



## **PLANNING BOARD AGENDA**

### ***Members:***

***Chairman: Stephen Upton (Town)***

***Vice-Chairman: Mark Lane (ETJ)***

***Teresa Daughtry (Town)***

***Ashley Spain (ETJ)***

***Tom Stevens (Town)***

***Alisa Bizzell***

***Michael Johnson (Town)***

***Debbie Howard (Town Alt)***

***Stephen Wensman, AICP, ALA, Planning Director***

***Mark Helmer, AICP, CZO, Senior Planner***

***Julie Edmonds, Administrative Assistant***

***Meeting Date: Thursday, September 5, 2019***

***Meeting Time: 6:00 p.m.***

***Meeting Place: Council Chambers, Smithfield Town Hall***

# **PLANNING BOARD**

## **AGENDA FOR REGULAR MEETING**

**September 5, 2019**

**6:00 PM TOWN HALL**

**Call to Order.**

**Identify voting members**

**Approval of the agenda**

**Approval of the minutes for August 1, 2019**

### **New Business**

**Smithfield Town Plan:** The Planning Department is requesting the Planning Board review the draft Town Plan and make a recommendation to the Town Council.

**ZA-19-04 Town of Smithfield:** The Planning Department is requesting an amendment to the Town of Smithfield Unified Development Ordinance (UDO), Article 3, Article 4, Article 6, and Article 7 to create a conditional zoning process and list of land uses and development types to be reviewed using the conditional zoning process.

### **Old Business**

#### **Administrative Actions report**

Planning Department Development Report

### **Adjournment**

**Draft  
Town of Smithfield  
Planning Board Minutes  
Thursday, August 1, 2019  
6:00 P.M., Town Hall, Council Chambers**

**Members Present:**

Chairman Stephen Upton  
Vice-Chair Mark Lane  
Ashley Spain  
Teresa Daughtry  
Oliver Johnson

**Members Absent:**

Michael Johnson  
Alisa Bizzell

**Staff Present:**

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

**Staff Absent:**

**CALL TO ORDER**

Chairman Stephen Upton asked each board member to acknowledge themselves.

**APPROVAL OF MINUTES from July 11, 2019**

Mark Lane made a motion, seconded by Teresa Daughtry, to approve the minutes as written.  
Unanimously approved

Mr. Upton stated that the previous meeting minutes from July 11<sup>th</sup>, 2019 asked what the Planning Department was seeking from the Planning Board. In that meeting, Mr. Wensman said the intent was to seek a recommendation from the Planning Board to the Town Council. That was assuming the Planning Board had reviewed the Town Plan and was satisfied.

Mr. Upton asked what satisfaction is.

Mr. Wensman said satisfaction is that the board is content with the Town Plan as it is and everyone can make a favorable recommendation to the Town Council.

Mr. Upton asked if the Planning Board were to approve a recommendation, would it go on as is.

Mr. Wensman said you could put conditions on it with changes.

Mr. Upton asked if those conditions and changes could be made at a later date.

Mr. Wensman said if the board isn't ready to make a recommendation with conditions then you'd postpone it until you're able to make that decision.

**APPROVAL OF THE AGENDA**

Mark Lane made a motion to approve the agenda, seconded by Ashley Spain. Unanimously approved

**NEW BUSINESS**

**Smithfield Town Plan**

The Planning Department is requesting the Planning Board review the draft Town Plan and make a recommendation to the Town Council.

Mr. Wensman said this process began about one year ago. There has been a good amount of public engagement. This Town Plan was initially brought before the Planning Board on July 11<sup>th</sup> but was tabled for 30 days.

Mr. Upton asked Mr. Wensman if he was going to itemize each segment of the Town Plan as recommended and have there been any changes to the recommendations.

Mr. Wensman said he doesn't have a line by line list of the changes but if there are any concerns we can address them. We currently are on the 8<sup>th</sup> revision; the consultants have been updating as Mr. Wensman has been forwarding comments to them. They haven't made a change for every comment. He would like to assure everyone that all comments have to be reviewed and listened to. He greatly appreciates every one of them.

The Town Plan establishes a vision for transportation and land use in the town. Its two planning processes put into one. Typically the town will do a land use plan, and then later a transportation plan. We are fortunate to be able to do them together. The Town Plan identifies community needs and deficiencies. We've held public workshops, held Steering Committee meetings, Stakeholder Interviews and conducted surveys to better identify the needs and deficiencies. This plan will guide growth and development in the future. We're in the 20<sup>th</sup> year of our current Town Plan. Typically you update these plans every 5 to 10 years as needed. Once we receive a recommendation from the Planning Board, it will then go before Town Council. There will be a public hearing at the Town Council meeting giving the public an opportunity to engage in conversation. Both in town and ETJ (Extraterritorial Jurisdiction) properties will be included in the Town Plan.

There are three volumes of the Town Plan. The first being the introductory volume which summarizes existing conditions. It is a preface for volume two and three. The fourth volume is the appendices that give details of the engagement process and larger maps. The Future Land Use Map is the guiding document for the community. It identifies various land use categories which then will influence zoning. Zoning is a tool to implement the land use plan. We had some focus areas as part of this process. One is the northeast gateway area which we see as one of the major re-development parts of the Town, off of Buffalo Rd and North of Booker Dairy Rd. There is a lot of land, it's less impacted by wetlands and it will capture a lot of the growth coming from the Wilson's Mills and Clayton area. DOT has recognized this, and they have several projects in that area ongoing.

The consultants also see the importance of the Greenway connection to Clayton and Raleigh. Based on the Mountains to Sea route there is a general map already but many steps will need to take place before it becomes a real trail. They will meet with landowners and get permission from them. Also the Town will pursue grants and get Council funding. Our next step from here is to get a favorable recommendation from the Planning Board then it would go before Town Council.

Mr. Lane asked how the previous Comprehensive Plan from 2008 benefitted the Town.

Mr. Helmer said it was a guiding document and has helped the Town. It didn't have the level of detail necessary for it to become a productive document.

Mrs. Daughtry said the Town's population was not what it is now when the old Comprehensive Plan was adopted.

Mr. Upton requested an answer to the concerns of North Street and Bridge Street remaining a historical neighborhood. A citizen from the last Planning Board meeting asked for protection from the Town on this concern. Mr. Upton would like to know if that request has been addressed.

Mr. Wensman said in the new draft plan, the consultants looked at the area downtown. In the Land Use Plan they have called it the downtown support area. Within that Land Use category they are suggesting a number of key things that could be done to better downtown. One is the support of housing, no further encroachment into neighborhoods and possibly allowing accessory dwellings. These are just some of the recommendations mentioned for this area.

Mr. Lane said he wanted to be clear on something. If you draw an imaginary line from Front Street to Bridge Street then to Caswell Street and on to 301. South of that is downtown district and north of that is North Smithfield district. That still will not stop businesses or commercialization from crossing that line.

Mr. Wensman said commercial has already crossed that line. The plan recognizes that there shouldn't be any further encroachment of commercial in those neighborhoods. The plan mentions buffers, and improved landscaping between different land uses.

Mr. Lane said a lot of the problem is people think because something is in the Town Plan it will definitely happen but that isn't the case. There's no way everything could happen.

Mr. Oliver Johnson said when an official document such as this is released; some people think it is permanent. The more we talk about it as a vision or living document, the more we can accept it as not being the last word or set in stone.

Mrs. Daughtry agrees that 20 years is too long to update the Town Plan. She asked who makes the decision on when to revise it.

Mr. Wensman said it will become apparent when this plan is out of date. There wasn't a lot in the previous plan so it didn't become obvious it was outdated until the map was changed. The new proposed plan has lots of information in it beyond the map. It's up to planning staff to suggest that we do that.

Emma Gemmell of 207 Hancock Street came forward to speak. She said it was mentioned that this plan was mobile and could be changed. When Mr. Wensman has an issue he refers to the Town Plan. It guides him in his decision making. She feels if something is listed in the plan, then that gives him the ok to use it. If something is removed from the plan, then he can't use it. That concerns her and she suggests the Planning Board think about that before recommending it.

Mr. Lane stated that Mr. Wensman can use the Comprehensive Plan to help him make a decision. However he doesn't have the final decision. It goes to the Planning Board and then to Town Council.

Mrs. Gemmell said the majority of the residents are going to look at the Town Plan and say it doesn't affect me and they won't attend the board meeting. They may not always know when there is an issue.

Mr. Upton said it was discussed at the last Planning Board meeting about public notification.

Mr. Wensman said the Town used Facebook to promote surveys and meetings. He instructed the water bills to include notifications within them. We have a new electronic kiosk in front of Town Hall that was used to advertise on. Paper copies of the surveys and flyers promoting the meetings were located at the cash window where payments are accepted.

Mr. Lane said it isn't just the Comprehensive Plan; we have Planning Board meetings where no one is here but us.

Mrs. Gemmell stated that she and Pam Lampe met with Mr. Wensman after reading the Town Plan because of concerns for the town, North Smithfield and other areas as well as errors found in the documents. They feel the plans focus is making the downtown district and increasing parks. It has taken the consultants over a year to revamp this plan. She feels they are in a rush to finish the Town Plan. Mrs. Gemmell feels the public and the Planning Board need up to date copies of the latest edits made to the plan before any decisions are made. She stated she had many concerns but would like to address North Smithfield. She would like to know why a new district is being created because we now have four. The new district is the downtown district. Adding another district seems to complicate and allow encroachment to their neighborhoods. Our neighborhoods are Second, Third, Fourth, Fifth, Sixth & Seventh Streets North of Market Street. We don't want to be North Smithfield in the Downtown district. We are zoned R-10 and medium density. Our neighborhood doesn't want any exceptions that are included as part of medium density R-10. It doesn't give them protection from the exceptions or the development of medium density.

They want to be low density R-10 from Bridge Street to Hospital Road. They also want less density not more from Bridge Street to Hospital Rd on Fourth, Fifth, Sixth and Seventh Street. Those streets are presently R-8. Some changes are going to be to R-6. It is possible to find a solution that helps our town keep the homes they have and develop higher quality homes in all areas. We have greater needs and more important ways to spend our money. With infrastructure such as streets, underground pipes, sidewalks, curb and gutter as well as maintaining what we have to a higher standard. These issues seem more pressing than creating a downtown district. Our town says they want growth to make it better, let's see if we can get our zoning map to reflect these higher standards. Mrs. Gemmell would like to speak about why the town needs to be proactive. Protection, encroaching and duplexes are a big business. This starts with a zoning line drawn starting on the North side of Bridge Street. We know encroachment has started on Bridge Street. We residents feel we need to protect the homeowners on Second through Seventh Streets. Home ownership needs to be our focus and direction with zoning not more rental units. Duplexes are more rental units not single family homes. If our town wants to encourage single family homes this isn't the way to go. Mrs. Gemmell and Mrs. Lampe checked 89 properties on Fourth Street, Market to Buffalo and Hospital Road. 22 of 51 owners live at the street address, 24 of 38 are owned by developers. You see the trend unless we change to higher standards of zoning. The direction the town is choosing is not home ownership. The zoning needs to be strong for owning homes and landscaping. The duplex rentals are a big business because of low standards in our town. North street duplexes do not have grass, bushes or trees. The new Fourth street duplex doesn't have grass, bushes or trees either, only gravel and a parking pad. The number of parks we have are amazing for such a small town. The Parks and Recreation staff does a great job of maintaining them and looking good. The parks staff consists of two full-time employees, one part-time and one intern. She appreciates the effort put forth to improve our town; we just want to keep our small town feel. She hopes we can adjust the Town Plan to create and enhance our assets.

Mr. Wensman stated that there is not a new district. The map Mrs. Gemmell is referring to is an analysis of the existing town. The consultants were looking at downtown and the areas that influence it, which are the neighborhoods surrounding it as being interrelated with sidewalks. The values there most reflect what happens downtown. They were commenting on the values of the historic neighborhoods and jobs. You need a North, South, East, West and a Middle. The middle is the downtown area. If you look to the implementation and growth management portion that's changed, they're not talking about downtown area any longer.

Mrs. Gemmell asked how they know it won't creep back into the Town Plan.

Mr. Wensman said you have to look at it as a map with arrows and call it something.

Mrs. Gemmell said then call it Market Street.

Mr. Wensman said Market Street doesn't encompass the commercial district and the residential around it.

Mrs. Gemmell said you are encroaching down Seventh Street. There are homeowners there that have no protection at all. No one keeps up with all the homes that are rented to out of state owners. The properties are not maintained and some have people sleeping in cars.

Mr. Wensman said you mentioned the exceptions and they are recognition of what is already in our zoning. We allow home occupations in any zoning district so they put the exception in there recognizing our current policy. He had the consultants take some of that language out based on Mrs. Gemmell and Mrs. Lampe's comments. Maintenance often comes with growth, if we don't have investment coming into the town less money is going around. This plan is calling for balanced growth, lets balance between preserving those historic neighborhoods, strengthening the boundaries, improving the landscape requirements which it does call for. The plan is trying to help us keep the charm that it currently has but we need the investment. It says lets recognize our assets such as the river and greenway and let's build on those to create stronger neighborhoods and landscaping. As far as maintenance and slumlords, he believes as the community grows with more investment there will be pressure on those people.

Mrs. Gemmell said no, as long as they are making money they don't care. You have to do something that is going to make it harder on them.

Mr. Wensman said we need more tools in our code. This new plan is suggesting that we get there. It's not prohibiting it by any means. We have property maintenance codes that could be improved.

Mrs. Gemmell said North Smithfield is a multi-section from the river to Hwy 301. We're a hodgepodge and we always have been. We have not maintained quality looking things.

Mr. Wensman said yes, this plan is saying we need stronger landscaping, investment and trying to identify where that investment goes and looks like. This will give us what we need to convince the Town Council to do what the community wants.

Mrs. Gemmell said we want higher standards for the houses that will be encroached upon. They're going to lose part of their neighborhood.

Mr. Wensman said he didn't agree with that.

Mrs. Gemmell said it is in the proposed plan. You're taking some of the streets on Fifth and Seventh Street and allowing them to go to R-6.

Mr. Wensman said there is no change to zoning at all. The only mention of zoning changes in this plan is in mixed use. Those mixed use areas we might want to create an overlay or zoning district. Our current plan says wherever there is mixed use on the land use plan you use a PUD process and a rezoning with the plan. The downtown support area currently has two or three zoning districts. They are the brown striped areas on this plan.

Mrs. Gemmell said maybe we don't want to be those brown striped areas.

Mr. Wensman said those striped areas are suggestive of policy.

Mrs. Gemmell said maybe we don't want those policies.

Mr. Wensman said we heard loud and clear from the community that we want to make downtown a place people want to come. The policies that are in this plan are suggestive of how we get there. We're going to take these recommendations and come up with zoning or policy recommendations. We will hold public hearings and it will go before the Planning Board and Town Council. It will take a long time to get through a lot of these recommendations. It will be trial and error. The successful things will get built on leading to more success.

Mrs. Gemmell said this plan is too lenient.

Mrs. Daughtry said let's keep in mind we were fought on our landscaping standards every time we turned around, people saying we had too much and were more than everyone else. When the study came out we didn't have any more standards than Clayton or other surrounding towns. Yet when applicants would come before the Planning Board they complained about how tough Smithfield was on landscaping requirements.

Mr. Upton said we cut the standards back 40 to 50%.

Mrs. Gemmell said well it looks like developers have it easy, just look down Fourth and North Street. There are no landscaping standards.

Mr. Upton said that is up to the Planning Department and Town Manager.

Mr. Lane said that is where we will have to make a change in the UDO.

Mr. Wensman said correct, this plan is addressing some of that. The next step is to suggest zoning changes to improve the landscaping even though we went through a slashing of it. We have no landscaping requirements for single-family residential or multi-family. This is not the place to mandate it, mandating comes when you create updates to the UDO. We would need to convince to Planning Board and Town Council and this document sets the stage to do so. They may not go along with it. However based on the public input we received it formed the basis of this plan.

Sarah Edwards of 1282-E Packing Plant Road came forward to speak. She referred to Volume 2 of the Comprehensive Growth Development Plan on page 18. This is from the 7<sup>th</sup> edition of the plan. It states discourage business uses in Historic Residential Neighborhoods except in limited circumstances. Then on page 26 it says preserve the character of historic residential neighborhoods while promoting reinvestment. It is the North Smithfield neighborhood that's from Bridge Street to North Street and from Front Street to Seventh Street on Hancock. There are protections there for the neighborhood. There are some properties that definitely need work done to them. You have people that have disposable income and can come downtown to support businesses. The bigger point she wants to make is this plan gives us the ability as a town to be able to take some steps forward. Without the plan getting approved we will not have better design standards. We don't have a downtown master plan now because of this. There are projects coming to downtown in the very near future once this Town Plan is approved. Those projects will make good positive changes.

Mr. Lane said you're saying projects are coming to downtown but waiting on the approval of the Town Plan.

Ms. Edwards said there are not necessarily projects waiting but taking some next steps on things that need to happen to encourage other investment.

Mr. Wensman said there have been many comments made about parking in downtown. This plan won't necessarily get us there but it does say the DSDC should conduct a parking study. It's something they can do with their constituents. This Town Plan is setting the stage for them to request funding for that study.

Mr. Lane asked if we had to have the Town Plan in order for Sarah to request funding.

Mr. Wensman said it would help.

Ms. Edwards said it doesn't make sense to start on a downtown portion of it if it doesn't fit with the town's greater plan. An example would be vacant land between Johnston Community College and downtown. From Fifth Street and East there is opportunity for reinvestment or redevelopment. Currently there is no plan that guides what that would look like. It could be if allowable based on current code that it would become strip center development or possibly residential development or a mix of residential and commercial. At this point there is no clear plan of what the Town or DSDC would like to see. That's what we are waiting for with the approval of the Town Plan. We need to allow these experts to do their job and move forward with this approval.

Mr. Upton asked if the projects just mentioned would have to be rezoned as they arose.

Mr. Wensman said there any many different goals and guidelines in this plan. Some of it will involve rezoning. There is a lot more work to do, but without a roadmap we will do things without a plan. The parking study downtown and a downtown plan make sense in the context of transportation changes throughout the whole community.

Hank Daniels of 825 S. Vermont St came forward to speak. He mentioned that the roundabout in town was a concern for citizens as well as travelers. He is concerned that the Town Plan suggests merging the express lane. He is afraid the merge will create problems even before you get to the roundabout. He suggested to Mr. Wensman the addition of a yield sign.

Mr. Upton asked if Mr. Daniels was referring to another merge.

Mr. Wensman said when you get off the exit ramp you have to choose to either get on Market Street or the lane that takes you to the outlets. It is located in Volume 3 of the Town Plan on page 13. The concern is people weaving from one lane to the other. He believes Kimley-Horn proposed it happen after the curve. There is more work that needs to go into this. The recommendations to the turn lanes further up Outlet Center Drive were changed in the plan.

Pam Lampe of 415 N. Second Street came forward to speak. She stated that it wasn't that she and Mrs. Gemmell were against the Town Plan, they know a growth plan is needed. She stated that Parks and Recreation had been in expansion mode for the last 20 years. She feels that our parks are some of the best in the region. Mrs. Lampe said the Community Park on Booker Dairy Road just experienced a major renovation and is known as a Miracle Park. The park is beautiful and landscaped to perfection. However she believes it is time to rethink the expansion policy and focus on park management. Our current inventory of park facilities should be sufficient for the next to 10 to 15 years assuming the towns projected growth rate of 1%. She stated the parks budgets need to focus on beautification and maintenance. Mrs. Lampe also discussed the parking issue in downtown Smithfield. She suggested the Town negotiate with the County and see if we can get a parking deck at the corner of S. Third Street and Johnson Street. The cost is over 2 million dollars but with the assistance of the Johnston County Visitors Bureau she hopes they would fund that instead of an amphitheater.

Another suggestion mentioned is repaving and landscaping the existing parking lots by Simple Twist and at Town Hall. Mrs. Lampe said the growth plan proposes modernization of Durwood Stephenson Highway to Hwy 210 for over 6 million dollars. The high cost is due to new road going over wetlands. If we continue this modernization along the existing Galilee Road it would give us a southern route to Brightleaf Blvd, I-95 and Holt's Lake. The cost would be less than a new road and it would help with the long-term goal of getting traffic off Market Street. This needs to be added to our transportation strategy plan. Mrs. Lampe suggested recruiting a private school or support another Charter School in the community to give residents more choices. This would be a great addition to the Town's long term strategy plan. She would also like to see the UDO revamped and become less complicated and legalistic. She believes that Smithfield needs better enforcement under our existing UDO laws.

Lastly, she would like her neighborhood to always be considered North Smithfield. Neither she nor her neighbors want to be called downtown or downtown support area. We realize our proximity to downtown but we'd like to retain our identity. We don't desire any more commercial/ office/ government/institutional in their neighborhood. Bridge Street is their dividing line. They would like R-10 zoning with no exceptions from Bridge Street to Hospital Road.

Mr. Upton stated as far as the school situation he feels that is an issue to be expressed to the Johnston County Board of Education.

Mrs. Lampe said I disagree we have an economic recruiter. Neuse Charter has helped us and she stated that she had reached out to the Board of Education but hasn't had any luck.

Mr. Upton asked Mr. Wensman if Mrs. Lampe's request to not have her neighborhood called downtown or a downtown support area could be honored.

Mr. Wensman said the downtown support area is outside of Mrs. Lampe's neighborhood. It's not a district; it's suggestive of some policies or zoning text changes and whatever districts lie under it or an overlay district which would be a set of regulations that span multiple districts to better downtown. North Smithfield doesn't change, and as Sarah Edwards mentioned we are suggesting better protection. The portion of the plan where it mentions the downtown area is describing the current conditions not future.

Mrs. Lampe asked if it doesn't even matter then why it was put into the new plan.

Mr. Wensman said because we had to describe the different areas.

Mrs. Lampe asked if their neighborhood would be subjected to the downtown overlay district.

Mr. Wensman said no.

Mrs. Lampe asked for a reasonable amount of time to read the most updated version of the Comprehensive Town Plan before any decision is made.

Mr. Wensman said there haven't been any major changes to the plan since she last looked at it.

Mr. Upton mentioned Mrs. Lampe's comment on the UDO needing to be revamped. He said two years ago it was supposedly revamped. Currently the Planning Department is revamping it but it is taking forever.

Mrs. Lampe asked Mr. Wensman if the Town would add a parking deck.

Mr. Wensman said the Town Plan recommends a parking study that DSDC would do. That study will tell us what the solution is economically and feasibly.

Mrs. Lampe asked Mr. Wensman about her comments on changing the mode with Parks and Recreation.

Mr. Wensman said the plan talks about the projection of population in Smithfield. We're supposed to double our population by 2045. At that point we will not have enough parks. If you don't get the land now you never will.

Mrs. Lampe said we need to beautify the Town's assets. It will cost a lot of money but it must be done. The focus needs to be on what we already have not what we may need many years from now.

Kay Kennedy of 121 W. Riverside Drive came forward to speak. She said she and her husband have investment property on Davis Street. They met with Mr. Wensman yesterday and discussed the trail that is planned to come from the Bob Wallace Park down Second Street to Riverside then Davis Street. Picture a Saturday morning with maybe 15 people walking down the trail. They walk down Riverside to First Street and there are no sidewalks. They then turn down Davis Street which is small, does not have sidewalks and lots of cars. That is a dangerous situation and very congested through there. There is plenty of land across the river. I know it is wet but so is the land on Riverside Drive and Davis Street. If you come off Bob Wallace Park and go down Second Street, you could stay on sidewalks all the way down until you find another street with sidewalks. This is poorly planned and very dangerous. The Town's Nature Trail should remain just that, a Nature Trail not a stroll down these streets.

Mr. Wensman said we don't have the ability to do an off road trail between the kiddie park and where we want it to go further South. At some point it's going to have to find its way through existing neighborhoods. If there are missing sidewalks, perhaps the Town will build more sidewalks.

Mrs. Kennedy said there isn't room. These are the same houses I built that I had to plead for road frontage to have a front door.

Mr. Wensman said we will look at the feasibility of the routes, contact landowners and secure funding.

Tammy Gardner of 103 E. Riverside Drive asked if the lot beside her at 111 E. Riverside Drive would be the access off of the Greenway to reach Riverside Drive.

Mr. Wensman said it's a suggestion yes.

Ms. Gardner said that lot is flooded 5 months out of the year. After this last hurricane it stayed flooded until the spring. Why would we want people walking through our neighborhood? She said she didn't receive a note in her utility bill, she doesn't come into Town Hall to pay her bill and she isn't on Facebook. She feels that she should have received a letter in the mail and stated she shouldn't have to find out

what's going on in her town by going onto a website. Mr. Upton asked the Planning Board their feelings toward the Town Plan. The Planning Department is asking for a recommendation.

Mrs. Daughtry said this board meets the first Thursday of each month at 6:00. We have a lot of people say they don't know the meetings or topics being discussed. You won't know if you don't come. I have seen many things done in Planning then they reach Town Council and someone will ask the same questions they could have asked in the Planning Board meeting as they did in the Town Council meeting. As far as the Town Plan, I think we need to absorb more of what we're reading before a decision is made.

Mr. Lane agrees with Mrs. Daughtry to table the request to recommend the Town Plan. He stated there is going to come a time where a decision must be made. This is the second meeting we have held on this topic.

Mr. Upton asked if taking another 30 days to review the material will make a difference in their decision after hearing what they did tonight.

Mrs. Daughtry said she wasn't saying one way or the other.

Mr. Lane said if I had to make a decision tonight my answer would be no.

Mrs. Lampe came forward again to ask for guidance from the Planning Board on what she needs to do in the next 30 days. She wants to know what they need from her and Mrs. Gemmell to get the changes they have requested.

Mr. Upton stated that certain things had been brought to the Boards attention and they just want time to digest everything.

Mr. Lane asked Julie Edmonds how hard it would be to receive the minutes from this meeting sooner than they normally do. Could they be emailed within a week or two?

Mrs. Edmonds stated that she was on vacation next week but would have them finished and emailed within two weeks.

Mrs. Daughtry asked if the 2008 version of the Comprehensive Growth Management Plan could be emailed out so they board could compare some things with the new version.

James Snyder of 216 W. Davis Street came forward and stated the terminology used in the Town Plan was hard to understand and he would like to know if it could be simplified.

Mr. Wensman said he didn't know if there was a solution. He agrees there is a misrepresentation of what some of the marks on the map actually are.

Tara Dunn of 307 S. Third Street came forward and asked about the survey the Town had done some years ago on the flooding issue.

Mr. Wensman said we just finished a Stormwater Management Action Plan and we had a consultant do a review of suggested past projects including the one Ms. Dunn mentioned. We have to implement the document now that we have it. The current plan has an action plan of how we pay for it. There is a suggested plan and now the Town Council has to decide when they will implement it.

Mark Lane made a motion to table the Smithfield Town Plan until the next Planning Board meeting, seconded by Teresa Daughtry. Unanimously approved.

Mr. Upton asked Mr. Wensman if the Town Council will look at this at their next meeting.

Mr. Wensman said not anymore, but they have a draft and hopefully have read it and made some questions to ask us.

Tara Dunn came forward again and said so you're going to put this off for a month; you will get the minutes and read them. Will this board meet again to discuss what they decide on before the next Planning Board meeting?

Mr. Upton said he hopes when this board gets the minutes and reads any changes in this version of the Town Plan; they will be well versed and ready to make a decision.

#### **ZA-19-04 Town of Smithfield**

The Planning Department is requesting an amendment to Article 3, Article 4, Article 6 and Article 7 of the Smithfield Unified Development Ordinance (UDO) to create a conditional zoning process and list of land uses and development types to be reviewed using the conditional zoning process.

Mr. Helmer stated that Conditional Zoning is a land-use tool that is authorized by state statute and reaffirmed by court decisions. The statute permits a zoning ordinance to include "conditional districts, in which site plans and individualized development conditions are imposed." In practice, conditional zoning occurs "when a governmental body, without committing its own authority, secures a given property owner's agreement to limit the use of his property to a particular use or to subject his tract to certain restrictions as a pre-condition to any rezoning. Essentially, conditional zoning will allow the Town of Smithfield to tailor development when rezoning to a more intensive land use, thus limiting the uses that would ordinarily apply if up-zoned to a general use zone.

Mr. Helmer stated that the Conditional Zoning process is a legislative one that combines the site-plan review and zoning into one process and would be approved by Town Council. It allows the Town to see the site plan with the rezoning request. There is no conflict or ex parte communication. It's easier for the Planning Board and Town Council to review these types of cases because the requirements for the things submitted as evidence are less stringent. The Town can place conditions on a particular rezoning/site plan. However, you have to be careful of the conditions put on them because there has to be a clear nexus between the conditions and the proposed use.

Mrs. Daughtry asked if this would go to the Town Council.

Mr. Wensman said this allows us to have two public hearings which was the request of the Planning Board. Because it's not quasi-judicial you guys as a Planning Board can hold a public hearing and make a recommendation to the Council.

Mr. Helmer stated the conditional zoning procedure allows an applicant to submit a request to amend the zoning district designation of land on the zoning map, subject to a set of additional voluntary limitations or expansion of uses expressed as conditions. The one single and final legislative decision is all that is needed to approve both the development plan and zoning conditions. The process begins when a completed application, site plan and non-refundable fee is submitted by the appropriate deadline. The application is then checked for accuracy by the planning staff. The site plan should include all pertinent details about the proposed use to include, but not limited to, such things as parking, ingress, egress, fencing, play areas, setbacks, square footage of building, hours of operation, number of employees, number of clients to be served, and landscaping, etc. The Town of Smithfield will have a legal requirement by general statute to advertise the request in the local newspaper. The town advertises the case for one day in two successive weeks prior to the first public hearing before the Planning Board. In addition, the town sends out notification letters to all abutting property owners to inform them of when the public hearing will be, which property is being considered, and what kind of use is requested. These notification letters are sent prior to both the Planning Board and Town Council meetings. The case is first heard at a public hearing before the Planning Board. Anyone wishing to speak at the hearing may do so. The Planning Board makes a recommendation to city council for approval or denial after hearing information from the planning staff, and anyone wishing to speak. The staff will present information on the surrounding land use, the surrounding zoning districts, and what the Town Plan recommends as the long range plan of the area. After being heard by the Planning Board, the case will then proceed to the Town Council who will also conduct a public hearing and take a final vote on the case.

Mr. Lane asked if this also includes quasi-judicial.

Mr. Helmer said no, it does not.

Mr. Lane said this board recommended and unanimously voted that it goes to the Council at their next meeting to bring that up.

Mr. Helmer said that may be the case, however staff disagrees with that and the Town Attorney, Bob Spence also agrees it is a process we need to get away from because of the legal exposure it places the Town in.

Mr. Upton stated he understands that but what was requested was that the Town Council hears it.

Mr. Wensman said he sent a letter to Mike Scott with Planning Boards request and what he has done with the letter I am not sure. He probably shared it with the Mayor and it is in their hands. They will decide how and when they will bring this forward.

Mr. Lane made a motion that ZA-19-04 be tabled until the Town Council hears the Planning Boards recommendation of them bringing the public hearing back to the Planning Board, seconded by Oliver Johnson. Unanimously Approved.

Mr. Upton stated it was mentioned before that the Town of Clayton can hear quasi-judicial on their Planning Board. I'm bringing that up so it will be brought before the Town Council giving them the facts.

Mr. Lane said when this board is making a recommendation and it is approved unanimously by this board it should go to the Town Council. That's a spit in our face.

Mr. Wensman said the Town Council has received your request.

Mr. Lane said I asked for it to be placed on the agenda for the next Town Council meeting.

Mr. Wensman said he didn't control that agenda but the request was given to the Town Manager.

Mr. Lane said he is expecting the Town Council to discuss the request at their next meeting as this board recommended them to do.

Mr. Wensman said he and the Town Manger discussed holding a joint meeting between the Town Council and the Planning Board.

Mr. Lane said that's not what this board voted on.

Mr. Spain said we heard that same thing in February.

Mr. Wensman said we have this ready for tonight if the Planning Board wants to make a recommendation to Town Council.

Mr. Lane said he would feel better about recommending ZA-19-04 when he knows the Council has discussed the public hearing issue requested by the Planning Board.

Mrs. Daughtry asked if this request to Town Council had been brought before them already.

Mr. Lane said yes, on February 21<sup>st</sup>. The Town Council directed Planning staff to find a way to bring public hearings back to the Planning Board, including quasi-judicial. Bob Spence was there as well and led the meeting.

Mr. Upton said he was present at the February 21<sup>st</sup> meeting and as best he can remember only two councilmen spoke.

**Presentation of Plaque to Dr. Oliver Johnson**

Mr. Upton recognized Dr. Johnson with a plaque for his service to the Planning Board. This is his last meeting serving as a board member. He accepted a position on the Johnston Community College Board of Trustees. Everyone stood and gave him a round of applause.

**Adjournment**

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

Next Planning Board meeting is September 5<sup>th</sup>, 2019 at 6:00 pm.

Respectfully Submitted,



Julie Edmonds  
Administrative Support Specialist

DRAFT



# Request for Planning Board Action

**Agenda Item:** Town Plan  
**Date:** 9/5/19

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**Subject:** Town Plan

**Department:** Planning

**Presented by:** Stephen Wensman

**Presentation:** N/A

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## Issue Statement

The Planning Department requests the Planning Board review the draft Town Plan, comprehensive growth management plan and transportation plan and make a recommendation to the Town Council.

## Financial Impact

N/A

## Action Needed

Review the Town plan and make a recommendation to approve, approve with changes, or to continue the item.

## Recommendation

Staff recommends the Planning Board review the Town Plan, and make an affirmative recommendation to the Town Council.

Approved:  Town Manager  Town Attorney

Attachments:

1. Staff report
2. Town Plan



# Staff Report

Agenda Town  
Item: Plan

The Town of Smithfield hired Stewart to prepare the comprehensive growth management plan update and Kimley-Horn to prepare an update to the transportation plan update in early 2018. The Town facilitated a combined planning and public engagement process with Stewart and Kimley Horn to prepare the updates of the combined, "Town Plan". The public engagement process included stakeholder interviews, two surveys, two public open house meetings, public engagement at the Ham and Yam festivals and the Smithfield-Selma Strong events. The Plan was guided by a citizen Town Plan Steering Committee comprised of a diversity of stakeholders including business owners, citizens, youth, education officials, realstate/development professionals, historians, etc. The Steering Committee met eight times during the planning process to provide input and guidance on the plan preparation.

## **Town Plan:**

The Town Plan is the Town's 20 year vision for future growth for both land use and transportation. The Plan identifies planning goals, policies and planning actions to achieve the vision. In support of the Plan vision: "Smithfield will be a place of opportunity for everyone. It will grow in ways that are true to its history, character and charm by investing in a vibrant downtown and connections to the river, balancing growth, and creating safe, healthy neighborhoods, " the following five goals have been identified:

- Balanced growth
- Vibrant downtown
- Healthy neighborhoods
- Community character, and
- Move and Connect.

The first four goals are focused primarily on land use and the fifth, transportation.

The Town Plan is comprised of the following sections:

1. Introduction – this section provides a plan overview of the combined planning process including the background and analysis and community engagement that informed the preparation of both plans.
2. Comprehensive Growth Management Plan- this section is focused on future landuse.
3. Transportation Plan –this section focused on future transportation infrastructure to support the future landuse plan.
4. Appendix- this section contains all the background documents from the public engagement process.

### **Comprehensive Growth Management Plan.**

The updated plan identifies a diversity of objectives and policy directives to achieve the goals that address:

- Mixed use areas (commercial, residential, and office).
- Economic development.
- Enhanced Town gateways.
- New housing addressing the “missing middle”, housing options lacking and needed in the Town.
- Protection and enhancement of existing neighborhoods.
- Balance of growth and environmental protection.
- Economic development opportunities.
- Strengthen and support Downtown.
- Parks, recreation and trails.

### **Transportation Plan.**

The updated transportation plans goal, “move and connect”, updates the Town’s functional class system for roads, and provides road right-of-way recommendations that include:

- Corridor improvements – Access and operations, capacity and mobility, and modernization.
- Intersection/interchange improvements – realignment, driveway consolidation, signalization, improved crossings, round-a-bout, turn lanes, signage, and restricted crossing U-turn intersection.
- Roadway Maintenance
- Specific outlet center drive round-a-bout
- US 70 Business/E. Market Street rail bridge
- US 301 Gateway
- Bicycle and Pedestrian Recommendations.

The Plan also identifies transportation funding opportunities and an Action Plan, with short to long term actions to achieve the goal of Move and Connect.

### **Planning Board Actions:**

The Planning Board, at its July 11, 2019 meeting unanimously voted to table the request until its August 1, 2019 meeting.

The Planning Board, at its August 1, 2019 meeting unanimously voted to table the request until its September 5, 2019 meeting.



# Request for Planning Board Action

**Agenda  
Item:** ZA-19-04  
**Date:** 9/5/2019

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**Subject:** Zoning Text Amendment  
**Department:** Planning  
**Presented by:** Stephen Wensman, Planning Director  
**Presentation:** Business Item

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## Issue Statement

The Planning Department is requesting an amendment to Article 3, Article 4, Article 6 and Article 7 of the Smithfield Unified Development Ordinance (UDO).

## Financial Impact

None.

## Action Needed

The Planning Board is respectfully requested to review the zoning text amendment and to make a recommendation to Town Council.

## Recommendation

Planning Staff approval of zoning text amendment ZA-19-04

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff report
2. Draft Zoning Text Amendment
2. Consistency Statement
3. Application



# Staff Report

Agenda ZA-19-  
Item: 04

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## REQUEST:

The Planning Department is requesting an amendment to the Town of Smithfield Unified Development Ordinance to various portion of Article 3, Article 4, Article 6 and Article 7 to create a new review and permitting process called conditional zoning.

Conditional zoning is a land-use tool that is authorized by state statute and reaffirmed by court decisions. The statute permits a zoning ordinance to include “conditional districts, in which site plans and individualized development conditions are imposed.” In practice, conditional zoning occurs “when a governmental body, without committing its own authority, secures a given property owner’s agreement to limit the use of his property to a particular use or to subject his tract to certain restrictions as a pre-condition to any rezoning.” Essentially, conditional zoning will allow the Town of Smithfield to tailor development when rezoning to a more intensive land use, thus limiting the uses that would ordinarily apply if up-zoned to a general use zone.

The conditional zoning procedure allows an applicant to submit a request to amend the zoning district designation of land on the zoning map, subject to a set of additional voluntary limitations or expansion of uses expressed as conditions. The one single and final legislative decision is all that is needed to approve both the development plan and zoning conditions.

The process begins when a completed application, site plan and non--refundable fee is submitted by the appropriate deadline. The application is then checked for accuracy by the planning staff. The site plan should include all pertinent details about the proposed use to include, but not limited to, such things as parking, ingress, egress, fencing, play areas, setbacks, square footage of building, hours of operation, number of employees, number of clients to be served, and landscaping, etc.

The Town of Smithfield will have a legal requirement by general statute to advertise the request in the local newspaper. The town advertises the case for one day in two successive weeks prior to the first public hearing before the Planning Board. In addition, the town sends out notification letters to all abutting property owners to inform them of when the public hearing will be, which property is being considered, and what kind of use is requested. These notification letters are sent prior to both the Planning Board and Town Council meetings.

The case is first heard at a public hearing before the Planning Board. Anyone wishing to speak at the hearing may do so. The Planning Board makes a recommendation to city council for approval or denial after hearing information from the planning staff, and anyone wishing to speak. The staff will present information on the surrounding land use, the surrounding zoning districts, and what the Town Plan recommends as the long range plan of the area. After being heard by the Planning Board, the case will then proceed to the Town Council who will also conduct a public hearing and take a final vote on the case.

## **PROPOSED AMENDMENT HIGHLIGHTS:**

### **Article 3,**

- Authorizes the Planning Board to conduct public hearings.
- Existing ordinances regulating the Historic Preservation Commission (HPC) is incorporated into the UDO.
- Authorizes staff and HPC to issue certificates of appropriateness (COA) in the Historic Downtown Zoning Overlay District.

### **Article 4,**

- Establishes the conditional zoning process as a legislative ordinance amendment to be approved by Town Council.
- Requires action by Planning Board in the form of public hearings and recommendations for all zoning amendments.
- Establishes approval criteria for conditional zoning cases.
- Updates finding of fact for special use permits.

### **Article 6,**

- Establishes conditional zoning as a unique zoning district.
- States purpose and intent of conditional zoning and other zoning districts.
- Identifies uses to be approved through the conditional zoning process.

### **Article 7,**

- Refines supplemental standards for uses permitted by the conditional zoning process.

## **CONSISTENCY STATEMENT:**

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

## **PLANNING BOARD ACTION:**

The Planning Board, at its August 1, 2019 meeting, unanimously voted to table the proposed zoning text amendment until their September 5, 2019 meeting.

**THE TOWN OF SMITHFIELD  
UNIFIED DEVELOPMENT ORDINANCE  
AMENDMENT CONSISTENCY STATEMENT  
BY THE SMITHFIELD TOWN COUNCIL  
ZA-19-04**

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

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

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

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

That the final action regarding zoning ordinance amendment ZA-19-04 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Town Council and information provided at the regularly scheduled meeting of Town Council; and

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

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

That the final action regarding zoning ordinance amendment ZA-19-04 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

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



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

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

## **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, ~~and engineering drawings, and final plats.~~

**3.1.2.6.** Provide administrative interpretations of the UDO.

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

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

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

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

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

**3.1.2.10.** Perform site inspections.

### **SECTION 3.2 CONFLICTS OF INTEREST.**

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

### **SECTION 3.3 PLANNING BOARD.**

#### **3.3.1. Creation.**

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

#### **3.3.2. Purpose.**

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

#### **3.3.3. Creation and Organization.**

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

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

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

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

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

**3.3.3.3. Offices and Duties.**

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

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

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

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

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

### **3.3.3.4. Meetings.**

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

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

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

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

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

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

**3.3.3.4.5.1.** Roll call

**3.3.3.4.5.2.** Reading of minutes of previous meetings

**3.3.3.4.5.3.** Reports of committees

**3.3.3.4.5.4.** Unfinished business

**3.3.3.4.5.5.** New business

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

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

### **3.3.4. General Powers and Duties.**

The general powers and duties of the Planning Board are:

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

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

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

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

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

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

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

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

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

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

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

**3.3.4.9.** To prepare, review and hold public hearings on zoning map and text amendments and ~~to prepare and recommend ordinances~~ promoting orderly development as guided

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

by along lines indicated in the Comprehensive Plan and make recommendations to the Town Council 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 public hearings, review and make recommendations to the Town Council on major site plans and major subdivisions in accordance with Section 5.6.

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

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

### **3.3.5. Planning Board Initiated UDO Amendments.**

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

### **3.3.6. Advisory Committees.**

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

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

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

## **SECTION 3.4 BOARD OF ADJUSTMENT.**

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

### **3.4.1. Powers and Duties.**

**3.4.1.1.** The Board of Adjustment shall hear and decide:

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

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

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

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

### **3.4.2. Creation and Organization.**

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

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

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

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any appointee policy in effect at that time. Members may be paid or reimbursed as current Town of Smithfield policy allows.

### **3.4.2.3. Meetings of the Board of Adjustment.**

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

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

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

**3.4.2.3.4. Conflicts on Quasi-Judicial Matters.** A member of the Board of Adjustment or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

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

### **3.4.2.4. Quorum and Voting.**

**3.4.2.4.1.** The concurring vote equal to four-fifths of the full membership of the board present at a meeting and not excused from voting (a quorum being present),

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

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

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

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

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

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

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

### **3.4.2.5. Board of Adjustment Officers and Duties.**

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

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

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

### **3.4.3. Rules of Procedure.**

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

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

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

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

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

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

### **SECTION 3.5 HISTORIC PRESERVATION COMMISSION.**

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

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

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

**3.5.3.1.** Effective May 3, 2005, the commission shall consist of seven (7) members appointed by the Town Council. All members shall reside within the Town limits. In addition, all members shall have demonstrated special interest, experience or education

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in history, architecture, archaeology or related fields. The commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the commission.

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

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

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

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

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

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

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

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

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

3.5.8. *Role of Council.* The designation of a historic landmark or district shall be effected

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.11.4. Restore, preserve and operate historic properties;

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

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

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

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

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

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

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

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

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

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

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

All of the provisions of this article are applicable to the construction, alteration, moving, and demolition by the state, its political subdivisions, agencies and instrumentalities, provided however that they shall not apply to interiors of buildings or structures owned

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by the state. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of the local commission. The decision of the North Carolina Historical Commission shall be binding upon both the state and the Historic Preservation Commission.

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

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

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

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

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

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

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

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

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

3.5.18.1. May be taken by any aggrieved party.

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

3.5.18.3. Shall be in the nature of certiorari.

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

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

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

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

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

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

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

3.5.20.5. Roof shapes, forms and materials.

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

3.5.20.7. General form and proportions of buildings and structures.

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

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

3.5.21. Minor Works. A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by the responsible staff person in the department of planning and development according to specific review criteria and guidelines. Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works shall be limited to those listed in the commission's rules of procedure. No application

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involving a minor work may be denied without the formal action of the commission.

### **3.5.21 Classification of Approvals**

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

#### **3.5.21.1 Normal Maintenance**

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

##### **3.5.21.1.1 For All Properties:**

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

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

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

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

**3.5.21.1.1.5.** Replacement of roofing material with matching material.

**3.5.21.1.1.6.** Removing screen doors or storm doors.

**3.5.21.1.1.7.** Caulking and weather stripping.

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

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

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

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

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

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

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

### 3.5.21.1.2 *For Noncontributing Properties:*

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

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

3.5.21.1.2.3. Modifications to or demolition of outbuildings

3.5.21.1.2.4. Addition of new rear decks or porches

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

3.5.21.1.2.6. Addition of screen doors or storm windows

3.5.21.1.2.7. Alteration or replacement of roof materials

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

3.5.21.1.2.9 Installation of gutters

3.5.21.1.2.10. Alterations to ornamentation or to cladding material

### 3.5.21.2. *Work Requiring a Certificate of Appropriateness*

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

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

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

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

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

<b>Roofs</b>		
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	✓	
<b>Other Building Alterations</b>		
Alterations or construction of building elements (including columns, railings, stairs, landings, ramps and fire escapes)	✓	
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	✓	
<b>Site Work</b>		
<b>Parking areas</b>		
New residential driveways or changes to existing residential driveways	✓	
Changes to existing parking lots	✓	
New surface parking lots	✓	
<b>Fences or Walls</b>		
Within the street yard (between the facade of the structure and the ROW)		✓
Within the rear or side yard	✓	

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

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

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

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

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

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

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

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

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

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

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

### **3.5.25. Delay in Demolition of Landmarks and Buildings.**

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

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

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

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

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

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

### **SECTION 3.5 6 TOWN COUNCIL.**

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

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

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

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

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

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

### **SECTION 3.6 TOWN COUNCIL.**

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

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

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

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

<p><b>ARTICLE 4.</b></p> <p><b>LEGISLATIVE/QUASI-JUDICIAL PROCEDURES</b></p>
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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.

#### **SECTION 4.2 HEARING REQUIRED.**

**4.2.1.** Before making a decision on an application for an amendment, appeal, variance, or special use permit, the Town Council or Board of Adjustment (as appropriate) shall hold a hearing on the application within forty-five (45) days of the submittal of a completed application (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.

**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 hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six weeks or more elapses between hearing dates.

#### **SECTION 4.3 NOTICE OF HEARING.**

##### ***4.3.1. Notice and Public Hearings - Zoning Text Amendment.***

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

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

### **4.3.2. Notice and Public 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 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 properties any portion of which is within two hundred (200) feet of 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 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 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 hearing not less than ten calendar days prior to the Town Council meeting at which the rezoning 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 hearing as required by NCGS 160A-364, 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 Hearings - Appeals, Variances, and Special Use Permits.**

**4.3.3.1.** Notice of 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 hearing; to the

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels of land abutting the parcel of land 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 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.

**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 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.

### **SECTION 4.4 EXPIRATION OF PERMITS.**

**4.4.1.** Zoning and special use permits for which vested rights as specified in Section 4.7 have not been secured shall expire automatically if, within one (1) year after the issuance of such permits:

**4.4.1.1.** The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or

**4.4.1.2.** Less than ten (10) percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development, this requirement shall apply only to the first phase. If construction of a subsequent stage has not begun within 365 calendar days (i.e., Phase 2 following completion of Phase 1), the permits for all subsequent phases shall expire. For example, if a development has five phases, the permits for Phases 2 through 5 would expire.

**4.4.2.** If after some physical alteration to land or structures begins and such work is discontinued for a period of one (1) year, then the zoning or special use permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4.5.

**4.4.3.** Once the special use permit has been issued, and the use, or activity ceases for a period of 12 consecutive months. In such instance the special use permit shall become void. If a special use is determined by the Planning Director to be void, such determination shall be transmitted in writing to the applicant.

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

**4.4.4.** 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 subsections 4.4.1 or 4.4.2 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.

**4.4.5.** 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:

**4.4.5.1.** 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

**4.4.5.2.** 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).

**4.4.6.** 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.

**4.4.7.** 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.

### **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

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

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.

### **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.

## ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

**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 public hearing 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 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 placed on the consent agenda to 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.

## ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

**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:

**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 are legislative. They are passed as ordinances, and as ordinances require 2/3 vote of the Council if there is a vote on the day of introduction. If on the day of introduction the ordinance passes by a mere majority, then the Council may vote at the next session and a majority vote suffices. For the purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on a legislative decision shall not be considered "members of the Council" for calculation of the requisite 2/3 vote. However, 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.

### **4.6.4.7 CZ/PUD Conditional Zoning District Approval**

## ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES

(CZ) Conditional Zoning and (PUD) Planned Unit Development District Conditional Zoning decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering a petition for a CZ or PUD Conditional Zoning District, the council shall act in accordance with Section 4.6 Amendment/Rezoning Procedures; approving, approving with conditions or disapproving of an ordinance to amend the official zoning district map and approving or disapproving of an ordinance amending of a CZ. or PUD Conditional Zoning District.

### **4.6.4.7.1 Legislative Considerations**

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed CZ or PUD rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

**4.6.4.7.1.1. Consistency with the adopted comprehensive plan.** The proposed CZ or PUD use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the adopted comprehensive plan

**4.6.4.7.1.2. Compatibility.** The proposed CZ or PUD District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

**4.6.4.7.1.3. Zoning district supplemental standards.** The proposed CZ or PUD District use's compliance with Article 7, Supplemental Standards, if applicable.

**4.6.4.7.1.4. Design minimizes adverse impact.** The design of the proposed CZ or PUD District use's minimization of adverse effects, visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

**4.6.4.7.1.5. Design minimizes environmental impact.** The proposed CZ or PUD District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

**4.6.4.7.1.6. Impact on public facilities.** The proposed CZ or PUD District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

**4.6.4.7.1.7. Health, safety, and welfare.** The proposed CZ or PUD District use's affect on the health, safety, or welfare of the residents of the Town or its ETJ.

**4.6.4.7.1.8. Detrimental to adjacent properties.** Whether the proposed CZ or PUD District use is substantially detrimental to adjacent properties.

**4.6.4.7.1.9. Not constitute nuisance or hazard.** Whether the proposed CZ or PUD District use constitutes a nuisance or hazard due to traffic impact or noise,

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or because of the number of persons who will be using the CZ or PUD District uses.

**4.6.4.7.1.10.** Other relevant standards of this Ordinance. Whether the proposed CZ or PUD District uses complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

### **4.6.4.7.2. Conditions to Approval of Petition**

Specific conditions applicable to this CZ or PUD District may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a CZ or PUD District are limited to those that address the conformance of the development and use of the site to Town ordinances, the adopted comprehensive plan or other applicable officially adopted plan, and those that address the impacts reasonably expected to be generated by the development or use of the site. Conditions shall not be in conflict with Town of Smithfield policies.

### **4.6.4.7.3 Written Statement**

Per NCGS 160A-383, prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

### **4.6.4.7.4 Effect of Approval**

**4.6.4.7.3.1.** 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.

**4.6.4.7.3.2.** 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.

**4.6.4.7.3.3** Any CZ or PUD District approved under this ordinance shall have vested rights pursuant to NCGS 160A-385.1 as set forth in Sec. 4.7 Vested Rights, of this ordinance.

### **4.6.4.7.5 Amendments to Approval**

**4.6.4.7.5.1.** 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 treated the

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

**4.6.4.7.5.2.** 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.

### **4.6.5. 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 160A-388, 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.

### **4.6.6. 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.

## **SECTION 4.7 ESTABLISHMENT OF VESTED RIGHTS.**

**4.7.1.** A vested right, in accordance with NCGS 160A-385.1, 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

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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 GS 160A-418 and GS 160A-422 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 160A-385.1(b)(5) 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 required to obtain a special use permit and shall include the information required by Section 4.9.2 and 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.

**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.

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**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.

**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.

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**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 160A-381(E).

## **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 5.7.

#### ***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. 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.

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**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 5.7.1 and a fee as specified in Section 4.2.1.

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**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. Town Council Action.**

**4.9.3.1.** 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. if there are no qualified alternates available to take the place of such members.

**4.9.3.2.** 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.

**4.9.3.3.** 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.

**4.9.3.4.** 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.

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

**4.9.3.5.1.** That the use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved;

**4.9.3.5.2.** That the use meets all required conditions and specifications;

**4.9.3.5.3.** That the use will not adversely affect the use or any physical attribute of adjoining or abutting property, or that the use is a public necessity; and

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4.9.3.5.4. 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.

4.9.3.5.5 The conditional use shall demonstrate conformance to the Land Use Plan or other plan in effect at the time and address impacts of the project as required by GS 160A-382(b).

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

4.9.3.5.2. The special use will be in harmony with the existing development and uses within the area in which it is to be located.

4.9.3.5.3. 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.

4.9.3.5.4. Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

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

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

4.9.3.5.7. Public access shall be provided in accordance with the recommendations of the Town's land use plan and access plan or the present amount of public access and public parking as exists within the Town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

4.9.3.5.8. The proposed use will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Town Council.

**4.9.3.6. 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

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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.

**4.9.3.7.** 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.

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

**4.9.3.9.** 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.

**4.9.3.10.** In the event that a rezoning is sought in conjunction with a special use permit, such deliberation would be legislative in nature and not part of the quasi-judicial process.

### ***4.9.4. 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.

### ***4.9.5. 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.

### ***4.9.6. 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.

### ***4.9.7. 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.

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

### **SECTION 4.10 APPEALS AND VARIANCES**

#### ***4.10.1. Appeals.***

**4.10.1.1.** Any person who has standing under GS 160A-393(d) 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 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.

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**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 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in GS 160A-393(k).

**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.

### **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

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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.

### **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.

## **SECTION 4.11 PROCEDURES FOR QUASI-JUDICIAL HEARINGS.**

### **4.11.1. Evidence/Presentation of Evidence.**

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

**4.11.1.2.** 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.

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

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

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

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

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

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

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

**4.11.1.7.** 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.

**4.11.1.8.** 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

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request issuance of a subpoena, persons with standing under GS 160A-393(d) 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.

### **4.11.2. Modification of Application at Hearing.**

**4.11.2.1.** 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.

**4.11.2.2.** 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.

### **4.11.3. Record.**

**4.11.3.1.** 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.

**4.11.3.2.** 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 160A-393(l).

### **4.11.4. 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

## **ARTICLE 4. LEGISLATIVE/QUASI-JUDICIAL PROCEDURES**

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 4.12 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.

### **SECTION 4.13 APPEALS OF QUASI-JUDICIAL DECISIONS.**

**4.13.1.** 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 160A-393.

**4.13.2** 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.

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

**ARTICLE 6.  
ZONING DISTRICTS**

Section 6.1 Establishment of Zoning Districts .....6-2  
Section 6.2 Interpretation .....6-2  
Section 6.3 Primary Zoning Districts .....6-3  
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Section 6.5 Table of Uses and Activities.....6-6

## ARTICLE 6. ZONING DISTRICTS

### SECTION 6.1 ESTABLISHMENT OF ZONING DISTRICTS.

In accordance with the requirements of NCGS Section 160A-382 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, conditional zoning, 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.
- **Conditional Zoning:** Planning Board review and Town Council review and approval of a conditional rezoning in accordance with Section 4.6. Some conditional uses. may also be subject to supplemental regulations outlined in Article 7.

## ARTICLE 6. ZONING DISTRICTS

- **Uses Not Permitted:** Uses not marked with a P, PS, S, **CZ, CZS**, or SS are not permitted.

### **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 **conditional special** uses, with proper review, site planning, and design controls. **Planned unit developments are allowed in R-8 districts.**

#### **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, ~~two-family dwellings, and manufactured homes on individual lots.~~ ~~Multi-family dwellings and manufactured home parks are special uses in this district.~~

#### **6.3.6. PUD Planned Unit Development **Special Conditional Zoning District.** (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 (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. The district does not require a rigid~~

## ARTICLE 6. ZONING DISTRICTS

separation of different land uses. Uses are limited to the uses identified in the approved mixed use site development plan, in the Table of Uses and Activities. All of the site specific standards and conditions, including a site plan are incorporated into the zoning district regulations for the PUD. Approval of the site plan will establish all zoning requirements for the subject property. 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 plan map.

~~This negotiated approach to a legislative decision allows maximum flexibility to tailor regulations to a particular site and project. But it also has great potential for abuse both in terms of impacts on individual landowners seeking approval and their neighbors and on the public interests zoning is supposed to promote. Thus, special restrictions have been placed on Conditional Zoning. Conditional Zoning may only occur at the owner's request and cannot be imposed without the owner's agreement. The individual conditions and site specific standards that can be imposed are limited to those that are needed to bring a project into compliance with town ordinances and adopted plans and to those addressing the impacts reasonably expected to be generated by use of the site. 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.~~

~~Conditional Zoning provides important opportunities to carefully tailor regulations to address the interest of the landowner, the neighbors, and the public. The town may use Conditional Zoning when it concludes that a particular project should be approved but that the standards in the comparable conventional zoning district(s) are insufficient to protect neighbors or public interests (perhaps because the conventional zoning allows other uses not suitable for the site or dimensional standards inadequate to preserve the neighborhood). Conditional Zoning often allows a developer to proceed with a project in a way that addresses site specific concerns of neighbors and the Town of Smithfield.~~

### **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.

### **6.3.9. B-3 Highway Entranceway Business District.**

## ARTICLE 6. ZONING DISTRICTS

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 commercial warehousing and light industrial uses which will be compatible with the Smithfield area and will not 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. Commercial, warehousing, and heavy industrial uses which will be compatible with the Smithfield area and will not cause adverse effects for the area or adjacent uses.

### **6.3.13. AD Airport District.**

The purpose of this district is to ensure the appropriate location, design, construction, and maintenance of land uses compatible with air transportation facilities.

### **6.3.14. OS Open Space District.**

Areas of special public interest that should be placed in a zone protected from any permanent development.

## **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 maximum 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 (sometimes including a site plan) are incorporated into the zoning district regulations. Individual conditions and site-specific standards

## ARTICLE 6. ZONING DISTRICTS

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 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 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 Conditional Zoning (CZ) District allows particular uses to be established only in accordance with site specific standards and conditions pertaining to each individual development project. All site-specific standards and conditions must be consistent with the objectives of these regulations, the adopted 2045 Land Use Map and adopted 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 Special-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.

## **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.

## ARTICLE 6. ZONING DISTRICTS

### **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 6.5 TABLES OF USES AND ACTIVITIES.

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO	
<b>ACCESSORY USES/BUILDINGS</b>																	
Accessory structures/buildings	P <u>PS</u>	P <u>PS</u>	P <u>PS</u>	P <u>PS</u>	P <u>PS</u>		P <u>PS</u>		P		<u>Section 7.3</u>						
Accessory uses incidental to any permitted use	<u>PS</u> <u>P</u>	<u>PS</u> <u>P</u>	<u>PS</u> <u>P</u>	<u>PS</u> <u>P</u>	<u>PS</u> <u>P</u>		<u>PS</u> <u>P</u>				<u>Section 7.3</u>						
Child care center (as an accessory use for a principal business)							PS	SS	SS	SS	PS	PS					Section 7.4.1
<u>Customary</u> home occupations	PS	PS	PS	PS	PS		PS	PS	PS								Section 7.7
Dwelling in principal business as an accessory use							SS	SS	SS	SS							Section 7.5
Granny pods/temporary health care structures	PS	PS	PS	PS	PS		PS								PS		Section 7.6
<u>Mobile food vending cart</u>								<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>					<u>Section 7.3.2</u>
Public or neighborhood swimming pools	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>		<u>S P</u>								<u>S</u>		
Public or private neighborhood tennis courts	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>		<u>S P</u>	P	P	P					<u>S</u>		
Public or private neighborhood basketball courts	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	<u>S P</u>	P	P	P					<u>S</u>		
<u>Temporary Sale of Goods Other Than Agricultural Products.</u>								<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>						<u>Section 7.30.</u>
Solar energy generating facility, accessory	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS					Section 7.8
Temporary storage facility (portable storage units)	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS					Section 7.9

## ARTICLE 6. ZONING DISTRICTS

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts		Supplemental Regulations			
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS		RHO	ECO	
Wind energy generating facility, accessory	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS						Section 7.10
<b>EDUCATIONAL INSTITUTIONAL</b>																		
Community college	<u>CZ</u> §						<u>CZ</u> §	<u>CZ</u> §										
Libraries							P	P	P	P								
Schools, public and private	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §		<u>CZ</u> §		<u>CZ</u> P									
<b>INSTITUTIONAL</b>																		
Armories							P											
<u>Assembly Uses/Event Centers</u>							<u>CZ</u> §	§	<u>CZ</u> §	<u>CZ</u> §								<u>Section 7.42</u>
<u>Buildings; Governmental offices</u>							P	P	P	P	P	P	P					
Cemeteries	<u>CZ</u> §						P											
Churches/places of worship	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §		<u>CZ</u> §		<u>CZ</u> §	<u>CZ</u> §								Section 7.32
Club or private lodge meeting halls							S		S	S								Section 7.32
<u>Clubs, public or private</u>									S	S								
Community centers							<u>CZ</u> §											
Country clubs, <u>golf courses</u>	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	<u>CZ</u> §	S													

## ARTICLE 6. ZONING DISTRICTS

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts		Supplemental Regulations		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS		RHO	ECO
Crematory										P	P	P					P
Electric substations	S	S	S	S	S		S	S	S	S	S	S	S	S	S	S	S
Governmental uses (i.e., police, fire) <u>Fire Station/Police Station/Jail</u>	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> S		P	P	P	P	P	P					
Hospitals							P		P	P							
Public uses not otherwise listed	S	S	S	S	S		S	S	S	S	S	S	S	S			
Public utility/ <u>Public Works</u> storage or service yards	?						<u>CZ</u> S			<u>CZ</u> S	P S	P					<u>Section 7.41</u>
Public utility substations/switching stations	<u>PSS</u>	<u>PSS</u>	<u>PSS</u>	<u>PSS</u>	<u>PSS</u>		<u>PSS</u>	<u>PSS</u>	<u>PSS</u>	<u>PSS</u>	SP	SP	S	S			<u>Section 7.43</u>
Pump stations (municipally owned)	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	P	P	P	P			<u>Section 7.43</u>
US postal services							<u>CZ</u> S	<u>CZ</u> S	<u>CZ</u> P	P	P	P					
Utility stations	S	S	S	S	S		S	S	S	S	P	P	S	S			
<u>Public water treatment, waste water treatment</u>							<u>CZ</u>										
<b>MANUFACTURING AND INDUSTRIAL</b>																	
Asphalt and concrete batch plant												P					
Artisan's workshop (3,000 square feet or less)	PS						PS	PS	PS	PS	PS						Section 7.11
Artisan's workshop (greater than 3,000 square feet)										SS	SS	SS					Section 7.11

## ARTICLE 6. ZONING DISTRICTS

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts													Overlay Districts		Supplemental Regulations	
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO		ECO
Bakery products, candy, confectionary manufacturing									§	§	P	P					
<b>Building materials sales and storage,</b>									§	§	P	P					
Carpet and upholstery cleaners									P	P	P						
<b>Commercial kitchen</b>									§	P	P						
Clothing and finished fabric products, manufacture of											P	P					
Contractors, building (with outdoor storage)							PS	PS	PS	PS	P	P					Section 7.41
Contractors, building (no outside storage)							P	P	P								
Contractors, <u>heavy construction</u> equipment sales/rental/storage												P					
Contractors, heavy construction												P					
Contractors, special trades (no storage)								P	P	P	P	P					
<b>Data Center</b>										§	P	P					
Electric motor repair									P	P		P					
Electrical and electrical machinery, equipment and supplies <u>retail sales</u>								§	PS	PS		P					
Food processing facilities											§	P					
Fuel and ice dealers											§	§					
<del>Gas companies with</del> Propane/bulk storage										SS	§	S					Section 7.41
Industrial research offices and laboratories											P	P					

## ARTICLE 6. ZONING DISTRICTS

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts		Supplemental Regulations		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS		RHO	ECO
Industrial uses <del>not</del> having an injurious effect on the town and not otherwise listed/identified												S					
Lumber and wood products, sales <u>and storage</u>										P	<u>P</u>	P					<u>Section 7.41</u>
<del>Machinery (engines, construction tools)</del>									S	S	?	P					
<del>Manufacturing (textiles, clothing, scientific instruments, and small machine assembly)</del>											<u>P</u>	P					
<del>Light manufacturing (light) uses and others not otherwise listed/identified (Amended 3/5/19)</del>									S	S	P						
<del>Manufacturing (heavy), processing, or warehousing or transportation use or public use or utility</del>											<u>PS</u>	PS	SS				Section 7.12
<del>Manufacturing of Paperboard containers and boxes</del>												<u>PS</u>					<u>Section 7.12</u>
<del>Manufacturing of refrigeration, heating, and air conditioning machinery</del>									S	S	<u>P</u>	P					
<del>Temporary office units/modular office units</del>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>					Section 7.13
<del>Motion picture production and distribution</del>											P	P					
<del>Motor freight terminals, bus terminals</del>											P	P					
<del>Outlet stores accessory to <del>for</del> industrial manufacturing establishments</del>										PS	PS	PS					Section 7.14
<del>Research laboratories</del>							S	P	P		P	P					
<del>Screw Manufacturing – Machine <u>tool and die</u> products (bolts, nuts, screws)–</del>												P					

## ARTICLE 6. ZONING DISTRICTS

P - Permitted Use

PS - Permitted Use with Supplemental Regulations

Blank - Not Permitted

S - Special Use

SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts		Supplemental Regulations		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS		RHO	ECO
Small engine repair									S	P		P					
Tanning, leather												S					
Textiles												P					
Welding repair									S	S	P	P					
<b>OFFICES, PROFESSIONAL AND SERVICES</b>																	
<u>Clinic, medical, therapeutic</u>							P		P	P							
Electronic data processing							P	P	P	P	P	P					
Engineering, architectural, and surveying offices							P	P	P	P	P						
Financial institutions with no drivein							P	P	P	P							
<u>Financial institutions with drivein</u>									P	P							
Labor unions ( <u>Offices</u> )							P	P	P	P							
<del>Office, computing and accounting machines (sales)</del>							P	P	P	P							
Office, professional							P	P	P	P	S						
<del>Offices (primary uses, not accessory)</del>							P	P	P	P	P						
Opticians and optical goods <u>sales</u>							P	P	P	P							
<b>RECREATIONAL</b>																	
<del>Billiard and pool halls</del>							S	S	S	S							
Boat ramps	S	S	S	S	S		S	S	S	S				S			

## ARTICLE 6. ZONING DISTRICTS

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PS - Permitted Use with Supplemental Regulations

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SS - Special Use with Supplemental Regulations

CZ – Conditional Zoning

CZS – Conditional Zoning with Supplemental Regulations

Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations	
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO		
Bowling alleys								S	S	S	S							
Dinner theatres								S	S	S	S							
Entertainment, Indoor (skating rinks, escape rooms, trampoline parks, etc.)										<u>S</u>	<u>S</u>							
Entertainment, Outdoor (amusement parks, mini-golf, driving ranges, etc.)										<u>CZ</u>	<u>CZ</u>							
Fairgrounds	<u>SS</u> <u>CZS</u>																SS	Section 7.15
Golf courses	S	S	S	S	S													
Health clubs								P	<u>P</u>	P	P	P						
Mechanical rides (ferris wheels, roller coasters, bumper cars, etc.)										S	S							
Miniature golf/driving ranges										S	S							
Movie theaters									P	P	P							
Nature observation points	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>			<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>						S	
Parks and recreation areas	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>			P	P	P	P							
Playgrounds	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>			P	P	P	P							
Recreation buildings and facilities for residential developments	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>						<u>PS</u>							
Skating rinks								S	S	S	S							

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	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO		
Video arcades							S	S	S	S								
<b>RESIDENTIAL</b>																		
Residential Cluster development	<u>CZS</u> SS	<u>CZS</u> SS	<u>CZS</u> SS	<u>CZS</u> SS	out													
Dwelling, <u>single-family attached</u> (townhomes)/ multi-family/ <del>townhouses</del> /condominiums			<u>CZS</u> SS	<u>CZS</u> SS	<u>CZS</u> SS		<u>CZS</u>	<u>CZS</u> SS	<u>CZS</u> SS	<u>CZS</u> SS								
Dwelling, single-family <u>detached</u>	P	P	P	P	P		S	S	S				P		P			
Dwelling, two family ( <u>duplex</u> ) <u>on single lot</u>			P	P	<b>P</b>		<u>CZ</u>	<b>CZS</b>	<b>CZS</b>									
<u>Licensable Facilities:</u>																		
Adult care home	S		S	S														
Family care home	PS	PS	PS	PS	PS		PS										Section 7.16	
Family child care home	SS	SS	SS	SS	SS		SS										Section 7.4.2	
Family foster home	S	S	S	S														
Multi-unit assisted housing with services	S						<u>CZ</u> S		<u>CZ</u>	<u>CZ</u>								
Residential child-care facility				S														
Small child care center		PS	PS	PS													Section 7.4.2	
Loft and studio apartments							<u>CZ</u> S	<u>CZS</u>	<u>CZS</u>									
Manufactured home, Class A on individual lot	PS				PS												Section 7.17	

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Uses	<i>Primary Zoning Districts</i>													<i>Overlay Districts</i>		<i>Supplemental Regulations</i>		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO		ECO	
Manufactured home, Class B on individual lot	SS				PS													Section 7.17
Manufactured home park					<u>CZS</u> SS													Section 7.18
Mixed use developments and unified commercial developments								S-	S-	S-								
Planned residential development	S-	S-	S-	S-	S-			S-	S-	S-								
Recreational vehicle parks											<u>CZS</u> , PS							Section 7.33
Temporary emergency, construction, and repair residences	<u>SS-PS</u>	<u>SS-PS</u>	<u>SS-PS</u>	<u>SS-PS</u>	<u>SS-PS</u>	<u>PS</u>	PS	PS	PS	PS	PS	PS						Section 7.19
Tiny houses				PS														Section 7.20
<b>RETAIL SALES AND SERVICES</b>																		
<u>ABC store, liquor sales</u>									<u>P</u>	<u>P</u>								
Adult <u>and sexually oriented</u> businesses												SS						Section 7.21
Animal hospitals/ veterinarians <u>no outdoor kennel or boarding</u>										S	S	S-						
Animal hospitals/ veterinarians <u>with outdoor kennel or boarding</u>										<u>S</u>	<u>P</u>							
Antique shops								P	P	P								

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Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations	
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO		
Any use which employs, as incidental or subordinate to the primary use of the property, more than 5 coin-operated amusement devices								S	S	S								
<u>Appliance and other large durable goods sales</u>									<u>P</u>	<u>P</u>								
Art galleries								P	P	P	P							
Automobile, <u>motorcycle</u> and truck dealers/ <u>brokers</u>										S	S							
Automobile parts and supply <del>store</del> <u>sales</u>								P	P	P								
<del>Automobile renting and leasing</del>									<del>S</del>	<del>S</del>								
<u>Automobile repair</u>									<u>P</u>	<u>P</u>	<u>P</u>							Add Standard for vehicle storage
<u>Automobile Painting and Body Shops</u>										<u>SS</u>	<u>P</u>	<u>P</u>						Add Standard for vehicle storage
Automobile sales and automobile broker										S	S							
Automobile service stations; <u>gas pumping stations</u>										PS	PS		<u>PS</u>					Section 7.22
<u>Bakery</u>									<u>P</u>	<u>P</u>	<u>P</u>							
<u>Bar or nightclub, pool halls, etc., with ABC Permit</u>										<u>S</u>	<u>S</u>							
Barber or beauty shops								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	S	S	S	S	S			S	S	S	S							

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Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations	
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO		
Boat sales and service									S	S								
Car washes									P	P								
Carpet and rug dealers								P	P	P								
Catering establishments								P	P	<u>PS</u>	P							
Commercial animal kennels/ <del>boarding facilities</del> , including accessory grooming (indoor facilities only)	S								S	S								
Commercial animal kennels/ <del>boarding facilities</del> , outdoor kennels										SP	<u>PS</u>							
Commercial <u>office</u> condominiums									<u>CZS</u>	<u>CZS</u>								
Convenience food stores								P	P	P								
<del>Convenience stores with gas pumps</del>								<del>S</del>	<del>S</del>	<del>S</del>								
Distilleries								PS	?	SS	PS							Section 7.24
Drug stores <u>with drive in</u>								<u>SP</u>	P	P								Add
<u>Drug store with no drive in</u>								P	P	P								
Exterminating services <u>business</u>								<u>P</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	P						
Farmer's market								S	S	S								
Flea markets/vendor markets									<u>CZS</u>	<u>CZS</u>								add
Floral and gift shops								<u>P</u>	P	P								
Food stores								P	P	P								

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Uses	Primary Zoning Districts													Overlay Districts		Supplemental Regulations			
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO		ECO		
Food trucks (Amended 7/9/19)								PS	PS	PS	PS								Section 7.25
Fortune tellers (to include palm readers, crystal ball reading, tarot card reading, and similar fortune telling techniques).											S								
Funeral homes								<u>CZ</u> S		<u>CZ</u> S	<u>CZ</u> S	S							
Furniture and fixtures <u>sales</u>								P	P	P									
Glass and mirror repair sales										P	P		P						
Hardware stores								<u>P</u> S	<u>P</u> S	<u>P</u> S									
<u>Home improvement stores with outdoor sales yard</u>										<u>S</u>	<u>S</u>								
<u>Home improvement stores</u>										<u>P</u>	<u>P</u>								
Kennels, private	S																		
Laundry and dry cleaning establishments with drive-in windows								SS	S	S	S								Section 7.26
Laundry and dry cleaning establishments-without drive-in windows								PS	PS	PS	PS								Section 7.26
Lawn and garden stores										P	P								
Leather products (no tanning or production)–								P	P	P									
<u>Licensable Facilities:</u> <u>Adult day care center facilities, adult</u>								S	S	S	S	S							

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Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO	
Child care center (11/6/18)							SS	SS	SS	SS	SS	SS					Section 7.41
Nursing homes	<u>CZ S</u>		<u>CZ S</u>				<u>CZ S</u>		<u>CZ S</u>	<u>CZ S</u>							
Locksmith, gunsmith								P	P	P	P						
Measuring, analyzing, controlling, and optical goods, watches, clocks								P	P	P	P						
Microbrewery								PS	SS	SS							Section 7.24
Mobile food vending cart								PS	PS	PS	PS	PS					Section 7.3.2
Motels/hotels							<u>CZ S</u>	<u>CZ S</u>	<u>CZ S</u>	<u>CZ S</u>							
Motorcycle sales and services									S	S							
Movers, van lines, and storage										S	P	P					Section 7.2
Museums							P	P	P	P							
Newspaper printing and publishing services								S	S	S	P	P					
Package delivery services, commercial								S	S	S	?	P					
Parking lots, commercial							<u>S</u>	S	S	S	P	P					
Parking lots, structures and underground parking garages, commercial							<u>CZ S</u>	<u>CZ S</u>									
Pawnshop or used merchandise store								P	P	P							
Photographers							P	P	P	P							

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Uses	Primary Zoning Districts												Overlay Districts				Supplemental Regulations
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO	ECO	
<del>Greenhouses and Plant nurseries, greenhouses and garden supply with outdoor sales and storage</del>	P								<u>CZ S</u>	<u>CZ S</u>	P	P					
Pottery and related products <u>with no outdoor storage</u>								P	P	P	P	P					
Printing and publishing								P	P	P	P	P					
Radio and television broadcasting studios							P	P	P	P	S	P					
Repair shops (radio, television, small appliances, shoes, etc.)								P	P	P							
Restaurants ( <i>Amended 3/6/2018</i> )							P	P	P	P							
<u>Restaurants with drive-in</u>									<u>P</u>	<u>P</u>							
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									<u>CZ S</u>	<u>CZ S</u>							
Shopping center, minor									P	P							
Signs in accordance with Article 10, Part III	P	P	P	P	P		P	P	P	P	P	P					
Street vendors								PS									Section 7.27 Section 7.3.2
<b>Studios for artists, designers, and photographers, and studios for the performing arts</b>							<b>P</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>	<b>S</b>					

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Uses	Primary Zoning Districts													Overlay Districts		Supplemental Regulations		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS	RHO		ECO	
Tattoo and body piercing establishments									S	S								
Tire dealers and service								S	S	S		P						
<u>Temporary sale of locally grown agricultural products grown off-site</u>									PS	PS								Section 7.30
Upholstery shops								PS	P	P		P						
<u>Vehicle storage in conjunction with repair</u>									S	S	S	P						Need Standard
Video rental								P	P	P								
<b>TRANSPORTATION</b>																		
<u>Airport</u>	CZ											CZ						
Bus stations									P	P								
Taxi stands limited to 5 taxis								S	S	S								
Tool, car, truck rental								S	S	S	P	P						
Towing services										S	P	P						
<b>WHOLESALE SALES AND WAREHOUSING</b>																		
Boat storage									S	S								
Fruit and vegetable markets, wholesale									P	P								
<u>Automobile Junkyards, Salvage yards, recycling of metal and other materials</u>												S						
Outdoor sales, service, or storage areas								S	S	S	P	P						

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Uses	Primary Zoning Districts												Overlay Districts		Supplemental Regulations		
	R-20A	R-10	R-8	R-6	R-MH	PUDS	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AD AHH	OS		RHO	ECO
Salvage yards												S					
Warehousing uses, including mini-storage									S	S	S	P	S				
Wholesale merchants									P	P	P	P					
Wholesale storage of gasoline or bulk terminal plants												S					
<b>OTHER USES</b>																	
Agricultural and forestry uses	P												P				
Bona fide farms and their customary appurtenances	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS			Section 7.28
Solar farms	<u>CZS</u> <u>SS</u>										<u>CZS SS</u>	<u>CZS SS</u>					Section 7.29
Telecommunication facilities	S	S	S	S	S		S	S	S	S	S	S	S	S			<u>Section 10.101</u>
Temporary office units	PS	PS	PS	PS	PS		PS	PS	PS	PS	SS	SS	SS	SS			Section 7.13
Temporary Uses- <u>Special Events</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	<u>SPS</u>	Section 7.30
Wind farms	<u>CZSS</u>										<u>CZ SS</u>	<u>CZ SS</u>	<u>SS</u>				Section 7.31

# ARTICLE 7. SUPPLEMENTAL REGULATIONS

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**ARTICLE 7.**  
**SUPPLEMENTAL REGULATIONS**

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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, 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 curbing ~~or some other acceptable method (decorative fencing, hedge, planter, etc.) in accordance with Article 10, Part I of this UDO, which will define and separate vehicular areas from required yards and pedestrian traffic.~~

**7.2.2.** Parking, ~~loading or storage yards shall areas~~ shall not be located in 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 may be paved with gravel or other similar material provided it exhibits shall be paved with blacktop, concrete, brick or other similar material determined to exhibit equivalent appropriate load bearing characteristics for the use. Curbing or other means shall be used to separate paved areas from required landscape or buffer yards. display, operations, or service areas, when proposed in conjunction with a special use permit request, shall not encroach into any required yard unless specifically authorized under the terms of the special use permit.~~

**7.2.4.** ~~It is recommended that in these districts, as much of each tract as~~ Existing vegetation shall be left ~~possible be left in a natural or enhanced state of vegetation~~ undisturbed unless the area is required for the orderly development of the site. ~~it can be demonstrated that the vegetation~~. Removal of existing viable natural vegetation shall be discouraged.

**7.2.5.** ~~Loading and Landscaping between the street and the principal building on the site shall be required to meet the landscaping requirements of Article 10, Part II of this Ordinance.~~

### **SECTION 7.3 ACCESSORY ~~USES OR~~ STRUCTURES.**

~~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~~

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

property. A use or a structure on the same lot with, but of a nature customarily incidental and subordinate to the principal use or structure and which contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal building or use being served. 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 use or accessory structure 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. Provided, however, that 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. Further provided, that a trailer, tent, or similar container, structure, or vehicle may be placed on property on a temporary basis for promotional or other business or charitable related purposes, but such use shall not continue for more than six months.

No accessory building or use shall be erected in any required front or side yard or within six (6) feet of the rear lot line (unless the rear line abuts navigable waters), or within eight (8) feet of any side lot line, Accessory buildings shall comply with Section 8.13.2 and no separate accessory building or use shall not be erected within ten (10) feet of any other accessory building unless on same property. No accessory building or use may be erected or installed on any lot where a principal building does not exist. No lot shall have in excess of one accessory building, except that granny pods 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. The side and rear setbacks for farm property shall be the same as other accessory buildings.

### **7.3.1. Satellite Dish Antennas.**

#### **7.3.1.1. General Requirements.**

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

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

**7.3.1.1.3.** 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.

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

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

**7.3.1.1.5.** 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.

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

### **7.3.1.2. Location in Yards.**

**7.3.1.2.1.** 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.

**7.3.1.2.2.** 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.

**7.3.1.2.3.** The location shall comply with all applicable FCC regulations.

### **7.3.1.3. Setback Requirements.**

**7.3.1.3.1.** Dish antennas shall not be allowed in any side yard.

**7.3.1.3.2.** 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.

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

### **7.3.1.4. Maximum Height Requirements.**

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

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

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**7.3.1.5. 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.

### **7.3.2. 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:

**7.3.2.1.** 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.

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

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

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

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

**7.3.2.2.2.** 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).

**7.3.2.2.3.** 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).

**7.3.2.2.4.** 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.

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

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

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

**7.3.2.2.8.** 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.

**7.3.2.2.9.** 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.

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

**7.3.2.2.11.** 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 outdoor sales special use permit.

### **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.** If a special use permit is required, the permit shall establish the hours of operation.

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**7.4.1.3.** Minimum paved off-street parking spaces: ~~Two spaces plus one for each employee shall comply with Article 6, Section 10.3~~

**7.4.1.4.** 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;

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

**7.4.2.4.** The building residence in which the Family Child Care Home is located may not be located closer than 500 feet to any other building housing another FCCH 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.

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~~7.5.2. Occupancy per dwelling unit shall not exceed 1.5 persons per bedroom. 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 a special use permit.~~

### **SECTION 7.6 GRANNY PODS/TEMPORARY HEALTH CARE STRUCTURES.**

Granny pods, also called temporary health care structures, are permitted under the authority of NC General Statutes Section 160A-383.5. 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 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 care-giving 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:

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**7.7.1.1.** Art gallery or the office or studio of a physician, artist (not inclusive of a studio of a commercial photographer), 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.

**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:

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### **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).**

Temporary storage facilities, as defined in Appendix A, 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.** Temporary storage facilities intended to be in place for greater than thirty (30) days shall require a zoning permit (less than 30 days does not require a permit).

**7.9.3.** 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.

**7.9.4.** No temporary storage facility shall encroach into any public right-of-way, or into any required landscape yard.

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

**7.9.6.** 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:

**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

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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.

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### **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.**

**7.13.1. Temporary Construction Office Units.** Temporary construction office units are allowed permitted by right in any district on construction sites with an approved site plan in accordance with UDO Section 7.13, ~~with a temporary use permit for a time period of six (6) months, which may be extended for an additional six (6) months by reapplication to the UDO Administrator, with no additional fee. Any additional extensions shall require a reapplication and an additional fee for each six (6) month extension. All usual permits are required for such use.~~ 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 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 Modular Office Units.** Modular office units used for expansion space for existing churches, health care facilities, and government offices, or school classrooms, under specific situations are permitted 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

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### **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 FAIRGROUNDS. (MOVE TO DEFINITIONS)**

~~Fairgrounds including carnivals, circuses, amusements not permanently attached to the site, and any event not otherwise listed herein resulting in the assemblage on one (1) parcel of 25 or more people within any twelve (12) hour period of time excluding parades, picketing, and demonstrations.~~

### **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 a permitted ~~use where indicated~~ 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.

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

**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 ~~Town of Smithfield 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, ~~which are located within the R-6 district on the effective date of this Ordinance may be continued and maintained as a nonconforming use provided that any such existing home upon their removal, shall only be replaced with a use permitted within the R-6 district.~~ Other manufactured homes existing on the effective date of this ordinance

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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.

~~7.17.4. Existing manufactured homes, Class A and Class B, which are located within the R-6 district on the effective date of this Ordinance which are damaged or destroyed by fire or an act of God may be replaced and shall comply with the yard, height, parking, loading, access, lot width, lot area, and lot coverage provisions of this Ordinance for the district in which such structure is located unless the structure is situated on a substandard lot of record, in which case the provisions concerning substandard lots of record shall apply, or unless the incomplete nature of the damage would make it more feasible to rebuild in the previous location, in which case the Board of Adjustment is authorized to consider a variance to allow the reconstruction or replacement. In considering the variance, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of the Ordinance.~~

### **SECTION 7.18 MANUFACTURED HOME PARK.**

**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;

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**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.

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.

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**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 #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 with a minimum right-of-way diameter of 100 feet. 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. *(Amended 4/3/2018)*

**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 NC Department of Transportation 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

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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 mail boxes 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.**

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 North Carolina Department of Transportation shall apply.

### **7.18.16. Sidewalks.**

~~Four (4)~~ **Five (5)** foot wide, 4-inch thick sidewalks shall be provided adjacent to public rights-of-way with NCDOT or Town of Smithfield approval, as may be applicable.

### **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.

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

### ***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 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.

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

**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 ~~or a non-residential/commercial development~~ 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.

## **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.

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**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.

**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 use in B-2, B-3, and H districts in accordance with Section 6.5, provided the following conditions are met:

**7.22.1.1.** The service 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.

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

**7.22.1.3.** The ~~service~~ station shall provide a ~~screen planting and/or fence~~ Type C buffer along the property lines that abut residential properties in accordance with Section 10.14 of this Ordinance. ~~Lighting facilities shall be arranged and of such nature that nearby residential properties are not disturbed~~

**7.22.1.4.** Lighting facilities shall be in accordance with Part IV of this Ordinance. ~~Service~~ 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 and comply with Section 7.30.3.

**7.22.2.** Automobile service stations located ~~within the town's corporate limits~~ shall have no gasoline or oil pump located within fifteen (15) feet ~~twelve (12) feet~~ of any street right-of-way line. Outside the town, no such pump shall be 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.

**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.***

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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.

**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.**

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

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.** (AMENDED 9/9/2019)

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 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.**

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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.

**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.**

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**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 — STREET VENDORS.**

#### **7.27.1. Use of Sidewalks for Private Purposes; Permit Required; Insurance.**

**7.27.1.1.** No use of the surface of public sidewalks or public right of way for street vending shall be permitted or continued unless the person, partnership, firm, or corporation desiring to use or continue the use of a sidewalk or public right of way shall procure a permit from the UDO Administrator, after the approval of such use by the Town Council. — Such permit shall be issued only upon condition that the user of the sidewalk or public right of way for private purpose shall first assume, in writing, responsibility for any injury or death of persons or damage sustained as a result of such use.

**7.27.1.2.** Users of the sidewalk or public right of way shall post indemnity with a surety or liability insurance in accordance with Town Council approval and minimum State of North Carolina liability insurance requirements. — The indemnity or insurance so provided shall be maintained throughout the period of such use and it shall be unlawful to continue such use without continuing such indemnity or insurance. — Encroachments for transmission devices of any type shall pay a fee in accordance with Town of Smithfield's Fee Schedule adopted by the Town Council at the rate of four cents (\$0.04) per linear foot per month of use, except that Johnston County, the State of North Carolina, any educational institution of Johnston County or the State of North Carolina, and companies holding approved franchise agreements with the Town shall be exempt from this fee, said fee shall be collected prospectively on an annual basis. — All users of the sidewalk or public right of way shall pay an administrative charge in accordance with Town of Smithfield's Fee Schedule adopted by the Town Council. Section 2.7 which will partially defray the Town's expense in keeping records and processing these requests.

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**7.27.1.3.** Upon construction of the encroachment the user shall submit to the Town as-built drawings showing the precise location of the encroachment, and in the case of encroachments for transmission devices the drawing shall also show the location of other utilities in the public right of way or sidewalk. As built plans shall not be required for underground lawn irrigation systems when used specifically for single family or duplex dwelling units. Permission for the use of the public rights of way or sidewalks shall not relieve the petitioner from compliance with any other requirement of this Code. Permission for the use of the sidewalk or public rights of way for any use permitted herein shall be subject to revocation by the Council at will. Newsracks and public utility companies authorized to use the streets under the franchise from the Town shall be exempt from the provisions of this section. Handicapped ramps installed to serve government buildings shall be exempt from the provisions of this section.

**7.27.1.4.** Any person, partnership, firm, corporation, or any other entity who shall use a sidewalk or public right of way without first obtaining the approval of the Town Council shall be guilty of a misdemeanor and shall upon conviction be punished as in such cases provided by statute. In addition to this criminal remedy and any other authorized remedy, any person, partnership, firm, corporation, or any other entity who excavates or excavated in a sidewalk or public right of way without first obtaining the approval of the Town Council shall be subject in the sole discretion of the Council to a civil penalty in accordance with Section 1.8.

### **7.27.2. Peddlers' Time on Street Limited; Presence Restricted in Certain Area; Impeding Pedestrians Prohibited; Waste Receptacle Required on Stand, Cart, Etc.**

Except as permitted pursuant to a special events permit approved by the Smithfield Town Council, all vendors occupying space on a pedestrian mall shall remove their stands or carts by 9:00 p.m. each day and shall not place the stands or carts on the mall before 8:00 a.m. Except pursuant to a special events permit, it shall be unlawful to peddle in the streets of the Town items other than foodstuffs prepared in conformity with applicable Johnston County health regulations, fresh cut flowers, and original artworks and handicrafts produced by the peddler. If a special event permit is granted, the peddler may also sell merchandise which is related to the event for which the permit has been granted. Provided further, it shall be unlawful for any person to erect, maintain or have any stand, cart, or vehicle upon any street which impedes, endangers, or interferes with the travel upon or use of the streets by the public. Each such stand, cart or vehicle shall be equipped with a waste receptacle and shall have rubber tires.

### **7.27.3. Sale of Merchandise on Sidewalks.**

It shall be unlawful, except pursuant to the provisions of this note, for any person to expose, sell or to offer for sale any merchandise, cooked provisions, poultry, fruits, vegetables, or other commodities upon any sidewalk in the Town; provided that this section shall not prevent the sale of merchandise if

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~~the proceeds of such sales are used exclusively for religious, charitable or educational purposes, or from sidewalk cafes which are permitted in the B-1 zoning district.~~

### **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 160A-360(K), as amended by S.L. 2011-363(H168).

### **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:

#### ***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.

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**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.

**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.**

#### **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:

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Temporary office units shall meet the requirements of Section 7.13.

**7.30.1.2.** Events with amplified sound.

**7.30.1.3.** Events with 100 people or more in attendance.

**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.

The Board Town Council shall consider the effects of the use on adjacent properties and shall may set a specific time limit on the temporary use. Temporary office units shall meet the requirements of Section 7.13.

### **7.30.1. Expansion or Replacement of Existing Facilities.**

Factory fabricated, transportable buildings that are designed to arrive at the site ready for occupancy, except for minor unpacking and connection to utilities, and designed for removal to, and installation at other sites, may be placed on a property with approval of a temporary use permit approved by the Town Council and subject to applicable ordinances to serve as the following:

**7.30.1.1.** Expansion space for existing churches, health care facilities, and government offices, under specific situations;

**7.30.1.2.** Temporary classroom space to augment an existing school facility;

**7.30.1.3.** Temporary office for construction and security personnel during the construction of a development; shall be in accordance with Section 7.13

**7.30.1.4.** Temporary quarters for recreational facilities which are being provided in conjunction with a new residential development;

**7.30.1.5.** Temporary quarters for a non-residential use when the permanent building has been destroyed by a fire or other physical catastrophe; and

**7.30.1.6.** One temporary office per site to include, but not be limited to, the following uses: hiring, membership solicitation, apartment office/leasing, and other general office uses.

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### **~~7.30.2. Real Estate Sales Offices and Model Sales Homes.~~**

~~One temporary real estate sales office or model sales home 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.~~

### **7.30.2. 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:

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

**7.30.2.2.** 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.

**7.30.2.3.** 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.

**7.30.2.4.** ~~Submittal requirements include~~ Sale of goods other than agricultural products require written permission from the property owner, ~~a sketch 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.~~

**7.30.2.5.** 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.

**7.30.2.6.** 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.

**7.30.2.7.** 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.

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### **7.30.3. 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. ~~as products obtained primarily through farming or agricultural activities;~~ 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 this section, processed or prepared food products of any kind shall not be considered as agricultural products. Additionally:

**7.30.3.1.** ~~As well as locations listed above, the t~~Temporary sale of locally grown agricultural products may occur from a vacant lot in accordance with Section 6.5.

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

**7.30.3.3.** The temporary sale of locally grown agricultural products may be accomplished from a vehicle, trailer, or shipping container tent.

**7.30.3.4.** 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.

**7.30.3.5** 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.

**7.30.3.6** The temporary sale of locally grown agricultural products shall be allowed ~~on an individual parcel or site for no more than 180 total days per calendar year, and no more than three events per calendar year~~ only by purchase of an annual permit which shall expire on December 31st of each calendar year.

**7.30.3.7.** 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.

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**7.30.3.8** 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:

**7.30.3.8.1** 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.

### **7.30.5. Restrictions on Fireworks.**

~~Section 13-13(9) of the Smithfield Code of Ordinances allows an applicant to request the Town to prohibit the possession, discharge, and/or other use of pyrotechnics other than those used for which a lawful permit has been issued. If the applicant checks "yes" on the application, all types of fireworks, including smoke bombs, sparklers, party poppers, etc., sold legally to the public would be banned at the event. If the applicant checks "no," fireworks sold legally to the general public would be allowed while more dangerous fireworks (rockets, Roman candles, and other exploding fireworks) would still require special permits and approvals. If the applicant wishes to ban all fireworks public notification of such prohibition will be the responsibility of the applicant, both prior to and at the event itself.~~

### **7.30.4. 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.

### **7.30.5 Events Exemptions from temporary use permits.**

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

**7.30.5.1.** Athletic events held at approved sports facilities;

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

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

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

**7.30.5.4.** 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;

**7.30.5.5.** 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

**7.30.5.6.** 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.

**7.30.5.7.** Non-profit on-site sales events.

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

**7.30.5.9.** Real estate sales offices and model sales homes in accordance with UDO Section 7.30.2

**7.30.5.10.** Temporary construction offices on construction site with an approved site plan in accordance with UDO Section 7.13

***7.30.8. Restrictions on Animals.***

~~Section 4-7 of the Smithfield Code of Ordinances allows that the applicant, for approval of an event, may request that animals not be permitted within the boundaries and confines of the event, with the exception of guide dogs and animals used in the event itself. Upon approval of the request by the Town Manager, responsibility for giving proper notice to the public will rest with the applicant, both in pre-event advertising and through notices posted at the event itself.~~

**SECTION 7.31 WIND FARMS.**

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 <sup>1</sup>			

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

		Occupied Buildings (Subject Property) <sup>2</sup>	Property Lines <sup>2</sup>	Public/ Private Right-of-Way <sup>2</sup>	Highway Corridor Overlay District	Maximum Height from Grade
Wind Farm	5 Acres	1.0	1.0	1.5	2.5	250 Ft.

<sup>1</sup> 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. <sup>2</sup> 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.

### **7.31.7. Application Requirements.**

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

**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 Certificate of Public Convenience and Necessity is required for a particular wind power project for which the Town

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

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

## **ARTICLE 7. SUPPLEMENTAL REGULATIONS**

**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.**

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(AMENDED 8/7/18)

**7.32.1** Churches/Places of Worship and Club or Private Lodge Meeting Halls shall have 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 unit may be used as an administrative office.

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**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:

**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.

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**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.

**7.33.17.** All streets must be constructed of all-weather material and shall be sixteen (16) feet wide and within a designated twenty-four (24) feet wide right-of-way. Recreational vehicle parks shall have direct access to a public maintained road.

### **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 units development on a portion of the site without increasing the overall net 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 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 dwellings development in

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specific areas of the site without increasing the net gross density above that which would normally be allowed pursuant to Article 8, Zoning District Design Standards.

~~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 net acres of net area. ~~For purposes of this section "net acres" shall be the total area of all lots and common area(s) exclusive of public street rights-of-way.~~ Addition to any existing residential cluster development may be allowed provided such addition meets or exceeds all other applicable requirements.

Subject to the paragraph above, a residential cluster development may be allowed as a special use within any R-6, R-8, R-10, or R-20A, zoning districts. Such 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, any 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

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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.

**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 ~~Planning Board and~~ 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).

### **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. under single family standards within the prevailing zoning district on a net area basis.

~~**7.34.3.2.** Public street rights of way and public street easements shall not be included or count towards the total net area for purposes of calculating allowable density.~~

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**7.34.3.2.** Area dedicated or deeded to the Town pursuant to the sections above shall count towards net 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. *(Amended 4/3/2018)*

**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.** No principal or accessory structure shall be closer than 15 feet to a public street right-of-way or as further provided herein.

**7.34.4.5. Side Yard Setback.** ~~No principal structure shall be closer than 6 feet to a side yard property line, unless the setback is zero (zero lot line). The minimum side yard setback for strucu~~ 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.** ~~Shall be subject to Section 7.34.5 (zero lot line) or~~ 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, ~~a minimum structure setback from the public right of way or easement shall be 300 feet. the minimum right of way and/or easement setback requirement of said single family zone or~~

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~~development shall be utilized for the entire opposite frontage and 300 feet from such common border.~~

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 Structure Requirements.**

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

**7.34.4.11.2.** Shall ~~be in accordance with Section 7.3.~~ not be located within 10 feet of any other principal structure or within five feet of any other accessory 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 ~~as are~~ permitted herein, ~~may be permitted,~~ 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.**

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

### **SECTION 7.35 MULTI-FAMILY/TOWNHOUSE/APARTMENT/CONDOMINIUM.**

**7.35.1.** 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;

**7.35.2.** 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 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.

### **7.35.2.3. Open Space (Recreation) Area.**

**New Townhouses and condominiums 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.**

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.35.2.4. 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.

Entrances and parking lots should be configured to be functional and connected to logical destinations by trails or sidewalks.

7.35.2.5. 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.

7.35.3 Multi-family Apartment Complex shall comply with the following standards:

7.35.3.1 No off-street parking space shall be located closer than ten feet to any residential building wall.

7.35.3.2 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

7.35.3.3 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:

7.35.3.3.1 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.);

7.35.3.3.2 multiple surface textures (e.g., rough, striated, imprinted, etc.);

7.35.3.3.3 Façade modulations (e.g., building off-sets of at least two (2) feet in depth for every forty (40) feet of building wall length);

7.35.3.3.4 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.);

7.35.3.3.5 Multiple colors (the maximum number of colors shall not be limited,

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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).

### **7.35.4 Active Open Space (Recreation) Area.**

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.

**7.35.4.1 Active open space shall meet the minimum design criteria:**

**17.35.4.1.1 The minimum dimension shall be 25 feet; and**

**7.35.4.1.2 Earth berms, vegetative screening, or fencing should separate the play area from driving and parking areas; and**

**7.35.4.1.3 Residents should have convenient access; and**

**7.35.4.1.4 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.**

**7.35.4.2 The children's play area shall not be located in any required landscape yard or buffer.**

**7.35.4.3 The children's play area may be dispersed on the site; provided, that the minimum size of each area is 800 square feet or larger.**

**7.35.4.4 Usable open space set aside pursuant to this chapter shall be applied toward the open space required through the Planned Unit Development process.**

### **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

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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 within the Small Town Character Overlay District shall be buffered 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.

### **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.

### **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. No outside storage of disassembled vehicles, or parts thereof, shall be permitted on site. 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 stored in an storage yard in accordance with Section 7.41 or in striped parking stalls meeting the Town's off-street parking requirements, Article 10, Part I.

7.38.5 Storage of salvage or wrecked vehicles shall be prohibited

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

### **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 street line.

**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

### **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 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;

## ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

### **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 an 6' high opaque fence with a type C bufferyard or better in accordance with section 10.14.

7.41.2. Outdoor storage areas shall be paved with gravel, bituminous, or concrete surfacing.

7.41.3. Outdoor storage is prohibited within the Entry Corridor Overlay District.

### **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 be 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.

### **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.



# Planning Department Development Report

Tuesday, August 27, 2019

Project Name: **Amends Article 3,4,6,& 7**  
 Request: Adds a conditional zoning process  
 Location  
 Tax ID#: PIN#:   
 Project Status **In Second Review**  
 Notes: Tabled by Planning Board for 30 days

<b>Text Amendment 2019-04</b>	
Submittal Date:	7/5/2019
Planning Board Review:	8/1/2019
Board of Adjustment Review:	
Town Council Hearing Date:	10/8/2019
Approval Date:	

Project Name: **Saint Ann Parking Lot Expansion**  
 Request: 96 Additional Parking Spaces  
 Location 4079 West US 70 Highway  
 Tax ID#: 17Q99003 PIN#: 168617-01-1829  
 Project Status **Approved**  
 Notes: Under Construction

<b>Site Plan 2019-07</b>	
Submittal Date:	6/28/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	7/2/2019

Project Name: **East River PUD**  
 Request: Voluntary Annexation into Corporate Limits  
 Location 1899 Buffalo Road  
 Tax ID#: 14075013 PIN#: 169520-80-0490  
 Project Status **In First Review**  
 Notes: TC first review on 8/13/2019 Public Hearing on 9/3/2019

<b>Annexation 2019-01</b>	
Submittal Date:	6/19/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	

Project Name: **Amends Article 10.15.4**  
 Request: Deletes Article 10.15.4  
 Location  
 Tax ID#: PIN#:   
 Project Status **In Second Review**  
 Notes: This ordinance exempts most redevelopment projects from buffer and street yard requirements.

<b>Text Amendment 2019-03</b>	
Submittal Date:	6/7/2019
Planning Board Review:	7/11/2019
Board of Adjustment Review:	
Town Council Hearing Date:	8/13/2019
Approval Date:	

Project Name: **TIMA, LLC Hemp Facility**  
 Request: Agriculture in a B-3  
 Location 1219 South Brightleaf Boulevard  
 Tax ID#: 15060025 PIN#: 169309-15-9306  
 Project Status **Approved**  
 Notes: 12/19/17 - building and site vacant and previous CUP Void

<b>Special Use 2019-08</b>	
Submittal Date:	6/4/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	8/13/2019
Approval Date:	8/13/2019

Project Name: **East Edgerton Warehouse Complex**  
 Request: Parking Lot expansion  
 Location 36 East Edgerton Street  
 Tax ID#: 15006015 PIN#: 260417-02-2237  
 Project Status **First Review Complete**  
 Notes:

<b>Site Plan 2019-05</b>	
Submittal Date:	5/31/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	

Project Name: **Johnston Regional Airport FBO**  
 Request: FBO Hanger Addition  
 Location 3149 Swift Creek Road  
 Tax ID#: 15079017D PIN#: 168500-12-1015  
 Project Status **Approved**  
 Notes:

<b>Site Plan 2019-04</b>	
Submittal Date:	5/22/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	

Project Name: **The Wash House**  
 Request: Coin Laundry  
 Location 1131 North Brightleaf Boulevard  
 Tax ID#: 14L10010B PIN#: 260411-65-5790  
 Project Status **Approved**  
 Notes: Under Construction

<b>Site Plan 2019-03</b>	
Submittal Date:	5/6/2019
Planning Board Review:	
Board of Adjustment Review:	
Town Council Hearing Date:	
Approval Date:	6/19/2019

Project Name: **American Pride Carwash**  
Request: Auto Wash  
Location 1205 North Brightleaf Boulevard  
Tax ID#: 14074001 PIN#: 260414-34-8508  
Project Status **Approved**  
Notes: NCDOT approval required

<b>Site Plan 2019-01</b>
Submittal Date: 4/27/2019
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 7/22/2019

Project Name: **Kamdon Ranch**  
Request: 110 Lot Division  
Location Swift Creek Road  
Tax ID#: 15108020 PIN#: 167400-55-9495  
Project Status **Approved**  
Notes:

<b>Subdivision 2019-02</b>
Submittal Date: 4/5/2019
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 6/27/2019

Project Name: **Tesla Super Charger**  
Request: EV Super Charger  
Location 1704 East Market Street  
Tax ID#: 15L11001 PIN#: 260305-09-6278  
Project Status **Approved**  
Notes: Under Construction

<b>Site Plan 2018-16</b>
Submittal Date: 12/17/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 3/1/2019

Project Name: **Hargis Warehouse**  
Request: Warehousing  
Location 3900 US 70 Highway  
Tax ID#: 17J08001D PIN#: 168617-20-4947  
Project Status **Third Review Complete**  
Notes:

<b>Site Plan 2018-14</b>
Submittal Date: 11/2/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date:

Project Name: **Lee Warehouse Complex**  
Request: Warehousing  
Location Brogden Drive  
Tax ID#: 15K11012C PIN#: 169310-35-5200  
Project Status Third Review Complete  
Notes:

Site Plan 2018-13
Submittal Date: 10/23/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date:

Project Name: **O'Reilly's Automotive**  
Request: Retail Expansion  
Location 816 North Brightleaf Boulevard  
Tax ID#: 15006013A PIN#: 260413-02-4939  
Project Status Approved  
Notes: Under Construction

Site Plan 2018-11
Submittal Date: 8/19/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 11/18/2018

Project Name: **College Plaza**  
Request: Retail Center  
Location 1547 East Market Street  
Tax ID#: 15K10023L PIN#: 169308-99-5886  
Project Status Approved  
Notes: Under Construction

Site Plan 2018-10
Submittal Date: 8/9/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 2/19/2019

Project Name: **Hampton Inn**  
Request: Free Standing Hotel  
Location 160 Towne Centre Place  
Tax ID#: 15L11001G PIN#: 260305-08-5727  
Project Status Approved  
Notes: Under Construction

Site Plan 2018-08
Submittal Date: 8/7/2018
Planning Board Review:
Board of Adjustment Review:
Town Council Hearing Date:
Approval Date: 3/28/2019