



PLANNING BOARD AGENDA

Members:

Chairman: Mark Lane (ETJ)

Vice-Chairman: Debbie Howard (Town)

Doris Wallace (Town)

Ashley Spain (ETJ)

Bryan Stanley (Town)

Alisa Bizzell (Town)

Wiley Narron (Alternate)

Stephen Wensman, AICP, ALA, Planning Director

Mark Helmer, AICP, CFM, Senior Planner

Julie Edmonds, Administrative Assistant

Meeting Date: Thursday, January 5, 2022

Meeting Time: 6:00 p.m.

Meeting Place: Council Chambers, Smithfield Town Hall

PLANNING BOARD AGENDA

FOR REGULAR MEETING

JANUARY 5, 2022

MEETING TIME: 6:00 PM

TOWN HALL COUNCIL CHAMBERS

Call to Order.

Pledge of Allegiance.

Identify voting members.

Approval of the agenda.

Approval of the minutes for December 1, 2022.

New Business.

ZA-22-04 Town of Smithfield: The applicant is requesting an amendment to Unified Development Ordinances, Article 10, Part VI, Stormwater Management that incorporates revisions mandated by the North Carolina Department of Environmental Quality.

ZA-22-05 Mr. William R. Andrews: The applicant is requesting an amendment to the Unified Development Ordinances, Article 6, Table 6.6 Table of Uses and Activities to allow Accessory Dwelling Units (ADUs) in the R-20A Zoning District with supplementary standards, Article 7 Section 7.3 to add supplementary standards for ADUs; and Article 11, Section A.3 adding a definition for ADU.

Old Business.

Adjournment.

**Town of Smithfield
Planning Board Minutes
Thursday, December 1, 2022
Town Hall Council Chambers
6:00 PM**

Members Present:

Chairman Mark Lane
Vice-Chairman Debbie Howard
Debbie Howard
Wiley Narron
Alisa Bizzell
Ashley Spain

Members Absent:

Doris Wallace
Brian Stanley

Staff Present:

Mark Helmer, Senior Planner
Julie Edmonds, Administrative Support Specialist

Staff Absent:

Stephen Wensman, Planning Director

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA Debbie Howard made a motion to approve the agenda; seconded by Ashley Spain. Unanimously approved

APPROVAL OF MINUTES for November 3rd, 2022

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

Approval Of The 2023 Meeting Schedule

Ashley Spain made a motion, seconded by Debbie Howard to approve the 2023 meeting schedule. Unanimously approved.

NEW BUSINESS

ZA-22-04 Town of Smithfield: The applicant is requesting an amendment to Unified Development Ordinances, Article 10, Part VI, Stormwater Management that incorporates revisions mandated by the North Carolina Department of Environmental Quality.

Mark Helmer stated that The North Carolina Department of Environmental Quality (NCDEQ) updates its Local Program requirements for stormwater management from time to time. This year the Town was required to resubmit its Local Program to the NCDEQ for review. The local program consists of the following:

- New development plan review and approval
- Stormwater control measure (SCM) maintenance
- Rule enforcement procedures
- Public education

- Storm sewer system mapping
- Illegal discharge removal

As part of the Local Program review, the Town is required to update its stormwater management ordinance. NCDEQ has approved the draft ordinance and the Town has 6- months to adopt the new ordinance (May 1, 2023).

Current Rules:

- Exempt
- SF projects that disturb less than one acre are exempt
- MF, Commercial and Industrial that disturb less than ½ acre are exempt
 - a. Treatment:
 - Developers provide onsite stormwater treatment if the development’s untreated nitrogen export exceeds 6lb/ac/yr for residential or 10lb/ac/yr for other land uses
 - (No treatment requirements based on project built-upon area (BUA) density)
 - b. Peak flow rate match required for 1yr, 24hr storm
 - c. Nutrient Offset
 - Reductions not achieved onsite can be covered with nutrient offsets
 - Developers fill in a form subsequently developed by DWQ to request local approval of nutrient offsets
 - Offsets are obtained in units of pounds of nitrogen

New Rules:

- d. Exempt
 - Single family and duplex residential and related recreational development and expansion of development that disturbs less than one acre is exempt.
- Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot is exempt from the provisions of this ordinance.
- Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and does not expand existing structures is exempt.
- Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and expands existing structures on a parcel but does not result in a cumulative built-upon area for the parcel exceeding twenty-four (24) percent is exempt.
- Development that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.
- Existing development or redevelopment if built-upon area is not increased is exempt from the provisions of this ordinance.
- Treatment:
 - Developers provide onsite stormwater treatment for all cumulative built-upon area (BUA) if the project density > 24% BUA, and meet other low-density, high-density and other stormwater requirements of DEMLR’s 02H .1003

- Stricter onsite treatment requirements may apply where development falls under DEMLR Water Supply Watershed Rule.
- Dedicated offsite regional SCMs may be used for stormwater treatment covering multiple otherwise unrelated projects
- Projects meeting the definition of “runoff volume match” do not need to further address nutrient export.
- (Peak flow rate match not required)
- Nutrient Offset:
 - Nutrient reduction needs not achieved following treatment requirements can be covered with nutrient offsets
 - Projects ≤ 24% BUA may meet nutrient rate targets entirely by nutrient offsets, but must also meet low density stormwater requirements of 02H.1003
 - Public road/sidewalk expansions may meet nutrient reductions entirely by nutrient offsets
 - SNAP tool can auto-generate the local government offset approval form
 - Offsets are obtained in units of pounds per year of nitrogen or phosphorus
- Additional Requirements for HOAs:
 - The draft ordinance includes new strengthened language for stormwater operations and maintenance and special requirements for Homeowners Associations (HOAs). HOAs will be required to establish escrow accounts to ensure there are adequate funds for long term maintenance.

Debbie Howard asked who determines the nutrient rate amounts?

Mark Helmer said the engineers and they have a particular method to generate the calculations for the amount of water leaving the site and coming into the site. They generate numbers for the amount of detention that’s required for a 10-year storm for instance, so engineering the capacity of the pond. There are different models they can use to determine the nitrogen.

Debbie Howard said the HOA is responsible for stormwater, is it correct they have to financially show they are able to take care of it?

Mark Helmer said yes, we are requiring that they set up an escrow at the onset of the project.

Debbie Howard asked who would determine how much money that would be?

Mark Helmer said the developer will have to look at the cost of maintenance. More than likely the developer would be putting the money up. Planning staff will meet with DEQ and have staff’s questions answered as well as any the board may have answered too.

Debbie Howard made a motion to table ZA-22-04, seconded by Alisa Bizzell. Unanimously approved.

CA-22-02 Town of Smithfield: The applicant is requesting an amendment to the comprehensive land use plan that considers removing the proposed third I-95 crossing from its current proposed location.

Mark Helmer stated The Town approved the current Town Plan (Transportation Plan and Comprehensive Growth Management plan) on February 4, 2020. Comprehensive Plans are typically long-range planning documents and are typically renewed every ten years. Smithfield has been

experiencing unprecedented growth and amendments are needed from time to time to address changes caused by existing or future development or other reasons.

The future extension of Peedin Road from Outlet Center Drive to the east side of I-95 was first suggested as part of the Southeast Area Study completed in 2017. A portion of this proposed route, the extension of Peedin Road over I-95 became part of the Town Plan when it was adopted on February 4, 2020. This proposed future street alignment came into question recently when the Smithfield Business Park proposed selling the wooded southwest corner of their property for commercial development. The requirement for this segment will adversely affect the sale of the property and likely drive the proposed development away. As a result, Staff has reconsidered this route. Staff believes there is a need for additional crossings of I-95, but the proposed route was originally part of a greater planned corridor that is no longer viable:

- The idea for the route sprung from the Southeast Area Study in 2017. It would have extended the planned Smithfield Crossings corridor which is no longer viable because of recent and planned development.

Staff has looked at an alternative that would extend M. Durwood Stephenson Parkway over the railroad and over I-95, however this route is problematic because of the cost and space constraints of constructing a bridge over the railroad and the proximity to the future I-95/I-42 interchange. Staff also considered moving the I-95 crossing to align with Peedin Road, however this would likely result in the future closing of the Carolina Premium Outlet's driveways onto Peedin Road to accommodate a future bridge structure.

OPTIONS:

There are several options for the Planning Board/Council to consider:

- Do nothing. The route is still relevant to the Town's long range transportation plan.
- Delete the route from the Comprehensive Land Use Plan Map as it is no longer relevant given the recent and planned development changes.
- Realign the route with Peedin Road, understanding that access to the Carolina Premium Outlet driveways onto Peedin Road would likely be closed with a future bridge.

Mark Lane said if this plat was developed the developer would be required to put this road in?

Mark Helmer said yes

Debbie Howard asked if a developer was interested in this land but possibility wouldn't buy due to the requirement of this road?

Mark Helmer said yes but Planning Staff has been looking at this issue for years. If this road doesn't serve the town and only deters people from developing the land then why require it?

Staff recommends the Planning Board recommend deleting the route from the comprehensive plan.

Debbie Howard made a motion to recommend the Town Council approve the proposed amendments to the 'Town Plan', Transportation Plan and Comprehensive Growth Management Plan, seconded by Alisa Bizzell. Unanimously approved.

OLD BUSINESS: None

Adjournment

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

Respectfully Submitted,

A handwritten signature in cursive script that reads "Julie Edmonds".

Julie Edmonds
Administrative Support Specialist



Request for Planning Board Action

Consent
Agenda
Item: ZA-22-
04
Date: 1/5/23

Subject: Stormwater Ordinance Update
Department: Planning Department
Presented by: Stephen Wensman, AICP, Planning Director
Presentation: Business Item

Issue Statement

Staff is requesting an amendment to Town of Smithfield Unified Development Ordinance, Article 10, Part VI, Stormwater Management.

Financial Impact

None

Action Needed

The Planning Board should review and discuss the proposed amendment and make a recommendation to the Town Council.

Recommendation

Staff recommends the Planning Board recommend approval of ZA-22-01, updating the stormwater management regulations.

Approved: Town Manager Town Attorney

Attachments:

1. Staff report
2. Proposed ordinance.
3. Consistency Statement
4. Application



Staff Report

Agenda
Item: ZA-22-04

OVERVIEW:

The North Carolina Department of Environmental Quality (NCDEQ) updates its Local Program requirements for stormwater management from time to time. This year the Town was required to resubmit its Local Program to the NCDEQ for review. The local program consists of the following:

- a. New development plan review and approval
- b. Stormwater control measure (SCM) maintenance
- c. Rule enforcement procedures
- d. Public education
- e. Storm sewer system mapping
- f. Illegal discharge removal

As part of the Local Program review, the Town is required to update its stormwater management ordinance. NCDEQ has approved the draft ordinance and the Town has 6-months to adopt the new ordinance (May 1, 2023).

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New Rules:

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 - Additional Requirements for HOAs:
 - The draft ordinance includes new strengthened language for stormwater operations and maintenance and special requirements for Homeowners Associations (HOAs). HOAs will be required to establish escrow accounts to ensure there are adequate funds for long term maintenance.

**THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
AMENDMENT CONSISTENCY STATEMENT
BY THE SMITHFIELD PLANNING BOARD
ZA-22-04**

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-22-04 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-22-04 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.

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

RICHARD E. ROGERS, JR.
Director



November 1, 2022

Stephen Wensman
Stormwater Program Administrator
Planning Department
350 East Market Street
Smithfield, NC 27577

Dear Mr. Wensman:

This letter is to notify you that the Town of Smithfield's Neuse Draft Local Program was approved by the Environmental Management Commission on September 8, 2022.

The next step in local implementation is adoption and implementation of the approved Draft Local Program and accompanying draft ordinance changes. The target date for completing local adoption of these materials is six months from the date of this letter, May 1, 2023. Within 30 calendar days, please provide Trish D'Arconte (trish.darconte@ncdenr.gov) the anticipated schedule for local approval and implementation. Once the final version has been adopted, provide a copy to DWR via email (trish.darconte@ncdenr.gov).

We recognize your jurisdiction may require small adjustments based on internal and public feedback. Notify DWR (trish.darconte@ncdenr.gov) of any proposed changes prior to finalizing adoption of the materials for review and approval by DWR [as required per 15A NCAC 02B .0711 (6)(f)/.0731(f)(6)].

DEQ has a Stormwater Nitrogen and Phosphorus (SNAP) tool that can be used for purposes of implementing this rule, available online: <https://deq.nc.gov/about/divisions/water-resources/water-planning/nonpoint-source-planning/nutrient-practices-and-crediting>. We understand the importance of providing an updated tool for your use. The enforcement of revised local programs will take into account all training and the integration of the updated SNAP Tool with the local programs. An update of the Tool is in progress to incorporate user requests:

December 2022	Beta version released for public comment
February 2023	Formal release of the revised tool
Early March 2023	Online training* for local government plan review staff
Mid-March 2023	Online training* for consultants

* Note: these trainings will be recorded for those who cannot attend

Please contact Trish D'Arconte with any concerns via email (trish.darconte@ncdenr.gov) or phone (919-707-3678).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard E. Rogers, Jr.', is written over a light blue background.

Richard E. Rogers, Jr.

cc: Trish D'Arconte, Rich Gannon, Karen Higgins



North Carolina Department of Environmental Quality | Division of Water Resources
512 North Salisbury Street | 1611 Mail Service Center | Raleigh, North Carolina 27699-1611
919.707.9000

PART VI. STORMWATER MANAGEMENT.

SECTION 10.42 PURPOSE.

The purpose of this Article is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of nitrogen in stormwater runoff and nonpoint and point source pollution associated with new development in the water shed of the Neuse River Basin. establish minimum criteria to control and minimize quantitative and qualitative impacts of stormwater runoff from development within the Town of Smithfield, a nutrient management program for new development in accordance with the statutory authority of planning and regulations of development, NCGS 160-D Article 2, 3, 4, including particularly but not limited to NCGS 160D-404 (enforcement), NCGS 160D Article 8 (subdivision), NCGS 160D Article 7 (zoning) and 15A NCAC 2B.0235 Neuse River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements. It has been determined that proper management of construction related and post development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety and general welfare; and protect water and aquatic resources.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

10.42.1. Establishing decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources;

10.42.2. Requiring that new *development* not exceed export targets for *nitrogen in stormwater* runoff for the watershed through site layout, *engineered stormwater controls*, or *permanent nutrient offset credits*;

10.42.3. Establishing minimum *post-development stormwater* management standards and design criteria for the regulation and control of *stormwater* runoff quantity and quality;

10.42.4. Establishing design and review criteria for the construction, function, and use of *engineered stormwater controls* that may be used to meet the minimum *post-development stormwater* management standards;

10.42.5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for *stormwater* and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;

10.42.6. Establishing provisions for the long-term responsibility for and maintenance of *engineered stormwater controls* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

10.42.7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved *projects*, and to assure appropriate long-term maintenance;

10.72.8. Controlling illicit discharges into the municipal separate stormwater system and waters of the State.

10.42.9. Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the municipal separate stormwater system and waters of the State.

SECTION 10.43 APPLICABILITY; EXCEPTIONS TO APPLICABILITY.

10.43.1. The provisions of this section shall apply to all development and expansion of development in areas within the planning jurisdictional limits of the Town of Smithfield, unless exempt as provided in Section 10.43.2.

10.43.2. The provisions of this section shall not apply to:

10.43.2.1. Single family and duplex residential and related recreational development and expansion of development that disturbs less than one acre is exempt from the provisions of this ordinance.

10.43.2.2. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and does not expand existing structures on a parcel is exempt from the provisions of this ordinance.

10.43.2.3. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and expands existing structures on a parcel but does not result in a cumulative built-upon area for the parcel exceeding twenty-four (24) percent is exempt from the provisions of this ordinance.

10.43.2.4. Development that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

10.43.2.5. Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot is exempt from the provisions of this ordinance.

10.43.2.6. Existing development or redevelopment if built-upon area is not increased is exempt from the provisions of this ordinance.

10.43.2.7. Activities subject to requirements of the Neuse River Basin Agriculture Rule, 15A NCAC 02B .0712 | .0732 is exempt from the provisions of this ordinance.

10.43.2.8. Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108 is exempt from the provisions of this ordinance.

10.43.2.9. Development or expansion of development for which the permit application was submitted prior to adoption of this ordinance is optionally exempt from the provisions of this ordinance per the requirements of N.C.G.S. 143-755.

10.43.3. No Development or Expansion Until Compliance and Permit. No development or expansion of development shall occur except in compliance with the provisions of this ordinance or unless exempted. No development or expansion of development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

SECTION 10.44 INTERPRETATION.

10.44.1. Meaning and Intent. All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 10.42, Purpose. If a different or more specific meaning is given for a term defined elsewhere in Town of Smithfield Unified Development Ordinance, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

10.44.2. Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

10.44.3. Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

10.44.4. References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design Manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

10.44.5. Computation of Time. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Smithfield, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the Town of Smithfield. References to days are calendar days unless otherwise stated.

10.44.6. Delegation of Authority. Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of the Town of Smithfield may be carried out by his or her designee.

SECTION 10.45 DESIGN MANUAL

10.45.1. Reference to Design Manual. The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of engineered stormwater controls and other practices for compliance with this ordinance.

The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Neuse River Basin Nutrient Sensitive Waters Management Strategy

10.45.2. Relationship of Design Manual to Other Laws and Regulations. If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

10.45.3. Changes to Standards and Specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the applicant shall have the choice of using the new Design Manual in reviewing the application and in implementing this ordinance with regard to the application, or using the old Design Manual.

SECTION 10.46 STORMWATER PERMIT APPLICATION PROCESS AND REVIEW PROCEDURES.

10.46.1. Permit Required; Must Apply for Permit. A stormwater permit is required for all development and expansion of development unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

10.46.2. Effect of Permit. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including engineered stormwater controls and elements of site design for stormwater management other than engineered stormwater controls.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development site consistent with the requirements of this ordinance, whether the approach consists of engineered stormwater controls or other techniques such as low-impact or low-density design. The permit

does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

10.46.3. Authority to File Applications. All applications required pursuant to this Ordinance shall be submitted to the Stormwater Administrator by the land owner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

10.46.4. Establishment of Application Requirements and Fees

10.46.4.1. Application. The application shall be filed with the town on a form supplied by the town and shall be accompanied with the information identified in the stormwater design manual. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all engineered stormwater controls, and how the proposed project will meet the requirements of this ordinance.

10.46.4.2. Fees. A list of fees associated with this section is available at the planning department in the Smithfield Town Hall in accordance with Section 2.7

10.46.4.3. Submittal of Complete Application and Review. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application.

10.46.4.4. Approval. If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

10.46.4.5. Fails to Comply. If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

10.46.4.6. Revision and Subsequent Review. A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (90) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

SECTION 10.51 STORMWATER PERMIT APPLICATION FOR APPROVAL.

10.51.1. Concept Plan and Consultation Meeting. Before a submitting a stormwater management permit application or before one is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. The purpose of this meeting is to discuss the stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. A Concept Plan should include:

10.51.1.2. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

10.51.1.2. Natural Resources Inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

10.51.1.3. Stormwater Management System Concept Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed engineered stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and

downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

10.51.2. Stormwater Management Permit Application. The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 10.54, General Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section xx-202(D).

10.51.3. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

10.51.4. Other Permits. No certificate occupancy shall be issued without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case a percentage of certificates of occupancy may be withheld until as-built plans are submitted and final inspection and approval has occurred.

SECTION 10.52 APPROVALS.

10.52.1. Effect of Approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. No deviations from the terms of the application or the approval shall be made until written approval of proposed changes or deviations has been obtained through permit revision and review. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

10.52.2. Time Limit/Expiration. An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

SECTION 10.53 APPEALS.

10.53.1. Right of Appeal. Except as provided in N.C.G.S. 160D-1403.1, any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment or governing board within 30 days from receipt of the notice of a determination. Appeals of variance requests shall be made in accordance with Section 4.10..

SECTION 10.54 GENERAL STANDARDS.

All projects to which this ordinance applies shall comply with the standards of this section. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and expansion of development maintains the site consistent with the approved project plans.

10.54.1. Nitrogen Loading Rate Targets.

10.54.1.1. The project shall meet either a nitrogen stormwater loading rate target of 3.6 pounds per acre per year (lb/ac/yr) or meet "runoff volume match" as defined in 15A NCAC 02H .1002.

10.54.1.2. The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area. The project density used for determining stormwater requirements is the amount of built-upon area subject to this ordinance at project completion divided by the project area.

10.54.1.3. The developer shall determine the nitrogen load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen load reduction to meet nutrient targets by using the approved accounting tool.

10.54.2. Nitrogen Standard is Supplemental. The nitrogen loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 02B .0714 | .0734 and .0295.

10.54.3. Control and Treatment of Runoff Volume.

10.54.3.1. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (>24%) percent built-upon area, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State's Minimum Design Criteria, 15A NCAC 02H .1059 through .1062.

10.54.2.2. Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat the volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.

10.54.2.3. Where high-density stormwater design is not required, stormwater systems shall meet the low-density stormwater design standards set forth in 15A NCAC 02H .1003(2).

10.54.3. Methods to Meet Nutrient Control Requirements.

Projects subject to this ordinance shall meet nitrogen loading targets through a combination of the following methods:

10.54.3.1. Projects may reduce export of nitrogen through any combination of engineered stormwater controls treating runoff on the site, in an approved offsite regional engineered stormwater control, or through the acquisition of permanent nutrient offset credits. The developer shall calculate the nitrogen reduction provided by these controls using the approved accounting tool.

10.54.3.2. Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet nitrogen reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

10.54.4. Use of Permanent Nutrient Offset Credits.

10.54.4.1. Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan. The Stormwater Administrator shall issue an approval letter for the development that documents the needed nitrogen credits and where the development is located relative to the Neuse River Basin Nutrient Sensitive Waters Management Strategy; Basinwide Stormwater requirements. All permanent nutrient offset credits permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.

10.54.4.2. Permanent nutrient offset credits shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.

10.54.4.3. A developer subject to this ordinance may acquire permanent nutrient offset credits through one of the following methods:

10.54.4.3.1. Through a private nutrient bank;

10.54.4.3.2. Through offsite offset provided by the developer and approved by Town of Smithfield;

10.54.4.3.3. Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.

10.54.4.4. Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

10.54.5. Evaluation of Standards for Stormwater Control Measures.

10.54.5.1. Evaluation According to Contents of Design Manual. All engineered stormwater controls and stormwater systems required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice in the Design Manual. The Stormwater Administrator shall determine whether proposed engineered stormwater controls will be adequate to meet the requirements of this ordinance.

10.54.5.2. Determination of Adequacy; Presumptions and Alternatives. Engineered stormwater controls that are designed, constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

SECTION 10.55 GENERAL STANDARDS FOR MAINTENANCE

10.55.1. Function of Engineered Stormwater Controls As Intended. The owner of each engineered stormwater control installed pursuant to this ordinance shall ensure adequate maintenance and operate it so as to preserve and continue its function in controlling stormwater

quality and quantity at the degree or amount of function for which the engineered stormwater control was designed.

10.55.2. Annual Maintenance Inspection and Report. The person responsible for maintenance of any engineered stormwater control installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from a qualified professional certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

10.55.2.1. The name and address of the land owner;

10.55.2.2. The recorded book and page number of the lot of each engineered stormwater control;

10.55.2.3. A statement that an inspection was made of all engineered stormwater controls;

10.55.2.4. The date the inspection was made;

10.55.2.5. A statement that all inspected engineered stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

10.55.2.6. The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

10.55.3. if the required annual inspection SCM is not submitted to the Town, the Stormwater Administrator may perform the annual inspection at the expense of the personal responsible for maintenance and inspection of the SCM in accordance with the Section 2.7 and 10.56.4.

SECTION 10.56 OPERATION AND MAINTENANCE OF ENGINEERED STORMWATER CONTROLS:

10.56.1. Operation and Maintenance Plan. There shall be an Operation and Maintenance Plan (O&M Plan) for every engineered stormwater control. The O&M Plan shall specify all operation and maintenance work necessary for the function of all engineered stormwater control components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point.

The O&M Plan shall require the owner to maintain, repair and, if necessary, reconstruct the engineered stormwater controls, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater controls. The O&M Plan shall specify methods to be

used to maintain or restore the engineered stormwater controls to design specifications in the event of failure.

The O&M Plan shall be signed by the owner and notarized. The owner shall keep maintenance records and these shall be available upon request by the Stormwater Administrator.

10.56.2. Operation and Maintenance Agreement. Prior to the conveyance or transfer of any lot or building site to be served by engineered stormwater controls pursuant to this ordinance, and prior to issuance of any permit for *development* requiring engineered stormwater controls pursuant to this ordinance, the applicant or owner of the site must enter into an Operation and Maintenance Agreement (O&M Agreement) with the Stormwater Administrator. The O&M Agreement shall require the applicant or owner to maintain, repair, or reconstruct the engineered stormwater controls in accordance with the approved design plans and the Operation and Maintenance Plan. The O&M Agreement shall be binding on all subsequent owners of the site, portions of the site, and lots, or parcels served by the engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the O&M Agreement.

The O&M Agreement shall grant to Town of Smithfield a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case shall the right of entry, of itself, confer an obligation on Town of Smithfield to assume responsibility for the engineered stormwater controls.

The O&M Agreement must be approved by the Stormwater Administrator prior to development plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded O&M Agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

10.56.3. Special Requirement for Homeowners' and Other Associations. For all engineered stormwater controls required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required O&M Agreement shall include all of the following provisions:

10.56.3.1. Acknowledgment that the association shall continuously operate and maintain the engineered stormwater controls according to the specifications laid out in the Operation and Maintenance Plan.

10.56.3.2. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the engineered stormwater controls. If engineered stormwater controls are not performing adequately or as intended or are not properly maintained, the Town of Smithfield, in its sole discretion, may remedy the situation, and in such instances the the Town of Smithfield shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the engineered stormwater controls, provided that the Town of Smithfield shall first consent to the expenditure.

10.56.3.3. Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per

cent of the initial construction cost of the engineered stormwater controls. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the engineered stormwater controls. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

10.56.3.4. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Smithfield depending on the design and materials of the engineered stormwater controls.

10.56.3.5. Granting to the Town of Smithfield a right of entry to inspect, monitor, maintain, repair, and reconstruct engineered stormwater controls.

10.56.3.6. Allowing the Town of Smithfield to recover from the association and its members any and all costs the Town of Smithfield expends to maintain or repair the engineered stormwater controls or to correct any operational deficiencies. Failure to pay the Town of Smithfield all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Smithfield shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

10.56.3.7. A statement that this agreement shall not obligate the Town of Smithfield to maintain or repair any engineered stormwater controls, and the Town of Smithfield shall not be liable to any person for the condition or operation of engineered stormwater controls.

10.56.3.8. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Smithfield to enforce any of its ordinances as authorized by law.

10.56.3.9. A provision indemnifying and holding harmless the Town of Smithfield for any costs and injuries arising from or related to the engineered stormwater controls, unless the name of Town of Smithfield has agreed in writing to assume the maintenance responsibility for the engineered stormwater controls and has accepted dedication of any and all rights necessary to carry out that maintenance.

10.56.4 Deed Recordation and Indications on Plat. The inspection and maintenance agreement shall be recorded in the register of deeds at the expense of the applicant.

10.56.4. Inspection Program. Inspections and inspection programs by Town of Smithfield may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in the engineered stormwater controls; and evaluating the condition of engineered stormwater controls.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to N.C.G.S. 15-

27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

10.56.5 Performance Security for Installation and Maintenance.

10.56.5.1. The Town of Smithfield may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the engineered stormwater controls are:

10.56.5.1.1. installed by the permit holder as required by the approved stormwater management plan, and/or

10.56.5.1.2. maintained by the owner as required by the Operation and Maintenance Agreement.

10.56.5.2. Amount.

10.56.5.2.1. Installation. The amount of an installation performance security shall be the total estimated construction cost of the engineered stormwater controls approved under the permit, plus 25%.

10.56.5.2.2. Maintenance. The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the engineered stormwater controls approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

10.56.5.3. Uses of Performance Security

10.56.5.3.1. Forfeiture Provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an Operation and Maintenance Agreement established pursuant to this ordinance.

10.56.5.3.2. Default. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any engineered stormwater control in accordance with the applicable permit or Operation and Maintenance Agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or Operation and Maintenance Agreement. In the event of a default triggering the use of installation performance security, the Town of Smithfield shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

10.56.5.3.3. Costs in Excess of Performance Security. If Town of Smithfield takes action upon such failure by the applicant or owner, the Town of Smithfield may collect from the applicant or owner the difference between the amount of the

reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

10.56.5.3.3. Refund. Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the engineered stormwater controls covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

SECTION 10.57. RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The owner of each engineered stormwater control shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

SECTION 10.58 EASEMENTS AND SCM ACCESS.

Easements for stormwater BMP SCM s shall include the area of the BMP SCM, ~~area of ponded water~~, and enough area for access and maintenance from a public right-of-way in accordance with the Town's Standard Detail and Specifications Manual. The easement shall be recorded in the register of deeds at the expense of the applicant and shall be depicted on the final plat or recorded map prior to approval of the certificate of occupancy or final plat.

SECTION 10.59 ILLEGAL DISCHARGE.

No person shall cause or allow the discharge, disposal, pouring or pumping directly or indirectly to any stormwater conveyance structure, stormwater conveyance system, stream, lake, pond, wetland, or other body of water, or upon the land in proximity to the same, any fluid, solid, or other substance (other than stormwater). Prohibited substances include, but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter. Examples of illegal discharges are:

10.59.1. Dumping of oil, anti-freeze, paint or cleaning fluids;

10.59.2. Untreated commercial carwash wash water;

10.59.3. Industrial challenges;

10.59.4. Contaminated foundation drains;

10.59.5. Cooling waters, unless no chemicals added and has valid NPDES permit;

10.59.6. Wash water from commercial and industrial activities;

10.59.7. Chlorinated backwash and draining associated with swimming pools;

10.59.8. Domestic wastewater;

10.59.9. Septic system effluent;

10.59.10. Washing machine discharges.

SECTION 10.60 ALLOWABLE DISCHARGES.

Examples of allowed discharges are:

10.60.1. Water line flushing;

10.60.2. Irrigation;

10.60.3. Uncontaminated groundwater pumping;

10.60.4. Street wash water;

10.60.5. Dechlorinated backwash and drainage associated with swimming pools;

10.60.6. NPDES permitted discharges.

SECTION 10.61 ILLEGAL CONNECTIONS.

Connections to a stormwater conveyance system or structure that allow the discharge(s) of non-stormwater are unlawful. Prohibited connections include but are not limited to:

10.61.1. Floor drains;

10.61.2. Waste water from washing machines or sanitary sewers;

10.61.3. Wash water from commercial vehicle washing or steam cleaning;

10.61.4. Waste water from septic systems.

SECTION 10.62 DETERMINATION OF CONNECTION.

Upon determining that said connection:



Request for Planning Board Action

Agenda
Item: ZA-22-05
Date: 01/05/2023

Subject: ADUs in the R-20A
Department: Planning
Presented by: Mark Helmer, Senior Planner
Presentation: Business Item

Issue Statement

Request to amend: Article 6, Table 6.6 Table of Uses and Activities to allow Accessory Dwelling Units (ADUs) in the R-20A Zoning District with supplementary standards; Article 7 Section 7.3 to add supplementary standards for ADUs; and Article 11, Section A.3 adding a definition for ADU.

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-22-05 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
4. Map of R20-A properties \geq 2 acres in Town



Staff Report

Agenda Item: ZA-22-05

REQUEST:

Mr. William R. Andrews is requesting an amendment to the UDO to allow accessory dwelling units in the R20-A. The request will amend: Article 6, Table 6.6 Table of Uses and Activities to allow Accessory Dwelling Units (ADUs) in the R-20A Zoning District with supplementary standards; Article 7 Section 7.3 to add supplementary standards for ADUs; and Article 11, Section A.3 adding a definition for ADU.

ANALYSIS:

Mr. Andrews is requesting the UDO amendment at this time so he can obtain a permit to complete the construct an accessory dwelling unit in his barn for his daughter. He had begun the construction with a valid permit for the ADU prior to the town's expansion of the ETJ and was hoping to complete the work at this time to enable his daughter to live in it. His permit application was rejected because ADUs are not permitted within the town's zoning jurisdiction.

In 2020, when the Town Plan approval was being considered by the Town Council, one of the policy recommendations in support of **Objective 5: Encourage a mix of housing types inside the Town Limits** was a policy to allow accessory dwelling units that meet performance-based criteria:

Policy 5C: Allow accessory dwelling units that meet performance-based criteria

Strategies:

1. Consider updates to requirements for accessory dwelling units (including tiny homes) in order to encourage high quality design, additional density and reinvestment in Downtown Support and Medium Density areas near downtown.

- Currently accessory dwelling units are allowed in commercial zoning districts and a special use permit is required. Allowing these as a permitted in some areas, if basic standards are met, can be a way to encourage reinvestment and increase density in a sensitive manner.



Accessory dwelling units (ADUs), also known as granny flats or garage apartments can be a way to preserve the character of neighborhoods while encouraging infill. Research suggests that ADUs can increase supply of affordable housing and make significant economic contributions to their communities, through construction activity and property taxes.

Source: www.planning.org/knowledgebase/accessorydwellings/

Image Source: <https://accessorydwellings.org>

With the approval of the Town Plan, the Town Council struck Policy 5C from the document.

This requested UDO Amendment is different than the deleted policy in that it would allow ADUs in the R20-A District only and only on parcels 2 acres or greater, and most of these are located **outside of the Town's corporate limits**. Permitting ADU's on larger rural lots would allow property owners to enjoy greater utility of their properties without negatively impacting neighbors, while providing needed housing. In the case of Mr. Andrews, it also provides him an opportunity to provide needed housing to his daughter who can then help care for he and his wife.

Accessory Dwelling Units are being promoted by the American Planning Association to address the national shortage of affordable housing. The Town has many illegal or legal

non-conforming accessory dwellings scattered throughout the town and mostly they go unnoticed without any complaint or issue.

PROPOSED AMENDMENT:

The proposed UDO amendment modifies 3 sections of the UDO:

1. Article 6, Section 6.6 will be amended to allow ADUs as permitted uses with standards in the R-20A District:

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

Uses	Primary Zoning Districts												Supplemental Regulations
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AHH	
ACCESSORY USES													
<u>Accessory Dwelling Unit (ADU)</u>	PS												<u>Section 7.3</u>
Accessory structures/buildings	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS		Section 7.3

2. Article 7, Section 7.3.3 will be added creating the following supplementary standards for ADUs:

7.3.3. Accessory Dwelling Unit (ADU). ADUs are permitted in the R-20A Zoning District on properties that are 2 or more acres in size, have adequate sewer or adequately sized and functioning septic system for the use.

7.3.3.1. An ADU shall be located on the same lot as a principal dwelling and meet both of the following: a. The gross floor area of the accessory dwelling shall be less than the gross floor area of the total principal dwelling.

7.3.3.2. An ADU shall be affixed to or constructed on a permanent foundation and not be a manufactured home or moveable structure.

7.3.3.3. There shall be no more than one ADU on the same lot as a principal dwelling.

7.3.3.4. An ADU shall be accessed by a lockable external entrance.

7.3.3.5. Ownership of an ADU shall not be transferred apart from its principal dwelling unit.

7.3.3.6. An ADU shall have dedicated paved parking area in accordance with Article 10, Part I.

3. A definition for ADU will be added to Article 11, Section A.3:

ARTICLE 11, SECTION A.3 DEFINITIONS.

Accessory Dwelling Unit (ADU).

A self-contained dwelling unit that is located on the same lot as a principal dwelling that meets the supplemental regulations identified in Section 7.3.3. An Accessory Dwelling Unit may be located above a garage. Accessory Dwelling Units may be detached, attached, or internal to the principal dwelling. Only residential uses are permitted in Accessory Dwelling Units.

CONSISTENCY STATEMENT (Staff Opinion):

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 recommend approval of the zoning text amendment, ZA-22-05, 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

RECOMMENDED MOTION:

Staff recommends the following motion:

“move to recommend approval of zoning text amendment, ZA-22-05, finding it 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-22-05
AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD
UNIFIED DEVELOPMENT ORDINANCE
ARTICLE 6, SECTION 6.6, ARTICLE 7, SECTION 7.3.3, AND ARTICLE 11, SECTION
A.3

WHEREAS, the Smithfield Town Council wishes to amend certain provisions in the Town of Smithfield Unified Development Ordinance by making changes to Unified Development Ordinance Article 6, Section 6.6 permitting Accessory Dwelling Units (ADUs) in the R-20A District with supplementary standards, Article 7, Section 7.3.3 adding supplementary standards for ADUs, and Article 11, Section A.3 adding a definition for ADU.

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 6.6 permitting Accessory Dwelling Units (ADUs) in the R-20A District with supplementary standards.]

PART 1

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

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

Uses	Primary Zoning Districts												Supplemental Regulations
	R-20A	R-10	R-8	R-6	R-MH	O/I	B-1	B-2	B-3	LI (Sect. 7.2)	HI (Sect. 7.2)	AH/H	
ACCESSORY USES													
<u>Accessory Dwelling Unit (ADU)</u>	<u>PS</u>												<u>Section 7.3</u>
Accessory structures/buildings	PS	PS	PS	PS	PS	P S	PS	PS	PS	PS	PS		Section 7.3
Accessory uses incidental to any permitted use	P	P	P	P	P	P	P	P	P	P	P		
Child care center (as an accessory use for a principal business)						P S	PS	PS	PS	PS	PS		Section 7.4.1
Customary home occupations	PS	PS	PS	PS	PS	P S	PS	PS					Section 7.7
Cemeteries	S					P							

[Revise Article 7, Section 7.3.3 adding supplementary standards for ADUs.]

PART 2

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

7.3.3. Accessory Dwelling Unit (ADU). ADUs are permitted in the R-20A Zoning District on properties that are 2 or more acres in size, have adequate sewer or adequately sized and functioning septic system for the use.

7.3.3.1. An ADU shall be located on the same lot as a principal dwelling and meet both of the following: a. The gross floor area of the accessory dwelling shall be less than the gross floor area of the total principal dwelling.

7.3.3.2. An ADU shall be affixed to or constructed on a permanent foundation and not be a manufactured home or moveable structure.

7.3.3.3. There shall be no more than one ADU on the same lot as a principal dwelling.

7.3.3.4. An ADU shall be accessed by a lockable external entrance.

7.3.3.5. Ownership of an ADU shall not be transferred apart from its principal dwelling unit.

7.3.3.6. An ADU shall have dedicated paved parking area in accordance with Article 10, Part I.

[Revise Article 11, Section A.3 adding a definition for ADU.]

PART 3

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

Accessory Dwelling Unit (ADU).

A self-contained dwelling unit that is located on the same lot as a principal dwelling that meets the supplemental regulations identified in Section 7.3.3. An Accessory Dwelling Unit may be located above a garage. Accessory Dwelling Units may be detached, attached, or internal to the principal dwelling. Only residential uses are permitted in Accessory Dwelling Units.

PART 4

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

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

Duly adopted this the 7th day of February, 2023.

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-22-05**

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-22-05, 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-22-05, 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:

<u>WILLIAM R. ANDREWS</u>	<u>420 WESTERMAN PL</u>
Petitioner's Name	Address or PO Box
<u>SMITHFIELD NC 27577</u>	<u>919-412-7548</u>
City, State, Zip Code	Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:

AMEND THE UDO TO ALLOW ACCESSORY DWELLINGS IN THE
R-20A DISTRICT ON PROPERTY GREATER THAN 2 ACRES IN SIZE.

(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.

<u>W.R. Andrews</u>	<u>11-27-22</u>
Signature of Petitioner	Date

FOR OFFICE USE ONLY

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

11-27-22

DEAR SIRS,

MY NAME IS BILL ANDREWS. I LIVE AT 420 WESTERMAN PL, SMITHFIELD AND HAVE DONE SO SINCE 2002. MY HOME AND BARN SIT ON 9.75 ACRES LOCATED IN CREEKS BEND SUBDIVISION. MY HOME AND BARN WERE BUILT IN 1995 AND I PURCHASED THEM IN 2001. THE BARN HAS AN UNFINISHED APARTMENT ON THE SECOND FLOOR THAT I WOULD LIKE TO FINISH IN ORDER TO CREATE LIVING QUARTERS FOR MY DAUGHTER. I AM REQUESTING AN AMENDMENT TO THE U.D.O. TO ALLOW ACCESSORY DWELLINGS IN THE R-20A DISTRICT ON PROPERTY GREATER THAN A MINIMUM LOT SIZE (THAT CAN BE DETERMINED BY THE TOWN COUNCIL). THIS AMENDMENT WOULD ALLOW PROPERTY OWNERS IN THE R-20A DISTRICT TO ENJOY GREATER UTILITY ON THEIR PROPERTY WITHOUT NEGATIVELY IMPACTING THE SUBDIVISION.

→ MY DAUGHTER IS A REGISTERED NURSE AND CURRENTLY LIVES IN MY HOME AND PROVIDES MEDICAL ASSISTANCE TO MY WIFE AND I AS NEEDED. THIS PROPOSED AMENDMENT TO THE U.D.O. WOULD BE A GREAT BENEFIT TO MY FAMILY.

ON A PERSONAL NOTE, I AM A PARKINSONS DISEASE PATIENT.

THANKS FOR YOUR CONSIDERATION,

WR Adams



PLANNING DEPARTMENT

Mark E. Helmer, AICP, CFM
Senior Planner

Notice of Public Meeting

Notice is hereby given that a public meeting will be held before the Planning Board of the Town of Smithfield, N.C., on Thursday, January 5, 2023 at 6:00 P.M., in the Town Hall Council Chambers located at 350 East Market Street to consider the following requests:

ZA-22-04 Town of Smithfield: The applicant is requesting an amendment to Unified Development Ordinances, Article 10, Part VI, Stormwater Management that incorporates revisions mandated by the North Carolina Department of Environmental Quality.

ZA-22-05: Mr. William R. Andrews: The applicant is requesting an amendment to the Unified Development Ordinances, Article 6, Table 6.6 Table of Uses and Activities to allow Accessory Dwelling Units (ADUs) in the R-20A Zoning District with supplementary standards, Article 7 Section 7.3 to add supplementary standards for ADUs; and Article 11, Section A.3 adding a definition for ADU.

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

Run Legal ad in the Johnstonian on December 21 and December 28, 2022.