



PLANNING BOARD AGENDA

Members:

Chairman: Stephen Upton (Town)

Vice-Chairman: Mark Lane (ETJ)

Teresa Daughtry (Town)

Ashley Spain (ETJ)

Doris Wallace (Town Alt)

Alisa Bizzell (Town)

Michael Johnson (Town)

Debbie Howard (Town)

Stephen Wensman, AICP, ALA, Planning Director

Mark Helmer, AICP, CZO, Senior Planner

Julie Edmonds, Administrative Assistant

Meeting Date: Thursday, October 1, 2020

Meeting Time: 6:00 p.m.

Meeting Place: Council Chambers, Smithfield Town Hall

PLANNING BOARD AGENDA

FOR REGULAR MEETING

OCTOBER 1, 2020

MEETING TIME: 6:00 PM

TOWN HALL COUNCIL CHAMBERS

Revised

Call to Order.

Identify voting members.

Approval of the agenda.

Approval of the minutes for August 6, 2020.

New Business.

ZA-20-03 Town of Smithfield: The applicant is requesting an amendment to the Town of Smithfield Unified Development Ordinance (UDO) Articles 3, 4, 5, 6 and 7 to allow conditional zoning, provide for quasi-judicial approvals of preliminary subdivision plats, adoption of Historic Preservation Commission regulations, incorporating of 160D enabling legislation changes and corrections to text designed to reduce ambiguities and provide additional clarity.

ZA-20-04 Town of Smithfield: The applicant is requesting an amendment to Article 6, Table 6.5 Table of Uses and Activities to allow Columbaria as an accessory use to Churches/Places of Worship with supplemental regulations in the O/I Office-Institutional Zoning District and adding two definitions to Appendix A.

Old Business.

Adjournment.

**Draft
Town of Smithfield
Planning Board Minutes
Thursday, August 6, 2020
Town Council Chambers
6:00 PM**

Members Present:

Chairman Stephen Upton
Michael Johnson
Debbie Howard
Ashley Spain
Alisa Bizzell

Members Absent:

Vice Chairman Mark Lane
Doris Wallace
Teresa Daughtry

Staff Present:

Mark Helmer, Senior Planner
Julie Edmonds, Administrative Assistant

Staff Absent:

Stephen Wensman, Planning Director

CALL TO ORDER

IDENTIFY VOTING MEMBERS

APPROVAL OF AGENDA

Debbie Howard made a motion, seconded by Ashley Spain to approve the agenda. Unanimously approved

APPROVAL OF MINUTES from July 9, 2020

Debbie Howard made a motion, seconded by Michael Johnson to approve the minutes as written. Unanimously approved

NEW BUSINESS

ZA-20-02 LESLEY THOMAS The applicant is requesting an amendment to the Town of Smithfield Unified Development Ordinance (UDO) Article 6, Section 6.5 Table of Uses and Activities to allow for child care centers as an accessory use to Churches/ Places of Worship as a special use in all zoning districts that allow for Churches/ Places of Worship.

Mr. Helmer said child care centers are regulated by the Division of Child Development and Early Education and are defined as a child care arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. This also includes a center located in a residence, where the program is in a residence and the licensed capacity is six through twelve children, or up to fifteen school-age children. Religious sponsored programs are given the option in child care law to operate under a Notice of Compliance with child care rules and laws rather than a child care license. They meet the rules for a one-star

license except that they are exempt from certain child care rules regarding certain age appropriate activities, staff qualification and training requirement. The Division of Child Development and Early Education monitors programs that operate under a “Notice of Compliance” in the same manner all other programs are monitored to ensure the facilities are healthy and safe for children. If religious sponsored programs receive child care subsidies, the exemptions apply, except they must meet the health and safety training requirements of staff.

Mr. Helmer went on to say in 1994 the Town of Smithfield adopted a zoning ordinance amendment that permitted day care establishments in all residential zoning districts with a Board of Adjustment approved conditional use permit. The subsequent Unified Development Ordinance adopted in 2008 removed day care centers from the list of permitted uses in all residential zoning districts. All day care establishments permitted before 2008 are now considered legal non-conforming and cannot be rebuilt if completely destroyed by fire or other natural disasters. In the 2016 UDO, child care centers are not allowed in residential districts as either primary or accessory uses. The draft zoning ordinance amendment will allow child care centers with a Town Council issued special use permit as an accessory use to churches and places of worship in all zoning districts that currently allow for churches and places of worship.

All child care centers accessory to churches will be required to meet the following existing supplemental regulations for child care centers and Churches/places of worship.

SECTION 7.4 CHILD CARE FACILITIES. (Supplemental Regulations)

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.

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

7.4.1.3. Minimum paved off-street parking spaces: Two spaces plus one for each employee.

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.

Childcare centers are also required to meet the supplemental regulations for Churches/ Places of Worship.

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.

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.

Mr. Helmer said Planning Staff recommends approval of the zoning text amendment ZA-20-02 with a statement declaring the request is consistent with the Town of Smithfield comprehensive Growth Management Plan and that the request is reasonable and in the public's interest.

Mr. Upton asked if the earlier statement about child care centers being regulated by the Division of Child Development and Early Education was the State. He also asked if they were supervised by the State.

Mr. Helmer said yes, the State. There is an inspection process.

Mr. Upton asked if the supplemental regulations were observed.

Mr. Helmer said the supplemental regulations are in addition to the State's requirements. They are put in place so that the Town Council and Planning Board can look at it in terms of the impact it may have at the requested locations

Debbie Howard made a motion to recommend approval of zoning text amendment ZA-20-02, adding Child Care Centers as an accessory use to Churches/Places of Worship as a special use. The Planning Board finds the amendment to Article 6, Section 6.5 Table of Uses and Activities 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; seconded by Ashley Spain. Unanimously approved

Old Business: None

Adjournment

Being no further business, Ashley Spain made a motion seconded by Debbie Howard to adjourn the meeting. Unanimously approved

Respectfully Submitted,



Julie Edmonds
Administrative Support Specialist



Request for Town Planning Board Action

Agenda Item: Zoning Text Amendments
Date: 10/1/20

Subject: Zoning Text Amendments to Articles 3, 4, 5, 6 and 7
Department: Planning Department
Presented by: Stephen Wensman, Planning Director
Presentation: Business Item

Issue Statement

Staff has prepared and is requesting review of proposed UDO Amendments to Articles 3, 4, 5, 6 and 7 in order to allow conditional zoning, to provide for quasi-judicial approvals of subdivision preliminary plats, to adopt Historic Preservation Commission and regulations, to incorporate the 160D enabling legislation changes, and to fix text errors, ambiguities and provide clarity to some sections.

Financial Impact

None

Action Needed

To review of proposed UDO Amendments to Articles 3, 4, 5, 6 and 7 and to specifically address the key issues.

Recommendation

Staff recommends the Council provide guidance on the proposed UDO Amendments.

Approved: Town Manager Town Attorney

Attachments:

1. Staff Report
2. Draft UDO Amendments, Articles 3, 4, 5, 6 and 7



Staff Report

Agenda Zoning Text
Item: Amendment

REQUEST:

Planning Staff is requesting Planning Board and Town Council review the draft amendment to the Town of Smithfield Unified Development Ordinance (UDO) Articles 3, 4, 5, 6 and 7 in order to allow conditional zoning, to provide for quasi-judicial approvals of subdivision preliminary plats, to adopt Historic Preservation Commission and regulations, to incorporate the 160D enabling legislation changes, and to fix text errors, ambiguities and provide clarity to some sections.

ANALYSIS:

The proposed UDO amendment to allow conditional zoning, to provide for quasi-judicial approvals of subdivision preliminary plats, to adopt Historic Preservation Commission and regulations, and to incorporate the 160D enabling legislation changes into the UDO requires changes to Articles 3, 4, 5, 6 and 7. The intent of the amendment is to:

- Allow for Conditional Zoning option as a parallel zoning district to each of the primary zoning districts. Conditional Zoning is a negotiated approach to a legislative decision (rezoning) allows maximum flexibility to tailor regulations to a site and project. Conditional Zoning Districts are zoning districts in which all the site-specific standards and conditions are incorporated into the zoning district regulations. Our current PUD regulations are a form of conditional zoning for mixed use developments. Conditional Zoning is a similar process but for developments that are not mixed use. The conditional zoning can only be for a landuse that is permitted in the primary zoning district and the only the landuse shown on the approved site plan.
- Change Major Preliminary Plat approvals from Administrative to Quasi-Judicial. This will allow the Town Council to conditionalize subdivision approvals and provide for public comment/expert comments. This change will also allow developers to submit preliminary plats without complete engineered construction plans as currently required. The TC approval of plats will allow for conditions to be incorporated into the preliminary plat approval, such as requiring construction drawings conform to the UDO.
- Adopt required changes to the UDO as a result of changes to the new combined enabling legislation both Counties and Towns, 160D. 160D requires Towns to adopted 160D changes into local regulations no later than July 1, 2001. The changes affect

all Articles of the UDO; but only those in Articles 3 ,4, 5, 6 and 7 are being addressed at this time.

- Adopt HPC and regulations into the UDO. These were left in the Town's Administrative Code and left out of the UDO when the Planning Board and Board of Adjustments were moved to the UDO.

Key Issues. In order to proceed with a final draft of the proposed text amendments, the following key issues should be addressed:

1. What role should the Planning Board have in quasi-judicial subdivision review?
2. What role should the Planning Board have in Special Use Permits?
3. Should Special Use Permit findings of fact be updated?
4. What should the expiration of abandoned Special Uses be? As drafted, if a special use ceases for 6-months or more, the special use is void. This would help the Town eliminate many non-conforming sites, such as used car dealerships.
5. Should Administrative review of Major Subdivision Final Plats be by Staff or Town Council? Appeals of Staff review would go to the BOA.
6. Should the Town allow rezoning to R-6, reversing a previous policy, in order to accommodate market demand? The South 2nd Street lots are a recent example of recent R-6 development.
7. Multi-family residential development currently requires a special use permit and there are no standards. Should multi-family be a permitted use with supplementary standards, to encourage Conditional Zoning with a site-specific plan?
8. There are many proposed changes to the Table of Uses, turning most special uses into permitted uses with supplemental standards. What uses should remain special uses?
9. There are many new supplementary standards being proposed. These should be carefully reviewed. What standards need to be changed and what additional standards are needed?

The following is a summary of the changes to each Article:

ARTICLE 3:

Article 3 addresses the administrative, legislative and quasi-judicial authority under the UDO. The proposed changes to the UDO include:

- Throughout the Article references to state statute were updated as related to 160D.
- 3.1.2.9. Deletes UDO Administrator's duty to provide nonconforming determinations of expansion of nonconforming uses and structures in anticipation of a future update to Article 9.
- 3.1.2.9. Adds duty to maintain records of the HPC.
- 3.2. Updates Ethics section as required with legislative enabling legislation 160D.

- 3.3.3. Updates Planning Board composition and vacancies as required with legislative enabling legislation 160D.
- 3.3.4.12. Adds to the Planning Board's duties a review of quasi-judicial applications as requested by the Planning Board and Town Council.
- 3.4.2.1. Updates reference to state statutes as required with legislative enabling legislation 160D.
- 3.4.2.2. Updates membership of the BOA as required with legislative enabling legislation 160D.
- 4.4.2.4. Updates Quorum and Voting of BOA as required with legislative enabling legislation 160D.
- 3.5 Inserts updated HPC regulations into the UDO (it was formerly in the Town's Administrative Code and was not moved when the UDO was update in 2016).
- 3.6.1. Add's quasi-judicial review of major subdivision plats to the Town Council's authority.
- 3.6.2. Add's conditional zoning to the Town Council's legislative authority.
- 3.6.4. Cleaned up text errors.

ARTICLE 4:

Article 4 addresses Legislative and quasi-judicial procedures in the UDO. Proposed changes include:

- Throughout the Article references to state statute were updated as related to 160D.
- 4.1.1. Add a summery table for required permits/approvals and process type (Admin./Legislative/Quasi-Judicial).
- 4.2. Includes updates as required with legislative enabling legislation 160D.
- 4.2.1. Strikes 45-day requirement for Town Council or BOA hearing after application submittal. The timeline was not feasible currently or under amended UDO.
- 4.3.2.1. Includes a 160D update about notice requirements.
- 4.3.2.3. Updates reference to state statutes related to 160D.
- 4.3.3. Updates the notice and public hearing section to include conditional zoning and preliminary plats and to address 160D requirements.
- 4.4. Updates expiration of permits by referencing state statutes and expirations of SUPs, including expirations of SUPs if use ceases for 6 months.
- 4.6.3. Adds noticed public meetings to the Planning Board actions.
- 4.6.4.1. Clean up of text.
- 4.6.4.6.3. Addresses changes related to 160D.
- 4.6.4.7. Adds Conditional Zoning/PUD procedures.
- 4.7. Updates vested rights references to statutes and procedures for plats, SUPs and site-specific CZ/PUD plans.
- 7.9.3.1. Clean up UDO, there are no alternates for Town Council.
- 4.9.3.5. Updates Special Use findings of fact requirements.

- 4.10. Updates reference to state statutes and updates voting requirements of the BOA.
- 4.11. Adds procedures section for preliminary subdivision plats.
- 4.12.1.2 Adds regulations for transmitting materials to various parties.

ARTICLE 5:

Article 5 establishes the development review process including subdivisions. In order to incorporate quasi-judicial review of major subdivision preliminary plats and to accurately describe the development review process the text changes are proposed and the order of the sections have been changed. The changes include:

- Throughout the Article references to state statute were updated as related to 160D.
- 5.3. Add conditional zoning and clean up text.
- 5.5. Add Major Subdivision Final Plats to Administrative approvals.
- 5.5.1. Update Admin Approval Flow chart to include Major Subdivision Final Plats
- 5.5.2. Provide clarifications in the text.
- 5.5.3. Delete section because it is out of sequence.
- 5.5.5. Added a process section for Minor Subdivisions.
- 5.5.6. Added a process section for Major Subdivision Final Plats.
- 5.6. Moved Site Plan Requirements from subdivision section. Subdivision requirements are in Article 10.
- 5.7. Updated Major Subdivision Plats Section for quasi-judicial preliminary plat review and administrative final plat review.
- 5.7.3. Updated the flow chart accordingly.

ARTICLE 6:

Article 6 establishes the Town's Zoning Districts and allowed uses within each district. Changes include:

- Throughout the Article references to state statute were updated as related to 160D.
- 6.3.3. Removed irrelevant text – PUDs are a zoning district.
- 6.3.4. Delete the prohibition to new R-6 rezonings. The smaller lots are currently desired in the marketplace for both developers and home buyers.
- 6.3.5. Delete two-family dwellings from description of R-MH District and deleted text about multifamily and manufactured home parks as special uses. The table of uses dictates what uses are special uses.
- 6.3.6. Deleted PUD as a Primary Zoning District in order to move it to a Conditional Zoning District section.
- 6.3.10. and 6.3.11. Add text to distinguish light industrial from heavy industrial.

- 6.3.13. Deleted AD District. There is no land zoned for AD in the Town or ETJ. The airport will be within an Airport Overlay District setting regulations for use and height in the airport safety zones.
- 6.3.14. Deleted the OS District. There is no land zoned for OS and there are no regulations for OS.
- 6.4. Added Conditional Zoning Districts section with descriptions of the two types of conditional zoning districts, CZ Districts and PUD.
- 6.5.3. and 6.5.4. Added description to Watershed Districts
- 6.4.5. Added AHH Overlay. The current airport master plan process will produce model ordinance language to be adopted by the Town to reduce the potential for airport hazards.
- 6.4.6. Create HO Overlay. This overlay district is mapped, but there are no district regulations in the UDO.
- 6.5. Amend uses in the Table of Uses, reducing the number of special uses by adding more rigorous supplementary standards for permitted uses and to encourage more conditional zoning. Also removing PUD, AD, AHH, OS RHO and ECO from the table of uses. The site-specific plan for PUDs identifies the uses and Overlay districts provide a layer of additional regulation over the primary zoning district uses.
 - Key changes:
 - Churches/Places of worship are permitted in all primary zoning districts to comply with RLUIPA.
 - Parks and playgrounds and recreation facilities are permitted uses, rather than special uses. These are typically approved with development or are Town projects. The Town can hold informational meetings with neighborhoods to shape the development of these facilities.
 - Multi-family will be permitted with standards. The standards are intended to be rigorous, to encourage most developers to choose Conditional Zoning to negotiate standards with a site-specific plan.
 - Licensable facilities will be permitted uses with standards rather than special uses.
 - Vehicle storage in conjunction with repair has been deleted as a use and new standards for vehicle storage has been incorporated into the Automobile Repair and Automobile Painting and Body Shop supplementary standards.
 - Bars and Nightclubs will be the new term for private clubs, establishments that serve alcohol without food.
- 6.5.1 created a Section for Prohibited Uses.

ARTICLE 7:

Article 7 provides supplementary standards for specific land uses. With the adoption of conditional zoning, many land uses that were special uses are to be permitted with strict supplementary standards (typical of conditions that would be placed on the land use) with the intent that the strict standards will create more conditional rezonings with site-specific

plans which give the Town Council an ability to shape development in a legislative decision making process.

Changes to Section 7 include:

- 7.2. Require/clarify the requirement for concrete curb and gutter between the building and the public street and other paving requirements. Allows gravel paving to the side and rear of the industrial development.
- 7.3. Updates Accessory Structure section. Allows 2 accessory structures on properties greater than ½ acre in size in the R20A District.
- 7.5.2. Adds new standard for Accessory Dwelling Units in the B-1 District. This was developed in coordination with the DSDC.
- 7.13. Updated Temporary Office Units/Modular Office Units. Temporary Uses throughout this Article have been rewritten.
- 7.15. Fairgrounds was not a standard, but rather a definition; therefore, it was moved to Appendix A- Definitions.
- 7.22. Strengthened and clarified standards for Automobile Service Stations; Gas Pumping Stations.
- 7.27 Street vendors was deleted. This is already in the Town's Administrative Code.
- 7.30 Temporary Uses section was reworked.
- 7.34. Cluster Development regulations were updated including a prohibition to stormwater SCMs within required open space.
- 7.35. Created standards for Multi-family Residential.
- 7.36. Created standards for Animal Hospital/Veterinarians.
- 7.37. Created standards for Drive-in Facilities.
- 7.38. Created standards for Automotive Repair.
- 7.39. Created standards for Car Washes.
- 7.40. Created standards for Mini-storage.
- 7.41. Created standards for Outdoor Storage.
- 7.42. Created standards for Assembly uses/Event Centers.
- 7.43. Created standards for Public Utility Pump Station/ Utility Substation/ Switchstations which add's a screening requirement.
- 7.44. Created standards for outdoor vehicle storage, sales and display.
- 7.45. Created standards for Flea Markets.
- 7.46. Created standards for Kennels.
- 7.47. Created standards for Bed and Breakfasts.

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-20-03**

Whereas the Smithfield Planning Board, 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 Planning Board, 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 PLANNING BOARD AS APPROPRIATE:

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

That the final action regarding zoning ordinance amendment ZA-20-03 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 Planning Board and information provided at the regularly scheduled meeting of Planning Board; and

It is the objective of the Town of Smithfield Planning Board 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 Planning Board 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-20-03 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 Planning Board 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 Administrator3-2
Section 3.2 Conflicts of Interest3-3
Section 3.3 Planning Board3-3
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Section 3.5 Historic Preservation Commission.....3-12
Section 3.6 Town Council3-29

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

SECTION 3.1 UDO ADMINISTRATOR.

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

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

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

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

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

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

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

3.1.2.6. Provide administrative interpretations of the UDO.

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

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

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

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 ETHICS CONFLICTS OF INTEREST.

3.2.1. Ethics.

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

1. Derive a direct benefit from a contract with the town;
2. Attempt to influence an officer who derives a direct benefit from a contract with the town;
3. Solicit any gift, favor, reward, service or promise of reward including a promise of future employment for attempting to influence a contract with the town.

One has a direct benefit fit from the contract if he or she or his or her spouse has more than a 10 percent ownership or other interest in an entity that is a party to the contract, derives any income or commission directly from the contract, or acquires property under the contract (G>S> 14-234 (a1)(4))

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

1. The need to obey all applicable laws regarding official actions taken as a board member.
2. The need to uphold the integrity and independence of the board member's office.
3. The need to avoid impropriety in the exercise of the board member's official duties.
4. The need to faithfully perform the duties of the office.
5. The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records. (2009-403, s. 1.)

3.2.2. Ethics Education.

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

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

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

~~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 160D-301 ~~160A-361~~ to serve the public interest by promoting the public health, safety, and general welfare of the residents of the Town of Smithfield and its extraterritorial jurisdiction. It is the intent of the Town to have representation of a broad cross-section of community interests.

3.3.2. Purpose.

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

3.3.3. Creation and Organization.

3.3.3.1. Composition and Vacancies. The Planning Board shall consist of seven (7) members and two (2) alternate members. Five (5) members and one (1) alternate member shall be citizens and residents of the Town and shall be appointed by the Town Council. Two (2) members and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction of the Town as described pursuant to NCGS 160D-307 ~~160A-360 et seq.~~ and shall be appointed by the Board of County Commissioners, upon

ARTICLE 3. ADMINISTRATIVE/LEGISLATIVE/QUASI-JUDICIAL AUTHORITY

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 160D-307 160A-362, as amended. Alternate members shall not be entitled to vote on matters before the Planning Board except when a regular Planning Board member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent.

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

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

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

3.3.3.3. Offices and Duties.

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

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

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

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

3.3.3.4. Meetings.

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

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

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

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

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

3.3.3.4.5.1. Roll call

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3.3.3.4.5.2. Reading of minutes of previous meetings

3.3.3.4.5.3. Reports of committees

3.3.3.4.5.4. Unfinished business

3.3.3.4.5.5. New business

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

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

3.3.4. General Powers and Duties.

The general powers and duties of the Planning Board are:

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

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

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

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

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

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

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

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

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

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~~3.3.4.11, 3.3.4.12.~~ To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

~~3.3.4.12, 3.3.4.13.~~ To keep the Town Council and the general public informed and advised as to these matters.

~~3.3.4.13, 3.3.4.14.~~ To perform any other duties that may lawfully be assigned to it.

3.3.5. Planning Board Initiated UDO Amendments.

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

3.3.6. Advisory Committees.

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

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

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

SECTION 3.4 BOARD OF ADJUSTMENT.

3.4.1. Powers and Duties.

3.4.1.1. The Board of Adjustment shall hear and decide:

3.4.1.1.1. Appeals of decisions of administrative officials charged with enforcement of this Ordinance (as provided in Section 4.10.1) and requests for variances (as provided in Section 4.10.2). As used in this subsection, the term

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“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 (NCGS 160D-302 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, as described pursuant to NCGS 160D-307, 160A-360 et seq. and shall be appointed by the Board of County Commissioners of Johnston County, upon receipt of a resolution from the Town Council requesting that such appointments be made. If the Board of County Commissioners fails to make the appointments requested within ninety (90) days of receipt of the resolution, the Town Council shall make the appointments. The Town Council will ensure that proportional representation on the Board of Adjustments shall be maintained in accordance with NCGS 160D-307 160A-362, as amended. Alternate members shall not be entitled to vote on matters before the Board of Adjustment except when a regular Board of Adjustment member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent.

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

3.4.2.3. Meetings of the Board of Adjustment.

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

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

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

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

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

3.4.2.4. Quorum and Voting.

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

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

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

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

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

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

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

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

3.4.2.5. Board of Adjustment Officers and Duties.

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

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

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

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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 NCGS 160D-942, and the provisions of this chapter, the Town Council of Smithfield designates a commission to be known as the Smithfield Historic Preservation Commission.

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

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

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

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

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

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

3.5.3.2.4. Upon its first formal meeting, and prior to performing any duties under this article or under NCGS 160D-942, the commission shall adopt rules of procedure governing the commission's actions which are not governed by this article or the General Statutes. The commission shall also adopt principles and guidelines standards for new construction, alterations, additions, moving and demolition of designated historic landmarks and properties in historic districts. The guidelines standards may be amended by the Historic Preservation Commission. All standards guidelines and amendments shall be subject to approval by the Town Council.

3.5.4. Attendance at Meetings.

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

3.5.5. Meetings.

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

3.5.6. Minutes.

The commission shall keep permanent minutes of all its meetings, which shall be a public record.

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

3.5.7. Receipt of Gifts and Authority to Acquire Historic Properties.

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

3.5.8. Role of Council.

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

3.5.8. Overlay District Established; Boundaries; Permitted Uses.

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

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

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

The Town Council may also, in its discretion, refer the report and the proposed boundaries to any other interested body for its recommendation prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such

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district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subsection (1) shall be prepared by the commission and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the department of cultural resources in accordance with the provisions of section

3.5.8.2. Upon receipt of these reports and recommendations, the town may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

3.5.9. Designation of Landmarks.

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

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

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

3.5.10. Required Landmark Designation Procedures.

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

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

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

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

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

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

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

3.5.10.7. Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions

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upon the property limiting its use for preservation purposes shall be considered by the tax supervisor appraising it for tax purposes.

3.5.11. Powers of the Commission.

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

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

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

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

3.5.11.4. Restore, preserve and operate historic properties;

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

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

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

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

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

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

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

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

3.5.12. Certificate of Appropriateness Required.

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

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

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

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

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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

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ninety (90) days from the date the application is filed. As part of its review procedure, the commission may view the premises and seek the advice of the department of cultural resources or other such experts as it may deem necessary under the circumstances.

3.5.18. Appeals.

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

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

3.5.18.3. May be taken by any aggrieved party.

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

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

3.5.18.6. Shall be in the nature of certiorari.

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

3.5.19. Submission of New Applications.

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

3.5.20. Review Criteria for Certificates of Appropriateness.

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

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

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materials.

3.5.20.5. Roof shapes, forms and materials.

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

3.5.20.7. General form and proportions of buildings and structures.

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

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

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

3.5.21. *Classification of Approvals.*

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

3.5.21.1. *Normal Maintenance.*

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

3.5.21.1.1. *For All Properties:*

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

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

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

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

3.5.21.1.1.5. Replacement of roofing material with matching material.

3.5.21.1.1.6. Removing screen doors or storm doors.

3.5.21.1.1.7. Caulking and weather stripping.

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

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

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

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

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

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

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

3.5.21.1.2. For Noncontributing Properties.

3.5.21.1.2.1. Painting of non-historic material, whether previously painted or not

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

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3.5.21.1.2.4. Addition of new rear decks or porches

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

3.5.21.1.2.6. Addition of screen doors or storm windows

3.5.21.1.2.7. Alteration or replacement of roof materials

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

3.5.21.1.2.9. Installation of gutters

3.5.21.1.2.10. Alterations to ornamentation or to cladding material

3.5.21.2. Work Requiring a Certificate of Appropriateness

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

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

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

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

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

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

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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.		
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3.5.22. Certain Changes Not Prohibited.

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

3.5.23. Conflict with Other Laws.

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

3.5.24. Enforcement and Remedies.

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

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

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

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

In case any building, structure, site area or object designated as a historic landmark or located within a historic district established pursuant to this article is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the article, the town, the

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commission, or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building, structure, site, area or object. Such remedies shall be in addition to any others authorized for violation of a municipal ordinance.

3.5.25. Delay in Demolition of Landmarks and Buildings.

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

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

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

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

SECTION 3.6 TOWN COUNCIL.

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

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

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

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

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PART I. GENERAL PROVISIONS

SECTION 4.1 REQUESTS TO BE HEARD EXPEDITIOUSLY.

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

4.1.1 Permit/Process Type.

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

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Certificate of Appropriateness – Major	3.5	Quasi-Judicial	Planning	Yes	HPC	BOA	1 year	1 year
Appeal of Administrative Decision	4.10	Quasi-Judicial	BOA	Yes	BOA	Superior Court	30 days to Appeal	N/A
Variance	4.10	Quasi-Judicial	BOA	Yes	BOA	Superior Court	30 days to Appeal	N/A
Text Amendment	4.6	Legislative	PB	Yes	BOC	Superior Court	N/A	N/A
Map Amendment (Rezoning)	4.6	Legislative	PB	Yes	TC	Superior Court	N/A	N/A
Conditional Zoning District	6.4	Legislative	PB	Yes	TC	Superior Court	May be rescinded after 2 years	N/A
	4.6							
Planned Unit Development	6.4	Legislative	PB	Yes	TC	Superior Court	May be rescinded after 2 years	N/A
	4.6							
	10.110.19							
Vested Right	4.7	Legislative	PB	Yes	BOA	None	2 years or up to 5 years	N/A

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

SECTION 4.2 HEARING REQUIRED.

4.2.1. Before making a decision on an application for an amendment to the zoning map or zoning text, appeal of a decision of an administrative officer, variance, ~~or~~ special use permit, or major subdivision preliminary plat the Town Council or Board of Adjustment (as appropriate) shall hold a hearing on the application as soon after the ~~within forty-five (45) days of the~~ submittal of a completed application as feasible (provided that the public advertising requirements are met). The required application fee and all supporting materials must be received by the UDO Administrator before an application is considered complete and a hearing scheduled.

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.

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

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

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, including those separated by a street, railroad, or other transportation corridor as shown on the Johnston County tax listing at the last addresses listed for such property owners on the Johnston County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for rezoning, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all abutting properties to 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.

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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 160D-301 ~~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, and Major Subdivision Preliminary Plats.

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 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 , including those separated by a street, railroad, or other transportation corridor that is the subject of the hearing. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the 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.

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

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~~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.~~

~~4.4.4. 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 G.S. 160D-108 (d) (2) in compliance with 160D-403 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).~~

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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 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:

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

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

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

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

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

4.6.3. Action by the Planning Board.

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

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Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Town Council without a recommendation from the Planning Board. However, the Planning Board may request the Town Council to delay final action on the amendment until such time as the Planning Board can present its recommendations.

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

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

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

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

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

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.

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4.6.4.6.3. Town Council consideration of amendments and rezonings, including conditional zoning are legislative and 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 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 Procedure

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

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

4.6.4.7.2. Fair and Reasonable Conditions. Within an approved Conditional Zoning (CZ or PUD), no use shall be permitted except pursuant to the conditions imposed by the applicant on the Conditional Zoning in the approval of the rezoning. The Town Council and the applicant may mutually agree to additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this section, and to preserve public welfare, and justice. The provisions of the Conditional Zoning Master Plan shall replace all conflicting development regulations set forth in this ordinance which would otherwise apply to the

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development site. The Planning Board may recommend and the Town Council (with mutual approval of the applicant) may attach reasonable and appropriate conditions including, but not limited to, the location, nature, hours of operation, and extent of the proposed use(s). Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to this ordinance and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site. The applicant will have a reasonable opportunity to consider and respond to any conditions and site-specific standards proposed by either the Planning Board or the Town Council prior to final action. In accordance with G.S. 160D-7-3.

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

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

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

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

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

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

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

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

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

4.6.4.7.6 Effect of Approval

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

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

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

- Land area being added or removed from the Conditional Zoning District
- Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
- A change in land use or development type beyond that permitted by the approved Conditional District Master Plan.
- When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
- When there is an increase in the total number of residential dwelling units originally authorized by the approved Conditional Zoning Master Plan.
- When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Town Council. Changes of less than 10 percent may be approved by the Administrator.

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- Any change which alters the basic development concept of the Conditional Zoning Master Plan.

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

4.6.4.7.3.1. 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 160D-108 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 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%.

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- 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 160D-402 ~~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 160 D-108 ~~160A-385.4~~, may be established upon the approval or special approval of a site-specific development plan by the Town Council in accordance with the provisions outlined in this section. Approval by the Town Council of a site-specific development plan shall follow the procedural requirements for the issuance of a special use permit as outlined in Section 4.9. Changes in or modifications to an approved site-specific development plan shall be made only with the concurrence of the Town Council in accordance with the provisions of Section 4.9.7. A right which has been vested as provided for in this section shall, as a general rule, remain valid for two (2) years and shall attach to and run with the land. A vested right shall expire at the end of two (2) years if no building permit applications have been filed with the Town to construct the use or uses proposed in the approved site-specific development plan. If building permits are issued, the provisions of NCGS 160D-108 ~~160A-418~~ and ~~GS 160A-422~~ shall apply, except that a building permit shall not

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expire or be revoked because of the lack of progress during the two-year vesting period. The two (2) years may be extended up to five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the Town.

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

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

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

4.7.2.3. Site-Specific or Phased Development Plan. A site-specific or phased development plan which has been submitted to the Town of Smithfield by a landowner in accordance with NCGS 160D-108 (D)(3) ~~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 5.6 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.

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.

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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.

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.

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

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

SECTION 4.8 MORATORIUM.

The Town may adopt temporary moratoria on any Town development approval required by law in accordance with NCGS 160D-107 ~~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 5.6 ~~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.~~

4.9.2.2. No application shall be deemed complete unless it contains or is accompanied by a site plan drawn to scale which complies with the requirements contained in Section 5.6 ~~5.7.1~~ and a fee as specified in Section 2.7 ~~4.2.1~~.

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.

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4.9.3. Planning Board Action.

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

4.11.7. Planning Board Review. The Planning Board shall review the special use permit application and conduct a public meeting about the proposed special use permit in order to obtain public comments and to provide feedback to the applicant. Subsequent to the Planning Board review, the UDO Administrator shall schedule the evidentiary hearing before the Town Council within 30 days of the Planning Board review of the application.

4.9.4. 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. In the course of evaluating the proposed special use, the Town Council may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Town Council.

4.9.3.3. 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

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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

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 NCGS 160D-605.

~~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.~~

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~~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 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.

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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.

SECTION 4.10 APPEALS AND VARIANCES

4.10.1. Appeals.

4.10.1.1. Any person who has standing under GS 160D-405 ~~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.

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

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

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

4.10.1.8. When hearing an appeal pursuant to GS 160D-947 ~~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 160D-1402 ~~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.

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

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

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

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

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

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

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

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.

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

4.10.4. Board of Adjustment Action/Voting

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

4.11. PRELIMINARY SUBDIVISION PLATS (MASTER PLANS).

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

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

4.11.3. Pre-Application Procedure: See Section 5.4.

4.11.4. Required Application Information: All major subdivision preliminary plats shall be submitted in accordance with Section 10.100 and shall be accompanied by a completed application and payment of a fee as adopted by the Town Council (see Section 2.7). All major subdivision preliminary plats shall be submitted twenty-one (21) days in advance of the Planning Board meeting at which they are to be reviewed.

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

4.11.6. Public Notification. At least ten, but no more than 25 calendar days prior to the date of the Planning Board meeting, notice of the proposed petition or application shall be mailed by first class mail to the owner of that parcel of land and all abutting property owners including those separated by a street, railroad, or other transportation corridor as shown on the Johnston County tax listing at the last addresses listed for such property owners on the Johnston County tax abstracts. The party applying for the change in zoning classification shall submit, with the request for preliminary plat, a list of the names of the owners, their addresses, and the tax parcel numbers of the property involved in the change and all properties any portion of which is within two hundred

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(200) feet of the property to be considered for preliminary plat, as shown on the Johnston County tax listing. The application shall be considered incomplete without such material.

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

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

4.11.9. Public Hearing. The Town Council shall hold an evidentiary meeting in accordance with the procedures for quasi-judicial hearings (Section 4.11) on the proposed subdivision preliminary plat and shall approve, deny or approve with conditions, or table the application for a specific number of days. The Town Council may also request additional information of the applicant, other governmental agencies or interested/affected parties in order to aid in the review of the request.

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

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

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

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

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

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

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

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

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

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

1. Modification of special performance criteria, design standards, or other requirements specified by the Subdivision Preliminary Plat
2. A change in land use or development type beyond that permitted by the approved Subdivision Preliminary Plat.
3. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
4. When there is an increase in the total number of residential dwelling units originally authorized by the approved Subdivision Preliminary Plat.

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5. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Town Council. Changes of less than 10 percent may be approved by the UDO Administrator.
6. Any change which alters the basic development concept of the Subdivision Preliminary Plat.

SECTION 4.12 PROCEDURES FOR QUASI-JUDICIAL HEARINGS.

4.12.1. Evidence/Presentation of Evidence.

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

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

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

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

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

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

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

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

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

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

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

4.12.1.8. The decision-making board through the Chair, or in the Chair's absence, anyone acting as the Chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under GS 160D-404(b) ~~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.

4.12.2. Modification of Application at Hearing.

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

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

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4.12.3. Record.

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

4.12.3.2. All documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town in accordance with NCGS 160D-1402 ~~160A-393(l)~~.

4.12.4. Quasi-Judicial Decision.

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

SECTION 4.13 REHEARINGS.

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

SECTION 4.14 APPEALS OF QUASI-JUDICIAL DECISIONS.

4.14.1. Every quasi-judicial decision shall be subject to review by the Superior Court of Johnston County by proceedings in the nature of certiorari pursuant to GS 160D-1402 ~~160A-393~~.

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

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

**ARTICLE 5.
DEVELOPMENT REVIEW PROCESS**

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ARTICLE 5. DEVELOPMENT REVIEW PROCESS

SECTION 5.1 APPLICABILITY.

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

The development review process applies to all development actions within the planning jurisdiction except for existing individual lots for single-family detached residential and two-family residential (duplex) development. The provisions of this Article shall be applicable for all Minor and Major Subdivisions, ~~and~~ Site Plans, and Construction Plans, except as provided in Section 5.2. (Amended 1/2/2018)

SECTION 5.2 APPLICATION NOT REQUIRED; WAIVER.

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

5.2.1. Accessory structures.

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

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

SECTION 5.3 ZONING VERIFICATION.

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

SECTION 5.4 PRE-APPLICATION MEETING AND SKETCH PLAN.

5.4.1. The recommended pre-application meeting is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of the Town of Smithfield, and does not confer upon the applicant any development rights.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

The sketch plan is only a courtesy intended to inform the applicant of the approval criteria prior to submittal of the development plan; furthermore, sketch plan review does not constitute approval of the development plan and may not be substituted for any required approvals.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

5.4.4.9. The boundaries of any proposed phasing.

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

5.4.4.11. Acreage in public uses.

5.4.4.12. Approximate number of lots.

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

SECTION 5.5 ADMINISTRATIVE APPROVALS - SITE PLAN AND MINOR SUBDIVISION

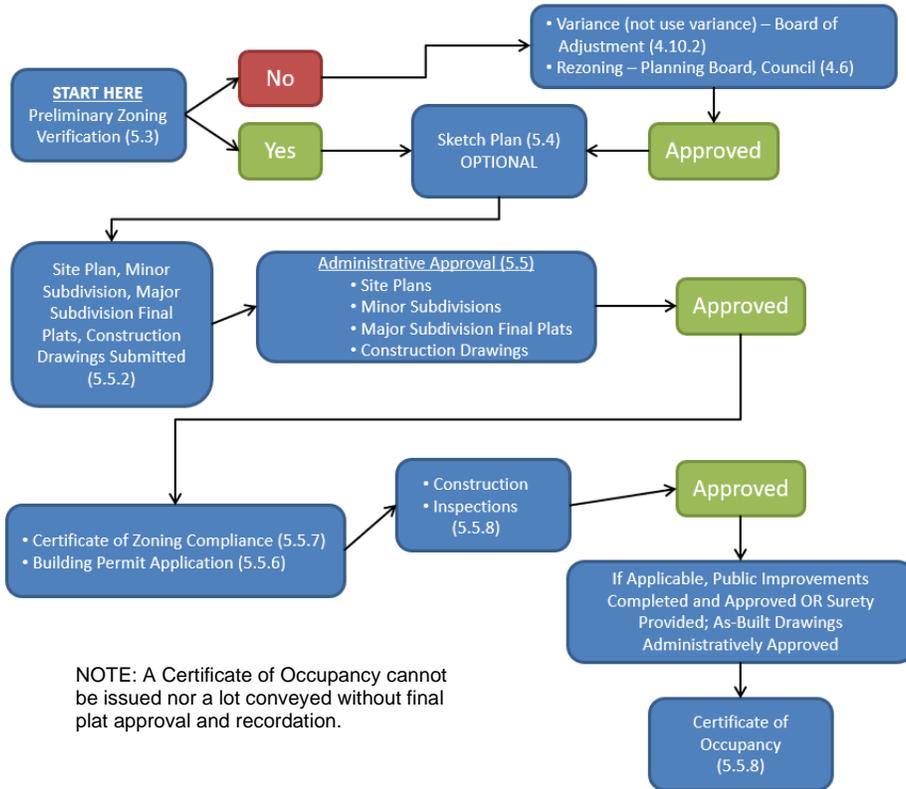
(AMENDED 1/2/2018)

Administrative approval includes the following types of development and permits:

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

5.5.1. Administrative Approval Flowchart.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS



5.5.2. Site Plan, Minor Subdivision, Major Subdivision Final Plat, or Construction Drawings Submitted for Review. (Amended 1/2/2018) A site plan of the proposed development shall be submitted in accordance with Section 5.6 ~~Sections 5.7 through 5.9~~. Plats of the proposed development shall be submitted in accordance with Section 10.100. Construction Drawings of the proposed development shall be submitted in accordance with 5.8. All applications shall be accompanied by the completed application and payment of a fee as adopted by the Town Council (see Section 2.7).

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

5.5.3. Preliminary Zoning Approval.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

5.5.3. Staff Review.

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

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

5.5.4. Approval (Amended 1/2/2018) All required local, state, and/or federal permits must be obtained prior to the approval of the site plan, construction plan, minor subdivision, or major subdivision final plat. ~~If the site plan is found to meet all applicable regulations of this Ordinance, then the UDO Administrator shall issue a certificate of zoning compliance.~~

5.5.5. Minor Subdivisions.

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

5.5.5.2. After this initial review has been completed, the subdivider or his authorized representative shall prepare a final plat as specified in Section 10.97 Section 10.99 and submit it to the UDO Administrator. At the time of submission, the subdivider shall pay to the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section 10.98 Section 10.100 for plat requirements.

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

5.5.6. Major Subdivision Final Plats. For Major Subdivision Final Plats, the UDO Administrator shall review the Final Plat for substantial conformance (Section 4.11.15) with the Preliminary Plat, conditions of approval, and phasing plan if applicable (Refer to Section 5.7). The UDO Administrator shall review to ensure the following have been complied with:

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

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

5.5.8. Appeal of Administrative Denial. (Amended 1/2/2018)

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

5.5.9. Building Permit Required.

5.5.9.1. No building or other structure shall be erected, moved, added to, demolished, or structurally altered without a building permit issued by the Building Inspector and a zoning permit issued by the UDO Administrator. No building permit shall be issued by the Building Inspector except in conformity with the provisions of the NC State Building Code

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

and this Ordinance, unless he or she receives a written order from the Board of Adjustment in the form of a variance to this Ordinance as provided for by this Ordinance.

5.5.9.2. Application for Building Permit. All applications for building permits shall be accompanied by plans, including a survey not more than one (1) year old, as specified by the NC State Building Code. The application shall include other information as lawfully may be required by the Building Inspector, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, dwelling units or rental units the building is designed to accommodate; conditions existing on the lot; floodplain development permit; and any other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance. A minimum of two (2) copies of the plans shall be required. One copy of the plans shall be returned to the applicant by the Building Inspector, after he shall have marked the copy either as approved or disapproved, and attested to same by his signature on the copy. One copy of the plans, similarly marked, shall be retained by the Building Inspector.

5.5.10. Certificate of Zoning Compliance.

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

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

5.5.11. Inspections and Certificates of Occupancy. (Amended 1/2/2018)

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

The Town Council must have accepted the offer of dedication for all publicly dedicated improvements, including roadways, contingent upon the recordation of the final plat or provision of performance guarantees approved by the Town Council as specified in Section ~~5.8.2.6~~ 5.7.7.10.

Commented [SW1]: Do performance guarantees need council approval

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

SECTION 5.6 SITE PLAN REQUIREMENTS.

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

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

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

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

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

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

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

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

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

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

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

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

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

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

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

5.6.1.17. The location of all common areas.

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

5.6.1.19. Landscaping and buffering plan showing what will remain and what will be planted, indicating names of plants, trees, and dimensions, approximate time of planting, and maintenance plans per the requirements of Article 10, Part II. The plan shall include

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

the tree line of wooded areas and individual trees eight (8) inches in diameter or more, identified by common or scientific name.

5.6.1.20. Proposed site lighting.

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

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

5.6.1.23. North arrow or compass rose.

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

5.6.2. Certificate of Zoning Compliance/Building Permit.

An application for a certificate of zoning compliance may be requested in advance of or concurrently with an application for a building permit in accordance with Sections ~~5.5.6 and 5.5.7,~~ and 5.5.8.

5.6.3. Inspections and Certificates of Occupancy.

No new building, or part thereof, shall be occupied; no addition or enlargement of any existing building shall be occupied; no existing building after being altered or moved shall be occupied; and no change of use shall be made in any existing building or part thereof, until the Building Inspector has issued a Certificate of Occupancy as provided in Section ~~5.5.8 5.5.9, above.~~

SECTION 5.7 MAJOR SUBDIVISION PLATS TOWN COUNCIL APPROVAL UPON PLANNING BOARD REVIEW AND RECOMMENDATION – MAJOR SUBDIVISION PRELIMINARY AND PLATS: (AMENDED 1/2/2018)

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

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

Major Subdivision Plats Include all subdivisions not meeting the requirements for a minor subdivision (see Section 4.10.5).

5.7.1. Major subdivision preliminary plats require Town Council evidentiary hearing and approval after Planning Board review.

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

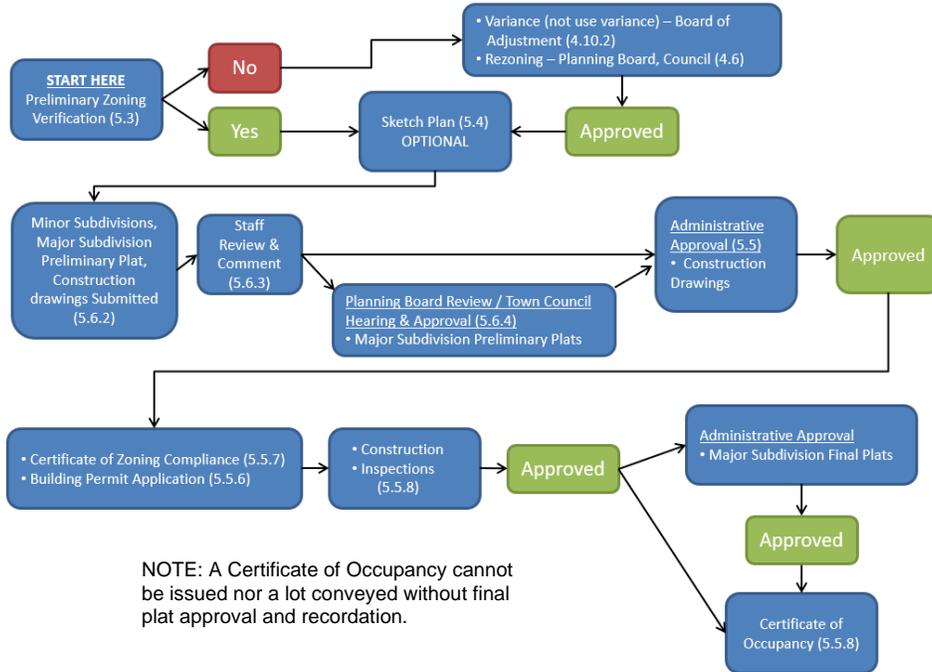
Commented [SW2]: Should be quasi-judicial with findings if reviewed by Council. Should PB review if QJ?

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

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

5.7.3. Town Council Review and Major Subdivision Approval Flowchart.



5.7.4. Major Subdivision Preliminary Plat or Construction Drawings Submitted for Review. (Amended 1/2/2018) All major subdivision preliminary plats shall be submitted in accordance with Section ~~10.100~~ Sections 5.7 through 5.9, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Town Council (see Section 2.7). All major subdivision preliminary plats shall be submitted twenty-one (21) days in advance of the Planning Board meeting at which they are to be reviewed.

5.7.5. Staff Review. The UDO Administrator will circulate the plan to relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but not necessarily be limited to, those listed in Section 5.5.3. ~~5.5.4.~~

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

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

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

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

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

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

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

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

5.7.6.3.1. Approve the application;

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

5.7.6.3.3. Deny the application;

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

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

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

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

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

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

~~5.6.4.4. The Council may take the following actions:~~

~~5.6.4.4.1. Approve the application;~~

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

~~5.6.4.4.3. Deny the application;~~

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

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

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

~~5.7.6 Town Council Denial:~~

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

SECTION 5.7 SITE PLAN REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

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

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

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

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

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

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

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

~~5.7.1.17.~~ The location of all common areas.

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

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

~~5.7.1.20.~~ Proposed site lighting.

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

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

~~5.7.1.23.~~ North arrow or compass rose.

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

~~5.7.2. Certificate of Zoning Compliance/Building Permit.~~

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

~~5.7.2. Inspections and Certificates of Occupancy.~~

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

5.8 Subdivision Procedures

~~5.8.1.1. Review Procedure for Minor Subdivisions.~~

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

~~5.8.1.2.~~ After this initial review has been completed, the subdivider or his authorized representative shall prepare a final plat as specified in Section 10.97 Section 10.99 and submit it to the UDO Administrator. At the time of submission, the subdivider shall pay to the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section 10.98 Section 10.100 for plat requirements.

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

~~5.8.2. Review Procedure for Major Subdivisions.~~

~~8.8.2.1. Preliminary Plat.~~

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

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

~~5.8.2.1.2. The subdivider or his or her authorized agent shall submit five (5) copies of the preliminary plat to the UDO Administrator who shall evaluate the plan to determine whether or not it meets the requirements of this Ordinance. The UDO Administrator will solicit and receive comments from other persons or agencies before making its final recommendations. If the application is complete, the UDO Administrator will submit it to the Planning Board according to the schedule established in Section 5.6.4.~~

5.7.8. Major Subdivision Final Plat.

5.7.7.1. At the time of submission of the final plat, the subdivider or his or her authorized agent shall pay the Town an application fee as established by the Town Council in accordance with Section 2.7. Refer to Section ~~40.98~~ 10.100 for plat requirements.

5.7.7.2. Within 24 months after approval of the preliminary plat by the Town Council, the subdivider shall submit a final plat showing that he or she has completed the subdivision according to the preliminary plan and phasing plan (if applicable). The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plat, provided that all required improvements have been installed, inspected and approved as called for in the approved preliminary plat or a surety bond or similar financial instrument has been approved by the Town Council, in accordance with Section 5.7.7.10

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

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

5.7.7.4. The final plat shall be prepared by a surveyor licensed and registered to practice in the state. It shall conform to the provisions of plats, subdivisions, and mapping

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requirements as set forth in GS 47-30, as amended, and the *Standards of Practice of Land Surveying in North Carolina*.

5.7.7.5. The final plat shall depict or contain the information specified in Section ~~40.98~~ 10.100. Plats not illustrating or containing the information required in Section ~~40.98~~ 10.100 shall be returned to the subdivider or his or her authorized agent for completion and resubmission.

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

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

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

5.7.7.9. Property Owners Association Covenants Review. Prior to approval of any final plat for a major subdivision, the UDO Administrator shall review the covenants of the Property Owners Association to ensure compliance with Town requirements. The covenants shall include provisions for the ownership and maintenance of all privately-held facilities. The UDO Administrator will refer the covenants to the Town Attorney for review and approval.

5.7.7.10. Performance Guarantees. In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the Town of Smithfield may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the Town

ARTICLE 5. DEVELOPMENT REVIEW PROCESS

Council, if all other requirements of this Ordinance are met. The Town shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements.

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

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

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

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

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

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

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

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

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

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

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

The Town Council, through its attorney or other official so designated, may take any action to enforce this Ordinance as provided in Section 1.8. Civil penalties may be issued in accordance with Section 1.8. The Town Council may direct the enforcement of this Ordinance by any method listed in NCGS 160D-101 ~~General Statutes 160A-474~~, including enjoining the transfer or sale of land in an illegal subdivision. Building permits required pursuant to NCGS 160D-1110 ~~460A-417~~ may be denied for lots that have been illegally subdivided.

5.7.8. Procedure for Plat Recordation.

After the effective date of this Ordinance, no subdivision plat of land within the Town's jurisdiction shall be filed or recorded until it has been submitted to and approved by the appropriate agencies, and until this approval is entered in writing on the face of the plat by the UDO Administrator in accordance with Section 10.119 ~~chairperson or head of that agency~~. All publicly dedicated improvements must be accepted by the Town Council contingent upon final plat recordation or acceptance of an approved performance bond.

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

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5.7.9. Issuance of Permits

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

5.7.10. School Site Reservation.

In accordance with ~~NCGS 160D-804~~ ~~160A-372~~, if the Town Council and the Johnston County Board of Education have jointly determined the specific location and size of any school sites to be reserved in accordance with the Town of Smithfield Comprehensive Plan, staff shall immediately notify the Board of Education in writing whenever a sketch plan for a subdivision is submitted which includes all or part of a school site to be reserved. The Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does wish to reserve the site, the subdivision shall not be approved without such reservation. The Board of Education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the developer may treat the land as freed of the reservation.

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

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

SECTION 5.8 CONSTRUCTION DRAWING REVIEW REQUIREMENTS.

5.8.1. Applicability and Process. *(Amended 1/2/2018)*

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

5.8.2. Submittal Requirements.

Construction Drawings shall include the following:

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

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

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ZONING DISTRICTS**

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ARTICLE 6. ZONING DISTRICTS

SECTION 6.1 ESTABLISHMENT OF ZONING DISTRICTS.

In accordance with the requirements of NCGS Section ~~160D-703~~ ~~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, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.5 showing the uses allowed in each district. The following describes the processes of each of the categories that the uses are subject to:

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

SECTION 6.3 PRIMARY ZONING DISTRICTS.

ARTICLE 6. ZONING DISTRICTS

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

6.3.1. R-20A Residential-Agricultural District.

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

6.3.2. R-10 Single-Family Residential District.

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

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

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

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~~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.

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

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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 are incorporated into the zoning district regulations. Individual conditions and site-specific standards that can be imposed are limited to those needed to bring a project into compliance with town ordinances and adopted plans and those addressing the impacts reasonably expected to be generated by use of the site. Conditional Zoning may only occur at the owner's request and cannot be imposed without the owner's agreement. Some flexibility can be granted, deviating from the standards in the corresponding general zoning district and supplemental standards with the rezoning (such as lot sizes and setbacks).. however, these should be carefully considered and should correspond to other Town objectives. With an approval of a conditional zoning application, an ordinance 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

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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.

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.

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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 Overly 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.

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SECTION 6.5 TABLES OF USES AND ACTIVITIES – PRIMARY ZONING DISTRICTS.

P - Permitted Use
S - Special Use

PS - Permitted Use with Supplemental Regulations
SS - Special Use with Supplemental Regulations

Blank - Not Permitted

Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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
ACCESSORY USES/BUILDINGS																	
Accessory structures/buildings	<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>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>P</u>		<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>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>Section 7.3</u>
Child care center (as an accessory use for a principal business)							<u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>PS</u>	<u>PS</u>					<u>Section 7.4.1</u>
<u>Customary home occupations</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>Section 7.7</u>
Dwelling in principal business as an accessory use							<u>SS</u> <u>PS</u>	<u>PS</u>									<u>Section 7.5</u>
Granny pods/temporary health care structures	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>								<u>PS</u>		<u>Section 7.6</u>
<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</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>		<u>S</u> <u>P</u>								<u>S</u>		
Public or private neighborhood tennis courts	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>		<u>S</u> <u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>					<u>S</u>		
Public or private neighborhood basketball courts	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>					<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>

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P - Permitted Use
S - Special Use

PS - Permitted Use with Supplemental Regulations
SS - Special Use with Supplemental Regulations

Blank - Not Permitted

Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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
<u>Temporary office units/modular office units</u>	PS	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	PS	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	PS					<u>Section 7.13</u>
Solar energy generating facility, accessory	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS					Section 7.8
<u>Temporary Uses- Special Events</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>	<u>PS</u>					<u>Section 7.30</u>
Temporary storage facility (portable storage units)	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS					Section 7.9
Wind energy generating facility, accessory	PS	PS	PS	PS	PS		PS	PS	PS	PS	PS	PS					Section 7.10
<u>EDUCATIONAL INSTITUTIONAL</u>																	
Community college	S						S P	S	S	S	S	S					
Libraries							P	P	P	P							
Schools, public and private	S	S	S	S	S		P		P								
<u>INSTITUTIONAL</u>																	
Armories							P										
<u>Event Center</u>									<u>PS</u>	<u>PS</u>							<u>Section 7.42</u>
<u>Buildings, Governmental offices</u>							P	P	P	P	P	P	P				
Cemeteries	S P						P										

ARTICLE 6. ZONING DISTRICTS

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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
Churches/places of worship	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S	<u>PS</u> S					Section 7.32 <u>Section 7.42</u>
Club or private lodge meeting halls							<u>PS</u> S		<u>PS</u> S	<u>PS</u> S							<u>Section 7.42</u>
Clubs, public or private-									S	S							
Community centers							<u>PS</u> S										<u>Section 7.42</u>
Country clubs, <u>golf courses</u>	<u>P</u> S	S	S	S	S												
Crematory										<u>P</u>	<u>P</u>	P					P
Electric substations	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>						
Government Service uses (i.e., police, fire)	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>					
Hospitals							P		P	P							
Public Institutional 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>PS</u>			S	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>	<u>PS</u>	<u>PS</u>					<u>Section 7.43</u>
US postal services							S	S	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
Utility stations	S	S	S	S	S		S	S	S	S	P	P	S	S			
Public water treatment, waste water treatment							<u>P</u>										
MANUFACTURING AND INDUSTRIAL																	
Asphalt and concrete batch plant												P					
Artisan's workshop (3,000 square feet or less)	PS						PS	PS	PS	PS	PS						Section 7.11 Section 7.2
Artisan's workshop (greater than 3,000 square feet)										SS	SS <u>PS</u>	SS					<u>Section 7.11</u> <u>Section 7.2</u>
Bakery products, candy, confectionary manufacturing									S	S P	P	P					<u>Section 7.2</u>
Building materials sales and storage,									S	S	P	P					
Carpet and upholstery cleaners									<u>P</u>	P	P						
Clothing and finished fabric products, manufacture of											P	P					
Contractors, building (with outdoor storage)							P	P	<u>PS</u>	<u>PS</u>	P	P					<u>Section 7.41</u> <u>Section 7.2</u>
Contractors, building (no outside storage)							P	P	P	<u>P</u>							

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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
Contractors, <u>heavy construction</u> equipment sales/rental/storage												P					<u>Section 7.41</u> <u>Section 7.2</u> <u>Section 4.44</u>
Contractors, heavy construction												P					
Contractors, special trades (no storage)								P	P	P	P	P					
Data Center											<u>P</u>	<u>P</u>					
Electric motor repair											<u>P</u>	P					
Electrical and electrical machinery, equipment and supplies								S	PS S	PS S	PS	P					<u>Section 7.41</u> <u>Section 7.2</u>
Food processing facilities												P					<u>Section 7.2</u>
Fuel and ice dealers											S	S					
Gas companies with Propane /Fuel bulk storage												S <u>PS</u>					<u>Section 7.41</u>
Industrial research offices and laboratories											P	P					
Industrial uses not having an injurious effect on the town and not otherwise listed/identified												SS					<u>Section 7.2</u> <u>Section 7.12</u>
Lumber and wood products, sales <u>and storage</u>											<u>PS</u>	<u>P</u>	P				<u>Section 7.41</u>
Machinery (engines, construction tools)													P				

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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
Manufacturing (textiles, clothing, scientific-instruments, and small machine assembly)											<u>P</u>	P					
Light manufacturing (<u>light</u>) uses and others not otherwise listed/identified (Amended 3/5/19)									§	§	<u>P</u> <u>PS</u>						Section 7.2
<u>Manufacturing (heavy) uses</u> , processing, or warehousing or transportation use or public use or utility												PS	SS				Section 7.12 Section 7.2
<u>Manufacturing/Processing of</u> Paperboard containers and boxes												<u>PS</u>					<u>Section 7.12</u> <u>Section 7.2</u>
<u>Manufacturing of</u> refrigeration, heating, and air conditioning machinery									§	§	<u>PS</u>	<u>PS</u>					<u>Section 7.12</u> <u>Section 7.2</u>
Temporary office units/modular office units	<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
Motion picture production and distribution											P	P					
Motor freight terminals, <u>bus terminals</u>											<u>PS</u>	<u>PS</u>					<u>Section 7.2</u>
Outlet stores <u>accessory to</u> for industrial manufacturing establishments											<u>PS</u>	<u>PS</u>					<u>Section 7.14</u>
Research laboratories							§	P	P		P	P					
Screw Manufacturing - Machine tool and die products (bolts, nuts, screws)												P					
Small engine repair									§	P	<u>P</u>	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	RHQ		ECO
Tanning, leather												P					
Textiles												P					
Welding repair									S	S	P	P					
OFFICES, PROFESSIONAL AND SERVICES																	
Clinic, <u>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>									PS	PS							<u>Section 7.37</u>
Labor unions (Offices)							P	P	P	P							
Office, computing and accounting machines (sales)							P	P	P	P							
Office, professional							P	P	P	P	S						
Offices (primary uses, not accessory)							P	P	P	P	P						
Opticians and optical goods							P	P	P	P							
RECREATIONAL																	
Billiard and pool halls							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 ramps	S	S	S	S	S		S	S	S	S				S			
Bowling alleys							S	S	S	S							
Dinner theatres							S	PS	PS	PS							<u>Section 7.42</u>
<u>Entertainment, Indoor (skating rinks, escape rooms, trampoline parks, etc.)</u>									<u>P</u>	<u>P</u>	<u>P</u>						
<u>Entertainment, Outdoor (amusement parks, mini-golf, driving ranges, etc.)</u>									<u>P</u>	<u>P</u>							
Fairgrounds	SS <u>PS</u>													SS			Section 7.15
Golf courses (see Country Clubs)	<u>P</u> S	S	S	S	S												
<u>Health clubs/Fitness centers</u>							<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>						
Mechanical rides (ferris wheels, roller coasters, bumper cars, etc.)									S	S							
Miniature golf/driving ranges									S	S							
Movie theaters								PS	PS	PS							Section 7.42
Nature observation points	<u>P</u> S	<u>P</u> S	<u>P</u> S	<u>P</u> S	<u>P</u> S		<u>P</u> S	<u>P</u> S	<u>P</u> S	<u>P</u> S				S			
Parks and recreation areas	<u>P</u> S	<u>P</u> S	<u>P</u> S	<u>P</u> S	<u>P</u> S		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
Playgrounds	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>		P	P	P	P							
Recreation buildings and facilities for residential developments	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>	<u>P</u> <u>S</u>					<u>P</u> <u>S</u>							
Skating rinks							S	S	S	S							
Video arcades							S	S	<u>S</u> <u>P</u>	<u>S</u> <u>P</u>							
RESIDENTIAL																	
Residential Cluster development	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u>													Section 7.34
Dwelling, single-family attached (townhomes)/ multi-family/townhouses/ condominiums			<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u>		<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>	<u>SS</u> <u>PS</u>							Section 7.35
Dwelling, single-family detached	P	P	P	P	P		S	<u>S</u>	S				P		P		
Dwelling, two family (duplex) on single lot			P	P	<u>P</u>		<u>S</u>	<u>S</u>	S								
Licensable Facilities: Adult care home	<u>PS</u> <u>S</u>		<u>PS</u> <u>S</u>	<u>PS</u> <u>S</u>			<u>PS</u>										
Family care home	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>	<u>PS</u>		<u>PS</u>										Section 7.16
Family child care home	<u>PS</u> <u>SS</u>	<u>PS</u> <u>SS</u>	<u>PS</u> <u>SS</u>	<u>PS</u> <u>SS</u>	<u>PS</u> <u>SS</u>		<u>PS</u> <u>SS</u>										Section 7.4.2
Family foster home	<u>S</u> <u>PS</u>	<u>S</u> <u>PS</u>	<u>S</u> <u>PS</u>	<u>S</u> <u>PS</u>													

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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	RHQ		ECO	
Multi-unit assisted housing with services	<u>S</u> <u>PS</u>						<u>PS</u>											Section 7.35
Residential child-care facility				<u>S</u>														
Small child care center		PS	PS	PS														Section 7.4.2
Loft and studio apartments							<u>PS</u>	<u>PS</u>	<u>PS</u>									
Manufactured home, Class A on individual lot	PS				PS													Section 7.17
Manufactured home, Class B on individual lot	SS PS				PS													Section 7.17
Manufactured home park					<u>PS</u> <u>SS</u>													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											PS							Section 7.33
Temporary emergency, construction, and repair residences	SS <u>PS</u>	SS <u>PS</u>	SS <u>PS</u>	SS <u>PS</u>	SS <u>PS</u>													Section 7.19
Tiny houses	<u>PS</u>	<u>PS</u>	<u>PS</u>	PS														Section 7.20
RETAIL SALES AND SERVICES																		

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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	
<u>ABC Stores</u>									<u>P</u>	<u>P</u>								
Adult <u>and sexually oriented</u> businesses												PS						Section 7.21
Animal hospitals/ veterinarians									<u>S</u>	<u>S</u>	<u>S</u>							<u>Section 7.36</u>
Antique shops								P	P	P								
Any use which employs, as incidental or subordinate to the primary use of the property, more than 5 coin-operated amusement devices								<u>S</u>	<u>S</u>	<u>S</u>								
<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>									<u>S</u>	<u>S</u>								Section 7.44
Automobile parts and supply store <u>sales</u>								P	P	P								
Automobile renting and leasing									<u>S</u>	<u>S</u>								
<u>Automobile repair</u>									<u>PS</u>	<u>PS</u>								<u>Section 7.38</u> <u>Section 7.44</u>
<u>Automobile Painting and Body Shops</u>										<u>PS</u>	<u>PS</u>	<u>PS</u>						<u>Section 7.38</u> <u>Section 7.44</u>
Automobile sales and automobile broker									<u>S</u>	<u>S</u>								

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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	RHQ		ECO	
Automobile service stations; <u>gas pumping stations</u>									PS	PS		PS						Section 7.22
<u>Bakery</u>								<u>P</u>	<u>P</u>	<u>P</u>								
Bar or nightclub									SS	SS								Section 7.42
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	PS	PS	PS	PS	PS		PS	PS	PS	PS								<u>Section 7.15</u>
Boat sales and service									PS	PS								<u>Section 7.44</u> <u>Section 7.41</u>
Car washes									<u>PS</u>	<u>PS</u>								<u>Section 7.39</u>
Carpet and rug dealers								P	P	P								
Catering establishments								P	P	<u>P</u>	P							
Commercial animal kennels/boarding facilities, including accessory grooming (indoor facilities only)	S								<u>PS</u>	<u>PS</u>								<u>Section 7.45</u>
Commercial animal kennels/boarding facilities, outdoor kennels										<u>PS</u>	<u>PS</u>	<u>S</u>						<u>Section 7.45</u>
Commercial <u>office</u> condominiums							P		<u>P</u>	<u>P</u>								
Convenience 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	
Convenience stores with gas pumps								S	S	S							<u>Section 7.22</u>
Distilleries								PS	<u>PS</u>	<u>SS</u>	PS						Section 7.24
Drug stores							S		<u>PS</u>	<u>PS</u>							<u>Section 7.37</u>
Exterminating services (Amended 7/7/20 ZA-20-01)									S	S	P	P					
Farmer's market								<u>S</u>	<u>S</u>	<u>S</u>							<u>Section 7.30.5</u>
Flea markets/vendor markets									S	<u>PS</u>							<u>Section 4.27</u>
Floral and gift shops							<u>P</u>	P	P	P							
Food stores								P	P	P							
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							S		<u>S</u>	<u>P</u>	S						
Furniture and fixtures sales								P	P	P							
Glass and mirror repair sales									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		
Hardware stores								<u>PS</u> S	<u>PS</u> S	<u>PS</u> S								<u>Section 7.30.4</u>
<u>Home improvement stores with outdoor sales yard</u>										<u>PS</u>								<u>Section 7.41</u>
<u>Home improvement stores</u>									<u>P</u>	<u>P</u>								
Kennels, private	<u>PS</u>																	<u>Section 7.45</u>
Laundry and dry cleaning establishments with drive-in windows								SS	S <u>PS</u>	S <u>PS</u>								<u>Section 7.37</u>
Laundry and dry cleaning establishments without drive-in windows								P	P	P	<u>PS</u>							
Lawn and garden stores									<u>PS</u>	<u>PS</u>								<u>Section 7.41</u> <u>Section 7.30.4</u>
Leather products (no tanning or production)								P	P	P								
<u>Licensable Facilities:</u> <u>Adult day care center facilities, adult</u>								S	S <u>P</u>	S <u>P</u>	S	S						
Child care center (11/6/18)							<u>PS</u> SS	SS	<u>PS</u> SS	<u>PS</u> SS	<u>PS</u> SS	SS						Section 7.41
Nursing homes	S		S				<u>PS</u>		S	S <u>P</u>								
Locksmith, gunsmith								P	P	P	<u>P</u>							
Measuring, analyzing, controlling, and optical goods, watches, clocks								P	P	P	P							

ARTICLE 6. ZONING DISTRICTS

P - Permitted Use
S - Special Use

PS - Permitted Use with Supplemental Regulations
SS - Special Use with Supplemental Regulations

Blank - Not Permitted

Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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	RHQ	ECO		
Microbrewery								PS	SS	SS								Section 7.24
Mobile food vending cart								PS	PS	PS	PS	PS						Section 7.3.2
Motels/hotels							S	S	S	S								
Motorcycle sales and services									S	S								
Movers, van lines, and storage										S	PS	P						Section 7.2 Section 7.41
Museums							P	P	P	P								
Newspaper printing and publishing services								S	S	S	P	P						
Package delivery services, commercial								S	S	PS	P	P						
Parking lots, commercial as principal use							S	S	S	S	P	P						
Parking structures and underground parking garages, commercial							P	P	P	P	S	S						
Pawnshop or used merchandise store								P	P	P								
Photographers							P	P	P	P								
Greenhouses and Plant nurseries & greenhouses	P PS								S	S	P	P						

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Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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
Pottery and related products-								P	P	P	P	P					
Printing and publishing								P	P	P	P	P					
Radio and television broadcasting studios							P	P	P	P	SP	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>									PS	PS							Section 7.37
Restaurants and cafeterias primarily for employees, patients, or students located in same building as another use and having no outside advertising or drive-in facilities							P	P	P	P	P	P					
Retail businesses								P	P	P							
Shopping center, major									S	PS							ADD
Shopping center, minor									PS	PS							ADD
Signs in accordance with Article 10, Part III	P	P	P	P	P		P	P	P	P	P	P					Article 10, Part III
Street vendors								PS									Section 7.27 Section 7.3.2
Studios for artists, designers, and photographers, and studios for the performing arts							P	S	S	S	S	S					

ARTICLE 6. ZONING DISTRICTS

P - Permitted Use
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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									PS	PS							
Tire dealers and service								§	PS §	PS §		P					Section 7.41 Section 7.44
<u>Temporary sale of locally grown agricultural products grown off-site</u>									PS	PS							Section 7.30
Upholstery shops								§	P	P		P					
Vehicle storage in conjunction with repair									§	§	?	P					
Video rental								P	P	P							
TRANSPORTATION																	
<u>Airport</u>												P					
Bus stations									P	P							
Taxi stands limited to 5 taxis								§	§	§P							
Tool, car, truck rental								§	PS §	PS §	PS	PS					Section 7.44 Section 7.41
Towing services										§	P	P					Section 7.44
WHOLESALE SALES AND WAREHOUSING																	
Boat storage									§	§ PS	P						Section 7.41

ARTICLE 6. ZONING DISTRICTS

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S - Special Use

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SS - Special Use with Supplemental Regulations

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Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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
Fruit and vegetable markets, wholesale									P	P	<u>P</u>						
Automobile Junkyards, <u>Salvage yards, recycling of metal and other materials</u>												P					
Outdoor sales, service, or storage areas <u>as principle use</u>								S	S	S	P	P					<u>Section 7.2</u> <u>Section 7.12</u>
Salvage yards												S					
Warehousing uses, including mini-storage									S	S	S	PS	S				<u>Section 7.40</u> <u>Section 7.32</u>
Wholesale merchants									P	P	<u>P</u>	P					
Wholesale storage of gasoline or bulk terminal plants												S					
OTHER USES																	
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	SS <u>PS</u>										SS	SS					Section 7.29
Telecommunication facilities (<u>not subject to administrative approval (10.86.2)</u>)	S	S	S	S	S		S	S	S	S	S	S	S	S			<u>Article 10, Part VIII</u>

ARTICLE 6. ZONING DISTRICTS

P - Permitted Use
S - Special Use

PS - Permitted Use with Supplemental Regulations
SS - Special Use with Supplemental Regulations

Blank - Not Permitted

Note: Conditional Zoning is allowed upon request by the property owner and agreement by the town in all districts as set forth in 6.4.1.

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
Temporary office units	PS	PS	PS	PS	PS		PS	PS	PS	PS	SS <u>PS</u>	SS <u>PS</u>	SS	SS			Section 7.13
Temporary Uses	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	SS	Section 7.30
Wind farms	SS										SS	SS	SS				Section 7.31

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

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

7.2.1. Parking, access, and circulation lanes between the principal building and the street(s) shall be surfaced with blacktop, concrete or brick and shall be separated from required yards or open areas by continuous concrete curb and gutter 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~~ 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 shall be paved with gravel, 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 street yards 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. The maneuvering, staging and docking areas shall not be in conflict with the required parking spaces, lots and their isle/maneuvering areas. ~~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.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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

~~7.3.2. No tent, mobile home, camper, travel trailer, nor any other temporary, portable, or removable trailer, container, vehicle or structure of any kind may be considered an accessory 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.~~

~~7.3.3. Accessory buildings may occupy 10% of the gross lot area, must be built a minimum of ten (10) feet from any lot line, and except for attached garages, must be built to the rear of the principal building in accordance with Section 8.13.2. No accessory building or use shall be erected in any required front or to the side of any principal structure. 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, and no separate accessory building or use~~

~~7.3.4. Accessory buildings shall not be erected within ten (10) feet of any other accessory building unless on same property.~~

~~7.3.5. No accessory building or use may be erected or installed on any lot where a principal building does not exist.~~

~~7.3.6. No lot shall have in excess of one accessory building, except that granny pods not exceeding three hundred (300) square feet and pool houses not exceeding one hundred fifty (150) square feet are permitted. Accessory building numbers limitation on property are exempt if the property is identified as having farm tax identification number. Properties greater than 1/2 acre in size in the R20-A zoning district may have up to two (2) accessory structures with a valid zoning permit. The side and rear setbacks for farm property shall be the same as other accessory buildings.~~

7.3.1. Satellite Dish Antennas.

7.3.1.1. General Requirements.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

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.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

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.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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.

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 Site-Specific Development Plan for a flea market. ~~outdoor sales.~~

SECTION 7.4 CHILD CARE FACILITIES.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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 The special use permit shall establish the hours of operation.

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 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.

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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

SECTION 7.5 DWELLING IN PRINCIPAL BUSINESS AS AN ACCESSORY USE.

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

7.5.2. ~~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 ~~NCGS 160D-915 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 caregiving on the site ceases.

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

ARTICLE 7. SUPPLEMENTAL REGULATIONS

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

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

SECTION 7.7. CUSTOMARY HOME OCCUPATIONS.

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

7.7.1.1. Art gallery or the office or studio of a physician, artist (~~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.

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

SECTION 7.8 SOLAR ENERGY GENERATING FACILITY, ACCESSORY

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

7.8.1. Roof-Mounted Solar Systems.

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

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

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

7.8.2. Ground-Mounted Solar Systems.

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

7.8.3. Approved Solar Components.

Electric solar system components shall have a UL listing.

7.8.4. Compliance with Building and Electrical Codes.

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

7.8.5. Compliance with Other Regulations.

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

SECTION 7.9 TEMPORARY STORAGE FACILITY (PORTABLE STORAGE UNITS).

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

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

~~**7.9.2.** 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).~~

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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 street yard or buffer yard.

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.

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

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

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

SECTION 7.11 ARTISAN'S WORKSHOP.

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

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

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

SECTION 7.13 TEMPORARY OFFICE UNITS /MODULAR OFFICE UNITS.

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

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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, or real estate sales trailer may be allowed as incidental to a new residential or non-residential development. Real estate sales trailers must be removed at the issuance of the first certificate of occupancy for the development.

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

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

SECTION 7.14 OUTLET STORES FOR INDUSTRIAL MANUFACTURING ESTABLISHMENTS.

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

SECTION 7.15 BED AND BREAKFAST

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

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

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

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

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

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

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

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

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

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

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

SECTION 7.15 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

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the state building code. The set up and anchoring must be done by persons licensed by the state to perform such work.

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

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~~ NC State building code requirements shall be installed under the perimeter of the home.

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

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

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

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

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

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

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

7.17.3. Existing manufactured homes, Class A and Class B, ~~which are located within the R-6 district on the effective date of this Ordinance may be continued and maintained as a~~

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~~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 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 constructed in accordance with Section 10.110.10. ~~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 ~~North Carolina Department of Transportation~~ Town of Smithfield shall apply.

7.18.14.2.3. Proposed streets, which are obviously in alignment with others, existing and named, shall bear the assigned name of the existing streets. In no case shall the name of proposed streets duplicate or be phonetically similar to

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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 Town of Smithfield shall apply.

7.18.16. Sidewalks.

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

7.18.19. Service, Administration, and Other Buildings.

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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.

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

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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.

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.

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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 HI 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.

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

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~~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, not to include wood pallets, and comply with Section 7.30.3.~~

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

~~7.22.2. Automobile service stations located 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.

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

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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.

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)

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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.

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

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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.

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.

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SECTION 7.26 LAUNDRY AND DRY CLEANING ESTABLISHMENTS.

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

SECTION 7.27 FLEA MARKET/VENDOR MARKET

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

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

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

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

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~~

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Schedule adopted by the Town Council. Section 2.7 which will partially defray the Town's expense in keeping records and processing these requests.

~~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~~

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~~of merchandise if 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 160D-903 ~~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.

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

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maximum duration of such temporary use shall be seven (7) days, unless otherwise specified within this Ordinance. For purposes of this definition, the duration of each separate occurrence shall be measured on continuous days.

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

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

~~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.

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;

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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~~

~~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 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~~

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~~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.~~

~~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.~~

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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.

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. Tents may require a building permit.

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

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

7.30.3.8 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;~~

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

~~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.

		Minimum Setback Requirements ¹	

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

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

7.31.2. Height.

Two hundred fifty feet (250') maximum.

7.31.3. Ground Clearance.

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

7.31.4. Visibility.

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

7.31.5. Interconnection Agreement.

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

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

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

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

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

7.31.7. Application Requirements.

7.31.7.1. Submit a site plan denoting the dimensions of the parcel, proposed wind farm location (arrangement of turbines and related equipment), distance from the proposed

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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 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.

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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

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.

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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.

(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

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neighborhood.

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

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

SECTION 7.33 RECREATIONAL VEHICLE PARKS.

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

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

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

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

7.33.3.2. Minimum separation from other structures: 20 feet.

7.33.3.3. Minimum exterior property boundary setback: 20 feet.

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.33.17. ~~All streets driveways must be constructed of all-weather material, such as bituminous or concrete or equal, and shall~~ All streets driveways must be constructed of all-weather material,

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~~such as bituminous or concrete or equal, and shall comply with Section 10.2.4. be sixteen (16) feet wide for one-way aisles, and and within a designated twenty-four (24) feet wide right-of-way. Recreational vehicle parks shall have direct access to a public maintained road and shall have a secondary exit.~~

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

SECTION 7.34 RESIDENTIAL CLUSTER DEVELOPMENT.

7.34.1. Purpose and Intent; Definition.

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

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

7.34.1.2. Reduce the per unit site development costs of dwellings by concentrating residential ~~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 single-family residential development design wherein conventional zoning standards are relaxed to permit modifications in lot area, lot width, lot frontage, lot coverage, required yards, and public street access, and to save infrastructure development cost, environmental damage, energy use and land resources by concentrating ~~dwellings~~ development in 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.

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

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

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

Residential Cluster developments shall contain not less than 10 ~~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 time of development, is improved for the uses listed under subsection 7.34.2.3 above, or is properly vegetated and landscaped with the objectives of creating a wooded area or other area that is consistent with the objective set forth in subsection 7.34.2.6 below.

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

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

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

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

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

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

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

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

7.34.4. Minimum Dimensional Standards.

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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.~~ setbacks shall be in accordance with Article 8.

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

7.34.4.6. Rear Yard Setback. ~~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, the residential cluster development shall maintain the same setback from the public right of way. ~~the minimum right-of-way and/or easement setback requirement of said single-family zone or 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.

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7.34.4.11. Detached Accessory Structure Requirements.

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

7.34.4.11.2. Shall not be located within 10 feet of any other ~~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.

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

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

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7.35.1.2 Sidewalks shall be constructed within the interior of the development to link residential buildings with other destinations such as, but not limited to: parking, adjoining streets, mailboxes, trash disposal, adjoining sidewalks or greenways and on-site amenities such as recreation areas.

7.35.3. Individual storage space containing at least 24 square feet of enclosed floor area with a minimum height of 7 feet shall be provided for each dwelling unit in a multi-family development. Such storage space shall be located either in the same building as the dwelling unit it serves or in an accessory building that may also house parking, recreational, laundry , or other facilities that serve the residents of the development

7.35.1.4. Multi-family Apartment Complex Building Design and Appearance Requirements.

All buildings, including community building / club house, storage buildings, maintenance buildings, garages and buildings containing dwelling units shall be constructed with at least four (4) of the following five (5) building design and appearance requirements:

7.35.1.3.1 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.);

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

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

7.35.1.3.4 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.);

7.35.1.3.5 Multiple colors (the maximum number of colors shall not be limited, provided however, that there shall be no more than three (3) discernable colors and the primary color shall constitute a minimum of sixty (60) percent of the façade (excluding windows, doors, roofing, fascia materials, or soffit materials).

7.35.1.3.6. All multi-family or apartment complex developments with one or more dumpsters or a trash compactor must provide a recycling area and a cardboard dumpster; both shall be screened with similar materials to the dumpster or compactor enclosure;

7.35.1.4. 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

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that this requirement does not apply to multifamily development located downtown or to developments devoted exclusively to senior citizens.

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.

7.35.4.1 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 500 square feet or larger.

7.35.2. Townhouses and Condominiums. Townhouses and condominiums shall comply with the following standards:

7.35.2.1. Maintenance. A property owners association shall be established and shall maintain everything on the outside of the townhouses, including but not limited to open space, landscaping, siding, roofing, porches, trim, mailboxes, driveways, and alleys.

7.35.2.2. the applicant shall file in the Johnston County Register of Deeds office at the time of site development approval, legal documents which shall provide guarantees for 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;

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7.35.2.2.3. Adequate insurance protection; and

7.35.2.2.4. Recovery for loss sustained by casualty, condemnation, or otherwise.

SECTION 7.36 ANIMAL HOSPITALS/VETERINARIANS

7.36.1. Treatment rooms or kennels. All treatment rooms or kennels in a veterinary clinic or hospital shall be designed and maintained within a completely enclosed soundproof building, and the veterinary clinic or hospital shall be operated in such a way as to produce no objectionable odors outside its walls.

7.36.2. Outdoor exercise and bathroom areas shall only be permitted according to the following conditions: a) Such areas shall only be used between the hours of 7:00 am to 10:00 pm. b) Such areas shall be screened to ensure compatibility with surrounding land uses. c) Such areas shall be set back at least 50 feet from the lot line when the adjacent use or zoning is residential. d) Such areas shall be enclosed by a fence at least six (6) feet in height.

7.36.3. Animal waste shall be disposed of properly in a timely manner.

SECTION 7.37 DRIVE-IN FACILITIES.

7.37.1. Queuing lanes and service windows shall be located on the side and rear only. Where use is located adjacent to residential zoning or residential use, a Type A buffer shall be required.

7.37.2. Site design shall accommodate a logical and safe vehicle and pedestrian circulation pattern. Adequate queuing lane space shall be provided, without interfering with on-site parking/circulation.

7.37.3. Sound from any speakers used on the premises shall not be audible above a level of normal conversation at the boundary of any surrounding residential district or on any residential property.

7.37.4. Each food or beverage drive-in business shall place refuse receptacles at all exits.

SECTION 7.38 AUTOMOBILE REPAIR.

7.38.1. The operation shall be adequately buffered with a Type C buffer along the property lines that abut residential properties in accordance with Section 10.14 of this Ordinance.

7.38.2 All repair activities shall be conducted within an enclosed structure and no outside storage of disassembled vehicles, or parts thereof, shall be permitted on site, except in the Heavy Industrial District. In the Heavy Industrial (HI) district, repair and maintenance activities shall be

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conducted within an enclosed structure or within an area screened from the view of adjacent lands by solid fencing, dense vegetative buffers, earthen berms, and/or other effective screening:

7.38.3 Vehicles shall not be tested off-site on residential streets.

7.38.4. Vehicles to be serviced shall be comply with Section 7.44.

7.38.5 Outdoor storage of salvage or wrecked vehicles shall be prohibited.

SECTION 7.39 CAR WASH

7.39.1. The car wash shall be capable of being enclosed when not in operation.

7.39.2. Any access drive shall be located at least thirty (30) feet from any public street intersection, measured from the interior curb line commencing at the intersection of the street.

7.39.3. Any car wash line exit shall be at least thirty (30) feet distant from any public right-of-way.

7.39.4. Sound from any speakers used on the premises shall not be audible above a level of normal conversation at the boundary of any surrounding residential district or on any residential property.

7.39.5. Water from the car wash shall not drain across any sidewalk or into a public right-of-way.

7.39.6 Queueing or parking of cars associated with the carwash is prohibited within the public right-of-way

SECTION 7.40 MINI-STORAGE

7.40.1. The only commercial uses permitted on the site of a self-service storage facility use shall be the rental of storage bays and the pickup and deposit of goods or property in dead storage. Storage bays shall not be used to manufacture, fabricate or process goods; service or repair vehicles, small engines or electrical equipment, or to conduct similar repair activities; conduct 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;

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7.40.4. Open storage of recreational vehicles and dry storage of pleasure boats of the type customarily maintained by persons for their personal use shall be permitted within a self service storage facility use, provided that the following standards are met:

7.40.4.1. The storage shall occur only within a designated area. The designated area shall be clearly delineated:

7.40.4.2. The storage area shall not exceed 25% of the buildable area of the site:

7.40.4.3. The storage area shall be entirely screened from view from adjacent residential areas and public roads by a building and/or solid fencing with landscaping on the outside of the fence:

7.40.4.3. Storage shall not occur within the area set aside for minimum building setbacks:

7.40.4.3. No dry stacking of boats shall be permitted on site: and

7.40.4.3. No vehicle maintenance, washing or repair shall be permitted.

SECTION 7.41 OUTDOOR STORAGE ACCESSORY TO PRINCIPAL USE

7.41.1. Outdoor storage shall be screened from public right-of-way and adjacent property utilizing a durable 6' high solid, decorative fence or masonry wall with a type C bufferyard or better in accordance with section 10.14.

7.41.2. The height of merchandise, materials, and equipment stored shall not exceed the height of the screening fence or wall.

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

7.41.4. No customer or vehicular circulation may occur through the area used for outdoor storage.

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

SECTION 7.42 ASSEMBLY USES/EVENT CENTERS

7.42.1. Where a place of assembly is adjacent to a residential use screening must be provided along the boundary adjacent to any property used for residential purposes. Such screening shall be Type C in accordance with Section 10.14

Kenel

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

ARTICLE 7. SUPPLEMENTAL REGULATIONS

7.42.4. The building setbacks for a place of assembly adjacent to a residential zoning district shall be no less than 50 feet.

SECTION 7.43 PUBLIC UTILITY PUMP STATION/UTILITY SUBSTATION/SWITCHSTATIONS

7.43.1 Such facilities shall be screened from adjacent property and public rights-of-way with planting of shrubs and/or trees that will achieve a landscape screen that is a minimum 6 foot high and provide 60% opacity, except vehicular access areas are exempt from this requirement.

SECTION 7.44 OUTDOOR VEHICLE STORAGE, SALES AND DISPLAY

7.44.1. All vehicles for stored outside for display, or sale shall be on a paved surface of bituminous, concrete or other approved comparable surface and in a striped parking stall complying with Article 10, Part I, or stored within a paved storage yard screened from the public right-a-way by a durable opaque fence, opaque wall and/or a solid vegetative buffer with a minimum height of six (6) feet.

SECTION 7.45 KENNELS

7.45.1. Commercial kennel use shall be located in an enclosed sound proof building and shall be designed and operated so that it does not produce objectionable odors outside of its walls.

7.45.2. Private kennels shall be located at least 50 from adjacent property lines.

7.45.3. Outdoor exercise and bathroom areas shall only be permitted according to the following conditions:

- (a) Such areas shall be used only between the hours of 7:00 AM and 10:00 PM.
- (b) Such areas shall be buffered from adjacent residential properties by a distance of 50 feet.
- (c) Such areas shall be enclosed by a fence at least six (6) feet in height.
- (d) Outdoor runs or pens shall be located on site and shall be screened from the view of all adjacent streets and properties by fencing or vegetation. No unreasonable noise or odor shall be detected off-premises.



Request for Planning Board Action

Agenda
Item: ZA-20-04
Date: 10/01/2020

Subject: Zoning Text Amendment
Department: Planning
Presented by: Mark Helmer, Senior Planner
Presentation: Business Item

Issue Statement

Request to amend Article 6, Table 6.5 Table of Uses and Activities to allow Columbaria as an accessory use to Churches/Places of Worship in the O/I Office-Institutional Zoning District with supplemental regulations (Article 7) and add definitions to Appendix A.

Financial Impact

None.

Action Needed

Planning Board is respectfully requested to review the zoning text amendment and to make a decision whether to recommend approval, approval with changes, or to recommend denial of the request.

Recommendation

Planning Staff recommend approval of the zoning text amendment ZA-20-04 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved: Town Manager Town Attorney

Attachments:

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



Staff Report

Agenda ZA-
Item: 20-04

REQUEST:

Staff is requesting the amendment to Article 6, Table 6.5 Table of Uses and Activities to allow Columbaria as an accessory use to Churches/Places of Worship in the O/I Office-Institutional Zoning District with supplemental regulations and adding definitions in Appendix A.

ANALYSIS:

A Columbarium is defined in GS 65-48 (8) as a structure or building substantially exposed above ground intended to be used for the interment of the cremated remains of a deceased person. A Columbarium is typically associated with a cemetery and in fact, GS 65-48 (3) defines cemetery as:

"Cemetery" means any one or a combination of more than one of the following in a place used or to be used and dedicated or designated for cemetery purposes:

- a. A burial park, for earth interment.*
- b. A mausoleum.*
- c. A columbarium.*

Columbaria have increased in popularity as the costs of funerals and cemetery plots have increased. In response, many churches have been adding columbaria to their churches or church properties. The Town recently had an inquiry about adding a columbarium to a church and after researching the issue found that there are at least 2 columbaria already on church property in the town. The Episcopal Church has an urn plot in a small garden setting and the presbyterian church as an even larger columbarium. Upon research of other towns, there seems to be columbaria on church properties throughout Raleigh and in many other smaller towns across North Carolina and across the Nation. Some jurisdictions are regulating columbaria on church properties to address potential issues, such as:

- Internment of cremated remains require maintenance in perpetuity just as with a cemetery plat. A church with a columbarium could be abandoned at some future date leaving the fate of the deceased remains in question.
- The location of a columbarium adjacent to residential property could become a nuisance when there are ceremonies, or the columbarium is large.

- Internment of remains in a columbarium can be expensive, \$1200 or more, and could become a potential revenue source for a small congregation. Regulation on the size of the columbarium might be needed so it does not become fundamentally a cemetery.

DRAFT UDO AMENDMENT:

The attached UDO Amendment would make columbaria accessory to churches and places of worship in the O/I Zoning District with supplemental regulations. The O/I District contains most of the towns large places of worship and is where the existing columbaria are known to exist presently. The placement of columbaria with places of worship in the O/I District are unlikely to be a nuisance or cause problems for adjacent properties, unlike with places of worship located in residential districts. The amendment addresses the various columbarium situations: an indoor or outdoor columbarium, or an urn plot. The supplemental regulations include regulations to address long term maintenance costs and alternate plans for future internment, dimensional considerations, number of allowed interments, appearance, and signage. The ordinance amends Table 6.5 Table of Uses and Activities, Article 7 Supplemental Regulations, and Appendix A Definitions.

CONSISTENCY STATEMENT:

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

RECOMMENDATION:

Planning Staff recommends the Planning Board recommend approval of the zoning text amendment ZA-20-04 with a statement declaring the request is consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest

RECOMMENDED MOTION:

Staff recommends the following motions:

“move to recommend approval of zoning text amendment ZA-20-04, adding Columbarium as an accessory use to Churches/ Places of worship with supplementary standards finding the amendment 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.”

DRAFT ORDINANCE # ZA-20-04
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
ARTICLE 6, SECTION 6.5, TABLE OF USES AND ACTIVITIES, ARTICLE 7
SUPPLEMENTAL REGULATIONS, AND APPENDIX A

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to allow columbarium as an accessory use to churches and places of worship in the O/I (Office Institutional) District.

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

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

[Revise Article 6, Section 6.5, to allow columbarium as an accessory use to churches and places of worship in the O/I (Office Institutional), Article 7 adding supplemental regulations for columbarium, and Appendix A. Definitions, adding definitions for Columbarium and Urn Plots.

PART 1

SECTION 6.5 TABLE OF USES AND ACTIVITIES.

Accessory Uses/Buildings	R-20A	R-10	R-8	R-6	R-MH	PUDs	O/I	B-1	B-2	B-3	LI	HI	Supplemental Regulations
<u>Columbarium accessory to places of worship</u>							<u>PS</u>						<u>Section 7.35</u>

PART 2

SECTION 7.35 COLUMBARIUM.

A columbarium, an indoor or outdoor columbarium, an outdoor columbarium, or an urn plot, shall be permitted as accessory uses to Churches and Places of Worship accordance with Section 6.5 and subject to the following standards:

7.35.1. Any place of worship may establish an indoor columbarium, an outdoor columbarium, or an urn plot as an accessory structure as an accessory to its permitted use provided the following are submitted to the Planning Department and approved:

7.35.1.1. A site plan of the proposed area approved by the Planning Department where the columbarium or urn plots are to be located showing the location of each urn, the dimensions of the space, and a 20 foot access area for maintenance and visitation that has relatively flat and firm topography such that maintenance equipment could access the burial area;

7.35.1.2. A plan of perpetual care and maintenance trust fund to be available if the Institution closes or no longer operates the columbarium or urn plot which is segregated

for just the columbarium or urn plot with funds retained from half the price of each space. The place of worship may spend annually from the fund 3% of the trust fund.

7.35.2. All Indoor Columbarium within the building of a place of worship must comply with the following physical requirements:

7.35.2.1. Alternate Plan. The Place of worship must present a plan with a dedicated outside area for internment of the urns in the event the place of worship ceases to operate or manage the columbarium.

7.35.3. All Outdoor Columbarium must comply with the following physical requirements:

7.35.3.1. Location. A columbarium must be located outside a building owned and occupied by a church or place of worship as defined by the Unified Development Ordinance, Appendix A

7.35.3.2. Height. Outdoor columbarium must be no higher than six (6) feet as measured from the average grade elevation where the columbarium meets the grade. An outdoor columbarium that is not visible from off-property public is not subject to the six (6) feet requirement and may be higher.

7.35.3.3. Setback. Columbarium structures shall meet the setback and yard requirements of the O/I Office/Institutional district.

7.35.3.4. Appearance. Columbarium shall be complementary or consistent in material and design with the primary structure.

7.35.3.5. Signage. Signage shall be limited to inscriptions on the face of a columbarium niche and commemorative plaque on the columbarium structure. Commemorative plaques may be no larger than 12 inches by 12 inches.

7.35.3.6. Number. The columbarium must have spaces for no more than 200 urns.

7.35.4. All Outdoor Urn Plots must comply with the following physical requirements:

7.35.4.1. Location. A columbarium must be located outside a building owned and occupied by a church or place of worship as defined by the Unified Development Ordinance, Appendix A

7.35.4.2. Setback. Outdoor urn plot structures shall meet the setback and yard requirements of the O/I Office/Institutional district.

7.35.4.3. Appearance. Urn Plot shall be complementary or consistent in material and design with the primary structure.

7.35.4.4. Number. The place of worship shall not provide urn plot spaces for more than 100 spaces.

7.35.4.5. Signage. Signage shall be limited to inscriptions on the face of a urns in the ground with one sign not exceeding 2 sq. ft.

PART 3

SECTION A.3 DEFINITIONS.

Columbarium

A Columbarium is defined in GS 65-48 (8) and is so defined herein as a structure or building substantially exposed above ground intended to be used for the interment of the cremated remains of a deceased person.

Urn Plots

Urn Plots in the ground are not defined by statute. Urn Plots are defined herein as urns set in the ground according to a predesigned and approved plot plan to contain cremated human remains.

PART 4

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

PART 4

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

Duly adopted this the 11 day of November 2020.

M. Andy Moore, Mayor

ATTEST

Shannan L. Parrish, Town Clerk

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-20-04**

Whereas the Smithfield Planning Board, 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 Planning Board, 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 PLANNING BOARD AS APPROPRIATE:

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

That the final action regarding zoning ordinance amendment ZA-20-04 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 Planning Board and information provided at the regularly scheduled meeting of Planning Board; and

It is the objective of the Town of Smithfield Planning Board 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 Planning Board 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-20-04 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 Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment does not promote this and therefore is neither reasonable nor in the public interest.



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

Petition for Amendment to the Unified Development Ordinance

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

APPLICANT INFORMATION:

TOS
 Petitioner's Name
Smithfield 27577
 City, State, Zip Code

350 East Market Street
 Address or PO Box
919-934-2116
 Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:
 To allow columbarium as accessory to churches in the O/I District

(Attach additional sheets as necessary)

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

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

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

Stephen Wren
 Signature of Petitioner

9/21/20
 Date

FOR OFFICE USE ONLY

File Number: _____ Date Received: _____ Amount Paid: _____