

Town of Smithfield, NC



Unified Development Ordinance

Adopted by the Smithfield Town Council: August 2, 2017



ACKNOWLEDGMENTS

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PREFACE

This Unified Development Ordinance (UDO) specifies minimum standards for land use and development within the Town of Smithfield's planning jurisdiction. The regulations contained herein may exceed minimum State or Federal standards, but in no case should be considered to be less than minimum State or Federal standards.

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ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.1 SHORT TITLE.

This Ordinance shall be known and may be cited as the *Town of Smithfield Unified Development Ordinance* (UDO).

SECTION 1.2 AUTHORITY.

Zoning provisions enacted herein are under the authority of North Carolina General Statute (NCGS) 160D-701, which extends to towns/cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. It is further authorized under NCGS 160D which authorizes cities to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations may be imposed upon properties that lie within the boundary of the district. The statutes also require that all such regulations shall be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

Subdivision provisions enacted herein are under the authority of NCGS 160D-801 which provide for the coordination of streets within proposed subdivisions with existing or planned street and with other public facilities, the dedication or reservation or recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area, and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding.

This UDO, which combines zoning and subdivision authority, is further enacted under NCGS 160D-103.

SECTION 1.3 JURISDICTION AND EXEMPTIONS.

1.3.1. This Ordinance shall be effective throughout the Smithfield corporate limits and the town's extraterritorial jurisdiction (ETJ).

1.3.2. In addition to other locations required by law, a copy of a map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the planning department.

1.3.3. Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located.

ARTICLE 1. PURPOSE AND APPLICABILITY

1.3.4. Exemptions.

1.3.4.1. These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site-specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160D-108. Any preliminary or final subdivision plat approvals required for such approved or exempted site-specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance or Subdivision Ordinance.

1.3.4.2. In accordance with NCGS 160D-913, the Town of Smithfield UDO applies to state-owned lands only when a building is involved.

1.3.4.3. Article 10, Part X, Sections 10.96.1.1 -10.96.1.5 are exempt from the Subdivision Regulations of this Ordinance. The following are not subject to the Subdivision Regulations of this Ordinance (Article 10, Part X):

- The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown on its subdivision regulations.
- The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
- The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.
- The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes. *(Amended 10/3/2017)*

SECTION 1.4 SEVERABILITY.

If any section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

SECTION 1.5 REFERENCES TO ARTICLES OR SECTIONS.

All references in this UDO to articles or sections are to the articles or sections of this UDO unless otherwise specified.

ARTICLE 1. PURPOSE AND APPLICABILITY

SECTION 1.6 CONFLICTS WITH OTHER REGULATIONS.

In interpreting and applying the provisions of this Ordinance, they shall be held to be the **minimum requirements** for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with, abrogate, or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, restrictive covenants, or agreements, the provisions of this Ordinance shall govern.

SECTION 1.7 PROVISIONS CONSIDERED AS CONTINUATIONS OF EXISTING ORDINANCES.

The provisions appearing in this UDO, so far as they are the same as those of ordinances adopted prior to the adoption of this Ordinance, shall be considered as continuations thereof and not as new enactments.

SECTION 1.8 VIOLATION OF UDO REGULATIONS.

1.8.1. Development Approvals.

No person shall commence or proceed with any development without first securing any required "development approval" as defined in NCGS 160D-102. Staff shall give written notice of any decision, which notice shall be consistent with the notice provisions of GS 160D-403.

1.8.2. Enforcement.

Whenever the UDO Administrator receives a written, signed complaint alleging a violation of the Ordinance, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions will be taken. Enforcement is through civil penalty, injunctive relief, permit revocation, action under GS 160A-175, Article 4 of GS 160D and as otherwise allowed by law.

1.8.3. Persons Liable for Violations.

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may jointly and/or independently be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

1.8.4. Procedures Upon Discovery of Violations.

1.8.4.1. Notices of Violation.

ARTICLE 1. PURPOSE AND APPLICABILITY

If the UDO Administrator determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Ordinance or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. A notice of violation may be appealed to the board of adjustment in accordance with Section 4.10 of this Ordinance.

1.8.5. Penalties and Remedies for Violations.

1.8.5.1. Stop Work Orders.

Whenever any work or activity subject to regulation pursuant to this Ordinance or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the town that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. A stop work order may be appealed accordance with Section 4.10 of this Ordinance. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

1.8.5.2. Violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits shall be punishable by a civil penalty in accordance with the fee schedule as set forth in the town's budget or as established by resolution of the Town Council (see Section 2.7). If the offender fails to pay this penalty within ten (10) days after being cited for a violation, the penalty may be recovered by the town in a civil action in the nature of debt.

1.8.5.2. This Ordinance may also be enforced by any appropriate equitable action.

ARTICLE 1. PURPOSE AND APPLICABILITY

1.8.5.3. Each day that any violation continues after notification by the UDO Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section. Separate notices will not be provided for each violation.

1.8.5.4. Any one, all, or a combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

1.8.5.5. The assessment of a civil penalty may be appealed to the Board of Adjustment.

1.8.6. Permit Revocation.

1.8.6.1. In addition to initiation of enforcement actions under Section 1.8.5., development approvals may be revoked by notifying the permit holder in writing stating the reason for the revocation.

Any permit issued under this Ordinance may be revoked by the town following the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable UDO requirement or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval.

Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed in accordance with Section 4.10. If an appeal is filed regarding a development regulation in accordance with Section 4.10, the provisions of G.S. 160D-405(e) regarding stays shall be applicable.

1.8.6.2. No person may continue to make use of land or building in the manner authorized by any permit issued under this Ordinance after such permit has been revoked in accordance with this Ordinance.

1.8.7. Statute of Limitation for Land Use Violations.

1.8.7.1 Statutes of Limitation Table

1.8.7.1. Any enforcement action for a violation of a land use statute, ordinance, or permit must be taken within five (5) years from the earlier of the occurrence of the following:

ARTICLE 1. PURPOSE AND APPLICABILITY

1.8.7.1.1. The facts constituting the violation are known to the governing board, an agent, or employee of the Town.

1.8.7.1.2. The violation can reasonably be determined from the public record of the Town.

This standard does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety.

~~1.8.7.2.~~ Any enforcement action for a violation of a land use statute, ordinance, or permit must be taken within seven (7) years from the earlier of the occurrence of the following:

1.8.7.2.1. The violation is apparent from a public right-of-way.

1.8.7.2.2. The violation is in plain view from a place to which the public is invited.

This standard does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety.

SECTION 1.9 EFFECTIVE DATE.

The provisions in this Ordinance were originally adopted and became effective on August 2, 2017.

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ARTICLE 2. GENERAL REGULATIONS

SECTION 2.1 NORTH CAROLINA STATE BUILDING CODE.

The Town of Smithfield Building Code with appendices and the North Carolina State Building Code are incorporated herein by reference, and serve as the basis for Building Inspector authority to regulate building construction. This Ordinance is not intended to conflict with or supersede the North Carolina State Building Code regulations.

SECTION 2.2 INTERPRETATION.

2.2.1. Responsibility.

In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the UDO, the UDO Administrator shall be responsible for interpretation and shall look to the Ordinance for guidance. Responsibility for interpretation by the UDO Administrator shall be limited to standards, regulations and requirements of the UDO, but shall not be construed to include interpretation of any technical codes adopted by reference in the UDO, and shall not be construed as overriding the responsibilities given to any commission, board, building inspector, or Town officials named in other sections or articles of the UDO. Interpretations of the UDO may be appealed to the Board of Adjustment.

2.2.2. Permitted Uses.

If a use is not specifically listed in any of the districts listed in this Ordinance, then the UDO Administrator shall have the authority to interpret in which district the use, if any, should be permitted. If the UDO Administrator rejects a proposal for a use that is not clearly disallowed in a particular district, then the UDO Administrator shall:

2.2.2.1. Ensure that the citizen is provided with a copy of the interpretation in writing.

2.2.2.2. Inform the citizen of the right to appeal the decision to the Board of Adjustment.

2.2.2.3. Assist with the development of a proposed zoning text change for consideration by the Planning Board and Town Council allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not. Financial responsibility for a proposed zoning text change shall be on the applicant.

SECTION 2.3 IDENTIFICATION OF OFFICIAL ZONING MAP.

2.3.1. The Zoning Map shall be identified by the signature of the Mayor attested by the Town Clerk and bearing the seal of the Town under the following words: AThis is to certify that this is the Official Zoning Map of the Unified Development Ordinance, Smithfield, North Carolina, together with the date of the adoption of this Ordinance and most recent revision date. Interpretations of the UDO may be appealed to the Board of Adjustment.

ARTICLE 2. GENERAL REGULATIONS

2.3.2. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other items portrayed on the Zoning Map, such changes shall be entered on the official zoning map promptly after the amendment has been approved by the Town Council, with an entry on the official zoning map denoting the date of amendment, description of amendment, and signed by the Town Clerk. No amendment to this Ordinance which involves matter portrayed on the official zoning map shall become effective until after such change and entry has been made on said map.

2.3.3. No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedures set forth in this Ordinance and state law. Any unauthorized change of whatever kind by any person shall be considered a violation of this Ordinance and punishable as provided under Section 1.8.

2.3.4. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, the official zoning map, which shall be located in the office of the Town Clerk, shall be the final authority as to the zoning status of land and water areas, buildings, and other structures in the Town.

2.3.5. In the event the official zoning map becomes damaged, destroyed, lost, or difficult to interpret, the Town Council may by resolution adopt a new official zoning map which shall supersede the prior zoning map. The new official zoning map may correct drafting errors or other errors or omissions in the prior official zoning map, but no correction shall have the effect of amending the original official zoning map, or any subsequent amendment thereof. The new official zoning map shall be identified by the signature of the Mayor attested by the Town Clerk, and bearing the seal of the Town under the following words: AThis is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced), as part of the Unified Development Ordinance, Smithfield, North Carolina.®

2.3.6. Unless the prior official zoning map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.

SECTION 2.4 ZONING MAP INTERPRETATION.

Where uncertainty exists with respect to the boundaries of any district shown on the Zoning Map, the following rules shall apply:

2.4.1. Use of Property Lines.

Where district boundaries are indicated as approximately following street lines, alley lines, and lot lines, such lines shall be construed to be such boundaries. Where streets, highways, railroads, water courses, and similar areas with width are indicated as the district boundary, the actual district boundary line shall be the centerline of such area.

2.4.2. Use of the Scale.

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In unsubdivided property or where a zone boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shall be determined by use of the scale appearing on the map.

2.4.3. Vacated or Abandoned Streets.

Where any street or alley is hereafter officially vacated or abandoned, the zoning regulations applicable to each parcel of abutting property shall apply to the centerline of such abandoned street or alley.

2.4.4. Split Zoned Parcels.

If a district boundary divides a parcel, the requirement for the district in which the greater portion of the parcel lies shall be extended to the remainder of the parcel, provided that such extension shall not include any part of such parcel which lies more than one hundred and fifty (150) feet beyond the existing district boundary, and further provided that the remaining parcel shall not be less than the minimum required for the district in which it is located.

2.4.5. Flood Hazard Boundaries.

Interpretations of the location of floodway and floodplain boundary lines shall be made by the Administrator.

2.4.6. Board of Adjustment.

In case any further uncertainty exists, the Board of Adjustment shall interpret the intent of the map as to location of such boundaries.

SECTION 2.5 RELATIONSHIP TO LAND USE PLAN.

It is the intention of the council that this Ordinance implement the planning policies adopted by the council for the Town of Smithfield, as reflected in the Town of Smithfield land use plan and other planning documents. While the council reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the council hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

SECTION 2.6 RELATIONSHIP TO EXISTING UNIFIED DEVELOPMENT ORDINANCE.

To the extent that the provisions of this Ordinance are the same in substance as the previously adopted provisions that they replace in the Town's existing Unified Development Ordinance (UDO), they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful nonconforming situation under the previously adopted UDO does not achieve lawful nonconforming status under this Ordinance merely by the repeal of the previous UDO.

SECTION 2.7 FEES.

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2.7.1. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, major and minor subdivision plat approval, zoning amendments, variances, appeals, and other administrative relief, and site plan review. The amount of the fees charged shall be set forth in the Town's budget or as established by resolution of the council files in the Office of the Town Clerk.

2.7.2. Fees established in accordance with subsection 2.7.1, above, shall be paid upon submission of a signed application or notice of appeal.

SECTION 2.8 COMPUTATION OF TIME.

2.8.1. Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

2.8.2. Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice and the notice or paper is served by mail (Certified Mail/Return Receipt Requested), three days shall be added to the prescribed period.

SECTION 2.9 NO USE OR SALE OF LAND OR BUILDINGS EXCEPT IN CONFORMITY WITH ARTICLE PROVISIONS.

2.9.1. Subject to Article 9 of this Ordinance (Nonconforming Situations), no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Ordinance.

2.9.2. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

SECTION 2.10 ISSUED BUILDING AND/OR ZONING PERMITS.

The provisions contained herein shall not affect buildings, structures, and uses for which building and/or zoning permits were issued prior to the passage of this Ordinance, provided that the permit is not revoked and the activities for which the outstanding permits were issued are begun within six (6) months of the date this Ordinance is adopted. Outstanding zoning permits not used within six months shall be null and void.

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SECTION 2.11 EFFECT OF PRIVATE DEED RESTRICTIONS.

It is not intended by this ordinance to interfere with or annul any easements, covenants or other agreements between parties except in cases where such agreements require a use or location prohibited by this ordinance. Where this ordinance imposes a greater restriction on a building, use, or lot, the provisions of this ordinance shall govern.

SECTION 2.12 REDUCTION OF LOT AND YARD AREAS PROHIBITED.

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least these minimum requirements.

SECTION 2.13 RELATIONSHIP OF BUILDING TO LOT.

Every building hereafter erected, moved, or structurally altered, shall be located on a lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot except in the case of a designed complex of professional, residential, or commercial buildings with an approved site plan (see Sections 5.6 and 5.7) in an appropriate zoning district, i.e., school campus, apartments, condominiums, shopping center, and industrial park.

SECTION 2.14 REQUIRED YARDS NOT TO BE USED BY BUILDING.

The minimum yards or other open spaces required by this Ordinance for each and every building shall not be encroached upon or considered as meeting the yard and open space requirements of any other building.

SECTION 2.15 LOT REQUIREMENTS/DIMENSIONS.

2.15.1. Insofar as practical, side lot lines which are not right-of-way lines shall be at right angles to straight street lines or radial to curved street lines.

2.15.2. Every lot shall have sufficient area, dimensions, and street access to permit a principal building to be erected thereon in compliance with all lot size and dimensions, yard space, setback, and other requirements of this Ordinance.

2.15.3. The location of required front, side, and rear yards on irregularly shaped lots shall be determined by the UDO Administrator. The determination will be based on the spirit and intent of this Ordinance to achieve an appropriate spacing and location of buildings and structures on individual lots.

SECTION 2.16 HEIGHT LIMITATION EXCEPTIONS.

ARTICLE 2. GENERAL REGULATIONS

The following uses are not controlled by height limitations of this Ordinance: belfries, spires, cupolas, domes, monuments, observation towers, chimneys, smokestacks, water towers, conveyors, flag poles, television and radio masts, aerials, towers, and similar structures.

SECTION 2.17 MEASUREMENT OF DISTANCE.

All measurements for the purpose of the separation of uses shall be from the closest points of property line to property line for the parcels on which the uses are located.

SECTION 2.18 PROPERTY DEDICATED FOR PRIVATE USE.

Any property dedicated for private ownership, including but not limited to property owners-association ownership, for any use permitted by this Ordinance is not the maintenance responsibility of the Town of Smithfield.

SECTION 2.19 PUBLIC ACCESS TO PROPERTY.

Every building or structure hereafter erected shall be located on a lot and the lot shall abut a public street or have access to an approved private street, or the lot shall abut a common area properly restricted through deed restrictions and/or property owners- association at least partly owned by the owner of the building, structure, or portion thereof.

SECTION 2.20 DRIVEWAYS; PERMIT REQUIRED.

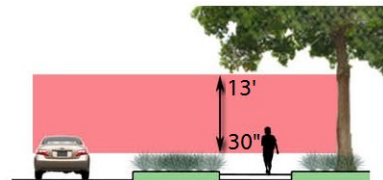
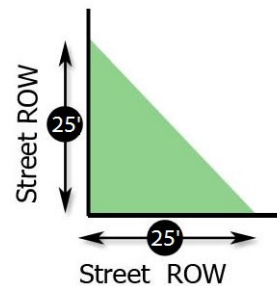
2.20.1. No person shall construct, reconstruct, or repair any driveway within the Town without first obtaining from the UDO Administrator a zoning permit to do so. Such person shall construct, reconstruct, and repair such driveway under the supervision of the UDO Administrator, and in accordance with Town specifications.

2.20.2. No portion of any residential driveway intersection with a Town public street shall be closer than twenty (20) feet to the corner of any intersection, measured along the right-of-way line. In commercial and industrial zones, this distance shall be thirty-six (36) feet. The width of any driveway intersection with the public street shall not exceed thirty-six (36) feet at its intersection with curb and street line. Driveway connections to the State of North Carolina Department of Transportation controlled streets must be requested from and approved by DOT on its standard form. Driveways that have double lane ingress and egress (4 lanes) shall be a minimum 48 feet width at intersection with curb and street line.

ARTICLE 2. GENERAL REGULATIONS

SECTION 2.21 STREET INTERSECTION SIGHT VISIBILITY TRIANGLE.

The land adjoining town-maintained street intersections or egress to a town-maintained street from off-street parking areas shall be kept clear of obstructions to protect the visibility and safety of motorists and pedestrians. On a corner lot, nothing shall be erected, placed, or allowed to grow in a manner so as materially to impede vision between a height of 30 inches and 13 feet in a triangular area formed by a diagonal line between two points on the right-of-way lines, 25 feet from where they intersect. A clear view shall be maintained on corner lots from 30 inches to 13 feet in vertical distance. Intersections of or with state maintained streets shall comply with NCDOT sight distance triangle requirements. Parcels in the B-1 district are exempt from this section, unless otherwise required by NCDOT standards.



SECTION 2.22 SIDEWALKS.

All new O/I (Office/Institutional), B-1 (CBD), B-2 (General Business), and B-3 (Highway Entranceway Business) district construction permitted following the adoption of this Ordinance shall be required to construct five (5) foot sidewalk(s) on the street right-of-way. The sidewalk(s) shall comply with the Town of Smithfield Standards and Specifications document and NCDOT requirements.

SECTION 2.23 CURB CUTS.

Construction of curb cuts for purposes of ingress and egress to property abutting a Town public right-of-way shall be approved by the Administrator. The North Carolina Department of Transportation is the approval authority where said curbs affect access to State Highways. Provision for all access work done on state highway right-of-way is subject to approval by the DOT.

SECTION 2.24 REGULATION OF FORESTRY ACTIVITIES.

This Ordinance shall not regulate either:

2.24.1. Forestry activity on forestland that is taxed on the basis of its present-use valued as forestland under NCGS Chapter 105, Article 12; or

2.24.2. Forestry activity that is conducted in accordance with NCGS Chapter 89B.

ARTICLE 2. GENERAL REGULATIONS

SECTION 2.25 BUSINESS USES OF MANUFACTURED HOMES AND TRAILERS.

No permanent manufactured home, permanent manufactured office, or permanent trailer shall be used in any manner for business or commercial purposes. The difference between manufactured offices and modular offices will be defined by the State Building Code.

SECTION 2.26 STANDARDS FOR EFFLUENT AND EMISSIONS.

All effluents and emissions into the air or surface or ground waters from new development permitted by this Ordinance must be in conformity with applicable federal, state, county, or Town health and environmental quality regulations.

SECTION 2.27 DUMPSTERS.

In all zoning districts, dumpsters must be located on a concrete pad with a six (6) foot high solid enclosure with solid gates.

SECTION 2.28 NUISANCES.

Non-domestic animals (i.e., pigs, ducks, cows, chickens) cannot be kept on any residentially zoned lot containing 20,000 square feet or less, unless the lot is registered as a bona fide farm.

SECTION 2.29 MISCELLANEOUS REGULATIONS.

2.29.1. Regulations set forth by this Ordinance shall be minimum regulations. If the requirements set forth in this Ordinance are at variance with the requirements of any other lawfully adopted uses, regulations, or ordinances, the more restrictive or higher standard shall govern.

2.29.2. Unless restrictions established by covenants with the land are prohibited by or contrary to the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative.

**ARTICLE 3.
ADMINISTRATIVE/LEGISLATIVE/
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ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

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, engineering drawings, and final plats.

3.1.2.6. Provide administrative interpretations of the UDO.

3.1.2.7. Provide nonconformity determinations.

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

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

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, Board of Adjustment and Historic Preservation Commission.

3.1.2.10. Perform site inspections.

SECTION 3.2 ETHICS.

3.2.1. Ethics.

3.2.1.1 Prohibitions As prohibited GS 14-234, the prohibitions of which are too numerous to duplicate herein, but are incorporated herein, no public officer or employee may:

3.2.1.1.1 Derive A Direct Benefit. Appointed board members shall not derive a direct benefit from a contract with the town; One has a direct benefit fit from the contract if he or she or his or her spouse has more than a 10 percent ownership or other interest in an entity that is a party to the contract, derives any income or commission directly from the contract, or acquires property under the contract (G.S. 14-234 (a1) (4))

3.2.1.1.2 Attempt to Influence an Officer. Appointed board members shall not attempt to influence an officer who derives a direct benefit from a contract with the town;

3.2.1.1.3 Solicit any gift, favor, reward. Appointed board members shall not solicit any gift, favor, reward service or promise of reward including a promise of future employment for attempting to influence a contract with the town.

3.2.1.2. Ethics Resolution All members of the board shall, as required by GS 160A-86 and pursuant to the Ethics Resolution of the town entered pursuant to that statute, study and follow the Ethics resolution including its direction as to the following.

3.2.1.2.1 Obey All Applicable Laws. Appointed board members shall obey all applicable laws regarding official actions taken as a board member.

3.2.1.2.2 Uphold Integrity. Appointed board members shall uphold the integrity and independence of the board member's office.

3.2.1.2.3 Avoid Impropriety. Appointed board members shall avoid impropriety in the exercise of the board member's official duties.

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3.2.1.2.4. Perform. Appointed board members shall faithfully perform the duties of the office.

3.2.1.2.5. Conduct Business in an Open and Public Manner. Appointed board members shall conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records. (2009-403, s. 1.)

3.2.2. Ethics Education.

All board members shall complete the ethics education requirements of G.S. 160A-87 within 12-months of appointment and file proof thereof with the Town Planner or will automatically be removed from the Board at the expiration of the 12-month deadline.

3.2.3. The provisions of this Code on the Historic Preservation Commission are drafted to be in compliance with Part 4 of Chapter 160A (including 160A-940-951 including any subsequent codification and the provisions of those statutes are incorporated herein and supersede the code.

SECTION 3.3 PLANNING BOARD.

3.3.1. Creation.

The Planning Board for the Town of Smithfield is created under the authority of NCGS 160D-301 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 NCGS 160D-307 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

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Town Council will ensure that proportional representation on the Planning Board shall be maintained in accordance with NCGS 160D-307, 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.

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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.

3.3.3.4. 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

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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.

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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, review and to prepare and recommend ordinances promoting orderly development along lines indicated in the Comprehensive Plan advise concerning proposed map and text 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 hold noticed public meetings to review and make recommendations to the Town Council on zoning text and map amendments.

3.3.4.12. To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

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

3.3.4.14. 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.

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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 Board of Adjustment shall be governed by the terms of NCGS 160D-302.

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, as described pursuant to NCGS 160D-307 and shall be appointed by the Board of County Commissioners of Johnston County, 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 Board of Adjustments shall be maintained in accordance with NCGS 160D-307, as amended. 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

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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 and not excused from voting (a quorum being present), shall be necessary to grant any variance. All other actions of the board shall be taken by majority vote of those present and not excused from voting, a quorum being present.

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.

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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 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-

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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 commission 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 NCGS 160D-942, 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. 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

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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.

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

3.5.3.2.4. Upon its first formal meeting, and prior to performing any duties under this article or under NCGS 160D-942, 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 standards for new construction, alterations, additions, moving and demolition of designated historic landmarks and properties in historic districts. The guidelines standards may be amended by the Historic Preservation Commission. All standards 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

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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 affected 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

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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

3.5.8.3. 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 standards guidelines, not inconsistent

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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

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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;

3.5.11.8. 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;

3.5.11.9. Prepare and recommend the official adoption of a preservation element as part

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of the town's comprehensive plan;

3.5.11.10. 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;

3.5.12.11 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

3.5.11.12. Approve all design plans and sketches so ensure that they meet the standards 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.

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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.

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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.

3.5.18.1 An appeal of an administrative decision may be made to the Historic Preservation Commission.

3.5.18.2 All decisions of the Historic Preservation Commission in granting or denying a certificate of appropriateness may be appealed to the Board of Adjustment

3.5.18.3. May be taken by any aggrieved party,

3.5.18.4. An appeal of a certificate of appropriateness must be filed within 30 days after the decision is effective or written notice has been provided.

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

3.5.18.6. Shall be in the nature of certiorari.

3.5.18.7. 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:

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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. 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.

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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 non-historic material, whether previously painted or not

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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 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	✓	

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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 flooring)	✓	
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	✓	

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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 character of the structure		✓
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	✓	

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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 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.

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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

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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 3.6 TOWN COUNCIL.

3.6.1. The Town Council, in considering special use permit applications and major subdivision preliminary plats, 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 4.6

ARTICLE 4.
LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

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ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

PART I. GENERAL PROVISIONS

SECTION 4.1 REQUESTS TO BE HEARD EXPEDITIOUSLY.

As provided in Article 3, the Planning Board/Town Council and Board of Adjustment (as applicable) shall hear and decide all applications, appeals, and variance requests, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 4.3, and obtain the necessary information to make sound decisions.

4.1.1 Permit/Process Type.

Permit/ Process Type	Section Permit/ Process Type*	Reviewing Agency	Public Notice (15.3)	Approving Agency	Appeal Process	Permit Validity Period	Permit Extension	
Zoning Permit	2.10	Administrative	PD	N/A	PD	BOA	6 months	N/A
Temporary Use Permit	6.5/7.30	Administrative	PD	N/A	PD or TC	BOA	6 months	N/A
Floodplain Development Permit	10.56-10.83	Administrative	PD	N/A	PD	Planning TC	6 months	Re-submit
Site Plan/Construction Plan	5.6	Administrative	PD and TRC	N/A	PD	BOA	2 years	5 year
Subdivision (Minor)	5.5	Administrative	PD / TRC	N/A	PD	BOA	30 days to file Plat	Re-submit
Subdivision (Major) Preliminary Plat	5.7	Quasi-Judicial	PD / TRC, & PB	Yes	TC	Superior Court	2 years	1 year
Final Plat (Major/Minor Subdivisions & Site Plans)	5.5/5.7.8	Administrative	PD/ TRC	N/A	Admin	BOA	30 days to file Plat	Re-submit
Special Use Permit	4.9	Quasi-Judicial	PB	Yes	TC	Superior Court	2 years	1 year
Designation of Historic Landmarks/Districts	3.5	Legislative	HPC	Yes	TC	Superior Court	N/A	N/A
Certificate of Appropriateness – Minor Works	3.5	Administrative	PD	N/A	PD	HPC	1 year	1 year

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Permit/ Process Type	Section	Permit/ Process Type*	Reviewing Agency	Public Notice (15.3)	Approving Agency	Appeal Process	Permit Validity Period	Permit Extension
Certificate of Appropriateness – Major	3.5	Quasi-Judicial	PD	Yes	HPC	BOA	1 year	1 year
Appeal of Administrative Decision	4.10	Quasi-Judicial	BOA	Yes	BOA	Superior Court	30 days to Appeal	N/A
Variance	4.10	Quasi-Judicial	BOA	Yes	BOA	Superior Court	30 days to Appeal	N/A
Text Amendment	4.6	Legislative	PB	Yes	TC	Superior Court	N/A	N/A
Map Amendment (Rezoning)	4.6	Legislative	PB	Yes	TC	Superior Court	N/A	N/A
Conditional Zoning District	6.4	Legislative	PB	Yes	TC	Superior Court	May be rescinded after 2 years	N/A
	4.6							
Planned Unit Development	6.4 4.6 10.110.19	Legislative	PB	Yes	TC	Superior Court	May be rescinded after 2 years	N/A
Vested Right	4.7	Legislative	PB	Yes	TC	None	2 years or up to 5 years	N/A

Board of Adjustments (BOA)
 Technical Review Committee (TRC)
 Planning Board (PB)
 Historic Preservation Commission (HPC)
 Town Council (TC)
 Planning Department (PD)

SECTION 4.2 HEARING REQUIRED.

4.2.1. Before making a decision on an application for an amendment to the zoning map or zoning text, appeal of a decision of an administrative officer, variance, ~~or~~ special use permit, or major subdivision preliminary plat the Town Council or Board of Adjustment (as appropriate) shall hold a hearing on the application as soon after the submittal of a completed application as feasible (provided that the public advertising requirements are met). The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

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4.2.2. Subject to subsection 4.2.3, the hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence and arguments.

4.2.3. The decision-making board may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

4.2.4. The decision-making board may continue the evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not present, the hearing shall be continued until the next regular board meeting without further advertisement.

SECTION 4.3 NOTICE OF HEARING.

4.3.1. Notice and Public Meetings/Hearings - Zoning Text Amendment.

No amendment shall be adopted by the Town Council until after public notice and meeting before the Planning Board and public notice and hearing before the Town Council. Notice of such a public meeting/hearing shall be published once a week for two successive calendar weeks in a local newspaper of general circulation in the Town.

4.3.2. Notice and Public Meetings/Hearings - Zoning Map Amendment.

4.3.2.1. In any case where the Town Council will consider a change in the zoning classification of a parcel of land, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners, including those separated by a street, railroad, or other transportation corridor as shown on the Johnston County tax listing at the last addresses listed for such property owners on the Johnston County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for rezoning, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all abutting properties to the property to be considered for rezoning, as shown on the Johnston County tax listing. The application shall be considered incomplete without such material.

4.3.2.2. At least ten but no more than 25 calendar days prior to the date of the meeting at which the Planning Board/Town Council will consider the request for rezoning, the Town Clerk shall mail a letter of notification containing a description of the request and the time, date and location of the public meeting/hearing to the owners on the supplied list. Additionally, the site proposed for rezoning or an adjacent public right-of-way shall be posted by the UDO Administrator with a notice of the public meeting/hearing not less than ten calendar days prior to the Planning Board/Town Council meeting at which the rezoning

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

is to be considered. When multiple parcels are included in a proposed zoning map amendment, a posting of each individual site is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons. The Town Clerk shall certify to the Town Council in writing that such notices have been made and such certification shall be deemed conclusive in the absence of fraud.

4.3.2.3. The first class mail notice required under subsections 4.3.2.1 and 4.3.2.2 of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice. In this instance, the Town may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish a notice of the meeting or hearing as required by NCGS 160D-301, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Johnston County property tax listing for the affected property, shall be notified according to the provisions of subsections 4.3.2.1 and 4.3.2.2.

4.3.3. Notice and Public Meetings/Hearings - Appeals, Variances, and Special Use Permits, and Major Subdivision Preliminary Plats.

4.3.3.1. Notice of meetings/hearings conducted pursuant to Sections 4.9. and 4.10 shall be mailed to the person or entity whose appeal, application, or request is the subject of the meeting/hearing; to the owner of the property that is the subject of the meeting/hearing if the owner did not initiate the meeting/hearing; and to the owners of all parcels of land abutting the parcel of land , including those separated by a street, railroad, or other transportation corridor that is the subject of the hearing. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the meeting/hearing. Within that same time period, the Town shall also prominently post a notice of the meeting/hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

4.3.3.2. In the case of special use permits, 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 meeting/hearing.

4.3.3.3. The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal and give a brief description of the action requested or proposed.

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SECTION 4.4 EXPIRATION OF PERMITS.

This ordinance specifies, as authorized by G.S. 160D-108 (d) (2) in compliance with 160D-403, that special use permits expire one year after issuance unless work has substantially commenced and terminate six months after the use of the property as specified in the special use ceases.

4.4.1. The permit-issuing authority may extend for a period up to six (6) months the date when a zoning or special use permit would otherwise expire pursuant to G.S. 160D-108 (d) (2) in compliance with 160D-403 if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted through a quasi-judicial proceeding for periods up to six (6) months (for a total period not to exceed three (3) years) upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

4.4.2. For purposes of this section, the special use permit within the jurisdiction of the Town Council is issued when such board votes to approve the application and issue the permit. A zoning permit within the jurisdiction of the UDO Administrator is issued when the earlier of the following takes place:

4.4.2.1. A copy of the fully executed permit or extension is delivered to the permit recipient and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or

4.4.2.2. The UDO Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required (see Section 4.5.2).

4.4.3. Notwithstanding any of the provisions of Article 9 (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

4.4.4. Special use permits for which vested rights have been secured in accordance with Section 4.7 shall expire at the end of the two-year vesting period.

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

SECTION 4.5 EFFECT OF PERMIT ON SUCCESSORS AND ASSIGNS.

4.5.1. Zoning, special use permits, and floodplain development permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the conforming uses, land, or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

4.5.1.1. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

4.5.1.2. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection 4.5.2) of the existence of the permit at the time they acquired their interest.

4.5.2. Whenever a special use or special use permit is issued to authorize development (other than single-family or two-family residences) on a tract of land in excess of one (1) acre, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Johnston County Registry and indexed under the record owner's name as grantor.

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

PART II. LEGISLATIVE PROCEDURES

SECTION 4.6 AMENDMENT/REZONING PROCEDURES.

4.6.1. Procedure.

The Town Council may amend, supplement, or change the text of this Ordinance and zoning map following review and recommendation of the Planning Board according to the procedures established in this section.

4.6.2. Action by Applicant.

The following action shall be taken by the applicant:

4.6.2.1. Proposed changes or amendments may be initiated by the Town Council, Planning Board, or by one or more interested parties.

4.6.2.2. An application for any text change or amendment shall contain the proposed text amendment and the name(s) and address(es) of the applicant(s).

4.6.2.3. An application for any map change or amendment shall contain a description and statement of the present and proposed zoning regulation or district boundary to be applied, the name(s) and address(es) of the applicant(s), the owner of the parcel of land involved in the change if different from the applicant, and all adjacent property owners as shown on the Johnston County tax listing.

4.6.2.4. One (1) hard copy and one (1) electronic copy of such application shall be filed with the UDO Administrator not later than thirty (30) calendar days prior to the Planning Board meeting at which the application is to be considered.

4.6.2.5. If the UDO Administrator determines that the development for which a rezoning is requested will have or may have substantial impact on surrounding properties, he will require that the applicant conduct an informational meeting prior to Planning Board consideration to discuss the impacts of the proposed rezoning with the adjoining property owners. The purpose of the information meeting is to involve those property owners most likely impacted by a proposed project in the early steps of the development process. Consequently, the information meeting should be held prior to the public hearing date established for the rezoning request.

4.6.3. Action by the Planning Board.

The Planning Board shall hold a noticed public meeting and advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted comprehensive plan and any other applicable officially adopted plans. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

approval of the proposed amendment by the Town Council. In its deliberations, the Planning Board shall provide the public an opportunity to comment on consistency with the Comprehensive Plan.

4.6.4. Action by the Town Council.

Action to consider a rezoning petition, including the scheduling of a public hearing, will be at the discretion of the Town Council.

4.6.4.1. Before an item is scheduled for a public hearing, the Planning Board's recommendation on each proposed zoning amendment must be received by the Town Council. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Town Council without a recommendation from the Planning Board. However, the Planning Board may request the Town Council to delay final action on the amendment until such time as the Planning Board can present its recommendations.

4.6.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Town Council may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

4.6.4.3. The Town Council is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

4.6.4.4. No member of the Town Council shall vote on any zoning map amendment or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member or his or her close family, business, and/or associational relationships.

4.6.4.5. Prior to adopting or rejecting any zoning text and/or map amendment (including small scale rezonings), the Town Council shall adopt a statement describing whether the action is consistent with the adopted comprehensive plan and any other applicable officially adopted plans and explaining why the Town Council considers the action taken to be reasonable and in the public interest. This statement is not subject to judicial review.

4.6.4.6. In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Town Council is whether the proposed amendment advance the public health, safety, or welfare. All other issues are irrelevant and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and excluded. When considering proposed map amendments:

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4.6.4.6.1. The Town Council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Town Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

4.6.4.6.2. The Town Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change but shall consider the impact of the proposed change on the public at large.

4.6.4.6.3. Town Council consideration of amendments and rezonings, including conditional zoning are legislative and are passed as ordinances. Members who refuse to vote but are not disqualified and are not excused by the council will be considered to have voted in the affirmative.

4.6.5. CZ/PUD Conditional Zoning Procedure

Conditional Zoning Districts (CZ) and (PUD) Planned Unit Development Conditional Zoning Districts (PUD) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Town Council in accordance with G. S. 160D-7-3 and in accordance with Section 4.6 Amendment/Rezoning/Conditional Zoning Procedures. Conditional Zonings (CZ and PUD) provide for orderly and flexible development under the general policies of this ordinance without the constraints of some of the prescribed standards guiding by-right development. This Conditional Zoning may be used in any district but is not intended to relieve hardships that would otherwise be handled using a variance procedure.

4.6.5.1. Action by Applicant. Conditional Zoning (CZ) or Planned Unit Development (PUD) classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included in the specific Conditional Zoning request. A Conditional Zoning shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. "Unified control" means that all land to be included within a Conditional Zoning shall be owned or otherwise under the legal control of the applicant for a Conditional Zoning. The applicant shall be legally capable of providing a commitment to the town that the Conditional Zoning development will comply with all documents, plans, standards and conditions ultimately approved by the town.

4.6.5.2. Fair and Reasonable Conditions. Within an approved Conditional Zoning (CZ or PUD), no use shall be permitted except pursuant to the conditions imposed by the applicant on the Conditional Zoning in the approval of the rezoning. The Town Council and the applicant may mutually agree to additional reasonable

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

and appropriate conditions or safeguards to serve the purpose and intent of this section, and to preserve public welfare, and justice. The provisions of the Conditional Zoning Master Plan shall replace all conflicting development regulations set forth in this ordinance which would otherwise apply to the development site. The Planning Board may recommend and the Town Council (with mutual approval of the applicant) may attach reasonable and appropriate conditions including, but not limited to, the location, nature, hours of operation, and extent of the proposed use(s). Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to this ordinance and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site. The applicant will have a reasonable opportunity to consider and respond to any conditions and site-specific standards proposed by either the Planning Board or the Town Council prior to final action. In accordance with G.S. 160D-7-3.

4.6.5.3. Content of Application. A Conditional Zoning (CZ or PUD) shall consist of the Existing Conditions Map, a Sketch Plan (may be waived by Administrator as appropriate), and Master Plan; as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the Board of Commissioners. The Conditional Zoning Master Plan, is a site specific that is a condition of the Conditional Zoning rezoning. In addition to those items required for Site Plans in Section 5.7, a Conditional Zoning Master Plan shall, at a minimum, illustrate the following:

4.6.5.3.1. The underlying zoning districts and a full list of proposed uses consistent in character with those zoning districts. Such use classifications may be selected from any of the uses, whether permitted, by right or with supplemental standards, allowed in the general zoning district upon which the Conditional Zoning (CZ or PUD) is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional Zoning.

4.6.5.3.2. General traffic routes (external and internal) to and from the development with major access points identified.

4.6.5.3.3. Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios and impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;

4.6.5.3.4. A proposed development schedule if the project is to be phased.

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4.6.5.4. Exception for Conditional Zonings with Use Limitations Only. If an applicant proposes a Conditional Zoning (CZ) which meets the following criteria, no Conditional Zoning Master Plan shall be required in the application:

4.6.5.4.1. The only proposed deviation in use from the underlying zoning is to impose additional limitations on the uses that will be allowed in the Conditional Zoning.

4.6.5.4.2. No other deviations from the standards of the underlying zoning are proposed in the Conditional Zoning.

4.6.5.5. Conditional Zoning Procedure. The procedure for approval of a Conditional Zoning (CZ or PUD) shall follow the procedure for review of zoning text and map amendments (rezoning) as outlined in Sections 4.6.

4.6.5.6 Effect of Approval

The applicant may proceed with development only after approval of the Conditional District Master Plan by the Town Council, followed by approval of any necessary Site Plans or Subdivision Plats, except that all subsequent approvals shall be completed by the Administrator. The development and use of all land within the Conditional Zoning (CZ or PUD) shall be in keeping with the approved Master Plan and all applicable provisions therein.

4.6.5.6.1. Final Approval by Stages. If so reflected on the Master Plan, the Town Council may allow the phasing of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable Conditional Zoning Master Plan.

4.6.5.6.2 Substantial Changes. Any substantial change to a Master Plan as noted below shall be reviewed by the Planning Board and approved or denied by the Town Council as an amended Conditional Zoning District (CZ or PUD). The following changes to a Conditional Zoning Master Plan shall require approval by the Town Council:

- Land area being added or removed from the Conditional Zoning District
- Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
- A change in land use or development type beyond that permitted by the approved Conditional District Master Plan.
- When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.

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- When there is an increase in the total number of residential dwelling units originally authorized by the approved Conditional Zoning Master Plan.
- When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Town Council. Changes of less than 10 percent may be approved by the Administrator.
- Any change which alters the basic development concept of the Conditional Zoning Master Plan.

4.6.5.6.3. Rescission of Conditional Zoning Districts: The Applicant shall secure a valid building or construction permit(s) within 2 years from date of approval of the Conditional Zoning District (CZ or PUD) unless otherwise specified. If such project is not complete or a valid building or construction permit is not in place at the end of the 2-year period, the Administrator shall notify the applicant of either such finding. Within 60 calendar days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional Zoning District to the Town Council. The Town Council may then rescind the Conditional Zoning District, or extend the life of the Conditional Zoning District for a specified period of time. The rescission of a Conditional Zoning District shall follow the same procedure as was needed for approval.

4.6.5.6.3.1. If a petition for a CZ or PUD is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, site-specific standards and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.

4.6.5.6.3.2. A CZ or PUD District approval and the conditions imposed upon its approval shall be perpetually binding on the land unless it is subsequently amended pursuant to Sec 4.6.4.7.4 Amendments or otherwise rezoned.

4.6.5.6.3.3 Any CZ or PUD District approved under this ordinance shall have vested rights pursuant to NCGS 160D-108 as set forth in Sec. 4.7 Vested Rights, of this ordinance.

4.6.5.7. Amendments to Approval

4.6.5.7.1. Except as provided in Section 4.6.4.7.3.2 below, changes to an approved petition or to the conditions attached to the approved petition shall be

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treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this chapter.

4.6.5.7.2. Minor deviations from an approved CZ or PUD Site Plan may be approved by the Planning Director. Minor deviations that are authorized are those that appear necessary in light of technical or engineering considerations as long as they comply with the standards of this Ordinance. Minor deviations shall consist of:

- Floor area. Expansion of building floor area by not more than 10%.
- Height. An increase of building height by not more than 10%.
- Parking spaces. An increase or decrease of parking spaces by not more than 10% or 10 spaces, whichever is less.
- Relocation of buildings. Minor relocation of buildings or other site elements if they maintain the same general building relationships, topography, landscaping and utility design.
- Minor changes. Minor changes in building elevations and landscaping provided that the change retains the same general architectural relationships and uses equivalent building and/or landscaping materials.

4.6.6. Citizen Comments.

Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the Clerk to the Board at least two business days prior to the proposed vote on such change, the Clerk to the Board shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160D-402, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Board shall not disqualify any member of the Board from voting.

4.6.7. Withdrawal of Application.

An applicant may withdraw his or her application at any time by written notice to the UDO Administrator and may resubmit at a subsequent date in compliance with the submittal schedule contained herein.

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SECTION 4.7 ESTABLISHMENT OF VESTED RIGHTS.

4.7.1. A vested right, in accordance with NCGS 160 D-108, may be established upon the approval or special approval of a site-specific development plan by the Town Council in accordance with the provisions outlined in this section. Approval by the Town Council of a site-specific development plan shall follow the procedural requirements for the issuance of a special use permit as outlined in Section 4.9. Changes in or modifications to an approved site-specific development plan shall be made only with the concurrence of the Town Council in accordance with the provisions of Section 4.9.7. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two (2) years and shall attach to and run with the land. A vested right shall expire at the end of two (2) years if no building permit applications have been filed with the Town to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of NCGS 160D-108 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period. The two (2) years may be extended up to five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the Town.

4.7.2. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this subsection shall have the meaning indicated when used in this section.

4.7.2.1. Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan.

4.7.2.2. Property. All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

4.7.2.3. Site-Specific or Phased Development Plan. A site-specific or phased development plan which has been submitted to the Town of Smithfield by a landowner in accordance with NCGS 160D-108 (D)(3) describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan and shall include the information required by Section 5.7. All site-specific or phased development plans shall be approved by the Town Council.

4.7.2.4. Vested Right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific or phased development plan.

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4.7.3. A vested right shall be deemed established upon the effective date of approval by the Town Council of a site-specific development plan. Following the approval of a site-specific development plan, the UDO Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site-specific development plan, and any other information determined by the UDO Administrator to be necessary to administer the vested right.

4.7.4. A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site-specific development plan. The Town Council may approve a site-specific development plan upon such terms and conditions as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.

4.7.5. A vested right, once established or provided for in this section, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in this approved site-specific development plan, except:

4.7.5.1. With the written consent of the affected landowner;

4.7.5.2. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan;

4.7.5.3. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

4.7.5.4. Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site-specific development plan; or

4.7.5.5. Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site-specific development plan, in which case the Town may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.

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4.7.6. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

4.7.7. Notwithstanding any provisions of this section, the establishment of a vested right shall not preclude, change, or impair the authority of the Town to enforce provisions of this Ordinance governing nonconforming situations or uses.

4.7.8. A vested right obtained under this section is not a personal right but shall attach to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.

4.7.9. The Town shall not require a landowner to waive his vested rights as a condition of developmental approval.

SECTION 4.8 MORATORIUM.

The Town may adopt temporary moratoria on any Town development approval required by law in accordance with NCGS 160D-107.

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PART III. QUASI-JUDICIAL PROCEDURES

SECTION 4.9 SPECIAL USE PERMITS.

4.9.1. Purpose and Applicability.

This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows some uses to be allowed in these districts as a special use subject to issuance of a special use permit by the Town Council. Town Council consideration of special use permits are quasi-judicial decisions. The purpose of having the uses being special is to ensure that they would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which they are located and would meet other criteria as set forth in this section. All special use permits require some form of a site plan as outlined in Section 5.6.

4.9.2. Application Process/Completeness.

4.9.2.1. The deadline for which a special use permit application shall be filed with the UDO Administrator is thirty (30) calendar days prior to the meeting at which the application will be heard. Permit application forms shall be provided by the UDO Administrator.

4.9.2.2. No application shall be deemed complete unless it contains or is accompanied by a site plan drawn to scale which complies with the requirements contained in Section 5.6 and a fee as specified in Section 2.7.

4.9.2.3. One (1) hard copy of the application, and all attachments and maps, for a special use permit shall be submitted to the UDO Administrator.

4.9.3. Planning Board Action.

4.9.3.1. Public Notification. At least ten, but no more than 25 calendar days prior to the date of the Planning Board meeting, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners including those separated by a street, railroad, or other transportation corridor as shown on the Johnston County tax listing at the last addresses listed for such property owners on the Johnston County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for special use permit, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all properties any portion of which is within two hundred (200) feet of the property to be considered for special use permit, as shown on the Johnston County tax listing. The application shall be considered incomplete without such material.

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4.9.3.2. Planning Board Review. The Planning Board shall review the special use permit application and conduct a public meeting about the proposed special use permit in order to obtain public comments and to provide feedback to the applicant. The Planning Board shall not make or forward any recommendation to the Town Council. Subsequent to the Planning Board review, the UDO Administrator shall schedule the evidentiary hearing before the Town Council within 30 days.

4.9.4. Town Council Action.

4.9.4.1. Town Council consideration of special use permits are quasi-judicial decisions approved by a simple majority vote. Quasi-judicial decisions must be conducted in accordance with Section 4.11. For the purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered “members of the Council” for calculation of the requisite majority vote.

4.9.4.2. Once the application is submitted by the UDO Administrator, the Town Council shall hold a public hearing to consider the application at its next regularly scheduled meeting. A quorum of the Town Council is required for this hearing. Notice of the public hearing shall be as specified in Section 4.3. In the course of evaluating the proposed special use, the Town Council may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Town Council.

4.9.4.3. In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Town Council may impose reasonable and appropriate conditions and safeguards upon the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council shall include in its comments a statement as to the consistency of the application with the Town’s currently adopted Comprehensive Plan.

4.9.4.4. The applicant has the burden of producing competent, substantial evidence tending to establish the facts and conditions which subsection 4.9.3.5 below requires.

4.9.4.5. The Town Council shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

4.9.4.5.1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.

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4.9.4.5.2. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

4.9.4.5.3. Adequate utilities, drainage, parking, or necessary facilities have been or are being provided.

4.9.4.5.4. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas.

4.9.4.5.5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

4.9.4.5.6. That the use will not adversely affect the use or any physical attribute of adjoining or abutting property.

4.9.4.5.7. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.

4.9.4.5.8. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

4.9.4.6. *Conditions and Guarantees.* Prior to the granting of any special use, the Town Council may require conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which special uses are granted, the Town Council may require guarantees to ensure compliance with the special use permit conditions. The reasons/justification for special conditions must be stated/tied to Section 4.9.3.5.

4.9.4.7. The Town Council may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

4.9.4.8. Without limiting the foregoing, the Town Council may attach to a permit a condition limiting the permit to a specified duration.

4.9.4.9. All additional comments or requirements shall be entered on the permit and are enforceable in the same manner and to the same extent as any other applicable requirements of this Ordinance.

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4.9.5. Effect of Approval.

If an application for a special use permit is approved by the Town Council, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the special use permit, or develop any other use listed as a permitted use for the general zoning district in which it is located.

4.9.6. Binding Effect.

Any special use permit so authorized shall be binding to the property included in the permit unless subsequently changed or amended by the Town Council.

4.9.7. Certificate of Occupancy.

No certificate of occupancy for a use listed as a special use shall be issued for any building or land use on a piece of property which has received a special use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the special use permit approved by the Town Council. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

4.9.8. Change in Special Use Permit.

An application to materially change a special use permit once it has been issued must first be submitted, reviewed, and approved in accordance with Section 4.9.3, including payment of a fee in accordance with the fee schedule approved by the Town Council.

SECTION 4.10 APPEALS AND VARIANCES

4.10.1. Appeals.

4.10.1.1. Any person who has standing under GS 160D-405 or the Town may appeal a decision of an administrative officer charged with the enforcement of this Ordinance to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal. A notice of appeal shall be considered filed with the Town Clerk when delivered to the Town Hall, and the date and time of filing shall be entered on the notice by the Town staff.

4.10.1.2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

4.10.1.3. The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have

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thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

4.10.1.4. The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

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

4.10.1.6. Subject to the provisions of subsection 4.10.1.4, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

4.10.1.7. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board of Adjustment shall have all the powers of the official who made the decision.

4.10.1.8. When hearing an appeal pursuant to GS 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in GS 160D-1402.

4.10.1.9. The parties of an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

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4.10.2. Variances.

4.10.2.1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator 30 days prior to the meeting at which it will be considered. Applications shall be handled in the same manner as applications for permits.

4.10.2.2. When unnecessary hardships would result from carrying out the strict letter of the UDO, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all of the following:

4.10.2.2.1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

4.10.2.2.2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

4.10.2.2.3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4.10.2.2.4. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

4.10.2.3. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

4.10.2.4. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

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4.10.3. Burden of Proof in Appeals and Variances.

4.10.3.1. When an appeal is taken to the Board of Adjustment in accordance with Section 4.10.1, the UDO Administrator shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

4.10.3.2. The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 4.10.2.2, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

4.10.4. Board of Adjustment Action/Voting

The concurring vote of four-fifths of the full membership of Board of Adjustment and not excused from voting shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal. For the purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority.

4.11. PRELIMINARY SUBDIVISION PLATS (MASTER PLANS).

4.11.1. Applicability. The Subdivision Preliminary Plat (Master Plan) review process is required for those divisions of land into 4 or more lots, or which require dedication of public utilities and/or public streets (Part X Subdivision Regulations).

4.11.2. Permit Required Before Any Land Disturbing Activity. No such land disturbing activity shall take place until a Subdivision Master Plan has been approved.

4.11.3. Pre-Application Procedure: See Section 5.4.

4.11.4. Required Application Information: All major subdivision preliminary plats shall be submitted in accordance with Section 10.100 and shall be accompanied by a 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.

4.11.5. Application Review. The UDO Administrator shall circulate the plat to relevant governmental agencies and officials in accordance with Section 5.5.3. who shall review the application to ensure that it is complete and in compliance with UDO requirements and other requirements. The UDO Administrator shall prepare a report and recommendation on the application and schedule the matter for a Planning Board review at the next available, regularly scheduled meeting.

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4.11.6. Public Notification. At least ten, but no more than 25 calendar days prior to the date of the Planning Board meeting, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners including those separated by a street, railroad, or other transportation corridor as shown on the Johnston County tax listing at the last addresses listed for such property owners on the Johnston County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for preliminary plat, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all properties any portion of which is within two hundred (200) feet of the property to be considered for preliminary plat, as shown on the Johnston County tax listing. The application shall be considered incomplete without such material.

4.11.7. Planning Board Review. The Planning Board shall review the preliminary plat and conduct a public meeting about the proposed preliminary plat in order to obtain public comments and to provide feedback to the developer. Subsequent to the Planning Board review, the UDO Administrator shall schedule the evidentiary hearing before the Town Council within forty-five days of the Planning Board review of the application.

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

4.11.9. Public Hearing. The Town Council shall hold an evidentiary meeting in accordance with the procedures for quasi-judicial hearings (Section 4.11) on the proposed subdivision preliminary plat and shall approve, deny or approve with conditions, or 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.

4.11.10. Decisions/Findings of Fact: No Preliminary Plat approval shall be granted by the Town Council unless it complies with the following findings of fact:

4.11.10.1. The plan is consistent with the adopted plans and policies of the town;

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4.11.10.2. The plan complies with all applicable requirements of this ordinance;

4.11.10.3. There exists adequate infrastructure (transportation and utilities) to support the plan as proposed; and

4.11.10.4. The plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses.

4.11.11. Denials. 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

4.11.12. Appeals. An appeal from the decision of the Town Council regarding a Subdivision Preliminary Plat (Master Plan) may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Council is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or Mayor at the time of its hearing of the case, whichever is later. The decision of the Council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

4.11.13. Approval Validity. Approval of a Subdivision Preliminary Plat (Master Plan) shall be valid for 2 years from the date of approval. Subdivisions may be phased according to a schedule established by the applicant. If the approved Subdivision Master Plan provides for multiple phases within the subdivision, a Subdivision Construction Plan approval for any one phase shall extend the Subdivision Preliminary Plat approval for all other phases for a period of 2 years from the date of the Subdivision Construction Plan approval for that phase. If a Subdivision Construction Plan approval has not been obtained prior to the end of this 2 year period, the Subdivision Preliminary Plat approval shall become void.

4.11.14. Approval Extension. The Town Council may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

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4.11.15. Substantial Changes. Any substantial change to a Subdivision Preliminary Plat (Master Plan) as noted below shall be reviewed by the Planning Board and approved or denied by the Town Council as an amended a Subdivision Preliminary Plat. The following changes to a Subdivision Preliminary Plat shall require approval by the Town Council:

1. Modification of special performance criteria, design standards, or other requirements specified by the Subdivision Preliminary Plat
2. A change in land use or development type beyond that permitted by the approved Subdivision Preliminary Plat.
3. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
4. When there is an increase in the total number of residential dwelling units originally authorized by the approved Subdivision Preliminary Plat.
5. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Town Council. Changes of less than 10 percent may be approved by the UDO Administrator.
6. Any change which alters the basic development concept of the Subdivision Preliminary Plat.

SECTION 4.12 PROCEDURES FOR QUASI-JUDICIAL HEARINGS.

4.12.1. Evidence/Presentation of Evidence.

4.12.1.1. The provisions of this section apply to all hearings for which a notice is required by Section 4.3.

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

4.12.1.2. All persons who intend to present evidence to the decision-making board shall be sworn in by the Chair. The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the decision-making board, willfully swears falsely is guilty of a Class 1 misdemeanor.

4.12.1.3. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (necessary findings) shall be based upon competent, substantial

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evidence. The term “competent evidence,” as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (1) the evidence was admitted without objection or (2) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term “competent evidence,” as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

4.12.1.3.1. The use of property in a particular way would affect the value of other property.

4.12.1.3.2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

4.12.1.3.3. Matters about which only expert testimony would generally be admissible under the rules of evidence.

4.12.1.4. The entirety of a quasi-judicial hearing and deliberation shall be conducted in open session.

4.12.1.5. Parties to a quasi-judicial hearing have a right to cross-examine witnesses.

4.12.1.6. Factual findings must not be based on hearsay evidence which would be inadmissible in a court of law.

4.12.1.7. If a member of the decision-making board has prior or specialized knowledge about a case, that knowledge should be disclosed to the rest of the decision-making board and parties at the beginning of the hearing.

4.12.1.8. The decision-making board through the Chair, or in the Chair’s absence, anyone acting as the Chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under GS 160D-404(b) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all property parties.

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4.12.2. Modification of Application at Hearing.

4.12.2.1. In response to questions or comments made in sworn testimony at the hearing, the applicant may agree to modify his application, including the plans and specifications submitted.

4.12.2.2. Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the UDO Administrator.

4.12.3. Record.

4.12.3.1. A record shall be made of all hearings required by Section 4.2 and such recordings shall be kept as provided by state law. Minutes shall also be kept of all such proceedings. A transcript may be made but is not required.

4.12.3.2. All documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town in accordance with NCGS 160D-1402.

4.12.4. Quasi-Judicial Decision.

The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision within the Clerk to the Board or such other office or official as this Ordinance species. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

SECTION 4.13 REHEARINGS.

When an application involving a quasi-judicial procedure/petition is denied by the Town Council or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

SECTION 4.14 APPEALS OF QUASI-JUDICIAL DECISIONS.

4.14.1. Every quasi-judicial decision shall be subject to review by the Superior Court of Johnston County by proceedings in the nature of certiorari pursuant to GS 160D-1402.

4.14.2 A petition for review shall be filed with the Johnston County Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with Section 4.11.4. When first class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

4.14.3. A copy of the writ of certiorari shall be served upon the Town of Smithfield.

**ARTICLE 5.
DEVELOPMENT REVIEW PROCESS**

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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, Site Plans, and Construction 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 construction 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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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.

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 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~~ building 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.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.4.4.9. The boundaries of any proposed phasing.

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

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.

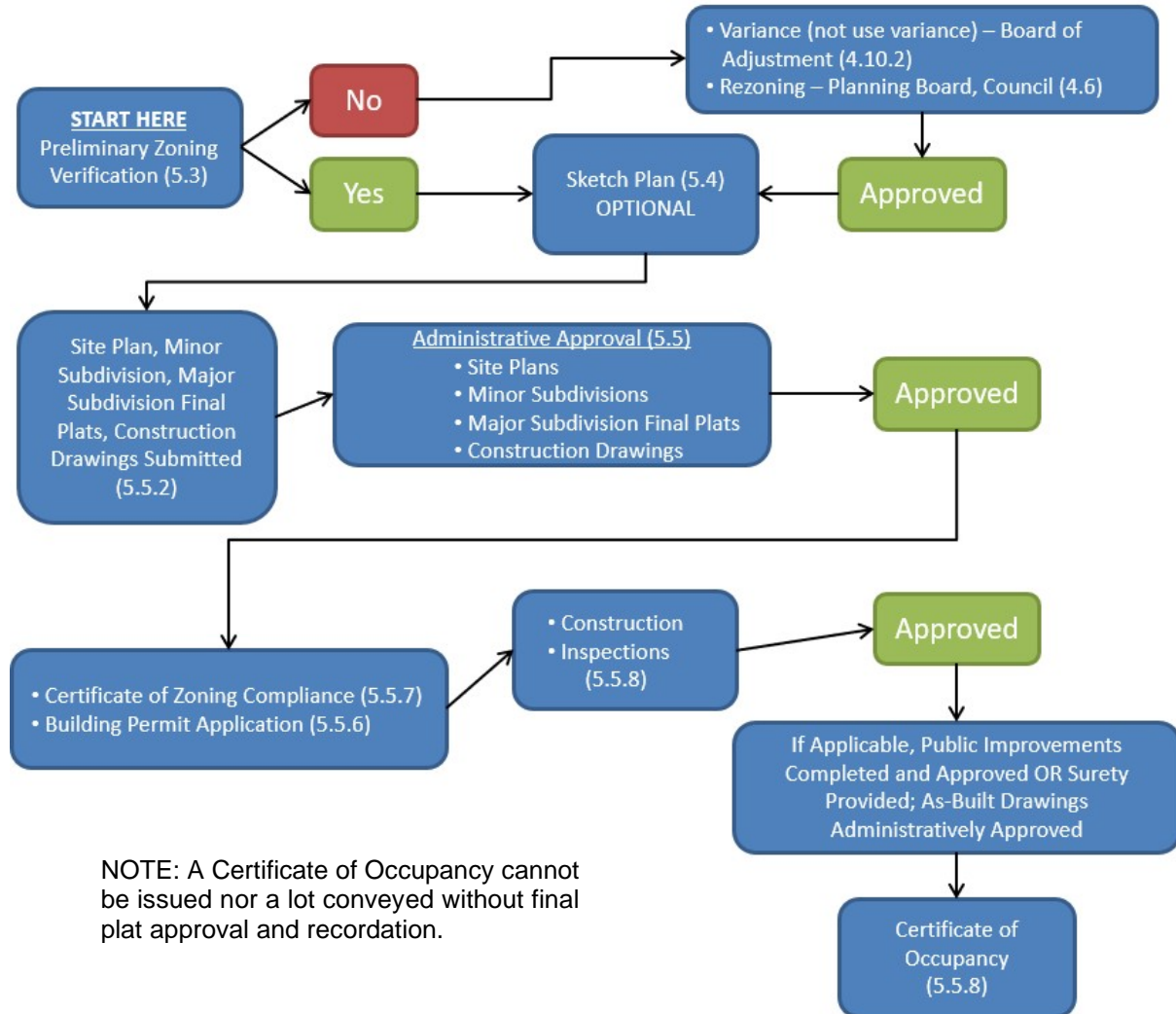
SECTION 5.5 ADMINISTRATIVE APPROVALS.

Administrative approval includes the following:

- Site Plans.
- Minor Subdivisions. A subdivision that does not involve any of the following: (i) the creation of more than a total of three (3) 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.
- Major Subdivision Final plats.
- Construction and As-Built Drawings.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.5.1. Administrative Approval Flowchart.



5.5.2. Site Plan, Minor Subdivision, Major Subdivision Final Plat, or Construction Drawings Submitted for Review. A site plan of the proposed development shall be submitted in accordance with Section 5.6. Plats of the proposed development shall be submitted in accordance with Section 10.100. Construction Drawings of the proposed development shall be submitted in accordance with 5.8. All applications shall be accompanied by the completed application and payment of a fee as adopted by the Town Council (see Section 2.7).

- Refer to Section 5.5.4.1 for Minor Subdivisions.
- Refer to Section 5.7.7 for Major Subdivision Final Plat. Refer to Section 5.7.2. for the Major Subdivision Approval Flowchart.
- Refer to Section 5.8 for Construction Drawing Review Requirements.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.5.3. 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

5.5.4. All required local, state, and/or federal permits must be obtained prior to the approval of the site plan, construction plan, minor subdivision, or major subdivision final plat.

5.5.5. Minor Subdivisions.

5.5.5.1. 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.

5.5.5.2. After this initial review has been completed, the subdivider or his authorized representative shall prepare a final plat as specified in Section 10.97 Section 10.99 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 Section 10.100 for plat requirements.

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

5.5.6. Major Subdivision Final Plats. For Major Subdivision Final Plats, the UDO Administrator shall review the Final Plat for substantial conformance (Section 4.11.15) with the Preliminary Plat,

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

conditions of approval, and phasing plan if applicable (Refer to Section 5.7). The UDO Administrator shall review to ensure the following have been complied with:

- Public dedications shall be accepted by the Town Council by Resolution (Section 10.116.1)
- All Utility System Develop Fees, stormwater management fees, and other fees have been paid, as applicable.
- As-built drawings submitted and approved if applicable
- Subdivision Street Disclosure Statement Provided if applicable (Section 10.110.4)
- Property Owners Association Covenants have been reviewed and approved by the Town Attorney, and recorded, if applicable (Refer to Section 5.7.7.9)
- Stormwater Inspection and Maintenance Agreement recorded, if applicable.

5.5.7. Approval. If the UDO Administrator finds the site plan, construction plan, minor subdivision, or major subdivision final plat is found to meet all of the applicable regulations of this Ordinance, then the UDO Administrator shall approve the site plan, or construction plans, or shall sign the minor subdivision or major subdivision final plat for recording and subsequently issue a certificate of zoning compliance for site plans or construction plans that are in compliance with UDO requirements.

5.5.8. Appeal of Administrative Denial.

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

5.5.9. Building Permit Required.

5.5.9.1. 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.

5.5.9.2. 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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

alteration; existing or proposed uses of the building and land; the number of families, 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.

5.5.10. Certificate of Zoning Compliance.

5.5.10.1. 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 (zoning permit) has been issued by the UDO Administrator, or his designee stating that the building or the proposed use thereof complies with the provisions of this Ordinance.

5.5.10.2. 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.

5.5.11. 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.

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.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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 as specified in Section 5.7.7.10.

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 SITE PLAN REQUIREMENTS.

5.6.1. 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:

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

5.6.1.2. 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.

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

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

5.6.1.5. 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.

5.6.1.6. Building setbacks, landscape and buffer yard distances.

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

5.6.1.8. 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.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

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

5.6.1.11. 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).

5.6.1.12. 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.

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

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

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

5.6.1.16. 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.

5.6.1.17. The location of all common areas.

5.6.1.18. 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.

5.6.1.19. 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.

5.6.1.20. Proposed site lighting.

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

5.6.1.23. North arrow or compass rose.

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

5.6.2. 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 5.5.7. and 5.5.8.

5.6.3. 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 ~~5.5.8-5.5.9, above.~~

SECTION 5.7 MAJOR SUBDIVISION PLATS.

5.7.1. Major Subdivision Preliminary Plats. Major Subdivision Preliminary Plats are required for all subdivisions not meeting the requirements for a minor subdivision (see Section 4.10.5) and require Town Council evidentiary hearing and approval after Planning Board review.

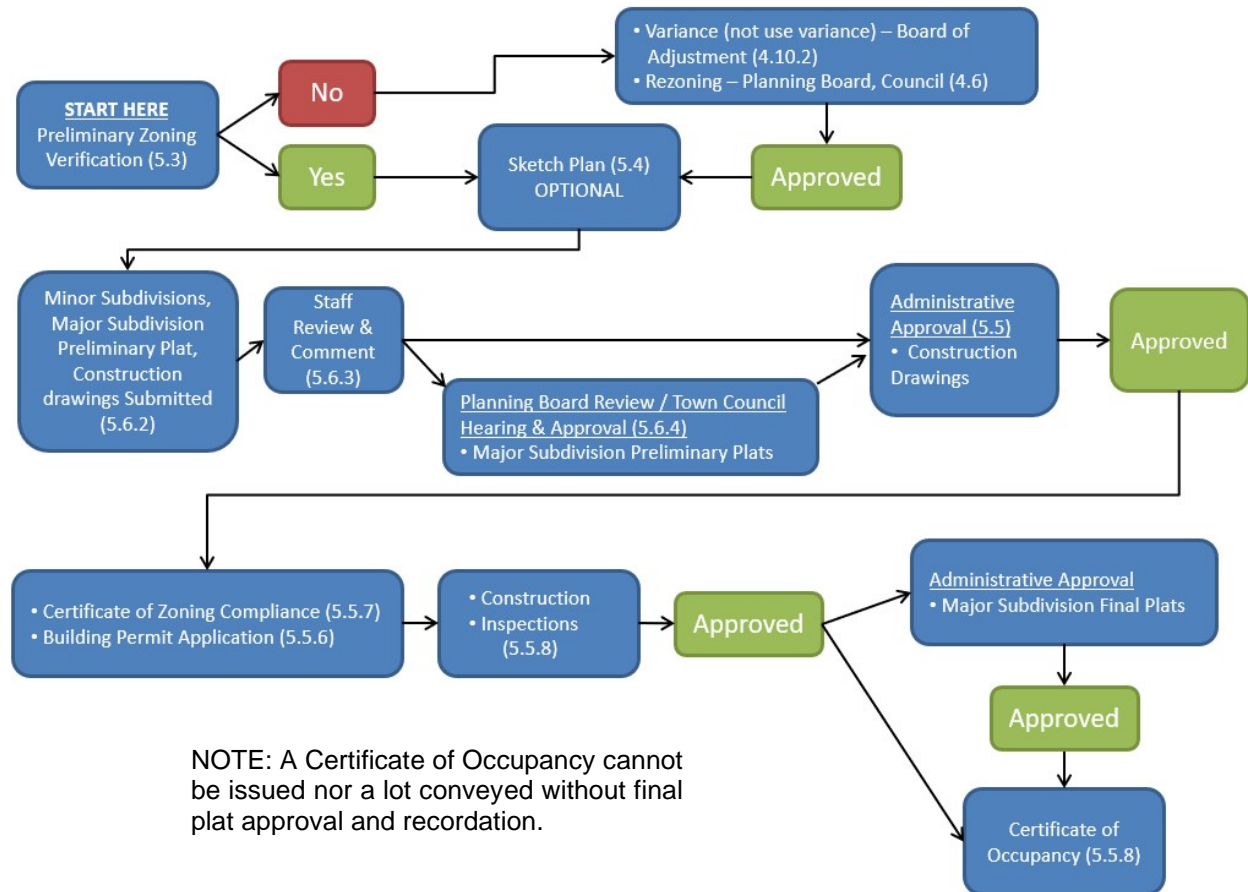
5.7.1.1. Process Type: Quasi-Judicial (See Section 4.11).

5.7.2. Major subdivision Final Plats. Major subdivision final plats require administrative approval and review for compliance with preliminary plat.

5.7.2.1. Process Type: Administrative (See Section 5.5.5.1).

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.7.3. Major Subdivision Approval Flowchart.



5.7.4. Major Subdivision Preliminary Plat or Construction Drawings Submitted for Review.

All major subdivision preliminary plats shall be submitted in accordance with Section 10.100 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.

5.7.5. 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 5.5.3.

5.7.6. Review and Approval by the Town Council After Planning Board Review of the Preliminary Subdivision Plat.

5.7.6.1. Following a complete review by the staff, the UDO Administrator shall schedule the application for informal review by the Planning Board at the next regularly scheduled meeting. The evidentiary standard will be relaxed to facilitate discussion by lay persons and therefore evidence will not be restricted to competent evidence that meets quasi-judicial standards. Before that review the Planning Board will notify all adjoining property owners (within 500 feet of a property line) of the proposed application. The

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

hearing by the Planning Board will be informal with the board allowing the developer, town staff and the adjoining owners to discuss the application and any relevant concerns. _

5.7.6.2. The Planning Board will attempt to reach a consensus with those that attend the meeting and no longer than forty-five (45) days of reviewing the application the application shall be forwarded to the Town Council. The Town Council shall consider the application at its next regularly scheduled meeting. At that time the Town Council shall hold a quasi-judicial hearing on the issue of approval of the preliminary plat with the burden being on the applicant to produce competent evidence on all the following issues so that the Council rules that it is more likely than not that the preliminary plat meets the following standards:

5.7.6.2.1. Consistency with the adopted plans and of polices of the town.

5.7.6.2.2. The subdivision meets all required specifications of this chapter.

5.7.6.2.3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.

5.7.6.2.4. The subdivision design will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure.

5.7.6.3. Either at the meeting or within 14 days thereafter, the Council shall make findings of fact based upon the above four standards and based thereupon the Council will:

5.7.6.3.1. Approve the application;

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

5.7.6.3.3. Deny the application;

5.7.6.3.4. 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.

5.7.6.3.5. 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.

5.7.7. The Developer may appeal the decision of the Town Council by writ of certiorari to the Superior Court of Johnston County.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.7.8. Major Subdivision Final Plat.

5.7.8.1. 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 10.100 for plat requirements.

5.7.8.2. 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, inspected and approved 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 5.7.7.10

The UDO Administrator shall determine whether or not the final plat substantially agrees with the approved preliminary plan. If substantial differences exist, the UDO Administrator may deny the final plat and require that a new preliminary plat be submitted. If the plat substantially agrees with the preliminary plat, the UDO Administrator shall approve the final plat within thirty (30) days after first consideration, if the Town Council has accepted the publicly dedicated improvements by Resolution or a performance guarantee bond is accepted for the improvements. 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.

5.7.8.3. 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.

5.7.8.4. 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*.

5.7.8.5. The final plat shall depict or contain the information specified in Section 10.100. Plats not illustrating or containing the information required in Section 10.100 shall be returned to the subdivider or his or her authorized agent for completion and resubmission.

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

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5.7.8.7. 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.

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

5.7.8.9. 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 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.

5.7.8.10. 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.

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

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

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

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

5.7.8.10.2. 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.

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

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

5.7.8.10.5. 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.

5.7.8.11. *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.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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 NCGS 160D-101, including enjoining the transfer or sale of land in an illegal subdivision. Building permits required pursuant to NCGS 160D-1110 may be denied for lots that have been illegally subdivided.

5.7.8.12. 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, and until this approval is entered in writing on the face of the plat by the UDO Administrator in accordance with Section 10.119. All publicly dedicated improvements must be accepted by the Town Council contingent upon final plat recordation or acceptance of an approved performance guarantee.

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.

5.7.8.13. 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.**

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.7.8.14. School Site Reservation.

In accordance with NCGS 160D-804, 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.

5.7.8.15. 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 5.8 CONSTRUCTION DRAWING REVIEW REQUIREMENTS.

5.8.1. Applicability and 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 site plan or major subdivision preliminary plat. Construction drawings shall be approved administratively prior to the issuance of a zoning permit.

5.8.2. 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

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- 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.

**ARTICLE 6.
ZONING DISTRICTS**

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ARTICLE 6. ZONING DISTRICTS

SECTION 6.1 ESTABLISHMENT OF ZONING DISTRICTS.

In accordance with the requirements of NCGS Section 160D-703 that zoning regulation is by districts, the Town of Smithfield, as shown on the Zoning Map, is hereby divided into districts which shall be governed by all of the uniform use and dimensional requirements of this Ordinance. In the creation of the respective districts, careful consideration is given to the peculiar suitability of each and every district for the particular regulations applied thereto, and the necessary, proper, and comprehensive groupings and arrangements of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the area.

The purposes of establishing the zoning districts are:

- To implement adopted plans;
- To promote public health, safety, and general welfare;
- To provide for orderly growth and development;
- To provide for the efficient use of resources;
- To facilitate the adequate provision of services.

SECTION 6.2 INTERPRETATION.

Zoning districts have uses specified as permitted by right, special uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.5 showing the uses allowed in each district. The following describes the processes of each of the categories that the uses are subject to:

- **Permitted by Right:** Administrative review and approval subject to district provisions and other applicable requirements only.
- **Permitted with Supplemental Regulations:** Administrative review and approval subject to district provisions, other applicable requirements, and supplemental regulations outlined in Article 7.
- **Special Uses:** Town Council review and approval of Special Use Permit subject to district provisions, other applicable requirements, and conditions of approval as specified in Section 4.9. Some Special Uses may also be subject to supplemental regulations outlined in Article 7.
- **Uses Not Permitted:** Uses not marked with a P, PS, S, or SS are not permitted.

ARTICLE 6. ZONING DISTRICTS

SECTION 6.3 PRIMARY ZONING DISTRICTS.

For the purposes of this Ordinance, the Town of Smithfield, North Carolina, and its extraterritorial jurisdiction, is hereby divided into the following primary zoning districts:

6.3.1. R-20A Residential-Agricultural District.

The purpose of this district is to provide for areas where the principal use of land is for low density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future residential development.

6.3.2. R-10 Single-Family Residential District.

The purpose of this district is to provide areas for conventional single-family neighborhoods. The regulations of this district are intended to discourage any use which, because of its character, would substantially interfere with the development of residences and which would be detrimental to the quiet residential nature of the areas included within this district.

6.3.3. R-8 Single, Two, and Multi-Family Residential District.

The purpose of this district is to provide areas where a mixture of housing types are allowed, some as permitted and others as special uses, with proper review, site planning, and design controls.

6.3.4. R-6 High Density Single, Two, and Multi-Family Residential District.

The purpose of this district is to provide for older areas which have developed with a mixture of housing types at fairly high densities. Except in unusual circumstances, it will not be used in new areas, and additional property will not be considered for rezoning to this district.

6.3.5. R-MH Manufactured Home Residential District.

The purpose of this district is to provide areas in which the principal uses of land are single-family dwellings and manufactured homes on individual lots

6.3.6. O/I Office/Institutional District.

A district designed for office/institutional uses at low to moderate densities and multi-family housing. This district should be used as a transitional zone between areas of conflicting land uses.

6.3.7. B-1 Central Business District.

The purpose of this district is to provide for those uses which can provide and contribute to a strong retail and service core for downtown Smithfield.

6.3.8. B-2 General Business District.

The purpose of this district is to provide for those business areas adjacent to the downtown core as well as other intensive and extensive business areas in Smithfield.

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6.3.9. B-3 Highway Entranceway Business District.

The purpose of this district is to allow commercial uses with proper regulations and safeguards to promote the safe and efficient movement of traffic, and the orderly development of land along major arteries leading into Town, while enhancing and preserving the environmental and aesthetic qualities of these areas. The proper location and development of the uses along these corridors will contribute to and enhance trade, tourism, capital investment, and the general welfare.

6.3.10. LI Light Industrial District.

The purpose of this district is to accommodate wholesale and warehousing uses as well as those industrial uses that include fabrication, manufacturing, assembly or processing of materials that are in refined form and that do not in their transformation create smoke, gas, odor, dust, noise, vibration of earth, soot or lighting to a degree that is offensive or cause adverse effects for the area or adjacent uses..

6.3.11. HI Heavy Industrial District.

The purpose of this district is to accommodate the development and operation of industrial, distribution, and manufacturing uses which, by nature of their intensity, may be incompatible with other types of land uses. Permitted uses in the HI zone may be more intensive than those allowable in the LI zoning district.

SECTION 6.4 CONDITIONAL ZONING DISTRICTS.

6.4.1. Conditional Zoning Districts (CZ).

Conditional Zoning (CZ) Districts are hereby established bearing the designation – CZ to correspond with each of the general use zoning districts. The uses permitted in a Conditional Zoning (CZ) District are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in the corresponding general use district set forth in Section 6.6.

Conditional Zoning is a negotiated approach to a legislative decision allows flexibility to tailor regulations to a particular site and project. Conditional Zoning Districts are zoning districts in which all of the site specific standards and conditions are incorporated into the zoning district regulations. Individual conditions and site-specific standards that can be imposed are limited to those needed to bring a project into compliance with town ordinances and adopted plans and those addressing the impacts reasonably expected to be generated by use of the site. Conditional Zoning may only occur at the owner's request and cannot be imposed without the owner's agreement. Some flexibility can be granted, deviating from the standards in the corresponding general zoning district and supplemental standards with the rezoning (such as lot sizes and setbacks). however, these should be carefully considered and should correspond to other Town objectives. With an approval of a conditional zoning application, an ordinance is adopted authorizing the requested use with such reasonable conditions as are mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and

ARTICLE 6. ZONING DISTRICTS

general welfare, or to mitigate impacts reasonably expected to be generated by use of the site. A Conditional Zoning (CZ) District allows particular uses to be established only in accordance with conditions pertaining to each individual development project. All site-specific conditions must be consistent with the objectives of these regulations, the adopted Comprehensive Land Use Plan and area plans. With the approval, the town must assure that all of the factors defining reasonable spot zoning are fully considered and that the public hearing record reflects that consideration.

6.4.2. Planned Unit Development Conditional Zoning District (PUD). *(Amended 3/6/2018)*

The PUD district allows a large site to be developed with a mixture of land uses according to an approved overall site plan. For example, a large tract may be developed with a mix of single-family and multi-family housing, with part of the site also devoted to commercial and office uses. The PUD district allows for greater flexibility in dimensional standards than general use district zoning, or other conditional district zoning (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. The PUD Conditional Zoning standards are not specifically tied to any single general use district, and does not require a rigid separation of different land uses. Streets within a PUD Conditional Zoning District shall comply with 10.110.19. Uses are limited to the uses identified in the mixed use site development plan along with all site specific standards, and conditions. With an approval of a PUD Conditional Zoning application, an ordinance authorizing the requested use with such reasonable conditions as are mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare, or to mitigate impacts reasonably expected to be generated by use of the site. A PUD district shall not be less than five (5) acres in area and are permitted only in areas guided as mixed use centers on the adopted comprehensive land use plan map.

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SECTION 6.5 OVERLAY ZONING DISTRICTS.

6.5.1. RHO Rowhouse Overlay District.

A district established to provide development standards for high density single-family residential areas which are in addition to those provided by the underlying zoning districts established by the Unified Development Ordinance.

6.5.2. ECO Entry Corridor Overlay District.

A district established to provide development standards for particular roadway corridor areas which are in addition to those provided by the other zoning districts established by the Unified Development Ordinance.

6.5.3. WS-IV-CA Critical Area Overlay District.

A district established to regulate development and land use in a manner which will limit exposure of water supply watersheds to pollution. The regulations applicable in this district are established under Section 10.92 of this Ordinance.

6.5.4. WS-IV-PA Protected Area Overlay District.

A district established to regulate development and land use in a manner which will limit exposure of water supply watersheds to pollution. The regulations applicable in this district are established under Section 10.92 of this Ordinance.

6.5.5. AHH Airport Height Hazard Overlay District.

The purpose of this district is to ensure the appropriate location, design, construction, and maintenance of land uses compatible with air transportation facilities. The applicable regulations are established under Section 10.95 of this Ordinance

6.4.6 HO Historic Overlay District.

The purpose of this district is to preserve the historical, prehistoric, architectural or cultural importance of historic properties, by regulation design, setting, workmanship, materials, feeling and/or association of such properties. Uses allowed within the Historic Overlay District are shall be in accordance Table 6.5 for uses allowed in the B-1 Central Business District. Any alteration, restoration, erection, demolition or moving of a building or structure within the Historic Overlay District requires a certificate of appropriateness is issued by the Historic Preservation Commission; or under special circumstances, its staff person in accordance with Article 3, Section 3.5 of this UDO.

ARTICLE 6. ZONING DISTRICTS

SECTION 6.6 TABLES OF USES AND ACTIVITIES – PRIMARY ZONING DISTRICTS.

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
ACCESSORY USES													
Accessory structures/buildings	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Section 7.3
Accessory uses incidental to any permitted use	P	P	P	P	P	P	P	P	P	P	P		
Child care center (as an accessory use for a principal business)						PS	PS	PS	PS	PS	PS		Section 7.4.1
Customary home occupations	PS	PS	PS	PS	PS	PS	PS	PS					Section 7.7
Columbarium accessory to places of worship	SS	SS	SS	SS		PS	SS	SS	SS				Section 7.46
Dwelling in principal business as an accessory use						PS	PS						Section 7.5
Granny pods/temporary health care structures	PS	PS	PS	PS	PS	PS							Section 7.6
Mobile food vending cart							PS	PS	PS	PS	PS		Section 7.3.2
Propane filling stations								P	P	P	P		
Public or neighborhood swimming pools	P	P	P	P	P	P							
Public or private neighborhood tennis courts	P	P	P	P	P	P	P	P	P				
Public or private neighborhood basketball courts	P	P	P	P	P	P	P	P	P				
Temporary Sale of Goods Other Than Agricultural Products.							PS	PS	PS	PS			Section 7.30.
Temporary office units/modular office units	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Section 7.13

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>			
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH				
Solar energy generating facility, accessory	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Section 7.8
Temporary Uses- Special Events	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Section 7.30
Temporary storage facility (portable storage units)	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Section 7.9
Wind energy generating facility, accessory	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	Section 7.10
INSTITUTIONAL																
Community college	S						P	S	S	S	S	S	S			
Libraries							P	P	P	P						
Schools, public and private	S	S	S	S	S	P			P							
Armories							P									
Event center									PS	PS						Section 7.42
Governmental offices							P	P	P	P	P	P				
Cemeteries	S						P									
Churches/places of worship	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			Section 7.32 Section 7.42
Club or private lodge meeting halls							PS		PS	PS						Section 7.42
Club or Bar, private									S	S						
Community centers							PS		SS	SS						Section 7.42
Country clubs, golf courses	P															
Crematory, human									P	P						
Government Public Safety (i.e., police, fire)	S	S	S	S	S	P	P	P	P	P	P	P				
Hospitals							P		P	P						

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Public utility/Public Works storage or service yards						PS				P	P		Section 7.41
Public utility substations/switching stations	PS	PS	PS	PS	PS	PS	PS	PS	PS	P	P		Section 7.43
Pump stations	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Section 7.43
US postal services								P	P	P	P		
Public water treatment						P							
Waste water treatment	S	S	S	S	S	S	S	S	S	S	S		
MANUFACTURING AND INDUSTRIAL													
Asphalt and concrete batch plant											P		
Artisan's workshop (3,000 square feet or less)	PS					PS	PS	PS	PS	PS			Section 7.11 Section 7.2
Artisan's workshop (greater than 3,000 square feet)										PS			Section 7.11 Section 7.2
Bakery products, candy, confectionary manufacturing									P	P	P		Section 7.2
Building materials manufacturing and storage,									SS	P	P		Section 7.41 Section 7.32
Carpet and upholstery cleaners								P	P	P			
Contractors, building (with outdoor storage)								PS	PS	P	P		Section 7.41 Section 7.2
Contractors, building (no outside storage)						P	P	P	P				
Heavy construction contractors, equipment sales/rental/storage										PS	PS		Section 7.2

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Data Center										P	P		
Electric motor repair										P	P		
Electrical and electrical machinery, equipment and supplies								PS	PS	PS			Section 7.41 Section 7.2
Food processing facilities											PS		Section 7.2 Section 7.12
Industrial research offices and laboratories										P	P		
Industrial uses having a potential injurious effect on the town											SS		Section 7.2 Section 7.12
Lumber and wood products, sales and storage									PS	P	P		Section 7.41
Manufacturing (light) uses										PS			Section 7.2 Section 7.12
Manufacturing (heavy) uses											PS		Section 7.12 Section 7.2
Manufacturing/Processing of Paperboard containers and boxes											PS		Section 7.12 Section 7.2
Manufacturing of refrigeration, heating, and air conditioning machinery										PS	PS		Section 7.12 Section 7.2
Motion picture production and distribution										P	P		
Motor freight terminals, bus terminals										PS	PS		Section 7.2 Section 7.12
Outlet stores accessory to industrial manufacturing establishments										PS	PS		Section 7.14
Pharmaceutical manufacturing										PS	PS		Section 7.2 Section 7.12

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>											<i>Supplemental Regulations</i>	
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)		AHH
Small engine repair									P	P			
Tanning, leather											P		
Textiles (Brick/ceramic/glass/ finished non metallic mineral products)											PS		Section 7.12
Welding repair										P	P		
OFFICES, PROFESSIONAL AND SERVICES													
Clinic, medical, theraputic						P		P	P				
Engineering, architectural, and surveying offices						P	P	P	P				
Financial institutions with no drivein						P	P	P	P				
Financial institutions with drivein								PS	PS				Section 7.37
Office, professional						P	P	P	P				
Opticians and optical goods						P	P	P	P				
RECREATIONAL													
Boat ramps	S	S	S	S	S	S	S	S	S				
Dinner theatres								PS	PS	PS			Section 7.42
Entertainment, Indoor (skating rinks,escape rooms, bowling alleys, trampoline parks, etc.)									P	P	P		
Entertainment, Outdoor (amusement parks, mini-golf, driving ranges, etc.)									P	P			
Fairgrounds	PS												
Golf courses (see Country Clubs)	P												
Health clubs/Fitness centers						P	P	P	P	P			

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>											<i>Supplemental Regulations</i>	
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)		AHH
Movie theaters							PS	PS	PS				Section 7.42
Nature observation points	P	P	P	P	P	P	P	P	P				
Parks and recreation areas	P	P	P	P	P	P	P	P	P				
Playgrounds	P	P	P	P	P	P	P	P	P				
Recreation buildings and facilities for residential developments	P	P	P	P	P				P				
Video arcades								P	P				
RESIDENTIAL													
Residential Cluster development	PS	PS	PS										Section 7.34
Dwelling, single-family attached (townhomes)/ multi-family / condominiums			SS	SS	SS	SS	SS	SS	SS				Section 7.35
Dwelling, single-family detached	P	P	P	P	P	S		S					
Dwelling, two family (duplex) on single lot			P	P		S		S					
Licensable Facilities: Adult care home	S		S	S									
Family care home	PS	PS	PS	PS	PS	PS							Section 7.16
Family child care home	PS	PS	PS	PS	PS	PS							Section 7.4.2
Family foster home	S	S	S	S									
Multi-unit assisted housing with services	SS					SS							Section 7.35
Small child care center		PS	PS	PS									Section 7.4.2
Loft and studio apartments						PS	PS	PS					Section 7.5
Manufactured home, Class A on individual lot	PS				PS								Section 7.17

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Manufactured home, Class B on individual lot	PS				PS								Section 7.17
Manufactured home park					SS								Section 7.18
Recreational vehicle parks										PS			Section 7.33
Temporary emergency, construction, and repair residences	PS	PS	PS	PS	PS								Section 7.19
Tiny houses	PS	PS	PS	PS									Section 7.20
RETAIL SALES AND SERVICES													
ABC Stores, State sponsored								P	P				
Adult and sexually oriented businesses											PS		Section 7.21
Animal hospitals/ veterinarians								PS	PS	PS			Section 7.36
Antique shops							P	P	P				
Appliance and other large durable goods sales								P	P				
Art galleries						P	P	P	P				
Automobile, motorcycle and truck dealers/brokers								PS	PS				Section 7.44
Automobile parts and supply sales								P	P				
Automobile repair								PS	PS				Section 7.38 Section 7.44
Automobile Painting and Body Shops									PS	PS	PS		Section 7.38 Section 7.44
Automobile service stations; gas pumping stations								PS	PS				Section 7.22
Bakery							P	P	P				

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Barber or beauty shops (personal service establishments)						P	P	P	P				
Battery charging station						PS	PS	PS	PS	PS	PS		Section 7.23
Battery exchange station						PS	PS	PS	PS	PS	PS		Section 7.23
Bed and breakfast	PS	PS	PS	PS		PS	PS	PS	PS				Section 7.15
Boat sales and service								PS	PS				Section 7.44 Section 7.41
Car washes								PS	PS				Section 7.39
Carpet and rug dealers							P	P	P				
Catering establishments							P	P	P				
Commercial animal kennels/boarding facilities, including accessory grooming (indoor facilities only)	SS							PS	PS				Section 7.45
Commercial animal kennels/boarding facilities, outdoor kennels									PS	PS			Section 7.45
Commercial office condominiums						P		P	P				
Convenience food stores							P	P	P				
Convenience stores with gas pumps								PS	PS				Section 7.22
Distilleries							PS	PS	PS	PS			Section 7.24
Drug stores						PS		PS	PS				Section 7.37
Exterminating services (<i>Amended 7/7/20 ZA-20-01</i>)								S	S	P	P		
Farmer's market							P	P	P				Section 7.30.5
Flea markets/vendor markets									SS				Section 4.27

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Floral and gift shops						P	P	P	P				
Food stores							P	P	P				
Food trucks (Amended 7/9/19)						PS	PS	PS	PS				Section 7.25
Funeral homes								P	P				
Furniture and fixtures sales							P	P	P				
Glass and mirror repair sales								P	P				
Hardware/Home improvement stores with outdoor sales yard									PS				Section 7.41 Section 7.30.2
Hardware/Home improvement stores							P	P	P				Section 7.30.2
Kennels, private	PS												Section 7.45
Laundry and dry cleaning establishments with drive-in windows								PS	PS				Section 7.37
Laundry and dry cleaning establishments without drive-in windows							P	P	P				
Lawn and garden stores								PS	PS				Section 7.41 Section 7.30.4
Licensable Facilities: Adult day care center							S	S	S				
Child care center (11/6/18)						PS		PS	PS	PS			Section 7.4.1
Nursing homes						P			P				
Locksmith, gunsmith							P	P	P	P			
Microbrewery							PS	PS					Section 7.24
Motels/hotels							P	P	P				

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Movers, van lines, and storage											PS		Section 7.2 Section 7.41
Museums						P	P	P	P				
Package delivery services, commercial									P	P			
Parking lots, commercial as principal use						S	S	S	S	P	P		
Parking structures and underground parking garages, commercial						S	S	S	S	P	P		
Pawnshop or used merchandise store							P	P	P				
Plant nurseries & greenhouses	PS								PS				
Printing and publishing							P	P	P	P			
Radio and television broadcasting studios						P	P	P	P	P	P		
Repair shops (radio, television, small appliances, shoes, etc.)							P	P	P				
Restaurants <i>(Amended 3/6/2018)</i>						P	P	P	P				
Restaurants <i>with drive-in</i>									PS	PS			Section 7.37
Restaurants and cafeterias primarily for employees, patients, or students located in same building as another use and having no outside advertising or drive-in facilities						P	P	P	P	P	P		
Retail businesses							P	P	P				
Shopping center, major									S	S			
Shopping center, minor									P	P			
Signs	P	P	P	P	P	P	P	P	P	P	P		Article 10, Part III

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>	
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH		
Street vendors							PS							Section 7.27 Section 7.3.2
Tattoo and body piercing establishments								S	S					
Tire dealers and service								PS	PS					Section 7.41 Section 7.44
Temporary sale of locally grown agricultural products grown off-site								PS	PS					Section 7.30
Upholstery shops								P	P					
TRANSPORTATION														
Airport											P			
Bus stations								P	P					
Taxi stands limited to 5 taxis								P	P					
Tool, car, truck rental								PS	PS	PS	PS			Section 7.44 Section 7.41
Towing services										P	P			Section 7.44
WHOLESALE SALES AND WAREHOUSING														
Boat storage									PS	P				Section 7.41
Fruit and vegetable markets, wholesale								P	P	P				
Junkyards, Salvage yards, recycling of metal and other materials											P			
Outdoor sales, service, or storage areas as principal use										P	P			Section 7.2 Section 7.12
Warehousing uses, including mini-storage									PS	PS	PS			Section 7.40 Section 7.32

ARTICLE 6. ZONING DISTRICTS

Uses	<i>Primary Zoning Districts</i>												<i>Supplemental Regulations</i>
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
Wholesale merchants								P	P	P	P		
Wholesale storage of gasoline, chemical or bulk terminal plants											S		
OTHER USES													
Agricultural and forestry	P												
Bona fide farms and their customary appurtenances	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Section 7.28
Solar farms	SS									SS	SS		Section 7.29
Telecommunication facilities (not subject to administrative approval (10.86.2))	S	S	S	S	S	S	S	S	S	S	S	S	Article 10, Part VIII
Temporary office units	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	SS	Section 7.13
Wind farms	SS									SS	SS		Section 7.31

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ARTICLE 7. SUPPLEMENTAL REGULATIONS

SECTION 7.1 INTRODUCTION.

The following supplemental regulations shall pertain to the uses listed in the Table of Uses and Activities located in Article 6 which are identified with an “S” for supplemental regulations.

For any use which requires the issuance of a special use permit, or is a use associated with a site specific plan for a conditional zoning, the supplemental use regulations listed herein may be in addition to any other fair and reasonable conditions placed on the use by the Town Council. The conditions may impose greater restrictions on a particular use than those which are listed herein.

SECTION 7.2 SITE DEVELOPMENT AND OPERATIONS STANDARDS WITHIN THE LI AND HI DISTRICTS.

7.2.1. Parking, access, and circulation lanes between the principal building and the street(s) shall be surfaced with blacktop, concrete or brick and shall be separated from required yards or open areas by continuous concrete curb and gutter in accordance with Article 10, Part I of this UDO.

7.2.2. Parking, loading or storage yards shall not be located within any required landscaping areas.

7.2.3. Truck or tractor and trailer parking, loading and outdoor storage, areas beyond the front façade facing the street shall be paved with gravel, blacktop, concrete, brick or other similar material determined to exhibit appropriate load bearing characteristics for the use. Curbing or other means shall be used to separate paved areas from required street yards or buffer yards.

7.2.4. Existing vegetation shall be left undisturbed unless the area is required for the orderly development of the site.

7.2.5. The maneuvering, staging and docking areas shall not be in conflict with the required parking spaces, lots and their isle/maneuvering areas.

SECTION 7.3 ACCESSORY USES OR STRUCTURES.

7.3.1. Structures such as storage sheds, garden sheds, and similar structures shall be considered accessory buildings, even though they may be capable of being lifted or disassembled and removed from the property.

7.3.2. No tent, mobile home, camper, travel trailer, nor any other temporary, portable, or removable trailer, container, vehicle or structure of any kind may be considered an accessory building, whether or not the wheels, axles, and/or tongue have or has been removed and whether or not the container, structure, or vehicle as described herein has been placed on a foundation, except as hereinafter described.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.3.3. Fences

Fences and walls that meet these requirements are permitted as accessory uses and shall comply with the following:

7.3.3.1. For the purposes of this Section of this ordinance, a fence is a barrier composed of wire, wood, metal, plastic, or a similar material and a wall is a barrier composed of brick, stone, rock, concrete block, or a similar masonry material. Electric fences and fences constructed with razor or barbed wire are prohibited except when used to enclose livestock on bona fide farm, for public or quasi-public institutions for public safety or security purposes, or for industrial uses in the Light or Heavy Industrial Zoning District for security purposes.

7.3.3.2. No fence or wall more than 48 inches in height, which is more than seventy-five percent (75%) solid, may be placed in the front of a principal structure.

7.3.3.3. Fences shall be installed such that exposed framing faces the interior yard and not toward adjacent properties or public rights-of-way.

7.3.3.4. Fences and walls may not exceed seven (7) feet in height, except that in commercial and industrial districts, a fence may not exceed ten (10) feet in height. Fences greater than seven (7) feet in height shall be of an open type similar to woven wire or wrought iron. Fences and walls may exceed the height requirements of this Section if required or specifically authorized in another Section of this ordinance or with a special use permit.

7.3.3.5. Fences and walls are exempt from the setback requirements of this ordinance.

7.3.3.6. No fence or wall shall impede vision as regulated in Section 2.21 of this ordinance.

7.3.5.7. Fences and walls approved with a special use permit shall not adversely impede light or airflow to adjoining properties.

7.3.3.8. Fences, if replaced, shall meet the requirements of this Section.

7.3.3.9. Fences and walls seven (7) feet or less in height meeting the requirements of this ordinance shall not require a zoning permit.

7.3.4. Accessory buildings may occupy 10% of the gross lot area, must be built a minimum of ten (10) feet from any lot line, and except for attached garages, must be built to the rear of the principal building in accordance with Section 8.13.2.

7.3.5. Accessory buildings shall not be erected within ten (10) feet of any other accessory building.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.3.6. No accessory building or use may be erected or installed on any lot where a principal building does not exist.

7.3.7. No lot shall have in excess of one accessory building, except that granny pods not exceeding three hundred (300) square feet and pool houses not exceeding one hundred fifty (150) square feet are permitted. Accessory building numbers limitation on property are exempt if the property is identified as having farm tax identification number. Properties greater than 1/2 acre in size in the R20-A zoning district may have up to two (2) accessory structures with a valid zoning permit. The side and rear setbacks for farm property shall be the same as other accessory buildings.

7.3.8. *Satellite Dish Antennas.*

7.3.8.1. *General Requirements.*

7.3.8.1.1. Zoning and building permits are required when moving or substantially reconstructing an existing dish antenna over four feet in diameter.

7.3.8.1.2. A dish antenna must be installed in compliance with the manufacturer's specifications at a minimum.

7.3.8.1.3. In all residential districts, dish antennas exceeding two (2) feet in diameter must be permanently installed on the ground and shall not exceed four (4) feet in diameter.

7.3.8.1.4. In business and industrial districts, dish antennas must be permanently installed on the ground and shall not exceed four (4) feet in diameter.

7.3.8.1.5. If a dish antenna is repainted, the only permissible colors are the original color used by the manufacturer, off-white, pastel beige, grey, or pastel grey-green. The paint must have a dull (nonglossy) finish and no patterns, lettering, or numerals shall be permitted on either side of the dish surface.

7.3.8.1.6. No dish antenna shall be installed or projected into any public right-of-way or in any drainage or utility easement.

7.3.8.2. *Location in Yards.*

7.3.8.2.1. A dish antenna shall be installed in the rear yard only, attached to the side or rear of the principal structure, or in an alternate location approved by the UDO Administrator (if necessary for adequate reception), in all districts, except as provided for in subsection 7.3.1.1 above and in subsection 7.3.1.2.2 below.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.3.8.2.2. In business and industrial districts only, a dealer selling dish antennas may have a maximum of one such antenna installed in the front or side yard for display purposes providing all other requirements are met. If a dealer displays a dish antenna in front or side yard, his permissible sign area shall be reduced by one half.

7.3.8.2.3. The location shall comply with all applicable FCC regulations.

7.3.8.3. Setback Requirements.

7.3.8.3.1. Dish antennas shall not be allowed in any side yard.

7.3.8.3.2. The minimum required setback for dish antennas from the rear lot line shall be 12 feet but in no case shall any part of the antenna come closer than 10 feet to the property line.

7.3.8.3.3. In all cases, no dish antenna shall be located within 15 feet of any street right-of-way.

7.3.8.4. Maximum Height Requirements.

7.3.8.4.1. In all residential districts, the maximum height of dish antennas shall be 15 feet or the height of the principal building, whichever is less.

7.3.8.4.2. In business and industrial districts, the maximum height of dish antennas installed on the ground shall be 20 feet.

7.3.8.5. Buffering Requirements. In business and industrial districts, dish antennas must be screened from view from abutting residential property and residential streets. Dish antennas in residential districts and abutting other residential property and residential streets shall be surrounded on all sides with any one or combinations of evergreen vegetation, landscaped earth berm, or architectural features such as fences so that the view of the lower half of the dish area is restricted. If evergreen vegetation is used, a species and size may be planted which can be expected to screen the required area within two years of normal growth. Any screening vegetation which dies must be replaced.

7.3.9. Mobile Food Vending Cart.

Permitted as a use by right in the B-1, B-2, B-3, LI, and HI districts when the following minimum standards are met:

7.3.9.1. Outdoor mobile food vending carts shall only be permitted as an accessory use and shall be located on the same lot as a principal building(s) with a minimum lot size of five (5) acres.

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7.3.9.2. Outdoor mobile food vending carts permitted on individual lots shall comply with all of the following:

7.3.9.2.1. The maximum number of outdoor mobile vending carts per lot shall be in accordance with the following:

7.3.9.2.1.1. Three (3) outdoor mobile vending carts on lots of five (5) acres or greater but less than twenty (20) acres.

7.3.9.2.1.2. Five (5) outdoor mobile vending carts on lots of twenty (20) acres or greater but less than thirty (30) acres.

7.3.9.2.2. A maximum of one (1) outdoor mobile vending cart when tenant occupancy equates to less than 50% of the gross floor area of the principal building(s).

7.3.9.2.3. The amount of space occupied by retail sales - outdoor mobile vending carts shall not exceed one percent (1%) of the occupied gross floor area of the principal building(s).

7.3.9.2.4. The dimensions of any retail sales - outdoor mobile vending cart may not exceed any of the following: 50 square feet in area, a maximum length or width of 10 feet nor a maximum height of 8 feet. The maximum height of 8 feet shall include any protection provided for the vendor or customer from outdoor conditions in the form of an umbrella, or other protective covering which must be attached to the cart.

7.3.9.2.5. All signage must be attached to the cart and shall be limited to a maximum of 32 square feet.

7.3.9.2.6. That a zoning permit be obtained in the Planning Department following a review of the final site plan.

7.3.9.2.7. All required Johnston County and Town of Smithfield permits and licenses shall be clearly displayed on the vending cart.

7.3.9.2.8. The vending cart must be located within 25 feet of a principal building facade containing a primary pedestrian entrance, located no closer than 10 feet to any entrance or exit and may not be situated such that the free flow of pedestrian or vehicular traffic is restricted.

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7.3.9.2.9. Hours of operation for any outdoor mobile vending cart shall be limited to the hours of operation of the associated principal use, but in no event be in operation between the hours of 11:00 p.m. and 8:00 a.m.

7.3.9.2.10. Sales of goods and merchandise shall be limited to food and beverages.

7.3.9.2.11. All outdoor food vending carts not meeting the dimensional requirements of this Ordinance shall be permitted by right when located at a flea market with approved Site-Specific Development Plan for a flea market.

SECTION 7.4 CHILD CARE FACILITIES.

7.4.1. Child Care Center

7.4.1.1. When a center is licensed for six to twenty-nine children, inclusive, there shall be 75 square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at 75 square feet per child. When a center is licensed for 30 or more children, there shall be 75 square feet per child of outdoor play area for at least one-half of the total number for which the center is licensed, provided that the minimum amount of space on the outdoor play area shall be enough to accommodate at least 30 children. The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods. The outdoor area shall be designed so that staff are able to see and easily supervise the entire area.

7.4.1.2. Minimum paved off-street parking spaces shall be in accordance with Article 10, Section 10.3

7.4.1.3. Minimum paved off-street loading and unloading area: In addition to the off-street parking area, there shall be sufficient paved driveway to accommodate at least two autos at one time for the purpose of loading and unloading passengers. The drop off area must be full drive through with no backing of vehicles required.

7.4.2. Family Child Care Home.

In addition to the other standards set forth in this Ordinance, each Family Child Care Home (FCCH) must meet the following requirements:

7.4.2.1. A Family Child Care Home may have no more than eight (8) children. Of the children present at any one time, no more than five (5) shall be preschool-aged, not including the operator's own preschool-aged children;

7.4.2.2. The maximum hours of operator are 7:00 am to 6:00 pm, Monday through Friday;

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7.4.2.3. No signage advertising the Family Child Care Home is allowed;

7.4.2.4. The building in which the Family Child Care Home is located may not be located closer than 500 feet to any other building housing another Family Child Care Home or Child Care Center; and

7.4.2.5. The home daycare must be licensed through the NC Department of Health and Human Services.

Violations of subsections 7.4.2.2, 7.4.2.3, and 7.4.2.4 of this section are violations of this Ordinance, and the Town may impose civil penalties and/or seek other remedies, as provided in this Ordinance, to correct violations of those subsections. Subsections 7.4.2.1 and 7.4.2.5 are established by State law, and the violations of these subsections may be punished as provided by State law. No violation of subsections 7.4.2.1 or 7.4.2.5 shall subject the offending party to civil penalties or other remedies established by this Ordinance.

SECTION 7.5 DWELLING IN PRINCIPAL BUSINESS AS AN ACCESSORY USE.

7.5.1. Dwellings may be accessory uses to a principal business as provided in Section 6.5 if located inside the principal structure or as a detached structure that is secondary to the primary structure in size or location such as a garage apartment. Manufactured homes, travel trailers, and recreational vehicles shall not be used as permanent accessory residences.

7.5.2. In the B-1 District, dwellings on the ground floor of the principal structure shall not exceed 33% of the first-floor gross area. A minimum of 1500 sq. ft. shall be devoted to commercial/retail uses. The residential area shall not be visible from the public right-of-way. No entrance from the residential use to the commercial use is allowed. The residential and commercial space shall comply with all NC Building Codes and Fire Codes. A floor plan must be submitted with an application for zoning permit.

SECTION 7.6 GRANNY PODS/TEMPORARY HEALTH CARE STRUCTURES.

Granny pods, also called temporary health care structures, are permitted under the authority of NCGS 160D-915. Granny pods shall be permitted as an accessory use in accordance with Section 6.5, subject to the following standards:

7.6.1. Structures must be transportable residential units assembled off-site and built to the standards of the State Building Code. It must be no more than 300 gross square feet and must not be placed on a permanent foundation.

7.6.2. The accessory structure must comply with all setbacks and any maximum floor area ratio limits that apply to the primary residential structure. The structure shall be connected to any

ARTICLE 7. SUPPLEMENTAL REGULATIONS

public water, sewer, and electric utilities serving the property or water and/or sewer systems approved by Johnston County. Only one accessory temporary family care structure is allowed per lot. No signage regarding the presence of the structure is allowed. The structure must be removed within sixty (60) days after caregiving on the site ceases.

7.6.3. A zoning permit is required to be obtained prior to installation. Evidence of compliance may be required as part of the permitting and annual permit renewal, including an annual renewal of the doctor's certification of impairment. The Town may make periodic inspections at times convenient to the caregiver to assure on-going compliance.

7.6.4. The caregiver must be at least 18 years old and must be a first or second degree relative of the impaired person (a spouse, parent, grandparent, child, grandchild, aunt, uncle, nephew, or niece). A legal guardian of the impaired person also qualifies.

7.6.5. In the O-I district, granny pods shall only be permitted for single-family residentially used property.

SECTION 7.7 CUSTOMARY HOME OCCUPATIONS.

7.7.1. Shall be permitted only as an incidental use and are limited to the following:

7.7.1.1. Art gallery or the office or studio of a physician, artist, general or trades contractor, musician, insurance agent, lawyer, real estate broker, instruction in music or dancing, tutoring of academic subjects, teacher or other like professional person residing on the premises.

7.7.1.2. Workshops not conducted for profit.

7.7.1.3. Customary home occupations such as millinery, dressmaking, laundering, or pressing and tailoring conducted by a person residing on the premises.

7.7.1.4. Single operator beauty shop or barber shop.

7.7.1.5. Pet grooming services without the boarding of animals or operation of kennels. The outside containment of animals is prohibited.

7.7.1.6. Any home occupation not complying with these regulations shall be prohibited.

7.7.2. Provided, furthermore, the home occupations listed above shall be permitted subject to the following limitations:

7.7.2.1. No exterior display of products.

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7.7.2.2. No mechanical equipment shall be installed or used except such that is normally used for domestic or professional purposes and which does not cause noises or other interference in radio and television reception.

7.7.2.3. No accessory buildings or outside storage shall be used in connection with the home occupation.

7.7.2.4. Not over twenty-five (25) percent of the total floor area or five hundred (500) square feet, whichever is less, shall be used for a home occupation.

7.7.2.5. Only one employee may be employed by the home occupation who is not a resident of the dwelling.

SECTION 7.8 SOLAR ENERGY GENERATING FACILITY, ACCESSORY.

Solar collectors shall be permitted as an accessory use to new or existing structures or facilities in accordance with Section 6.5, subject to the following standards:

7.8.1. Roof-Mounted Solar Systems.

The collector surface and mounting devices for roof-mounted solar systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.

7.8.1.1. Pitched Roof Mounted Solar Systems. For all roof-mounted systems other than a flat roof, a drawing shall be submitted showing the location of the solar panels.

7.8.1.2. Flat Roof Mounted Solar Systems. For flat roof applications, a drawing shall be submitted showing the distance to the roof edge and any parapets on the building.

7.8.2. Ground-Mounted Solar Systems.

Ground-mounted solar collectors (accessory) shall meet the minimum zoning setback for the zoning district in which it is located.

7.8.3. Approved Solar Components.

Electric solar system components shall have a UL listing.

7.8.4. Compliance with Building and Electrical Codes.

All solar collector systems shall be in conformance with the International Building Code with North Carolina amendments.

7.8.5. Compliance with Other Regulations.

All solar collector systems shall comply with all other applicable regulations.

SECTION 7.9 TEMPORARY STORAGE FACILITY (PORTABLE STORAGE UNITS).

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Temporary storage facilities, as defined in Appendix A, require a zoning permit and shall be subject to the following regulations:

7.9.1. Dumpsters or temporary storage facilities incidental to a natural disaster, or construction with a valid building permit, shall be exempt from these regulations.

7.9.2. With the exception of Light Industrial (LI) and Heavy Industrial (HI) zoning districts, temporary storage facilities may be placed on a property a maximum of any one hundred and twenty (120) day period during one calendar year from its initial placing on a property.

7.9.3. No temporary storage facility shall encroach into any public right-of-way, or into any required street yard or buffer yard.

7.9.4. No temporary storage facility may encroach into vehicular use areas where such encroachment reduces the amount of parking below the minimum permitted amounts.

7.9.5. No temporary storage facility shall be used as living space and/or a permanent accessory building.

SECTION 7.10 WIND ENERGY GENERATING FACILITY, ACCESSORY.

Wind energy generating facilities (accessory) designed to supplement other electricity sources shall be permitted as an accessory use in accordance with Section 6.5, subject to the following standards:

7.10.1. A wind energy generator (accessory) shall be setback from all property lines a distance equal to one linear foot for every foot of height of the highest structure that is part of the facility or the minimum setback for the zoning district, whichever is greater. Maximum height of wind turbines shall be consistent with the requirements of the underlying zoning district. The height shall be measured from the ground to the highest point of the prop.

7.10.2. A wind turbine may not be located between the front wall of the primary structure and the street.

7.10.3. Rotor blades on wind turbines shall maintain at least fifteen (15) feet of clearance between their lowest point and the ground.

7.10.4. Installation and Design.

The installation and design of the wind energy generator (accessory) shall conform to applicable industry standards, including those of the American National Standards Institute.

7.10.5. The visual appearance of wind energy generator (accessory) shall:

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7.10.5.1. Be constructed of a corrosion resistant material that will not fade, show rust spots, or otherwise change the appearance as a result of exposure to the elements and be a non-obtrusive color such as white, off-white, or gray.

7.10.5.2. Not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

7.10.5.3. Landscaping, buffering, and screening shall be provided in accordance with Article 10, Part II.

7.10.6. Any accessory wind energy generator and supporting structure that is not functional shall be removed after 180 days. In the event that the Town becomes aware of any wind energy system that is not operated for a continuous period of three (3) months, the Town will notify the landowner by certified mail that the system must be moved or repaired in 90 days. The owner may request and receive a single extension of up to 90 days for good cause shown, including the reasons for the operational difficulty and a reasonable timetable for corrective action. Any disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

SECTION 7.11 ARTISAN'S WORKSHOP.

Artisan's workshops shall be permitted in accordance with Section 6.5, provided all artisan production is conducted inside an enclosed building. Workshops exceeding 3,000 square feet require approval of a special use permit.

SECTION 7.12 MANUFACTURING, PROCESSING, OR WAREHOUSING OR TRANSPORTATION USE OR PUBLIC USE OR UTILITY.

Includes offices associated with these uses, which is (are) enclosed in a building and does not and will not emit smoke, odor, dust, fumes, glare, noise, vibrations, nuclear waste, or radioactivity, from the building in which it is located, except acid manufacture, cement, lime, gypsum, or plaster of paris manufacture, distillation of bones, explosives manufacture or storage, fat rendering, fish or fertilizer plant, garbage, waste parts, dead animal reduction or dumping, gas manufacture, glue manufacture, stockyards or slaughter of animals, tannery, or pulp manufacture. Any manufacturing, processing, warehousing, or transportation use or public use or utility including offices associated with these uses which involves outdoor storage, service, operations, emits or will emit smoke, odor, dust, fumes, glare, noise, vibrations, nuclear waste, or radioactivity, from the building in which it is located or involves bulk storage of combustible materials or is among the uses listed as exceptions in the list above shall be special uses.

SECTION 7.13 TEMPORARY OFFICE UNITS /MODULAR OFFICE UNITS.

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7.13.1. Temporary Construction Office Units. Temporary construction office units are allowed in any district on construction sites with an approved site plan in accordance with UDO Section 7.13. Manufactured homes and recreational vehicles may not be used as temporary office units.

7.13.2. Real Estate Sales Offices and Model Sales Homes. One temporary real estate sales office or model sales home, or real estate sales trailer may be allowed as incidental to a new residential or non-residential development. Real estate sales trailers must be removed at the issuance of the first certificate of occupancy for the development.

7.13.3. Temporary Modular Office Units. Modular office units used for expansion space for existing churches, health care facilities, government offices, or school classrooms, may be allowed with a temporary use permit approved by the Town Council. The Town Council shall set the time limit in which the permit is valid.

7.13.4. Permanent Modular Office units. Permanent modular office units must have originally been constructed for office use, shall not be a renovated manufactured home in accordance with Article 2, Section 2.25. The plans and specifications shall bear an NC Engineers seal. The unit shall have a permanent foundation. All transport apparatus such as wheels, hitch, and lights shall be removed, and there shall be landscaping around the base on all sides. Approval of a permanent modular office unit shall require site plan approval in accordance with Section 5.5.

SECTION 7.14 OUTLET STORES FOR INDUSTRIAL MANUFACTURING ESTABLISHMENTS.

In the LI and HI districts outlet stores shall be considered as accessory uses, provided that such stores shall be limited to ten (10) percent of the gross floor area of the buildings containing the industrial establishment or 2,500 square feet, whichever is less.

SECTION 7.15 BED AND BREAKFAST.

7.15.1. The operator of the bed and breakfast must reside on the premises on a full-time basis;

7.15.2. The property owner shall maintain a current guest register;

7.15.3. The structure(s) shall be located on a lot which complies with the required minimum lot area and dimensional standards for existing uses in its respective zoning district;

7.15.4. The structure(s) shall not be altered in a way that changes its general residential appearance;

7.15.5. No meals other than breakfast may be served to registered guests;

7.15.6. No meals shall be served to the general public;

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7.15.7. No cooking or kitchen facilities, apart from microwaves or mini refrigerators, shall be allowed in the guest rooms;

7.15.8. A maximum of eight (8) bedrooms may be rented to registered guests;

7.15.9. A particular guest stay shall not exceed fourteen (14) consecutive days;

7.15.10. One (1) off-street parking space shall be required for each guest bedroom in addition to parking required for the residential dwelling;

7.15.11. The resident owner shall comply with all laws and regulations of the Town of Smithfield, Johnston County, and the State of North Carolina.

SECTION 7.16 FAMILY CARE HOMES.

7.16.1. All Family Care Homes must be licensed by the State of North Carolina.

7.16.3. As defined by NC General Statutes Chapter 168-21, family care homes must be located no closer than one-half (1/2) mile from any other family care home. As provided for in Section 4.10.2, a variance to the 1/2 mile separation requirement may be obtained when the separation is accomplished by man-made features (i.e., railroad yards, freeways) or natural features (i.e., rivers, wetlands) and provides sufficient separation to ameliorate the harmful effects that justified the statutory separation. The burden of proof is on the applicant to show compliance with the 1/2-mile separation requirement.

SECTION 7.17 MANUFACTURED HOME, ON INDIVIDUAL LOT.

7.17.1. Manufactured housing on individual lots shall be permitted in accordance with Section 6.5 of this Ordinance and shall meet the following minimum requirements as well as any others required under this Code:

7.17.1.1. All requirements for the location of a single-family dwelling on an individual lot shall be met.

7.17.1.2. The manufactured home must be set up in accordance with the standards set by the state department of insurance and shall be properly anchored in accordance with the state building code. The set up and anchoring must be done by persons licensed by the state to perform such work.

7.17.1.3. All applicable Johnston County Environmental Health Department requirements shall be met.

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7.17.1.4. Exterior finishes shall be in good repair and in no case shall the degree of reflectivity of the exterior siding, foundation skirting, and roofing, exceed that of gloss white paint.

7.17.1.5. For manufactured homes, Class A, as defined under Appendix A of this Ordinance, a continuous, permanent masonry foundation of brick or block which is unpierced except for required ventilation and access constructed to NC State building code requirements shall be installed under the perimeter of the home.

7.17.1.6. For manufactured homes, Class B, as defined under Appendix A of this Ordinance, a continuous, uniform foundation enclosure unpierced except for required ventilation and access, shall be installed. The enclosure may consist of brick or concrete block, or wood, vinyl, or metal fabricated for this purpose. Any wood framing for foundation skirting shall be constructed with treated lumber.

7.17.1.7. Manufactured homes, Class A shall be placed so that the longest side of the home is parallel to the front property line of the lot. The Board of Adjustment shall be authorized to consider, as a variance, a modification to this parallel orientation standard.

7.17.1.8. For Class A homes, the moving hitch, wheels, axles, and transporting lights shall be removed. For Class B homes, the running lights shall be removed and the hitch shall either be removed or screened with shrubbery.

7.17.1.9. At least two (2) off-street parking spaces shall be provided.

7.17.1.10. All areas not used for placement of the home and its appurtenances, parking, or accessory structures, shall be grassed or otherwise suitably landscaped to prevent erosion.

7.17.1.11. All standards must be met prior to issuance of a Certificate of Occupancy, and no manufactured home may be parked on a lot for more than 60 days with or without a Certificate of Occupancy unless all of the above requirements are met.

7.17.2. "Park Model" Recreational Vehicles are not permitted.

7.17.3. Existing manufactured homes, Class A and Class B, existing on the effective date of this ordinance which are nonconforming uses within the zoning districts in which they are located, may be continued and maintained provided that upon their removal, they shall only be replaced with a use permitted within that district.

SECTION 7.18 MANUFACTURED HOME PARK.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.18.1. The minimum lot area for a manufactured home park is three (3) acres; the minimum number of manufactured home spaces for a manufactured home park is six (6) spaces.

7.18.2. Manufactured home parks shall contain only Class B or Class C manufactured homes.

7.18.3. The park shall be graded so as to prevent any water from ponding or accumulating on the premises. All ditch banks shall be sloped and seeded.

7.18.4. Each manufactured home space shall contain a minimum of five thousand (5,000) square feet where public water and sewer service is available and twenty thousand (20,000) square feet where either public water or sewer services is unavailable unless a larger or smaller square footage is required by the county health department.

7.18.5. No manufactured home shall be located closer than twenty (20) feet from another manufactured home or any other principal building within the manufactured home park. No manufactured home shall be located closer than forty (40) feet from a public street right-of-way or twenty (20) feet from a private, interior manufactured home park street.

7.18.6. Every manufactured home park development shall be developed so that at least five (5) percent of the total area of the development remains permanently as usable open space. For the purposes of this section, usable open space means an area that:

7.18.6.1. Is not encumbered with any substantial structure;

7.18.6.2. Is not devoted to use as a roadway, parking area, or sidewalk;

7.18.6.3. Is left in its natural or undisturbed state (as of the date development began), if wooded, except for the cutting of trails for walking or jogging, or, if not wooded at the time of development, is landscaped for ballfields, picnic areas, or similar facilities, or is properly vegetated and landscaped with the objective of creating a wooded area;

7.18.6.4. Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation;

7.18.6.5. Is lighted to provide full light coverage of the site at night;

7.18.6.6. Is legally and practicably accessible to the residents of the development out of which the required open space is taken.

An enclosed play area of twenty-one (21) square feet per manufactured home lot shall be provided. A turfed area and shaded area of at least forty (40) square feet per manufactured home lot shall also be provided. The enclosed play area shall include at least two (2) commercial grade pieces of play apparatus having a five (5) year warranty.

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Recreation facilities and usable open space required to be provided by the owner in accordance with this article shall not be dedicated to the public but shall remain under the ownership and control of the owner (or his successor). The owner of such recreational facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

7.18.7. Existing manufactured home parks which provide manufactured home spaces having a width or area less than that described above may continue to operate with spaces of existing width and area, but in no event shall any such nonconforming manufactured home park be allowed to expand unless such extension meets the requirements of this Ordinance.

7.18.8. The area beneath the manufactured home must be fully enclosed with durable skirting within ninety (90) days of placement in the manufactured home park.

7.18.9. Manufactured homes shall have a continuous and permanent skirting installed of brick, cement block, or corrosive-resistant nonreflective skirt extending from the bottom of the manufactured home to the ground. Said skirt shall be provided with a door for crawlspace measuring at least eighteen inches by twenty-four inches (18" x 24") and installed in a uniform manner.

7.18.10. Manufactured homes with or without toilet facilities that cannot be connected to a sanitary sewer shall not be permitted in a manufactured home park.

7.18.11. Manufactured homes shall have the tongue, axles, transportation lights, and towing apparatus removed subsequent to final placement.

7.18.12. Manufactured home shall be provided with a permanent steps, porch, or similar suitable entry, meaning steps that are not portable.

7.18.13. Each manufactured home space shall be graded, the graded areas grassed to prevent erosion, and provide adequate storm drainage (including retention pond facilities, when applicable) away from the manufactured home. Each manufactured home space shall abut upon an improved paved interior drive. The dimensions of all manufactured home spaces shall be shown.

7.18.14. Interior Drives.

All manufactured home spaces shall abut upon a paved interior drive of no less than 36 feet in right-of-way, which shall have unobstructed access to a public street or highway, it being the intent of this section that manufactured home spaces shall not have unobstructed access to public streets or highways except through said interior drive. Interior drives shall be privately owned and maintained. All interior drives shall be graded to their full right-of-way and shall have a road of at least 20 feet in width. Minimum improvements shall be a compacted base of four inches of

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#7 ABC stone. Roads shall be maintained with paved surface of 2" of asphalt. Graded and stabilized road shoulders and ditches shall be provided. Standing water shall not be permitted.

7.18.14.1. Cul-De-Sacs. Any interior drive designed to be closed shall have a turnaround at the closed end constructed in accordance with Section 10.110.10. The entire right-of-way of such turnaround shall be graded and usable for the turning of motor vehicles. Cul-de-sacs shall not exceed 750 feet in length.

7.18.14.2. Access to the manufactured home park must be via a public road. The following street and parking standards shall be complied with:

7.18.14.2.1. Maintenance of such streets shall be provided by the owner or operator of the park, who will be required to post a bond for the first year's maintenance, amount and terms to be determined by the Town Council.

7.18.14.2.2. Streets or drives within the manufactured home park shall intersect as nearly as possible at right angles, and no street shall intersect at less than 60 degrees. Where a street intersects a public street or road, the design standards of the Town of Smithfield shall apply.

7.18.14.2.3. Proposed streets, which are obviously in alignment with others, existing and named, shall bear the assigned name of the existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of a suffix: Street, Avenue, Boulevard, Drive, Place, Court, etc. New manufactured home park names shall not duplicate or be similar to any existing manufactured home park name in the town. Street name signs that are in compliance with current town policy are required and may be purchased from the town.

7.18.14.2.4. A minimum of two automobile parking spaces surfaced with a minimum of four inches of compacted gravel and paved with two inches of asphalt shall be provided on each manufactured home space and shall not be located within any public right-of-way or within any street in the park.

7.18.14.2.5. All spaces within a manufactured home park shall be serially numbered for mailing address purposes. These numbers shall be displayed in the front of the manufactured home on the driveway side with four-inch lettering.

7.18.14.2.6. When more than five rural mailboxes are used for mail delivery, the approval of the local Post Office Department and the District Highway Engineer shall be required.

7.18.15. Intersections.

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Drives shall intersect as nearly as possible at right angles, and no drive shall intersect at less than 75 degrees. Where an interior drive intersects a public right-of-way, the design standards of the Town of Smithfield shall apply.

7.18.16. Sidewalks.

Five (5) foot wide, 4-inch thick sidewalks shall be required on the street right-of-way or adjacent to the street right-of-way in a public easement. The sidewalk(s) shall comply with the Town of Smithfield Standard Detail and Specifications Manual.

7.18.17. Spaces Numbered.

Each manufactured home space shall be identified by a permanent number which shall not be changed. All space numbers must be shown on the site development plan. The appropriate number of each manufactured home space must be permanent and visibly displayed on the space. Each number shall be placed on a concrete, wood, metal, or any permanent post and conspicuously located on the lot.

7.18.18. Refuse Collection Facilities.

The park owner is responsible for seeing to refuse collection. All refuse shall be collected at least once/week or more if the need is indicated. When manufactured home parks are located in the Smithfield town limits, the applicable sanitation regulations shall be complied with.

7.18.19. Service, Administration, and Other Buildings.

7.18.19.1. Within a manufactured home park, one manufactured home may be used as an administrative office. Other administrative and service buildings housing sanitation and laundry facilities, recreational facilities, or any other such facilities shall comply with all applicable ordinances, codes, and statutes regarding buildings, electrical installations, plumbing, and sanitation systems.

7.18.19.2. In each manufactured home park, the permittee or duly authorized attendant or caretaker shall be in charge at all times to keep the manufactured home park, including all service buildings, equipment, commercial structures, and the grounds of the park in a clean, orderly, safe, and sanitary condition and kept free from any condition that will menace the health of any occupant or the public or constitute a nuisance. An onsite management office with 24 hour/7 day a week contact capability shall be provided.

7.18.20. Structural Additions.

All structural additions to manufactured homes other than those which are built into the unit and designed to fold out or extend from it shall be erected only after a building permit is obtained, and such additions shall conform to the North Carolina Building Code, and shall meet the standards of special regulations adopted with respect to such additions. The building permit shall specify whether such structural additions may remain permanently, must be removed when the manufactured home is removed, or must be removed within a specified length of time after the

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manufactured home is removed. Structural alterations existing at the time of passage of this Ordinance shall be removed within thirty (30) days after the manufactured home which they serve is moved unless attached to another manufactured home on the same site within that period.

7.18.21. Storage.

Storage of a manufactured home or recreational vehicle is prohibited.

7.18.22. Manufactured Home Park Register.

It shall be the duty of the operator of a manufactured home park to keep an accurate register containing a record of all registered occupants. The operator shall keep the register available at all times for inspection by law enforcement officials, public health officials, and other officials whose duties necessitate acquisition of the information contained in the register.

7.18.23. Sales in Manufactured Home Parks.

7.18.23.1. It shall be unlawful to sell on a commercial basis manufactured homes or trailers within manufactured home parks.

7.18.23.2. It shall be unlawful to sell a manufactured home space(s) within the manufactured home parks.

7.18.23.3. Except for accessory uses, it shall be unlawful to operate any business within a manufactured home park.

7.18.24. Flood Hazard Areas.

A manufactured home park or any portion of a manufactured home park shall not be located within any area included on the Flood Boundary and Floodway Map (FBFM), refer to Appendix A for definition.

SECTION 7.19 TEMPORARY EMERGENCY, CONSTRUCTION, AND REPAIR RESIDENCES.

7.19.1. Dimensional Requirements. A Temporary Emergency, Construction and Repair Residence shall comply with the dimensional requirements for an accessory building as set forth in Article 8.

7.19.2. Permit Expiration. A permit for Temporary Emergency, Construction, and Repair Residence to be occupied pending the construction, repair, or renovation of a permanent single-family dwelling on a site shall expire within 6 months after the date of the issuance, except that the UDO Administrator may renew such permit if it is determined that: (1) substantial construction, repair work, renovation or restoration work has been done; and (2) such renewal is reasonably necessary to complete the necessary work to make such residence habitable. A Class A manufactured home may be used as a temporary residence.

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SECTION 7.20 TINY HOUSES.

Tiny houses shall be allowed in accordance with Section 6.5, subject to the following:

7.20.1. A tiny house must comply with the North Carolina State Building Code.

7.20.2. A tiny house must be situated on a permanent foundation with secure wind-resistant tie-downs and connected to public water, sewer, and electric utilities.

7.20.3. If the tiny house is constructed on a travel chassis with wheels, the wheels must be removed for permanent location on a foundation.

7.20.4. A tiny house must comply with all UDO requirements for the zoning district in which it is located. Tiny house development shall not be built following the manufactured home park requirements.

7.20.5. Room Unit Capacity. The amount of floor space provided per room or occupant shall be that provided in the applicable North Carolina building code.

SECTION 7.21 ADULT AND SEXUALLY ORIENTED BUSINESSES.

7.21.1. No such business shall be located within 2,000 feet of any other sexually oriented business, as measured in a straight line from property line to property line.

7.21.2. No such business shall be located within 2,000 feet of a church, public or private elementary or secondary school, child day care or nursery, public park, residentially used or residentially zoned property, or any establishment with an on-premise ABC license, as measured on a straight line from property line to property line.

7.21.3. There shall be no more than one adult oriented business on the same property or in the same building, structure, or portion thereof.

7.21.4. No other principal or accessory use may occupy the same building, structure, property, or portion thereof of any adult oriented business.

7.21.5. Except for signs as permitted under Article 10, Part III of this Ordinance, there shall be no other advertisements, displays, or other promotional materials visible to the public from pedestrian sidewalks, walkway, or vehicular use areas.

7.21.6. No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

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7.21.7. No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

SECTION 7.22 AUTOMOBILE SERVICE STATIONS; GAS PUMPING STATIONS.

7.22.1. Automobile service stations and or gas pumping stations shall be permitted in accordance with Section 6.5, provided the following conditions are met:

7.22.1.1. The station is limited in function to dispensing gasoline, oil, grease, antifreeze, tires, batteries, and automobile accessories directly related to motor vehicles; to washing, polishing and servicing motor vehicles, only to the extent of installation of the above-mentioned items; and to selling at retail the items customarily sold by service stations.

7.22.1.2. The station shall not overhaul motors; provide upholstery work, auto glass work, painting, welding, bodywork, tire recapping, or auto dismantling.

7.22.1.3. The station shall provide a Type C buffer along the property lines that abut residential properties in accordance with Section 10.14 of this Ordinance.

7.22.1.4. Lighting facilities shall be in accordance with Part IV of this Ordinance. Stations shall extinguish all floodlights at the close of daily operation or 11:00 p.m., whichever is earlier.

7.22.1.5. Exterior display of items offered for sale shall meet all building setback requirements and shall be located in containers, racks or other structures designed to display merchandise, not to include wood pallets, and comply with Section 7.30.3.

7.22.1.6. No vehicle that has been repaired and is awaiting removal, or that is awaiting repair, shall be stored or parked for more than thirty (30) consecutive days.

7.22.2. Automobile service stations located shall have no gasoline or oil pump located within fifteen (15) feet of any street right-of-way line.

SECTION 7.23 BATTERY CHARGING/BATTERY EXCHANGE STATION.

Battery charging stations and battery exchange stations shall be permitted in accordance with Section 6.5, subject to the following requirements:

7.23.1. Electric vehicle charging stations should be reserved for parking and charging of electric vehicles only.

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7.23.2. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

7.23.3. Battery Charging Stations.

For land use compatibility purposes, the charging activity should be proportionate to the associated permitted use. Electric vehicle charging station(s) shall be permitted in a single- or multi-family garage designed to service the occupants of the home/dwelling unit as an accessory use. Accessory single-family charging stations shall not exceed residential building code electrical limitations. Whereas, charging station(s) installed in a parking lot for non single-family residential use are expected to have intensive use and will be permitted to have multiple “rapid charging stations” to serve expected demand.

7.23.4. Battery Exchange Stations.

Exchange stations are permitted in any commercial or industrial zoning district, provided, however, all other requirements for the building or space the use occupies are satisfied, including but not limited to the UDO, fire code, and building code requirements. This use is specifically prohibited in exclusively residential or conservation/recreation zoning districts.

7.23.5. Design Criteria for Commercial and Multi-Family Development.

The following criteria shall be applied to electric charging facilities.

7.23.5.1. Number Required. This is an optional improvement. No minimum number of stalls applies. Provided, if electric vehicle stalls are reserved for electric vehicles, care should be taken to ensure enough spots are available for all of a site’s parking needs.

7.23.5.2. Generally. Location and provision of electric vehicle parking will vary based on the design and use of the primary parking lot, keeping in mind flexibility will be needed in various parking lot layout options.

7.23.5.3. Signage to Identify. Each charging station space should be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operations should be included if time limits or tow away provisions are to be enforced by the owner.

7.23.5.4. Maintenance. Charging station equipment should be maintained in all respects, including the functioning of the charging equipment.

7.23.5.5. Accessibility. Where charging station equipment is provided within an adjacent pedestrian circulation area, such as a sidewalk or accessible route to the building entrance, charging equipment should be located so as to not interfere with accessibility.

7.23.5.6. Lighting. Where charging station equipment is installed, adequate site lighting should also be provided unless charging is for daytime purposes only.

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7.23.5.7. Notification of Station Specifics. Information on the charging station identifying voltage and amperage levels and any time of use, fees, or safety information.

7.23.5.8. Avoid Conflict with Handicap Spots. Stalls should generally not be located adjacent to handicap spots unless designed for handicapped use.

SECTION 7.24 MICROBREWERY/DISTILLERY.

An establishment that meets the definition of a microbrewery or distillery shall be permitted in accordance with Section 6.5, provided it meets the requirements of NCGS 18B-1104 or 18B-1105, respectively. Tasting rooms are an accessory use to a microbrewery.

SECTION 7.25 FOOD TRUCKS.

Food trucks shall be permitted in accordance with Section 6.5, and subject to the following standards:

7.25.1. Food trucks may conduct sales while parked on a public street when the Town Council has approved a temporary street closing or on property owned by the Town for a Town-sponsored or civic event such as a street festival/fair, or Town Council approved special event.

7.25.2. Food trucks may operate on an individual private property for a maximum of 90 days, each calendar year when utilizing a temporary event permit for each individual parcel on which the food truck is located.

7.25.3. Food Truck Location.

Food trucks must be located at least 100 feet from the front door of any restaurant and outdoor dining area during restaurant business hours and at least 50 feet from any permitted mobile food vending cart location. Additionally, food trucks are prohibited from parking closer than 15 feet of a fire hydrant, and closer than 5 feet of a driveway, utility box or vault, handicapped ramp, building entrance or exit, or emergency call box. Food Trucks serving alcoholic beverages shall be no closer than 50 feet from any place of worship. These minimum distance requirements are all measured in a straight line from the closest point of the proposed food truck location to the closest point from the buffered point, or in the case of a restaurant measured from the closest point of the restaurants main entrance. If a zoning permit is issued and a restaurant or place of worship subsequently opens within buffered distance (measured from the restaurants/place of worship main entrance) of the approved food truck location, the food truck may continue to operate until the permit expires.

7.25.4. Zoning Permit.

A zoning permit is required for each site and must be signed by the property owner and completed and submitted along with a site plan or plot plan. If a property owner has a property large enough

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to accommodate more than one food truck, only one zoning permit is required to be submitted showing the location of all food trucks. The plot plan must show the limits of the property, the location(s) of the proposed food truck, and label adjoining uses on neighboring properties. The applicant must also submit a copy of a valid permit for a Mobile Food Unit, NC Sales and Use Certificate, NC Department of Agriculture Permit, and/or ABC Permit when applicable, location of approved grease disposal facility, proof of food truck storage location and a copy of the vehicle or trailer registration.

7.25.5. Parking.

Food trucks may not occupy any required parking stall for the primary use while the primary use is open to the public. Food trucks and the primary use may share parking spaces when having separate hours of operation. Parking stalls that are overflow or extra according to the regulations in the UDO may be used to park a food truck; however, parking stalls leased to another business or adjacent use may not be used unless the food truck is operating under separate hours of operation. Food trucks may not park in handicapped accessible parking spaces, nor can they park in access or drive aisles. The approved location for the parking trucks, as shown on the zoning permit, must be physically marked. The food truck parking space can be marked with paint, tape or other easily identifiable material. Food trucks may not be parked in an approved location after hours of operation.

7.25.6. Hours of Operation.

Food trucks may operate between the hours of 6 a.m. and 10 p.m., unless the food truck is located within 150 feet of a property with a single- or two-family residential dwelling. When located within 150 feet of this residential dwelling, the hours of operation shall be between 7 a.m. and 6 p.m. This measurement is taken from the property line of the residential dwelling in a straight line to the closest point of the approved food truck location.

7.25.7. Prohibitions.

Food trucks may not use audio amplification. Freestanding signage shall be limited to a single sandwich board sign of a maximum height of four (4) feet and a maximum length of three (3) feet. All equipment and signage associated with the food trucks must be located within three (3) feet of the food truck. The food truck operator is responsible for disposing of all trash associated with the operation of the food truck. Town trash receptacles may not be used to dispose trash or waste. All areas within fifteen (15) feet of the food truck must be kept clean. Grease and liquid waste may not be disposed in tree pits, storm drains, the sanitary sewer system or public streets. Food trucks are all subject to the Town-wide noise ordinance.

7.25.8. Maximum Number of Trucks Per Property.

7.25.8.1. Maximum of two (2) food trucks on lots of one-half acres or less.

7.25.8.2. Maximum of three (3) food trucks on lots between one-half acre and 1 acre.

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7.25.8.3. Maximum of four (4) food trucks on lots greater than 1 acre.

7.25.8.4. Outdoor seating associated with a food truck is only permitted on lots at least two acres in size or greater.

7.25.9. Exceptions.

7.25.9.1. Food Trucks when located at outdoor flea markets are exempt from Section 7.25.2 and Section 7.25.4. Food trucks at outdoor flea markets shall operate under a valid special use permit for the flea market and are permitted to operate under the same hours of operation.

7.25.9.2. The number and location of Food Trucks operating with a Town-sponsored or civic event such as a street festival/fair, or Town Council approved special event shall be regulated with the permit.

SECTION 7.26 LAUNDRY AND DRY CLEANING ESTABLISHMENTS.

Such establishments shall be permitted when only oil, gas, or electricity is used for heat. Screening and filtering devices shall be used to prevent the emission of smoke, dust, fumes, odors, or steam into the atmosphere.

SECTION 7.27 FLEA MARKET/VENDOR MARKET.

7.27.1. All vendor shelters or structures shall comply with State Building Code.

7.27.2. All vendors shall maintain the same hours as the flea market unless operating under a separate zoning permit.

7.27.3. There shall be adequate ingress and egress such that there is no stacking onto public rights-of-ways.

7.27.4. All parking shall comply with Article 10, Part I.

SECTION 7.28 BONA FIDE FARMS.

Bona fide farms in the Town of Smithfield extraterritorial jurisdiction are exempt from the provisions of this Ordinance as directed by NCGS 160D-903.

SECTION 7.29 SOLAR FARMS.

A Solar Farm developed as a principal use shall be permitted in accordance with Section 6.5, subject to the following:

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7.29.1. Setbacks.

Solar farms shall meet the minimum zoning setbacks for the zoning district in which located.

7.29.2. Height.

Ten (10) feet maximum.

7.29.3. Visibility.

Solar farms with panels located less than 100 feet from an adjacent public street right-of-way, a residentially zoned property, or a property currently utilized for residential purposes must be screened by a continuous screen of evergreen vegetation intended to be at least six (6) feet high and three (3) feet thick at maturity.

7.29.4. Application Requirements.

A site plan is required in accordance with Article 5.

7.29.5. Installation and Design.

7.29.5.1. Approved Solar Components - Electric solar energy system components must have a UL listing and must be designed with anti-reflective coating(s).

7.29.5.2. Compliance with Building and Electrical Code - All solar farms shall meet all requirements of the International Building Code with North Carolina Amendments.

7.29.6. Decommissioning.

7.29.6.1. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) addressing the following shall be submitted with permit application.

7.29.6.1.1. Defined conditions upon which decommissioning will be initiated (i.e., end of land lease, no power production for 12 months, etc.).

7.29.6.1.2. Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations.

7.29.6.1.3. Restoration of property to condition prior to development of the solar farm.

7.29.6.1.4. The timeframe for completion of decommissioning activities.

7.29.6.1.5. Description of any agreement (i.e., lease) with landowner regarding decommissioning.

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7.29.6.1.6. The party currently responsible for decommissioning.

7.29.6.1.7. Plans for updating this decommissioning plan.

7.29.6.2. Before final electrical inspection, provide evidence decommissioning plan was recorded with the Register of Deeds.

7.29.6.3. Applicants proposing development of a Solar Farm must provide the Town a form of surety equal to 125% of the entire cost, as estimated by the applicant and approved by the Town Attorney, through an instrument readily convertible into cash at face value, either with the Town or in escrow with a financial institution designated by the applicant as an official depository of the Town, to cover the cost of removal in the event the applicant is unable to perform any required removal and the Town choose to do so. Following initial submittal of the surety, the cost calculation shall be reviewed every 12-months by the applicant and adjusted accordingly based upon the estimated decommissioning costs in current dollars. The adjustment must be approved by the Town. Failure to comply with any requirement of this paragraph shall result in the immediate termination and revocation of all prior approvals and permits; further, the Town of Smithfield shall be entitled to make immediate demand upon, and/or retain any proceeds of, the surety, which shall be used for decommissioning and/or removal of the Solar Farm, even if still operational.

SECTION 7.30 TEMPORARY USES.

No temporary use may omit any noise, odors, dust, fumes, glare, or vibration or cause traffic or other safety issues that could be detrimental to adjoining properties or surrounding areas. Temporary uses shall be subject to applicable location, setback, parking, land use and other standards for the district, but exempt from the vegetation and parking lot surface improvement standards. Christmas tree sales, fireworks sales, carnivals and nonprofit organizations are exempt from the frequency and duration provisions of this Ordinance. The maximum frequency of temporary uses shall not exceed two (2) occurrences within any twelve-month period and the maximum duration of such temporary use shall be seven (7) days, unless otherwise specified within this Ordinance. For purposes of this definition, the duration of each separate occurrence shall be measured on continuous days.

7.30.1. Special events requiring temporary use permits approved by the Town Council.

The Town Council shall consider the effects of the use on adjacent properties and shall set a specific time limit on such uses:

7.30.1.2. Events with amplified sound.

7.30.1.3. Events with 100 people or more in attendance.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.30.1.4. Events that require closure or blockage of Town streets.

7.30.1.5. Events with food trucks on private property in accordance with Section 7.25.1

7.30.1.6. Events that have a likelihood of damage to public or private property, injury to persons, public disturbances or nuisances, unsafe impediments to pedestrian or vehicular travel, or other significant adverse effects upon the public health, safety, or welfare as determined by the Planning Director.

7.30.2. *Town-Recognized Events.*

These are defined as events which are in part, or wholly, sponsored by the Town, recognized by the Town, or proclaimed as a Town-recognized event by the Town Council. Such events shall include only those listed on the Town-recognized Event List as maintained by the Town Clerk. The Town-recognized Event List may be amended as needed by the Town Council. The event sponsors are required to complete temporary use permits applications for administrative approval and are subject to the maximum allowable time frames and temporary signage requirements of Article 10, Part III.

7.30.3 *Exemptions from temporary use permits.*

Temporary use permits are **NOT** required for the following, but may be subject to the maximum allowable time frames and temporary signage requirements:

7.30.3.1. Athletic events held at approved sports facilities;

7.30.3.2. Temporary not-for-profit car washes held on developed sites;

7.30.3.3. Block parties occurring entirely upon the grounds of a private residence or common area of a multi-family residential development;

7.30.3.4. Other events with 99 people or fewer in attendance provided there is little likelihood of damage to public or private property, injury to persons, public disturbances or nuisances, unsafe impediments to pedestrian or vehicular travel, or other significant adverse effects upon the public health, safety, or welfare;

7.30.3.5. Private events which are not open to members of the general public typically has a duration of less than 12 hours, and which is not expected to have significant negative impacts on surrounding properties, such as wedding ceremonies, funerals, and private parties, etc.; and

7.30.3.6. Events which occur or take place entirely within the boundaries of a parcel or parcels which possess development plan approval for such activities, i.e., assembly halls, convention centers, amphitheaters, or event centers, etc.

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7.30.3.7. Non-profit on-site sales events.

7.30.3.8. Sale of Goods Other than Agricultural Products in accordance with UDO Section 7.30.3.

7.30.4. Sale of Goods Other Than Agricultural Products.

Merchants may display and/or sell goods in the Town on a temporary basis without establishing a permanent place of business, subject to the requirements of this Ordinance. The outdoor display and/or sale of goods consistent with the provisions of this Ordinance is considered an accessory use and does not require a temporary use permit. Additionally:

7.30.4.1. The proposed display or sales of goods for commercial purposes may not occur within 200 feet of an occupied residential dwelling unit.

7.30.4.2. The proposed display or sales of goods for commercial, public, or institutional purposes shall take place on a developed site where the principal use is retail sales, or on an immediately adjacent developed outparcel of such a site. Upon approval of the Planning Director, temporary sales of goods for a public or institutional purpose may take place on public property.

7.30.4.3. A temporary display or sale of products shall be limited in scope to similar or complimentary products to those offered by the existing principal use.

7.30.4.4. Sale of goods other than agricultural products require written permission from the property owner,

7.30.4.5. The hours of operation are limited to 7:30 am to 10 pm, or the same hours as the principal use, whichever is more restrictive.

7.30.4.6. The temporary sale of non-agricultural products shall be allowed on an individual parcel or site for no more than 90 total days per calendar year, and no more often than three events per calendar year.

7.30.4.7. The temporary sale of non-agricultural products shall utilize existing pedestrian and vehicular ingress, egress and parking. Structures shall be in accordance with NC Building Code.

7.30.5. Sale of Agricultural Products Grown Off-Site.

For purpose of this section, locally grown agricultural products are defined agricultural products grown within the state of North Carolina. including but not limited to: pumpkins; grains and seed crops; fruits of all kinds; vegetables; nursery, floral, ornamental, and greenhouse products; trees and forest products, including Christmas trees, firewood, and pine straw; bees and beekeeping products; seafood; dairy products, any USDA-recognized agricultural product. For purposes of

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this section, processed or prepared food products of any kind shall not be considered as agricultural products. Additionally:

7.30.5.1. Temporary sale of locally grown agricultural products may occur from a vacant lot in accordance with Section 6.5.

7.30.5.2. The temporary sale of locally grown agricultural products is exempt from the requirement to be similar to the products of the principal use.

7.30.5.3. The temporary sale of locally grown agricultural products may be accomplished from a vehicle, trailer, or tent. Tents may require a building permit.

7.30.5.4. The temporary sales of locally grown agricultural products within the street right-of-way and required landscape yards shall be prohibited. Location of temporary sales of locally grown agricultural products must provide for safe vehicular access and adequate parking.

7.30.5.5. The quantity of temporary sales of locally grown agricultural products shall be limited to one vendor for every 75 linear feet of road frontage per lot.

7.30.5.6. The temporary sale of locally grown agricultural products shall be allowed only by purchase of an annual permit which shall expire on December 31st of each calendar year.

7.30.5.7. A permit application for temporary sales of locally grown agricultural products must include a signed and notarized written letter of permission from the property owners allowing the applicant to conduct temporary sales of locally grown agricultural products on the property considered for approval. The application shall also include a scaled site plan showing the location of any tent or temporary structure to be used, the location of pedestrian, vehicular, and emergency ingress and egress, the location and number of available off-street parking spaces, the location, size, color, and design of any temporary sign, and electrical power connection, if applicable.

7.30.5.8 Temporary Sign. Signs advertising the temporary sale of locally grown agricultural products for sale shall be allowed provided that they meet the requirements of Article 10, Part III, and the following:

7.30.5.8.1 On properties where temporary sales of locally grown agricultural products are grown and sold, one ground sign is allowed facing each road on which the property has frontage in accordance with Section 10.26.5.

SECTION 7.31 WIND FARMS.

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Wind Farms developed as a principal use shall be permitted in accordance with Section 6.5, subject to the following:

7.31.1. Setbacks.

Wind Energy Facility Type	Minimum Lot Size	Minimum Setback Requirements ¹				Maximum Height from Grade
		Occupied Buildings (Subject Property) ²	Property Lines ²	Public/ Private Right-of-Way ²	Highway Corridor Overlay District	
Wind Farm	5 Acres	1.0	1.0	1.5	2.5	250 Ft.

¹ Measured from the center of the wind turbine base to the property line, right-of-way, or nearest point on the foundation of the occupied building. ² Calculated by multiplying required setback number by wind turbine height.

7.31.2. Height.

Two hundred fifty feet (250') maximum.

7.31.3. Ground Clearance.

Rotor blades on wind turbines must maintain at least twenty-four feet (24') of clearance between their lowest point and the ground.

7.31.4. Visibility.

Wind farms must be set back at least 150 feet from any residential district; no energy generating equipment may be located within 150 feet of any public right-of-way; and screening and landscaping shall be provided in accordance with Article 10, Part II.

7.31.5. Interconnection Agreement.

All wind farms are required to enter into an interconnection agreement with the Town prior to connection.

7.31.6. Wind Farm Facility Noise, Shadow Flicker, and Electromagnetic Interference.

7.31.6.1. Audible sound from a Wind Turbine shall not exceed fifty-five (55) dBA, as measured at any off-site occupied building of a Non-Participating Landowner.

7.31.6.2. Shadow flicker at any occupied building on a Non-Participating Landowner's property caused by a Wind Energy Facility located within 2,500 feet of the occupied building shall not exceed thirty (30) hours per year.

7.31.6.3. Wind turbines may not interfere with normal radio and television reception in the vicinity. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility.

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7.31.7. Application Requirements.

7.31.7.1. Submit a site plan denoting the dimensions of the parcel, proposed wind farm location (arrangement of turbines and related equipment), distance from the proposed area to all property lines, and location of the driveway(s). No developed portion of the wind farm area may encroach into the required setbacks and any buffer area(s).

7.31.7.2. Provide the representative type and height of the wind turbine in the form of horizontal and vertical (elevation) to-scale drawings.

7.31.7.3. Provide a statement, including the generating capacity of the turbines, dimensions and respective manufacturers of all generating systems and equipment, and a description of ancillary facilities.

7.31.7.4. Provide proof of compliance with applicable Federal Aviation Administration regulations.

7.31.7.5. An applicant for a Wind Farm special use permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigating measures, and any adverse environmental effects that cannot be avoided within 1/4 mile of the site property line, in the following areas:

7.31.7.5.1. Demographics including people, homes, and businesses.

7.31.7.5.2. Noise.

7.31.7.5.3. Visual impacts.

7.31.7.5.4. Public services and infrastructure.

7.31.7.5.5. Cultural and archaeological impacts.

7.31.7.5.6. Recreational resources.

7.31.7.5.7. Public health and safety, including air traffic, electromagnetic fields, and security and traffic.

7.31.7.5.8. Additional or new hazardous materials.

7.31.7.5.10. Impact on tourism and community benefits.

7.31.7.5.17. Avian impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site as well as known migration routes and patterns.

7.31.7.5.18. Wildlife impact assessment, including migration routes and patterns.

7.31.7.5.19. Rare and unique natural resources.

7.31.7.6. An applicant for Wind Farm special use permit shall state in the application whether a Certificate of Public Convenience and Necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The Town may ask the Utilities Commission to determine whether a

ARTICLE 7. SUPPLEMENTAL REGULATIONS

Certificate of Public Convenience and Necessity is required for a particular wind power project for which the Town has received an application. The Town shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission.

7.31.8. Installation and Design.

7.31.8.1. The installation and design of the wind generation facility shall conform to applicable industry standards, including those of the American National Standards Institute.

7.31.8.2. Attachment of a tower or supporting structure to a building of any kind shall be prohibited.

7.31.9. Visual Appearance.

7.31.9.1. The wind turbine shall be constructed of a corrosion resistant material that will not fade, show rust spots or otherwise change the appearance as a result of exposure to the elements, and be a non-obtrusive color such as white, off-white or gray; and

7.31.9.2. The wind turbine shall not be artificially lit, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.

7.31.10. Maintenance.

Any wind generation facility that is not functional shall be repaired by the owner within a 6-month period or be removed. In the event that the Town becomes aware of any wind farm that is not operated for a continuous period of 6 months, the Town will notify the landowner by certified mail and provide 30 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Town deems the timetable for corrective action as unreasonable, the Town shall notify the landowner, and such landowner shall remove the turbine(s) with 180 days of receipt of said notice. Any disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

7.31.11. Decommissioning.

7.31.11.1. The applicant must remove the wind generation facility if, after the completion of the construction, the wind generation facility fails to begin operation, or becomes inoperable for a continuous period of one (1) year.

7.31.11.2. The one-year period may be extended upon a showing of good cause on appeal to the Town of Smithfield Board of Adjustment

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7.31.11.3. A decommissioning plan signed by the party responsible for decommissioning and the landowner (if different) addressing the following shall be submitted with permit application.

7.31.11.3.1. Defined conditions upon which decommissioning will be initiated (i.e., end of land lease, no power production for 12 months, etc.)

7.31.11.3.2. Removal of all non-utility owned equipment, conduit, structures, fencing, roads, and foundations.

7.31.11.3.3. Restoration of property to condition prior to development of the wind farm.

7.31.11.3.4. The timeframe for completion of decommissioning activities.

7.31.11.3.5. Description of any agreement (i.e., lease) with landowner regarding decommissioning.

7.31.11.3.6. The party currently responsible for decommissioning.

7.31.11.3.7. Plans for updating this decommissioning plan.

7.31.11.4. Before final electrical inspection, provide evidence decommissioning plan was recorded with the Register of Deeds.

7.31.11.5. Applicants proposing development of a Wind Farm must provide the Town a form of surety equal to 125% of the entire cost, as estimated by the applicant and approved by the Town Attorney, through an instrument readily convertible into cash at face value, either with the Town or in escrow with a financial institution designated by the applicant as an official depository of the Town, to cover the cost of removal in the event the applicant is unable to perform any required removal and the Town choose to do so. Following initial submittal of the surety, the cost calculation shall be reviewed every 12 months by the applicant and adjusted accordingly based upon the estimated decommissioning costs in current dollars. The adjustment must be approved by the Town. Failure to comply with any requirement of this paragraph shall result in the immediate termination and revocation of all prior approvals and permits; further, the Town of Smithfield shall be entitled to make immediate demand upon, and/or retain any proceeds of, the surety, which shall be used for decommissioning and/or removal of the Wind Farm, even if still operational.

SECTION 7.32 CHURCHES/PLACES OF WORSHIP, CLUB OR PRIVATE LODGE MEETING HALLS AND INDOOR STORAGE FACILITIES.

7.32.1. Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have

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adequate parking meeting Article 10, Section 10.3.

7.32.2. The land use will not significantly increase traffic on local roadways within a residential neighborhood.

7.32.3. In B-2 and B-3 zoning districts, the land use should not substantially decrease vehicular and/or pedestrian traffic or inhibit business activity for adjacent commercial businesses particularly during normal business hours. Obviously, some businesses have more traffic than others. The Town recognizes that businesses in these zoning districts need active adjacent business space to attract customers to B-2 and B-2 zoning districts. The town intends for planning policies to encourage business traffic in these zoning districts while not prohibiting uses with less traffic. If a special use, due to inactivity during business hours or otherwise, substantially decreases commercial traffic then that special use is likely not to be in harmony with the existing development and uses with the area in which it is to be located.

7.32.4. The land use will not impede the normal and orderly development of the surrounding property for uses permitted in the district. If a substantial portion of a commercial center is closed or not attracting traffic during normal business hours then that absence of activity would likely impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

SECTION 7.33 RECREATIONAL VEHICLE PARKS.

7.33.1. All recreational vehicle parks shall be at least three (3) acres in size.

7.33.2. Every space shall consist of a minimum of 2,000 square feet.

7.33.3. All recreational vehicles parks must adhere to the following dimensional requirements:

7.33.3.1. Minimum structure separation for recreational vehicles: 10 feet.

7.33.3.2. Minimum separation from other structures: 20 feet.

7.33.3.3. Minimum exterior property boundary setback: 20 feet.

7.33.4. Within a recreational vehicle park, one commercial modular office unit may be used as an administrative office.

7.33.5. Each park shall provide a central structure or structures that will supply separate toilet facilities and showers for both sexes, to be maintained and kept in good repair at all times.

7.33.6. Establishments of a commercial nature including food stores and coin operated laundry may be permitted in recreational vehicle parks subject to the following conditions:

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7.33.6.1. Such establishments shall be located, intended, and designed to serve only the trade or service needs of persons residing in the park.

7.33.6.2. Establishments shall be accessory to the use and character of the park.

7.33.6.3. Access to the commercial establishment must be from interior streets.

7.33.6.4. Off-street parking for commercial establishments shall be provided at a ratio of one (1) space for every 400 square feet of gross floor area.

7.33.7. No individual sites may be permitted within the jurisdiction of a Special Flood Hazard Area but may be set aside for passive open space.

7.33.8. Recreational vehicle parks may allow for designated tent only camping sites, not to exceed 20% of the park's gross area.

7.33.9. Permanent parking and storing of a recreational vehicle shall not be permitted in the park.

7.33.10. No manufactured home used for residential purposes shall be permitted in a recreational vehicle park.

7.33.11. The operator of a recreational vehicle park shall keep an accurate register containing a list and description of all homes located in the park and owner thereof.

7.33.12. All parks shall adhere to Article 10, Part II, Landscape Requirements.

7.33.13. A safe, adequate, and convenient central water supply and sewage system connection must be provided for each park space. All recreational vehicle parks must be connected to central public water and sewer systems or state approved private central water and sewer systems.

7.33.14. Park owners shall make arrangements for a private vendor or other sources to collect refuse, either from individual spaces or from centrally located dumpster sites. All dumpster locations are to be fenced and screened from view. Individual refuse receptacles shall be waterproof and rodent proof.

7.33.15. The location and dimensions of all proposed and existing rights-of-way, utility or other easements, riding trails, pedestrian or bicycle paths, natural buffers, and areas if any to be dedicated to public use with the purpose of each stated shall be referenced on the site plan.

7.33.16. No individual recreational vehicle space shall have direct access to a public maintained road.

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7.33.17. All driveways must be constructed of all-weather material, such as bituminous or concrete or equal, and shall comply with Section 10.2.4. Recreational vehicle parks shall have direct access to a public maintained road and shall have a secondary exit.

7.33.18. All RV Parks shall have a 24-hr attendant on duty for security and emergency purposes.

SECTION 7.34 RESIDENTIAL CLUSTER DEVELOPMENT.

7.34.1. Purpose and Intent; Definition.

The purpose of residential cluster development is to provide an alternative development option that will:

7.34.1.1. Promote more efficient use of land resources than is otherwise possible under conventional zoning and subdivision regulations.

7.34.1.2. Reduce the per unit site development costs of dwellings by concentrating residential development on a portion of the site without increasing the overall gross density above that which would normally be allowed pursuant to Article 8, Zoning District Design Standards.

7.34.1.3. Preserve the natural character of the site.

7.34.1.4. Preserve farmland and scenic views.

7.34.1.5. Provide for desirable and usable open space, tree cover, and the preservation of environmentally sensitive areas.

7.34.1.6. Provide variety in residential buildings and properties and provide design flexibility that can relate the location of units to unique site conditions.

7.34.1.7. For the purposes of this section, a residential cluster development is defined as:

7.34.1.7.1. A single-family residential development design wherein conventional zoning standards are relaxed to permit modifications in lot area, lot width, lot frontage, lot coverage, required yards, and public street access, and to save infrastructure development cost, environmental damage, energy use and land resources by concentrating development in specific areas of the site without increasing the gross density above that which would normally be allowed pursuant to Article 8, Zoning District Design Standards.

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7.34.1.7.2. Such development shall contain detached single-family dwellings only; and

7.34.1.7.3. Such development shall provide a program for the provision, operation and maintenance of such areas, facilities and improvements as shall be required for the perpetual common use by the occupants of the development.

7.34.2. Area; Permitted Districts; Street Access; Open Space(s); Density; Dimensional Standards.

Residential Cluster developments shall contain not less than 10 acres of net area. Addition to any existing cluster development may be allowed provided such addition meets or exceeds all other applicable requirements.

Subject to the paragraph above, a residential cluster development shall be exempt from the conventional zoning standards relative to lot area, lot width, lot frontage, lot coverage, required yards and public street access normally applicable to such districts, provided such development complies with the minimum standards set forth under this section.

A residential cluster development shall provide open space(s) subject to all the following requirements:

7.34.2.1. Such open space shall be greater or equal in area to the total amount of area by which each lot was reduced below the minimum lot size requirement of the prevailing zoning district, or as provided under subsection 7.34.2.2, below, whichever is greater.

7.34.2.2. Residential Cluster developments shall reserve not less than 15% of the gross acreage as common open space.

7.34.2.3. Such area shall not be used as a building site. For purposes of this section, picnic areas or shelters, ball fields, walking or jogging trails, boat ramps and docks or other similar recreational facilities may be allowed.

7.34.2.4. Such area shall not be devoted to stormwater management facilities, public street right-of-way, private driveways or parking areas.

7.34.2.5. Such area shall be left in its natural or undisturbed state if wooded at the time of development, except for the cutting of trails for walking or jogging or, if not wooded at the time of development, is improved for the uses listed under subsection 7.34.2.3 above, or is properly vegetated and landscaped with the objectives of creating a wooded area or other area that is consistent with the objective set forth in subsection 7.34.2.6 below.

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7.34.2.6. Such area shall be capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation or for horticulture if not devoted to other allowable uses in this subsection.

7.34.2.7. Such area shall be legally and practically accessible to the residents of the development, or to the public if so dedicated.

7.34.2.8. A minimum of one-half of the required open space shall be contained in one continuous undivided part.

7.34.2.9. Not more than 25% of the required open space shall lie within any floodway zone or wetlands.

7.34.2.10. Not more than 25% of the required open space may be devoted to allowable improvements as set forth in subsection 7.34.2.3 above.

7.34.2.11. Such area shall be perpetually owned and maintained for the purposes of this section by a homeowners association or, at the option of the Town, dedicated or deeded to the public.

7.34.2.12. The location and arrangement of any open space(s) shall be subject to Town Council approval.

7.34.2.13. The owner shall, pursuant to the subdivision regulations, cause a final subdivision plat to be recorded in the Johnston County Register of Deeds which clearly describes the open space(s), required deed restrictions, and conditions thereof, prior to the issuance of any building permit(s).

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7.34.3. Maximum Density Requirements.

7.34.3.1. Residential density shall not exceed that which would normally be permitted in accordance to Article 8.

7.34.3.2. Area dedicated or deeded to the Town pursuant to the sections above shall count towards gross area for purposes of density calculation.

7.34.4. Minimum Dimensional Standards.

7.34.4.1. Lot Area. Not less than 60% of the minimum lot area which would normally be required under the single-family standards of the prevailing zoning district.

7.34.4.2. Lot Width. 40 feet.

7.34.4.3. Lot Frontage. 40 feet, except on the radius of a cul-de-sac where such distance may be reduced to 20 feet.

7.34.4.4. Public Street Setback. Principal and accessory structure setbacks shall be in accordance with Article 8.

7.34.4.5. Side Yard Setback. Shall be subject to Section 7.34.5 (zero lot line) or not less than 12 feet, provided however, that no structure shall be located on more than one side lot line. Dwellings which do not utilize the provisions of Section 7.34.5 (zero lot line) and are not located adjacent to a lot line subject to Section 7.34.5 shall maintain a minimum side setback of not less than six feet.

7.34.4.6. Rear Yard Setback. The rear yard setback shall not be less than 12 feet.

7.34.4.7. Building Separations. No portion of any principal structure shall be located less than 12 feet from any other principal structure or less than 10 feet from any accessory structure as measured to the closest point.

7.34.4.8. Periphery Boundary Setback. Except as further provided no principal or accessory structure shall be located less than 25 feet from the peripheral boundaries of the residential cluster development.

7.34.4.9. Transition Area Setback. Where a residential cluster development adjoins or borders an existing single-family zoning district or other predominantly single-family development sharing common frontage on the same or opposite side of a public street, the residential cluster development shall maintain the same setback from the public right of way.

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For purposes of this subsection, “other predominantly single-family development” shall be that area within 100 feet of the external boundary of the residential cluster development in which 50% or more of the conforming land uses are detached single-family residential.

7.34.4.10. Maximum Height. 35 feet.

7.34.4.11. Detached Accessory Structures.

7.34.4.11.1. Shall not be located within any front yard or side yard setback;

7.34.4.11.2. Shall not be located within 10 feet of any other-structure;

7.34.4.11.3. Shall not cover more than 20% of any side or rear yard; and

7.34.4.11.4. The side or rear yard requirement for detached accessory structures shall be subject to the provisions of Section 7.34.5 (zero lot line) or not less than five feet.

7.34.5. Zero Side Yard Setbacks.

A zero-side yard setback are permitted herein, subject to the following provisions:

7.34.5.1. Any wall constructed on the side or rear lot line shall be a solid doorless and windowless wall. Such wall shall contain no electrical, mechanical, heating, air conditioning, or other fixtures that project beyond such wall. If there is an offset of the wall from the lot line, such offset shall be subject to the applicable provisions of Section 7.34.4.5 and 7.34.4.6. Roof eaves may encroach two feet into the adjoining lot;

7.34.5.2. A five-foot maintenance and access easement with a maximum eave encroachment easement of two feet within the maintenance easement shall be established on the adjoining lot and shall assure ready access to the lot line wall at reasonable periods of the day for normal maintenance;

7.34.5.3. Where zero side yard setbacks are proposed, the buildable area for each lot shall be indicated on the preliminary and final subdivision plat.

7.34.6. Compliance with Subdivision Standards.

All development regulated in accordance with this section shall be subject to the requirements, conditions, and restrictions of the subdivision regulations, see Article 10, Part X.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

SECTION 7.35 MULTI-FAMILY/TOWNHOUSE/APARTMENT/CONDOMINIUM.

7.35.1. Multi-family Apartment Complexes.

Multi-family Apartment Complexes shall comply with the following standards:

7.35.1.1. No off-street parking space shall be located closer than ten feet to any residential building wall.

7.35.1.2. Sidewalks shall be constructed within the interior of the development to link residential buildings with other destinations such as, but not limited to: parking, adjoining streets, mailboxes, trash disposal, adjoining sidewalks or greenways and on-site amenities such as recreation areas.

7.35.1.3. Individual storage space containing at least 24 square feet of enclosed floor area with a minimum height of 7 feet shall be provided for each dwelling unit in a multi-family development. Such storage space shall be located either in the same building as the dwelling unit it serves or in an accessory building that may also house parking, recreational, laundry, or other facilities that serve the residents of the development

7.35.1.4. Multi-family Apartment Complex Building Design and Appearance Requirements.

All buildings, including community building / club house, storage buildings, maintenance buildings, garages and buildings containing dwelling units shall be constructed with at least four (4) of the following five (5) building design and appearance requirements:

7.35.1.4.1 Multiple building materials (e.g., brick, fieldstone, limestone, marble, granite, textured block, architectural pre-cast concrete, concrete composite siding, wood clapboard siding, wood beaded siding, stucco, E.F.I.S., aluminum siding, etc.); Multiple surface textures (e.g., rough, striated, imprinted, etc.);

7.35.1.4.2 multiple surface textures (e.g., rough, striated, imprinted, etc.);

7.35.1.4.3 Façade modulations (e.g., building off-sets of at least two (2) feet in depth for every forty (40) feet of building wall length);

7.35.1.4.4 Architectural elements (e.g., quoins, pilasters, soldier courses, friezes, cornices, dentils, etc.) or roof line changes (e.g., changes in direction of ridge, changes in elevation of ridge, inclusion of dormers, etc.);

7.35.1.4.5 Multiple colors (the maximum number of colors shall not be limited, provided however, that there shall be no more than three (3) discernable colors and the primary color shall constitute a minimum of sixty (60) percent of the façade (excluding windows, doors, roofing, fascia materials, or soffit materials).

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7.35.1.4.6. All multi-family or apartment complex developments with one or more dumpsters or a trash compactor must provide a recycling area and a cardboard dumpster; both shall be screened with similar materials to the dumpster or compactor enclosure.

7.35.1.5. Open Space (Recreation) Area Requirements.

New multifamily developments of 25 units or more shall be required, as a condition of site plan approval, to provide a minimum of 800 square feet of unpaved, usable open space with lawn or other soft surface for an outdoor children's play area, plus an additional 50 square feet of usable open space for each additional unit beyond the initial 10 units, up to a maximum of 10,000 square feet, except that this requirement does not apply to multifamily development located downtown or to developments devoted exclusively to senior citizens.

7.35.1.5.1. The features and spaces should enhance the building and center as integral parts of the community. The use of such features as plazas, patios, and courtyards should be used when practical.

7.35.1.5.2. Active open space shall meet the minimum design criteria:

7.35.1.5.2.1. The minimum dimension shall be 25 feet; and

7.35.1.5.2.2. Earth berms, vegetative screening, or fencing should separate the play area from driving and parking areas; and

7.35.1.5.2.3. Residents should have convenient access; and

7.35.1.5.2.4. The design should invite a variety of active and passive recreational activities appropriate for children by utilizing unique natural features, creating gentle slopes or berms, and providing other amenities such as seating benches or play equipment.

7.35.1.5.3. The children's play area shall not be located in any required landscape yard or buffer.

7.35.1.5.4. The children's play area may be dispersed on the site; provided, that the minimum size of each area is 500 square feet or larger.

7.35.2. Townhouses and Condominiums.

Townhouses and condominiums shall comply with the following standards:

7.35.2.1. Maintenance. A property owners association shall be established and shall maintain everything on the outside of the townhouses, including but not limited to open space, landscaping, siding, roofing, porches, trim, mailboxes, driveways, and alleys.

7.35.2.2. the applicant shall file in the Johnston County Register of Deeds office at the time of site development approval, legal documents which shall provide guarantees for

ARTICLE 7. SUPPLEMENTAL REGULATIONS

reserving the use of open space for the use and enjoyment of the residents of the development and provide:

7.35.2.2.1. Continuity of proper maintenance for those portions of open space land requiring maintenance;

7.35.2.2.2. Availability of funds required for such maintenance;

7.35.2.2.3. Adequate insurance protection; and

7.35.2.2.4. Recovery for loss sustained by casualty, condemnation, or otherwise.

SECTION 7.36 ANIMAL HOSPITALS/VETERINARIANS.

7.36.1. Treatment rooms or kennels. All treatment rooms or kennels in a veterinary clinic or hospital shall be designed and maintained within a completely enclosed soundproof building, and the veterinary clinic or hospital shall be operated in such a way as to produce no objectionable odors outside its walls.

7.36.2. Outdoor exercise and bathroom areas shall only be permitted according to the following conditions: a) Such areas shall only be used between the hours of 7:00 am to 10:00 pm. b) Such areas shall be screened to ensure compatibility with surrounding land uses. c) Such areas shall be set back at least 50 feet from the lot line when the adjacent use or zoning is residential. d) Such areas shall be enclosed by a fence at least six (6) feet in height.

7.36.3. Animal waste shall be disposed of properly in a timely manner.

SECTION 7.37 DRIVE-IN FACILITIES.

7.37.1. Queuing lanes and service windows shall be located on the side and rear only. Where use is located adjacent to residential zoning or residential use, a Type A buffer shall be required.

7.37.2. Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern. Adequate queuing lane space shall be provided, without interfering with on-site parking/circulation.

7.37.3. Sound from any speakers used on the premises shall not be audible above a level of normal conversation at the boundary of any surrounding residential district or on any residential property.

7.37.4. Each food or beverage drive-in business shall place refuse receptacles at all exits.

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SECTION 7.38 AUTOMOBILE REPAIR.

7.38.1. The operation shall be adequately buffered with a Type C buffer along the property lines that abut residential properties in accordance with Section 10.14 of this Ordinance.

7.38.2 All repair activities shall be conducted within an enclosed structure and no outside storage of disassembled vehicles, or parts thereof, shall be permitted on site, except in the Heavy Industrial District. In the Heavy Industrial (HI) district, repair and maintenance activities shall be conducted within an enclosed structure or within an area screened from the view of adjacent lands by solid fencing, dense vegetative buffers, earthen berms, and/or other effective screening;

7.38.3. Vehicles shall not be tested off-site on residential streets.

7.38.4. Vehicles to be serviced shall be comply with Section 7.44.

7.38.5 Outdoor storage of salvage or wrecked vehicles shall be prohibited.

SECTION 7.39 CAR WASH.

7.39.1. The car wash shall be capable of being enclosed when not in operation.

7.39.2. Any access drive shall be located at least thirty (30) feet from any public street intersection, measured from the interior curb line commencing at the intersection of the street.

7.39.3. Any car wash line exit shall be at least thirty (30) feet distant from any public right-of-way.

7.39.4. Sound from any speakers used on the premises shall not be audible above a level of normal conversation at the boundary of any surrounding residential district or on any residential property.

7.39.5. Water from the car wash shall not drain across any sidewalk or into a public right-of-way.

7.39.6 Queueing or parking of cars associated with the carwash is prohibited within the public right-of-way

SECTION 7.40 MINI-STORAGE.

7.40.1. The only commercial uses permitted on the site of a self-service storage facility use shall be the rental of storage bays and the pickup and deposit of goods or property in dead storage. Storage bays shall not be used to manufacture, fabricate or process goods; service or repair vehicles, small engines or electrical equipment, or to conduct similar repair activities; conduct

ARTICLE 7. SUPPLEMENTAL REGULATIONS

garage sales or retail sales of any kind; or conduct any other commercial or industrial activity on the site;

7.40.2. A security or caretaker quarters use may be established on the site of a self-storage facility;

7.40.3. Except as provided in this section, all property stored on the site of a self-service storage facility use shall be entirely within enclosed buildings;

7.40.4. Open storage of recreational vehicles and dry storage of pleasure boats of the type customarily maintained by persons for their personal use shall be permitted within a self-service storage facility use, provided that the following standards are met:

7.40.4.1. The storage shall occur only within a designated area. The designated area shall be clearly delineated;

7.40.4.2. The storage area shall not exceed 25% of the buildable area of the site;

7.40.4.3. The storage area shall be entirely screened from view from adjacent residential areas and public roads by a building and/or solid fencing with landscaping on the outside of the fence;

7.40.4.3. Storage shall not occur within the area set aside for minimum building setbacks;

7.40.4.3. No dry stacking of boats shall be permitted on site; and

7.40.4.3. No vehicle maintenance, washing or repair shall be permitted.

SECTION 7.41 OUTDOOR STORAGE ACCESSORY TO PRINCIPAL USE.

7.41.1. Outdoor storage shall be screened from public right-of-way and adjacent property utilizing a durable 6' high solid, decorative fence or masonry wall with a type C bufferyard or better in accordance with section 10.14.

7.41.2. The height of merchandise, materials, and equipment stored shall not exceed the height of the screening fence or wall.

7.41.3. Outdoor storage areas shall be paved with gravel, bituminous, or concrete surfacing.

7.41.4. No customer or vehicular circulation may occur through the area used for outdoor storage.

7.41.5. Outdoor storage is prohibited within the Entry Corridor Overlay District.

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SECTION 7.42 ASSEMBLY USES/EVENT CENTERS.

7.42.1. Where a place of assembly is adjacent to a residential use screening must be provided along the boundary adjacent to any property used for residential purposes. Such screening shall be Type C in accordance with Section 10.14.

7.42.2. Assembly uses shall have two or more driveways for emergency access.

7.42.3. Assembly uses shall not have direct access Town streets that are primarily single family residential

7.42.4. The building setbacks for a place of assembly adjacent to a residential zoning district shall be no less than 50 feet.

SECTION 7.43 PUBLIC UTILITY PUMP STATION/UTILITY SUBSTATION/SWITCHSTATIONS.

7.43.1 Such facilities shall be screened from adjacent property and public rights-of-way with planting of shrubs and/or trees that will achieve a landscape screen that is a minimum 6 foot high and provide 60% opacity, except vehicular access areas are exempt from this requirement.

SECTION 7.44 OUTDOOR VEHICLE STORAGE, SALES AND DISPLAY.

7.44.1. All vehicles for stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a striped parking stall complying with Article 10, Part I, or stored within a paved storage yard screened from the public right-a-way by a durable opaque fence, opaque wall and/or a solid vegetative buffer with a minimum height of six (6) feet.

SECTION 7.45 KENNELS.

7.45.1. Commercial kennel use shall be located in an enclosed soundproof building and shall be designed and operated so that it does not produce objectionable odors outside of its walls.

7.45.2. Private kennels shall be located at least 50 from adjacent property lines.

7.45.3. Outdoor exercise and bathroom areas shall only be permitted according to the following conditions:

- (a) Such areas shall be used only between the hours of 7:00 AM and 10:00 PM.
- (b) Such areas shall be buffered from adjacent residential properties by a distance of 50 feet.
- (c) Such areas shall be enclosed by a fence at least six (6) feet in height.
- (d) Outdoor runs or pens shall be located on site and shall be screened from the view of all adjacent streets and properties by fencing or vegetation. No unreasonable noise or odor shall be detected off-premises.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

SECTION 7.46 COLUMBARIUM.

An indoor or outdoor columbaria and/or urn plots shall be permitted as accessory uses to churches and places of worship accordance with Section 6.5 and subject to the following standards:

7.46.1. Any church or place of worship may establish an indoor columbarium, and/or outdoor columbarium, and/or an urn plot as an accessory structure as an accessory to its permitted use provided the following are submitted to the Planning Department and approved:

7.46.1.1. A site plan of the proposed area approved by the Planning Department where the columbarium or urn plots are to be located showing the location of each niche or urn, the dimensions of the space, and a 20-foot access area for maintenance that has relatively flat and firm topography such that maintenance equipment could access the burial area. The 20-foot access area shall be adjacent to the columbarium or urn plot and shall be accessed from a public right-of-way, private drive, or parking lot. Vehicular access internal to the columbarium or urn plot is not allowed. Internal access shall be limited to handicapped pedestrian access only. In addition to the site plan, construction drawings prepared by a licensed architect, engineer, or landscape architect. Construction drawings shall show dimensions, materials, and details.

7.46.1.2. A special use permit is required for columbaria with greater than 200 niches.

7.46.1.3. A plan of perpetual care and maintenance trust fund is required for a columbarium or urn plot. Funding of the trust fund must occur as niches or urn plots are sold. The church or place of worship shall submit an annual report to the Town of Smithfield Planning Department showing sales, receipts, and expenditures. The reporting period is January 1st to December 31st. Annual reports are due on April 1st for columbaria or urn plots. Fifty (50) percent of the sales price of a niche or urn plot must be deposited in the trust fund for columbaria with 200 niches or urn plots or less. With a special use permit for columbaria with greater than 200 niches, the Town Council shall establish the percentage of the sales price to be retained. In no case shall the percentage be less than fifteen (15) percent of the sales price. The church or place of worship may spend up to three (3) percent of the trust fund for maintenance of the columbarium or urn plot on an annual basis.

7.46.2. All Indoor Columbaria within the building of a church or place of worship must comply with the following physical requirements:

7.46.2.1. Alternate Plan. The church or place of worship must present a plan with a dedicated outside area with clear title and able to comply with Section 7.35.1.1 for interment of the urns in the event the church or place of worship ceases to operate or manage the columbarium.

7.46.2.2. Shall meet the NC Building Code and be constructed of masonry, natural stone or concrete.

7.46.3. All Outdoor Columbaria must comply with the following physical requirements:

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.46.3.1. Location. A columbaria must be located outside a building on land owned and occupied by a church or place of worship as defined by the Unified Development Ordinance, Appendix A. Land shall have a clear title and meet the requirements of Section 7.35.1.1.

7.46.3.2. Height. Outdoor columbaria must be no higher than seven (7) feet as measured from the average grade elevation where a columbarium meets the grade. An outdoor columbarium that is not visible from off-property public is not subject to the seven (7) feet requirement and may be higher.

7.46.3.3. Setback. Columbarium structures shall meet the setback and yard requirements of the underlying zoning district.

7.46.3.4. Appearance. A columbarium shall be complementary to the primary structure and consistent of natural stone, concrete or masonry construction.

7.46.3.5. Signage. Signage shall be limited to inscriptions on the face of a columbarium niche and commemorative plaque on the columbarium structure. Commemorative plaques may be no larger than 12 inches by 12 inches.

7.46.3.6. Number. The columbaria must have spaces for no more than 200 urns, except when a greater number is approved by the Town Council with a special use permit.

7.46.4. All Outdoor Urn Plots must comply with the following physical requirements:

7.46.4.1. Location. An outdoor urn plot must be located outside a building owned and occupied by a church or place of worship as defined by the Unified Development Ordinance, Appendix A. Land shall have a clear title and shall comply with Section 7.35.1.1.

7.46.4.2. Setback. Outdoor urn plot structures shall meet the setback and yard requirements of the underlying zoning district.

7.46.4.3. Appearance. Urn plot shall be complementary or consistent in design with the primary structure.

7.46.4.4. Number. The church or place of worship shall have no more than 100 urn plot spaces.

7.46.4.5. Signage. Signage shall be limited to one inscribed stone per urn plot not exceeding 2 sq. ft.

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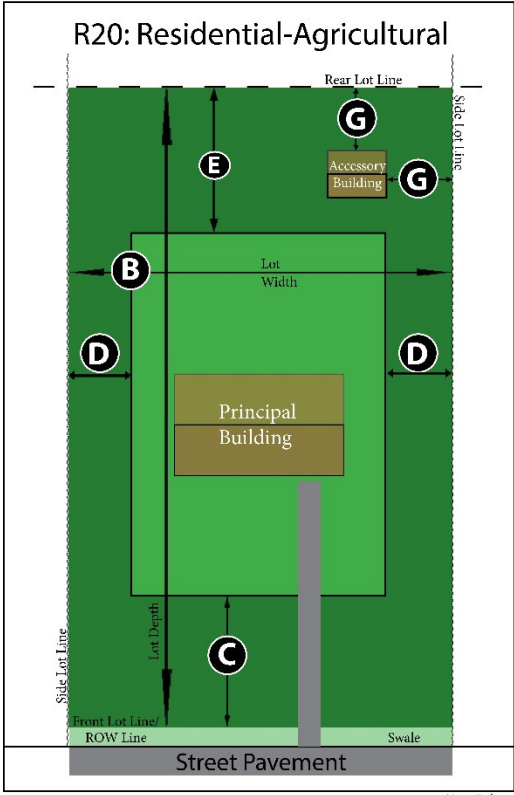
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ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.1 R-20A RESIDENTIAL-AGRICULTURAL DISTRICT.

8.1.1. Dimensional Requirements.

(A) Minimum Lot Area	15,000 sq ft
(B) Minimum Lot Frontage	75 ft
(C) Front Yard Setback	30 ft
(D) Side Yard Width	10 ft
(E) Rear Yard Depth	25 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.1.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Design Standards.

8.1.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

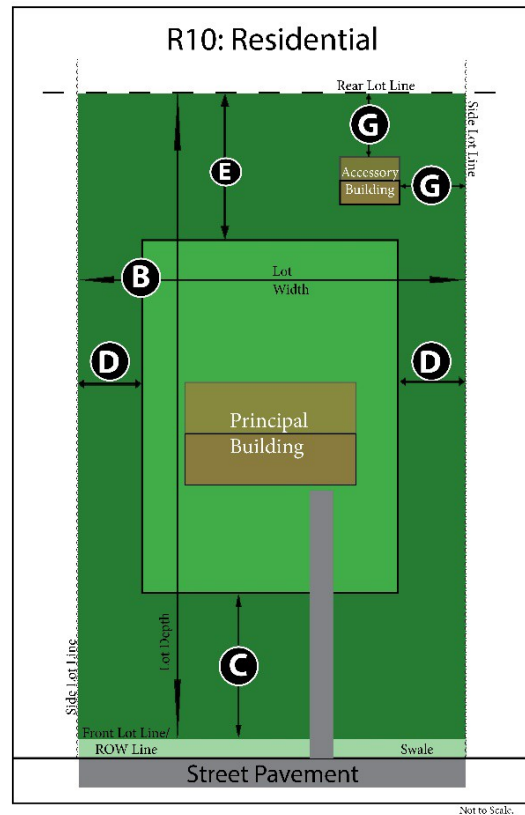
8.1.4. Parking. Off-street parking shall be provided as required in Article 10, Part I.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.2 R-10 SINGLE-FAMILY RESIDENTIAL DISTRICT.

8.2.1. Dimensional Requirements.

(A) Minimum Lot Area	
• Single-family dwelling	10,000 sq ft
• Other allowable building	7,500 sq ft
(B) Minimum Lot Frontage	
• Single-family dwelling	75 ft
• Other allowable building	70 ft
(C) Front Yard Setback	
• Single-family dwelling	30 ft
• Other allowable building	25 ft
(D) Side Yard Width	10 ft
(E) Rear Yard Depth	
• Single-family dwelling	25 ft
• Other allowable building	20 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.2.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Design Standards.

8.2.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.2.4. Parking. Off-street parking shall be provided as required in Article 10, Part I.

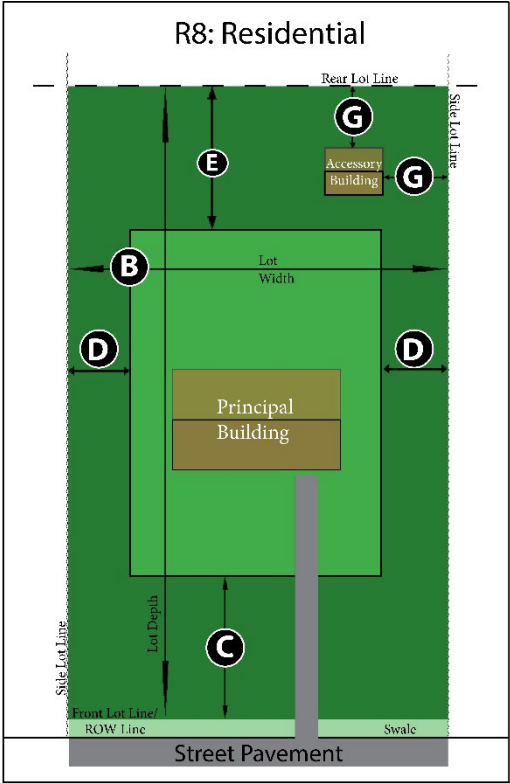
ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.3 R-8 SINGLE, TWO, AND MULTI-FAMILY RESIDENTIAL DISTRICT.

8.3.1. Dimensional Requirements.

(A) Minimum Lot Area	
• Single-family dwelling	8,000 sq ft
• Two-family dwelling	10,000 sq ft
• Multi-family dwelling*	9,000 sq ft
• Other building	10,000 sq ft
(B) Minimum Lot Frontage	70 ft
(C) Front Yard Setback	30 ft
(D) Side Yard Width	10 ft
(E) Rear Yard Depth	25 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)

*See Note 8.13.1 for additional multi-family dimensional requirements.



8.3.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Design Standards.

8.3.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.3.4. Parking. Off-street parking shall be provided as required in Article 10, Part I.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.4 R-6 HIGH DENSITY SINGLE, TWO, AND MULTI-FAMILY RESIDENTIAL DISTRICT.

8.4.1. Dimensional Requirements.

(A) Minimum Lot Area	
• Single-family dwelling	6,000 sq ft
• Two-family dwelling	9,000 sq ft
• Multi-family dwelling*	9,000 sq ft
• Other building	6,000 sq ft
(B) Minimum Lot Frontage	
• Single-family dwelling	60 ft
• Two-family dwelling	70 ft
• Multi-family dwelling*	
• Other building	60 ft
(C) Front Yard Setback	25 ft
(D) Side Yard Width	8 ft
(E) Rear Yard Depth	15 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)

*See Note 8.13.1 for additional multi-family dimensional requirements.

8.4.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Design Standards.

8.4.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

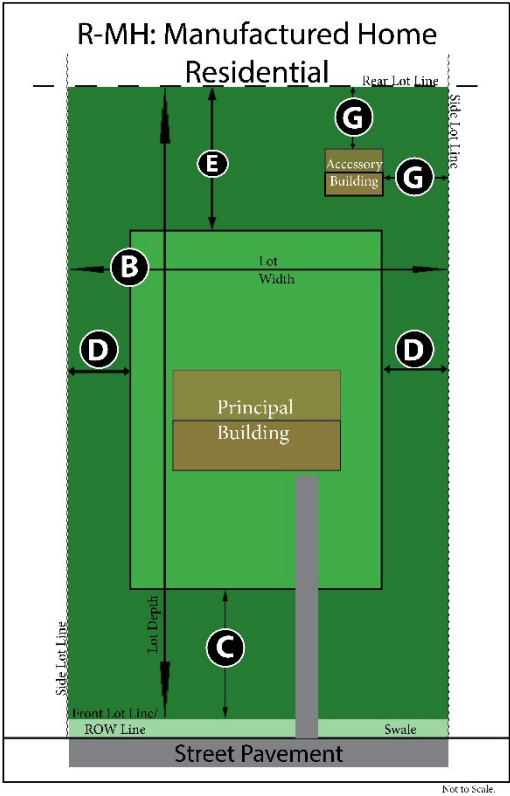
8.4.4. Parking. Off-street parking shall be provided as required in Article 10, Part I.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.5 R-MH MANUFACTURED HOME RESIDENTIAL DISTRICT.

8.5.1. Dimensional Requirements.

(A) Minimum Lot Area	
• Single-family dwelling	7,500 sq ft
• Two-family dwelling	7,500 sq ft
• Multi-family dwelling*	9,000 sq ft
• Manufactured home on individual lot	7,500 sq ft
• Other building	7,500 sq ft
(B) Minimum Lot Frontage	70 ft
(C) Front Yard Setback	25 ft
(D) Side Yard Width	10 ft
(E) Rear Yard Depth	20 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



*See Note 8.13.1 for additional multi-family dimensional requirements.



8.5.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Design Standards.

8.5.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

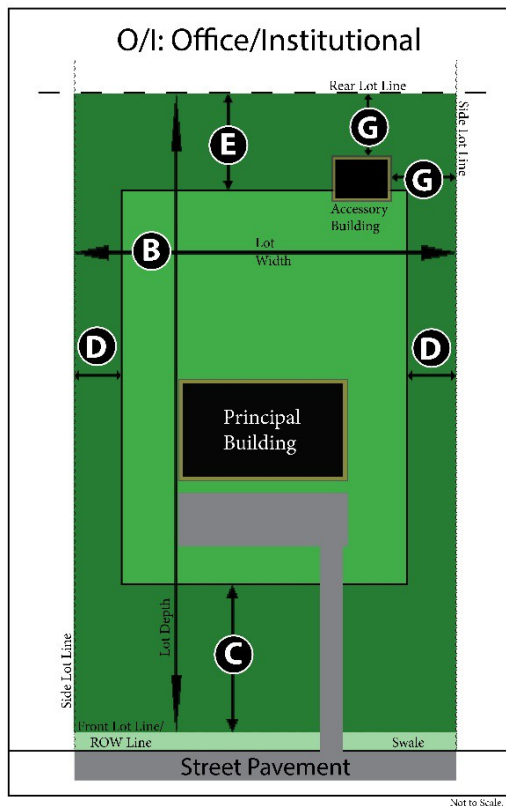
8.5.4. Parking. Off-street parking shall be provided as required in Article 10, Part I.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.6 O/I OFFICE/INSTITUTIONAL DISTRICT.

8.6.1. Dimensional Requirements.

(A) Minimum Lot Area	
• Single-family dwelling	6,000 sq ft
• Two-family dwelling	9,000 sq ft
• Multi-family dwelling*	9,000 sq ft
• Other building	6,000 sq ft
(B) Minimum Lot Frontage	
• Single-family dwelling	60 ft
• Two-family dwelling	70 ft
• Multi-family dwelling*	
• Other building	60 ft
(C) Front Yard Setback	25 ft
(D) Side Yard Width	8 ft
(E) Rear Yard Depth	15 ft
(F) Maximum Building Height	35 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



*See Note 8.13.1 for additional multi-family dimensional requirements.



8.6.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.6.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.6.4. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.6.5. Buffers. Refer to Article 10, Part II.

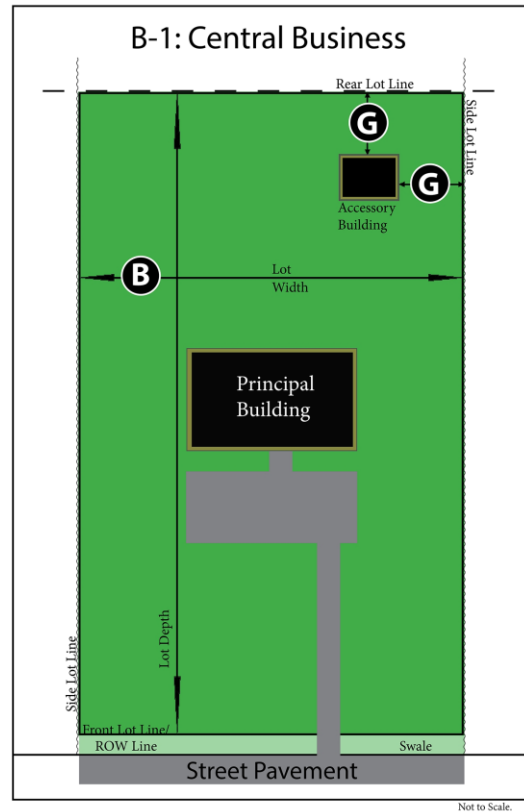
8.6.6. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.7 B-1 CENTRAL BUSINESS DISTRICT.

8.7.1. Dimensional Requirements.

(A) Minimum Lot Area	N/A
(B) Minimum Lot Frontage	20 ft
(C) Front Yard Setback	0 ft
(D) Side Yard Width	0 ft (see Sect 8.7.2)
(E) Rear Yard Depth	0 ft
(F) Maximum Building Height	40 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.7.2. Side Yard Width. None required, provided however, that if a side yard is provided, it shall be at least eight (8) feet wide.

8.7.3. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.7.4. Signs. Signs shall be permitted as provided in Article 10, Part II.

8.7.5. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.7.6. Buffers. Refer to Article 10, Part II.

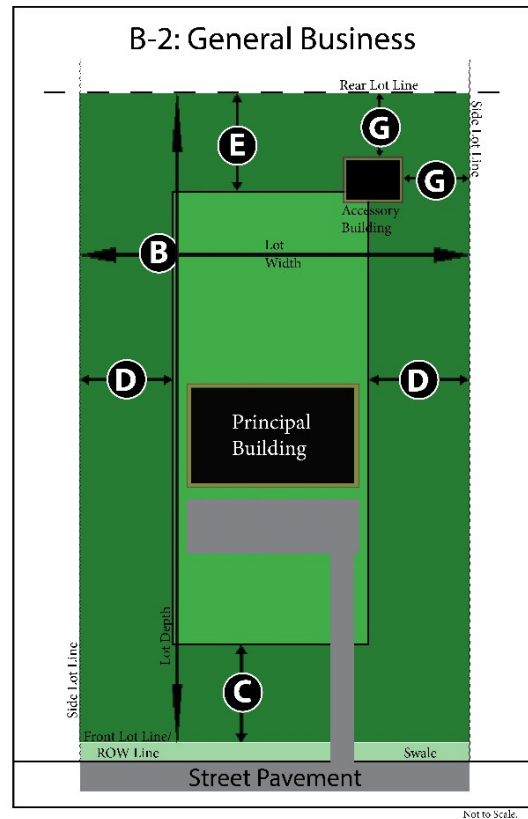
8.7.7. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.8 B-2 GENERAL BUSINESS DISTRICT.

8.8.1. Dimensional Requirements.

(A) Minimum Lot Area	
<ul style="list-style-type: none"> • Single-family dwelling • Two-family dwelling • Multi-family dwelling* • Major shopping center • Minor shopping center • Other building or use 	<ul style="list-style-type: none"> 6,000 sq ft 9,000 sq ft 9,000 sq ft 12,000 sq ft 12,000 sq ft 12,000 sq ft
(B) Minimum Lot Frontage	
<ul style="list-style-type: none"> • Single-family dwelling • Two-family dwelling • Multi-family dwelling* • Major shopping center • Minor shopping center • Other building or use 	<ul style="list-style-type: none"> 60 ft 60 ft 200 ft 125 ft 125 ft



*See Note 8.13.1 for additional multi-family dimensional requirements.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

(C) Front Yard Setback <ul style="list-style-type: none"> • Single-family dwelling • Two-family dwelling • Multi-family dwelling* • Major shopping center • Minor shopping center • Other building or use 	25 ft 25 ft 100/50 ft (see Sec 8.8.2.1) 50/35 ft (see Sec 8.8.2.2) 20 ft
(D) Side Yard Width <ul style="list-style-type: none"> • Single-family dwelling • Two-family dwelling • Multi-family dwelling* • Major shopping center • Minor shopping center • Other building or use 	8 ft 8 ft 50 ft 15 ft (see Sec 8.8.2.3) 8 ft (see Sec 8.8.2.3)
(E) Rear Yard Depth <ul style="list-style-type: none"> • Single-family dwelling • Two-family dwelling • Multi-family dwelling* • Major shopping center • Minor shopping center • Other building or use 	15 ft 15 ft 50 ft 25 ft 15 ft
(F) Maximum Building Height	40 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)

8.8.2. Minimum Yard Requirements.

8.8.2.1. 100 feet whenever front or corner side yard frontage is on an arterial or collector street; 50 feet when frontage is on a lower street classification.

8.8.2.2. Fifty feet whenever front or corner side yard frontage is on an arterial or collector street; 35 feet when frontage is on a lower street classification.

8.8.2.3. None required, provided however, that if a side yard is provided, it shall be at least eight (8) feet wide.

8.8.3. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.8.4. Signs. Signs shall be permitted as provided in Article 10, Part III.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

8.8.5. *Parking and Loading.* Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.8.6. *Buffers.* Refer to Article 10, Part II.

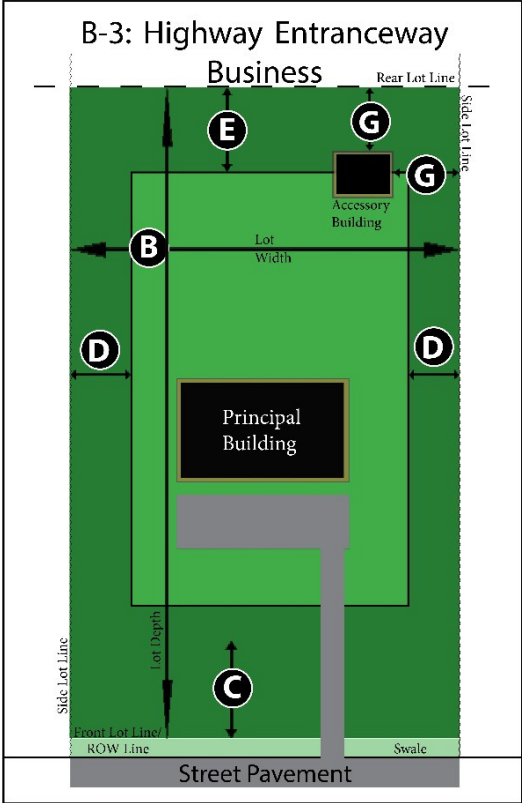
8.8.7. *Landscaping.* For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.9 B-3 HIGHWAY ENTRANCEWAY BUSINESS DISTRICT.

8.9.1. Dimensional Requirements.

(A) Minimum Lot Area • Major shopping center • Minor shopping center • Other building or use	12,000 sq ft 12,000 sq ft 12,000 sq ft
(B) Minimum Lot Frontage • Major shopping center • Minor shopping center • Other building or use	200 ft 125 ft 125 ft
(C) Front Yard Setback • Major shopping center • Minor shopping center • Other building or use	100/50 ft (see Sect 8.9.2.1) 50/35 ft (see Sect 8.9.2.2) 50/35 ft (see Sect 8.9.2.2)
(D) Side Yard Width • Major shopping center • Minor shopping center • Other building or use	50 ft 15 ft (see Sect 8.8.2.3) 15 ft (see Sect 8.8.2.3)



YARD AREA
 BUILDABLE AREA

(E) Rear Yard Depth • Major shopping center • Minor shopping center • Other building or use	50 ft 25 ft 25 ft
(F) Maximum Building Height	40 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)

8.9.2. Minimum Yard Requirements.

8.9.2.1. 100 feet whenever front or corner side yard frontage is on an arterial or collector street; 50 feet when frontage is on a lower street classification.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

8.9.2.2. Fifty feet whenever front or corner side yard frontage is on an arterial or collector street; 35 feet when frontage is on a lower street classification.

8.9.2.3. None required, provided however, that if a side yard is provided, it shall be at least eight (8) feet wide.

8.9.3. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.9.4. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.9.5. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.9.6. Buffers. Refer to Article 10, Part II.

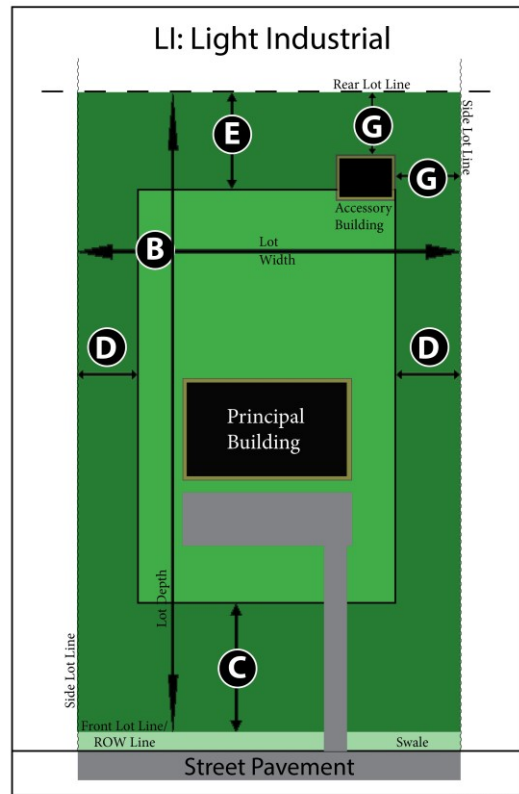
8.9.7. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.10 LI LIGHT INDUSTRIAL DISTRICT.

8.10.1. Dimensional Requirements.

(A) Minimum Lot Area	20,000 sq ft
(B) Minimum Lot Frontage	150 ft
(C) Front Yard Setback	50 ft
(D) Side Yard Width	25 ft
(E) Rear Yard Depth	40 ft
(F) Maximum Building Height	80 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.10.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.10.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.10.4. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.10.5. Buffers. Refer to Article 10, Part II.

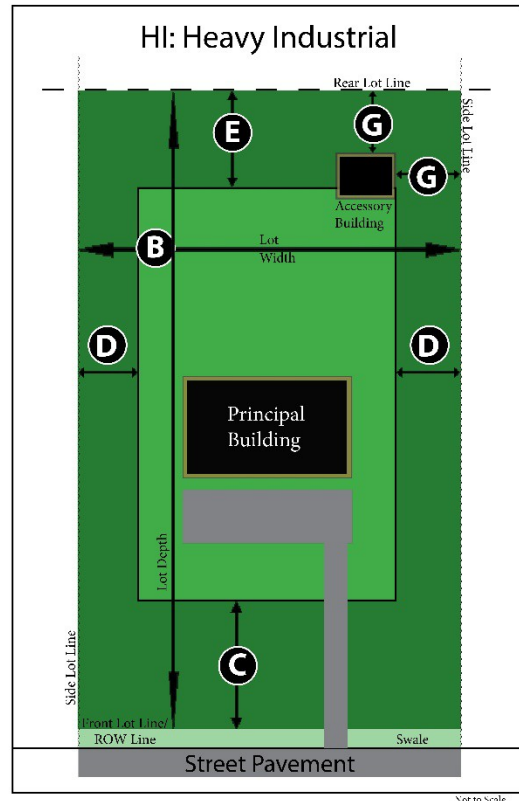
8.10.6. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.11 HI HEAVY INDUSTRIAL DISTRICT.

8.11.1. Dimensional Requirements.

(A) Minimum Lot Area	20,000 sq ft
(B) Minimum Lot Frontage	150 ft
(C) Front Yard Setback	50 ft
(D) Side Yard Width	25 ft
(E) Rear Yard Depth	40 ft
(F) Maximum Building Height	40 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.11.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.11.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.11.4. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.11.5. Buffers. Refer to Article 10, Part II.

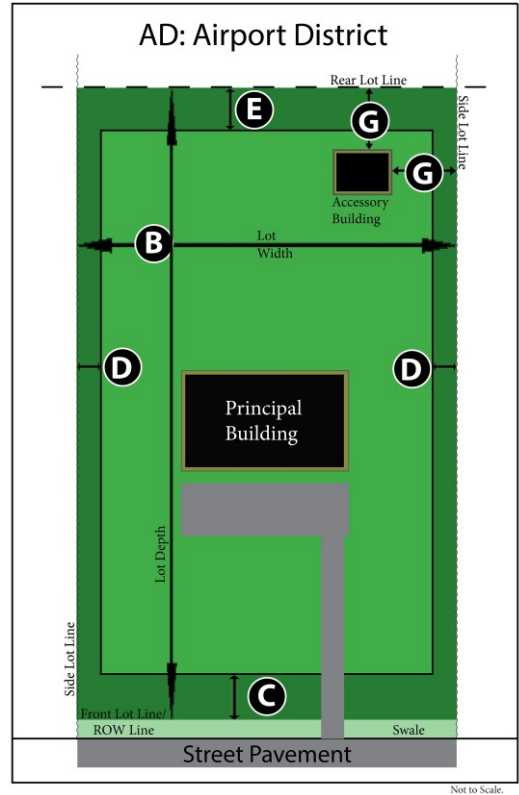
8.11.6. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.12 AD AIRPORT DISTRICT.

8.12.1. Dimensional Requirements.

(A) Minimum Lot Area	5 acres
(B) Minimum Lot Frontage	400 ft
(C) Front Yard Setback	50 ft
(D) Side Yard Width	25 ft
(E) Rear Yard Depth	40 ft
(F) Maximum Building Height	40 ft
(G) Accessory Buildings	10 ft (see Note 8.13.2)



8.12.2. Additional Requirements. Refer to Section 8.13, Notes to Zoning District Development Standards.

8.12.3. Signs. Signs shall be permitted as provided in Article 10, Part III.

8.12.4. Parking and Loading. Off-street parking and loading shall be provided, as required by Article 10, Part I.

8.12.5. Buffers. Refer to Article 10, Part II.

8.12.6. Landscaping. For landscaping requirements, refer to Article 10, Part II.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

SECTION 8.13 NOTES TO THE ZONING DISTRICT DESIGN STANDARDS.

8.13.1. Multi-Family Dwellings.

8.13.1.1. Density. Maximum allowable density shall not exceed 4,500 square feet of gross site area per dwelling unit.

8.13.1.2. Building Separation. More than one building may be located on the site provided that building separation shall be determined as follows:

Height of Taller Building	Minimum Horizontal Distance Between Vertical Projections
20 feet or less	16 feet
Between 20.1 and 25.0 feet	25 feet
Between 25.1 and 30.0 feet	30 feet
Between 30.1 and 35.0 feet	40 feet

8.13.1.3. Distance Related to Windows. The minimum distance between the centers of facing windows shall be 20 feet.

8.13.1.4. Yard Requirements. Front Yard - general district setback shall apply; Corner Side Yard - same as front yard; Other Yards - a perimeter yard shall be provided around the perimeter of the site (other than front and corner side yards) in accordance with the following based on the number of units proposed.

Number of Units	Width of Required Yard
3 to 10 units	30 feet
11 to 30 units	35 feet
31 or more units	40 feet

8.13.2. Location of Accessory Building.

Accessory buildings may occupy 10% of the gross lot area, must be built a minimum of ten feet from any lot line, and except for attached garages, must be built to the rear of the principal building.

8.13.3. Corner Lots.

8.13.3.1. On corner lots, the side yard on that side of the lot abutting the side street shall not be less than one-half the front yard setback requirement on that side street.

ARTICLE 8. ZONING DISTRICT DESIGN STANDARDS

8.13.3.2. Accessory buildings on corner lots located on that side of the lot abutting the side street shall not project more than 50% of the full front yard requirement on that side street.

8.13.3.3. No planting, fence, sign, or other obstruction to visibility of vehicles shall be erected, planted, maintained, or allowed to exist in any district as specified in Section 2.21.

8.13.4. All buildings in the Central Business and Highway Entranceway Business Districts shall be permanent fully enclosed construction. Portable, open air, shed type structures shall be prohibited.

8.13.5. Building height may be increased above 40 feet up to a maximum of 100 feet through the issuance of a conditional use permit.

**ARTICLE 9.
NONCONFORMING SITUATIONS**

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ARTICLE 9. NONCONFORMING SITUATIONS

SECTION 9.1 INTENT.

Upon the effective date of this Unified Development Ordinance, and any amendment thereto, preexisting structures or lots of record and existing and lawful uses of any building or land which do not meet the minimum requirements of this Unified Development Ordinance for the district in which they are located or which would be prohibited as new development in the district in which they are located shall be considered as nonconforming. It is the intent of this article to permit these nonconforming uses to continue until they are removed, discontinued, or destroyed, but not to encourage such continued use, and to prohibit the expansion of any nonconformance. Nonconforming projects may be completed only in accordance with Section 9.7. A nonconforming manufactured home may only be replaced if destroyed as the result of an act of God.

SECTION 9.2 NONCONFORMING LOTS OF RECORD.

Any lot of record or structure existing at the time of the adoption of this Unified Development Ordinance, which has dimensions which do not meet the requirements of this Unified Development Ordinance, shall be subject to the following exceptions and modifications:

9.2.1. Lot Not Meeting Minimum Lot Size Requirements.

Except as set forth in the above, in any district in which single-family dwellings are permitted, any lot of record existing at the time of the adoption of these regulations that has dimensions that are less than required by these regulations may be used as a building site for a single-family dwelling providing the lot area and width are not less than fifty percent (50%) of the requirements in the district. If the lot is smaller or narrower, a variance may be requested of the Board of Adjustment.

9.2.2. Yard Requirements Modified.

Where a lot has width or depth less than that required in the district in which it is located, the UDO Administrator shall be authorized to reduce the yard requirements for such lot by not more than twenty percent (20%). Additional or other forms of yard modification may be permitted with a variance granted by the Board of Adjustment.

9.2.3. Extension or Enlargement of Nonconformities.

9.2.3.1. Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

9.2.3.2. Subject to subsection 9.2.3.4 of this subsection, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, subject to Section 9.8 of this Ordinance (Authorization of Nonconforming Projects), a nonconforming use may not be extended to additional buildings or to land outside the original building.

ARTICLE 9. NONCONFORMING SITUATIONS

9.2.3.3. Subject to Section 9.8 of this Ordinance (Authorization of Nonconforming Projects), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if 10% or more of the earth products had already been removed at the effective date of this Ordinance.

9.2.3.4. The volume, intensity, or frequency of use of property where a nonconformity exists may be increased and the equipment or processes used at a location where a nonconformity exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

9.2.3.5. Physical alternation of structures or the placement of new structures on open land are unlawful if they result in:

9.2.3.5.1. An increase in the total amount of space devoted to a nonconforming use;

9.2.3.5.2. Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or

9.2.3.5.3. The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.

9.2.3.6. Minor repairs to and routine maintenance of property where nonconformities exist are permitted and encouraged. Major renovation -- i.e., work estimated to cost more than 60 percent of the appraised value of the structure to be renovated (and not required by the partial or total destruction of a structure [see paragraph 9.2.3.8]) -- may be done pursuant to a permit issued by the Board of Adjustment. The Board of Adjustment shall issue such a permit if it finds that the work will not result in a violation of any other paragraphs of this section (particularly paragraph 9.2.3.5) or make the property more incompatible with the surrounding neighborhood.

9.2.3.7. Notwithstanding paragraph 9.2.3.5, any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. In particular, a manufactured home may be replaced with a larger manufactured home, and a "single-wide" manufactured home may be replaced with a

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"double-wide." This paragraph is subject to the limitations stated in Section 9.6 on abandonment and discontinuance of nonconformities.

9.2.3.8. A structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, subject to the following restrictions:

9.2.3.8.1. The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single-family residential structure may be constructed in place of a smaller one and a larger manufactured home intended for residential use may replace a smaller one;

9.2.3.8.2. The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building;

9.2.3.8.3. The reconstructed building may not enclose areas that were previously unenclosed, even though those areas were used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent or more of the perimeter of the area is marked by a permanently constructed wall or fence.

9.2.3.9. Except for single-family residential structures (including manufactured homes), if the estimated cost of the reconstruction work exceeds 10 percent of the appraised value of the structure, the work may be done only after issuance of a permit by the Board of Adjustment. The Board shall issue the use permit if it finds that the work will be done in accordance with this paragraph and that the reconstructed building will not make the property more incompatible with the surrounding property than it was before the destruction occurred.

SECTION 9.3 NONCONFORMING USES.

A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this UDO, or any amendment thereto, but which does not conform to the regulations for the zoning classification in which it is located. Nonconforming uses may be continued subject to the limitations noted herein. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming manufactured home park for one hundred eighty (180) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is maintained in conjunction with a conforming use,

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discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

9.3.1. Expansions.

No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings, or structures than was occupied by such use at the time it became nonconforming; provided, however, a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.

9.3.2. No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use; provided, however, such building or structure may be enlarged or extended upon authorization from the Board of Adjustment, which authorization shall not be granted unless the Board of Adjustment makes each of the following findings of fact:

9.3.2.1. The proposed enlargement or extension shall be less than 10% of the building or structure gross enclosed floor area in relation to the existing building or structure.

9.3.2.2. The proposed enlargement or extension shall not increase the intensity of the nonconforming use, which is to say, it will not result in an increase in dwelling units for a residential use nor in gross floor area for a nonresidential use.

9.3.2.3. The proposed enlargement or extension is designed so that it will not render the use of the property any less compatible that it is in its existing circumstances.

9.3.2.4. The authorization of such proposed enlargement or extension does not harm or reduce the public health, safety, or welfare.

9.3.3. Where a nonconforming use ceases for one hundred eighty (180) consecutive days, then the use shall not be re-established or resumed, and any subsequent use of the land or structure shall conform to the requirements of this UDO. Vacancy and non-use of the building or structure, regardless of the intent of the owner, shall constitute discontinuance under this provision.

9.3.4. When a structure or operation made nonconforming by this UDO is vacant or discontinued, the one hundred eighty (180) day period begins to run when the property is vacated or use discontinued.

9.3.5. Where a building or structure devoted to a nonconforming use is damaged to the extent of fifty percent (50%) or more of its current appraised valuation as determined by the current Johnston County real property tax assessment, such building or structure, if restored, shall thereafter be devoted to conforming uses.

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SECTION 9.4 REPAIR, MAINTENANCE, AND RECONSTRUCTION.

9.4.1. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than fifty percent (50%) of the appraised valuation as determined by the current county real property tax assessment of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.

9.4.2. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would not exceed fifty percent (50%) of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in subsection 9.3.

9.4.3. The UDO Administrator shall issue a permit authorized by this section if he finds that, in completing the renovation, repair or replacement work:

9.4.3.1. No violation of Section 9.3 will occur; and

9.4.3.2. The permittee will comply to the extent reasonably possible with all provisions of this UDO permit conditions applicable to the existing use, (except that the permittee shall not lose his right to continue a nonconforming use).

SECTION 9.5 CHANGE IN USE OF PROPERTY WHERE A NONCONFORMING SITUATION EXISTS.

9.5.1. A change in the use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or special use permit under this UDO may not be made except in accordance with subsection 9.5.2 through 9.5.3 and the other requirements of this Ordinance. However, this requirement shall not apply if only a sign permit is needed.

9.5.2. If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements, this Ordinance applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Ordinance is achieved, the property may not revert to its nonconforming status.

9.5.3. If the intended change in use is to a principal use that is permitted in the district where the property is located, but all of the requirements of this Ordinance applicable to that use cannot reasonably be complied with, then the change is permissible, if the Board of Adjustment issues a variance authorizing the change. This permit may be issued if the Board of Adjustment finds, in addition to any other permits that may be required by this Ordinance, that:

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9.5.3.1. The intended change will not result in a violation of Section 9.3; and

9.5.3.2. All of the applicable requirements of this Ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this Ordinance is not reasonably possible if, among other reasons, compliance cannot be achieved without adding additional land to the lot unless under common ownership where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements, as paved parking does not constitute grounds for finding that compliance is not reasonably possible. However, the UDO Administrator may conclude that compliance is not reasonably possible if the cost (financial and otherwise) of compliance is substantially disproportional to the benefits of eliminating nonconformity. In no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

9.5.4. If the intended change in principal nonconforming use is to another principal use that is also nonconforming in the district where the property is located, then the change in nonconforming use is permissible if the Board of Adjustment issues a permit authorizing the change. The Board of Adjustment may issue the permit if it finds, in addition to other findings that may be required by this Ordinance, that:

9.5.4.1. The use requested is one that is permissible in some zoning district with either a zoning or special use permit; and

9.5.4.2. All of the conditions applicable to the permit authorized in subsection 9.5.3 of this section are satisfied; and

9.5.4.3. The proposed development will have less of an adverse impact on those most affected by it, except for the applicant, and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

An existing nonconforming use shall be discontinued within sixty (60) days of the date of approval of a change in nonconforming use. Subsequent to that time, such existing use shall become unlawful.

SECTION 9.6 ABANDONMENT AND DISCONTINUANCE OF NONCONFORMITIES

Vested rights are limited in duration by state law as proscribed by GS 160D-108 (d).

SECTION 9.7 COMPLETION OF NONCONFORMING PROJECTS.

9.7.1. All nonconforming projects on which construction was begun at least 180 days before the effective date of this Ordinance as well as all nonconforming projects that are at least twenty five

ARTICLE 9. NONCONFORMING SITUATIONS

percent (25%) completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.

9.7.2. Except as provided in subsection 9.7.1, and except to the extent that a developer has a vested right as set forth in Section 4.7, all work on any nonconforming project shall cease on the effective date of this Ordinance, and all permits previously issued for work on nonconforming projects shall be revoked unless the developer requests an appeal to the Board of Adjustment to overturn the UDO Administrator's decision. An appeal shall stay any revocation. The UDO Administrator shall issue such a permit if he/she finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changes his position in some substantial way in reasonable reliance on the Ordinance as it existed before the effective date of this Ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the UDO Administrator shall be guided by the following, as well as other relevant considerations:

9.7.2.1. All expenditures made to obtain or pursuant to a building, zoning, sign, or special or conditional use permit that was validly issued and that remains unrevoked shall be considered as evidence of reasonable reliance on the land use law that existed before this Ordinance became effective.

9.7.2.2. Except as provided in subdivision 9.7.2.1, no expenditures made more than 180 days before the effective date of this Ordinance may be considered as evidence of reasonable reliance on the land use law that existed before this Ordinance became effective. An expenditure is made at the time a party incurs a binding obligation to make that expenditure.

9.7.2.3. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditures to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old.

9.7.2.4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.

9.7.2.5. A person shall be considered to have acted in good faith if the person (i) had actual knowledge of a proposed change in the Ordinance affecting the proposed

ARTICLE 9. NONCONFORMING SITUATIONS

development site which could not be attributed to him, or (ii) should have known of the proposed change in the Ordinance.

9.7.2.6. Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the UDO Administrator may still find that he acted in good faith if he did not proceed with his plans in a deliberate attempt to circumvent the requirements of the proposed Ordinance. The UDO Administrator may find that the developer did not proceed in an attempt to avoid requirements of the proposed Ordinance if he/she determines that (i) at the time the expenditures were made it was not clear that the proposed Ordinance would prohibit the intended development, and (ii) the developer had legitimate business reasons for making expenditures.

9.7.2.7. In deciding whether a permit should be issued under this section, the UDO Administrator shall not be limited to either denying a permit altogether or issuing a permit to complete the project (or phases, sections, or stages thereof) as originally proposed or approved. Upon proper submission of plans by the applicant, the UDO Administrator may also issue a permit authorizing a development that is less nonconforming than the project as originally proposed or approved but that still does not comply with all the provisions of the Ordinance making the project nonconforming. The UDO Administrator shall not allow the nonconforming project to be constructed or completed in a fashion that is larger or more extensive than is necessary to allow the developer to recoup and obtain a reasonable rate of return on the expenditures he has made in connection with that nonconforming project.

9.7.3. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection 9.7.2 and obtain permits. In addition to the matters and subject to the guidelines set forth in subdivisions 9.7.2.1 through 9.7.2.7, the UDO Administrator shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

9.7.3.1. Whether any plans prepared or approved regarding incompleting phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.

9.7.3.2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.

9.7.3.3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or on such a scale, in anticipation of connection to or interrelationship with approved but incompleting phases, that the investment in such

ARTICLE 9. NONCONFORMING SITUATIONS

utilities or other facilities cannot be recouped if such approved but incompleated phases are constructed in conformity with existing regulations.

9.7.3.4. The UDO Administrator shall not consider any application for the permit authorized by subsection 9.7.2 that is submitted more than sixty (60) days after the effective date of this Ordinance. The UDO Administrator may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

SECTION 9.8 AUTHORIZATION OF NONCONFORMING PROJECTS.

Whenever an amendment to this Ordinance becomes effective after an application for a development permit is submitted but before the permit is issued, and the effect of the amendment is to render the proposed development nonconforming in some respect, then the applicant may choose to proceed with the development under the previous requirements or under the amended requirements.

SECTION 9.9 NONCONFORMING SIGNS.

9.9.1. Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of this article may be continued.

9.9.2. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition; nor may illumination be added to any nonconforming sign.

9.9.3. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this article.

9.9.4. If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this section, a nonconforming sign is "destroyed" if damaged to an extent that the cost of repairing the sign to its former stature or replacing it with an equivalent sign equals or exceeds the value (tax value if listed for tax purposes) of the sign damaged.

9.9.5. The message of a nonconforming sign may be changed so long as this does not create any new nonconformity (for example, by creating a pole sign under circumstances where such a sign would not be allowed).

9.9.6. Subject to other provisions of this section, nonconforming signs may be repaired and renovated so long as the cost of such work does not exceed within any 12-month period 50% of the value (tax value if listed for tax purposes) of such sign.

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ARTICLE 10. PERFORMANCE STANDARDS

PART I. OFF-STREET PARKING & OFF-STREET LOADING REQUIREMENTS.

SECTION 10.1 APPLICATION.

The off-street parking and loading requirements shall apply to all districts shown on the Official Zoning Map of the Town of Smithfield.

SECTION 10.2 GENERAL.

10.2.1. Off-Street Parking Requirements.

There shall be provided at the time of the erection of any building, at the time an existing structure is demolished in order to permit new construction, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified by this Ordinance. Such parking space may be provided in a parking garage or properly graded open space. All parking areas shall be designed so that ingress to and egress from such area shall be established and maintained so that all vehicular traffic shall enter and leave the lot by forward motion of the vehicle. Except for multi-family and single-family uses, all off-street parking and loading in the Entry Corridor Overlay District shall be provided in the rear of the principal structure. No off-street parking or loading shall be permitted in a required yard or open space, except in the case of a single or two family dwelling. No required off-street parking shall be located on any public right-of-way or encroach by more than 50% on any required setback, or into any required streetyard. Under no circumstances shall parking be located within five feet of a right-of-way line.

10.2.2. Minimum Parking Requirement.

Each application for a zoning permit shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. Required off-street parking area for three or more automobiles shall have individual spaces marked, and shall be so designed, maintained, and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked and unparked without moving another. This information shall be in sufficient detail to enable the Building Inspector to determine whether or not the requirements of this Ordinance are met. No Certificate of Occupancy shall be issued until the parking requirements of this section are met.

10.2.3. Vehicle Storage.

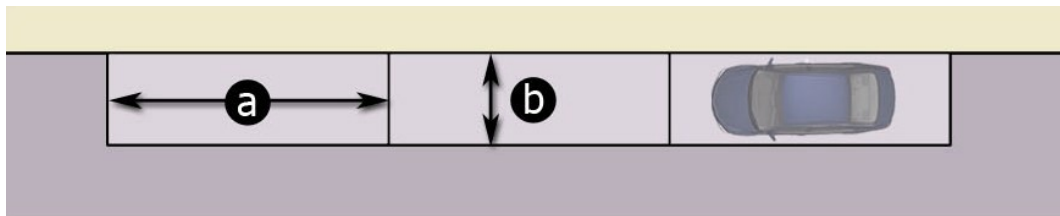
10.2.3.1. Residential Districts. Vehicles intended for personal use may be parked or stored on property zoned for residential use. No more than one commercial truck, van, or trailer may be driven home and must be parked in a garage or carport or in the driveway and never on the street. Inoperative vehicles, including trucks, vans, or trailers, may not be stored in a residential district.

ARTICLE 10. PERFORMANCE STANDARDS

10.2.3.2. Business and Industrial Districts. Customer and employee parking is permitted along with the parking and storing of governmental or commercial vehicles, in any business or industrial district. Inoperative vehicles shall only be permitted to be parked or stored while undergoing repairs at a commercial garage or automobile service station or if stored in an approved junk or wrecking yard. Overnight parking or storage of tractor trailers in commercial districts is strictly limited to vehicles associated with the commercial establishment operating on the premises.

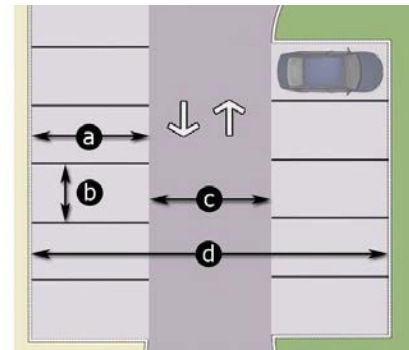
10.2.4. Parking Space Arrangements and Dimensions.

10.2.4.1. Parallel Parking. Parallel parking stalls for standard size automobiles shall have a minimum size of eight (8) feet by twenty-three (23) feet. All parallel parking stalls shall have a minimum of ten (10) feet for maneuvering space in one-way traffic and twenty (20) feet maneuvering space in two-way traffic.



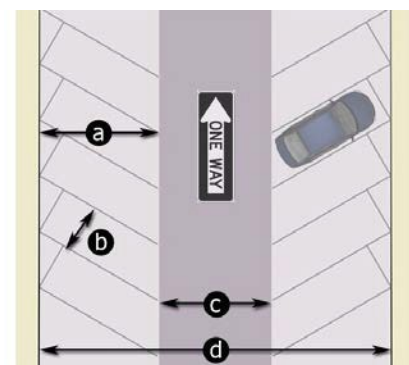
10.2.4.2. 90 Degree Parking.

- (a) Length: 18 feet
- (b) Width: 9 feet
- (c) Aisle Width: 24 feet
- (d) Two Row Parking with Aisle: 60 feet total
- (e) Compact Cars: Length - 16 feet
Width - 8 feet



10.2.4.3. 60 Degree Parking.

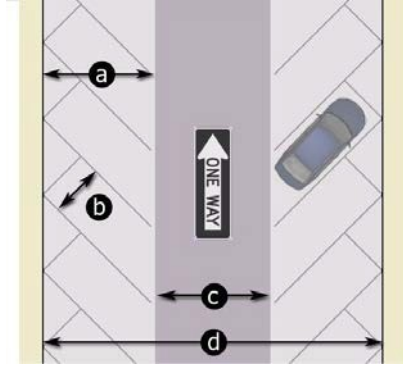
- (a) Length: 20 feet 1 inch
(measured from the end of striping perpendicular to the curb)
- (b) Width: 9 feet
- (c) One-Way Aisle: 16 feet
Two-Way Aisle: 20 feet
- (d) Two Row Parking with One-Way Aisle:
56 feet 2 inches total
Two Row Parking with Two-Way Aisle:
60 feet 2 inches total
- (e) Compact Cars: Length - 17 feet 6 inches
(measured from the end of striping perpendicular to the curb)
Width - 8 feet



ARTICLE 10. PERFORMANCE STANDARDS

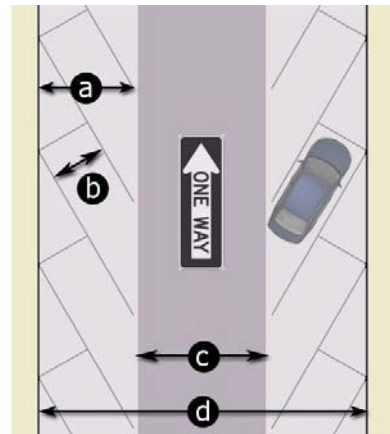
10.2.4.4. 45 Degree Parking.

- (a) *Length*: 19 feet 1 inch
(measured from the end of striping perpendicular to the curb)
- (b) *Width*: 9 feet
- (c) *One-Way Aisle*: 15 feet
Two-Way Aisle: 20 feet
- (d) *Two Row Parking with One-Way Aisle*: 53 feet
2 inches total
Two Row Parking with Two-Way Aisle: 58 feet
2 inches total
- (e) *Compact Cars*: Length - 16 feet 6 inches
(measured from the end of striping perpendicular to the curb)
Width - 8 feet



10.2.4.5. 30 Degree Parking.

- (a) *Length*: 15 feet 11 inches
(measured from the end of striping perpendicular to the curb)
- (b) *Width*: 9 feet
- (c) *One-Way Aisle*: 14 feet
Two-Way Aisle: 19 feet
- (d) *Two Row Parking with One-Way Aisle*: 45 feet
10 inches total
Two Row Parking with Two-Way Aisle: 50 feet
10 inches total
- (e) *Compact Cars*: Length - 14 feet 6 inches
(measured from the end of striping perpendicular to the curb)
Width - 8 feet



10.2.5. Parking Lots with More than Four Spaces.

10.2.5.1. Surfacing. All parking lots shall be graded and surfaced with blacktop, concrete, brick, or other such surfacing material to ensure a dustless surface condition.

10.2.5.2. Markings. Each parking stall shall be marked off and maintained so as to be distinguishable.

10.2.5.3. Lighting. Any lighting shall be so arranged as to direct the light and glare away from streets and adjacent property.

10.2.5.4. Yards. Except in the Entry Corridor Overlay District, all such parking lots shall observe a minimum front yard of not less than five feet and a side yard on a corner lot of

ARTICLE 10. PERFORMANCE STANDARDS

not less than five feet. Parking lots in residential-agricultural and residential districts shall have front yards of not less than 15 feet and side and rear yards of not less than five feet.

10.2.5.5. Curb/Gutter. The required yards shall be set off from parking areas by continuous curb/gutter. Breaks in the curb/gutter may be permitted if the engineer's design of the parking lot requires a break to obtain effective stormwater control.

10.2.5.6. Drainage. Parking lots shall not drain onto or across public sidewalks, or into adjacent property except into a natural watercourse or a drainage easement. In already developed areas where this condition would be impossible to meet, the UDO Administrator may exempt the developer from this requirement, provided that adequate provision is made for drainage.

10.2.5.7. Separation of Bumper and Walkways. In the event any parking stall abuts upon a walkway, there shall be a space of three and a half feet between the wheel bumper or curb and the edge of the walkway.

10.2.5.8. Entrances and Exits. These shall be provided in accordance with Section 10.6 of this Ordinance.

10.2.5.9. Special requirements apply to parking lots in the B-3 and the Industrial districts in addition to the requirements of this Article.

10.2.6. Combination of Required Parking Space.

The required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that 2 of the parking spaces required for churches, theater, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

10.2.7. Remote Parking.

10.2.7.1. If the number of off-street parking spaces required by this Ordinance cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off-site spaces are referred to in this section as "satellite" parking spaces.

10.2.7.2. All such satellite parking spaces (except spaces intended for employee use) must be located within 400 feet of a public entrance of a principal building housing the use associated with such parking, or within 400 feet of the lot on which the use associated with such parking is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance. Satellite parking spaces must be located in a zoning district which permits parking lots for the use intended.

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10.2.7.3. The developer wishing to take advantage of the provisions of this section must present satisfactory written evidence, on an annual basis, that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. The developer must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing activity to provide the requisite number of parking spaces.

10.2.8. Separation from Walkways, Sidewalks, and Streets.

All parking, loading, and service areas shall be separated from walkways, sidewalks, and streets by curbing or other suitable protective device to prevent vehicles from intruding into these areas.

10.2.9. Phased Developments.

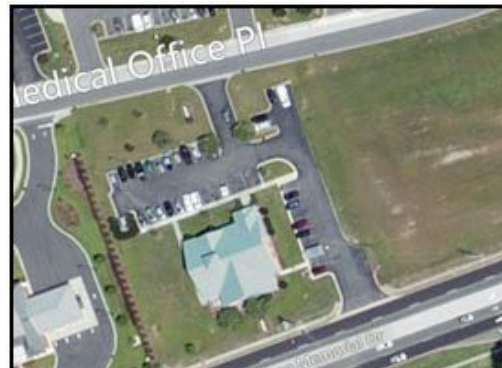
Each individual phase of a multi-phase development shall meet all applicable parking standards established in this section including shared parking facilities prior to initiation of the next phase.

10.2.10. Lateral Access.

All new nonresidential development, specifically commercial development, shall provide lateral access to adjacent property which is either: (1) existing nonresidential, or (2) zoned nonresidential. In the site plan process review, lateral access shall be displayed and labeled clearly by showing the appropriate connections. All lateral access connections shall be a minimum of 20 feet in width and maximum of 24 feet in width. If this section is determined not to be feasible due to particularities of the parcel, the Board of Adjustment may modify the requirements herein.



Cross access provided between sites



Cross access for future development

10.2.11. Handicapped Requirements.

Handicapped parking spaces shall be in accordance with regulations set forth by the Americans with Disabilities Act (ADA), the NC Department of Transportation, the NC Division of Motor Vehicles ADA requirements, the NC State Building Code, and ICC A 117.1.

10.2.12. Landscaping Requirements.

See Article 10, Part II.

ARTICLE 10. PERFORMANCE STANDARDS

10.2.13. Exceptions.

10.2.13.1. The UDO Administrator may withhold a permit or Certificate of Occupancy if a parking layout not specifically prohibited by this Section would be likely to cause avoidable safety or traffic congestion problems until modification is made. The applicant may appeal the UDO Administrator's decision to the Board of Adjustment under the normal procedure for an appeal.

10.2.13.2. If a peculiar characteristic of an establishment makes the requirements in this Section clearly unrealistic, the Board of Adjustment may grant the applicant a parking modification.

10.2.13.3. In the Central Business District, the UDO Administrator may allow a new use to be established in an existing building even if all parking requirements of this Article cannot be met for the new use, provided that as much off-street parking as can reasonably be provided is provided by the use, and not foreseeable traffic congestion problems will be created.

SECTION 10.3 MINIMUM/MAXIMUM PARKING REQUIREMENTS.

The minimum number of required off-street parking spaces shall be calculated as follows. In the case of a building or use not expressly provided for, the number of off-street access spaces shall be the same as for a similar use or inclusive category which is provided for. Where there is more than one use in a single structure, or on a single tract, or two or more instances of the same use, the minimum number of required off-street parking spaces shall be equal to the sum of the requirements of the various uses, except for shopping centers which are expressly provided for.

Classification	Off-Street Parking Requirement
RESIDENTIAL	
Dwelling, Single-Family	2 spaces
Dwelling, Manufactured Home	2 spaces
Dwelling, Multi-Family - One bedroom - Two bedrooms - Three bedrooms or more	1.5 spaces per unit 1.75 spaces per unit 2 spaces per unit
ACCESSORY USES/BUILDINGS	
Accessory Business or Residential Unit (Incl. Home Occupations)	2 spaces per business or residence
Accessory Buildings	Same ratio as the principal use
EDUCATIONAL, OFFICE/INSTITUTIONAL, AND RETAIL SALES & SERVICES	
Retail, Enclosed	1 space per 200 square feet

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Classification	Off-Street Parking Requirement
Retail, Outdoor (incl. commercial recreation)	1 space per 600 square feet of parcel area
Restaurant	1 space per 150 square feet enclosed floor area
Office (including medical clinics)	4 spaces per 1,000 square feet
Lodging	1 space per room plus 1 space per employee
Institutional/Civic	5 spaces per 1,000 square feet
Hospital	1.5 spaces per patient room plus 3 spaces per 1,000 square feet of office area.
Child care facility/adult day care facility	1 space per 4 persons of licensed capacity.
Schools, Elementary or Junior High	3 spaces for each room used for administration offices, class instruction, or 1 space for each 6 seats in auditorium and other places of assembly or facilities available for the public, whichever is greater
Schools, Senior High	1 space per school employee and 1 space per 4 students
Assembly	1 space per 3 fixed seats plus 1 space per 3 movable seats
Other	Determined by the UDO Administrator in consideration of an approved study prepared by a registered engineer with expertise in Transportation Engineering
MANUFACTURING AND INDUSTRIAL USES	
Adult and sexually oriented businesses	1 space per 500 square feet of gross floor area
All other industrial uses	1 space per employee
RECREATION USES	
The most applicable of the following standards shall apply for all recreational uses, including auditoriums, assembly halls, or stadiums:	1 space per 4 fixed seats; 1 space for each 40 square feet of floor area available in establishment as a meeting room; 1 space for each 150 square feet of gross floor area; 1 space per 600 square feet of parcel area.
TEMPORARY USES/STRUCTURES	
To be determined by the UDO Administrator based on the site specific conditions and principal use.	
AGRICULTURAL USES	
To be determined by the UDO Administrator based on the site specific conditions.	

NOTE: The maximum parking allowed shall not exceed 150% of the minimum parking specified in this section.

Special situations which are not covered by the above shall be handled by the Board of Adjustment. The Board of Adjustment shall make the final determination as to the number of spaces to be required, but shall in all cases give due consideration to the needs therefor.

ARTICLE 10. PERFORMANCE STANDARDS

SECTION 10.4 VEHICLE STACKING AREAS.

10.4.1. Vehicle Stacking Areas.

The vehicle stacking standards of this section shall apply unless otherwise expressly approved by the UDO Administrator. Additional stacking spaces may be required by the UDO Administrator where trip generation rates suggest that additional spaces will be needed.

10.4.2. Minimum Number of Spaces.

Off-street stacking spaces shall be provided as follows:

Activity Type	Minimum Stacking Spaces	Measured From
Automated teller machine (ATM)	3	Teller
Bank teller lane	4	Teller or Window
Car wash bay, full-service	6	Bay
Car wash bay, self-service	3	Bay
Dry cleaning/laundry drive-through	3	Cleaner/laundry window
Gasoline pump island	3	Pump island
Gate, unstaffed	2	Gate
Gatehouse, staffed	4	Gatehouse
Pharmacy pickup	3	Pharmacy window
Restaurant, drive- through	6	Order box
Restaurant, drive- through	4	Between order box and pick-up window
Valet parking	3	Valet stand
Other	Determined by the UDO Administrator in consideration of an approved study prepared by a registered engineer with expertise in Transportation Engineering.	

ARTICLE 10. PERFORMANCE STANDARDS

10.4.3. Design and Layout of Stacking Spaces.

Required stacking spaces shall be subject to the following design and layout standards:

10.4.3.1. Size. Stacking spaces shall be a minimum of eight (8) feet in width by twenty-five (25) feet in length.

10.4.3.2. Location. Stacking spaces shall not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

10.4.3.3. Design. Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the UDO Administrator for traffic movement and safety.

SECTION 10.5 OFF-STREET LOADING REQUIREMENTS.

10.5.1. Location.

10.5.1.1. No loading spaces shall be located within thirty (30) feet of street intersections or in any required front, side, or rear yard.

10.5.1.2. A minimum setback of fifty (50) feet shall be required where loading docks face a residential district or a structure with first-floor residential uses, unless the loading area is completely screened from view with an eight (8) foot high masonry wall in accordance with the requirements of Article 10, Part II.

10.5.1.3. Loading areas shall be located to provide the most convenient access to the use being served. Generally, loading areas should be adjacent to the building.

10.5.2. Design.

10.5.2.1. Loading berths for office uses shall be a minimum of twelve (12) feet wide by thirty-five (35) feet long with a height clearance of fourteen (14) feet.

10.5.2.2. All other loading berths shall be a minimum of twelve (12) feet wide and fifty-five (55) feet long with a height clearance of fourteen (14) feet.

10.5.3. Spaces.

The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. The following table indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. However, the permit-issuing authority may require more or less loading and unloading area if reasonably necessary to satisfy the foregoing standard.

ARTICLE 10. PERFORMANCE STANDARDS

Use	Off-Street Loading Requirement
Office and Institutional Uses including Hotels and Motels	One space for each 50,000 square feet of gross floor area or fraction thereof.
Retail Business	One space for each 20,000 square feet of gross floor area or fraction thereof.
Wholesale Trade and Industry	One space for each 10,000 square feet of gross floor area or fraction thereof.
Elementary, Junior High, High Schools, Kindergartens, Nurseries, and Day Care Centers	One space for each 50,000 square feet of gross floor area or fraction thereof, plus a safe place off the street for the loading and unloading of children from automobiles and buses.

Exceptions. If a peculiar characteristic of an establishment makes the requirements of this Section clearly unrealistic, the Board of Adjustment may grant the applicant a modification of the loading requirements in regard to that particular establishment.

The UDO Administrator may allow a new use to be established in an existing building even if all loading requirements of this Section cannot be met for the new use, provided that as much loading space as can reasonably be provided is provided by the use and traffic or safety hazards will not be created.

SECTION 10.6 DRIVEWAYS.

10.6.1. General.

After the date of passage of this section, only driveways designed, approved, constructed, and surfaced in accordance with the provisions herein shall be allowed to provide motor vehicle access to or from any property upon which a building has been constructed, reconstructed, or physically altered. All driveways shall be paved with either asphalt or concrete, or with alternative paving material (e.g., concrete pavers, brick, "turfstone" or similar pervious material) determined to exhibit equivalent wear resistance and load bearing characteristics as asphalt or concrete.

Before a building permit is issued for the construction, reconstruction, or change in use of any building or land used for purposes other than a single or two-family residence, all driveways shall be reviewed and approved by the Administrator. Private driveways serving single-family and two-family dwellings shall not be regulated by the provision of this Ordinance. "Construction, reconstruction, or change in use" refers to those improvements made to the site involving overall structure size or to changes in use which would require the addition of one or more parking spaces under the provision of Article 10, Part I, Off-Street Parking and Off-Street Loading Requirements; it is not intended to refer to construction activities which merely involve changes to exterior architectural features (e.g., painting, addition of siding, roofing activities, etc.).

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When the use of any driveway has been permanently discontinued, the property owner of that driveway shall, at his expense, replace all necessary curbs, gutters, aprons, sidewalks, and appurtenances thereto, within 60 days of receipt of a written notice from the Administrator.

No driveway shall conflict with any municipal facility such as traffic signal standards, catch basins, fire hydrants, crosswalks, loading zones, bus stops, utility poles, fire-alarm supports, meter boxes, and sewer clean-outs or other necessary structures, except with the express approval of the Director of Public Works. Any adjustments to municipal facilities to avoid such conflicts shall be at the expense of the driveway applicant.

10.6.2. Permit Requirements.

A permit must be obtained from the Public Works Director prior to the removal, alteration, or construction of any curb, driveway, gutter, and/or pavement or prior to the performance of any other work in any public or private street. Conditions governing the issuance of such a permit are:

10.6.2.1. A continuing indemnity bond with sufficient surety acceptable to the town may be required of the party performing the work. All work must be done in conformity with the standards established herein.

10.6.2.2. The town shall be indemnified for any damages it might sustain as a result of the breach of condition above. The damages payable to the town shall be the amount required to make such improvement conform to town standards.

Based on the Town of Smithfield Schedule of Fees, a fee shall be paid to the town at the time the application for a driveway permit is made.

10.6.3. Submission of Plans.

Two copies of plans showing the location and dimensions of all proposed improvements shall be filed with the Administrator for approval prior to the issuance of a driveway permit for uses other than single or two-family residential.

All design and construction of driveways shall conform to the requirements of the North Carolina Department of Transportation.

10.6.4. Driveway Location(s).

10.6.4.1. A safe means of ingress and egress shall be provided for all parking spaces and driveways for uses other than single and two-family residential and shall be at least 24 feet wide.

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10.6.4.2. Two driveways entering the same street from a single lot shall be permitted only if the minimum distance between the closest edges of the driveways equals or exceeds 50 feet.

10.6.4.3. Three driveways entering the same street from a single lot shall be permitted only if the minimum distance between the closest edges of the driveways equals or exceeds 150 feet.

10.6.4.4. Four or more driveways entering the same street from a single lot shall be prohibited.

10.6.4.5. In no case may the total width of all driveways exceed 50% of the total property frontage.

10.6.4.6. No driveway (nearest edge) shall be located within 10 feet of a side lot property line except in the case of a shared driveway (single curb/access point) utilized by two or more lots.

10.6.4.7. No driveway (nearest edge) shall be located within 25 feet of an intersection on a secondary road and 40 feet on a primary road except in the case where no other lot access to a public street or town-approved private road is available.

10.6.5. Driveway Permit Inspection.

Once the driveway permit is duly issued, the supervisor of the driveway construction site shall keep the permit available for on-the-job inspection by authorized personnel of the town. The inspector or other authorized representative of the town shall have the authority to require the immediate stoppage of work not performed either in accordance with the approved plans or under the requirements of this section and may order the nonconforming installations be corrected and/or blocked.

10.6.6. Brick Driveways.

Brick driveways will be allowed consisting of smooth, hard-burned clay bricks with an appropriate concrete base conforming to the design standards of the Administrator. In the event repairs are required after brick driveways are installed due to utility replacement or other construction work, the driveway applicant shall pay that portion of the repair cost which exceeds the cost of repair using standard concrete six inches in thickness. Normal maintenance or replacement will be the responsibility of the driveway applicant.

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PART II. LANDSCAPE REQUIREMENTS.

SECTION 10.7 PURPOSE.

The purpose of this section is to establish minimum requirements to provide adequate visual buffering and screening of permitted uses, structures, parking areas, and preservation of protected trees. The intention of these requirements is to satisfy the following objectives:

10.7.1. To encourage the conservation of existing trees and vegetation, when practicable;

10.7.2. To provide visual and spatial buffering between adjoining and competing uses;

10.7.3. To enhance the beautification of the town;

10.7.4. To enhance property values and protect public and private investment;

10.7.5. To preserve the identity and environment of the town;

10.7.6. To provide a habitat for living things that might not otherwise occur in an urban environment;

10.7.7. To ensure that planting areas are distributed within developing sites in a manner which will provide shade, buffer noise, and filter glare.

SECTION 10.8 APPLICABILITY.

The three standard requirements in this section are: Parking Facility Requirements (Section 10.13), Bufferyard Requirements (Section 10.14), and Screening of Dumpsters (Section 10.15.3). The requirements of this Article 10, Part II shall be applicable to the following situations:

10.8.1 Single-Family-Residential-Development

When a major residential subdivision with new roadways are proposed.

10.8.2 All new Single-Family-Residential homes on existing lots

All new single-family and duplex dwellings on existing lots shall comply landscape regulations of Section 10.13.1.8.2 Single-Family and Town House Residential Developments.

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10.8.3. Multi-Family Residential Development.

When ten (10) or more parking spaces are required for all phases of development excluding all manufactured home parks.

10.8.4. Nonresidential Development.

10.8.4.1. New Construction. When a permitted use, a use or combination of uses contained within a conditional use permit require ten (10) or more parking spaces.

10.8.4.2. Existing Development. When there is a change from an existing use to a new use which requires additional parking and the new use requires ten (10) or more parking spaces.

10.8.4.3. Expansion of Structure. When there is an expansion of an existing structure by greater than 25% of the gross floor area and that use requires ten (10) or more additional parking spaces.

10.8.4.4. Expansion of Site Improvements. When there is an expansion of site improvements by greater than 25% of the site's hard surface area.

10.8.4.5. Reconstruction of Structure. When there is damage or destruction to an existing structure beyond 50% of its assessed value, the reconstruction must conform to the new construction standards of this section.

10.8.4.6. Expansion of Parking Facility. When there is an expansion of the parking facility by a minimum of 10% of the parking with a minimum of ten (10) total spaces.

SECTION 10.9 TREE RESOURCE MANAGEMENT.

Tree resource management regulations shall apply to all protected trees for both new and existing development in accordance with this Section 10.9. No building permit or certificate of occupancy shall be issued for any improvements upon a property where the provisions of this section have not been complied with.

10.9.1. Exemptions.

All properties within the Town's jurisdiction shall comply with the requirements of Section 10.9, Tree Resource Management, except as otherwise exempted below:

10.9.1.1. Small Trees. Any tree with a diameter/caliper less than eight (8) inches (circumference of 25") or less measured at diameter at breast height (DBH) may be cut at any time without a permit, except replacement plantings.

ARTICLE 10. PERFORMANCE STANDARDS

10.9.1.2. Nursery. A business location where trees are grown specifically for sale, as part of a primary commercial activity, shall be exempt.

10.9.1.3. Utility Construction. Companies and governmental agencies installing and maintaining utilities in easements and right-of-ways shall be exempt when acting in accordance with approved construction plans.

10.9.1.4. Wetlands Mitigation. Wetlands mitigation shall be exempt when working in accordance with an approved plan of the US Army Corps of Engineers or North Carolina Department of Environment and Natural Resources (NCDENR).

ARTICLE 10. PERFORMANCE STANDARDS

10.9.1.5. Hazardous Conditions. If any tree shall be determined to be in a hazardous condition so as to (i) immediately endanger the public health, safety, or welfare, or (ii) cause an immediate disruption of public service, the Public Utilities/Public Works director may determine that replacement with additional trees is necessary. In making determinations, the Public Utilities/Public Works Director shall utilize such professional criteria and technical assistance as may be necessary.

10.9.1.6. Certain Forestry Activities. Only activity associated with growing, managing, and harvesting trees on lands taxed on a present-use value as forest land, or activity being conducted in accordance with a forest management plan shall be exempt from Tree Resource Management. Forestry Activities are only permitted in the R-20A zoning district in accordance with Section 6.5, Table of Uses and Activities.

10.9.1.7. Acts of God. The UDO Administrator may waive the requirements of this Article during an emergency such as a hurricane, tornado, windstorm, tropical storm, flood, or other act of God.

10.9.1.8. Certain Property Types. This Article shall not apply to the following types of property in the manner noted:

10.9.1.8.1. Except for the construction of single-family residences in subdivisions prior to the recording of a final plat for the subdivision, single-family residences are exempt from this Article.

10.9.1.8.2. Property used for a business primarily engaged in the sale and display of motor vehicles, manufactured housing, boats, recreational vehicles, or similar equipment may have the required landscaping within the streetyard installed at a minimum height of 18 inches at planting and not exceeding three feet at maturity.

10.9.2. Tree Preservation.

Vegetation existing on a site at the time of development that is required to be retained in accordance with the following provisions, shall be inventoried on a tree survey, performed and certified by a certified Arborist or licensed Forester, or submitted as part of the site plan review process.

10.9.2.1. Protected Trees. The following categories of existing vegetation shall be considered protected and shall be retained as indicated:

10.9.2.1.1. Natural Buffers. If existing trees and shrubs on the site where a buffer is required by Section 10.14 meet at least 50% of the required opacity standard, then those trees and shrubs shall be retained for use in buffering and supplemented as needed with plantings, fences, and/or berms to meet the required standards.

ARTICLE 10. PERFORMANCE STANDARDS

10.9.2.1.2. Perimeter Trees. Existing trees greater than eight inches in diameter at 4.5 feet in height above grade (DBH) within required buffers or street yards, shall be considered protected and shall be retained in all cases.

10.9.2.1.3. Regulated Trees. All regulated trees anywhere on the site shall be considered protected, and shall be preserved to the greatest extent practical and incorporated into required landscaping. Regulated tree removal will be allowed to the extent necessary to allow compliance with the requirements of this Ordinance.

10.9.2.1.4. Significant Trees. Hardwood and conifer trees located in perimeter and street yards at least 24 inches in DBH, and dogwoods, American Hollies and flowering trees at least eight inches DBH, shall be considered protected, and must be preserved or their removal mitigated as in accordance with Section 10.9.2.3 , regardless of location on the site, unless the trees are shown to be dead, dying or severely damaged or diseased as a result of natural factors.

10.9.2.2. Retention Standards of Protected Trees.

10.9.2.2.1. Perimeter Trees and Regulated Trees. If any of these trees are to be cleared from the site, reasons for doing so shall be clearly stated on the tree survey. Suitable reasons for clearing one or more of these trees include such factors as the essential site improvements cannot be elsewhere accommodated on the site or that it is impossible to position the building on the site or that necessary grading changes would significantly harm the tree. Unsuitable reasons include such factors as more parking than the minimum specified by this section, or that non-selective clearing by bulldozer is less expensive than selective clearing by chainsaw.

10.9.2.2.2. Significant Trees and Natural Buffers. All Significant Trees and Natural Buffers shall be retained and protected, or their removal mitigated as set forth in subsection 10.9.2.3 below.

10.9.2.2.3. Existing trees specified on the required landscape plan to remain on the site as a function fulfilling purposes of this section, shall be protected from vehicular movement and material storage during construction and in the final landscape design. An undisturbed area with a porous surface shall be preserved around each tree as determined by the trees drip ring of its natural canopy. The undisturbed area shall be protected during construction by approved tree protection fencing.

ARTICLE 10. PERFORMANCE STANDARDS

10.9.2.2.4. A minimum of 15 trees at least two inches in diameter (measured 6" above the ground) shall be retained or planted on the parcel for each acre or proportionate area disturbed by development.

10.9.2.3. Mitigation. The removal of any "Significant Tree" as defined by this Ordinance, must be mitigated in accordance with the following standards:

10.9.2.3.1. The total caliper inches of all significant trees proposed for removal shall be totaled and doubled. The resultant number of caliper inches must be planted back on the site with 2-3 inch caliper trees as a minimum.

10.9.2.3.2. If the UDO Administrator determines that the site cannot accommodate the required number of trees, then only the amount of trees which can be accommodated on the site may be replaced.

10.9.2.3.3. Any mitigation trees required as a result of the removal of Significant Tree(s) shall not be counted to meet the requirements of the street yard, buffers or interior parking requirements. These trees must be provided in addition to any tree required by this Ordinance.

10.9.3. Marking of Trees Required.

Any tree(s) indicated on a site plan for removal inspection must be clearly marked with brightly colored tape, ribbon, or similar material prior to an inspection by the UDO Administrator.

10.9.4. Purposeful Damage to Trees Prohibited.

It shall be unlawful for any person, corporation or other entity to damage, deface, mutilate, alter, or otherwise cause severe or permanent harm to any tree(s) regulated by this section. Purposeful damage to trees shall include topping and any other practices deemed harmful to trees based upon current forestry practices. Purposeful damage prohibitions also apply to tree re-plantings that are less than a diameter/caliper of eight (8) inches (circumference of 25"). Trees and shrubs which are required to be planted by this Ordinance cannot be trimmed/cut below the height requirement at planting.

SECTION 10.10 INSTALLATION

10.10.1. Plants shall meet the standards for plant quality and size as defined in the most recent version of the American Standard of Nursery Stock manual, published by the American Horticulture Industry Association.

10.10.2. Plants shall be installed per the installation details included in Appendix B of this Ordinance.

ARTICLE 10. PERFORMANCE STANDARDS

SECTION 10.11 MAINTENANCE

10.11.1. All existing vegetation that is used to meeting landscaping requirements, all required plants, and all required berms shall be maintained by the owner of the property on a continuing basis for the life of the development.

10.11.2. Opaque Fence or Opaque Walls shall be maintained, cleaned and repaired by the owner of the property on a continuing basis for the life of the development. Such fencing shall be kept free of litter and advertising. Opaque fences or walls may be subject to periodic inspection by the UDO Administrator.

10.11.3. A new certificate of occupancy/building permit/zoning permit or a complaint will result in an inspection for compliance.

10.11.4. Failure to maintain landscaping required by Article 10, Part II will be considered a violation of this Ordinance and subject to penalty as prescribed in Section 1.8.

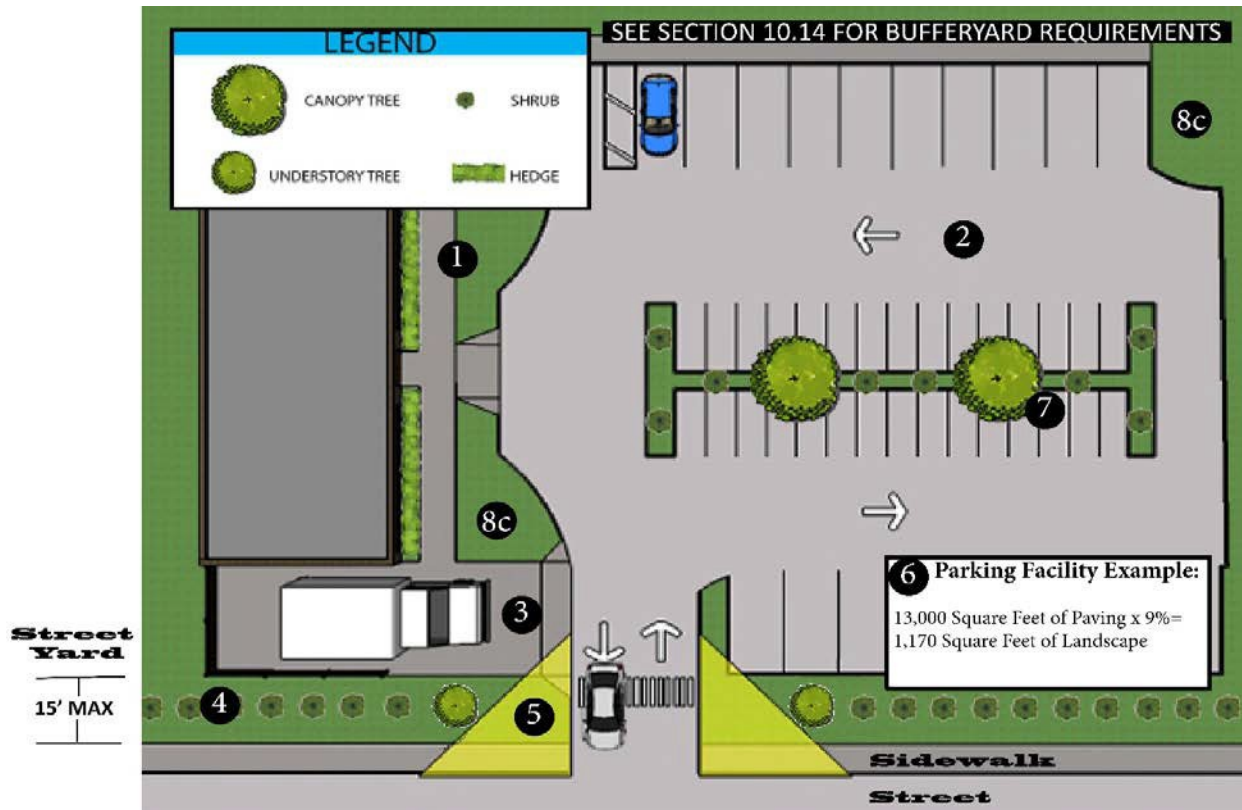
SECTION 10.12 AUTHORITY OF PUBLIC UTILITIES DIRECTOR AND PUBLIC WORKS DIRECTOR TO TREAT OR REMOVE TREES ON PRIVATE PROPERTY

No foliage shall be allowed to extend from public or private property into any portion of a street right-of-way below a height of thirteen (13) feet above the grade of the sidewalk at the property line, or, if no sidewalk grade has been established the height shall be measured vertically above the center of the roadway. The Administrator may cause or order corrective action to prevent any such condition from existing. Removal of any tree on town-owned/maintained public right- of-way or property has to be approved by the Appearance Commission before removal.

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SECTION 10.13 PARKING FACILITY REQUIREMENTS

10.13.1. Streetyard and Parking Facility Landscape Example



10.13.1.1. For all portions of buildings, which are adjacent to parking facilities or internal drive aisles, foundation plantings shall be required and located between the buildings face and the parking or drive isle curb.

10.13.1.2. All tree plantings shall be evenly distributed throughout the parking facility so that no parking stall shall be located farther than 75 feet from the trunk of a tree.

10.13.1.3. All loading, utility, and open storage areas shall be screened from public right-of-way and adjacent properties by suitable fencing, wall, or hedge which shall maintain an opacity of at least 75% year round.

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10.13.1.4. Sight distance triangle shall be in compliance with Section 2.21.

10.13.1.5. Minimum Standards: For parking facilities having 4 or more parking spaces, at least 9% of the gross paved area of the parking facility shall be landscaped and located in the interior of the facility.

10.13.1.6. Planting islands shall include at least one Canopy Tree or one Understory Tree and six Small Shrubs. At least 50% of the trees planted shall be Canopy Trees.

10.13.1.7. In support of the above, the following standards shall apply to interior plantings:

- a** **10.13.1.7.1.** All plantings shall be evenly distributed throughout the parking facility.
- b** **10.13.1.7.2.** All interior plantings shall be curbed or otherwise physically protected. Depressed landscaped islands shall be permitted for stormwater management purposes as approved by the UDO Administrator.
- c** **10.13.1.7.3.** Landscaped islands shall be installed at each block of 15 consecutive parking spaces and at the ends of all parking rows. Landscaped islands shall contain at least 100 square feet in area and be at least 8 feet in width, measured from back of curb to back of curb.

10.13.1.8 Streets Yards.

10.13.1.8.1. Commercial Developments.

Street Yards shall be provided with a minimum depth of 50% of the required front or corner side yard setback as measured perpendicular to the street right of way, provided that no street yard in excess of 15 feet in depth shall be required. The width of the planting strip may vary, but the minimum width cannot be less than seven feet and the average width shall be at least ten feet. The planting area must be covered with living material, including trees, shrubs and/or ground cover, so that no soil is exposed at a rate of two canopy tree and 2 shrubs per every 100 linear feet of road frontage. Canopy trees can be replaced by understory trees if in conflict with overhead utilities. Required trees shall be placed in a planting strip on private property and not within the street right-of-way. No required street yard tree can be planted further than 15 feet from the edge of the right-of-way to meet this requirement.

10.13.1.8.2. Single Family and Town House Residential Developments.

Street Yards shall be provided with a minimum depth of 15 feet when adjacent to a major or minor arterial street and shall be planted with 2 deciduous trees, 1 evergreen tree and 30 shrubs per 100 linear feet of road frontage. All interior streets within single family and townhouse developments shall provide 2 deciduous trees, 1 evergreen tree per 100 linear feet of road frontage on each side of the street. Shrubs shall be planted at a rate of 3 per residential unit and placed adjacent to the front building facade. Required trees shall be placed in a planting strip on private property and not within

ARTICLE 10. PERFORMANCE STANDARDS

the street right-of-way. No required tree can be planted further than 15 feet from the edge of the right-of-way to meet this requirement.

10.13.2. Foundation Plantings. For all portions of buildings, which are adjacent to parking facilities or internal drive aisles, foundation plantings shall be required and located between the buildings face and the parking or drive isle curb. The minimum standards are required; however, it is encouraged that sites exceed the minimum whenever possible. The following minimum standards shall apply:

10.13.2.1. The area of the building wall face adjacent to the parking area or internal drive isle shall be calculated and multiplied by a minimum of 12%. The resultant total square footage shall be planted as landscaped areas of sufficient variety, height, and approved by the Planning Department.

10.13.2.2. Exemptions from these requirements may be granted when the following circumstances exist or when any of the following conditions are proposed on the site:

10.13.2.2.1. For those portions of buildings which have drive up services along any side or rear of the building. (Such examples would include but not be limited to Pharmacies, Banks, Fast Food Restaurants, Dry Cleaners, and PhotoShops.)

10.13.2.2.2. On the rear side of a building when less than 10% of the total required parking is located in the rear of the building and the rear is not adjacent to any public right-of-way.

10.13.2.3. If the requirements of this section conflict with any other requirements from other sections of this Ordinance, the more stringent shall apply.

ARTICLE 10. PERFORMANCE STANDARDS

SECTION 10.14 BUFFERYARD REQUIREMENTS.

Bufferyards are required for multi-family residential development with ten (10) or more parking spaces and nonresidential development as outlined in Section 10.8. See the table below to determine the type of bufferyard required.

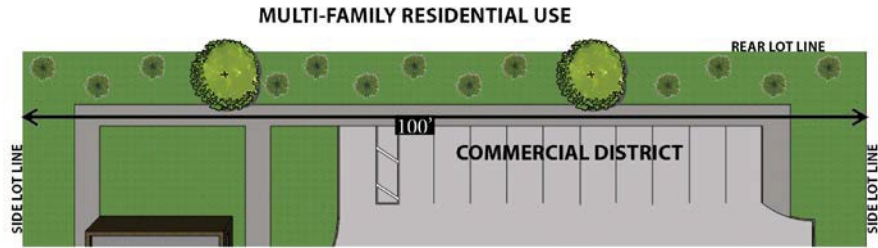
Zoning District and/or Use To Be Developed (below)	Adjacent Land Use				
	Industrial	Commercial	Single-Family Residential	Multi-Family Residential (10 or more parking), PUD, PRD	Open Space
Industrial	N/A	Type A	Type C	Type C or D	Type C or D
Commercial	Type A	50% of Type A	Type B	Type A	Type C or D
Multi-Family Residential (10 or more parking), PUD, PRD	Type C or D	Type A	Type A	N/A	N/A

Bufferyard requirements as they pertain to the Table of Uses and Activities (Section 6.5) are as follows:

- (1) Industrial shall include all uses allowed within the LI and HI districts.
- (2) Commercial shall include all uses allowed within the O/I, B-1, B-2, and B-3 districts.
- (3) Multi-Family Residential shall include all uses allowed within the R-6, R-8, R-MH, PUD, B-1, B-2, and B-3 districts.
- (4) Single-Family Residential shall include all uses allowed within the R-6, R-8, R-10, R-20A, R-MH, PUD, RHO, O/I, B-1, B-2, B-3 districts.
- (5) Manufactured Home Parks and Junkyards shall provide buffer Type C or D.

ARTICLE 10. PERFORMANCE STANDARDS

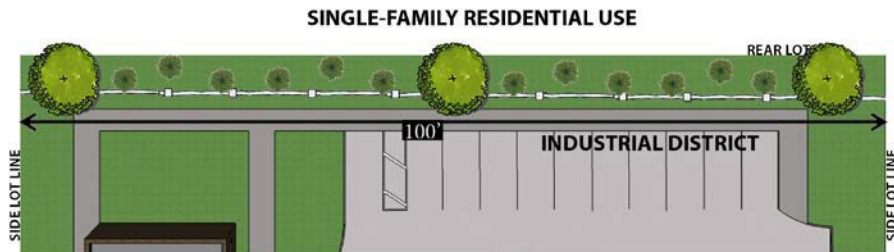
The following provides *examples* of Type A to D bufferyards.



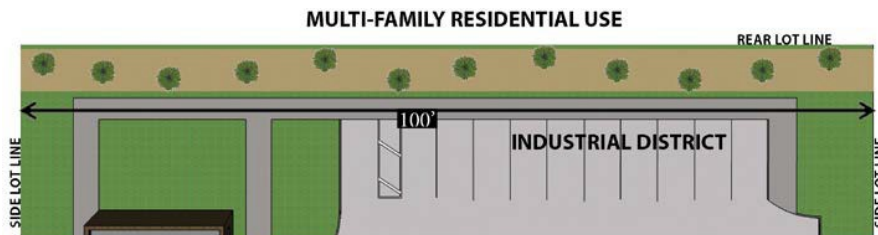
Type A - Bufferyard Example:
 1000 Square Feet of Non-Residential Lot Line Adjacent to a Residential Use=
 2 Canopy Tree and
 12 Shrubs



Type B - Bufferyard Example:
 1000 Square Feet of Residential Lot Line Adjacent to a Residential Use -OR- Non-Residential Lot Line Adjacent to a Non-Residential Use=
 1 Canopy Tree and
 8 Shrubs



Type C - Bufferyard Example:
 Canopy Tree and
 Shrubs
 6' Max High Fence



Type D - Bufferyard Example:
 Shrubs (May Vary in Size)
 6' Max High Fence
 8' Max High Berm; 3:1 Slope



ARTICLE 10. PERFORMANCE STANDARDS

Type A Bufferyard Screening.

Minimum of 10 feet wide. For every 1,000 square feet, the screen shall consist of a combination of a minimum of 2 Canopy Trees and 12 Shrubs distributed evenly throughout the Bufferyard. (Shrubs shall be 3' minimum at planting and 6' minimum at maturity.)

Type B Bufferyard Screening.

Minimum width of 20 feet, or fraction thereof, the screen shall consist of a combination of a minimum of 1 Canopy Tree and 8 Shrubs. (Shrubs shall be 3' minimum at planting and 6' minimum at maturity.)

OPTIONS TO TYPE A AND/OR TYPE B

Type C Bufferyard Screening.

The design, color and materials of any fence or screen used to meet bufferyard requirements shall be approved by the UDO Administrator. **The side of the fence facing the affected property owner shall be the finished side of the fence.** The planting shall be three canopy trees and 12 shrubs per 100 linear feet of fencing. All planted screening required to be used in conjunction with a fence shall be approved by the UDO Administrator and planted on the finished side of the fence facing the affected use, and the remaining plantings shall be equally distributed in the bufferyard.

Type D Bufferyard Screening.

An earthen berm may be used in conjunction with planted vegetation made up of small, intermediate, and large shrubs, as approved by the UDO Administrator, provided that the combined height of the berm and planted vegetation shall be an installed minimum height of 6 feet. The slope of the berm shall be stabilized with vegetation and no steeper than 1½:1. The height of the berm shall be a maximum of 8 feet, with a level or rounded area on top of the berm. The berm shall be constructed of compacted earth. Depending upon plant type, plantings should be close enough to ensure an opaque screen at maturity.

NOTE: It is recommended and encouraged that native species and related cultivars be planted.

SECTION 10.15 ADDITIONAL REQUIREMENTS.

10.15.1. Uses in the Bufferyard.

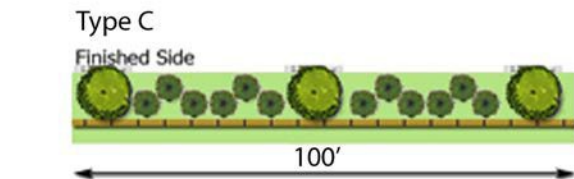
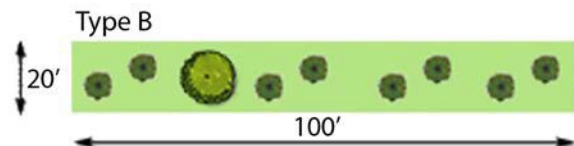
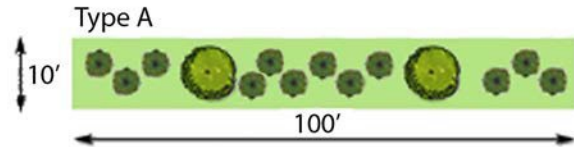
No activities shall occur in the bufferyard except for maintenance of the bufferyard, required ingress and egress and the installation and maintenance of water, sewer, electrical, and other utility systems where the installation causes minimal disturbance of existing vegetation.

10.15.2. Uses in the Rear Yard and Side Yards Abutting a Residential Use.

The following uses shall be shielded from view from the property line of adjacent residentially used or zoned property by means of an Opaque Fence, Opaque Wall, or Solid Vegetative Buffer:

10.15.2.1. Outside storage areas.

10.15.2.2. Loading/unloading areas.



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10.15.3. Dumpsters or Other Trash Holding Areas.

All dumpsters or other trash holding areas shall be screened on three (3) sides by means of an Opaque Fence, Opaque Wall, or Solid Vegetative Buffer.

10.15.4. Encroachment into Setbacks.

10.15.4.1. If an existing structure is located within a setback where the implementation of the Streetyard and/or Bufferyard requirements are physically impossible and the encroachment into the yard (streetyard or bufferyard) allows for a minimum of three (3) feet of planting area, only the required shrubs shall be planted.

10.15.4.2. If the encroachment into the yard (streetyard or bufferyard) allows for less than three (3) feet of planting area, no planting shall be required in that yard.

SECTION 10.16 LANDSCAPE PLAN.

Landscape plans shall be submitted with minor or major site plans, special use permit application, and/or request for a zoning certificate of compliance, if Section 10.8 applies. The plans shall be drawn to scale and prepared by a landscape architect, licensed landscape contractor, architect, engineer, or other licensed design professional. These plans shall contain the following information:

10.16.1. Date of plan preparation.

10.16.2. Project name and description of land use.

10.16.3. Project owner and mailing address.

10.16.4. A Tree Removal Permit is required for the removal of any protected trees as specified in Section 10.9.2.

10.16.5. A map at a scale of 1" = 100' or less showing:

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10.16.5.1. North arrow

10.16.5.2. Scale

10.16.5.3. Approximate locations and species of all existing hardwood trees at least 8" DBH, all conifer trees at least 12" DBH, and all protected trees (see Section 10.9.2.1). The canopy drip line of those trees shall be delineated. If groves of protected trees exist that will not be removed or disturbed, it is permitted to label the grove as such on the map, stating the approximate number of protected trees and species mix, without specifying data on each individual tree.

10.16.5.4. Note on plan stating that prior to any clearing, grading, or construction activity, tree protection fencing will be installed around protected trees or groves of trees. And no construction workers, tools, materials, or vehicles are permitted within the tree protection fencing.

10.16.5.5. Locations, dimensions and square footages of required buffer strips and parking lot landscaping.

10.16.5.6. Details of required landscaping showing species, dimensions, and spacing of planted materials and the use and protection of existing vegetation.

10.16.5.7. All existing and proposed utilities and if applicable, their associated easements.

10.16.5.8. Location and square footage of structures and parking lots.

10.16.5.9. Adjacent zoning districts.

10.16.5.10. Approximate locations of all trees greater than 8" DBH within required buffers and of all areas of natural vegetation to be used as part of the buffer.

10.16.5.11. Setbacks of all structures and specifications and shielding of certain uses, as required.

SECTION 10.17 TREE PROTECTION DURING CONSTRUCTION.

Tree preservation is a pre-planning activity and will be thoroughly considered prior to development of engineering and/or architectural plans and prior to initiation of construction projects. Protected trees shall be guarded during development against the following:

10.17.1. Unnecessary cutting, breaking, or skinning of roots.

10.17.2. Skinning and bruising of bark.

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10.17.3. Excessive vehicular and foot traffic within driplines.

10.17.4. Parking vehicles within drip lines.

10.17.5. During the land clearing and construction stage of development, the developer shall erect and maintain protective barriers (to the UDO Administrator's specifications consistent with good management practices) around all trees or groups of trees to be protected from the center of the tree(s) to the dripline. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the protective barrier.

10.17.6. During the construction stage of development, the developer shall not allow the cleaning of equipment or material within the drip line of any tree or groups of trees to be protected. Neither shall the developer allow the disposal of waste materials such as paint, oil solvents, asphalt, concrete, mortar and so on within the drip line of any tree or groups of trees.

10.17.7. No attachments or wires other than those of a protective nature shall be attached to any tree.

10.17.8. Soil disturbances within the drip line of a protected tree shall be limited to two inches in depth removed or two inches in depth added. Any soil added under the drip line of the tree shall be a loamy soil mix to ensure minimal compaction.

10.17.9. During land clearing and construction stage of development, the UDO Administrator shall periodically inspect the site to ensure compliance with the provisions of this section.

10.17.10. Tree location and replacement activity permitted or required under this section shall be done in accordance with standard forestry practices and procedures, and all such plantings shall be reasonably maintained and attended to promote successful establishment thereof.

SECTION 10.18 RECOMMENDED PLANT LIST.

The following is a recommended plant list to be utilized in the preparation of Landscape Plans to meet vegetation requirements. NOTE: Native vegetation is preferred. Exceptions to the recommended plant list may be granted by the UDO Administrator with the substitution of comparable vegetation. Some plants are listed under multiple categories as many of these plants are offered in numerous varieties. Mature height and spread of each plant is contingent on the variety. It is highly recommended that Landscape Plans be prepared by or in consultation with a Registered Landscape Architect or qualified landscape design professional.

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Key:

E ' EVERGREE N

D ' DROUGHT TOLERANT

N ' NATIVE

R ' PRONE TO LARGE SURFACE ROOTS

Botanical Name

Common Name

Canopy Tree – installed at 12-14 foot height and 2-inch caliper, mature height greater than 35 feet

Acer rubrum	Red Maple	N, R
Fagus grandifolia	American Beech	N, R
Ginkgo biloba (male only)	Ginkgo	D
Gleditsia tricanthos inermis	Thornless Honeylocust	N, R
Liquidambar styraciflua	American Sweetgum	N, D, R
Magnolia grandiflora	Southern Magnolia	E, N, D
Nyssa sylvatica	Black Gum	N
Platanus acerifolia	London Plane Tree	D, R
Quercus nigra	Water Oak	N, D
Quercus shumardii	Shumard Oak	N, D
Quercus phellos	Willow Oak	N, D
Quercus virginiana	Live Oak	E, N, D, R
Taxodium distichum	Baldcypress	N, D
Ulmus parvifolia	Lacebark Elm	D

Understory Tree – installed at 8-10 foot height and 1-inch caliper, mature height less than 35 feet

Acer buergerianum	Trident Maple	D
Amelanchier canadensis	Shadblow Serviceberry	N
Betula nigra	River Birch	N
Cercis canadensis	Eastern Redbud	N, D
Cornus florida	Dogwood	N
Elaeagnus angustifolia	Russian Olive	D
Fraxinus americana	White Ash	N
Ilex cassine	Dahoon Holly	E
Ilex latifolia	Lusterleaf Holly	E, D
Ilex opaca	American Holly	E, N, D
Ilex vomitoria	Yaupon Holly	E, N, D
Ilex x attenuate 'Fosters'	Foster's Holly	E, D
Ilex x 'Nellie Stevens'	Nellie Stevens Holly	E, D
Koelreuteria paniculata	Goldenraintree	D
Lagerstromia	Crapemyrtle	D
Understory Tree (continued)		
Magnolia grandiflora 'Little Gem'	Little Gem Magnolia	E, N, D

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Botanical Name	Common Name	
Magnolia virginiana	Sweetbay Magnolia	N
Magnolia x souangiana	Saucer Magnolia	D
Osmanthus americanus	Devilwood	E, N
Oxydendrum arboretum	Sourwood	N
Persea borbonia	Redbay	E, N
Prunus caroliniana	Carolina Cherrylaurel	E, D
Quercus geminate	Sand Live Oak	E, N
Vitex angus-castus	Chastetree	D

Large Shrub – installed at 5-foot height, maintained height at 6-10 feet

Berberis julianae	Wintergreen Barberry	E, D
Cleyera japonica	Japanese Cleyera	E
Elaeagnus pungens	Thorny Elaeagnus	E
Euonymous japonicas	Japanese Euonymus	E
Ilex cornuta	Holly	E, D
Ilex vomitoria	Yaupon Holly	E, N, D
Ligustrum japonicum	Wax Leaf Privet	E, D
Ligustrum lucidum	Glossy Privet	E, D
Mahonia bealei	Leatherleaf Mahonia	E
Myrica cerifera	Southern Waxmyrtle	E, N, D
Osmanthus x fortunei	Fortunes Osmanthus	E, D
Photina serulata	Chinese Photina	E
Pittosporum tobira	Japanese Pittosporum	E, D
Podocarpus macrophyllus	Chinese Podocarpus	E, D
Raphiolepis umbellata	Indian Hawthorn	E

Intermediate Shrub – installed at 36-inch height, maintained height at 4-6 feet

Abelia x grandiflora	Glossy Abelia	E, D
Acuba japonica	Japanese Acuba	E, D
Clethera alnifolia	Sweet Pepperbush	N
Hydrangea macrophylla	Bigleaf Hydrangea	D
Ilex cornuta	Chinese Holly	E, D
Ilex crenata	Japanese Holly	E, D
Ilex glabra	Inkberry Holly	E, N, D

Intermediate Shrub (continued)

Juinperus chinensis	Chinese Juniper	E
Loropetalum chinensis	Chinese Fringe-Flower	E
Raphiolepis indica	Indian Hawthorn	E

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Botanical Name	Common Name	
Rhododendron obtusum	Kurume Azalea	E, N, D
Viburnum suspensum	Sandwanka Viburnum	E
Small Shrub – installed at 18-inch height, maintained height up to 4 feet		
Abelia x grandiflora (dwarf var.)	Glossy Abelia	E, D
Acuba japonica (dwarf var.)	Japanese Acuba	E, D
Berberis thunbergii	Japanese Barberry	D
Buxus microphylla var. koreana	Korean Boxwood	E, D
Euonymus japonicus 'Microphyllus Variegatus'	Var. Boxleaf Euonymus	E
Gardenia jasminoides 'Radicans'	Cape Jasmine	E, D
Ilex crenata 'Soft Touch'	Japanese Holly	E, D
Ilex cornuta 'Carissa'	Carissa Holly	E, D
Ilex vomitoria 'Nana'	Dwarf yaupon Holly	E, N, D
Itea virginica	Virginia Sweetspire	N, D
Jasminium nudiflorum	Winter Jasmine	E, D
Juniperus chinensis	Chinese Juniper	E
Nandina domestica	Dwarf Nandina	E, D
Pieris japonica	Japanese Pieris	E
Pittosporum tobira	Japanese Pittosporum	E
Raphiolepis indica	Indian Hawthorn	E, D
Spirea japonica	Japanese Spirea	D
Spirea nipponica	Snowmound Spirea	D

ARTICLE 10. PERFORMANCE STANDARDS

PART III. REGULATIONS FOR SIGNS.

SECTION 10.19 INTENT.

The intent of this section is, 1) to establish sign standards and restrictions that allow for the legitimate identification of residential, commercial, industrial, and other activities, 2) to provide for the safety of vehicular traffic by limiting visual interference, 3) to facilitate police and fire protection, 4) to protect the general public from injury caused by distracting and improperly placed signs, and 5) to protect property values while at the same time promoting the economic welfare of the Town of Smithfield by encouraging visually appealing and non-distracting forms of information transfer. For definitions relating to this Section refer to Appendix A.

SECTION 10.20 APPLICABILITY.

10.20.1. Administration.

The Planning Department of the Town of Smithfield shall be responsible for the administration and enforcement of this Section. The Administrator shall administer and enforce the terms and conditions of this Section and all other provisions of laws relating to signs. The duties shall include not only the issuance of permits as required in Section 10.20.2, but also enforcement of the provisions of this Section.

10.20.2. Permit Requirements.

10.20.2.1. General Requirements. Except as otherwise provided by this ordinance in Section 10.21 and 10.22, it shall be unlawful to erect, post, hang, paint, repair, replace, change, or maintain any sign without first obtaining a sign permit. Application for the permit shall be made in writing on forms furnished by the Administrator and signed by the applicant or authorized agent. Failure to secure a permit shall constitute a violation of this Section.

10.20.2.2. Sign Maintenance. no permit shall be required for the maintenance requirements of Section 10.29 (Maintenance) hereinafter.

10.20.2.3. Plans, Specifications, and Other Data Required. The application shall be accompanied by complete information as required on forms provided by the Administrator and shall include, without being limited to, a site plan and elevation drawings of the proposed sign, a drawing of the building facade indicating the proposed location of the sign, height, dimensions and square footage of the proposed sign and any other data as the Administrator may determine is necessary for review of the application. The Administrator shall not issue a sign permit unless the plans, specifications, and intended use of such sign conform in all respects to the applicable provisions of this Article.

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10.20.2.4. Building Permit. A building permit must be obtained from the Johnston County Building Inspections Department.

10.20.2.5. Fees. A sign permit fee shall be paid upon the application for a sign permit and prior to commencement of any sign construction on the lot where the sign will be located. The fee to the Town of Smithfield for each sign permit applied for in accordance with this Article in an amount determined by the Town of Smithfield Schedule of Fees. This permit fee does not include building permit fees which shall be additional

10.20.2.6. Revocation of Permits for Non-Use.

10.20.2.6.1. Commencement of Work. If actual work for the permitted sign on the site is not commenced within 60 days from the date of such sign permit or if substantial work for the permitted sign is suspended for a period of 60 consecutive days after issuance of the sign permit, the permit shall automatically become null and void. However, for new construction, the sign permit shall not become null and void until 60 days after the Zoning Compliance Release has been issued.

10.20.2.6.2. Extensions of Time. The provisions of subsection 10.20.2.6.1 above shall not apply when delays are not a result of willful acts or neglect of the persons obtaining the permit. In that event, the Administrator may grant an extension of time within which operations must be started or resumed. All requests for such extensions and approval thereof shall be in writing.

10.20.2.7. Forfeiture of Fees. When any permit has been revoked under the terms of this Section, the permit fees shall not be refunded. If a sign permit is denied, however, the permit fee will be refunded.

10.20.2.8. Licenses. No person shall engage in the business of erecting or maintaining signs in the Town of Smithfield unless said person has been issued a sign contractor's license which has not expired at the time said work is done. This requirement shall be interpreted to exclude those persons who construct and erect a principal use identification sign when that sign is used at that person's place of business, provided all construction and installation is properly permitted and inspected for compliance with the applicable building codes of the Town of Smithfield and other parts of this Section.

SECTION 10.21 SIGN COMPUTATIONS.

10.21.1 Computation of Sign Area.

The surface area of a sign is computed as including the entire area within a parallelogram, triangle, circle, semi-circle, or other regular geometric figure, including all of the elements of the display, but

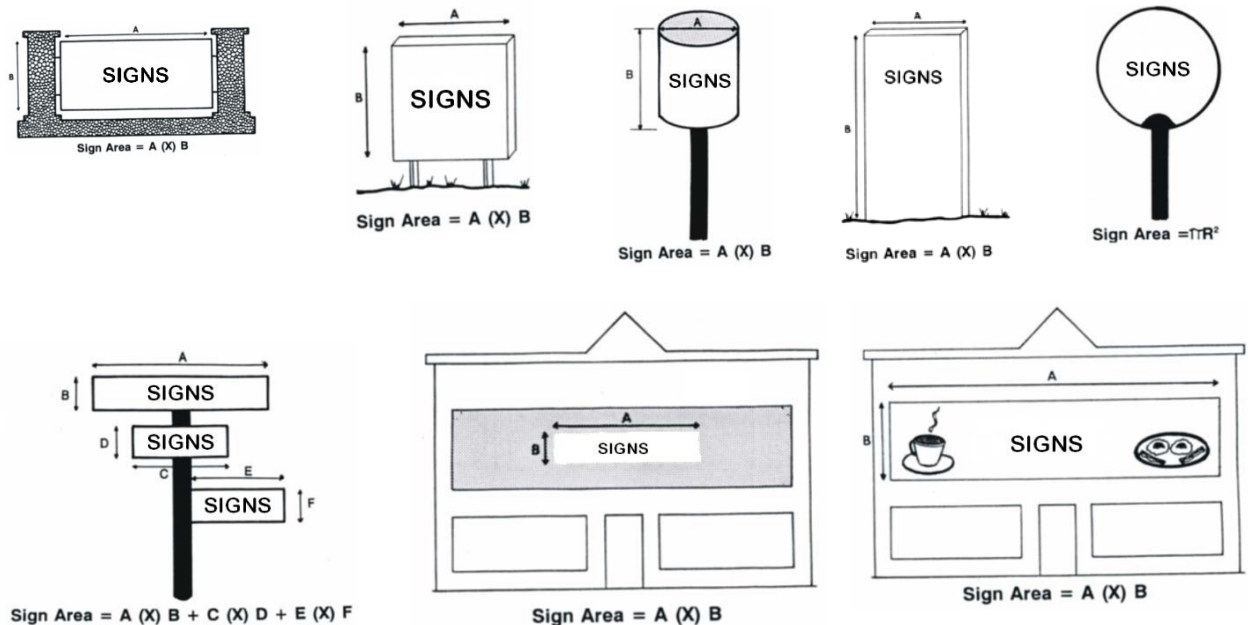
ARTICLE 10. PERFORMANCE STANDARDS

not including blank masking (a plain strip, bearing no advertising matter around the edge of a sign), frames, display of identification or licensing officially required by any governmental body, or structural elements outside the sign surface. In the case of signs mounted back-to-back,

only one side of the sign is to be included in the area. Otherwise, the surface area of each sign is to be separately computed. In the case of cylindrical signs, signs in the shape of cubes, or other signs, which are substantially three-dimensional with respect to their display surfaces, the entire display surface or surfaces, is included in computations of area.

In the case of embellishments (display portions of signs extending outside the general display area), surface area extending outside the general display area is to be computed as part of the total surface area of the sign. Where three dimensional figures are used as or on signs, the area shall be the total of all sides made an integral part of the projected figure used in conveying the intended message. If a sign is attached to an entrance wall or fence, only that portion of that wall or fence on which the sign face or letters are placed shall be calculated in the sign area.

In the case of a multi-faced pole sign, the area of the sign shall be considered to include all faces visible from one direction.



10.21.2. Monument or Ground Mounted Sign Dimensional Requirements.

The base of such sign structure shall be on the ground or a maximum of 24 inches above the adjacent grade. The width of the top of the sign structure shall be no greater than 120 percent of the width of the base.



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SECTION 10.22 GENERAL PROVISIONS

10.22.1. Standards Applicable to All Signs

10.22.1.1. Location: Unless specifically provided otherwise elsewhere in this section, all permitted signs shall adhere to the following provisions:

10.22.1.1.1. All signs regulated by this ordinance shall be on-premises signs located on private property.

10.22.1.1.2. Permitted signs shall always be located outside of the street right-of-way and required sight triangles.

10.22.1.1.3. All permitted signs must be placed no closer than 10' from property line, except within the B-1 District where it can be located zero (0) ft. from the front property line/right-of-way

10.22.1.1.4. Permitted signage shall be located behind sidewalk areas except where encroachments are permitted as outlined in 10.22.1.2 below.

10.22.1.1.5. No new freestanding sign shall be placed within 20 feet of an existing freestanding sign on an adjoining lot.

10.22.1.1.6. All signs must maintain a 10 foot setback from the public right-of-way except within the B-1 zoning district or if otherwise specified herein.

10.22.1.2. Sign Encroachments. No portion of any sign shall encroach into or over a public right-of-way except awning signs, projecting/suspended signs and marquee signs within the B-1 District and may project over the sidewalk to within 3-feet of the curbline provided that such signs shall maintain a minimum clearance of 9 feet above the sidewalk.

10.22.1.3. Discontinued Signs. Upon the discontinuance of a business or occupancy of an establishment for a consecutive period of one hundred eighty (180) days, the UDO Administrator shall require the removal of any nonconforming sign(s) advertising or identifying the establishment. The UDO Administrator shall give thirty (30) days' notice to the property owner to remove the sign(s). Failure to remove the sign(s) within the thirty-day period shall constitute a violation of this Article and shall be remedied in accordance with the provisions of Section 1.8

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10.22.2. Wall Signs.

10.22.2.1. No wall sign shall project more than 18 inches from the building wall. Further, no wall sign or its supporting structure shall cover any window or part of a window, nor shall it extend on the roofline, parapet, or mansard roof.

10.22.2.2. Canopy and awning signs may be substituted for part or all of the allowable wall signage per premises. Copy area of the sign is limited to the drip flap. Logos may be placed on the awning itself.

10.22.2.3. No wall sign shall be attached to any cupola, tower, or other architectural feature that is above the roofline.

10.22.3. Projecting Signs.

10.22.3.1. All Projecting Signs.

10.22.3.1.1. A projecting sign will not project more than four (4) feet from a building wall

10.22.3.1.2. A projecting sign will not extend vertically above the roofline or parapet of a building.

10.22.3.1.3. The sign shall be a minimum of nine (9) feet from the bottom of the sign above the finished grade.

10.22.3.1.4. The maximum area for the projecting signs shall be calculated as though it was a wall sign. The maximum area of a projecting sign shall be seventy-five (75) feet and there shall be no more than one projecting sign per business entrance.

10.22.4. Temporary Use Signs.

A zoning permit for a temporary use may also authorize one temporary sign, not to exceed 32 square feet in sign surface area, associated with the temporary use

10.22.5. Electronic Messaging Signs. Electronic message boards and kinetic sign lighted display areas shall not exceed thirty (32) square feet.

10.22.6. Signs in the Entry Corridor Overlay District. Signs within the Entry Corridor Overlay District shall comply with all sign regulations in Article 10 Part III except as modified in Article 10, Part IX Overlay Districts.

10.22.7. Wireless Communication Facility Signage. Refer to Article 10, Part VIII for requirements regarding wireless communication facilities.

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SECTION 10.23 SIGN ILLUMINATION AND SIGNS CONTAINING LIGHTS.

10.23.1. Unless otherwise prohibited by this chapter, signs may be illuminated if such illumination is in accordance with this section.

10.23.2. Illuminated signs shall comply with the maximum light levels of Part IV, Lighting Ordinance, Section 10.34.3.1.

10.23.3. Lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential premises.

10.23.4. Subject to Subsection 10.28.7, no sign may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity, except signs indicating the time, date, or weather conditions.

10.23.5. Subsections 10.23.1 and 10.22.4 do not apply to temporary signs or decorations erected or installed in connection with observance of holidays.

SECTION 10.24 PERMITTED DISTRICT SIGNS. (Note: Refer to Appendix A, Definitions for graphic examples of signs.)

10.24.1 Residential Development Identification Signs (R-6, R-8, R-10, R-20A, R-MH, PUD and Residential Conditional Zoning)

10.24.1.1 Required Signs. Residential development identification signs shall be required at a minimum of two entrances as applicable for all residential subdivision, multi-family development or manufactured home parks. Residential development identification signs shall be of a monument or wall sign design and shall not exceed 4 feet in total overall height and twenty-four (24) square feet in area per sign side. No more than two such signs shall be permitted at any entrance. Residential development identification signs shall not impede site distances and shall be no closer than 10 feet to a property or right-of-way line. All residential development identification signs and associated structure shall be in a designated sign easement and maintained by the development owner or owner's association.

10.24.1.2. Home Occupation Signs. Home occupations with a valid zoning permit are permitted one sign with an area of no greater than four (4) square feet. Home occupation signage shall be permanently fixed to the residence within which the home occupation resides.

10.24.1.3. Non-residential Uses in Residential Districts. For residentially zoned permitted nonresidential uses: Non-residential uses with a valid zoning permit may have one (1) freestanding sign or one (1) wall sign per zoning lot of no more than 32 square feet in area, with a maximum height of six (6) feet if ground mounted or no higher than the roof line if wall mounted.

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10.24.2. Single Tenant Business District Signs (O/I, B-1, B-2, B-3 and Business Conditional Zoning).

Permitted Sign Type(s)	Specific Applicability	Maximum Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall	Frontage on street, public parking area, common parking area in a planned shopping center or a public access walkway.	1 sq. ft. for each linear foot of wall frontage <u>or</u> 5% of wall whichever is greater	N/A	4
Small Wall Signage	Home occupation (O/I only)	4 sq. ft.	5 ft	1
Window	Businesses	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Businesses (excluding home occupations)	12 sq. ft. (total of 24 sq. ft.)	8 ft	1
Canopy or Awning	Businesses (excluding home occupations)	Copy area of the sign is limited to the drip flap. Logos may be placed on the awning itself.	---	1
FREESTANDING				
Monument or Ground Mounted	Nonresidential	Primary street: 75 sq. ft. Secondary street: 75 sq. ft.	6 ft	2
High-Rise	B-3 District within 660' of Interstate 95 (See Section (10.25)	400 per side	50 ft min.- 100 ft max.	1
Pole	(Refer to Section 10.23.6 and 10.23.8)	300 sq. ft.		

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10.24.3. Industrial District Signs (LI and HI).

Permitted Sign Type(s)	Specific Applicability	Maximum Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall	Frontage on street, public parking area, common parking area in a planned shopping center or a public access walkway.	1 sq. ft. for each linear foot of wall frontage <u>or</u> 5% of wall whichever is greater	N/A	4
Window	Businesses	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Businesses (excluding home occupations)	12 sq. ft. (total of 24 sq. ft.)	8 ft	1
Canopy or Awning	Businesses (excluding home occupations)	Copy area of the sign is limited to the drip flap. Logos may be placed on the awning itself.	---	1
FREESTANDING				
Monument or Ground Mounted	Nonresidential	100 sq. ft.	6 ft	1
Pole	HI district (refer to Section 10.25.2 and 10.23.7)	300 sq. ft.	(See Section 10.23.7)	

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10.24.4. Multi-tenant Business District Signs (O/I, B-1, B-2, and B-3)

Number of Outlets	Specific Applicability	Maximum Area	Maximum Height	Maximum Number
FREESTANDING				
Up to six outlets	Businesses	125 sq. ft.	15 ft	1 per street frontage
7-14 outlets	Businesses	150 sq. ft.	15 ft	1 per street frontage
15 or more outlets	Businesses	200 sq. ft.	15 ft	1 per street frontage
OUT PARCELS				
	Monument or ground mounted sign	75 sq. ft.	6 ft	1 per out parcel

Permitted Sign Type(s)	Specific Applicability	Maximum Area	Maximum Height	Maximum Number
BUILDING MOUNTED				
Wall	Front facades	1 sq. ft. for each linear foot of wall frontage <u>or</u> 5% of wall whichever is greater	N/A	N/A
Wall	Secondary to primary signage	1/2 sq. ft. for each linear foot of building facing side street and/or interior area of a planned building group	N/A	N/A
Window	Businesses	25% of first floor total building front facade window and/or door area	N/A	N/A
Projecting	Businesses (excluding home occupations)	12 sq. ft. (total of 24 sq. ft.)	8 ft	1
Canopy or Awning	Businesses (excluding home occupations)	Copy area of the sign is limited to the drip flap. Logos may be placed on the awning itself.	---	1

ARTICLE 10. PERFORMANCE STANDARDS

10.25 SUPPLEMENTAL SIGN STANDARDS FOR THE O/I, B-1, B-2, B-3, AND PUD DISTRICTS.

10.25.1 High-Rise Business Identification Signs (Single Tenant).

High-rise business identification signs may be permitted as a use by right for single tenant developments when located in the B-3 (Highway Entrance Business) zoning district and located within 660 feet of Interstate 95. A zoning permit may be granted providing the following minimum standards are met.

10.25.1.1 High-rise signs shall only advertise activities conducted on the property upon which it is located.

10.25.1.2 Maximum sign height shall not exceed a total height of 100 feet and shall be a minimum total height of at least 50 feet.

10.25.1.3 Maximum sign area shall not exceed 400 square feet of sign area per side.

10.25.1.4 No part of a high-rise sign shall be closer than 10 feet to a property line.

10.25.1.5 High-rise signs shall be free standing, ground mounted and of mono-pole design.

10.25.1.6 Only one high-rise identification sign may be permitted per property and is in addition to all other allowable signs.

10.25.2 POLE SIGNS (OUTDOOR ADVERTISING)

10.25.2.1 *General Provisions for Pole Signs.*

Following the effective date of this Ordinance, pole signs shall not be erected, or maintained in any zoning district except in compliance with the provisions set forth in this Section and with NCGS Article 11, Outdoor Advertising Act.

10.25.2.1.1 *Computation of Sign Area.* The area of the sign shall be considered to be that of the smallest rectilinear figure (but which shall have a continuous perimeter of not more than eight straight lines) which encompasses all lettering, wording, frame, design, or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts or extensions shall be included in the area of a sign but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction. Where three dimensional figures are used as or on signs, the area shall be the total of all sides made an integral part of the projected figure used in conveying the intended message.

10.25.2.1.2. *Encroachment into the Right-of-Way.* No part of any pole sign shall be located on or extended into a public right-of-way.

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10.25.2.1.3. Illumination. Sign illumination shall be in accordance with Section 10.23. Illuminated signs shall be subject to the following conditions: a) Any light used for the illumination shall be shielded so that the beams or rays of light will not shine directly into surrounding areas or on the public roadway; and b) Neither direct nor reflected light from any light source shall create a traffic hazard or distraction to operators of motor vehicles on public thoroughfares.

10.25.2.1.4 Visibility. No sign or structure shall be erected or maintained to impede safe and adequate visibility from vehicles or for pedestrians.

10.25.2.1.5 Extensions. No extension(s) shall be allowed beyond those dimensions for the sign area as initially permitted.

10.25.2.1.6 Stacking. Stacking of pole signs is not permitted.

10.25.2.2 Pole Sign, LED (Light Emitting Diodes). The use of LED or other similar technologies on pole signs shall be a permitted use by right in all zoning districts when adjacent to I-95. A zoning permit may be granted provided the following minimum standards are met.

10.25.2.2.1. The property on which the sign is to be located must be adjacent to I-95.

10.25.2.2.2 The sign cannot be located within six hundred sixty (660) feet of the edge of the right-of-way of I-95.

10.25.2.2.3 The sign shall comply with all regulations of the North Carolina Department of Transportation and with the North Carolina General Statutes.

10.25.2.2.4. No two (2) such LED pole signs shall be placed less than two thousand five hundred (2,500) feet apart; however, an LED pole sign may be allowed within five hundred (500) feet of a non-LED pole sign. Distance shall be measured as specified in North Carolina Administrative Code T19A:023.0200.

10.25.2.2.5. The sign shall be of monopole design and placed on the site so as to be viewed only from the corridor in which it is permitted.

10.25.2.2.6. Pole signs may not change content more than one (1) time within a thirty second period and the change must occur within a two (2) second period. All LED pole signs must be equipped to automatically turn off in case of malfunction.

10.25.2.2.7. No pole sign can project over any public right-of-way.

10.25.2.3. Pole Signs in the HI District on Property Adjacent to I-95.

Following the effective date of this Ordinance, pole signs shall not be erected, or maintained in any zoning district except in compliance with the provisions set forth in this Section. The following sign

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regulations shall be applicable within the HI district on properties adjacent to the I-95 corridor wherein pole signs are allowed. Any sign not specifically allowed is prohibited.

In the HI zoning district, pole signs are allowed subject to the restrictions set forth herein.

10.25.2.3.1. Size. No pole sign shall exceed 300 square feet per directional flow of traffic (300 square feet total per sign structure). A maximum of two faces per sign structure is allowed, positioned either back to back or V-shaped, such that only two faces are allowed per side. Both sides of a double-faced or V-shaped sign shall be of equal size. In no case shall there be more than two faces per directional flow of traffic.

10.25.2.3.2 Location. The property on which the sign is to be located must be adjacent to I-95.

10.25.2.3.3. Height. No pole sign located beyond 660 feet of the right-of-way of the I-95 corridor shall exceed 100 feet. Within 660 feet of the I-95 corridor and in the area between the I-95 and the CSX rights-of-way, the maximum sign height shall be 25 feet.

10.25.2.3.4 Spacing.

10.25.2.3.4.1 The minimum distance between any two sign structures shall be 1,000 linear feet on either side of the same street.

10.25.2.3.4.2 No pole sign shall be located within a 200-foot radius of a school, place of worship, public park, national park, and/or forestland(s) or bridge.

10.25.2.3.4.3 Except for pole signs permitted in Section 10.23.8, no pole sign shall be located within 75 feet of any intersection.

10.25.2.3.4.4 Except for pole signs permitted in Section 10.23.8, no pole sign shall be located within a 100-foot radius of residentially zoned property.

10.25.2.3.4.5. No pole sign shall be located within 50 feet of any building or on-premises sign.

10.25.2.3.4.5 Setback. Minimum setbacks from public right-of-way: _

10.25.2.3.4.5.1 For sign area of 0 to 75 square feet per face - 10 feet.

10.25.2.3.4.5.2 For sign area of 76 to 300 square feet per face - 20 feet. For all sign sizes, the minimum setback distances from all other property lines shall be ten feet.

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10.25.2.3.5.3. Pole Signs Per Parcel. There may not be more than two pole sign per parcel.

10.25.3. Pole Signs on Non-Industrial Commercial Property Adjacent to the I-95 Corridor.

10.25.3.1. Size. No pole sign shall exceed 300 square feet per directional flow of traffic (300 square feet total per sign structure). A maximum of two faces per sign structure is allowed, positioned either back-to-back or v-shaped, such that only two faces are allowed per side. Both sides of a double-faced or v-shaped sign shall be of equal size. In no case shall there be more than two faces per directional flow of traffic.

10.25.3.2. Pole Signs, Non-LED. Pole signs shall be a permitted use by right in all zoning districts when located on property adjacent to I-95. A zoning permit may be granted provided the following minimum standards are met.

10.25.3.2.1 The property on which the sign is to be located must be adjacent to I-95.

10.25.3.2.2. The sign cannot be located within six hundred sixty (660) feet of the edge of the right-of-way of I-95.

10.25.3.2.3. The sign shall comply with all regulations of the North Carolina Department of Transportation and with the North Carolina General Statutes.

10.25.3.2.4. No two (2) such structures shall be placed less than two thousand five hundred (2,500) feet apart. Distance shall be measured from center point to center point.

10.25.3.2.5. The sign shall be of monopole design and placed on the site so as to be viewed only from the corridor in which it is permitted. Sign height may not exceed one hundred (100) feet. The bottom of the sign must be at least fifty (50) feet above the base of the pole on which the sign is mounted.

10.25.4. Pole Sign, LED (Light Emitting Diodes). Pole signs utilizing LED or other similar technologies shall be a permitted use by right in all zoning districts when adjacent to I-95. A zoning permit may be granted provided the following minimum standards are met.

10.25.4.1. The property on which the sign is to be located must be adjacent to I-95.

10.25.4.2. The sign cannot be located within six hundred sixty (660) feet of the edge of the right-of-way of I-95.

10.25.4.3. The sign shall comply with all regulations of the North Carolina Department of Transportation and with the North Carolina General Statutes.

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10.25.4.4. No two (2) such LED pole signs shall be placed less than two thousand five hundred (2,500) feet apart; however, an LED pole sign may be allowed within five hundred (500) feet of a non-LED pole sign. Distance shall be measured from center point to center point.

10.25.4.5. The sign shall be of monopole design and placed on the site so as to be viewed only from the corridor in which it is permitted.

10.25.4.6. Pole signs may not change content more than one (1) time within a thirty second period and the change must occur within a two (2) second period. All LED pole signs must be equipped to automatically turn off in case of malfunction.

10.25.4.7. No pole sign can project over any public right-of-way.

SECTION 10.26 TEMPORARY SIGNS

10.26.1. Temporary Signs on Residential Lots.

Any ground/freestanding sign containing any lawful message on a residential lot may be erected subject to the following:

10.26.1.1. Maximum Number. One (1) sign per 100 feet or fraction thereof, of lot frontage of all adjacent public streets with a maximum of 3 signs per lot.

10.26.1.2. Size: Each sign shall not exceed 4 square feet in area, and 3 feet in height.

10.26.1.3. Maximum Duration: A temporary sign may be displayed up to 15 days prior to and 15 days following a specific event with which the sign is associated. Miscellaneous temporary use signs not tied to or connected to a specific event may be displayed for up to 60 calendar days without a sign permit.

10.26.1.4. Location. Temporary signs are not permitted in the public right-of-way. No off-premises commercial signage permitted.

10.26.2. Temporary Event Sign in O/I, B-1, B-2, B-3, PUD, LI, and HI Districts. One temporary sign may be displayed up to fifteen (15) days prior to and fifteen (15) days following the specific event with which the sign is associated, and no more than 60 calendar days per year. Such signs shall not exceed 32 square feet in area, six (6) feet in height and shall be located on the premise, set back 10' or more from any property line (Except in the B-1 District, such signs can be located at the property line).

10.26.3. Off Premise Temporary Event Signs are permitted in Commercial Districts associated

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with Town sponsored events. Such signs may be displayed up to fifteen (15) days prior to and fifteen (15) days following the specific event with which the sign is associated. Such signs shall not exceed 32 square feet in area, six (6) feet in height and located on public or private property, but not within the public right-of-way.

SECTION 10.27 SIGNS NOT REQUIRING A PERMIT

10.27.1. Commercial Sandwich Board Sign.

Limited to one sign per business, except restaurants and prepared food service establishments may have two (2) sandwich board signs. Signs shall be limited to a maximum height of four (4) feet and a maximum length of three (3) feet. Folding and double-faced signs shall be considered one (1) sign. Sandwich board signs shall not be located on any public right-of-way, except that where the edge of the right-of-way is the face of the building and where such building abuts a public sidewalk, such signage may be allowed as a right-of-way encroachment. Sign placement shall not impede movement on the sidewalk.

10.27.2 Construction Signs.

An on-site temporary sign identifying the names of the individuals and/or firms connected with the construction of an active project. Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the Town may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

10.27.3. Miscellaneous Exemptions.

10.27.3.1. Handicapped parking space signs: signs associated with the operation of equipment or other functional elements such as menu boards, automatic teller machines, gas pumps, vending machines, scoreboards, and similar incidental signs; signs visible only from the premises, markers which are non-commercial in nature.

10.27.3.2. Memorial signs, plaques or grave markers.

10.27.3.3. On-premises directional and instruction signs not exceeding four (4) square feet in area apiece.

10.27.3.4. Signs located within the interior of a business or operation.

10.27.3.5. Public interest signs (i.e., historical markers).

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10.27.3.6. Identification signs not exceeding three (3) square feet in area (one only per premises).

10.27.3.7. Address and name signs. Signs or plates on residential structures giving the name and/or address of the occupant.

10.27.3.8. Integral decorative or architectural features of buildings or works of arts, provided such features or works of art do not contain advertisements, trademarks, moving parts, or lights.

10.27.3.9. Displays, including lighting, erected in connection with the observance of holidays. Such displays shall not be considered as illuminated signs and they shall be removed within ten (10) days following the holiday.

10.27.3.10. Political signs erected in accordance with NC General Statutes §136-32 as follows:

10.27.3.10.1. During the period beginning on the 30th day before the beginning date of “one stop” early voting under NC General Statutes §163-227.2 and ending on the 10th day after the primary or election day, person may place political signs in the right-of-way of the State highway system or Town street as provided in this section. Signs must be placed in compliance with subsection 10.27.3.10.2 below and removed by the end of the period prescribed herein.

10.27.3.10.2. The permittee must obtain the permission of the property owner of a residence, business or religious institution fronting the right-of-way where a sign would be erected. Signs must be placed in accordance with the following:

10.27.3.10.2.1. No sign shall be permitted in the right-of-way of a fully controlled access highway.

10.27.3.10.2.2. No sign shall be closer than three (3) feet from the edge of the pavement of the road.

10.27.3.10.2.3. No sign shall obscure motorist visibility at an intersection.

10.27.3.10.2.4. No sign shall be larger than 864 square inches.

10.27.3.10.2.5. No sign shall obscure or replace another sign.

10.27.3.11. ID plaques of no more than four (4) square feet per business or tenant in non-residential zoning districts and signs of no more than two (2) square feet in area in residential zoning districts, including signs bearing only property identification numbers and names, post

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office box numbers of occupants of the premises, or other identification of premises so that public safety agencies can easily identify the property from a public street. In cases where the building is not located within view of the public street, the identifier shall be located on a mailbox or other suitable device visible from the street. Such signs shall not be illuminated. The size and location of the identifying numerals and letters (if any) must be proportional to the size of the building and the distance from the street to the building.

10.27.3.12. Ornamental signs not exceeding six (6) square feet are permitted in the B-2, B-3, L-I, and H-I zoning districts displayed on/attached to light poles located at least fifteen (15) feet from any public right-of-way.

10.27.3.13. Governmental Signs. Any sign, symbol or device erected and maintained by a federal state, county, or municipal government or any such governmental agency in the performance of their duties such as regulatory signs, identification/directional signs, welcome signs, legal notice signs and traffic control signs.

10.27.3.14. *Additional Subdivision Signage for New Developments*

10.27.3.14.1. *Surface Area:* Such signs may be no greater than 32 square feet in area and 6 feet in height.

10.27.3.14.2. *Maximum Number:* One sign is permitted for each entrance to the subdivision.

10.27.3.14.3. *Maximum Duration:* Such signs shall be removed when 85% of the lots have been sold or within 5 years of erection, whichever is less.

10.27.3.15. *Johnston County Community College Signs.* Such signs shall be setback 10 feet from public right-of-way.

SECTION 10.28 PROHIBITED SIGNS.

The following list of signs are prohibited in the town; any violation is subject to the regulations as stated in this Article.

10.28.1. No sign may be located so that it substantially interferes with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets or private roads.

10.28.2. Signs that revolve or are animated or that utilize movement or apparent movement to attract the attention of the public. Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion. This prohibition includes, but is not limited to, flutter flags and wind signs as defined in Appendix A.

10.28.3. No sign may be erected so that by its location, color, size, shape, nature, or message, it

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would tend to obstruct the view of or be confused with official traffic signs or other signs erected by governmental agencies. Signs displaying intermittent light resembling the flashing light customarily used in traffic signals, or used by police, fire, ambulance, or other emergency vehicles, nor shall any sign use the word "stop," "danger," or any other words, phrases, symbol, or character in a manner that might be construed as a public safety warning or traffic sign.

10.28.4. Signs which obstruct free ingress to or egress from a driveway or a required door, window, fire escape, or other required exit way.

10.28.5. No signs shall overhang or be erected in any public right-of-way. Traffic regulation, information, or warning signs erected by the State Department of Transportation, signs erected by the Town, or signs located in the B-1 district are exempt.

10.28.6. Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.

10.28.7. Flashing, fluttering, swinging, rotating signs (except governmental signs and signs, which give time and temperature and other commercial public information message).

10.28.8. Roof signs, or signs above the parapet of a building.

10.28.9. Electronic message boards in all Residential districts, except for permitted nonresidential uses in a Residential district.

10.28.10. Portable signs, except for "sandwich boards."

10.28.11. All Beacons and Spotlights. Illumination system(s) shall not contain or utilize any beacon, spot, search, or stroboscopic light or reflector which is visible from any public right-of-way or adjacent property, nor shall such lights be operated outside, under any circumstances, except by authorized agencies for emergency services purposes.

10.28.12. Flood lights shall not be utilized as a part of a sign illumination system which are not hooded or shielded so that the light source is not visible from any public right-of-way or adjacent property, nor shall any sign otherwise reflect or emit a glaring light so as to impair drivervision.

10.28.13. Any sign or sign structure that is structurally unsafe as determined by the Building Inspector.

10.28.14. Signs painted on or attached to trees, fences, or fence posts, and telephone or utility poles or signs on or attached to rocks or other natural features (snipe signs).

10.28.15. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign. This prohibition does not include temporary construction site vehicles on active construction sites.

10.28.16. Pole signs which are within 660 feet of the nearest edge of the right-of-way and visible from the maintained traveled way of the Federal Aid Primary and Interstate System, all as described in the Federal Highway Beautification Assistance Act of 1979, as amended, and which are constructed or erected on or after the effective date of this Section, unless excepted by NCGS 136-

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129 (see Appendix C). Provided, further, pole signs located specifically as described hereinbefore which were erected prior to the effective date of this Section are not prohibited from continuing, notwithstanding their non-conformance with regulations of this Section, other than conformance with the maintenance provisions set forth in Section 10.30 hereinafter.

10.28.17. Pavement markings except those of a customary traffic-control nature, as found in the Manual of Uniform Traffic Control Devices.

10.28.18. Off premise advertising signs except as permitted under Section 10.25.2.

10.28.19. Other signs not expressly permitted by this Ordinance.

SECTION 10.29 SIGN CONSTRUCTION.

All signs shall be designed, constructed and maintained in accordance with the following additional standards:

10.29.1.1 Except for permitted banners, flags, temporary signs, and window signs conforming in all respects with the requirements of this Unified Development Ordinance, all signs shall be constructed of permanent materials and shall be attached to the ground or building.

10.29.1.2. All signs allowed by this Section shall be constructed in accordance with the requirements of the North Carolina State Building Code.

SECTION 10.30 SIGN MAINTENANCE.

To ensure that signs are erected and maintained in a safe and aesthetic manner, it shall be unlawful for any sign designed to be visible from any public street or highway within the jurisdiction of the Town of Smithfield to be erected or maintained by any person, other than by a sign contractor properly licensed under Section 10.20.2 or by a designated representative of such licensed contractor, except that this requirement shall be interpreted to exclude those persons who construct and erect a principal use identification sign when said sign is used at said person's place of business and to exclude licensed general contractors erecting signs as part of a permitted construction or renovation project; provided, however, in all cases, all erection must be properly permitted and inspected for compliance with the applicable codes of the State of North Carolina and the Town of Smithfield and with other parts of this Article.

The following maintenance requirements must be observed for all signs visible from any public street or highway within the jurisdiction of this Article.

10.30.1. No sign shall have more than 20% of its surface area covered with disfigured, cracked, ripped, or peeling paint or poster paper for a period of more than 30 successive days.

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10.30.2. No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts or be allowed to stand more than 15 degrees away from the perpendicular for a period of more than 30 successive days.

10.30.3. No sign shall be allowed to have weeds, vines, landscaping, or other vegetation growing upon it and obscuring its view from the street or highway from which it is to be viewed for a period of more than 30 successive days.

10.30.4. No neon or internally illuminated sign may be allowed to stand with only partial illumination for a period of more than 30 successive days.

10.30.5. If a sign or sign structure is damaged such that more than 50% of the value is lost, with such determination made by the UDO Administrator, any repair or replacement must be done in conformance with this Section.

10.30.6 The UDO Administrator may inspect all signs for compliance with these maintenance requirements.

SECTION 10.31 NONCONFORMING SIGNS.

Refer to Article 9, Section 9.9 for nonconforming sign regulations.

SECTION 10.32 RECONSTRUCTION OF DAMAGED SIGNS OR SIGN STRUCTURES.

10.33.1. Any conforming sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within thirty (30) days and completed within sixty (60) days of such damage. However, if the sign should be declared unsafe by the UDO Administrator, the owner of the sign or the owner of record of the real property whereon the sign is located shall immediately correct all unsafe conditions in a manner satisfactory to the UDO Administrator.

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PART IV. LIGHTING ORDINANCE.

SECTION 10.34 OUTDOOR LIGHTING.

10.34.1. Intent and Purpose.

Outdoor lighting shall be designed to provide the minimum lighting necessary to ensure adequate safety, night vision, and comfort, and not create or cause excessive glare onto adjacent properties and public street rights-of-way.

10.34.2. Light Measurement Technique.

Light level measurements shall be made at the property line of the property upon which the light to be measured is being generated. If measurement on private property is not possible or practical, light level measurements may be made at the boundary of the public street right-of-way that adjoins the property of the complainant or at any other location on the property of the complainant. Measurements shall be made at finished grade (ground level), with the light-registering portion of the meter held parallel to the ground pointing up. The meter shall have cosine and color correction and have an accuracy tolerance of no greater than plus or minus five percent. Measurements shall be taken with a light meter that has been calibrated within the year. Light levels are specified, calculated, and measured in footcandles (FC). All FC values below are maintained footcandles.

10.34.3. General Standards for Outdoor Lighting.

10.34.3.1. Unless otherwise specified in Sections 10.34.4 through 10.34.9 below, the maximum light level shall be 0.5 maintained footcandle at any property line in a residential district, or on a lot occupied by a dwelling, congregate care, or congregate living structure, and 2.0 maintained footcandle at any public street right-of-way, unless otherwise approved by the Planning Board and Town Council.

10.34.3.2. All flood lights shall be installed such that the fixture shall be aimed down at least 45 degrees from vertical, or the front of the fixture is shielded such that no portion of the light bulb extends below the bottom edge of an external shield. Flood lights and display lights shall be positioned such that any such fixture located within 50 feet of a public street right-of-way is mounted and aimed perpendicular to the right-of-way, with a side-to-side horizontal aiming tolerance not to exceed 15 degrees from perpendicular to the right-of-way.

10.34.3.3. All flood lamps emitting 1,000 or more lumens shall be aimed at least 60 degrees down from horizontal, or shielded such that the main beam from the light source is not visible from adjacent properties or the public right-of-way.

10.34.3.4. All wall pack fixtures shall be cutoff fixtures.

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10.34.3.5. Service connections for all freestanding fixtures installed after application of this Ordinance shall be installed underground.

10.34.3.6. Within the B-3 district, all outdoor lighting fixtures shall be at minimum semi-cutoff fixtures.

10.34.3.7. All light fixtures installed by public agencies, their agents, or contractors for the purpose of illuminating public streets are otherwise exempt from this regulation. For regulations regarding Street Lighting, see Section 10.35.

10.34.4. Lighting in Parking Lots and Outdoor Areas.

10.34.4.1. Other than flood lights and flood lamps, all outdoor area and parking lot lighting fixtures of more than 2,000 lumens shall be cutoff fixtures, or comply with subsection 10.34.4.3.

10.34.4.2. The mounting height of all outdoor lighting, except outdoor sports field lighting and outdoor performance area lighting, shall not exceed 41 feet above finished grade, unless approved by the Planning Board and Town Council as having no adverse effect.

10.34.4.3. Exceptions:

10.34.4.3.1. Non-cutoff fixtures may be used when the maximum initial lumens generated by each fixture shall not exceed 9,500 initial lamp lumens per fixture.

10.34.4.3.2. All metal halide, mercury vapor, fluorescent, induction, white high pressure sodium, and color improved high pressure sodium lamps used in non-cutoff fixtures shall be coated with an internal white frosting inside the outer lamp envelope.

10.34.4.3.3. All metal halide fixtures equipped with a medium base socket must utilize either an internal refractive lens or a wide-body refractive globe.

10.34.4.3.4. All non-cutoff fixture open-bottom lights shall be equipped with full cutoff fixture shields that reduce glare and limit uplight.

10.34.5. Lighting for Vehicular Canopies.

Areas under a vehicular canopy shall have a maximum point of horizontal illuminance of 24 maintained footcandles (FC). Areas outside the vehicular canopy shall be regulated by the standards of Section 10.34.4 above. Lighting under vehicular canopies shall be designed so as not to create glare off-site. Acceptable methods include one or more of the following:

10.34.5.1. Recessed fixture incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the vehicular canopy.

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10.34.5.2. Light fixture incorporating shields, or shielded by the edge of the vehicular canopy itself, so that light is restrained to five degrees or more below the horizontal plane.

10.34.5.3. Surface mounted fixture incorporating a flat glass that provides a cutoff fixture or shielded light distribution.

10.34.5.4. Surface mounted fixture, typically measuring two feet by two feet, with a lens cover that contains at least two percent white fill diffusion material.

10.34.5.5. Indirect lighting where light is beamed upward and then reflected down from the underside of the vehicular canopy. Such fixtures shall be shielded such that direct illumination is focused exclusively on the underside of the vehicular canopy.

10.34.5.6. Other methods approved by the Planning Board.

10.34.6. Outdoor Sports Field/Outdoor Performance Area Lighting.

10.34.6.1. The mounting height of outdoor sports field and outdoor performance area lighting fixtures shall not exceed 80 feet from finished grade unless approved by the Planning Board and Town Council as having no adverse effect.

10.34.6.2. All outdoor sports field and outdoor performance area lighting fixtures shall be equipped with a glare control package (louvers, shields, or similar devices). The fixtures must be aimed so that their beams are directed and fall within the primary playing or performance area.

10.34.6.3. The hours of operation for the lighting system for any game or event shall not exceed one hour after the end of the event.

10.34.7. Lighting of Outdoor Display Areas.

10.34.7.1. Parking lot outdoor areas shall be illuminated in accordance with the requirements for Section 10.34.4 above. Outdoor display areas shall have a maximum point of illuminance of 24 maintained footcandles (FC).

10.34.7.2. All light fixtures shall meet the IESNA definition of cutoff fixtures. Forward throw fixtures (type IV light distribution, as defined by the IESNA) are required within 25 feet of any public street right-of-way. Alternatively, directional fixtures (such as flood lights) may be used provided they shall be aimed and shielded in accordance with Section 10.34.3.1 and 10.34.3.2 of this Ordinance.

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10.34.7.3. The mounting height of outdoor display area fixtures shall not exceed 41 feet above finished grade, unless approved by the Planning Board and Town Council as having no adverse effect.

10.34.8. Sign Lighting.

Lighting fixtures illuminating signs shall be aimed and shielded so that direct illumination is focused exclusively on the sign.

10.34.9. Lighting of Buildings and Landscaping.

Lighting fixtures shall be selected, located, aimed, and shielded so that direct illumination is focused exclusively on the building facade, plantings, and other intended site feature and away from adjoining properties and the public street right-of-way.

10.34.10. Permits.

The applicant for any permit required for work involving outdoor lighting shall submit documentation at time of site plan or plot plan approval that the proposed lighting plan complies with the provisions of this Ordinance. The submission shall contain, but not be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in this Ordinance:

10.34.10.1. A point-by-point footcandle array in a printout format indicating the location and aiming of illuminating devices. The printout shall indicate compliance with the maximum maintained footcandles required by this Ordinance.

10.34.10.2. Description of the illuminating devices, fixtures, lamps, supports, reflectors, poles, raised foundations and other devices (including but not limited to manufacturers or electric utility catalog specification sheets and/or drawings, and photometric report indicating fixture classification [cutoff fixture, wall pack, flood light, etc.]).

The Administrator or his/her designee(s) may waive any or all of the above permit requirements, provided the applicant can otherwise demonstrate compliance with this Ordinance.

10.34.11. Nonconformities.

10.34.11.1. Following application of this regulation, the installation of outdoor lighting, replacement of outdoor lighting, and changes to existing light fixture wattage, type of fixture, mounting, or fixture location shall be made in strict compliance with this Ordinance. Routine maintenance, including changing the lamp, ballast, starter, photo control, fixture housing, lens and other required components, is permitted for all existing fixtures not subject to subsection 10.34.11.2 below.

10.34.11.2. All outdoor lighting that fails to conform with Section 10.34.3 above which is either located in a residential zoning district or which affects a lot occupied by a dwelling,

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congregate care, or congregate living structure located in a residential zoning district shall be discontinued, removed, or made to conform with Section 10.34.3 within 5-1/2 years from the effective date of this provision.

SECTION 10.35 STREET LIGHTING.

10.35.1. Policy Purpose.

The purpose of this section is to establish an official policy for the Town of Smithfield pertaining to the installation of street lights for the purposes of traffic safety and crime control.

10.35.2. Coverage.

This Article, upon adoption, shall apply to all public rights-of-way within the municipal limits and the ETJ of the Town of Smithfield and any public rights-of-way annexed in the future until such time that this section is altered, modified, or rescinded by the Town Council.

10.35.3. Policy.

The Town Council of the Town of Smithfield hereby establishes the following:

10.35.3.1. The owner, developer, or subdivider of a site plan or subdivision shall be required to install street lighting via underground distribution unless specifically approved otherwise by the Town Council, along all proposed streets and along all adjoining existing streets and thoroughfares in accordance with this section.

10.35.3.2. Through the site plan and subdivision plan approval process, the Town Council may approve street lighting which exceeds the standard Town requirements for residential streets so as to reduce the length of sag vertical curves provided the street lights are operational prior to the issuance of any Certificates of Occupancy on such street. In any case, the minimum allowable length of sag vertical curves shall be as follows: residential streets - 20A; cul-de-sacs and loop roads - 15A.

10.35.3.3. All underground electrical distribution systems for street lighting within the corporate limits of the Town of Smithfield and its extraterritorial planning jurisdiction shall be installed according to the following standards:

10.35.3.3.1. Underground service for light fixtures shall be installed by the developer in conformance with Progress Energy and Town of Smithfield standards at the developer's expense.

10.35.3.3.2. The placement of street lighting fixtures in residential areas shall be at 400 to 600 foot intervals unless:

10.35.3.3.2.1. The roadway length is less than 400 feet but more than 200 feet in which case a street light will be provided at the end of the street; or

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10.35.3.3.2.2. Where the roadway length is less than 200 feet and a street light is placed at the intersection and no natural features create a problem, no street light will be placed at the end of the roadway; or

10.35.3.3.2.3. The vertical and horizontal street alignment or natural features necessitate shorter spacing intervals.

10.35.3.3.3. The placement of street lighting along thoroughfares, marginal access streets, and collector streets and in nonresidential areas shall be in accordance with the latest revision of the Illuminating Engineering Society's American National Standards for Roadway Lighting.

10.35.3.3.4. A street light shall be provided at all street intersections.

10.35.3.4. Street light fixtures shall conform to the following:

10.35.3.4.1. All fixtures in residential areas shall be either 5,800 or 9,500 lumen enclosed high pressure sodium lamps on standard Progress Energy or Town of Smithfield poles 25 feet in height. The 5,800 lumen fixture shall be placed only at the "neck" of cul-de-sacs.

10.35.3.4.2. All fixtures along thoroughfares shall be 28,500 lumen enclosed high pressure sodium lamps on Progress Energy or Town of Smithfield standard fiberglass poles 30 feet in height or 50,000 lumen enclosed high pressure sodium lamps on Progress Energy or Town of Smithfield standard fiberglass poles 35 feet in height. The 28,500 lumen fixtures shall be placed in residential areas when spillover from the 50,000 lumen fixtures would be excessive.

10.35.3.5. Authorization for street light installations shall occur at such time as:

10.35.3.5.1. A developer, through the Town of Smithfield, requests the installation of street lights prior to the issuance of any Certificates of Occupancy. The developer shall incur a monthly electrical expense billed from Progress Energy or the Town of Smithfield equal to the monthly electrical expense incurred by the Town of Smithfield, for each street light installed. The developer will be billed by Progress Energy or the Town of Smithfield for the period beginning with installation of the street light and ending with notification to the Town of Smithfield, by the Developer, of issuance of a Certificate of Occupancy in the immediate area of each street light location, or

10.35.3.5.2. A Certificate of Occupancy is issued in the immediate area of the proposed street light location, or

10.35.3.5.3. A thoroughfare, marginal access street, or collector street is constructed or widened as a part of development. Thoroughfares, marginal

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access streets, and collector streets that are constructed or widened by the Town of Smithfield shall be lighted immediately after construction, dependent on the availability of funds.

10.35.3.6. Street lighting facilities and street lights shall be installed by the developer on any roadway, portion of roadway, or widening prior to the Town of Smithfield's acceptance of that roadway for routine maintenance unless otherwise approved by the Public Works Director.

10.35.3.7. Residents along a street may request the relocation of a street light provided that the proposed street light location meets Town standards and the relocation is approved by the Public Works Director. Residents living at the cul-de-sac end of a street may request the replacement of an existing 9,500 lumen semi-enclosed light fixture with a 5,800 lumen semi-enclosed light fixture. A petition, signed by all persons owning property fronting on the street within the boundaries of the next closest installed or proposed street lights, shall be required. Also, the relocation or replacement cost and all facilities abandonment costs must be paid in full to Progress Energy or the Town of Smithfield in advance by the resident(s) requesting the relocation or replacement.

10.35.3.8. A developer may request to use decorative or "private" street lighting within a development provided:

10.35.3.8.1. Street light fixture types and locations must meet the minimum criteria set forth in this Article and must be approved by the Town of Smithfield.

10.35.3.8.2. The developer and/or Homeowner's Association shall be responsible for all installation costs and monthly operating costs above what is accepted by policy of the Smithfield Town Council associated with the streetlights.

10.35.3.8.3. The developer and/or Homeowner's Association shall be responsible for any costs associated with deletion of the street lights and any costs associated with installing the Town's standard street lights.

10.35.3.8.4. The developer shall include all responsibilities of the Homeowner's Association pertaining to the street lighting in the development covenants. The developer shall inform all purchasers of property in the development of these same responsibilities.

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PART V. TRAFFIC IMPACT STUDY.

SECTION 10.36 PURPOSE.

The traffic impact study will enable the Town of Smithfield to assess the impact of a proposed special use permit or development on the highway system when that system is at or near capacity or a safety problem exists. Its purpose is to insure that proposed developments do not adversely affect the highway network and to identify any traffic problems associated with access from the site to the existing transportation network. The purpose of the study is also to identify solutions to potential problems and to present improvements to be incorporated into the proposed development.

SECTION 10.37 CONDUCT.

A traffic impact study shall be prepared by a qualified professional traffic engineer and/or certified transportation planner with previous traffic study experience. The procedures and standards for the traffic impact study are set forth in Section 10.40 of this Ordinance.

Prior to the preparation of a traffic impact study, a scoping meeting shall be held, including the planning staff, the applicant, and the preparer of the study. The discussion at this meeting should set the study parameters, including the study area, planned and committed roadway improvements (by NCDOT or others), road links and intersections to be analyzed, preliminary traffic distribution, other planned developments to be considered, traffic growth rate, available data, periods for which analysis is to be performed, and other staff concerns. The qualifications of the preparer may be discussed at or prior to this meeting.

SECTION 10.38 APPLICABILITY.

Except as described below, a traffic impact study shall be required for all special use permits and site plans that meet the following criteria:

- *Special Use Permit.* Estimated traffic generated by the permit exceeds 800 trips/day.
- *Major Site Plans.* Estimated traffic generated by the development exceeds 800trips/day.
- *Single-Family Residential.* Estimated traffic generated by the developmentexceeds 800 trips/day.
- *Planned Unit Development.* Estimated traffic generated by the development exceeds 800 trips/day.

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Special use permits or major site plans/subdivisions that produce more than 800 trips per day traffic may be exempted from the requirements to prepare and submit a traffic impact study if: (1) a traffic impact study has previously been prepared for this particular project or development, and (2) there is to be no change in land use or density that would increase travel, (3) there is to be no change in access to the external street system, or (4) material is submitted to demonstrate that traffic created by the proposal when adding to existing traffic will not result in a need for transportation improvements. The Planning Board and Town Council will review material submitted in support of an exemption and will determine from that material whether or not to grant the exemption. All exemptions shall be concurred with by the NCDOT District 3 Office. If an exemption is granted, documentation of the exemption will be submitted as part of the staff recommendation.

If the project is reviewed as a Planned Unit Development, only one traffic impact study is required for a special use permit.

SECTION 10.39 CAPACITY ANALYSIS OF THE EXISTING SYSTEM.

An indication of the adequacy of the existing street system is a comparison of traffic volumes versus the ability of the streets to move traffic freely at a desirable speed. The ability of a street to move traffic freely, safely, and efficiently with a minimum delay is controlled primarily by the spacing of major devices utilized. Thus, the ability of a street to move traffic can be increased by restricting parking and turning movements, using proper sign and signal devices, and by the application of other traffic engineering strategies.

Capacity is the maximum number of vehicles which has a "reasonable expectation" of passing over a given section of roadway, during a given time period under prevailing roadway and traffic conditions. The relationship of traffic volumes to the capacity of the roadway will determine the level of service (LOS) being provided. Six levels of service have been selected for analysis purposes. They are given letter designations from A to F with LOS A representing the best operating conditions and LOS F the worst.

10.39.1. LOS A.

Describes primarily free flow conditions. The motorist experiences a high level of physical and psychological comfort. The effects of minor incidents of breakdown are easily absorbed. Even at the maximum density, the average spacing between vehicles is about 528 feet or 26 car lengths.

10.39.2. LOS B.

Represents reasonably free flow conditions. The ability to maneuver within the traffic stream is only slightly restricted. The lowest average spacing between vehicles is about 330 feet or 18 car lengths.

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10.39.3. LOS C.

Provides for stable operations, but flows approach the range in which small increases will cause substantial deterioration in service. Freedom to maneuver is noticeably restricted. Minor incidents may still be absorbed, but the local decline in service will be great. Queues may be expected to form behind any significant blockage. Minimum average spacings are in the range of 220 feet or 11 car lengths.

10.39.4. LOS D.

Borders on unstable flow. Density begins to deteriorate somewhat more quickly with increasing flow. Small increases in flow can cause substantial deterioration in service. Freedom to maneuver is severely limited, and the driver experiences drastically reduced comfort levels. Minor incidents can be expected to create substantial queuing. At the limit, vehicles are spaced at about 165 feet or nine car lengths.

10.39.5. LOS E.

Describes operation at capacity. Operations at this level are extremely unstable, because there are virtually no usable gaps in the traffic system. Any disruption to the traffic stream, such as a vehicle entering from a ramp, or changing lanes, requires the following vehicles to give way to admit the vehicle. This can establish a disruption wave that propagates through the upstream traffic flow. At capacity, the traffic stream has no ability to dissipate any disruption. Any incident can be expected to produce a serious breakdown with extensive queuing. Vehicles are spaced at approximately six car lengths, leaving little room to maneuver.

10.39.6. LOS F.

Describes forced or breakdown flow. Such conditions generally exist within queues forming behind breakdown points.

SECTION 10.40 GENERAL REQUIREMENTS AND STANDARDS.

The traffic impact study shall contain the following information:

10.40 General Site Description.

The site description shall include the size, location, proposed land uses, number of units and gross square footage by land use, existing land use and zoning, construction staging, and completion date of the proposed land development to the extent known or able to be described at the time the application is prepared. If the development is residential, types of dwelling units and number of bedrooms shall also be included. A brief description of other major existing and proposed land developments within the study area shall be provided. The general site description shall also include probable socio-economic characteristics of potential site users to the extent that they may affect the transportation needs of the site (i.e., number of senior citizens).

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10.40.1. Transportation Facilities Description.

The description shall contain a full documentation of the proposed internal and existing external transportation system. This description shall include proposed internal vehicular, bicycle, and pedestrian circulation; all proposed ingress and egress locations; all internal roadway widths and rights-of-way, turn lanes, parking conditions, traffic channelizations; and any traffic signals or other intersection control devices at all intersections within the site.

The report shall describe the entire external roadway system within the study area. Major intersections in the study area and all intersections or driveways adjacent to or within 800 feet of the site shall be identified and sketched. All existing and proposed public transportation services and facilities within one-mile of the site shall also be documented. Future highway improvements, including proposed construction and traffic signalization, shall be noted. All proposed traffic signals shall be approved by the NCDOT District 3 Office. This information shall be obtained from North Carolina's Transportation Improvement Program and the Smithfield Thoroughfare Plan. Any proposed roadway improvements due to proposed surrounding developments shall also be noted.

10.40.2. Existing Traffic Conditions.

Existing traffic conditions shall be documented for all roadways and intersections in the study area. This shall include documentation of traffic accident counts as recorded by the NC Department of Transportation District Engineers Office, Town law enforcement, and the NC Highway Patrol. Existing traffic volumes for average daily traffic, peak highway hour(s) traffic, and peak development generated hour(s) traffic, if appropriate, shall be recorded. Manual traffic counts at major intersections in the study area shall be conducted, encompassing the peak highway and development generated hour(s), if appropriate, and documentation shall be included in the report. Existing average daily or peak-hour traffic counts made within one year of the study date may be used subject to Administrator approval. A volume/capacity analysis based upon existing volumes shall be performed during the peak highway hour(s) and the peak development generated hour(s), if appropriate, for all roadways and major intersections expected to be impacted by development traffic. Levels of service shall be determined for each signalized intersection or roadway segment analyzed above.

This analysis will determine the adequacy of the existing roadway system to serve the current traffic demand. Roadways and/or intersections experiencing levels of service E or F shall be noted as congestion locations (see Section 10.41).

10.40.3. Transportation Impact of the Development.

Estimation of vehicular trips to result from the proposed development shall be completed for the average weekday, the average daily peak hours of highway travel in the study area, and if appropriate, the peak hour of traffic generation by the development. Vehicular trip generation rates to be used for this calculation shall be obtained from an accepted source such as "Trip Generation" (Institute of Transportation Engineers, Fourth Edition, 1987 as amended). These development-generated traffic movements, as estimated, and the reference source(s) and methodology followed shall be documented. These generated volumes shall be distributed to

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the study area and assigned to the existing roadways and intersections throughout the study area. Documentation of all assumptions used in the distribution and assignment phase shall be provided. All average daily traffic link volumes within the study area shall be shown graphically. Peak hour turning movement volumes shall be shown for signalized and other major intersections, including all access points to the development. Pedestrian and bicycle volumes at school crossings and as otherwise applicable shall be reported. Any characteristics of the site that will cause trip generation to vary significantly from average rates available in published sources shall be documented, including such factors as diversion of passer-by traffic, internal capture, staggered work hours, or use of transit.

10.40.4. Analysis of Transportation Impact.

The total traffic demand that will result from construction of the proposed development shall be calculated. This demand shall consist of the combination of the existing traffic, traffic generated by the proposed development, and traffic due to other developments and other growth in traffic that would be expected to use the roadway at the time the proposed development is completed. If staging of the proposed development is anticipated, calculations for each stage of completion shall be made. This analysis shall be performed for average weekday traffic, the peak highway hour(s) and, if appropriate, peak development-generated hour(s) for all roadways and major intersections in the study area. Volume/capacity calculations shall be completed for all major intersections. It is usually at these locations that capacity is most restricted.

All access points and pedestrian crossings shall be examined for adequate sight distance and for the necessity of installing traffic signals. The traffic signal evaluation shall compare the projected traffic and pedestrian volumes to the warrants for traffic signal installation.

10.40.5. Conclusions and Recommended Improvements.

Levels of service for all roadways and signalized intersections serving 10% or more of peak-hour project traffic shall be reported. All roadways and/or signalized intersections showing a level of service below D in urban or developed areas or below C in rural areas shall be considered deficient, and specific recommendations for the elimination of these problems shall be listed (see Section 10.41). This listing of recommended improvements shall include, but not be limited to, the following elements: internal circulation design, site access location and design, external roadway and intersection design and improvements, traffic signal installation and operation including signal timing, and transit service improvements. All physical roadway improvements shall be shown on the site plan.

SECTION 10.41 SUBMISSION AND IMPLEMENTATION.

The traffic impact study will be submitted to the Administrator within the applicable time frame indicated below. The Administrator will review the study as part of the development review process. Recommendations will be incorporated into the approval process as indicated below.

10.41.1. Special Use Permits.

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10.41.1.1. Time of Submission. The traffic impact study shall be submitted to the Administrator with, and as a part of, the application for the special use permit.

10.41.1.2. Implementation. The Administrator and such other agencies or officials as may appear appropriate in the circumstances of the case shall review the impact study to analyze its adequacy in solving any traffic problems that will occur due to the proposed use.

The Town Council or Board of Adjustment, as appropriate, shall consider the impact study and the analysis of the impact study before the application is approved or denied. The Town Council or Board of Adjustment, as appropriate, may decide that certain improvements on or adjacent to the site or on roadways or intersections for which the improvements are needed to adequately and safely accommodate site traffic are mandatory for special use permit approval and may make these improvements conditions of approval, may require modifications in the use, or may deny the permit.

10.41.2. Site Plan Approval.

10.41.2.1. Time of Submission. The traffic impact study will be submitted to the Administrator with, and as a part of, the site plan.

10.41.2.2. Implementation. The Administrator and such other agencies or officials as may appear appropriate in the circumstances of the case shall review the impact study to analyze its adequacy in solving any traffic problems that will occur due to development proposed on the site plan. The Administrator may recommend that certain improvements on or adjacent to the site or on roadways or intersections for which the improvements are needed to adequately and safely accommodate site traffic are mandatory for site plan approval and may require these improvements to be on the approved site plan.

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PART VI. STORMWATER MANAGEMENT.

SECTION 10.42 PURPOSE.

The purpose of this Article is to establish minimum criteria to control and minimize quantitative and qualitative impacts of stormwater runoff from development within the Town of Smithfield, a nutrient management program for new development in accordance with 15A NCAC 2B.0235 Neuse River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements.

Further, prudent site planning should include special consideration for the purposes of preserving natural drainage ways, maximizing infiltration, and slowing stormwater runoff from individual sites in route to streams and rivers by use of effective runoff management, structural and non-structural best management practices, drainage structures, and stormwater facilities.

SECTION 10.43 APPLICABILITY; EXCEPTIONS TO APPLICABILITY.

10.43.1. The provisions of this section shall apply to all areas within the planning jurisdictional limits of the Town of Smithfield, unless exempt as provided in Section 10.43.2.

10.43.2. The provisions of this section shall not apply to:

10.43.2.1. Developers/property owners that can demonstrate that they have vested rights as of the adoption date of the revised stormwater ordinance shall be exempt from the revised stormwater ordinance.

10.43.2.2. Developments that meet one of the following requirements shall be exempt from storm attenuation:

10.43.2.2.1. There is no increase in peak flow between pre- and post-development conditions; or

10.43.2.2.2. The proposed development meets all of the following criteria: overall impervious surface is less than fifteen (15) percent and the pervious portions of the site are utilized to the extent practical to convey and control stormwater runoff.

10.43.2.3. The nutrient management and/or reduction requirements of this Ordinance are required in all developments of one acre or more whether or not the development is exempt from further requirements. NOTE: Nutrient management and/or reduction shall be required.

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SECTION 10.44 INTERPRETATION.

10.44.1. In interpreting and applying this section, the requirements are intended to be minimum requirements, which are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements.

10.44.2. This section shall not be deemed to interfere with or annul or otherwise affect in any manner whatsoever any ordinance, rules, regulations, permits, or easements, covenants, or other agreements between parties, provided, however, that where this section imposes greater restrictions and controls with respect to stormwater management, the provisions of this section shall prevail.

SECTION 10.45 STORMWATER PERMIT APPLICATION PROCESS.

10.45.1. Except where provided elsewhere, land-disturbing activities shall not commence without obtaining a stormwater permit pursuant to the provisions of this section and the stormwater design manual.

10.45.2. The stormwater permit application shall be made by, or on behalf of, the owner(s) or developer(s) of the site for which the permit is sought. The application shall be filed with the town on a form supplied by the town and shall be accompanied with the information identified in the stormwater design manual.

10.45.3. A stormwater permit shall not be issued until the following conditions are met:

10.45.3.1. Approval of the stormwater management plan by the UDO Administrator.

10.45.3.2. Submission and approval of any required easements and impervious area statements on a map to be recorded.

10.45.3.3. Submission and approval of any required inspection and maintenance agreement and/or escrow account or other legal instrument established to ensure long-term maintenance of BMPs.

10.45.3.4. Payment of all fees.

10.45.4. If the development requires approval of an erosion and sediment control plan, the stormwater permit will be conditional upon the owner receiving such erosion and sediment control approval.

10.45.5. The stormwater permit will be valid for one year from the date of issuance or until significant changes in the development are made that change the intent of the permit. The UDO

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Administrator shall determine significant changes. If significant changes are made, the original stormwater permit shall not be valid, and a new permit shall be required.

SECTION 10.46 FEES.

A list of fees associated with this section is available at the planning department in the Smithfield Town Hall.

SECTION 10.47 STORMWATER MANAGEMENT AND PLANS.

10.47.1. Stormwater shall be conveyed from developments in an adequately designed drainage system of natural drainage ways, grass swales, storm sewers, culverts, inlets, and channels. Drainage systems shall be designed, constructed, and maintained to encourage natural infiltration, control velocity, control flooding, and extend the time of concentration of stormwater runoff. The UDO Administrator shall determine adequacy of the stormwater drainage system.

10.47.2. The post-development runoff rate for the two-year storm event shall be attenuated to the predevelopment runoff rate for the two-year storm.

10.47.3. The nitrogen loading contributed by new development shall be restricted to 3.6 pounds of nitrogen per acre per year. Methodologies for determining nitrogen loading are outlined in the stormwater design manual.

10.47.4. A developer has the option of offsetting the nitrogen loading from a development by paying into the state wetlands restoration program. Procedures for offset payments are outlined in the stormwater design manual. When using the offset payment, the total nitrogen loading from a development shall not exceed 6.0 pounds per acre per year for residential development and ten pounds per acre per year for nonresidential development.

10.47.5. Stormwater management plans shall:

10.47.5.1. Include drawings, maps, supporting calculations, specifications, and summaries as outlined in the stormwater design manual.

10.47.5.2. Demonstrate through accepted engineering practices described in the stormwater design manual the impacts of the proposed development. Impacts of the proposed development shall include:

10.47.5.2.1. Effects on existing upstream and/or downstream drainage systems and property;

10.47.5.2.2. Ability of the natural drainage way to handle additional stormwater runoff; and

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10.47.5.2.3. Site-specific criteria supporting the analysis of any impacts noted in subsections 10.47.5.2.1 and 10.47.5.2.2 above.

10.47.5.3. Demonstrate through accepted engineering practices described in the stormwater design manual that stormwater runoff is adequately conveyed through the development in a drainage system designed to meet the criteria described in the stormwater design manual.

10.47.5.4. Demonstrate through accepted engineering practices described in the stormwater design manual that stormwater facilities required to control the impacts of the development are designed to meet the criteria described in the stormwater design manual.

10.47.5.5. Demonstrate that the nitrogen loading from the new development does not exceed the limits set forth in Section 10.47.3.

10.47.5.6. For new construction, prior to the issuance of a certificate of occupancy, the engineer's certificate of completion and compliance for the constructed BMP will be required.

SECTION 10.48 MAINTENANCE AGREEMENT.

A written inspection and maintenance agreement in a form acceptable to the town attorney and executed by the applicant and the owner(s) of the BMP, if different than the applicant, shall be provided prior to receiving a stormwater permit. The agreement shall:

10.48.1. Bind the parties thereto and all subsequent owners, successors, and assigns to maintenance and inspection of the system or structure;

10.48.2. State that if the town directs the correction, repair, replacement, or maintenance of the system or structure in writing and the actions are not satisfactorily performed within a reasonable time (but not greater than one hundred twenty [120] days), the town (or its contractors) may, after reasonable notice, enter the land and perform all the necessary work and may assess the owner(s) of the facility with the cost of the work performed or the town can seize all or part of the escrow or other fund set aside by the applicant for perpetual maintenance. The owner(s) served by the facility shall be jointly responsible to the town for the maintenance of the facility and liable for any costs incurred by the town pursuant to the said agreement. All properties are jointly subject to the imposition of the liens for said costs.

10.48.3. The inspection and maintenance agreement shall be recorded in the register of deeds at the expense of the applicant.

SECTION 10.49 EASEMENTS.

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Easements for stormwater BMPs shall include the area of the BMP, area of ponded water, and enough area for access and maintenance from a public right-of-way. The easement shall be recorded in the register of deeds at the expense of the applicant and shall be depicted on the final plat or recorded map.

SECTION 10.50 ILLEGAL DISCHARGE.

No person shall cause or allow the discharge, disposal, pouring or pumping directly or indirectly to any stormwater conveyance structure, stormwater conveyance system, stream, lake, pond, wetland, or other body of water, or upon the land in proximity to the same, any fluid, solid, or other substance (other than stormwater). Prohibited substances include, but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter. Examples of illegal discharges are:

- 10.50.1.** Dumping of oil, anti-freeze, paint or cleaning fluids;
- 10.50.2.** Untreated commercial carwash wash water;
- 10.50.3.** Industrial challenges;
- 10.50.4.** Contaminated foundation drains;
- 10.50.5.** Cooling waters, unless no chemicals added and has valid NPDES permit;
- 10.50.6.** Wash water from commercial and industrial activities;
- 10.50.7.** Chlorinated backwash and draining associated with swimmingpools;
- 10.50.8.** Domestic wastewater;
- 10.50.9.** Septic system effluent;
- 10.50.10.** Washing machine discharges.

SECTION 10.51 ALLOWABLE DISCHARGES.

Examples of allowed discharges are:

- 10.51.1.** Water line flushing;
- 10.51.2.** Irrigation;
- 10.51.3.** Uncontaminated groundwater pumping;

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10.51.4. Street wash water;

10.51.5. Dechlorinated backwash and drainage associated with swimming pools;

10.51.6. NPDES permitted discharges.

SECTION 10.52 ILLEGAL CONNECTIONS.

Connections to a stormwater conveyance system or structure that allow the discharge(s) of non-stormwater are unlawful. Prohibited connections include but are not limited to:

10.52.1. Floor drains;

10.52.2. Waste water from washing machines or sanitary sewers;

10.52.3. Wash water from commercial vehicle washing or steam cleaning;

10.52.4. Waste water from septic systems.

SECTION 10.53 DETERMINATION OF CONNECTION.

Upon determining that said connection:

10.53.1. May result in the discharge of hazardous materials, may pose a threat to health and safety, or is likely to result in immediate injury or harm to human or animal life, natural resources, to real or personal property, or habitat, or

10.53.2. Was made in violation of any applicable regulation or ordinance, the UDO Administrator shall outline in a notice of violation, sent by certified mail, the time in which the connection shall be removed. Failure to comply with the terms and deadline set in the notice of violation will constitute a violation of this Ordinance.

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SECTION 10.54 RIPARIAN BUFFERS.

Fifty-foot wide riparian buffers shall be maintained along both sides of a stream, river or other water body as required by the Neuse River Basin: Nutrient Sensitive Waters Management Strategy - Protection and Maintenance of Riparian Buffers, Section 3(a-b). Riparian buffer shall be noted on the maps submitted for stormwater management plan approval and shall be noted on the final, recorded map.

Determination of exemptions as noted in 15A NCAC 2B.0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy - Protection and Maintenance of Riparian Buffers, Section 3 (a-b) shall be made by the NCDEQ Division of Water Resources.

SECTION 10.55 RIGHT TO ENTER.

Any town personnel, or contractors for the town shall be permitted to enter upon public or private property for the purposes of inspection, sampling, monitoring, testing, or otherwise verifying compliance. Should the town personnel, or contractor for the town, be denied reasonable access to any property, the UDO Administrator shall obtain an administrative search warrant.

No person shall obstruct, hamper or interfere with any such representative while carrying out his/her official duties.

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PART VII. FLOOD DAMAGE PREVENTION, NON-COASTAL REGULAR PHASE.

DIVISION I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION 10.56 STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in NCGS 160D delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Town Council of Smithfield, North Carolina, does ordain as follows.

SECTION 10.57 FINDINGS OF FACT.

10.57.1. The flood prone areas within the jurisdiction of the Town of Smithfield are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

10.57.2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION 10.58 STATEMENT OF PURPOSE.

It is the purpose of these regulations to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

10.58.1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

10.58.2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

10.58.3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

10.58.4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

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10.58.5. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION 10.59 OBJECTIVES.

The objectives of this ordinance are to:

10.59.1. Protect human life, safety, and health;

10.59.2. Minimize expenditure of public money for costly flood control projects;

10.59.3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

10.59.4. Minimize prolonged business losses and interruptions;

10.59.5. Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

10.59.6. Minimize damage to private and public property due to flooding; *(Amended 4/3/2018)*

10.59.7. Make flood insurance available to the community through the National Flood Insurance Program; *(Amended 4/3/2018)*

10.59.8. Maintain the natural and beneficial functions of floodplains; *(Amended 4/3/2018)*

10.59.9. Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

10.59.10. Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

DIVISION II. GENERAL PROVISIONS.

SECTION 10.60 LANDS TO WHICH THESE REGULATIONS APPLY.

These regulations shall apply to all Special Flood Hazard Areas within the jurisdiction, including extraterritorial jurisdictions (ETJs), of the Town of Smithfield and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

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SECTION 10.61 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS. *(Amended 4/3/2018)*

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated June 20, 2018, for Johnston County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this Ordinance. Future revisions to the FIS and DFIRM panels that do no change flood hazard data within the jurisdictional authority of the Town of Smithfield are also adopted by reference and declared a part of this Ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within three (3) months.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date: Johnston County Unincorporated Area, dated September 30, 1983, and Town of Smithfield, dated April 1, 1982.

SECTION 10.62 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of these regulations prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 10.61.

SECTION 10.63 COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of these regulations and other applicable regulations.

SECTION 10.64 ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where these regulations and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION 10.65 INTERPRETATION.

In the interpretation and application of these regulations, all provisions shall be:

- 10.65.1.** Considered as minimum requirements;
- 10.65.2.** Liberally construed in favor of the governing body; and
- 10.65.3.** Deemed neither to limit nor repeal any other powers granted under State statutes.

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SECTION 10.66 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Smithfield or by any officer or employee thereof for any flood damages that result from reliance on these regulations or any administrative decision lawfully made hereunder.

SECTION 10.67 PENALTIES FOR VIOLATION. *(Amended 4/3/2018)*

Violation of the provisions of these regulations or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NCGS § 143-215.58. Any person who violates these regulations or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Smithfield from taking such other lawful action as is necessary to prevent or remedy any violation.

DIVISION III. ADMINISTRATION.

SECTION 10.68 DESIGNATION OF FLOODPLAIN ADMINISTRATOR. *(Amended 4/3/2018)*

The UDO Administrator, or his/her designee, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of these regulations. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this Ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this Ordinance.

SECTION 10.69 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

10.69.1. Application Requirements.

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

10.69.1.1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

10.69.1.1.1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems,

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grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

10.69.1.1.2. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 10.61, or a statement that the entire lot is within the Special Flood Hazard Area;

10.69.1.1.3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 10.61;

10.69.1.1.4. The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 10.61;

10.69.1.1.5. The Base Flood Elevation (BFE) where provided as set forth in Section 10.61, Section 10.70, or Section 10.75;

10.69.1.1.6. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

10.69.1.1.7. The certification of the plot plan by a registered land surveyor or professional engineer.

10.69.1.2. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

10.69.1.2.1. Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures; *(Amended 4/3/2018)*

10.69.1.2.2. Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE, A or AO will be floodproofed; and *(Amended 4/3/2018)*

10.69.1.2.3. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed. *(Amended 4/3/2018)*

10.69.1.3. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

10.69.1.4. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of these regulations are met. These details include but are not limited to:

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10.69.1.4.1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

10.69.1.4.2. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 10.74.4.3 when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.

10.69.1.5. Usage details of any enclosed areas below the lowest floor.

10.69.1.6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

10.69.1.7. Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

10.69.1.8. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Sections 10.74.6 and 10.74.7 of these regulations are met.

10.69.1.9. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

10.69.2. Permit Requirements.

The Floodplain Development Permit shall include, but not be limited to:

10.69.2.1. A complete description of all the development to be permitted under the floodplain development permit (e.g., house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.). *(Amended 4/3/2018)*

10.69.2.2. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 10.61.

10.69.2.3. The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

10.69.2.4. The Regulatory Flood Protection Elevation required for the protection of all public utilities.

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10.69.2.5. All certification submittal requirements with timelines.

10.69.2.6. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Section 10.77 have been met. *(Amended 4/3/2018)*

10.69.2.7. The flood openings requirements, if in Zones A, AO, AE or A1-30.

10.69.2.8. Limitations of below BFE enclosure uses, if applicable (i.e., parking, building access and limited storage only).

10.69.2.9. A statement that all materials below BFE/RFPE must be flood resistant materials. *(Amended 4/3/2018)*

10.69.3. Certification Requirements.

10.69.3.1. Elevation Certificates.

10.69.3.1.1. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

10.69.3.2. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

10.69.3.3. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain

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Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

10.69.3.2. Floodproofing Certificate. If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-3481-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. *(Amended 4/3/2018)*

10.69.3.3. A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required, prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy. *(Amended 4/3/2018)*

10.69.3.4. If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 10.74.3.2.

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10.69.3.5. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

10.69.3.6. Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in Sections 10.69.3.1 and 10.69.3.2:

10.69.3.6.1. Recreational Vehicles meeting requirements of Section 10.74.6.1;

10.69.3.6.2. Temporary Structures meeting requirements of Section 10.74.7; and

10.69.3.6.3. Accessory Structures less than 150 square feet meeting requirements of Section 10.74.8.

10.69.4. Determination for Existing Buildings and Structures. (Amended 4/3/2018)

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

10.69.4.1. Estimate the market value, or require the applicant to obtain an appraisal of the market value, prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

10.69.4.2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

10.69.4.3. Determine and document whether the proposed work constitutes substantial improvements or repair of substantial damage; and

10.69.4.4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this Ordinance is required.

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SECTION 10.70 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

10.70.1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of these regulations have been satisfied.

10.70.2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.

10.70.3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

10.70.4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

10.70.5. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 10.77 are met.

10.70.6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 10.69.3.

10.70.7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 10.69.3.

10.70.8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 10.69.3.

10.70.9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Sections 10.69.3 and 10.74.2.

10.70.10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

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10.70.11. When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 10.61, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 10.75.2.2, in order to administer the provisions of these regulations.

10.70.12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 10.61 obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of these regulations.

10.70.13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

10.70.14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

10.70.15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

10.70.16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

10.70.17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

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10.70.18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

10.70.19. Follow through with corrective procedures of Section 10.71.

10.70.20. Review, provide input, and make recommendations for variance requests.

10.70.21. Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 10.61 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs. *(Amended 4/3/2018)*

10.70.22. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION 10.71 CORRECTIVE PROCEDURES.

10.71.1. Violations to be Corrected.

When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

10.71.2. Actions in Event of Failure to Take Corrective Action.

If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

10.71.2.1. That the building or property is in violation of the floodplain management regulations;

10.71.2.2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

10.71.2.3. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

10.71.3. Order to Take Corrective Action.

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If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

10.71.4. Appeal.

Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

10.71.5. Failure to Comply with Order. (Amended 4/3/2018)

If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NCGS § 143-215.58 and shall be punished at the discretion of the court.

SECTION 10.72 VARIANCE PROCEDURES.

10.72.1. The Town Council as established by the Town of Smithfield, hereinafter referred to as the "appeal board," shall hear and decide requests for variances from the requirements of these regulations.

10.72.2. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

10.72.3. Variances may be issued for:

10.72.3.1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

10.72.3.2. Functionally dependent facilities if determined to meet the definition as stated in Appendix A of this ordinance, provided provisions of Sections 10.72.9.2, 10.72.9.3, and 10.72.9.5 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

10.72.3.3. Any other type of development, provided it meets the requirements of this Section.

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10.72.4. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

10.72.4.1. The danger that materials may be swept onto other lands to the injury of others;

10.72.4.2. The danger to life and property due to flooding or erosion damage;

10.72.4.3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

10.72.4.4. The importance of the services provided by the proposed facility to the community;

10.72.4.5. The necessity to the facility of a waterfront location as defined under Appendix A of this ordinance as a functionally dependent facility, where applicable;

10.72.4.6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

10.72.4.7. The compatibility of the proposed use with existing and anticipated development;

10.72.4.8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

10.72.4.9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10.72.4.10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

10.72.4.11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

10.72.5. A written report addressing each of the above factors shall be submitted with the application for a variance.

10.72.6. Upon consideration of the factors listed above and the purposes of these regulations, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of these regulations.

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10.72.7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

10.72.8. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

10.72.9. Conditions for Variances:

10.72.9.1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

10.72.9.2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

10.72.9.3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

10.72.9.4. Variances shall only be issued prior to development permit approval.

10.72.9.5. Variances shall only be issued upon:

10.72.9.5.1. A showing of good and sufficient cause;

10.72.9.5.2. A determination that failure to grant the variance would result in exceptional hardship; and

10.72.9.5.3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

10.72.10. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

10.72.10.1. The use serves a critical need in the community.

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10.72.10.2. No feasible location exists for the use outside the Special Flood Hazard Area.

10.72.10.3. The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.

10.72.10.4. The use complies with all other applicable Federal, State and local laws.

10.72.10.5. The Town of Smithfield has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

DIVISION IV. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION 10.73 GENERAL STANDARDS.

In all Special Flood Hazard Areas the following provisions are required:

10.73.1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

10.73.2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

10.73.3. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

10.73.4. All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches. *(Amended 4/3/2018)*

10.73.4.1. Replacement parts of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

10.73.4.2. Replacements that are for maintenance and not part of a substantial improvement may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

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10.73.5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

10.73.6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

10.73.7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

10.73.8. Nothing in these regulations shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

10.73.9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 10.72.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 10.69.3.

10.73.10. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

10.73.11. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

10.73.12. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

10.73.13. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

10.73.14. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

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10.73.15. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

SECTION 10.74 SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 10.61, or Section 10.75, the following provisions, in addition to the provisions of Section 10.73, are required:

10.74.1. Residential Construction.

New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this ordinance.

10.74.2. Non-Residential Construction. (Amended 4/3/2018)

New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this ordinance. Structures located in Zones A, AE, AO, and A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section

10.78.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 10.69.3, along with the operational plan and the inspection and maintenance plan.

10.74.3. Manufactured Homes.

10.74.3.1. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Appendix A of this ordinance.

10.74.3.2. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the

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elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

10.74.3.3. All enclosures or skirting below the lowest floor shall meet the requirements of Section 10.74.4.

10.74.3.4. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

10.74.4. Elevated Buildings.

Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

10.74.4.1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

10.74.4.2. Shall not be temperature-controlled or conditioned; (*Amended 4/3/2018*)

10.74.4.3. Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and

10.74.4.4. Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

10.74.4.4.1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;

10.74.4.4.2. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;

10.74.4.4.3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

10.74.4.4.4. The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;

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10.74.4.4.5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

10.74.4.4.6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

10.74.5. Additions/Improvements.

10.74.5.1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

10.74.5.1.1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

10.74.5.1.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

10.74.5.2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

10.74.5.3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

10.74.5.3.1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

10.74.5.3.2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

10.74.5.4. Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds fifty (50) percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the

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date of the first improvement or repair of that building or structure subsequent to the effective date of this Ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvements regardless of the actual repair work performed. The requirement does not, however, include either: *(Amended 4/3/2018)*

10.74.5.4.1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

10.74.5.4.2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation of a historic structure.

10.74.6. Recreational Vehicles. *(Amended 4/3/2018)*

Recreational vehicles shall either:

10.74.6.1. Temporary placement:

10.74.6.1.1. Be on site for fewer than 180 consecutive days; or

10.74.6.1.2. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions).

10.74.6.2. Permanent placement: Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

10.74.7. Temporary Non-Residential Structures.

Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

10.74.7.1. A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

10.74.7.2. The name, address, and phone number of the individual responsible for the removal of the temporary structure;

10.74.7.3. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

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10.74.7.4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

10.74.7.5. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be removed.

10.74.8. Accessory Structures.

When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

10.74.8.1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

10.74.8.2. Accessory structures shall not be temperature-controlled;

10.74.8.3. Accessory structures shall be designed to have low flood damage potential;

10.74.8.4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

10.74.8.5. Accessory structures shall be firmly anchored in accordance with the provisions of Section 10.73.1;

10.74.8.6. All service facilities such as electrical shall be installed in accordance with the provisions of Section 10.73.4; and

10.74.8.7. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 10.74.4.3.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 10.69.3.

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10.74.9. Tanks. (Amended 4/3/2018)

When gas or liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

10.74.9.1. Underground Tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

10.74.9.2. Above-Ground Tanks, Elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

10.74.9.3. Above-Ground Tanks, Not Elevated. Above-ground tanks that do not meet the elevation requirements of Section 10.73.2 of this Ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

10.74.9.4. Tank Inlets and Vents. Tank inlets, fill openings, outlets, and vents shall be:

10.74.9.4.1. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

10.74.9.4.2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

10.74.10. Other Development. (Amended 4/3/2018)

10.74.10.1. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 10.65 of this Ordinance.

10.74.10.2. Retaining walls, sidewalks, and driveways in regulated floodways and NEAs. Retaining walls, sidewalks, and driveways that involve placement of fill in regulated floodways shall meet the limitations of Section 10.65 of this Ordinance.

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10.74.10.3. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings, and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 10.65 of this Ordinance.

SECTION 10.75 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 10.61, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 10.73, shall apply:

10.75.1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

10.75.2. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

10.75.2.1. When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections 10.73 and 10.74.

10.75.2.2. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 10.74 and 10.77.

10.75.2.3. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 10.61 and utilized in implementing this ordinance.

10.75.2.4. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed

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(nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Appendix A. All other applicable provisions of Section 10.74 shall also apply.

SECTION 10.76 STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

10.76.1. Standards of Sections 10.73 and 10.74; and

10.76.2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

SECTION 10.77 FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 10.61. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Section 10.73 and 10.74, shall apply to all development within such areas:

10.77.1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

10.77.1.1. it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or

10.77.1.2. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

10.77.2. If Section 10.77.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

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10.77.3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

10.77.3.1. The anchoring and the elevation standards of Section 10.74.3; and

10.77.3.2. The no encroachment standard of Section 10.77.1.

SECTION 10.78 STANDARDS OF AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Section 10.61, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 10.73 and 10.74, all new construction and substantial improvements shall meet the following requirements:

10.78.1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least two (2) feet above the highest adjacent grade plus a freeboard of two (2) feet if no depth number is specified.

10.78.2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 10.78.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Sections 10.69.3 and 10.74.2.

10.78.3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

SECTION 10.79 STANDARDS OF AREAS OF SHALLOW FLOODING (ZONE AH). *(Amended 4/3/2018)*

Located within the Special Flood Hazard Areas established in Section 10.61, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent annual chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base flood elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Section 10.73 and 10.74, all new construction and substantial improvements shall meet the following requirements:

10.79.1. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

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DIVISION V. LEGAL STATUS PROVISIONS.

SECTION 10.80 EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING REGULATIONS.

These regulations in part come forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance, adopted May 2, 1982, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Smithfield enacted on May 2, 1982, as amended, which are not reenacted herein are repealed.

SECTION 10.81 EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of these regulations.

SECTION 10.82 SEVERABILITY. *(Amended 4/3/2018)*

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION 10.83 EFFECTIVE DATE.

These regulations shall become effective upon adoption of the Town of Smithfield Unified Development Ordinance.

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PART VIII. WIRELESS COMMUNICATION FACILITIES.

SECTION 10.84 PURPOSE AND INTENT.

The purpose of this section is to facilitate the deployment of necessary telecommunication services that are the least visibly intrusive type of installation that is not proven to be commercially or technologically impracticable and that will effectively prohibit the applicant from accomplishing its intended goal(s).

SECTION 10.85 SITING HIERARCHY AND PREFERENCES.

The following list indicates the Town's preferences for facility locations, in descending order of preference:

- Antennae co-location on an existing tower or utility pole;
- Concealed (stealth) antennae on existing building/structure;
- New concealed (stealth) tower fifty (50) feet in height or less;
- New concealed (stealth) towers over fifty (50) feet in height;
- Building-mounted antennae and/or tower;
- New freestanding non-stealth towers (monopoles);
- New freestanding non-stealth towers (all other types).

SECTION 10.86 APPROVALS REQUIRED FOR WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES.

10.86.1. Expert Review of Application.

The Town may charge up to one thousand dollars (\$1,000) per application for expert assistance with the application review for collocation studies. For studies other than collocation, the Town may charge a "reasonable and customary fee" under NCGS 160D-935 provided the fees are fixed in advance.

10.86.2. Administrative Review and Approval.

The following types of applications are subject to the review process as provided in Section 5.5. No other type of zoning or site plan review is necessary.

10.86.2.1. New Wireless Support Structures that are less than fifty (50) feet in height, in any zoning district.

10.86.2.2. New Wireless Support Structures that are less than two hundred (200) feet in height, in any Industrial district.

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10.86.2.3. Concealed Wireless Facilities that are fifty (50) feet or less in height, in any residential district.

10.86.2.4. Concealed Wireless Facilities that are one hundred fifty (150) feet or less in height, in any zoning district *except* residential districts.

10.86.2.5. Monopoles or Replacement Poles located on public property or within utility easements or rights-of-way, in any zoning district.

10.86.2.6. Carrier on wheels or cell on wheels (COWs), in any zoning district, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred twenty (120) days.

10.86.2.7. Small cell/e-pole devices.

10.86.2.8. Substantial modifications.

10.86.2.9. Collocations.

10.86.3. *Special Use Permit.*

Any application for Wireless Facilities and/or Wireless Support Structures not subject to Administrative Review and Approval pursuant to this Ordinance shall be permitted in any district upon the granting of a Special Use Permit in accordance with the standards for granting Special Use Permits set forth in Section 4.9.

10.86.4. *Exempt From All Approval Processes.* The following are exempt from all Town of Smithfield zoning approval processes and requirements, unless located within the Historic District Overlay (*Amended 10/3/2017*):

10.86.4.1. Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this Ordinance.

10.86.4.2. Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures. Nothing in this section requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities.

10.86.4.3. Wireless Facilities, including Small Wireless Facilities, placed on existing or replacement Utility Poles subject to the following limitation: Each new Small Wireless Facility in the public right-of-way shall not extend more than ten (10) feet above the utility pole, or the wireless support structure on which it is collocated. (*Amended 10/3/2017*)

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10.86.4.4. COWs placed for a period of not more than one hundred twenty (120) days at any location within the Town of Smithfield or in response to a declaration of an emergency or a disaster by the Governor.

10.86.4.5. Non-tower wireless communications facilities are permitted by right in all zoning districts in a right-of-way.

SECTION 10.87 ADMINISTRATIVE REVIEW AND APPROVAL PROCESS.

10.87.1. Content of Application Package - For All Sites.

All Administrative Review and Town Council application packages must contain the following in addition to those requirements outlined in Section 5.5 and 5.6:

10.87.1.1. Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application. Such submissions need not disclose financial lease terms.

10.87.1.2. Documentation from a licensed professional engineer if calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this Ordinance.

10.87.1.3. For collocations and substantial modifications, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas.

10.87.1.4. For substantial modifications, drawings depicting the improvements along with their dimensions.

10.87.2. Approval Schedule.

10.87.2.1. Applications for Collocation, Monopole or Replacement Pole, a Concealed Wireless Facility, a Non-Exempt COW, or a Substantial Modification. Within forty-five (45) days of the receipt of a complete application for a Collocation, a Monopole or Replacement Pole, a Concealed Wireless Facility, a Non-Exempt COW, or a Substantial Modification, the UDO Administrator will:

10.87.2.1.1. Review the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator provides notice that the application is incomplete in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The UDO Administrator may deem

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an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state, and local safety requirements. The UDO Administrator may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

10.87.2.1.2. Issue a written decision approval an eligible facilities request application within forty-five (45) days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the UDO Administrator shall issue its written decision to approve or deny the application within forty-five (45) days of the application being deemed complete.

10.87.2.1.3. Failure to issue a written decision within forty-five (45) calendar days shall constitute an approval of the application.

10.87.2.2. Applications for New Wireless Support Structures that are Subject to Administrative Review and Approval. Within forty-five (45) calendar days of the receipt of an application for a New Wireless Support Structure that is subject to Administrative Review and Approval under this Ordinance, the UDO Administrator will:

10.87.2.2.1. Review the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The UDO Administrator may deem an application incomplete if there is insufficient evidence provided to show that the eligible facilities request will comply with federal, state, and local safety requirements. The UDO Administrator may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

10.87.2.2.2. Issue a written decision approval on an eligible facilities request application within forty-five (45) days of such application being deemed complete.

10.87.2.2.3. Failure to issue a written decision within forty-five (45) calendar days shall constitute an approval of the application.

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10.87.3. Application Review.

When considering applications for wireless telecommunication facilities, the Town shall comply with the requirements of NCGS 160D-930 the Telecommunications Act of 1996, as amended, and the applicable U.S. statutes and FCC orders. The UDO Administrator's review of an application for the placement or construction of a new wireless support structure or substantial modification of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the UDO Administrator may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, the quality of its service to or from a particular area or site, or the radio frequency emissions that will be produced by the facility. The UDO Administrator may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. The UDO Administrator may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the UDO Administrator may review the following:

10.87.3.1. Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

10.87.3.2. Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new wireless support structure, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new wireless support structure or initial wireless facility placement or a proposed height increase of a substantially modified wireless support structure, or replacement wireless support structure is necessary to provide the applicant's designed service.

10.87.3.3. The UDO Administrator may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if the applicant shows by verifiable technical evidence that the collocation is technically or commercially impractical or the owner of the existing structure is unwilling to enter into a contract for such use at fair market value.

10.87.3.4. The Town may require such information as necessary to provide that the proposed location and the type of support structure will work.

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10.87.4. Building Permit.

The Building Inspector shall issue a building permit following approval of the application under Administrative Review in accordance with the process and standards in this Ordinance.

SECTION 10.88 SPECIAL USE PERMIT PROCESS.

10.88.1. Special Use Permit.

Any Wireless Facility or Wireless Support Structures not meeting the requirements of Section 10.86.2 or 10.86.4 above, may be permitted in all zoning districts upon the granting of a Special Use Permit, subject to:

10.88.1.1. The submission requirements of Section 10.88.1.2. below; and

10.88.1.2. The applicable standards of Section 10.89 below; and

10.88.1.3. The requirements of the special use permit process in Section 4.9.

10.88.2. Content of Special Use Permit Application Package.

All Special Use permit application packages must contain the following in addition to those requirements contained in Sections 4.9, 5.6, 10.87.1.

10.88.2.1. Written description and scaled drawings of the proposed Wireless Support Structure or Wireless Facility, including structure height, ground and structure design, and proposed materials.

10.88.2.2. Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Wireless Support Structure.

10.88.2.3. Line-of-sight diagram or photo simulation, showing the proposed Wireless Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.

10.88.2.4. A statement of the proposed Wireless Support Structure will be made available for Collocation to other service providers at commercially reasonable terms, provided space is available and consistent with Section 10.89.1 of this Ordinance.

10.88.3. Approval Schedule.

Within one hundred fifty (150) calendar days of the receipt of an application under this section, the Town Council upon recommendation of the Planning Board will:

10.88.3.1. Complete the process for reviewing the application for conformity with this Ordinance. An application under this section is deemed to be complete unless the UDO Administrator notifies the applicant in writing, within thirty (30) calendar days of submission

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of the application of the specific deficiencies in the application which, if cured, would make the application complete. The Town loses the ability to object that the application is incomplete if the applicant is not notified within 30 days. Upon receipt of a timely written notice that an application is deficient, the 150-day clock is stopped until more information is received at which point the 150-day clock starts again. If the application is still incomplete, the clock continues to run until the applicant is notified in writing. Applications are automatically approved after 150 days.

10.88.3.2. Make a final decision to approve or disapprove the application.

10.88.3.3. Advise the applicant in writing of its final decision. If the Town Council denies an application, it must provide written justification of the denial.

10.88.3.4. Failure to issue a written decision within one hundred fifty (150) calendar days shall constitute an approval of the application.

SECTION 10.89 GENERAL STANDARDS AND DESIGN REQUIREMENTS.

Design standards apply to all communication towers, both staff approved and special use permit.

10.89.1. Design.

10.89.1.1. Wireless Support Structures shall be subject to the following:

10.89.1.1.1. Shall be engineered and constructed to accommodate a minimum number of Collocations based upon their height:

10.89.1.1.1.1. Support structures fifty (50) to one hundred (100) feet shall support at least two (2) telecommunications providers.

10.89.1.1.1.2. Support structures greater than one hundred (100) feet but less than one hundred fifty (150) feet shall support at least three (3) telecommunications providers.

10.89.1.1.2. The Equipment Compound area surrounding the Wireless Support Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section 10.89.1.1.

10.89.1.1.3. There shall be no interference with local emergency communications or normal radio/television reception.

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10.89.1.2. Concealed Wireless Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured, or otherwise not readily apparent to a casual observer.

10.89.1.3. Upon request of the Applicant, the UDO Administrator or Town Council may waive the requirement that new Wireless Support Structures accommodate the Collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

10.89.1.4. A Monopole or Replacement Pole shall be permitted within utility easements or rights-of-way, in accordance with the following design requirements with approval of the entity controlling the utility easement:

10.89.1.4.1. The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.

10.89.1.4.2. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

10.89.1.4.3. The height of the Monopole or Replacement pole may not exceed by more than thirty (30) feet the height of existing monopole structure.

10.89.1.4.4. Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

10.89.1.4.5. Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by subsection 10.87.1.4.3 above.

10.89.1.4.6. Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to thirty (30) feet in height of the utility tower.

10.89.2. Setbacks.

Unless otherwise stated herein, each Wireless Support Structure shall be set back from all property lines a distance equal to its engineered fall zone.

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10.89.3. Height.

In residential districts, Wireless Support Structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure to the top of the highest point, including appurtenances. Notwithstanding the foregoing, the UDO Administrator or Town Council shall have the authority to vary the foregoing height restriction upon the request of the applicant. With its waiver request, the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the UDO Administrator or Town Council, whoever has authority to approve.

10.89.4. Aesthetics.

10.89.4.1. Lighting and Marking. Wireless Facilities or Wireless Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

10.89.4.2. Signage. Signs located at the Wireless Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which Wireless Facilities are located (i.e., approved signage at locations on which Concealed Facilities are located).

10.89.5. Accessory Equipment.

Accessory Equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Wireless Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.

10.89.6. Fencing.

10.89.6.1. Ground mounted Accessory Equipment and Wireless Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the UDO Administrator or Town Council.

10.89.6.2. The UDO Administrator or Town Council may waive the requirement of Section 10.89.6.1 if it is deemed that a fence is not appropriate or needed at the proposed location.

10.89.7. Standards for Facilities in the Public Rights-of-Way.

Wireless telecommunication facilities may be placed in a publicly-owned right-of-way if all the following standards are met:

10.89.7.1. The public entity controlling the rights-of-way consents to the encroachment in writing.

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10.89.7.2. No antennae may be discernable as antennae by the average person from more than 250 feet, unless the standard of subsection 10.89.8 below applies. The stricter standard shall apply.

10.89.7.3. Wireless installations shall be on poles that meet or exceed current NESC standards and the wind and ice loading requirements of ANSI 222 Version G.

10.89.7.4. No open lattice work towers are permitted.

10.89.7.5. For Town-controlled rights-of-way:

10.89.7.5.1. The UDO Administrator approves the encroachment; and

10.89.7.5.2. The established encroachment fees are paid; and

10.89.7.5.3. If requested by the Town, the structure is designed to accommodate other reasonable attachments by the Town's electric utility department; and

10.89.7.5.4. Unless proven unfeasible by clear and convincing evidence, in lieu of installing new poles, any wireless installation in the public right-of-way shall replace a pre-existing distribution pole, secondary pole, or streetlight.

10.89.8. Standards for the R-20A, R-10, R-8, R-6, R-MH, PUDS, and O/I Districts. In the R-20, R-8, R-6, PUD, B-3, and O/I zoning districts and in all other zoning districts on properties located within eight hundred (800) feet of any R-20, R-8, R-6, PUD, B-3, and O/I zoning districts (measured from the base of the tower or other supporting structure to the zoning district line), wireless facilities shall meet all of the following standards:

10.89.8.1. Poles must not be metal or concrete. Poles must not conduct electricity.

10.89.8.2. Poles shall be no taller than fifty (50) feet.

10.89.8.3. All supporting structures and antennae must be a "concealed design" including all cabling and antennae inside a "hollow pole" or mounted on the pole.

10.89.8.4. All poles must be non-reflective, matte finish.

10.89.8.5. No new structures shall be located directly in front of residences unless replacing an existing pole.

10.89.8.6. All antennae must be hidden from view or designed so as not to be identified as antennae by a layperson.

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10.89.8.7. Installation of all facilities shall be the least visibly intrusive type of installation that is not proven to be commercially or technologically impracticable and that will not serve to effectively prohibit the applicant from accomplishing its intended goal.

10.89.8.8. Utility poles are not considered support structures.

10.89.8.9. New telecommunication devices and support structures shall not be located closer than eight hundred (800) feet from new and existing structures.

10.89.8.10. All radios, network equipment and batteries shall be enclosed in a pedestal cabinet near the pole; or in a pole-mounted cabinet or under a pole mounted shroud.

10.89.8.11. Cabinets shall be consistent in size and be no larger than standard NCDOT streetlight signal cabinets.

SECTION 10.90 MISCELLANEOUS PROVISIONS.

10.90.1. Abandonment and Removal.

If a Wireless Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the Town of Smithfield may require that such Wireless Support Structure be removed only after first providing written notice to the owner of the Wireless Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Wireless Support Structure within sixty (60) days of receipt of said written notice. In the event the owner of the Wireless Support Structure fails to utilize the Wireless Support Structure within the sixty (60) day period, the owner of the Wireless Support Structure shall be required to remove the same within six (6) months thereafter. The Town of Smithfield shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

10.90.2. Multiple Uses on a Single Parcel or Lot.

Wireless Facilities and Wireless Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

SECTION 10.91 WIRELESS FACILITIES AND WIRELESS SUPPORT STRUCTURES IN EXISTENCE ON THE DATE OF ADOPTION OF THIS ORDINANCE.

10.91.1. Facilities in Existence on the Date of Adoption.

Wireless Facilities and Wireless Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

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10.91.2. Activities at Non-Conforming Wireless Support Structures.

Notwithstanding any provision of this Ordinance:

10.91.2.1. Ordinary Maintenance may be performed on a Non-Conforming Wireless Support Structure or Wireless Facility.

10.91.2.2. Collocation of Wireless Facilities on an existing non-conforming Wireless Support Structure shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section 10.85; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.

10.91.2.3. Substantial Modifications may be made to non-conforming Wireless Support Structures utilizing the Special Use Permit process defined in Section 4.9 of this Ordinance.

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PART IX. OVERLAY DISTRICTS.

SECTION 10.92 WATER SUPPLY WATERSHED PROTECTION OVERLAY DISTRICTS.

10.92.1. Purpose.

The purpose of this section is to regulate development and land use activities in a manner which will limit exposure of water supply watersheds to pollution. Sources of pollution include leachate from septic tank nitrification fields, storm water runoff, accidental spillage from residential, commercial, and industrial activities, and discharge of process and cooling water, among others.

As required by the Water Supply Watershed Protection Act of 1989, the State of North Carolina has reclassified each of the state's drinking water supply watersheds to its most appropriate classification. The Neuse River watershed is classified as WS-IV which are protected water supply watersheds which are generally moderate to highly developed. Water Supply Watershed protection is a proactive approach to the preservation and treatment of drinking water supplies rather than a reactive approach of treatment prior to consumption.

10.92.2. Authority.

Statutory authority for this section is derived from NCGS 160D-702 and NCGS 160D-703.

10.92.3. Jurisdiction.

The regulations established shall apply within areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission and the boundaries of the watershed areas shall be as noted on a map adopted in conjunction with these regulations.

10.92.4. Standards.

The standards of both the Water Supply Watershed Protection Overlay Districts and the underlying zoning district shall apply. Where these standards differ, the standards of the Overlay Districts shall govern.

10.92.5. Establishment of Watershed Areas.

For the purposes of this section, the Town of Smithfield and its extraterritorial jurisdiction are divided into the following Water Supply Watershed Protection Overlay Districts:

10.92.5.1. WS-IV-CA Critical Area Overlay District.

10.92.5.2. WS-IV-PA Protected Area Overlay District.

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10.92.6. Development Regulations - WS-IV-CA District.

The following regulations shall apply within the WS-IV-CA:

10.92.6.1. Allowed Uses.

10.92.6.1.1. Agricultural uses are not subject to the stormwater requirements of this Ordinance. (Amended 10/3/2017)

10.92.6.1.2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.

10.92.6.1.3. Residential uses.

10.92.6.1.4. Expansions to existing nonresidential development in accordance with Section 10.92.9.

10.92.6.2. Density and Built-Upon Limits. (Amended 10/3/2017)

10.92.6.2.1. Single-Family Residential Minimum Lot Size. Where neither public water nor sewer are available, the minimum lot size shall be 40,000 square feet, or as determined by the Johnston County Division of Environmental Health. Where either public water or sewer, or both, are available, the minimum lot size shall be ½ acre or 21,780 square feet.

10.92.6.2.2. Impervious Surface Limitations. Development shall not exceed 24% built upon area on a project by project basis unless the High Density Option is utilized. For the purpose of calculating the built upon area, total project area shall include the gross acreage in the tract on which the project is to be developed.

10.92.6.2.3. High Density Option. Impervious surfaces may be increased up to a maximum of 70% subject to the following requirements:

10.92.6.2.3.1. Stormwater Control Requirements. Where development proposes intensity greater than 24% engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

10.92.6.2.3.2. Ownership, Design, and Maintenance of Engineered Stormwater Controls.

10.92.6.2.3.2.1. Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owners' association, which shall be responsible for the continued care and maintenance of such controls.

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10.92.6.2.3.2.2. Engineer stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town of Smithfield and to the State's minimum standards. The BMP design criteria shall require 85% average annual removal of Total Suspended solids and the discharge rate must meet one of the following criteria:

10.92.6.2.3.2.2.1. The discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design within five (5) days, but not less than two (2) days; or

10.92.6.2.3.2.2.2. The post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24-hour storm.

10.92.6.2.3.2.3. Except as allowed in paragraph 10.92.6.2.3.2.3.3 below, no building permit shall be issued for a site proposed for development, until:

10.92.6.2.3.2.3.1. UDO Administrator has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an Agreement and Covenants or Operation and Maintenance Agreement with the Town in accordance with the terms established by the Town including being referenced on a final plat which must be recorded along with the agreement in the Johnston County Register of Deeds; and

10.92.6.2.3.2.3.2. The property owner has posted a performance bond, other surety instrument, or other payment in acceptable form to the Town in an amount determined by the UDO Administrator as appropriate to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.

10.92.6.2.3.2.3.3. For multi-family projects, building permits may be issued; but construction drawing approval, or water and sewer permit approval, shall be withheld until compliance with paragraphs 10.92.6.2.3.2.3.1 and 10.92.6.2.3.2.3.2 above.

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10.92.6.2.3.2.3.4. The Agreement and Covenants or Operation and Maintenance Agreement required under paragraph 10.92.6.2.3.2.3.1 above, may be required prior to site plan or preliminary plat approval.

10.92.6.2.3.2.4. No certificate of compliance/occupancy shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the UDO Administrator has approved construction of the engineered stormwater controls and after review and approval of “as-built” drawings. Notwithstanding this requirement, the UDO Administrator may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single-family housing and other developments requiring multiple certificates of occupancy.

10.92.7. Development Regulations - WS-IV-PA District.

The following regulations shall apply within the WS-IV-PA:

10.92.7.1. Allowed Uses.

10.92.7.1.1. Agricultural uses are not subject to the stormwater requirements of this Ordinance. *(Amended 10/3/2017)*

10.92.7.1.2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.

10.92.7.1.3. Residential development.

10.92.7.1.4. Nonresidential development, excluding storage of toxic and hazardous materials unless a spill containment plan is implemented.

10.92.7.2. Density and Built-Upon Limits. *(Amended 10/3/2017)*

10.92.7.2.1. Single-Family Residential Minimum Lot Size. Where neither public water nor sewer are available, the minimum lot size shall be 40,000 square feet, or as determined by the Johnston County Division of Environmental Health. Where either public water or sewer, or both, are available, the minimum lot size shall be 1/2 acre or 21,780 square feet.

10.92.7.2.2. Impervious Surfaces. Development shall not exceed 24% built upon area on a project by project basis unless the High Density Option is utilized.

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For the purpose of calculating the built upon area, total project area shall include the gross acreage in the tract on which the project is to be developed.

10.92.7.2.3. High Density Option. Impervious surfaces may be increased up to a maximum of 70% subject to the following requirements:

10.92.7.2.3.1. Stormwater Control Requirements. Where development proposes intensity greater than 24% engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

10.92.7.2.3.2. Ownership, Design, and Maintenance of Engineered Stormwater Controls.

10.92.7.2.3.2.1. Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owners' association, which shall be responsible for the continued care and maintenance of such controls.

10.92.7.2.3.2.2. Engineer stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town of Smithfield and to the State's minimum standards. The BMP design criteria shall require 85% average annual removal of Total Suspended solids and the discharge rate must meet one of the following criteria:

10.92.7.2.3.2.2.1. The discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design within five (5) days, but not less than two (2) days; or

10.92.7.2.3.2.2.2. The post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24-hour storm.

10.92.7.2.3.2.3. Except as allowed in paragraph 10.92.7.2.3.2.3.3 below, no building permit shall be issued for a site proposed for development, until:

10.92.7.2.3.2.3.1. UDO Administrator has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an Agreement and Covenants or Operation and Maintenance

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Agreement with the Town in accordance with the terms established by the Town including being referenced on a final plat which must be recorded along with the agreement in the Johnston County Register of Deeds; and

10.92.7.2.3.2.3.2. The property owner has posted a performance bond, other surety instrument, or other payment in acceptable form to the Town in an amount determined by the UDO Administrator as appropriate to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.

10.92.7.2.3.2.3.3. For office, institutional, commercial, industrial, and multi-family projects, building permits may be issued; but construction drawing approval, or water and sewer permit approval, shall be withheld until compliance with paragraphs 10.92.7.2.3.2.3.1 and 10.92.7.2.3.2.3.2 above.

10.92.7.2.3.2.3.4. The Agreement and Covenants or Operation and Maintenance Agreement required under paragraph 10.92.7.2.3.2.3.1 above, may be required prior to site plan or preliminary plat approval.

10.92.7.2.3.2.4. No certificate of compliance/occupancy shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the UDO Administrator has approved construction of the engineered stormwater controls and after review and approval of "as-built" drawings. Notwithstanding this requirement, the UDO Administrator may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single-family housing and other developments requiring multiple certificates of occupancy.

10.92.8. Impervious Surface Transfer Credit. (Amended 10/3/2017)

The impervious surface limit provisions of this section can be exceeded through an impervious surface credit transfer. Credit for the impervious surfaces allowed on one or more parcels ("donor parcels") can be transferred to non-contiguous parcels ("receiving parcels"), such that the amount of impervious surface available for a development project would be the total of what is normally allowed on the receiving parcel plus what is transferred from the donor parcel(s). Impervious surface credit transfer is subject to the following provisions:

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10.92.8.1. The donor parcel and receiving parcel shall be located within the same water supply watershed.

10.92.8.2. The impervious surface credit transfer shall not be from a donor parcel in Protected Area to a receiving parcel in Critical Area.

10.92.8.3. The portion of the donor parcel which is restricted from development as part of the impervious surface credit transfer shall remain in a vegetated or natural. The portion of the donor site restricted from development shall be protected from all future development through use of a permanent conservation easement in favor of either:

10.92.8.3.1. Town of Smithfield; or

10.92.8.3.2. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements (the organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer to the Town in the event the organization becomes unable to carry out its functions). If the entity accepting the easement is not the Town then a third right of enforcement favoring the Town shall be included in the easement.

10.92.8.4. The impervious surface credit transfer shall be reviewed and approved through use of the site plan process.

10.92.8.5. The donor parcel shall be deemed appropriate for acceptance by the Town under the Town of Smithfield Review Criteria for Acceptance of Conservation Easements for Impervious Surface Transfer.

10.92.9. Buffer Areas Required. *(Amended 10/3/2017)*

For all new development activities proposed within the WS-IV-CA or WS-IV-PA Districts, a minimum 50 foot vegetative buffer is required, unless the High Density Option is utilized in which case the minimum buffer will be 100 foot, adjacent to all perennial waters as indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by other reliable sources. Vegetation within such buffers shall remain undisturbed except as permitted by State rules and as may be necessary to accommodate any of the following uses:

10.92.9.1. Boat docks, ramps, piers, or similar structures.

10.92.9.2. Reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places.

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10.92.9.3. Roads, provided they cross the buffer at a horizontal angle of at least 60 degrees.

10.92.9.4. Other public projects, where no practical alternative exists.

10.92.10. Existing Single-Family Development Exempt.

Existing single-family dwelling units or proposed additions or expansions to existing single-family dwelling units shall be exempt from these regulations.

10.92.11. Other Existing Development.

Existing development as defined herein (other than single-family residential development) which does not currently comply with these provisions, may be continued and maintained without penalty. Proposed expansions to structures classified as existing development, including nonresidential development within the Critical Area, which would qualify as permitted uses within the underlying zoning district may be allowed but shall be required to comply fully with these requirements. The existing built-upon area shall not be required to be included when calculating permissible density.

10.92.12. Existing Vacant Lots.

Existing vacant lots, for which plats or deeds have been recorded in the Johnston County Register of Deeds office prior to the adoption of these regulations, may be used for any of the permissible uses allowed in the watershed area in which it is located, provided that whenever two or more contiguous residential lots of record are in single ownership at any time after the adoption of this Ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, then such lots shall be considered as a single property for the purpose of compliance with these requirements.

10.92.13. Occupied Lots.

Lots occupied for residential purposes at the effective date of these regulations may continue to be used, provided that whenever two or more contiguous lots of record, one of which is occupied, are in single ownership on the effective date of these regulations, and such lots individually or together have less area than required by the minimum standards, then such lots shall be considered as a single property for the purpose of compliance with these requirements.

10.92.14. Swale Street Systems.

Within the WS-IV-CA and WS-IV-PA Districts, the Town Council may authorize development which would utilize a swale rather than a curb and gutter street system provided such streets are designed and constructed in accordance with the NCDOT Division of Highways manual entitled "Minimum Construction Standards for Subdivision Roads," as amended, or its successor document, for the classification of street proposed. Additionally, Best Management Practices (BMPs) as prescribed in the NCDOT manual "Water Supply Watershed Best Management Practices" shall be utilized for all new roadway construction within watershed areas.

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10.92.15. Planned Unit Development within Watershed Areas.

For Planned Unit Developments proposed within water supply watershed areas, development densities shall comply with the regulations established under this section in lieu of the development densities set forth for Planned Unit Developments in Section 6.3.6.

10.92.16. Variances.

10.92.16.1. Whenever an application is filed for a variance to the provisions contained in this section the town shall notify the other local governments having jurisdiction within the watershed and any entity using the water supply for consumption purposes to allow these parties an opportunity to comment on the application.

10.92.16.2. The Board of Adjustment shall conduct a hearing on the application in accordance with the procedures established under this Ordinance. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances, as defined herein, from the terms of this section as will not be contrary to the public interest.

10.92.16.3. If the application for a variance calls for the granting of a major variance, as defined herein, and if the Board of Adjustment decides in favor of granting the variance, a preliminary record of the hearing shall be prepared within 30 days. The preliminary record shall include:

10.92.16.3.1. The variance application;

10.92.16.3.2. The hearing notices;

10.92.16.3.3. The evidence presented;

10.92.16.3.4. Proposed findings and exceptions;

10.92.16.3.5. The proposed decision, including any conditions proposed to be added to the permit.

10.92.16.4. The preliminary record shall be sent to the (EMC) for review as follows:

10.92.16.4.1. If the EMC concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from nor make any proposed variance is granted, and (b) the variance, if granted, will not result in a threat to the water supply, then the EMC shall approve the variance as proposed or approve the proposed variance with conditions.

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10.92.16.4.2. If the EMC concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or, (b) the variance, if granted, will result in a serious threat to the water supply, then the EMC shall deny approval of the variance as proposed.

10.92.16.5. The EMC shall prepare a final Commission decision relative to the proposed variance and transmit it to the Board of Adjustment. The Board shall advise the applicant for the proposed variance of the EMC's final decision.

10.92.16.6. A record of all variances granted during a calendar shall be transmitted to the Division of Environmental Management on or before January 1st of the following year.

10.92.17. Cluster Subdivisions. (Amended 10/3/2017)

Cluster development is allowed in all Watershed Areas under the following conditions:

10.92.17.1. Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Sections 10.92.6.2.1 and 10.92.7.2.1. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, whichever applies.

10.92.17.2. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

10.92.17.3. Areas concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainage ways.

10.92.17.4. The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to the Town of Smithfield for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

10.92.17. Amendments to Water Supply Watershed Protection Regulations.

The Town Council may, on its own motion or upon a properly filed petition, amend, supplement, or modify the watershed regulations set forth under this section in accordance with the procedures

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established under Article 4 of this Ordinance, provided that no amendments shall be adopted which shall cause these regulations to violate the minimum watershed protection rules adopted by the North Carolina Environmental Management Commission. All amendments shall subsequently be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

10.92.18. Summary of Water Supply Watershed Protection Rules.

The following table summarizes the Water Supply Watershed Protection Regulations contained herein, which were adopted by the Smithfield Town Council on August 2, 2017; to become effective and in force from that day forward.

Classifications	Dischargers	Residential Density Low Density Option	Nonresidential Development	Sludge Applications	Landfills	Hazardous Materials	Sewer Lines
WS-IV Critical Area	None	2du/1ac**	No new development	None	None	None	Allow
Protected Area	Domestic & industrial	Same	Allow maximum 24% built-upon	None	None	Inventory spill/failure	Allow

NOTES:

**Minimum lot size where public water or sewer is not available shall be 40,000 square feet.

- (1) Critical area is one mile draining to river intake or to the ridgeline, whichever is greater.
- (2) Protected area is ten miles upstream draining to river intake or to the ridgeline, whichever is greatest.
- (3) For residential and nonresidential development, a minimum buffer width of 50 feet shall be provided adjacent to all perennial waters.
- (4) Spill containment structures are required for new industry where hazardous materials are used, stored, or manufactured.
- (5) Storm water control structures shall not be employed within the critical or protected portion of the watershed as a means to exceed the minimum criteria established herein.
- (6) Agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990. In critical area agricultural activities must maintain a ten-foot vegetated buffer or equivalent control. Animal operations with greater than 100 animals must use BMPs as determined by the Soil and Water Conservation Commission.
- (7) Forestry activities are subject to the provisions of the forest practices guidelines related to water quality (15A NCAC 11.0101-.0209).
- (8) The Department of Transportation must use BMPs as described in their document, "Water Supply Watershed Best Management Practices."
- (9) Swale street systems constructed in accordance with NCDOT standards may be permissible within the critical and protected areas.

SECTION 10.93 ENTRY CORRIDOR OVERLAY DISTRICTS.

These districts are established to provide development standards for particular roadway corridor areas as shown on the Official Zoning Map which are in addition to those provided by the other zoning districts established by the Unified Development Ordinance. The purpose for establishing these entry corridor overlay districts is first, to recognize the importance that different roadway corridors play in defining the town's character as town entryways and, second, to protect and preserve both the aesthetics of these important roadways and their traffic-handling capabilities, thereby contributing to the general welfare of the Town of Smithfield.

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It is the intent of this Ordinance that development existing as of the date of its enactment shall not be required to comply with the regulations contained herein unless such development is expanded by 20% or more of the gross enclosed floor area of the principal structure.

10.93.1. Permitted Uses.

Same as for underlying zoning district(s).

10.93.2. Special Uses.

Same as for underlying zoning district(s).

10.93.3. Prohibited Uses.

Same as for underlying zoning district(s).

10.93.4. Development Standards.

Dimensional requirements and all other development standards shall be the same as for underlying zoning district(s) except as modified herein.

10.93.4.1. Thoroughfare Protection. No improvements other than driveways, sidewalks, parking, and landscaping shall be permitted within the limits of projected rights-of-way as specified in the Official Thoroughfare Plan.

10.93.4.2. Setbacks. Setbacks shall be the same as for the underlying zoning district; provided, however, one or more principal structures may be authorized within the setback under the following circumstances:

10.93.4.2.1. Such principal structure(s) is not situated within 10 feet of the projected right-of-way line of an entry corridor roadway;

10.93.4.2.2. Parking for the site is placed to the side or rear of such structure(s) so that it is screened from view from the entry corridor by means of such structure(s) and vegetative buffering as provided in Article 10, Part II.

10.93.4.2.3. The landscaping requirement for parking lots located to the side or rear of the principal structure may be reduced by 20%.

10.93.4.2.4. The required parking spaces for parking lots located to the side or rear of the principal structure may be reduced by 20%.

10.93.4.3. Driveways. Driveways serving a development parcel shall be permitted in accordance with the standards of the North Carolina Department of Transportation (NCDOT); provided, however, a development parcel shall be limited to no more than one (1) driveway on any road and no more than three driveways total, unless a major site plan

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has been approved with additional driveways. Additional driveways may be permitted when they are necessary to improve traffic movement, increase sight distances, or for other safety reasons. Developers are encouraged to share parking areas and driveways with adjoining developments.

10.93.4.4. Outdoor Storage. Outdoor storage shall be screened from view with six (6) foot high opaque vegetation or fencing, so that it is not visible from a roadway or adjacent properties. Provided, however, this section shall not apply to the outdoor display of goods for sale.

10.93.4.5. Signs. Signs shall be governed by the regulations contained in Article 10, Part III except as modified below:

10.93.4.5.1. Pole Signs. Pole signs are prohibited.

10.93.4.5.2. Freestanding Signs. Each development parcel may include no more than one freestanding sign, which shall not exceed 70 square feet in size and 10 feet in height, measured from street grade, for each thoroughfare on which the site has driveway access. For purposes of this paragraph, a development parcel does not include out parcels associated with approved major siteplans.

10.93.4.6. Exceptions.

10.93.4.6.1. Single-family and two-family residential dwellings shall be required to comply with the provisions of Sections 10.93.4.1 to 10.93.4.3 , above, but they shall not be required to comply with the remaining regulations of the Entry Corridor Overlay Zoning Classification.

10.93.4.6.2. Small lots, defined as lots with less than 100 feet of frontage on an entry corridor roadway or with less than 100 feet of depth, may have site constraints which make strict compliance with the regulations contained in this section a hardship. In such cases, the Board of Adjustment for the town may approve deviations from such regulations so long as the plans of development are consistent with an approved minor site plan.

10.93.4.7. Nonconformities. Uses, structures, and lots rendered nonconforming by this ordinance shall be governed by the provisions of Article 9 of the Unified Development Ordinance; provided, however, structures, other than signs, existing as of the effective date of this ordinance which are destroyed by fire or other act of God shall be entitled to be rebuilt in their preexisting location regardless of the degree of damage.

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SECTION 10.94 ROWHOUSE OVERLAY DISTRICTS.

This district is established to provide development standards for high density single-family residential areas which are in addition to those provided by the underlying zoning districts established by the Unified Development Ordinance. The purpose of establishing this rowhouse overlay district is to allow high density single-family residential development in locations where it will be compatible with adjacent land uses.

10.94.1. Allowable Zoning Districts.

B-1, R-6, R-8, and O/I.

10.94.2. Permitted Uses

None

10.94.3. Special Uses.

Dwelling, single-family; accessory uses; and home occupations.

10.94.4. Prohibited Uses.

All uses not specifically permitted by issuance of a special use permit.

10.94.5. Parking.

All required parking shall be located in the rear yard.

10.94.6. Minimum Zoning District Area.

20,000 square feet of contiguous area within the RHO overlay district. (NOTE: It is intended that the RHO district will include multiple parcels.)

10.94.7. Yard, Area, and Height Requirements.

Refer to Article 8. Minimum yard requirements may be modified through the issuance of a special use permit

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SECTION 10.95 AIRPORT HEIGHT HAZARD OVERLAY(AHH).

10.95.1. Purpose.

The purpose of the airport height hazard district (AHH) is to provide regulations that provide a higher level of control from activities, situations and obstructions that could have the potential for endangering the lives and property of users of the Johnston Regional Airport, and property or occupants of land in its vicinity. Further, the creation or establishment of an obstruction may effect existing and future instrument approach minimums of the Johnston Regional Airport, and that obstruction may present a hazard to air navigation and/or reduce the size of areas available for the safe landing, takeoff and maneuvering of aircraft.

10.95.2. Intent.

It is the intent of this section to prevent the creation or establishment of hazards to air navigation, eliminate, remove, alter or mitigate hazards to air navigation, by regulating the height of structures, and the use of property in the vicinity of the airport.

10.95.3. Airport Hazard District Zones.

In order to carry out the provisions of this section, there are created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Johnston Regional Airport. Such zones are identified on the airport hazard district map which is on file in the office of the Johnston County planning office and the geographical informational services office. An area located in one or more than one of the following zones is considered to be the only area in the zone with the more restrictive height regulations.

10.95.3.1. Runway Larger Than Utility Visual Approach Zone. This zone is defined as the inner edge of the approach zone that coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

10.95.3.2. Runway Larger Than Utility with a Visibility Minimum Greater than Three-Quarter Mile Non-precision Instrument Approach Zone. This zone is defined as the inner edge of this approach zone that coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

10.95.3.3. Runway Larger Than Utility with a Visibility Minimum as Low as Three-Quarter Mile Non-precision Instrument Approach. This zone is defined as the inner edge of this approach zone that coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet

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at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

10.95.3.4. Precision Instrument Runway Approach Zone. This zone is defined as the inner edge of this approach zone that coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

10.95.3.5. Transitional Zone. The transitional zones are those zones that are the areas beneath the transitional surfaces.

10.95.3.6. Horizontal Zone. This zone is defined as that area established by swinging arcs of 5,000 feet radii for all runways designated as utility or visual and 10,000 feet for all others from the center of each and the primary surface of each runway connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include approach and transitional at the periphery of the horizontal zone, and extends outward from a horizontal distance of 4,000 feet.

10.95.4. Airport Environs Height Regulations.

Except as otherwise provided in this section, no building or structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any airport hazard district zone to a height in excess of the applicable height established for such zone. The maximum height regulations are as follows:

10.95.4.1. Runway Larger Than Utility Visual Approach Zone. Slopes 20 feet outward for each foot upward beginning at the end of, and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

10.95.4.2. Runway Larger Than Utility with a Visibility Minimum Greater than Three-Quarter Mile Non-precision Instrument Approach Zone. Slopes 34 feet outward for each foot upward beginning at the end of, and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

10.95.4.3. Runway Larger Than Utility with a Visibility Minimum as Low as Three-Quarter Mile Non-precision Instrument Approach. Slopes 34 feet outward for each foot upward beginning at the end of, and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

10.95.4.4. Precision Instrument Runway Approach Zone. Slopes 50 feet outward for each foot upward beginning at the end of, and at the same elevation as the primary surface and extending to a horizontal distance upward of 40 feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

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10.95.4.5. Transitional Zone. Slopes seven feet outward for each foot upward beginning at the sides of, and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation (165 feet above mean sea level). In addition to the foregoing, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of, and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of, and the same elevation as the approach surface and extending a horizontal distance of 5,000 feet measured at 90 degree angles to the extended runway centerline.

10.95.4.6. Horizontal Zone. Established at 150 feet above the airport elevation or at a height of 315 feet above mean sea level.

10.95.4.7. Conical Zone. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone, and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

10.95.5. Airport Environs Height Regulations Exceptions.

Nothing in this section shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

10.95.6. Use Regulations.

Notwithstanding any other provision of this section, no use may be made of land or water within any zone established by this section in such a manner as to:

10.95.6.1. Create electrical interference with navigational signals or radio communication between airport and aircraft;

10.95.6.2. Make it difficult for pilots to distinguish between airport lights and other lights;

10.95.6.3. Result in glare in the eyes of pilots using the airport;

10.95.6.4. Impair visibility in the vicinity of the airport;

10.95.6.5. Create bird strike hazards; or

10.95.6.6. Otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

10.95.7. Existing Uses.

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The regulations prescribed in this section shall not be construed to require the removal, alteration, lowering or other change of any structure or tree not conforming to the regulations as of May 7, 1984, or otherwise interfere with the continuance of a nonconforming use. Nothing contained in this section shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to May 7, 1984.

10.95.8. Marking and Lighting.

Notwithstanding the provisions of this section, the owner of any existing structure that exceeds the height requirements of subsection 10.95.4 of this section, is required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Johnston County Airport Authority to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Johnston County Airport Authority.

10.95.9. Permits Required.

Except as specifically provided in this subsection, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit thereof shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient information in order to determine whether the resulting use, structure, or tree would conform to the regulations prescribed in this article.

10.95.9.1. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction, or permit a nonconforming use, structure or tree, to become a greater hazard to air navigation than it was on May 7, 1984, or than it is when the application permit is made.

10.95.9.2. Nonconforming Uses, Abandoned or Destroyed. Whenever the UDO Administrator determines that a nonconforming structure or tree has been abandoned, or more than 80 percent physically deteriorated, destroyed, or decayed, no permit shall be granted that would allow such structure or tree to exceed the height regulations of subsection 10.93.4 of this section, or otherwise deviate from the requirements of this section.

10.95.9.3. Permit Exceptions.

10.95.9.3.1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any structure or tree less than 75 feet of vertical height above the ground, except when, because of existing terrain, land contour, or topographic feature, such structure or tree would extend above the required height limits prescribed for such zones.

10.95.9.3.2. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no

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permit shall be required for any structure or tree less than 75 feet of vertical height above the ground, except when such structure or tree, because of existing terrain, land contour, or topographic feature, would extend above the required height limit prescribed for such zones. Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration, of any structure, or growth of any tree in excess of any of the required height limits established in subsection 10.95.4 of this section.

10.95.10. Variances.

Any person desiring to erect or increase the height of any building or structure not in accordance with the regulations prescribed in this section, may apply to the Board of Adjustment for a variance from such regulations. The application for a variance must be accompanied by a determination letter from the Federal Aviation Administration as to the effect of the variance request on the operation of air navigation facilities and the safe, efficient use of navigable air space. An application for a variance from the requirements of this section shall be referred to the Airport Manager for advice as to the aeronautical effects of the variance request on the operation of the airport facilities. If the Airport Manager does not respond to the application request within 15 days after receipt of the application, the Board of Adjustment may act on its own to grant or deny such application. The Board of Adjustment, based on findings of fact, shall grant the variance if it:

10.95.10.1. Is found that a literal application of enforcement of the regulations will result in unnecessary hardship and relief granted will not be contrary to the public interest;

10.95.10.2. Will not create a hazard to air navigation;

10.95.10.3. Will do no injustice; and

10.95.10.4. Will be in accord with the spirit and intent of this section.

10.95.11. Obstruction Marking and Lighting.

Any permit or variance granted may, if such action is deemed advisable to carry out the purpose of this section, and is reasonable in the circumstances, be so conditioned as to require the owner of the structure to install, operate, and maintain, at the owner's expense, such markings and lights as necessary. If deemed proper by the Board of Adjustment, this condition may be modified to permit the Johnston County Airport Authority, at its own expense, to install, operate and maintain the necessary markings and lights.

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PART X. SUBDIVISION REGULATIONS.

SECTION 10.96 STANDARDS FOR REVIEW.

Refer to Article 5 for the subdivision review process. Decision on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in Article 10, Part X. Whenever the ordinance criteria for decisions requires application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval.

SECTION 10.97 SKETCH PLANS.

A sketch plan is recommended and should include the information specified in Section 5.4.4.

SECTION 10.98 PRELIMINARY PLATS FOR MINOR AND MAJOR SUBDIVISIONS.

The preliminary plat shall depict or contain the information provided in Section 10.98. Preliminary plats shall be clearly and legibly drawn at a scale of not less than two hundred (200) feet to one (1) inch. If a major subdivision is to be developed in states, a phasing plan must be submitted with the preliminary plat.

SECTION 10.99 FINAL PLATS FOR ALL SUBDIVISIONS.

10.99.1. Final Plat Contents.

The final plats shall depict or contain the information provided in Section 10.100. Final plats shall be clearly and legibly drawn by a registered land surveyor currently licensed in the State of North Carolina by the NC State Board of Registration for Professional Engineers and Land Surveyors. The plat shall also be drawn at a scale of not less than two hundred (200) feet to one (1) inch and shall be drawn on a sheet size of mylar acceptable to the Register of Deeds of Johnston County.

10.99.2. Certifications.

The final plat shall contain the certifications outlined in Section 10.119.

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SECTION 10.100 INFORMATION TO BE PROVIDED ON PRELIMINARY AND FINAL PLATS.

The preliminary and final plats shall depict or contain the information indicated in the following table. An "X" indicates that the information is required.

<i>Information</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
Vicinity map (6" W x 4" H) showing location of subdivision in relation to neighboring tracts, subdivision, roads, and waterways (to include streets and lots of adjacent developed or platted properties). Also include corporate limits, Town boundaries, county lines if on or near subdivision tract.	X	
Boundaries of tract and portion to be subdivided, including total acreage to be subdivided, distinctly and accurately represented with all bearings and distances shown.	X	X
Proposed street layout and right-of-way width, lot layout and size of each lot. Number lots consecutively throughout the subdivision.	X	X
Name of proposed subdivision.	X	X
Statement from the Johnston County Health Department that a copy of the sketch plan has been submitted to them, if septic tanks or other onsite water or wastewater systems are to be used in the subdivision, AND/OR statement from the County Public Utilities that application has been made for public water and/or sewer permits.	X	
Graphic scale.	X	X
North arrow and orientation.	X	X
Concurrent with submission of the Preliminary Plat to the Town, the subdivider or planner shall submit copies of the Preliminary Plat and any accompanying material to any other applicable agencies concerned with new development, including, but not limited to: District Highway Engineer, County Board of Education, U.S. Army Corps of Engineers, State Department of Natural Resources and Community Development, for review and recommendation.	X	
List the proposed construction sequence.	X	
Stormwater plan Bsee Article 10, Part VI.	X	
Show existing contour lines with no larger than five-foot contour intervals.	X	
New contour lines resulting from earth movement (shown as solid lines) with no larger than five-foot contour intervals (existing lines should be shown as dotted lines).	X	
Survey plat, date(s) survey was conducted and plat prepared, the name, address, phone number, registration number and seal of the Registered Land Surveyor.	X	X
Names, addresses, and telephone numbers of all owners, mortgagees, land planners, architects, landscape architects and professional engineers responsible for the subdivision (include registration numbers and seals, where applicable).	X	X
Date of the drawing(s) and latest revision date(s).	X	X

ARTICLE 10. PERFORMANCE STANDARDS

<i>Information</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
The owner's name(s) of adjoining properties and Zoning District of each parcel within 100' of the proposed site.	X	
State on plans any variance request(s).	X	
Show existing buildings or other structures, water courses, railroads, bridges, culverts, storm drains, both on the land to be subdivided and land immediately adjoining. Show wooded areas, marshes, swamps, rock outcrops, ponds or lakes, streams or stream beds and any other natural features affecting the site.	X	
The exact location of the flood hazard, floodway and floodway fringe areas from the community's FHBM or FIRM maps (FEMA). State the base flood elevation data for subdivision.	X	X
Show the minimum building setback lines for each lot.	X	X
Provide grading and landscape plans. Proposed plantings or construction of other devices to comply with the screening requirements of Article 10, Part II.	X	
Show location of all proposed entrance or subdivision signage (see Section 10.23.1).	X	
Show pump station detail including any tower, if applicable.	X	
Show area which will not be disturbed of natural vegetation (percentage of total site).	X	
Label all buffer areas, if any, and provide percentage of total site.	X	X
Show all riparian buffer areas.	X	X
Show all watershed protection and management areas per Article 10, Part VI.	X	X
Soil erosion plan.	X	
Show temporary construction access pad.	X	
Outdoor illumination with lighting fixtures and name of electricity provider.	X	
The following data concerning proposed streets:		
Streets, labeled by classification (see Town of Smithfield construction standards) and street name showing linear feet, whether curb and gutter or shoulders and swales are to be provided and indicating street paving widths, approximate grades and typical street cross-sections. Private roads in subdivisions shall also be shown and clearly labeled as such.	X	X
Traffic signage location and detail.	X	
Design engineering data for all corners and curves.	X	X

ARTICLE 10. PERFORMANCE STANDARDS

<i>Information</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
For office review; a complete site layout, including any future expansion anticipated; horizontal alignment indicating general curve data on site layout plan; vertical alignment indicated by percent grade, PI station and vertical curve length on site plan layout; the District Engineer may require the plotting of the ground profile and grade line for roads where special conditions or problems exist; typical section indicating the pavement design and width and the slopes, widths and details for either the curb and gutter or the shoulder and ditch proposed; drainage facilities and drainage.	X	
Type of street dedication; all streets must be designated public. (Where public streets are involved which will be dedicated to the Town, the subdivider must submit all street plans to the UDO Administrator for approval prior to preliminary plat approval).	X	X
When streets have been accepted into either the municipal or the state system before lots are sold, a statement explaining the status of the street in accordance with the Town of Smithfield construction standards.	X	X
If any street is proposed to intersect with a state maintained road, a copy of the application for driveway approval as required by the Department of Transportation, Division of Highways Manual on Driveway Regulations. (1) Evidence that the subdivider has applied for such approval. (2) Evidence that the subdivider has obtained such approval.	X X X	
The location and dimensions of all:		
Utility and other easements.	X	X
Pedestrian and bicycle paths.	X	X
Areas to be dedicated to or reserved for public use.	X	X
The future ownership (dedication or reservation for public use to governmental body or for owners to duly constituted homeowners' association) of recreation and open space lands.	X	X
Required riparian and stream buffer per Article 10, Part VI.	X	X
The site/civil plans for utility layouts including:		
Sanitary sewers, invert elevations at manhole (include profiles).	X	
Storm sewers, invert elevations at manhole (include profiles).	X	
Best management practices (BMPs)	X	
Stormwater control structures	X	
Other drainage facilities, if any.	X	
Impervious surface ratios	X	

ARTICLE 10. PERFORMANCE STANDARDS

<i>Information</i>	<i>Preliminary Plat</i>	<i>Final Plat</i>
Water distribution lines, including line sizes, the location of fire hydrants, blow offs, manholes, force mains, and gate valves.	X	
Gas lines.	X	
Telephone lines.	X	
Electric lines.	X	
Plans for individual water supply and sewage disposal systems, if any.	X	
Provide site calculations including:		
Acreage in buffering/recreation/open space requirements.	X	X
Linear feet in streets and acreage.	X	X
The name and location of any property or buildings within the proposed subdivision or within any contiguous property that is located on the US Department of Interior's National Register of Historic Places.	X	X
Sufficient engineering data to determine readily and reproduce on the ground every straight or curved line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings, or deflection angles, radii, central angles and tangent distance for the center line of curved property lines that is not the boundary line of curved streets. All dimensions shall be measured to the nearest one-tenth of a foot and all angles to the nearest minute.	X	X
The accurate locations and descriptions of all monuments, markers, and control points.	X	X
Proposed deed restrictions or covenants to be imposed upon newly created lots. Such restrictions are mandatory when private recreation areas are established. Must include statement of compliance with state, local, and federal regulations.	X	X
A copy of the erosion control plan submitted to the Regional Office of NC-DNRCD, when land disturbing activity amounts to one acre or more.	X	
All certifications required in Section 10.119.	X	X
Any other information considered by either the subdivider, UDO Administrator, Planning Board, or Town Council to be pertinent to the review of the plat.	X	X
Improvements guarantees (see Section 5.8.2.6).		X

SECTION 10.101 PRESALE OF LOTS.

Pre-sale and pre-lease contracts are allowed only after a preliminary plat has been approved. The closing and final conveyance of lots subject to pre-sale and pre-lease contracts may not occur until after the final plat is approved and recorded. The buyer shall:

10.101.1. Be provided a copy of the preliminary plat at the time the contract is executed;

10.101.2. Be notified that no final plat has been approved;

ARTICLE 10. PERFORMANCE STANDARDS

10.101.3. Be advised that there is no guarantee that changes will not be made to the plat before final approval;

10.101.4. Be provided a copy of the final plat before final approval by the Town; and

10.101.5. Be informed that the contract or lease may be terminated by the buyer/leasee if the final plat differs in any material way from the preliminary plat.

SECTION 10.102 RECOMBINATION OF LAND.

10.102.1. Any plat or any part of any plat may be vacated by the owner or developer at any time before the sale of any lot in the subdivision by a written instrument to which a copy of such plat shall be attached, declaring the same to be vacated.

10.102.2. Any lot line may be adjusted of lots combined in a subdivision to which a copy of such revisions shall be attached deciding the adjustment.

10.102.3. Such an instrument shall be approved by the same agencies as approved the final plat. The Town Council may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets, or alleys.

10.102.4. Such an instrument shall be executed, acknowledged, or approved and recorded and filed in the same manner as a final plat; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds, and all dedications laid out or described in such plat.

10.102.5. When lots have been sold, the plat may be vacated in the manner provided in Section 10.102.1 through 10.102.4, by all owners of the lots in such plat joining in the execution of such writing.

SECTION 10.103 RESUBDIVISION PROCEDURES.

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

SECTION 10.104 COMPLIANCE WITH PROVISIONS REQUIRED.

Each subdivision shall contain the improvements specified in this section, which shall be installed in accordance with the requirements of this Ordinance and paid for by the subdivider, unless other means of financing is specifically stated in this Ordinance. Land shall be dedicated and reserved in each subdivision as specified in this section. Each subdivision shall adhere to the minimum standards of design established by this section.

ARTICLE 10. PERFORMANCE STANDARDS

SECTION 10.105 SUITABILITY OF LAND.

10.105.1. Land which has been determined by the Planning Board on the basis of engineering or other expert surveys to post an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until the subdivider has taken the necessary measures to correct the conditions and to eliminate the dangers.

10.105.2. Areas that have been used for disposal of solid waste shall not be subdivided unless tests by the Johnston County Health Department, a structural engineer and a soils expert determine that the land is suitable for the purpose proposed.

10.105.3. All subdivision proposals shall be consistent with the Flood Damage Prevention Ordinance. In areas of flood hazard, identified on the Flood Insurance Rate Map of Johnston County, North Carolina, as Zones A and AE, all subdivisions shall be designed to minimize flood damage in accordance with the provisions of the Smithfield Flood Damage Prevention Regulations, Article 10, Part VII.

SECTION 10.106 STORMWATER DRAINAGE FACILITIES.

The preliminary plat shall be accompanied by evidence satisfactory to the Planning Board as to the proposed method of providing for stormwater drainage in accordance with Article 10, Part VI.

SECTION 10.107 EROSION AND SEDIMENTATION CONTROL.

The preliminary plat shall be accompanied by a written statement from NCDENR, or the UDO Administrator, as the case may be, that any required soil erosion and sedimentation control plan has been approved.

SECTION 10.108 RIPARIAN BUFFERS.

Riparian buffers within a lot are to be shown on the recorded plat, and the area of a lot within the riparian buffer must still count toward any dimensional requirements for lot size. Riparian buffers must be shown on all subdivision plats, including those on platted lots. If a riparian buffer is designated as a privately-owned common area (e.g., owned by a property owners association), the Town may, upon request, attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-regulated regulatory requirements based on property size. Dimensional lot requirements include calculations for, among other things, residential density standards, tree conservation area, open space or conservation area, setbacks, perimeter buffers, and lot area.

ARTICLE 10. PERFORMANCE STANDARDS

SECTION 10.109 GENERAL POLICY STATEMENTS.

10.109.1. Land subject to flooding and land deemed unacceptable for development for other reasons shall not be platted for residential occupancy, or for other such uses as may increase danger to life, health or property, or intensify the potential for flood hazard. Such land within a plan shall be specified for such uses as will not be endangered by periodic or occasional inundation. The delineation of flood hazard boundaries shall be determined by reference to the Flood Insurance Rate Map for the Town of Smithfield, provided by the Federal Emergency Management Agency (FEMA), as well as additional studies as they become available.

10.109.2. Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged to allow for the opening of future streets and logical further subdivision.

10.109.3. Where a subdivision is proposed adjacent to a railroad right-of-way, it shall be planned so as to avoid having lots that front on a street which is parallel and adjacent to the railroad right-of-way.

10.109.4. The subdivider shall be responsible for all costs incurred in the extension of water, sewer, and other utilities. Requests for extension of electrical service from the Town shall be administered through policies in effect at the time of application for such service.

SECTION 10.110 STREETS.

10.110.1. Design Standards.

The design of all streets and roads within the jurisdiction of this Ordinance shall be in accordance with the accepted policies of the North Carolina Department of Transportation, Division of Highways, as taken or modified from the American Association of State Highway Officials (AASHO) manuals. The NC Department of Transportation, Division of Highways' Subdivision Roads, Minimum Construction Standards, January 1, 2000, or the current NC Department of Transportation standards, shall apply for any items not included in this Ordinance, or where stricter than this Ordinance.

10.110.1.1. Conformity to Existing Maps and Plans.

10.110.1.1.1. The location and width of all proposed streets shall be in conformity with the officially adopted Thoroughfare Plan for the Town of Smithfield, and shall be in conformity with all current plans of the Town of Smithfield.

10.110.1.1.2. The proposed street system within a subdivision shall, whenever possible, be tied in with the existing street system. The proposed street system shall also provide for the continuation of the existing Town and State systems, whenever possible.

ARTICLE 10. PERFORMANCE STANDARDS

10.110.1.2. All streets shall be labeled on the preliminary plat as: Major Streets and Highways; Collector Streets; Minor Streets; or Cul-de-sacs.

10.110.1.3. Blocks.

10.110.1.3.1. Blocks shall be a maximum of 1,000 feet and a minimum of 400 feet in length.

10.110.1.3.2. Blocks shall have sufficient width to provide two tiers of lots, except where another design may be necessary to separate residential development from through traffic or other non-residential uses.

ARTICLE 10. PERFORMANCE STANDARDS

10.110.1.4. Lots. The size, shape, and orientation of non-residential lots shall be such as the Planning Board and Town Council deem appropriate for the type of development or use proposed; however, residential, as well as non-residential lots, shall comply with the following minimum requirements:

10.110.1.4.1. Lot Area. All lots shall have a minimum gross area of at least 8,000 square feet. Additional lot area shall be required when:

10.110.1.4.1.1. A lot is served by either public water or sewer, but not both
B 20,000 square feet.

10.110.1.4.1.2. A lot is not served by either public water or sewer B 25,000 square feet.

10.110.1.4.2. Lot Width and Depth. All lots shall have a minimum width and street frontage as required in Article 8, except in the case of the turning circle of cul-de-sacs where a minimum width at the street right-of-way line of 25 feet is permissible. Corner lots shall have an extra width of 10 feet to permit adequate setback from side streets. The minimum lot depth of single tier lots (when approved) shall be 125 feet. All other lots shall be 110 feet in depth. Additional lot width and depth shall be required when: *(Amended 4/3/2018)*

10.110.1.4.2.1. A lot is served by either public water or sewer, but not both:
Lot width - 100 feet; Lot depth - 200 feet.

10.110.1.4.2.2. A lot is not served by either public water or sewer: Lot width
- 125 feet; Lot depth - 200 feet.

10.110.1.4.3. Lot size, shape, and location shall be made with due consideration to topographic conditions, contemplated use, and the surrounding area.

10.110.1.4.4. Every lot shall maintain required street frontage as required in Article 8 on one of the following *(Amended 4/3/2018)*:

10.110.1.4.4.1. A public street dedicated to and maintained by the Town of Smithfield or the North Carolina Department of Transportation.

10.110.1.4.4.2. A street constructed to the standards of the Town or Smithfield or the North Carolina Department of Transportation, with a written agreement concerning the future maintenance of the street.

10.110.1.4.5. Double frontage and reverse frontage lots shall be avoided except where necessary to separate residential development from through traffic or non-residential development.

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10.110.1.4.6. Side lot lines shall be substantially at right angles or radial to street lines.

10.110.1.4.7. Flag-shaped lots shall only be permitted in cases where the minimum lot width and lot depth of this Ordinance are complied with and the lot has a minimum street frontage of at least 60 feet in width. *(Amended 4/3/2018)*

10.110.1.5. Easements.

10.110.1.5.1. To provide service to public utility facilities easements of not less than 30 feet in width may be provided for on a subdivision plat.

10.110.1.5.2. To provide access to required engineered stormwater control facilities including BMPs.

10.110.1.5.3. The location and extent of such an easement shall be finalized before the approval of the preliminary plat.

10.110.2. Private Streets.

10.110.2.1. Streets designated as private may be allowed in subdivisions when in the opinion of the Town Council they provide adequate ingress and egress onto collector streets, and sufficient assurance is provided through a legally established homeowners' association, that the street shall be properly maintained.

10.110.2.2. All such streets shall be designated a "Private Street" on the preliminary plans and final plats. Whenever a private street intersects a US or NC highway or NC secondary road, a statement of approval for the intersection, signed by the District Engineer, North Carolina Department of Transportation, Division of Highways for Johnston County, shall be submitted concurrent with the final plat.

10.110.2.3. All private streets must meet Department of Transportation standards for construction and maintenance.

10.110.2.4. A homeowners' association shall be established for each subdivision containing private streets and drainage systems. The final plat for each such subdivision shall contain a certificate indicating the book and page number of the homeowners' association covenants, conditions, and restrictions. The covenants, conditions, and restrictions shall specify lot owners' responsibilities for maintenance of private streets and drainage systems, and shall provide for assessments to finance all maintenance activities. Covenants shall provide that the homeowners' association will construct all stub streets prior to offering any connecting for acceptance by NCDOT or the Town. Final plats for subdivisions containing private streets and drainage improvements will not be approved

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until the subdivider's homeowners' association documents have been submitted and approved by the Town Council.

10.110.3. Marginal Access Streets.

Where a tract of land to be subdivided adjoins a principal arterial street, the subdivider may be required to provide a marginal access street parallel to the arterial street or reverse frontage on a minor street for the lots to be developed adjacent to the arterial street. Where reverse frontage is established, private driveways shall be prevented from having direct access to the expressway. In the case of minor subdivisions fronting on a major highway, the Planning Board may regulate access onto an existing or proposed highway by requiring:

10.110.3.1. That access be limited to a minor street, when available.

10.110.3.2. That another access design, such as joint driveways, be used to achieve the intent of this regulation.

10.110.4. Subdivision Street Disclosure Statement.

All streets shown on the final plat shall be designated in accordance with G.S. 136-102.6, and designation as public shall be conclusively presumed an offer of dedication to the public. Where streets are dedicated to the public but not accepted into a municipal or the state system, before lots are sold, a statement explaining the status of the street shall be included with the final plat.

10.110.5. Half-Streets.

The dedication of half streets of less than 60 feet at the perimeter of a new subdivision shall be prohibited. If circumstances render this impractical, adequate provision for the concurrent dedication of the remaining half of the street shall be furnished by the subdivider. Where there exists a half-street in an adjoining subdivision, the remaining half shall be provided by the proposed subdivision. However, in circumstances where more than 60 feet of right-of-way is required, a partial width right-of-way, not less than 60 feet in width, may be dedicated when adjoining undeveloped property is owned or controlled by the subdivider; provided that the width of the partial dedication is such as to permit the installation of such facilities as may be necessary to serve abutting lots. When the adjoining property is subdivided, the remainder of the full required right-of-way shall be dedicated.

10.110.6. Street Names and House Numbers

Proposed streets which are obviously in alignment with existing streets shall be given the same name. In assigning new names, duplication of existing names shall be avoided, and in no case shall the proposed name be phonetically similar to existing names irrespective of the use of a suffix such as street, road, drive, place, court, etc. Street names and house numbers shall be assigned in accordance with the Town of Smithfield Construction Standards. Street names shall be subject to the approval of the Town Council.

10.110.7. Collector and Minor Streets.

ARTICLE 10. PERFORMANCE STANDARDS

Collector and minor streets shall be so laid out that their use by through traffic will be discouraged. Streets shall be designed or walkways dedicated to assure convenient access to parks, playgrounds, schools, and other places of public assembly.

10.110.8. Nonresidential Streets.

The subdivider of a nonresidential subdivision shall provide streets in accordance with I.F.-4 of the North Carolina Roads, Minimum Construction Standards, January 1, 2000; or current applicable North Carolina Department of Transportation Standards; and the standards of this Ordinance, whichever are stricter in regard to each particular item.

10.110.9. Right-of-Way Widths.

Right-of-way widths shall not be less than the following:

Principal Arterial (Freeways) - 350 feet.

Principal Arterial (Other) - 200 feet.

Major Collector - 100 feet.

Major Thoroughfare other than Freeway and Expressway - 90 feet.

Minor Thoroughfare - 60 feet.

Local Street - 60 feet (may be no less than 50 feet if approved by Town Council due to special conditions).

Cul-de-sac - 100' diameter for turnaround and 45' for street right-of-way.



10.110.10. Pavement Widths.

Pavement widths or graded widths shall be as follows:

	<u>Streets with Curb and Gutter</u>	<u>Streets without Curb and Gutter</u>
Minor Thoroughfare	43 ft.	40 ft.
Local Road	24 ft.	20 ft.
Marginal Access (frontage)	24 ft.	20 ft.
Cul-de-sac	24 ft.	20 ft.
Cul-de-sac turnaround	100 ft. in dia.	80 ft. in dia.

Pavement widths for principal arterials and major thoroughfares shall be determined in concert with the Town of Smithfield or the NC Department of Transportation standards and the current Smithfield Thoroughfare Plan.

10.110.11. Roads and Street Surfaces.

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All public subdivision streets and roads shall be constructed and paved to meet the current requirements of the North Carolina Department of Transportation, Division of Highways' standards for state maintenance.

10.110.12. Tangents.

A tangent of at least 100 feet shall be provided between reverse curves on all streets.

10.110.13. Street Intersections.

Street intersections shall be laid out as follows:

10.110.13.1. All streets shall intersect as nearly as possible at right angles and no street shall intersect at less than 60 degrees.

10.110.13.2. Intersections with a major street shall be at least 1,000 feet apart, measured from centerline to centerline.

10.110.13.3. Where a centerline offset (jog) occurs at an intersection, the distance between centerline of the intersecting streets shall be not less than 200 feet.

10.110.13.4. Property lines at intersections should be set so that the distance from the edge of pavement of the street turnout to the property line will be at least as great as the distance from the edge of pavement to the property line along the intersecting streets. The property line can be established as a radius or as a sight triangle. Greater offsets from the edge of pavement to the property lines will be required, if necessary, to provide sight distance for the vehicle on the side street.

10.110.13.5. Turn lanes or deceleration lanes may be required to be constructed within 150 feet of any intersection, or other point of ingress or egress, where a substantial number of conflicting turning movements is anticipated, if the Council determines that the safety of motorists and pedestrians merit such construction.

10.110.14. Alleys.

10.110.14.1. Alleys shall be required to serve lots used for commercial and industrial purposes except that this requirement may be waived where other definite and assured provision is made for service access. Alleys shall not be provided in residential subdivision unless necessitated by unusual circumstances and approved by the Planning Board and Town Council.

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10.110.14.2. All alleys shall be designed in accordance with the Department of Transportation, Division of Highways' specifications and standards and shall meet the following requirements:

Right-of-way width	20 feet
Property line radius at alley intersection	15 feet
Minimum centerline radius when deflection angle of not more than 10 degrees occurs	35 feet
Minimum turnaround diameter of dead end alley (right-of-way width)	80 feet

10.110.14.3. Sharp changes in alignment and grade shall be avoided.

10.110.14.4. All alleys shall be designed in accordance with NC Department of Transportation Standards.

10.110.15. Geometric Characteristics.

The standards outlined below shall apply to all subdivision streets proposed for addition to the State Highway System or Municipal Street System. In cases where a subdivision is sought adjacent to a proposed thoroughfare corridor, the requirements of dedication and reservation discussed under Right-of-Way shall apply.

10.110.15.1. Design Speed. The design speeds for subdivision-type streets shall be:

<u>Urban</u>	<u>Desirable (mph)</u>	<u>Minimum (mph)</u>
Minor Thoroughfares	60	50
Local Streets	40	40

10.110.15.2. Desirable and Minimum Grades. The desirable/minimum for subdivision type streets grades in percent shall be:

	<u>60 Desirable</u> (50 Minimum)	<u>40 Desirable</u> (40 Minimum)
Type of Topography		
Flat-NCDOT Divisions	3	5
1, 2, 3, 4, and 5	(4)	(5)

The minimum grade in no case shall be less than 0.5%. Grades for 100 feet each way from intersections should not exceed 5%.

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10.110.16. *Minimum Sight Distances.*

In the interest of public safety, the minimum sight distance applicable shall be provided in every instance. Vertical curves that connect each change in grade shall be provided and calculated using the following parameters. (General practice calls for vertical curves to be multiples of 50 feet. Calculated lengths should be rounded up in each case.)

<u>Design Speed, MPH</u>	<u>20</u>	<u>30</u>	<u>40</u>	<u>50</u>	<u>60</u>
Stopping Sight Distance					
Min. Stopping Distance, Ft.	150	200	275	350	475
Des. Stopping Distance, Ft.	150	200	300	450	650
Minimum K* Value For:					
Min. Crest Vert. Curve	16	28	55	85	160
Des. Crest Vert. Curve	16	28	65	145	300
Min. SAG Vert. Curve	24	35	55	75	105
Des. SAG Vert. Curve	24	35	60	100	155
Passing Sight Distance					
Min. Passing Distance, Ft. (2 lane)		1100	1500	1800	2100
Min. K* Value for Crest Vert. Curve		365	686	985	1340

K* is a coefficient by which the algebraic difference in grade may be multiplied to determine the length in feet of the vertical curve which will provide minimum sight distance.

Sight distance provided for stopped vehicles at intersections should be in accordance with the Unified Development Ordinance for the Town of Smithfield.

10.110.17. *Design Speeds.*

The following table shows the maximum degree of curve and related maximum superelevation for design speeds. The maximum rate of roadway superelevation (e) for roads with no curb and gutter is .08. The maximum rate of superelevation for streets with curb and gutter is .06, and .04 being desirable.

Design Speed MPH	Maximum e*	Minimum Radius (Rounded) Feet	Maximum Degree of Curve (Rounded) Degrees
20	.04	125	45.00
30	.04	302	19.00
40	.04	573	10.00
50	.04	955	6.00
60	.04	1528	3.45
20	.06	115	50.00
30	.06	273	21.00
40	.06	509	11.15
50	.06	844	6.45

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Design Speed MPH	Maximum e*	Minimum Radius (Rounded) Feet	Maximum Degree of Curve (Rounded) Degrees
60	.06	1380	4.15
20	.08	110	53.50
30	.08	252	22.45
40	.08	468	12.15
50	.08	764	7.30
60	.08	1206	4.45

*Maximum rate of roadway superelevation, foot per foot.

10.110.18. Cul-De-Sacs.

Cul-de-sacs shall not exceed 750 feet in length.

10.110.19. PUD Streets.

10.110.19.1. A dense network of narrow streets with reduced curb radii may be fundamental to sound design. This network serves to both slow and disperse vehicular traffic and provide a pedestrian friendly atmosphere. Such alternate guidelines are encouraged in PUDs when the overall design ensures that non-vehicular travel is to be afforded every practical accommodation that does not adversely affect safety considerations. The overall function, comfort, and safety of a multi-purpose or “shared” street are more important than its vehicular efficiency alone.

10.110.19.2. PUDs should have a high proportion of interconnected streets, sidewalks, and paths. Streets and rights-of-ways are shared between vehicles (moving and parked), bicycles, and pedestrians. A dense network of PUD streets will function in an interdependent manner, providing continuous routes that enhance non-vehicular travel. Most PUD streets should be designed to minimize through traffic by the design of the street and the location of land uses. Streets should be designed to only be as wide as needed to accommodate the usual vehicular mix for that street while providing adequate access for moving vans, garbage trucks, fire engines, and school buses.

10.110.20. Street Construction Standards.

All streets must be constructed to the Town of Smithfield Construction Standards.

SECTION 10.111 STREET CONNECTIVITY REQUIREMENTS.

10.111.1. An interconnected street system is necessary in order to protect the public health, safety, and welfare in order to ensure that streets will function in an interdependent manner, to provide adequate access for emergency and service vehicles, to enhance nonvehicular travel such as pedestrians and bicycles, and to provide continuous and comprehensible traffic routes. All proposed new streets shall be platted according to the current Town Thoroughfare Plan. In areas where such plans have not been completed, the streets shall be designated and located in

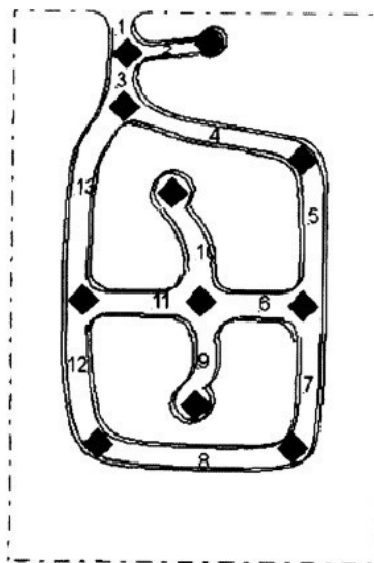
ARTICLE 10. PERFORMANCE STANDARDS

relation to existing and proposed streets, the topography, to natural features such as streams and tree cover, to public safety and convenience, and to the proposed use of land to be served by such streets.

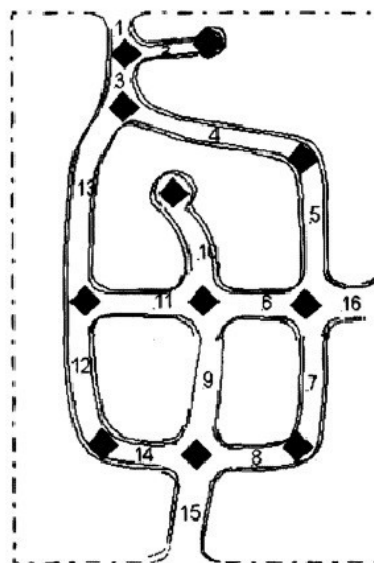
10.111.2. All proposed streets shall be continuous and connect to existing or platted streets without offset with the exception of cul-de-sacs as permitted and except as provided below. Whenever practicable, provisions shall be made for the continuation of planned streets into adjoining areas.

10.111.3. The street network for any subdivision shall achieve a connectivity ratio of not less than 1.45 (see example below).

Example 1: Subdivision that does not meet the Ratio
(13 links/11 nodes = 1.18 ratio)



Example 2: Same development modified to meet Ratio
(16 links/11 nodes = 1.45 ratio)



10.111.4. For the purposes of this section, the street links and nodes within the collector or thoroughfare streets providing access to a proposed subdivision shall not be considered in computing the connectivity ratio.

10.111.5. Residential streets shall be designed so as to minimize the length of local streets, to provide safe access to residences, and to maintain connectivity between and through residential neighborhoods for autos and pedestrians.

10.111.6. Where necessary to provide access or to permit the reasonable future subdivision of adjacent land, rights-of-way, and improvements shall be extended to the boundary of the development. A temporary turnaround may be required where the dead end exceeds 500 feet in length. The platting of partial width rights-of-way shall be prohibited except where the remainder of the necessary right-of-way has already been platted, dedicated, or established by other means.

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10.111.7. Utility stub-outs shall be provided at all required points of street connectivity.

10.111.8. Exemptions. New subdivisions that intend to provide one new cul-de-sac street shall be exempt from the connectivity requirement when the UDO Administrator determines that the subdivision will provide for connectivity with adjacent future development and there are no options for providing stub streets due to topographic conditions, adjacent developed sites, or other limiting factors.

SECTION 10.112 SIDEWALKS.

10.112.1. Except as provided in Section 10.112.3, the Town Council may require the construction of sidewalks adjacent to one side of new streets in subdivisions. The sidewalks required by this section shall be four (4) feet in width if on both sides of the street and five (5) feet in width if on one side of the street. All sidewalks shall be constructed according to the specifications set forth in the Town of Smithfield construction standards.

10.112.2. Whenever the Town finds that a means of pedestrian access is necessary from a subdivision to schools, parks, open space, playgrounds, roads, or other facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer shall be required to reserve an unobstructed easement of at least ten (10) feet in width and a five (5) foot sidewalk to provide such access.

10.112.3. Subdivisions fronting on major thoroughfares are required to construct four (4) foot sidewalk(s) on the thoroughfare right-of-way regardless of whether or not a sidewalk exists on the opposite side of the street. The sidewalk(s) shall comply with the Town of Smithfield construction standards and NCDOT requirements.

SECTION 10.113 UTILITIES.

10.113.1. Water and Sewerage Systems.

10.113.1.1. When available, the subdivider shall connect to the water and sewerage systems owned and operated by the Town. For all residential and commercial development, the Town may require that the developer install lines larger than required by the development in order to support future growth. The Town will pay the difference between the required utilities and the upsized lines.

10.113.1.2. Where public or community water supply and/or sewerage systems are not available or to be provided, a written statement from the County Health Department shall be submitted with the preliminary plat indicating that each lot has adequate land area and soil conditions suitable to accommodate the proposed methods of water supply and sewage disposal. The statement from the County Health Department shall be based upon a field investigation. The field investigation for sewage disposal shall include a sufficient number of percolation tests (at least one per acre) to determine absorption capacity of the

ARTICLE 10. PERFORMANCE STANDARDS

soil and test holes at least six feet deep (as needed) to determine the depth to the ground water table, and the presence of rock formations or other impervious strata.

10.113.1.3. All utilities shall be installed per Town requirements at the direction of the Public Utilities Director.

10.113.2. Electric Power.

Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

10.113.2.1. If the use is not a subdivision and is located on a lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.

10.113.2.2. If the use is a subdivision or is not located on a lot served by an existing power line or a substantial internal distribution system will be necessary, then the electric utility service provider must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

10.113.3. Telephone Service.

Every principal use and every lot within a subdivision must have available to it a telephone service cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

10.113.3.1. If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is necessary.

10.113.3.2. If the use is a subdivision or is not located on a lot served by an existing telephone line or a substantial internal distribution system will be necessary, then the telephone utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

10.113.4. Underground Utilities.

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10.113.4.1. All electric power lines (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions constructed after the effective date of this Ordinance shall be placed underground in accordance with the specifications and policies of the respective utility service providers and the Town of Smithfield.

10.113.4.2. Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this Ordinance, then all electric power, telephone, gas distribution, and cable television lines installed to serve the development that are located on the development site outside of a previously existing public street right-of-way shall be placed underground in accordance with the specifications and policies of the respective utility service providers and the Town of Smithfield.

10.113.5. Utilities to be Consistent with Internal and External Development.

10.113.5.1. Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (i.e., water or sewer lines) shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

10.113.5.2. All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

SECTION 10.114 RECREATION.

10.114.1. Applicability.

Every person, firm, or corporation who subdivides land for residential and/or nonresidential purposes shall be required to dedicate a portion of such land for the purpose of public recreation/open space, including the preservation of natural and cultural resources, to serve the leisure needs of the residents of the subdivision and the Town of Smithfield (if recreation area is publicly dedicated).

10.114.2. Exceptions.

10.114.2.1. If dedicated land is to be less than 2,000 square feet, and where that area cannot be combined with an existing or planned recreation area, then provision or dedication of that area will not be required.

10.114.2.2. If the Town Council determines that assembling a piece of land to meet the requirements of this section, either (a) would create undue hardships, or (b) is not necessary because the needs of the subdivision are already being met by dedicated land, it may waive any requirements of that subsection.

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10.114.2.3. If the site abuts designated greenways or future greenways on the Town's Land Use Plan, then provision or dedication of land will not be required. The Planning Board may recommend, and the Town Council may require, the dedication of a connecting path to the designated or future greenway. Where a connection path is necessary, a path of up to 50 feet may be required, but in no case shall the path be less than 30 feet in length. Also, the path must connect with an existing street that is accessible to all residents of the subdivision.

10.114.3. Dimensional Requirements.

At least one fifty-seventh of an acre (1/57) shall be dedicated for each dwelling unit planned or provided for in the subdivision plan, except where land is located in the flood plain of a stream or river as indicated by the flood plain maps of the Federal Insurance Administration and/or is characterized by steep slopes (15% or greater), then at least one-twentieth (1/20) of an acre of such land shall be dedicated for each dwelling unit.

The total land area dedicated as part of a nonresidential subdivision shall be determined by an analysis of the site, the use(s) to be located thereon, and the designation of recreation and/or open space sites as shown on the adopted Land Use Plan. The site analysis shall be prepared by the applicant and shall identify in written and graphic form those areas characterized by steep slopes (15% or greater), flood plains and wetlands, rock outcroppings, mature woodlands (trees of 18 inches or greater in diameter), existing structures and cemeteries, and lakes, ponds, rivers and other water sources. A written and graphic description shall also be submitted by the applicant which identifies the proposed use of each lot in the subdivision, the approximate amount of building and parking coverage for each lot, and the approximate number of employees associated with each use.

10.114.4. Site Suitability.

Land provided or dedicated for active recreational purposes shall be of a character, slope, and location suitable for use as play areas, tennis courts, multi-purpose courts, picnic areas, ball fields, and other similar recreation uses. Active recreation areas shall be located on land that is relatively flat (0 to 7-1/2% slopes), free of wetlands and/or flood plains, free of easements for public utility transmission lines, and is otherwise capable of accommodating active recreation uses.

Land provided or dedicated for passive recreation and open space purposes shall be of a character, slope, and location suitable for use for walking, jogging, reading, and similar quiet activities, and the preservation of natural features and cultural resources such as steep slopes, rock outcrops, native plant life and wildlife cover, mature woodlands, and water resources.

In all cases, active and passive recreation sites as well as open space areas designated on the adopted Land Use Plan shall be incorporated into the design of the subdivision. Criteria for evaluating the suitability of proposed recreation areas shall include, but not be limited to, the following:

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10.114.4.1. Location. Land dedicated for recreation purposes shall be located so as to serve the needs of the residents of the subdivision and the residents of the immediate neighborhood within which the subdivision is located. Recreation areas shall be located where more land better suited for recreational purposes due to shape, level slopes, and/or dry soil conditions is present. Where proposed park sites are shown on the adopted Land Use Plan, and a subdivision contains a portion of the park site, then the developer may be required to locate the recreation area in accordance with the park site as shown thereon.

10.114.4.2. Unity. Land dedicated for recreation purposes shall be a single parcel except where it is determined that two or more parcels are suited to the needs of a particular subdivision. The Planning Board may recommend, and the Town Council may require, the dedication of a connecting path in addition to other land as may be required by this Ordinance. Where a connecting path is necessary, a path of up to 50 feet in width may be required, but in no case shall the path be less than 30 feet in width.

10.114.4.3. Accessibility. Land dedicated for recreational purposes shall have at least 50 feet of frontage on at least one street within the subdivision. Where a recreation area is not accessible due to lot arrangement, the Planning Board may recommend, and the Town Council may require, the dedication of connecting paths which link the recreation area with other streets within the subdivision. Connecting paths so required shall be in addition to other land as may be required by this Ordinance. Connecting paths of up to 50 feet in width may be required, but in no case shall the paths be less than 30 feet in width.

10.114.4.4. Usability. The dedicated land shall be usable for recreation. Lakes may not be included in computing dedicated land area unless acceptable to the Planning Board. Where the Planning Board determines that recreation needs are being adequately met, either by other dedicated parcels or existing recreation facilities, then land that is not used for recreation may be dedicated as open space.

10.114.5. Recreation Facilities.

Private recreation facilities, either required or provided at the option of the applicant, shall meet the standards for site improvements contained herein. When choosing improvements for a recreational area, the anticipated characteristics and needs of the residents shall be considered in conjunction with the size of the development, any physical constraints posed by the site, and the availability of other improvements within the same general area as the subdivision. As an example, the existence of a public multi-purpose court in an adjacent, existing subdivision and the availability of the facility for use by residents of the proposed subdivision may indicate to the applicant that another facility, such as a tennis court, would be more appropriate. Recreation facilities which are suitable for various age groups include, but are not limited to, those shown on the following pages. Trash receptacles shall be provided for all recreational areas regardless of the number and type of other improvements located thereon. The owner/developer may choose

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from the following recreational facilities. Other recreational facilities such as disk golf may be approved by the UDO Administrator. Dedicated public recreational facilities shall adhere to these standards.

RESIDENTIAL RECREATION FACILITY DEVELOPMENT STANDARDS FACILITY REQUIREMENTS PER DWELLING UNIT

Facility	Recommended Space Requirements	Recommended Size and Dimensions	Recommend Orientation
Tot Lot. 1. Enclosed play area with play apparatus and sand box. 2. Open, turfed area for active play. 3. Shaded area for quiet activity.	2,000 - 4,000 sq. ft.	Enclosed play area of 21 sq. ft. per family. Turfed area and shaded area of at least 40 sq. ft. each.	None specified.
Basketball Court	4,400 - 8,000 sq. ft.	46' x 74' to 50' x 94' Court dimensions with 5' unobstructed space on all sides.	Long axis north - south.
Badminton Court	1,500 -2,600 sq. ft.	Singles-17' x 44' Doubles- 20' x 44' with 5' unobstructed space on all sides.	Long axis north - south.
Tennis Courts	6,200 -8,400 sq. ft.	36' x 78' with 12' clearance on both sides; 21' at both ends.	Long axis north - south.
Volleyball Court	2,800 - 4,000 sq. ft.	30' x 60' with 10' clearance on all sides.	Long axis north-south.
Softball Field	1.5 - 2.0 acres.	Baselines-65'. Pitching distance 40'-46'. Field radius from plate 275' between foul lines.	Locate home plate so pitcher throwing across sun and batter not facing it. Line from home plate through pitchers mound runs east-north-east.
Soccer Field	1.7-2.1 acres	195' to 225' x 300' to 360' with 10' minimum clearance on all sides.	Fall season-long axis northwest to southeast; for longer periods, north to south.
Handball Court (3-Wall)	1,000 sq. ft.	20' x 40'- Minimum of 10' to rear. Minimum 20' overhead clearance.	Long axis north south. Front wall at north end.
Swimming Pool	0.5-2.0	Minimum of 27 sq. ft. of water surface per	None-although care must be taken in siting of lifeguard stands in

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Facility	Recommended Space Requirements	Recommended Size and Dimensions	Recommend Orientation
		swimmer. Ratio of 2:1 deck vs. water.	relation to afternoon sun.
Pedestrian Paths	None	Well defined head room with maximum 10' width. Maximum average grade 5%, not to exceed 15%. Path width 6'-8'.	None
Shuffleboard	570 sq. ft.	10' x 52' with 2.5' clearance at both ends. 2' clearance on both sides.	Long axis north-south.
Horseshoes	240 sq. ft.	6' square pitchers box. Steel stakes 1" diameter, 14" above ground, spaced 40' apart.	Long axis north-south.
Croquet Court	1,800 sq. ft.	25' x 55' playing area with 2.5' clearance on all sides.	Long axis north-south.
Park bench, picnic tables and grills, and trash receptacles.	One picnic table per 50 residents 50 sq. ft. of land per table.	Minimum table dimensions- 36"W x 72"L x 30"H. Tables, benches, and other similar facilities securely anchored to ground.	None other than provision of shading for picnic tables and benches.
Picnic shelter structure.	One open shelter per 60 residents.	Minimum shelter dimensions - 20' x 30' with minimum of 10 picnic tables and accompanying benches located therein and securely anchored to ground. Fire place shall be installed at one end.	None.

In addition to land provided or dedicated for active recreation purposes, sufficient area shall be provided to make available a minimum of five off-street parking spaces for the first two acres of each recreation site and one space for each additional acre thereafter.

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Where any of the following facilities are also provided, off-street parking as required shall be provided in addition to the general standard above.

Swimming pool	One space for each five patrons
Soccer and ball fields	Eight spaces per acre
Tennis/handball courts	Two spaces per court
Picnic Shelter area	One space for each ten patrons
Basketball courts	Five spaces per court

Each off-street parking space shall be a minimum of nine feet in width and 18 feet in length. A minimum back-up aisle of 24 feet in width shall be provided for access to and from each space. Bay parking is prohibited, and entrance to and exit from each parking area shall be by forward motion of the vehicle. One of the parking spaces provided must be barrier-free and identified for use by individuals with physical disabilities. Handicapped spaces shall be at least 12 feet in width and shall be designed as follows:

10.114.5.1. So that handicapped individuals are not compelled to wheel or walk behind parked cars;

10.114.5.2. So that handicapped individuals can get into and out of an automobile onto a level surface, suitable for wheeling and walking; and

10.114.5.3. In conjunction with sidewalk cut-ways and/or ramps, not exceeding 5% slope.

10.114.6. Flexibility in Administration Authorized.

10.114.6.1. The requirements set forth in this article concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with multi-family residential, manufactured home park developments, and subdivisions are established by the Council as standards that presumptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted Town plans. The Council recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the Town Council may permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

10.114.6.2. Whenever the permit issuing board authorizes some deviation from the standards set forth in this section pursuant to subsection 10.114.6.1, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

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10.114.7. Method of Provision or Dedication.

Land dedicated for public recreation area as required by this Ordinance shall be designated on both the preliminary and final plat(s) of the subdivision and must be dedicated to an appropriate unit of local government. Determination of the appropriate unit of local government shall be made by the Town Council, upon recommendation from the Recreation and Parks Advisory Council and the Planning Board. Acceptance of the dedication may be one in trust if deemed appropriate by the Town Council.

Land provided for private recreation purposes must be conveyed to the trustees provided in an indenture establishing an association of homeowners. The recreation area must be conveyed to the trustees subject to covenants and easements to be approved by the Planning Board and Town Council and which provide for the continued maintenance and control of the recreation area in a manner which assures its continuing use for its intended purpose. Where the recreation area is conveyed to a homeowners' association, the subdivider shall file a declaration of covenants and restrictions in accordance with the provisions of Section 5.8 Subdivision Procedures of this Ordinance.

10.114.8. Payments in Lieu of Dedication.

Any subdivider required to dedicate recreation area pursuant to this Ordinance may, with the approval of the Town Council, make a payment in lieu of dedication or make a combination of land dedicated and payment. Before approving a payment in lieu of dedication, the Town Council shall find that no recreation and/or open space sites have been designated on the adopted Land Use Plan for the property in question.

The payment in lieu of dedication shall be equal to the appraised value of the required acreage of land within the subdivision based on an appraisal prepared by a licensed appraiser and submitted by the developer. If the Town disagrees with the submitted appraisal, it may have a second appraisal prepared. If the appraisals are within 15% of each other, the developer's appraisal will be utilized to establish value. If the appraisals differ by more than 15%, the value will be based on the average of the two appraisals.

Where a combination of land dedication and payments in lieu are approved, the subdivider shall be given a credit equivalent to the appraised value per acre of land dedicated for recreation purposes. The credit amount shall be determined by multiplying the number of acres to be dedicated by the appraised value per acre. If the total payment in lieu as determined above is larger than the credit amount, the subdivider shall pay the difference between the two amounts. If the credit amount is larger than the total payment in lieu as determined above, no additional payment in lieu is required. However, the subdivider may not transfer the excess credit from one subdivision to another.

Upon approval by the Town Council, payment in lieu of dedication shall be made at the time of final subdivision plan approval or within one year of approval of the preliminary subdivision plan, whichever occurs first. All monies received by the Town of Smithfield pursuant to these

ARTICLE 10. PERFORMANCE STANDARDS

requirements shall be used only for the acquisition and development of recreation, park, and open space sites to serve the residents of the development and the residents of the immediate neighborhood within which the development is located. The Town Council shall also have the authority to sell land dedicated pursuant to these provisions with the proceeds of any such sale used solely for the acquisition of other recreation, park, or open space sites within the immediate neighborhood within which the development is located.

SECTION 10.115 SCHOOL PLANS.

This section may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the Town Council. If the Town Council and the County Board of Education with jurisdiction over the area have jointly determined the specific location and size of any school sites to be reserved, and this information appears in the comprehensive land use plan, the Planning Board shall immediately notify the County Board of Education whenever a sketch plan for a subdivision is submitted which includes all or part of a school site to be reserved. At that time, the Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does not wish to reserve the site, it shall so notify the Town Council or the Planning Board, and no site shall 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 County Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of reservation.

SECTION 10.116 EFFECT OF PLAT APPROVAL ON DEDICATIONS AND ACCEPTANCES.

10.116.1. Plat Approval Shall Not Constitute Acceptance.

Pursuant to NCGS 160D-806 the approval of a plat shall not be deemed to constitute or effect the acceptance by the municipality or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. To be effective, all offers of dedication must be accepted by resolution.

10.116.2. Acceptance of Dedications.

10.116.2.1. At the time of submittal of a preliminary plat with streets, utilities, or other proposed to be dedicated for acceptance by the Town as public, the Town Council will decide if it will approve the dedication, subject to the street(s), parks, utilities, sidewalks, or other complying with all Town requirements for acceptance. The Town of Smithfield is not obligated to accept any offer of dedication.

10.116.2.2. Acceptance of dedication will be provided by adoption of a resolution of acceptance by the Town of Smithfield Town Council.

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SECTION 10.117 ADJUSTMENTS.

The Board of Adjustment may authorize an adjustment from these regulations when, in its opinion, undue hardship may result from strict compliance. In granting any adjustment, the Board of Adjustment shall make the findings required below, taking into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision and the probable effect of the proposed subdivision upon traffic conditions in the vicinity. The Board of Adjustment deliberations of the request must follow quasi-judicial procedures. No adjustment shall be granted unless the Board finds:

10.117.1. There are special circumstances or conditions affecting that property such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of this land.

10.117.2. The adjustment is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

10.117.3. The circumstances giving rise to the need for the adjustment are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this Ordinance.

10.117.4. The granting of the adjustment will not be detrimental to the public health, safety, and welfare or injurious to other property in the territory in which the property is situated.

An appeal to the Board's decision on an adjustment request shall be made to the Town Council. The Council's consideration of the appeal must follow quasi-judicial procedures.

SECTION 10.118 CEMETERY SUBDIVISION LOT SIZE EXEMPTION.

Cemeteries and individual cemetery plot(s) may be platted and approved as minor subdivisions and recorded that do not meet the minimum lot size of the zoning district; however, the cemetery shall comply with all other zoning district restrictions. Where there is not reasonable access to individual lots, an 18-foot easement for ingress and egress may be established.

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SECTION 10.119 FINAL PLAT CERTIFICATIONS AND OTHER DOCUMENTATION.

10.119.1. Minor Subdivision Approval.

10.119.1.1. Certificate of Ownership. I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, which property is within the subdivision regulation jurisdiction of the Town of Smithfield, and that I freely adopt this plan of subdivision.

Owner(s)

Date

10.119.1.2. Certificate of Approval. I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with the Town of Smithfield Unified Development Ordinance, and that therefore this plat has been approved by the UDO Administrator, subject to its being recorded in the Johnston County Registry within sixty days of the date below.

UDO Administrator

Date

10.119.1.3. Flood Damage Prevention Certificate of Approval for Recording. I certify that the plat shown hereon complies with the Town of Smithfield Flood Damage Prevention requirements and is approved by Smithfield for recording in the Register of Deeds office.

UDO Administrator

Date

10.119.1.4. Certificate of Survey and Accuracy. I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, Page _____ etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, Page _____, that the ratio of precision as calculated is 1: _____, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____ A.D., 20 _____.

Official

Seal

Professional Land Surveyor

Registration Number

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The certificate of the Notary shall read as follows:

North Carolina, _____ County
I, _____, a Notary Public of the County and State aforesaid, certify that
_____, a registered land surveyor, personally appeared
before me this day and acknowledged the execution of the foregoing instrument. Witness
my hand and official stamp or seal, this _____ day of _____, 20 ____ .

Signature Official Seal

My Commission Expires: _____

10.119.1.5. Review Officer Certification. I, _____, Review Officer of Johnston County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer Date

10.119.1.6. Statement of Compliance with the Town of Smithfield Riparian Buffer Requirements. I certify that this subdivision fully complies with the 15A NCAC 25.023 Neuse River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements.

Stormwater Administrator Date

10.119.2. Major Subdivision Approval.

10.119.2.1. Certificate of Ownership and Dedication. I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Smithfield, and that I freely adopt this subdivision plan with my free consent, establish minimum setback lines, and dedicate all streets, alleys, parks, and other sites and easements to public or private use as noted.

Owner Date

10.119.2.2. Certificate of Improvements. If the required improvements are completed prior to the submission of the Final Plat, the following certificate shall be lettered on the plat above the signature of the Town Engineer:

“Know all men by these present, that I hereby certify that on this, the _____ day of _____, 20 ____ , all of the improvements as required by the Smithfield Subdivision Regulations have been installed by the developer in an approved manner.”

If the required improvements are not completed prior to the submission of the Final Plat, the following certificate shall be lettered on the plat above the signature of the Town Manager:

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“Know all men by these presents, that I hereby certify performance guarantee sufficient to secure the amount of \$_____ has been posted with the Town of Smithfield by the developer, thereby guaranteeing that all improvements required by the Smithfield Subdivision Regulations shall be constructed. Such improvements shall be completed within _____ days from the date of this statement.”

10.119.2.3. Flood Damage Prevention Certificate of Approval for Recording. I certify that the plat shown hereon complies with the Town of Smithfield Flood Damage Prevention requirements and is approved by Smithfield for recording in the Register of Deeds office.

UDO Administrator

Date

10.119.2.4. Certificate of Survey and Accuracy. I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book_____, Page_____ etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, Page _____, that the ratio of precision as calculated is 1: _____, that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____ A.D., 20 _____.

Professional Land Surveyor

Official Seal

Registration Number

The certificate of the Notary shall read as follows:

North Carolina, _____ County

I, _____, a Notary Public of the County and State aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 20 _____.

Signature

Official Seal

My Commission Expires: _____

10.119.2.5. Approval and Acceptance of Dedication by the Town Council. I hereby certify that the Town of Smithfield has approved this plat for recording in the office of the Johnston County Register of Deeds, and accepts the dedication of streets, easements, rights-of-way, and public lands shown thereon, but assumes no responsibility to open or

ARTICLE 10. PERFORMANCE STANDARDS

maintain the same until, in the opinion of the Smithfield Town Council, it is in the public interest to do so.

Town Manager

Date

10.119.2.6. Review Officer Certification. I, _____, Review Officer of Johnston County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer

Date

10.119.3. Electronic Documents.

In order for a plat defined as an electronic document under NCGS 47-16.2(3) to meet the requirements for plat size, reproducible form, and necessary certification, the following conditions must be met:

10.119.3.1. The Johnston County Register of Deeds has authorized the submitter to electronically register the electronic document.

10.119.3.2. The plat is submitted by a US federal or state governmental unit or instrumentality or a trusted submitter.

10.119.3.3. Evidence of required certifications appear(s) on the digitized image of the document as it will appear on the public record.

10.119.3.4. With respect to a plat submitted by a trusted submitter, the digitized image of the document as it will appear on the public record contains the submitter's name in the following completed statement on the first page of the document image: "Submitted electronically by _____ (submitter's name) in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Johnston County Register of Deeds."

10.119.3.5. Except as otherwise provided in this subsection, the digitized image of the plat conforms to all other applicable laws and rules that prescribe recordation.

**APPENDIX A.
DEFINITIONS**

Section A.1 Purpose A-2
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APPENDIX A. DEFINITIONS

SECTION A.1 PURPOSE.

For the purposes of this Ordinance, certain words, concepts, and ideas are defined herein. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

SECTION A.2 INTERPRETATION.

A.2.1. As used in this Ordinance, words importing the masculine gender include the feminine and neuter.

A.2.2. Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

A.2.3. Words used in the present tense include future tense.

A.2.4. The word “person” includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.

A.2.5. The words “may” and “should” are permissive.

A.2.6. The words “shall” and “will” are always mandatory and not merely directive.

A.2.7. The word “used for” shall include the meaning “designed for.”

A.2.8. The words “used” or “occupied” shall mean “intended, designed, and arranged to be used or occupied.”

A.2.9. The word “lot” shall include the words “plot,” “parcel,” “site,” and “premises.”

A.2.10. The word “structure” shall include the word “building.”

A.2.11. The word “street” includes the word “alley,” “road,” “cul-de-sac,” “highway,” or “thoroughfare,” whether designated as public or private.

A.2.12. The word “includes” shall not limit the term to specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

A.2.13. The word “Town Councilman” shall include “Town Council” of the Town of Smithfield, North Carolina.

A.2.14. The word “director” shall mean the Town Manager or his designee.

APPENDIX A. DEFINITIONS

A.2.15. The word “UDO Administrator” shall mean the Administrator of this Ordinance or his designee.

A.2.16. The words “Zoning Board,” “Zoning Commission,” or “Planning Commission” shall mean the “Town of Smithfield Planning Board.”

A.2.17. The word “Town” shall mean the “Town of Smithfield,” a municipal corporation of the State of North Carolina.

A.2.18. The words “map,” “zoning map,” and “Smithfield Zoning Map” shall mean the “Official Zoning Map for the Town of Smithfield, North Carolina.”

A.2.19. The words “Board of Adjustment” shall mean the “Town of Smithfield Board of Adjustment.”

SECTION A.3 DEFINITIONS.

A

Abandoned vehicle

A motor vehicle that:

- (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- (2) Is left on property owned or operated by the Town for longer than 24 hours; or
- (3) Is left on private property without the consent of the owner, occupant, or lessee thereof longer than two hours; or
- (4) Is left on any public street or highway for longer than seven days.

Abutting

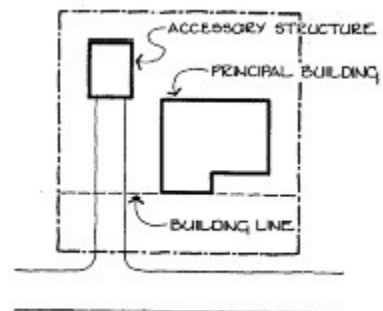
A property which directly touches another piece of property.

Accessory apartments

A self-contained unit incorporated within an existing structure for a single family.

Accessory building, structure, or use

A building, structure, or use incidental to, and on the same lot as, a principal use.



APPENDIX A. DEFINITIONS

Act of God (Amended 10/3/2017)

An event, such as an earthquake, tornado, or hurricane, that is caused by natural forces and cannot be prevented or foreseen.

Addition (to an existing building)

An extension or increase in the floor area or height of a building or structure.

Adjacent (Amended 10/3/2017)

Property abutting directly on the boundary of, touching, or sharing a common point.

Administrator

The UDO Administrator for the Town of Smithfield as appointed by the Town Manager.

Administrative approval

Approval that the UDO Administrator or designee is authorized to grant after Administrative Review.

Administrative decision

Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Ordinance. These are sometimes referred to as ministerial decisions or administrative determinations

Administrative review

Non-discretionary evaluation of an application by the UDO Administrator or designee. This process is not subject to a public hearing.

Adult day care center

The provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled.

Adult establishment (including sexually oriented businesses)

Adult or sexually oriented businesses include any businesses or enterprises that have as one of their business purposes or as a portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10, including the display or sale of sexual aid devices.

Affiliate (Amended 10/3/2017)

A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Agriculture (Amended 10/3/2017)

APPENDIX A. DEFINITIONS

The use of land for agricultural purposes, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, forestry, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities and provided further that the above uses shall not include the commercial feeding of garbage or offal to swine or other animals. The use of waters for stock watering, irrigation, or other farm purposes.

Airport (Amended 10/3/2017)

A place where aircraft can take off and land, be repaired, take on or discharge passengers or cargo, be stored or refueled.

Airport height hazard district definitions

For the purposes of Article 10, Part IX, Section 10.93, Airport Height Hazard District, the following items, phrases, and words shall have the meaning herein:

- (1) **Airport elevation.** The topographical elevation above mean sea level. At the Johnston Regional Airport this elevation is 165 feet.
- (2) **Approach surface.** A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Section 10.93.4 of this Ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.
- (3) **Conical surface.** A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.
- (4) **Hazard to air navigation.** An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable air space.
- (5) **Height.** The height limits set forth in Section 10.93 and as shown on the height hazard map, the datum shall mean sea level elevation except as otherwise specified.
- (6) **Horizontal surface.** The horizontal 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
- (7) **Larger than utility runway.** The runway that is constructed for and intended to be used for propeller driven aircraft or greater than 12,500 pounds maximum gross weight or jet powered aircraft.

APPENDIX A. DEFINITIONS

- (8) **Non-precision instrument runway.** The runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.
- (9) **Obstruction.** Any building, structure, growth, or other object, including a mobile object which exceeds a limiting height as set out in Section 10.93.4 of this Ordinance.
- (10) **Precision instrument runway.** A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR), or a runway for which a precision approach system is planned and is so indicated on the approved airport layout plan or any other planning document.
- (11) **Primary surface.** A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. For military runways, or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
- (12) **Runway.** A defined area on an airport prepared for landing and takeoff of aircraft along its length.
- (13) **Transitional surfaces.** A surface extending outward at 90 degree angles to the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical approach surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90 degree angle to the extended runway centerline.
- (14) **Utility runway.** A runway intended solely for the operation of aircraft using visual approach procedures.
- (15) **Visual runway.** A runway intended solely for the operation of aircraft using visual approach procedures.

Alterations

The word alteration shall include any of the following:

APPENDIX A. DEFINITIONS

- (1) Any addition to the height or depth of a building or structure;
- (2) Any change in the location of any of the exterior walls of a building or structure;
- (3) Any increase in the interior accommodations of a building or structure;
- (4) Any structure modification of a building or structure;
- (5) Any movement or relocation of a building or structure.

Antenna (Amended 10/3/2017)

Communication equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communication services.

Antenna array (Amended 10/3/2017)

A single or group of antenna(s) and their associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

Apartment

A room or suite of one or more rooms, each of which has kitchen facilities and is designed or intended to be used, as an independent unit, on a rental basis.

Appeal

A request for a review of the Administrator=s interpretation of any provision of this Ordinance or a request for a variance.

Approval authority

The Town Council of the Town of Smithfield, the Board of Adjustment or other board or official designated by Ordinance as authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Art, work of

All forms of original creations of visual art including but not limited to: sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic; painting, whether portable or permanently fixed, as in the case of murals; mosaics; photographs; crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof; calligraphy; mixed media composed of any combination of forms or media; unique architectural stylings or embellishments, including architectural crafts; environmental landscaping; or restoration and renovation of existing works of art of historical significance. Signs are not considered artwork.

Artisan's workshop

An establishment for the preparation, display, and sale of individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven articles, and related items. An artisan=s workshop includes an establishment that is engaged in the low-impact manufacturing, assembly,

APPENDIX A. DEFINITIONS

repair, or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Examples include contractors and building maintenance services and similar uses that perform services off-site, low-impact clothing or textile manufacturing, commercial bakery, food service contractor, movie production facility, printing, publishing, lithography, sign-making, welding, woodworking, arts-based (culinary, dance, art, music, photography) classroom, and other similar uses.

Assisted living residence

Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multi-unit assisted housing with services. As used in this definition, **elderly person** means: (i) any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services; or (ii) any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

- (1) ***Adult care home.*** An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes include halfway houses and drug rehab facilities.
- (2) ***Multi-unit assisted housing with services.*** An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or other compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided

APPENDIX A. DEFINITIONS

by appropriately trained staff when delegated by a licensed nurse according to the home care agency=s established plan of care.

As-built plan

Plans reflecting actual field conditions which may include the construction plans with any changes identified and shown on the plan.

Assembly

A joining together of completely fabricated parts to create a finished product.

Attached dwelling unit for individual ownership (townhouse)

A dwelling unit having a common or party wall with another dwelling unit. Each attached dwelling unit is characterized by its own subdivided lot of record which is conveyed with the dwelling unit when purchased.

Automobile off-street parking (commercial lot)

Any building or premises, except a building or premises described as a private garage, used for the storage of motor vehicles for the public or private businesses, including O&I uses.

Automobile repair shop

A building or other structure where the following uses and activities are permitted: major mechanics, body work, straightening of body parts, along with all uses and activities of an automotive care center.

Automobile wash or automatic car wash

A building or structure where chain conveyors, blowers, steam cleaners, and other mechanical devices are employed for the purpose of washing motor vehicles.

Automotive care center

Three or more automotive care uses planned and constructed as a single unit, where the following uses and activities associated with each would be permitted:

- (1) Auto parts store
- (2) Muffler shop
- (3) Transmission shop
- (4) Tune-up shop
- (5) Lubrication shop
- (6) Auto trim and detail shop, including wash, wax, and vacuum.
- (7) Tire store with service (including alignment)
- (8) Brake shop

Uses permitted do not include major mechanical and body work, straightening of body parts, storage of automobiles not in operational condition, or other work involving noises, glare, fumes, smoke, or other characteristics to an extent greater than normally found in facilities of this type.

APPENDIX A. DEFINITIONS

An automotive care center is not a garage for the general repair of automobiles, or a body shop, but does include an automotive trim shop.

B

Base Station (Amended 10/3/2017)

A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Battery charging station

An electrical component assembly or cluster or component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed federal, state, and/or local requirements.

Battery exchange station

A fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds federal, state, and/or local requirements.

Bed and breakfast inn

A house, or portion thereof, where short-term lodging rooms and meals are provided. The operator of the inn shall live on the premises or in adjacent premises (including boarding home(s) and tourist home(s)).

Berm

An earthen mound designed to provide visual interest, screen undesirable view, and/or decrease noise. Slopes not to exceed a ratio of 1 2:1.

Best Management Practices (BMP) (Amended 10/3/2017)

A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Block

A piece of land bounded on one or more sides by streets or roads.

Board of Adjustment

A semi-judicial body, composed of representatives from the Town of Smithfield and the Town=s ETJ, which is given certain powers under and relative to this Ordinance.

Bona fide farm

Agricultural activities as set forth in G.S. 160D-903.

Buffer (Amended 10/3/2017)

APPENDIX A. DEFINITIONS

An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Buffer strip. A planted strip which shall be a minimum of sixteen (16) feet in width, shall be composed of evergreen shrubs and/or trees, and which complies with Article 10, Part II of this Ordinance.

Buildable area

The portion of a lot remaining after required yards and environmental/ regulatory constraints have been made.

Building (Amended 10/3/2017)

Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

Building, accessory

See accessory structure.

Building code (Amended 10/3/2017)

The North Carolina State Building code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Building, commercial

Any building used for business purposes.

Building, detached

A building having no party or common wall with another building except an accessory building or structure.

Building frontage

The distance expressed in linear feet of the horizontal dimension of a building wall that is parallel and adjacent to one (1) or more of the qualifying areas as follows: (a) a public or private street; (b) a common parking area in the case of a planned center; (c) a public parking area; or (d) a public access walkway.

Building, height of

APPENDIX A. DEFINITIONS

The vertical distance from the average finished grade (prior to the addition of any fill) of the building lot to the highest point of the building. The average grade will be based on the condition of the lot prior to the date of adoption of this Ordinance.

Building inspector

The person, officer, and his authorized representatives, whom the Town Council has designated as their agent for the administration and enforcement of the Town building codes and minimum housing code.

Building line

A line parallel to the street right-of-way which intersects the nearest point of the building to the street right-of-way.

Building line minimum

A line parallel to the street right-of-way which establishes the minimum allowable distance between the nearest portion of any building, excluding the outermost three (3) feet of any uncovered porches, steps, eaves, gutters and similar fixtures, and the street right-of-way line, when measured perpendicularly thereto, such minimum distance from the street right-of-way line as specified in Article 8, Zoning District Design Standards.

Building, main

A building in which the principal use of the lot on which the building is situated is conducted.

Building permit (Amended 10/3/2017)

An official administrative authorization issued by the Johnston County Inspections Department prior to beginning construction consistent with the provisions of G.S. 160A-417.

Building permit

An official administrative authorization issued by the Johnston County Inspections Department prior to beginning construction consistent with the provisions of NCGS 160D1101-1130.

Built-upon area (Amended 10/3/2017)

Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

Bulk storage system

A facility containing storage tanks, pipe network, power, and control systems which allow dry bulk materials to be aerated and handled as required. Normally used to store materials which are consumed in relatively large quantities (i.e., barite, bentonite, and cement).

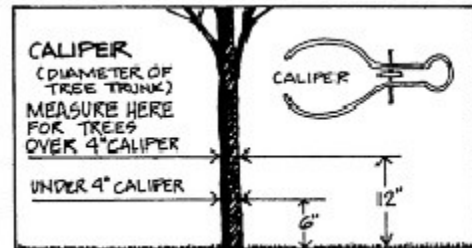
APPENDIX A. DEFINITIONS

C

Caliper

A measurement of the diameter of a tree trunk taken to the following standards:

- (1) New nursery (to be installed) and nonregulated (existing on-site) trees: trees up to and including four (4) inches in diameter shall be measured six (6) inches above ground level. For trees above four (4) inches in diameter, the caliper measurement shall be taken twelve (12) inches above ground level.
- (2) Regulated on-site trees: the caliper of regulated trees shall be measured four and one-half (4-1/2) feet above average ground level.



Canopy tree

An evergreen or deciduous tree that will attain a mature height greater than thirty-five (35) feet, with an expected crown spread of thirty (30) feet or more, as determined by the latest edition of [American Standards of Nursery Stock](#).

Cemetery (Amended 10/3/2017)

A place used or to be used and dedicated or designated for interment of human remains or pet animal remains.

Certificate of occupancy/compliance

A statement signed by the Director or his authorized agent, after the building inspector, fire marshal, and UDO administrator has signed off that the building, structure, or use complies with or is significantly complete as proposed by any preliminary approved plan.

Certiorari

An appellate proceeding which brings into Superior Court or other appropriate forum the record of administrative, judicial, or quasi-judicial actions for the purposes of either reexamining the action taken by the inferior body to determine the appropriateness of said action or to obtain further information in the pending case.

Certify

Whenever this Ordinance requires that some agency certify the existence of some fact or circumstance to the Town, the Town may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, and without limiting the foregoing, the Town may accept certification by telephone (with

APPENDIX A. DEFINITIONS

confirmation by mail) from some agency when the circumstances warrant it, or the Town may require that the certification be in the form of a letter or other document.

Chemical storage facility

A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive product.

Child care

A program or arrangement where three or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

Child care facility

Includes child care centers, family child care homes, and any other child care arrangement not excluded by NCGS 110-86 (2) that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

- (1) ***Child care center.*** An arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
- (2) ***Small child care center.*** Small centers in a residence that are licensed for six to twelve children which may keep up to three additional school age children, depending upon the ages of other children in care. When the group has children of different ages, staff-child ratios and group size must be met for the youngest child in the group.
- (3) ***Family child care home.*** A child care arrangement located in a residence where, at any one time, more than two (2) children, but less than nine (9) children, receive child care.

Church or place of religious worship

An institution having state and federal tax exempt status that people regularly attend to participate in or hold religious services, meetings, and other activities. The term *church* shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held.

Circulation area

That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

APPENDIX A. DEFINITIONS

City Right-of-Way

A right-of-way owned, leased, or operated by a town, including any public street or alley that is not a part of the State highway system.

City Utility Pole

A utility pole owned or operated by a town in the right-of-way of any public street or alley that is not part of the State highway system.

Club or private lodge

An incorporated or unincorporated association for civic, social, cultural, fraternal, literary, political, recreational or like activities operated on a nonprofit basis for the benefit of its members, and recognized as a nonprofit organization by the State of North Carolina.

Cluster development (Amended 10/3/2017)

Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed use development are considered as cluster development.

Collocation (Amended 10/3/2017)

The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, Town utility poles, or wireless support structures.

Commercial amusement use

Any use which provides entertainment, amusement, or recreation activities for commercial gain. This definition shall not include special events or functions customarily sponsored by or associated with schools, churches, nonprofit organizations, civic groups, fraternal orders, and charitable institutions.

Competent evidence

NC General Statutes require that the rules of evidence as applied in the trial division of the General Court of Justice ordinarily be followed but adds the important exception that ~~A~~when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available.[@] The Board just limit itself to the type of evidence that ought to be admissible before local administrative agencies generally. The term ~~A~~competent[@] is essentially a synonym for ~~A~~admissible before a local board.[@]

Communication facility (Amended 10/3/2017)

APPENDIX A. DEFINITIONS

The set of equipment and network components, including wires and cables and associated facilities used by a communication service provider to provide communication services.

Communication service *(Amended 10/3/2017)*

Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

Communication service provider *(Amended 10/3/2017)*

A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Conditional zoning

A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

Condominium

A dwelling unit in which the ownership of the occupancy rights to the dwelling unit is individually owned or for sale to an individual and such ownership is not inclusive of any land.

Construction plat

A plan with supporting data for a proposed subdivision, developed for the purpose of establishing the layout and provision of roads and utilities.

Contractor, general

One who is engaged in one or more aspects of building construction and/or land development through a legal agreement.

Contractor, trades

One who accomplishes work or provides facilities under contract with another and specifically engages in a specialized trade, such as plumbing, heating, wiring, sheet metal and roofing work, etc.

Convenience store

A one-story, retail store containing less than 2,000 square feet of gross floor area that is designed and stocked to sell primary food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a supermarket). It is designed to attract and depends upon a large volume of stop-and-go traffic. Illustrative examples of convenience stores are those operated by the Fast Fare, 7-11, and Pantry chains.

County Commissioners

The Board of Commissioners of Johnston County, North Carolina.

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Coverage

An area determined in square footage.

Critical area (*Amended 10/3/2017*)

The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Curb (including curb and gutter)

A structural element at the edge of an existing or proposed street or other way, generally at a higher elevation than the adjacent edge of roadway, installed to deter vehicles and water from leaving the roadway, to otherwise control drainage, to delineate the edge of existing or future roadways or driveways, to present a more finished appearance to the street, to assist in the orderly development of the roadside, and to contribute to the stability and structural integrity of the pavement.

Curtain wall

A continuous, uniform foundation enclosure constructed of masonry material and that is unpierced except for required ventilation and access. A curtain wall must comply with Town of Smithfield building code requirements.

Customary home occupations

Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

D

Dedication

A gift by the owner, a right to use of land for a specified purpose or purposes, or a mandatory requirement to exercise the right to develop. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

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Designer

A professional who is permitted to prepare plans and studies required by this Ordinance.

Detention facility

A structure designed and constructed for the collection and storage of surface water for subsequent gradual discharge.

Develop

The construction, landscaping, clearing projects or any other project which in any manner alters the natural structure of the land mass.

Development

Unless the context clearly indicates otherwise, the term means any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S 160D-802.
- d. The initiation of substantial change in the use of land or the intensity of use of land.

Development approval

An administrative or quasi-judicial approval made pursuant to this Ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Ordinance including plat approvals, permits issued, development agreements entered into, and building permits issued.

Developed land use conditions

The land use conditions that would be permitted according to the current official Town Zoning Maps.

Developer

A person who is responsible for any undertaking that requires a zoning permit, special use permit, or sign permit.

Dimensional nonconformity

A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Dish antenna (or earth station)

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An accessory structure and shall mean a combination of (1) antenna or dish antenna whose purpose is to receive communication or other signals from orbiting satellites and other extraterrestrial sources; (2) a low-noise amplifier which is situated at the focal point of the receiving component and whose purpose is to magnify and transfer signals; and (3) a coaxial cable whose purpose is to carry the signals into the interior of the building.

Dish antenna (or earth station) height

That distance as measured vertically from the highest point of the antenna or dish, when positioned at its lowest angle for operation, to ground level at the bottom of the vase which supports the antenna.

Dish antenna (or earth station) setback

The distance measured from the center mounting post supporting the antenna.

Disposal

The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any structure, land, or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Distillery

A distillery as permitted by NCGS is an enterprise which engages in one or more of the following:

- (1) Manufacture, purchase, import, possess and transport ingredients and equipment used in the distillation of spirituous liquor;
- (2) Sell, deliver and ship spirituous liquor in closed containers at wholesale to exporters and local boards within the State, and, subject to the laws of other jurisdictions, at wholesale or retail to private or public agencies or establishments of other states or nations;
- (3) Transport into or out of the distillery the maximum amount of liquor allowed under federal law, if the transportation is related to the distilling process.

District

Any section of the Town of Smithfield and its extraterritorial jurisdiction in which zoning regulations are uniform.

Drip line

A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Drive-in facility

An establishment at which employees provide curb service to customers and at which the customer does not customarily leave his vehicle; or accommodations through special equipment

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or construction from which a person may receive a service or place an order. Self-service gas pumps are excluded from this definition.

Driveway

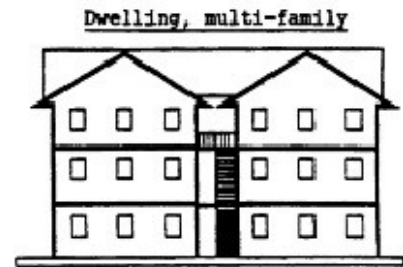
That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

Dwelling

Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Ordinance, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

Dwelling, multiple family

A residential building designed for or occupied by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

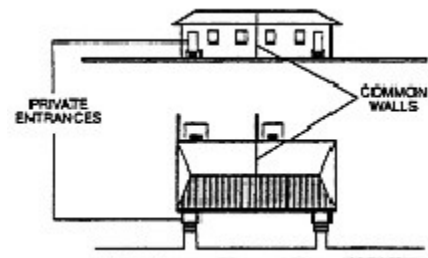


Dwelling, single-family

A detached building designed for or occupied exclusively by one family.

Dwelling, two family (duplex)

A detached residential building containing two dwelling units, designed for occupancy by not more than two families. Units must share a common wall.



Dwelling unit

A room or group of rooms within a dwelling forming a single, independent, habitable unit; containing an independent kitchen, sanitary, and sleeping facilities; and provided such dwelling unit complies with local minimum housing standards.

E

Easement

A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation, or persons.

Effective date of this Ordinance

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Whenever the effective date of this ordinance is referred to, the reference shall be deemed to include the effective date of any amendments to this ordinance if the amendment, rather than this ordinance as originally adopted, creates a nonconforming situation.

Electric vehicle

Any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for energy purpose. Electric vehicle includes: (1) a battery powered electric vehicle; and (2) a plug-in hybrid electric vehicle.

Electric vehicle charging station

A public or private parking space located together with a battery charging station which permits the transfer of electric energy (by conductive or inductive means) to a battery or other storage device in an electric vehicle. An electric vehicle charging station is permitted as an accessory use to any principal use.

Electric vehicle parking space

Any marked parking space that identifies the use to be exclusively for an electric vehicle.

Eligible facilities request (Amended 10/3/2017)

A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include substantial modification.

Energy generating facility

A facility that uses a variety of sources and/or products for the production of power. Energy facilities may include, but are not limited to: petroleum; methane; ethanol; thermal; wind; solar; hydro-electric; and other energy generation facilities.

Engineered stormwater control (Amended 10/3/2017)

A structural BMP used to reduce pollution or peak flow rates to downstream properties and receiving waters in order to achieve water quality or water quantity control.

Equipment compound (Amended 10/3/2017)

An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

Erect

Build, construct, rebuild, or reconstruct, as the same are commonly defined.

Erosion (Amended 10/3/2017)

The wearing away of land surface by the action of wind, water, gravity or any combination thereof.

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Essential site improvements

Any construction or reconstruction of the site development features required by local, state, or federal regulations, ordinances, or laws, such as underground drainage, off-street parking, driveways, retention areas or similar improvements required for the intended use of the site, which cannot be accommodated on the site without removal of the regulated trees.

Existing development (Amended 10/3/2017)

Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) Having an outstanding valid building permit as authorized by the NCGS 160D-108, or
- (3) Having an approved site specific or phased development plan as authorized by NCGS 160D-108.

Existing land use conditions

The land use conditions existing at the time the design plans are submitted for approval, including previously approved upstream developments.

Existing lot (lot of record) (Amended 10/3/2017)

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Ex parte

A Latin legal term meaning "from (by or for) [the/a] party". An *ex parte* decision is one decided by a judge without requiring all of the parties to the controversy to be present.

Extraterritorial jurisdiction

The area beyond the corporate limits within which the planning and zoning regulations of the Town apply in accordance with state law. Such area is delineated on the official zoning map for the Town of Smithfield.

F

Fabrication

The process and/or assemblage of various components into a complete or partially completed commodity. Fabrication relates to stamping, cutting or otherwise shaping the processed

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materials into useful objects. The refining aspects of manufacturing and other initial processing of basic raw material such as metal ores, lumber and rubber, etc., are excluded.

Fall zone (Amended 10/3/2017)

The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family

An individual or two or more persons related by blood, marriage, or adoption and living together in a dwelling; or a group of not more than four unrelated persons living in a single unit.

Family care home

A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. A Person with disabilities@ means a person with a temporary or permanent physical, emotional, or mental disability, including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in NCGS Section 122C-3(11)b.

Family foster home

The private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship, or adoption.

Family subdivision (Amended 10/3/2017)

Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

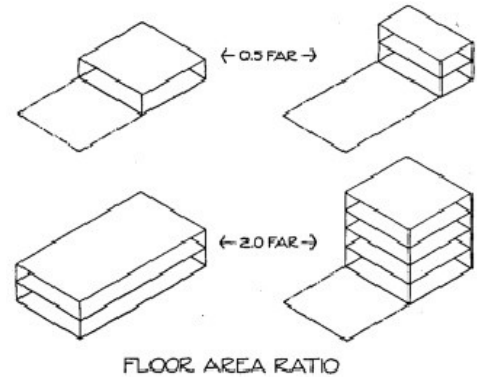
Farmers market

An establishment primarily engaged in the retail sale of fresh fruits and vegetables. Such uses are typically found in public or municipal markets.

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FAR (Floor Area Ratio)

The maximum square foot amount of total floor area including all stories and all uses permitted for each square foot of land area.



Fence

A continuous barrier constructed of wood, stone, steel, or wire or other similar material.

Fence, screen

A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six (6) feet constructed of wood, stone, steel or similar material.

Fence, security

A continuous barrier extending from the surface of the ground to a uniform height of not less than six (6) feet constructed of wood, stone, steel, wire or other similar material.

Fill

Any material used to raise the elevation of the surface of the land, excluding a grade base and paving.

Fine arts

Individual art pieces, not mass-produced, consisting of one or more (but not limited to one) of the following: paintings, drawings, etchings, sculptures, ceramics, inlays, needlework, knitting, weaving and/or craftwork of leather, wood, metal or glass.

Flea market

A commercial operation held on a regular periodic basis and patronized by individual entrepreneurs who transport a variety of merchandise to a common geographical area for the purpose of sale or trade to the general public. This definition does not include sporadic and infrequent yard sales held in residential areas.

Flood damage prevention definitions

For the purposes of Article 10, Part VII, Flood Damage Prevention, the following items, phrases, and words shall have the meaning herein:

- (1) **Accessory structure (appurtenant structure).** A structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds, and the

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like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

- (2) **Alteration of a watercourse.** A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood. (Amended 4/3/2018)
- (3) **Appeal.** A request for a review of the UDO Administrator=s interpretation of any provision of Article 10, Part VII.
- (4) **Area of future-conditions flood hazard.** The land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology. (Amended 4/3/2018)
- (5) **Area of shallow flooding.** A designated AO or VO zone on a community=s Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
- (6) **Area of special flood hazard.** See aSpecial Flood Hazard Area (SFHA).@
- (7) **Basement.** The lowest level or story which has its floor subgrade on all sides.
- (8) **Base flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (9) **Base flood elevation (BFE).** A determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation, when combined with the aFreeboard,@ establishes the aRegulatory Flood Protection Elevation.@
- (10) **Breakaway wall.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten (10) and not more than twenty (20) pounds per square foot. A wall with loading resistance of more than twenty (20) pounds per square foot requires an architect or professional engineer=s certificate.
- (11) **Building.** Any structure built for support, shelter, or enclosure for any occupancy or storage.

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- (12) **Design flood.** See "Regulatory Flood Protection Elevation." (*Amended 4/3/2018*)
- (13) **Development.** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (14) **Development activity.** Any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures. (*Amended 4/3/2018*)
- (15) **Digital Flood Insurance Rate Map (DFIRM).** The digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (*Amended 4/3/2018*)
- (16) **Elevated building.** A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.
- (17) **Encroachment.** The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
- (18) **Existing building and existing structure.** Building and/or structure for which the "start of construction" commenced before date the community's first floodplain management ordinance was adopted. (*Amended 4/3/2018*)
- (19) **Existing construction.** For the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRM=s effective prior to that date. Existing construction may also be referred to as existing structures.
- (20) **Existing manufactured home park or manufactured home subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the Town.

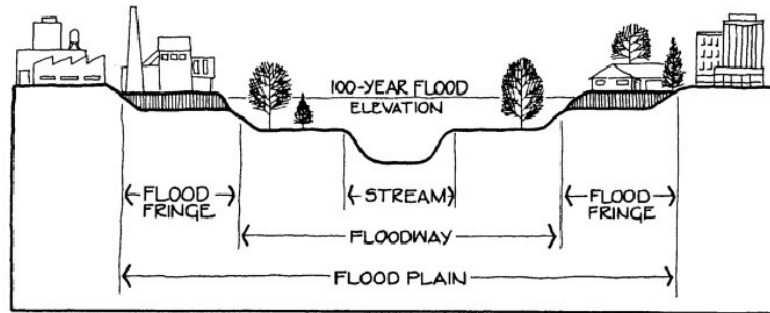
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- (21) **Expansion to an existing manufactured home park or subdivision.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).
- (22) **Flood or flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (i) the overflow of inland or tidal waters; and/or
 - (ii) the unusual and rapid accumulation of runoff of surface waters from any source.
- (23) **Flood boundary and floodway map (FBFM).** An official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).
- (24) **Flood hazard boundary map (FHBM).** An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.
- (25) **Flood insurance.** The insurance coverage provided under the National Flood Insurance Program.
- (26) **Flood insurance rate map (FIRM).** An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.
- (27) **Flood insurance study (FIS).** An examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.
- (28) **Flood prone area.** See [AFloodplain.@](#)
- (29) **Floodplain or flood prone area.** Any land area susceptible to being inundated by water from any source.

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- (30) **Floodplain development permit.** Any type of permit that is required in conformance with the provisions of Article 10, Part VII, prior to the commencement of any development activity.
- (31) **Floodplain management.** The operation of an overall program of corrective and preventative measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
- (32) **Floodplain Regulations.** Article 10, Part VII, and other zoning ordinances, subdivision regulations, building codes, health, regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.
- (33) **Floodproofing.** Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.
- (34) **Flood-resistant material.** Building product [material, component or system capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above- grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials. (Amended 4/3/2018)
- (35) **Floodway.** The channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. (Amended 4/3/2018)

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- (36) **Floodway encroachment analysis.** An engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models. (Amended 4/3/2018)
- (37) **Flood zone.** A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
- (38) **Freeboard.** The height added to the Base Flood Elevation (BFE) to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The freeboard plus the Base Flood Elevation establishes the Regulatory Flood Protection Elevation.
- (39) **Highest adjacent grade.** The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.
- (40) **Letter of Map Change (LOMC).** An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:
- (a) **Letter of Map Amendment (LOMA).** An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
 - (b) **Letter of Map Revision (LOMR).** A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
 - (c) **Letter of Map Revision Based on Fill (LOMR-F).** A determination that a structure or parcel of land has been elevated by fill above the BFE and is,

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therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

- (d) **Conditional Letter of Map Revision (CLOMR).** A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.
- (41) **Lowest adjacent grade.** The lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.
- (42) **Lowest floor.** The subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Article 10, Part VII.
- (43) **Market value.** The building value, excluding the land value and that of any accessory structures or other improvements on the lot, established by independent certified appraisal, replacement cost depreciated by age of building and quality of construction (Actual Cash Value), or adjusted tax assessed values.
- (44) **Non-encroachment area.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.
- (45) **Post-FIRM.** Construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.
- (46) **Pre-FIRM.** Construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.
- (47) **Principally above ground.** At least 51% of the actual cash value of the structure is above ground.
- (48) **Reference level.** The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory

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compliance. For structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, or A99, the reference level is the top of the lowest floor or bottom of lowest attendant utility including ductwork, whichever is lower.

- (49) **Regulatory flood protection elevation.** The elevation, in relation to mean sea level, to which the reference level of all structures and other development located within Special Flood Hazard Areas must be protected. Where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. Where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.
- (50) **Remedy a violation.** To bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
- (51) **Repetitive loss.** Flood-related damages sustained by a structure on two (2) separate occasions during any ten (10) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.
- (52) **Riverine.** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.)
- (53) **Special flood hazard area (SFHA).** The land in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year.
- (54) **Structure.** A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.
- (55) **Substantial damage.** Damage of any origin sustained by a structure during any 10-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred. (Amended 4/3/2018)
- (56) **Substantial improvement.** Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any 1-year period for which the cost equals or exceeds fifty percent (50%) of the market value of the structure, before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not,

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however, include either: (a) any correction of existing violations of State or local health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or, (b) any alteration of a historic structure, provided that the alteration will not preclude the structure=s continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 10.72 of this Ordinance. (*Amended 4/3/2018*)

- (57) **Technical bulletin and technical fact sheet.** A FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. (*Amended 4/3/2018*)
- (58) **UDO Administrator.** The individual appointed to administer and enforce the floodplain management regulations.
- (59) **Variance.** A grant of relief from the requirements of Article 10, Part VII.
- (60) **Violation.** The failure of a structure or other development to be fully compliant with the town=s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Article 10, Part VII is presumed to be in violation until such time as that documentation is provided.
- (61) **Water surface elevation (WSE).** The height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.
- (62) **Watercourse.** A lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Floor

The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

APPENDIX A. DEFINITIONS

Floor area

The total square footage on all floors within a building.

Floor area, gross

The number of square feet of total floor area bounded by the exterior faces of a structure, plus the number of square feet of unenclosed space devoted to the conduct of the use, excluding basements and unenclosed porches, balconies, and terraces, unless used in conjunction with the use, such as for outdoor eating, merchandising, storage, assembly, or similar uses, and excluding off-street parking and loading areas.

Forestry

A woodland area where all of the following occur:

- (1) the growing of trees;
- (2) the harvesting of timber, leaves, or seeds;
- (3) the regeneration of either timely replanting of trees or natural generation in accordance with a forest management plan acceptable to the Division of North Carolina Forest Resources;
- (4) the application of *Best Management Practices*, including the NC Department of Environment and Natural Resources, *Forest Practice Guidelines Related to Water Quality*, and all successor documents.

Foundation plantings

Required planted area between the curb line of a parking facility or drive isle and the building facade.

Frontage

All property abutting on one side of a street measured along the street line.

Fuel pump island

Any device or group of devices used for dispensing motor fuel or similar petroleum products to the general public.

G

GS or NCGS

North Carolina General Statute.

Garage apartment

A detached accessory or subordinate building to an existing single-family dwelling containing living facilities for not more than one family and having sufficient enclosed area for at least one (1) parked automobile.

APPENDIX A. DEFINITIONS

Garage, private

A building or space used as an accessory to or a part of the main building permitted in any residential district, that provides storage space for motor vehicles and in which no business, occupation or service for profit is in any way conducted.

Garage, public

Any building or premises, except those described as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired, or kept for hire or sale.

Gate

A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier and screen as a part of the fence in which it is attached.

Granny pod/temporary health care structure

A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143–139.1(b). Mentally or physically impaired persons are those who require assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation, transferring, toileting, and eating). The impairment must be certified in writing by a physician licensed in North Carolina.

Greenway

A linear park network left in its natural state, except for the introduction of trails to be used by pedestrians and bicyclists.

Gross site area

The total square footage of the proposed development as determined by actual on-site survey.

Guest Lodging

A premises in which rooms are rented, with or without board, on a fee basis to permanent or transient guests; provided all accessory services, such as dining rooms, shall be available to such guests only, and not open to the general public.

Guideline

An objective.

APPENDIX A. DEFINITIONS

Habitable floor

Any floor for living purposes, which includes working, sleeping, eating, cooking, or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

Half street

A street whose centerline coincides with a subdivision plat boundary, with one-half (2) the street right-of-way width being contained within the subdivision plat. Also, any existing street to which the parcel of land to be subdivided abuts on only one side.

Hazardous waste management facility

A facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

Health spa

A commercial enterprise, private club, or business established for the purpose of providing an indoor facility for physical exercise with the use of athletic equipment and accessory services. The term health spa includes private exercise clubs, figure salons, or health clubs.

High density option (Amended 10/3/2017)

One of two approaches available for development in the Watershed Protection Overlays. The high density option relies on impervious surface limits and engineered stormwater controls to minimize risk of water pollution.

Historic Overlay District

That area designated by the Town of Smithfield and which is delineated upon a map adopted by the Town Council and on file at the Smithfield Town Clerk's Office.

Historic structure

Any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or
- (4) certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the NC Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

APPENDIX A. DEFINITIONS

Home occupation

An incidental use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or services. The term *home occupation* shall not be deemed to include a tourist home.

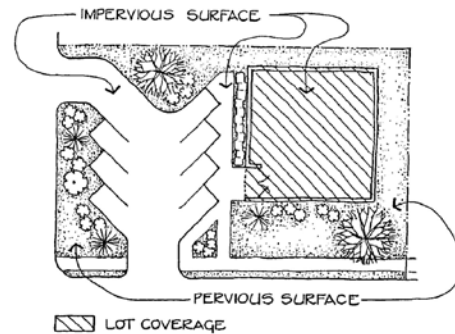
Hotel (motel, inn)

A building providing sleeping accommodations commonly available on a daily basis for pay to transient or permanent guests or tenants, in six (6) or more rooms. Dining rooms, restaurants or cafes, if existing, shall be conducted in the same building or buildings in connection therewith.

I

Impervious surface

Any material that significantly reduces and prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roof, patios, balconies, decks, streets, parking areas, driveways, sidewalks, and any concrete, stone, brick, asphalt, or compacted gravel surface.



Infiltration

The passage or movement of water into the soil sub-surface.

Improved landscape

Gardens, parks, parking lots, or any other proposed outside improvements including any planned vegetation, public street furniture, masonry walls, fences, light fixtures, steps and pavements, or other appurtenant features.

Improvements

The addition of any building, accessory building, parking area, loading area, fence, wall, hedge, lawn or mass planting (except to prevent soil erosion) to a lot or parcel of property.

Industrial development (Amended 10/3/2017)

Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Institutionalized persons

Persons who are committed through some legal process (jail, hospital ward for the dangerously mentally ill), or persons committed to an institution, such as a halfway house, on a time-of-day basis.

APPENDIX A. DEFINITIONS

Intensive livestock operations

Any enclosure, pen, feedlot, building, or group of buildings intended to be used or actually used to feed, confine, maintain or stable cattle, horses, sheep, goats, turkeys, chickens, swine, or any combination thereof, with at any time a total of 100 animal units or more present, where their dietary needs are met primarily by means other than grazing.

J

Jail

A municipal or county operated facility designed for the holding of individuals for trial, contempt, or punishment when the period is not to exceed one hundred and eighty (180) days.

Junk

Pre-used or unusable metallic parts and other nonmetallic manufactured products that are worn, deteriorated or obsolete, making them unusable in their existing condition, but are subject to being dismantled and salvaged.

Junkyard

The use of more than six hundred (600) square feet of any lot or tract for the outdoor storage and/or sale of waste paper, rags, scrap metal, or other junk, and including storage of automobiles or other vehicles or dismantling of such vehicles or machinery or parts thereof.

Junked vehicle

A motor vehicle that (1) is partially dismantled or wrecked; (2) cannot be self-propelled or moved in the manner in which it was originally intended to move; (3) is more than five years old and appears to be worth less than \$100.00; or (4) does not display a current license plate when the motor vehicle is required by laws of this state to have such a license plate to operate on public roads, unless stored within an enclosed structure.

K

Kennel, commercial

A commercial operation that: (a) provides food and shelter and care of three (3) or more dogs/cats for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian), or (b) engages in the breeding of animals for sale.

Kennel, private

A place or facility where five (5) or more domesticated animals (dogs or cats) over four (4) months of age are maintained by the owner or occupant of the property for the owner's personal enjoyment, hobby or sport, whether or not for compensation.

L

APPENDIX A. DEFINITIONS

Land area

The total square footage within the development project property boundary of net buildable area.

Landfill (Amended 10/3/2017)

A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this Ordinance, this term does not include composting facilities.

Legislative decision.

The adoption, amendment, or repeal of a regulation under this Ordinance. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Ordinance.

Levee

A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Level, floor

The bottom portion, inclusive of horizontal sills, of the first living floor of a structure intended for occupancy.

Light duty truck (Amended 4/3/2018)

Any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Loading and unloading area

That portion of the vehicle accommodation area used to satisfy the requirements of Article 10, Part I. It provides space for bulk pickups and deliveries, scaled to delivery vehicles and accessible to such vehicles at all times even when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

Lot

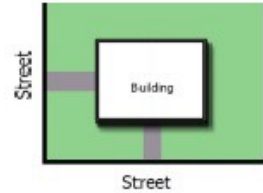
Land area of defined boundaries in single ownership, set aside for separate use or occupancy, and recorded as such in the office of the Johnston County Register of Deeds.

APPENDIX A. DEFINITIONS

Lot, area of

The parcel of land enclosed within the boundaries formed by the property lines, plus one-half of any alley abutting the lot between the boundaries of the lot, if extended.

Lot, corner. A lot which occupies the interior angle at the intersection of two or more right-of-way lines. A lot abutting on the right-of-way of a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.



Lot coverage, maximum in percent. The maximum percent of the lot which may be covered with structures. All yard requirements must be met in addition to lot coverage requirements.

Lot, depth

The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear. On lots having an access strip extending from the front of the main portion of the lot, the foremost points of the side lot lines shall be measured at the place where the access strip joins the main portion of the lot.

Lot, flag (Amended 4/3/2018)

A lot with two distinct parts:

- (1) The flag, which typically contains building site; and is located behind another lot;
- and
- (2) The pole, which connects the flag to the street; provides the only street frontage for the lot; and at any point is less than or equal to the minimum lot width for the zone.

Lot, interior

A lot other than a corner lot with only one frontage on a street.

Lot line

Any boundary of a parcel of land.

Lot line, front

- (1) If a lot has one property line which is coterminous with a street right-of-way line, such line shall constitute the front lot line;
- (2) If a lot has two property lines which are also street right-of-way lines abutting different streets and those two (2) property (street right-of-way) lines form an angle between 80 degrees and 100 degrees, then the shorter of those two (2) lines shall constitute the front property line; if both lines are equal, the front property line shall be determined by the property owner if a front property line has not been designated on the final plat (minimum building lines are construed to designate the front lot line);

APPENDIX A. DEFINITIONS

- (3) If a lot is not encompassed by provision (a) or (b) and no front property line is designated on the final plat, the front property line shall be designated by the Board of Adjustment.

Lot line, rear

The property line(s) which is (are) opposite the front property line. If no property line is deemed to be opposite the front property line and no minimum building line exists on the final plat to establish a rear lot line, then there shall be no rear lot line; however, the rear yard setback shall be maintained from the point (apex) on the property's perimeter which is the furthest removed from the mid point of the front line. The rear yard minimum building line shall be a line perpendicular to a straight line connecting said apex and the mid point of the front lot line.

Lot line, side

A boundary line which is not defined as front or rear lot line.

Lot, nonconforming

A lot or parcel of land that has less than the required minimum area or width as established by the zone in which it is located and provided that such lot or parcel was of record as a legally created lot on the effective date of this Ordinance.

Lot of record

A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Johnston County prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

Lot, reversed frontage

A lot on which the frontage is at right angles or approximately right angles (interior angles less than one hundred thirty-five [135] degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot, or a through lot.

Lot, single-tier

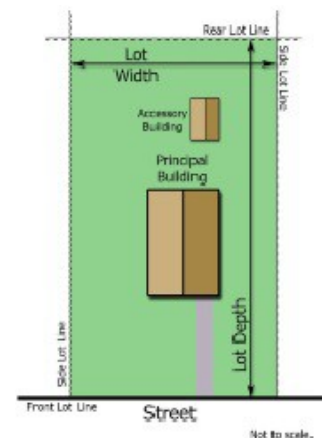
A lot which backs upon a limited access highway, a railroad, a physical barrier, or another type of land use and to which access from the rear is usually prohibited.

Lot, through or double frontage

A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Lot width (Amended 4/3/2018)

The distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front



APPENDIX A. DEFINITIONS

yard; provided, however, that width between side lot lines at their foremost points (where they intersect the right-of-way line, or for lots having an access strip extending from the front of the main portion of the lot, at the place where the access strip joins the main portion of the lot) shall not be less than sixty (60) feet, except in the case of the turning circle of cul-de-sacs.

M

Major and/or multi-unit development

Development consisting of:

- (1) structures on a tract of two [2] acres or more, or
- (2) nonresidential structures having a total floor area of ten thousand (10,000) square feet or more.

Manufactured home

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include a *recreational vehicle*.

Manufactured home (mobile home) class A

A double- or triple-wide manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies each of the following additional criteria:

- (1) The home has a length not exceeding four times its width;
- (2) The pitch of the home's roof has a minimum vertical rise of one foot for each five feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction;
- (3) The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
- (4) A continuous, permanent masonry foundation, unpierced except for required ventilation and access, is installed under the home; and
- (5) The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

Manufactured home (mobile home) class B

A single-wide manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify as a Class A manufactured home.

APPENDIX A. DEFINITIONS

Manufactured home (mobile home) class C

Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home. Class C manufactured homes are not permitted within Smithfield=s planning jurisdiction.

Manufactured home park or subdivision

A parcel, or contiguous parcels, of land divided into two (2) or more manufactured home lots for rent or sale.

Manufactured home/recreational vehicle space

A plot of land within a MH/RV park designed for the accommodation of a single manufactured home/recreational vehicle in accordance with the requirements set forth in this section.

Manufactured home/recreational vehicle stand

That portion of the manufactured home/recreational vehicle space designed for and used as the area occupied by the MH/RV proper.

Microbrewery

A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise.

Micro wireless facility (Amended 10/3/2017)

A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Minor variance (watershed) (Amended 10/3/2017)

A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option.

Modular home

A factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, bears a seal or label issued by the Department of Insurance pursuant to GS 143-139.1, and is placed on a permanent foundation and used for residential purposes.

Modular structure, commercial

A commercial unit which is constructed off-site and when assembled at a permanent site complies fully with the North Carolina State Building Code for commercial structures.

More intensive use

APPENDIX A. DEFINITIONS

A use that will have a greater impact on the surrounding area than the previous use, including activities which generate more traffic, require more employees or service deliveries, or utilize more square footage than the previous use existing on the site.

Motor vehicle

Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

Multifamily development

A single building on a single lot or tract containing more than two (2) dwelling units.

N

Natural feature

Any outside landscape feature on the site such as trees, shrubs, or rock formations.

Net acreage, acres, land area, square footage of land area

Land area with streets, right-of-ways, driveways which serve as access to more than two (2) dwelling units or uses, and major transmission line easements not included in its measurement.

Net buildable area

The total area within the project property boundary less:

- (1) all easement for storm drain or utilities;
- (2) highway and street rights-of-way;
- (3) sediment basins and water retention ponds;
- (4) wetlands, defined by the Division of Water Quality and/or US Corps of Engineers;
- (5) water and wastewater treatment facilities;
- (6) local or state designated historic sites; and
- (7) water areas including seasonal ponds.
- (8) buffered areas adjacent to streams and water bodies.

New construction

- (1) Any development occurring on property utilized for governmental, commercial, or residential subdivision purposes for which a building permit is required.
- (2) For floodplain management purposes, structures for which the start of construction@ commenced on or after the effective date of this Ordinance and includes any subsequent improvements to such structures.

New manufactured home park

A manufactured home park for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the

APPENDIX A. DEFINITIONS

construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after October 21, 1996.

Nonconforming building or development

Any legally existing building or development which fails to comply with the provisions of the Ordinance.

Nonconforming lot of record (watershed) (Amended 10/3/2017)

A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

Non-residential development (Amended 10/3/2017)

All development other than residential development, agriculture and silviculture.

Nursing home

A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

O

Official maps or plans

Any maps or plans officially adopted by the Smithfield Town Council.

Open space

An area (land and/or water) generally lacking in manmade structures and reserved for the enjoyment of residents of a Planned Unit Development, or other group project. Common open spaces may contain accessory structures, and improvements necessary or desirable for religious, education, non-commercial, recreational, or cultural uses.

OSR (Open Space Ratio)

The total square footage not covered by manmade structures.

Overhead canopy

Any structure placed over, around, or near a fuel pump island, drive-up bank teller facility, or similar use, and intended to provide lighting and/or protection from the elements for facility users.

APPENDIX A. DEFINITIONS

P

▲Park model@ recreational vehicle. A manufactured home typically built in accordance with the construction requirements of HUD National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. ' 5401, et seq. but because of their limited size they are not required to be labeled by the HUD manufacturing housing program. Since these park model type units are not under the jurisdiction of the HUD program, they are labeled and sold as recreational vehicles. NOTE: Not permitted as permanent residences.

Parking area, aisles

A portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

Parking facility, commercial

Any area (except an accessory use), either open or enclosed, structural or natural, for the storage of a vehicle or vehicles. Each parking facility shall have an approved means of ingress and egress. A parking lot is a subclassification of a parking facility.

Parking lot, commercial

An open area (except as an accessory use), outside of the public right-of-way, for the storage of a vehicle or vehicles. The term "parking area" shall be included in this definition. Each parking lot shall have an approved means of ingress and egress.

Parking space, off street

For the purpose of this Ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. No required off-street parking shall be located on any public right-of-way.

Patio home

A single-family detached or semi-detached unit built on a small lot which may be enclosed by walls which provide privacy.

Person

An individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity acting as a unit, including the following:

- (1) The agent in charge of a building, premises, structure, or facility; or
- (2) The owner of the building, premises, structure, or facility when such owner knew or reasonably should have known the nature of the business located therein, and such owner refused to cooperate with the public officials in reasonable measures designed to terminate the proscribed used; provided, however, that if there is an

APPENDIX A. DEFINITIONS

agent in charge, and if the owner did not have actual knowledge, the owner shall not be prosecuted; or

- (3) The owner of the business; or
- (4) The manager of the business.

Personal property

Property owned, utilized, and maintained by an individual or members of his or her residence, and acquired in the normal course of living in or maintaining a residence. It does not include merchandise which was purchased for resale or obtained on consignment.

Photovoltaic power

An active solar energy system that converts solar energy directly into electricity.

Planned unit development (PUD) (Amended 3/6/2018)

A development constructed on a tract of land under single ownership, planned and developed as an integral unit, and may consist of a combination of residential and nonresidential uses and within a PUD special zoning district in accordance with Section 6.3.6.

Planning Board

A commission appointed by the Town Council and by the Johnston County Board of Commissioners for the following purposes:

- (1) to develop and recommend long-range development plans and policies;
- (2) to advise the Town Council in matters pertaining to current physical development and zoning for the town's planning jurisdiction.

Planting strip or area

A ground surface free of concrete, asphalt, stone, gravel, brick, or other paving material, aside from walkways, which is required or used for landscaping purposes.

Plat

A map or plan of a parcel of land which is to be, or has been, subdivided.

Predevelopment

The conditions that existed prior to the proposed project, site plan, or subdivision being in place.

Principal building, use or structure

The main use of a lot or the building or structure in or on which the main use of the lot takes place.

Private driveway

A roadway serving two or fewer lots, building sites, or other division of land, and not intended to be public ingress or egress.

Private street

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An undedicated private right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with GS 136-102.6.

Processing

Any operation changing the nature of material or material's chemical composition or physical properties; does not include operations described as fabrication.

Protected area (Amended 10/3/2017)

The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Protected tree

An existing healthy tree which, when measured at four and one-half feet above the ground DBH, has a minimum diameter of eight (8) inches.

Public safety and/or nuisance

Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or a river, bay, stream, canal, or basin.

Public sewage disposal system

A system serving two (2) or more principal uses and approved by the Johnston County Health Department and the North Carolina Department of Environment and Natural Resources, Environmental Management Division.

Q

Quasi-judicial decisions

A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board

R

Recreation area or park

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An area of land or combination of land and water resources that is developed for active and/or passive recreation pursuits with various man-made features that accommodate such activities.

Recreational vehicle (Amended 4/3/2018)

A vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) not designed for use as a permanent primary dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

Recreational vehicle parks

Any single parcel of land upon which two (2) or more recreational vehicles, occupied for sleeping purposes, are located regardless of whether or not a charge is made for such purposes. Recreational Vehicle Parks are referred to in this Ordinance as a RV Park(s).@

Redevelopment

Renovation of an existing structure or structures which totals at least 60 percent of the original structure.

Regulated tree

The subsurface roots, crown, and trunk of:

- (1) Any self-supporting woody perennial plant such as a large shade or pine tree, which usually has one main stem or trunk, and has a measured caliper as follows:
 - (a) hardwood tree - eight (8) inches, such as oak, maple, etc.
 - (b) pine tree - twelve (12) inches, such as long leaf pine
- (2) Any small flowering tree, such as dogwood, with a measured caliper of at least four (4) inches.
- (3) Any tree having several stems or trunks, such as crepe myrtle, and at least one defined stem or trunk with a measured caliper of at least two (2) inches.

Rehabilitation

Returning a property to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.

Remove (including removing and removal)

The cutting down of any live or dead regulated tree and all other acts which cause the death or destruction of any regulated trees.

Renewable energy resource

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A solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer=s facility; or hydrogen derived from a renewable energy resource. A Renewable energy resource@ does not include peat, a fossil fuel, or nuclear energy resource.

Reservation

A reservation of land does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

Residential child-care facility

A staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care, but not family care homes.

Residential development (Amended 10/3/2017)

Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

Residuals (Amended 10/3/2017)

Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

Restaurant

An establishment whose principal business is the sale of foods, frozen desserts, or beverages to a customer in a ready-to-consume state, and whose design and principal method of operation determines its classification as follows:

- (1) **Standard.** Customers are provided with an individual menu and served by an employee at the same table or counter at which their food and/or beverages generally are consumed within the restaurant.
- (2) **Carry-out.** (1) Foods and/or beverages are usually served in edible containers or in paper, plastic, or other disposable containers by an employee at a standing counter or drive-in window; and (2) consumption is normally off the premises, but may be allowed within a motor vehicle parked on the premises, or at other facilities on the premises outside the principal building.
- (3) **Fast Food.** Same as Acarry-out,@ but includes allowing consumption within the principal building.

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Retail

Sale of a commodity, [the sale being] to the ultimate consumer and [the commodity being] not customarily subject to sale again.

Retention pond facilities

A permanent structure that provides for the storage of runoff and is designed to maintain a permanent pool of water.

Right-of-Way

A strip of land, owned publicly or privately, which affords the principal means of access to abutting property.

Right-of-Way (Town) (Amended 10/3/2017)

A right-of-way owned, leased, or operated by the Town of Smithfield, including any public street or alley that is not part of the State highway system.

Roof line

The top edge of the roof or the top edge of the parapet, whichever forms the top line of the building silhouette, but not including penthouses or equipment structures.

S

Sales office, off-premises (branch)

In addition to maintaining inventories of goods; physically assembling, sorting, and grading goods in large lots; breaking bulk; delivery; and various types of promotion, such as advertising, a wholesaler or distributor may establish offices and other supportive areas for the use of personnel primarily employed for off-premises sales and other administrative or managerial needs. On-premises retail sales as the principal use are not included in this classification. Off-street parking for this portion of the building shall be calculated independently of any other use of the same structure.

Sales office, temporary

An office established within the boundaries of a subdivision or development which is used for the promotion and sales of real property solely within that subdivision or development.

Salvage operation or yard

Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances, and related machinery.

School

Any public or private institution for the teaching of children/adults.

Screening

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The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, vegetation, or other natural or man-made visual barriers.

Search ring (Amended 10/3/2017)

The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Service stations

A building or lot dedicated to the rendering of services such as the sale of gasoline, oil, grease, and accessories and the minor repair of automobiles, excluding body work, overhauling, and painting.

Setback

The minimum required distance existing between the abutting street right-of-way line (if no street right-of-way line is involved, the subject property line) and the minimum building line as specified in Article 8, Zoning District Development Standards.

Shadow flicker

The visible flicker effect when rotating turbine blades cast shadows on the ground and nearby structures causing the repeating pattern of light and shadow.

Shopping center, major. Two or more commercial establishments, planned and constructed, as a single unit with off-street parking and loading facilities provided on the property with a total building area of twenty-five thousand (25,000) square feet or greater.

Shopping center, minor

Two or more commercial establishments, planned and constructed, as a single unit with off-street parking and loading facilities provided on the property with a total building area less than twenty-five thousand (25,000) square feet.

Shrub, Small

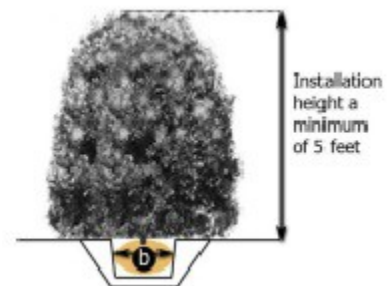
A hard-wooded perennial plant of species which normally reaches a height between eighteen (18) inches and four (4) feet.

Shrub, Intermediate

A hard-wooded perennial plant of species which normally reaches a height between four (4) feet and six (6) feet.

Shrub, Large

A hard-wooded perennial plant of species which normally reaches a height between six (6) feet and ten (10) feet.



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Sign

Any device that is designed to attract attention to a particular location with on-premises or off-premises copy is considered a sign.

Sign, area

The surface area of a sign shall be computed as including the entire area visible from any one point, within a regular geometric form or combinations of regular geometric forms comprising all of the display area of the sign including lattice work, wall work, and individual letters and spaces between letters comprising part(s) of the sign. Computations of sign area shall include only one side of a double-faced sign structure. If a sign has two sides joined at an angle of greater than 60°, the surface of both sides of the sign shall be included in the computation of area. See Section 10.24.

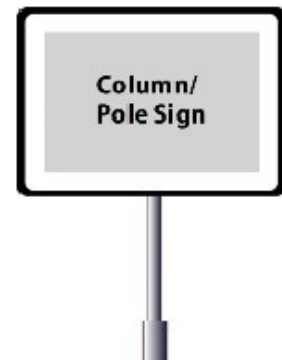
Sign, banner

A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations, or ornamentations applied to cardboard, plastic or fabric of any kind, excluding flags and emblems of political, professional, religious, education, or corporate organizations.



Sign, column/pole

A freestanding sign supported by one or more columns or poles or other similar support.



Sign, flutter flag

A freestanding temporary sign typically constructed of a single plastic or metal shaft driven in the ground with an attached pennant that is vertically elongated and attached to the shaft.



Sign, flag

A device generally made of flexible material, usually cloth, paper or plastic, typically used as a symbol of a government, school, or religion. The term "Flag" does not include feather flag signs.



Sign, freestanding

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A sign anchored directly to the ground or supported by one or more posts, columns, or other vertical structures or supports, and not attached to or dependent for support from any building. Monument signs, pole signs, and some temporary signs are considered freestanding signs.

Sign, ground-mounted

A freestanding sign, supported by a contiguous structural base or planter box that is permanently affixed to the ground.

Sign, height of

The vertical distance measured from the ground to the top of the sign face or sign structure, whichever is greater.

Sign, message board

A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. This definition does not include menu and sandwich board signs.



Sign, monument

A freestanding sign where the base of the sign structure is on the ground or a maximum of 12 inches above the adjacent grade. The width of the top of the sign structure can be no more than 120 percent of the width of the base.



Sign, nonconforming

A sign which was legally erected prior to the effective date of this Ordinance, but which does not conform to these regulations.

Sign, ornamental

A banner that uses any of a variety of images or colors of an ornamental nature, and that displays no on-premises or off-premises copy.



Sign, outdoor advertising

Any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended, or visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

Sign, portable

Any sign not exceeding thirty-two (32) square feet in billboard area and not permanently attached to the property on which it is located.



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Sign, projecting

Any sign, other than a wall, awning, canopy or marquee sign, which is affixed to a building and is supported only by the wall on which the sign is mounted.



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Sign, roof

Any sign erected, constructed, or maintained upon or over the roof of a building, or extending above the highest wall of the building, and having its principal support on the roof or walls of the building.



Sign, snipe

A sign that is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, fences, or to other objects.



Sign, suspended

A sign that is suspended from the underside of a horizontal plane surface such as a canopy or marquee and is supported by such surface.



Sign, temporary

A display, informational sign, banner, or other advertising device constructed of cloth, canvas, fabric, wood, or other temporary material, with or without a structural frame (including banners), and intended for a limited period of display, including decorative displays for holidays or public demonstrations.



Sign, wall

Any sign attached to, painted on, or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of said wall and which does not extend more than eighteen (18) inches from the wall.



Sign, wind means any display or series of objects designed and fashioned in such a manner as to move when subjected to internal wind pressure.



Sign, window means any sign appearing in, on or through a window of a structure and visible from outside. The term window sign shall not be used to define a window display.



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Significant Tree

Any tree, which meets or exceeds the following criteria:

- (1) All hardwood trees with a DBH (Diameter at breast height) equal to or greater than 24 inches.
- (2) All coniferous trees with a DBH (Diameter at breast height) equal to or greater than 24 inches.
- (3) All Dogwood, American Hollies, and other Flowering with a DBH (Diameter at breast height) equal to or greater than 8 inches.

Site inspector

The site inspector, building inspector, fire marshal, UDO administrator, and town engineer or his designated representative for the Town of Smithfield.

Site plan

A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

Site specific development plan

A plan of development submitted to the Town to obtain one of the following zoning or land use permits or approvals:

- (1) Final Subdivision Plat,
- (2) Special Use Permit, or
- (3) Planned Unit Development Plan.
- (4) Conditional Zoning Plan

Notwithstanding the foregoing, a document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall not constitute a site specific development plan.

Skirting

A continuous, uniform foundation enclosure constructed of vinyl, or metal fabricated for such purpose and that is unpierced except for required ventilation or access.

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Small wireless facility (Amended 10/3/2017)

A wireless facility that meets both of the following qualifications:

- (1) Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
- (2) All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For the purposes of this ordinance, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Solar collector (accessory)

Any solar device that absorbs and accumulates solar radiation for use as a source of energy. The device may be roof-mounted or ground-mounted as an accessory use.

Solar energy

Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar energy system

A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generating, or water heating. Solar Energy Systems may include, but not be limited to, solar farms and any of several devices that absorb and collect solar radiation for use as a source of energy as an accessory use.

Solar farm

An area of land designated use for the sole purpose of deploying photovoltaic power and generating electric energy.

Solid waste disposal facility

Any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

Solid waste disposal site

Any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special use

A use that would not be an appropriate general use without restriction or review in a particular zoning district, but which, if controlled as to number, area, location or relation to surrounding uses, would promote the public health, safety or general welfare.

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Special use permit

A permit issued by the Town Council to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgement and discretion be exercised, as well as compliance with specific standards in accordance with the Town of Smithfield Unified Development Ordinance as well as any additional requirements imposed by the Town Council. The term includes permits previously referred to as conditional use permits.

Standard

A mandatory requirement.

Standing

The following persons shall have standing to file a petition or appeal under this Ordinance:

- (1) Any person meeting any of the following criteria:
 - (a) Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - (b) Has an option or contract to purchase the property that is the subject of the decision being appealed.
 - (c) Was an applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
- (4) A town whose decision-making board has made a decision that the Council believes improperly grants a variance or is otherwise inconsistent with the proper interpretation of an ordinance adopted by the Town Council.

Start of construction

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The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Storage

A deposition of commodities or items for the purpose of future use or safekeeping.

Storage, open

The keeping of any goods, junk, material, merchandise, or vehicles in the same place (yard) for a period of more than 24 hours in an unroofed area or any type of shed which does not have four sides.

Storage Facility, Indoor (AMENDED 8/7/18)

A building or part of a building where the principal use is for storage of goods, wares, or equipment, including mini-storage, which consists of individual, small, self-contained units that are leased or owned for the storage of goods and wares.

Stormwater management definitions

For the purposes of Article 10, Part VI, Stormwater Management, the following items, phrase and words shall have the meaning herein:

- (1) **Applicant.** An owner or developer of a site who executes the Storm Water Permit Application pursuant to this Ordinance is considered the applicant.
- (2) **Best management practices (BMPs).** A wide range of practices that have been demonstrated to effectively manage the quality and/or quantity of stormwater runoff and which are compatible with the planned land use. BMP=s can be structural (detention ponds, wetlands, etc.) or non-structural (reduced road pavement width, cluster development, etc.).
- (3) **Channel bank.** The location of the upper edge of the active channel above which the water spreads into the overbanks on either side of the channel or the elevation

APPENDIX A. DEFINITIONS

of the two-year frequency storm. Where the channel bank is not well defined, the channel bank shall be considered the edge of the waterline.

- (4) **Design storm.** The specific frequency and, if necessary, duration of the rainfall event to be used in design to meet the criteria established in the Town of Smithfield Stormwater Design Manual.
- (5) **Development.** Any of the following actions taken by a public or private individual or entity:
 - (a) The division of a lot, tract, or parcel of land into two (2) or more lots, plots, sites, tracts, parcels, or other divisions by plat or deed.
 - (b) Any land change, including, without limitation, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting, and filling of land.
- (6) **Drainage structures.** Swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed to convey stormwater.
- (7) **Existing development.** An individual non-residential site with site plan approval by the Planning Department or a non-residential subdivision with preliminary subdivision approval from the Planning Board.
- (8) **Illegal discharges.** Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, or other discharge of any substance other than stormwater conveyance system, the waters of the State or upon the land such that the substance is likely to reach a stormwater conveyance system or waters of the State constitutes an illegal discharge.
- (9) **Impervious surface.** A surface composed of any material that impedes or prevents natural infiltration of water into the soil. Gravel areas shall be considered impervious.
- (10) **Land disturbance.** Removal of topsoil, grubbing, stump removal, and/or grading.
- (11) **Natural drainage way.** An incised channel with a defined channel bed and banks that are part of the natural topography. Construction channels such as drainage ditches shall not be considered a natural drainage way unless the constructed channel was a natural drainage way that has been relocated, widened, or otherwise improved.
- (12) **New development.** Defined as:

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- (a) Any activity that disturbs greater than one acre of land in order to establish, expand, or modify a single-family or duplex residential development or recreational facility.
 - (b) Any activity that disturbs greater than one-half an acre of land in order to establish, expand, or modify a multi-family residential development or a commercial, industrial, or institutional facility.
 - (c) New development shall NOT include mining, agricultural, or forestry activities. Land disturbance is defined as grubbing, stump removal, and/or grading.
- (13) **Riparian buffer.** An area of trees, shrubs, or other forest vegetation, that is adjacent to surface waters. For purposes of this Ordinance, surface water shall be present if the feature is approximately shown on either the most recent version of the Johnston County soil survey report prepared by the Natural Resources Conservation Service (NRCS) or the most recent version of the 1:24,000 scale (7.5 min.) quadrangle topographic maps prepared by the United States Geological Survey. Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Ordinance, except areas designated by the Stormwater Administration to be environmentally sensitive. See Article 10, Part VI, Stormwater Management.
- (14) **Stormwater.** Flow resulting from and occurring after any form of precipitation.
- (15) **Stormwater conveyance system or structure.** Any feature, natural or man-made, that collects and transports stormwater, including but not limited to, roadways with collection systems, catch basins, man-made and natural channels, streams, pipes and culverts, and any other structure or system designed to transport runoff.
- (16) **Stormwater design manual.** The manual of design, performance, and review criteria adopted by the Smithfield Town Council for the administration of the Stormwater Program. The Stormwater Design Manual will be maintained and revised as needed by the UDO Administrator.
- (17) **Vegetative buffer.** An area that has a dense ground cover of herbaceous or woody species, which provides for diffusion and infiltration of runoff and filtering of pollutants.
- (18) **Vested rights of stormwater.** Based upon projects that require a state permit, such as landfills, NPDES wastewater discharges, land application or residuals and road construction activities, and shall be considered to have vested rights if a state

APPENDIX A. DEFINITIONS

permit was issued prior to the effective date of the adoption of the revised Stormwater Ordinance.

- (19) **Water dependent structure.** Those structures that require the access or proximity to, or sitting within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not considered water dependent structures.

Story

That portion of a building between the surface of any floor and the floor or roof above it. The following are considered stories:

- (1) Mezzanine, if it extends one-third of the total floor area of the story immediately below it;
- (2) Penthouse, if it exceeds one-third of the total area of the roof;
- (3) Basement, if subdivided and used for dwelling or business purposes.

Street

A public thoroughfare which affords access to abutting property and is recorded as such in the office of the Johnston County Register of Deeds. The following classifications apply:

- (1) **Superhighway.** Major thoroughfares consisting of interstates, freeways, expressways, or parkway links that are characterized by limited access control.
- (2) **Major arterial.** A major street in the Town=s street system that serves as an avenue for the circulation of traffic into, out, or around the Town and carries high volumes of traffic. It is designed to carry more than twelve thousand (12,000) but less than twenty-four thousand (24,000) trips per day.
- (3) **Minor arterial.** A major street in the Town=s street system that serves as an avenue for the circulation of traffic into, out, or around the Town and carries high volumes of traffic. It is designed to carry more than five thousand (5,000) but less than twelve thousand (12,000) trips per day.
- (4) **Collector.** A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It is designed to carry more than two thousand five hundred (2,500) but less than five thousand (5,000) trips per day. Typically, a collector is able to serve, directly or indirectly, between two hundred and fifty (250) and five hundred (500) dwelling units.

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- (5) **Subcollector.** A street whose principal functions are both to carry traffic between minor and local streets and collectors, or to join two collectors, or a collector and an arterial, and to serve abutting properties. It is designed to carry more than five hundred (500) but less than two thousand five hundred (2,500) trips per day. Typically, a subcollector is able to serve, directly or indirectly, between fifty (50) and two hundred fifty (250) dwelling units.
- (6) **Local road.** A street whose sole function is to provide access to abutting properties. It is designed to carry more than one hundred fifty (150) but less than five hundred (500) trips per day. Typically, a local road is able to serve, directly or indirectly, between fifteen (15) and fifty (50) dwelling units.
- (7) **Minor street.** A street whose sole function is to provide access to abutting properties. It is designed to carry one hundred fifty (150) or less trips per day. Typically, a minor street serves fifteen (15) or fewer dwelling units.
- (8) **Alley.** A strip of land, owned publicly or privately, set aside primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

Street Line

The right-of-way boundary of a street.

Street yard

The area of a parcel immediately adjacent to a street right-of-way and reserved for planting. The minimum dimensions of street yards are established by Section 10.13 of this Ordinance.

Structure

Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, manufactured homes, fences, signs, swimming pools, and tennis courts.

Subdivider

Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision

The division of land for the purpose of sale or development as specified in G.S. 160D-8-2.

Subdivision, major

All subdivisions shall be considered major subdivision except those defined as minor subdivisions.

Subdivision, minor

A minor subdivision is a tract to be subdivided which is five (5) acres or less in size, and three or fewer lots result after subdivision:

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- (1) all of which front on an existing approved public street;
- (2) not involving any new public streets or public street improvements, right-of-way dedication, or prospectively requiring any new street for access to interior property;
- (3) not requiring drainage improvements or easements to serve the applicant=s property or interior properties;
- (4) not involving any utility extensions; and
- (5) not requiring any easements, other than rear and side lot line easements.
- (6) not creating any new or residual parcels which do not satisfy the requirements of this Ordinance.
- (7) not adversely affecting the development of the remainder of the parcel or of adjoining property.

Substantial modification, wireless facilities (Amended 10/3/2017)

The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the Town to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

- (1) Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- (2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- (3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Substantially improved existing manufactured home park

Repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads which equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, construction, or improvement commenced.

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T

Telecommunication tower

A tower facility, including, but not limited to, radio and television transmission towers or similar utilities, microwave towers, and mobile telephone or radio towers. This term shall not include radio transmission facilities for use by ham radio operators or two-way local radio facilities for business or governmental purposes that are under 100 feet in height and that, at a height of fifty feet above the base, have a maximum horizontal measurement of eighteen inches nor shall it include any tower erected by a public authority for public safety or emergency service communication purposes.

Telecommunications facility

A communications tower or antenna and any associated accessory structures and equipment.

Telephone communication facility, unattended

A windowless structure containing electronic telephone equipment that does not require regular employee attendance for operating.

Temporary emergency, construction or repair residence

A subordinate residence (which may be a Class B manufactured home, travel trailer) that is: located on the same lot as a single-family dwelling made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or (ii) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed.

Temporary storage facility (portable storage units)

Any container intended for storing or keeping household goods, other personal property or business related goods intended to be filled, refilled, or emptied while located outdoors and later removed from the property for storage or disposal off-site. Temporary storage facilities are sometimes also known as portable storage units or portable storage containers.

Therapeutic foster home

A family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission.

Tiny house

A single-family detached home that is 200 square feet to 600 square feet in size (not including loft space) and complies with the North Carolina State Building Code. A tiny house on wheels for permanent occupancy (longer than 30 days) is considered a recreational vehicle.

Temporary uses

APPENDIX A. DEFINITIONS

Any use intended for temporary and limited duration, operated as an accessory to a principal use. The maximum frequency of such temporary use shall not exceed two (2) occurrences within any twelve-month period and the maximum duration of such temporary use shall be seven (7) days. For purposes of this definition, the duration of each separate occurrence shall be measured on continuous days. Such use shall be subject to applicable location, setback, parking, land use and other standards for the district. Christmas tree sales, fireworks sales, carnivals and nonprofit organizations are exempt from the frequency and duration provisions of this Ordinance. Temporary uses shall be exempt from the vegetation and parking lot surface improvement standards, provided however, where the director of planning due to extended duration or frequency of operation finds that the use requirements shall apply. No temporary use may omit any noise, odors, dust, fumes, glare, or vibration or cause traffic or other safety issues that could be detrimental to adjoining properties or surrounding areas.

Thoroughfare plan

The official major thoroughfare plan of Smithfield, North Carolina, as adopted by the Smithfield Planning Board and the North Carolina Department of Transportation.

Tower

Any structure whose principal function is to support antenna.

Towing service, automotive or truck

A commercial enterprise, business or company established to tow or remove motor vehicles from one location to another. A towing service includes the temporary storage of motor vehicles at its site, but under no circumstances shall any motor vehicle remain on the premises of a towing service for more than twenty-four (24) hours unless stored within an enclosed structure or the tow service is located in an industrial district. Such services shall comply with all ordinances of the Town.

Town

The Town of Smithfield, North Carolina.

Town Council

The Town Council of the Town of Smithfield.

Townhouse

A principal structure containing two (2) or more single-family attached dwelling units with each unit on its own individual lot. All townhouse developments shall be subject to multiple family dwelling provisions of this chapter, with the following exceptions:

- (1) All townhouse developments shall comply with the multiple family density requirements of Article 8 of this Ordinance; this standard can be met by individual lot area, by provision of common open space, or by a combination of lot area and common open space.
- (2) No unit shall be connected on more than two (2) sides by common walls.

APPENDIX A. DEFINITIONS

- (3) All yard dimensional requirements shall apply to the property lines of the entire development. No individual unit shall be required to meet the yard dimensions.

Toxic substance (Amended 10/3/2017)

Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

Tract

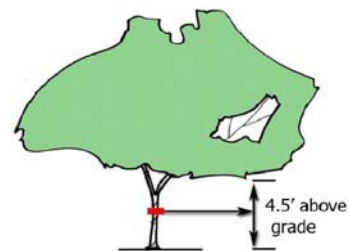
A tract is a piece of land whose boundaries have been described or delineated by a legal instrument or map recorded in the office of the Johnston County Register of Deeds.

Tract area

The total acreage/square footage of the entire tract being developed.

Tree diameter at breast height (DBH)

The diameter of a tree trunk in inches measured at four and one-half feet above the ground.



U

Understory tree

A deciduous tree that will attain a mature height between fifteen (15) feet and thirty-five (35) feet, with an expected crown spread between fifteen (15) and twenty-five (25) feet, as determined by the latest edition of American Standards of Nursery Stock.®

Urn Plots (Amended 10/10/20, ZA-20-04)

Urn Plots in the ground are not defined by statute. Urn Plots are defined herein as urns set in the ground according to a predesigned and approved plot plan to contain cremated human remains.

Use

The purpose for which land or structure thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased.

Use, accessory

A use incidental to and customarily associated with the use-by-right and located on the same lot with the use-by-right, and operated and maintained under the same ownership with the operation of the use-by-right.

APPENDIX A. DEFINITIONS

Use-by-right

A use which is listed as an unconditionally permitted activity in this Ordinance.

Use, nonconforming

A use of building or land that does not conform with the regulations of the district in which the building or land is situated.

Use, non farm

Any use of property which is not encompassed by the definition of a farm as so defined in this Ordinance.

Utility pole (Amended 10/3/2017)

A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.

V

Variance

A grant of relief to a person from the requirements of this Ordinance which permits construction in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.

Vested right

The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in NCGS 160D-108 or under common law.

Violation of Unified Development Ordinance

Failure of a structure, use, lot, situation, or other development to be fully compliant with the requirements of this Ordinance.

Visible

Capable of being seen without visual aid by a person of normal visual acuity.

W

Warehouse

A building or compartment in a building used and appropriated by the occupant for the deposit and safekeeping or selling of his own goods at wholesale and/or for the purpose of storing the goods of others placed there in the regular course of commercial dealing and trade to be again removed or reshipped.

APPENDIX A. DEFINITIONS

Water dependent structure (Amended 10/3/2017)

Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed (Amended 10/3/2017)

The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

Watershed Administrator (Amended 10/3/2017)

The UDO Administrator who is the official or designated person of the Town of Smithfield responsible for administration and enforcement of this Ordinance.

Watershed variance (Amended 10/3/2017)

A permission to develop or use property granted by the Board of Adjustment relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.

Water tower (Amended 10/3/2017)

A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

Wholesale

Sale of a commodity for resale to the public for direct consumption.

Wireless facility (Amended 10/3/2017)

Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

- (1) The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- (2) Wireline backhaul facilities.
- (3) Coaxial or fiber-optic cable that is between wireless structures or utility poles or Town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider (Amended 10/3/2017)

Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

APPENDIX A. DEFINITIONS

Wireless provider (Amended 10/3/2017)

A wireless infrastructure provider or a wireless services provider.

Wireless services (Amended 10/3/2017)

Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider (Amended 10/3/2017)

A person who provides wireless services.

Wireless support structure (Amended 10/3/2017)

A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or Town utility pole is not a wireless support structure.

Y

Yard

A required open space unoccupied and unobstructed by a structure or portion of a structure; provided, however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

Yard, front

A yard across the full width of the lot, extending from the front lot line of the building to the front line of the lot, including the area of steps, eaves, and uncovered porches, but not including the areas of covered porches.

Yard, rear

An area extending across the full width of the lot and lying between the rear lot line and a line parallel thereto at a distance therefrom as required in the applicable district.

Yard, side

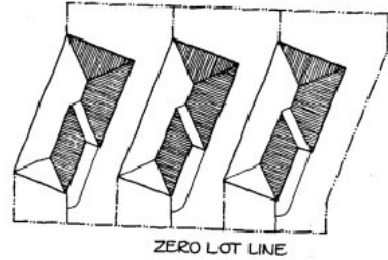
An area extending along the length of the lot between the required front yard and the required rear yard, and between the side lot line and a line parallel thereto and a distance therefrom as required in the various districts.

APPENDIX A. DEFINITIONS

Z

Zero lot line housing unit

A single-family detached housing unit placed on a lot such that a windowless wall is placed on one side property line and the footage required for two (2) side yards is placed on the other side property line as the total side yard requirement for the lot.



Zoning compliance

A certification by the Administrator or his authorized agents that a course of action to use or occupy a tract of land or a building, or to erect, install or alter a structure, building or sign situated in the zoning jurisdiction of the Town, fully meets the requirements of this Ordinance.