

Motion and
Statement of Consistency with Comprehensive Plan
UDO-242

I move that the following statement be adopted in support of a **Motion to Approve** Zoning Text Amendment UDO-242.

The zoning text amendment, proposed by City/County Planning and Development Services Staff to amend Chapter B, Article VI of the Unified Development Ordinances (UDO) to comply with the changes to State law regarding Zoning Boards of Adjustment, is in conformance with the recommendations of the Legacy Comprehensive Plan and is reasonable and in the public interest because:

1. the amendments set forth in UDO-242 incorporate the changes made to the North Carolina General Statutes in Session Law 2013-126, House Bill 276, entitled "An Act To Clarify And Modernize Statutes Regarding Zoning Boards Of Adjustment"; and
2. the amendments set forth in UDO-242 clarify the statutes, modernize the language, and bring more uniformity to the statutes in areas such as the appeal process, voting requirements, posting requirements, and notice requirements for hearings before Boards of Adjustment; and
3. this proposed text amendment would make the Unified Development Ordinances (UDO) consistent with the changes in the law and with all other jurisdictions in the State of North Carolina.

Based on the foregoing Statement, I move adoption of UDO-242.

Second:

Vote:

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: November 11, 2013 **AGENDA ITEM NUMBER:** -A&B

SUBJECT:-

- A. Public Hearing on a UDO Text Amendment Proposed by City-County Planning and Development Services Staff to Amend Chapter B of the *Unified Development Ordinances* to Reflect Changes Made by the General Assembly of North Carolina to the North Carolina General Statutes in Session Law 2013-126/House Bill (H.B.) 276 entitled "AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS OF ADJUSTMENT" (UDO-242)

- B. Ordinance Proposed by City-County Planning and Development Services Staff Amending Article VI of the Unified Development Ordinances to Comply with New State Requirements Concerning Zoning Board of Adjustments

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

After consideration, the Planning Board recommended approval of the rezoning text amendment.

ATTACHMENTS:- YES NO

SIGNATURE: _____ **DATE:** _____

STAFF REPORT

DOCKET # UDO-242

STAFF: [Chris Murphy](#)

REQUEST

A UDO Text Amendment proposed by City-County Planning and Development Services staff to amend Chapter B of the *Unified Development Ordinances* to reflect changes made by the General Assembly of North Carolina to the North Carolina General Statutes in Session Law 2013-126/House Bill (H.B.) 276 entitled “AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS OF ADJUSTMENT.” – (UDO-242)

BACKGROUND

H.B. 276 was a bi-partisan bill aimed at modernizing the Zoning Boards of Adjustment statutes, which originally date to 1923, but which have been amended, often in a dis-jointed fashion, seventeen (17) times over the past century. The House of Representatives and the Senate both adopted the bill with unanimous votes. The bill originated as a proposal from the Zoning, Planning and Land Use Section of the North Carolina Bar Association, but received extensive input from the North Carolina Homebuilders Association, the North Carolina Chapter of the American Planning Association, the North Carolina Association of Zoning Officials, the League of Municipalities, the Association of County Commissioners and various other industry groups.

ANALYSIS

Amendments to the Zoning Board of Adjustment statutes approved as part of H.B. 276’s adoption can be placed into three groups of changes. The first group of changes is a set of stylistic and organizational changes aimed at clarifying the statutes and modernizing the language. The second group of changes is largely technical in nature, dealing with the administering of oaths, processing subpoenas, the provisions for judicial review, etc. The third group of changes incorporates a variety of modernization and uniformity provisions to the statutes. These include modernizing the appeal process, the voting requirements for various case types, providing for the land owner posting his own property to provide constructive notice of a permit/decision, uniform notice requirements for hearings before the board, etc.

The amendments set forth in UDO-242 incorporate the changes made to the General Statutes in H.B. 276. The *Unified Development Ordinances* (UDO) will be consistent with those provisions and with all other jurisdictions in the State of North Carolina.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-242
SEPTEMBER 12, 2013**

Chris Murphy presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST:

Dan Patterson, 521 Paigebrook Drive, Winston-Salem, NC 27106 asked why we would want to reduce the amount of notification to the public by removing the newspaper advertising. Chris Murphy responded that it was to help offset the additional cost of the advertising we are going to have to do through mail-outs. The mail-out is probably about half as expensive as the newspaper advertisement.

WORK SESSION

MOTION: Paul Mullican moved approval of the zoning text amendment.

SECOND: Lynne Mitchell

VOTE:

FOR: Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Barry Lyons, Lynne Mitchell, Paul Mullican, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services

UDO-242
AN ORDINANCE PROPOSED BY CITY-COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF AMENDING ARTICLE VI OF THE *UNIFIED DEVELOPMENT ORDINANCES* TO COMPLY WITH NEW STATE REQUIREMENTS CONCERNING ZONING BOARD OF ADJUSTMENTS

Be it ordained by the Board of Commissioners of Forsyth County, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article VI – Administration and Amendments is hereby amended as follows:

6-1.4 BOARD OF ADJUSTMENT

(A) Special Use Permits Authorized by the Board of Adjustment

- (1) Board of Adjustment Review. The Board of Adjustment shall review all requests for permits as designated in Table B.2.6 and Section B.2-5.
- (2) Planning Board Report. Applications for special use permits may be approved by the Board of Adjustment after such board receives a report from the Planning Board and holds a duly advertised public hearing in each case, except that the Planning Board shall not be required to review and report on applications for:
 - (a) Riding Stables per Table B.2.6;
 - (b) Kennels, Outdoor per Table B.2.6;
 - (c) Shooting Ranges, Outdoor per Table B.2.6;
 - (d) Manufactured Homes Class A, Class B and Class C per Table B.2.6;
 - (e) Expansion or Conversion of a Nonconforming Use per Sections B.5-2.3(B) and B.5-2.4(A);
 - (f) Accessory Uses as follows:
 - (i) Dwelling, Accessory (Detached) per Section B.2-6.4(C);
 - (ii) Separation, Processing, Storage or Wholesale Sale of Materials in LCID's per Section B.2-5.41(N); or
 - (iii) Home Occupations in Rural Areas (GMAs 4 and 5) per Section B.2-6.4(D)(2)(b);

- (g) Accessory Structures as follows:
 - (i) Exceeding size limits for accessory structures per Section B.3 1.2(E);
- (h) Parking reductions for churches per Sections B.2-5.21(D) and B.2-5.22(C);
- (i) Veterinary Services per Table B.2.6;
- (j) Reserved.
- (k) Keeping of horses, mules, donkeys, goats, sheep, or cattle(W) per Section B.3-11.4;
- (l) Child Daycare, Large Home.

The Planning Board shall submit its report in writing to the Director of Inspections not more than sixty (60) days after receipt of the application in accordance with established review procedures. In reviewing the request, the Planning Board shall review the application to assure compliance with all provisions of this Ordinance. The Planning Board report shall make a finding that the application as submitted either complies with the Ordinance, complies with recommended conditions, or does not comply with the Ordinance. If the Planning Board recommends conditions, the Planning Board shall have the authority to recommend conditions as identified in Section B.6-1.3(A)(1) to reduce impacts associated with the project.

- (3) Required Findings. The Board of Adjustment shall issue a special use permit only when the Board of Adjustment makes an affirmative finding as follows:
 - (a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
 - (b) That the use meets all required conditions and specifications;
 - (c) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
 - (d) That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with *Legacy*.

Except with regard to the conversion of nonconforming uses in Section B.5-2, no provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a special use permit for any use unless authorized in Table B.2.6. In approving an application for the issuance of a special use permit, the Board of Adjustment may impose additional reasonable and appropriate conditions and safeguards to protect the public health and safety, and the value of neighboring properties, and the health and safety of neighboring residents. If the Board of Adjustment denies the application for the issuance of a special use permit, it shall enter the reasons for denial in the minutes of the meeting at which the action was taken.

- (4) Permit Expiration. A special use permit shall become void if the terms of such permit, in the judgment of the Director of Inspections, are not exercised within a period of two (2) years from the date of approval. Special use permits are also subject to the provisions in Section B.1-5.2 Vested Rights.
- (5) Extension of Permit. A letter requesting an extension of time and indicating the reason for such request, submitted prior to the termination date and duly approved by the Board of Adjustment, shall extend the validity of such permit for a period of six (6) months. No other extension of time shall be granted.
- (6) Review of Request for Extension. In considering such extension, the Board of Adjustment may make such changes in the conditions under which the permit was granted as may be indicated by any new information relating to the property or to the use proposed thereon, provided the extension or changes still comply with the affirmative finding set forth above.
- (7) Special Use District Zoning. No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.

(B) Variances

- (1) Authority. No provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a variance of the conditions of a permitted use except with respect to the specific waiving of requirements as to:
 - (a) General Dimension Requirements for Zoning Districts listed in Sections B.2-1.2, B.2-1.3, B.2-1.4 and B.2-1.5 and shall only include minimum zoning lot area and width, minimum setbacks, maximum impervious surface cover, or maximum height;

- (b) Floodplain regulations as specified in Section C.2-2.7;
 - (c) Vehicular use landscaping requirements as specified in Section B.3-4;
 - (d) Bufferyard requirements as specified in Section B.3-5;
 - (e) Setback and landscaping requirements of the TO District as specified in Section B.2-1.6(B);
 - (f) Width of private access easements where such easement is for single family residential uses and where said private access easement was established prior to April 17, 1978;
 - (g) Off-street parking and loading as specified in Section B.3-3;
 - (h) Delay of building permits within designated Transportation Plan corri-dors as specified in Section B.3-7.1;
 - (i) Residential infill setback requirements as specified in Section B.3-8; (W) and
 - (j) Conservation Standards for the NCO District as specified in Section B.2-1.6(A).
- (2) Limitations. The Board of Adjustment shall not grant a variance to permit a use not permitted in the applicable zoning district, nor shall it grant a variance for a site plan feature or condition adopted in conjunction with a special use district zoning.
- (3) Public Hearing. Applications for variances may be approved by the Board of Adjustment after such Board of Adjustment holds a duly advertised public hearing in each case.
- (4) ~~Difficulty or Hardship.~~ Said application for a variance may be approved only upon a finding of ~~practical difficulty or unnecessary hardship~~ in meeting the dimensional requirements of this Ordinance. **The which difficulties hardship must arise from the recorded platting or deeding of land or any building constructed and completed prior to the adoption of this Ordinance, or from any act of a public agency, or from natural conditions beyond the control of the property owner. The Board of Adjustment shall vary the provisions of the ordinance upon a showing of all of the following:**
- (i) **The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of a variance, no reasonable use can be made of the property;**

- (ii) 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;
- (iii) 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; and
- (iv) 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.

- (5) Findings. The Board of Adjustment shall approve of a variance only when the Board of Adjustment makes an affirmative finding as follows:
- (a) That the approval of the variance will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
 - (b) That the use of the property otherwise meets all required conditions and specifications;
 - (c) That the approval of the variance will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
 - (d) That the location and character of the use, if developed according to the variance, will otherwise be in harmony with the area in which it is to be located and in general conformity with *Legacy*.
 - (e) That the basis for a hardship determination in subsection B.6-1.4(B)(4) is met.
- (6) Review of Applications. Any such variance shall observe the spirit and purpose of this Ordinance and shall be granted only with reference to conditions and circumstances peculiar to the property involved. ~~In passing upon such requests the Board of Adjustment may specify additional reasonable and appropriate conditions and safeguards, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, to protect the public health and safety, the value of neighboring properties and the health and safety of neighboring residents.~~

If the Board of Adjustment denies the application for a variance, it shall enter the reasons for the denial in the minutes of the meeting at which the action was taken.

- (7) Conditions. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.**
- (8) Voting on Variance Requests. The concurring vote of four-fifths (4/5) of the board shall be necessary to grant a variance. 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 if there are no qualified alternatives to take the place of such members.**

(C) Appeals and Interpretations

- (1) General. The Board of Adjustment shall hear and pass upon appeals from and shall review any ~~disputed order, requirements, decision or determination~~ made by the Director of Inspections or his/her designee. The Board of Adjustment shall also hear and pass upon all other matters upon which it is required to act under this Ordinance. **The appeal request is subject to the following:**

 - (a) Only written decisions or determinations shall be appealed. A decision includes any final and binding order, requirement or determination. The Director of Inspections, or his or her designee shall give written notice to the owner of the property that is 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.**
 - (b) The owner or other party receiving the written notice shall have thirty (30) days from receipt of the written notice, decision or determination to file an appeal. Any other person or party with standing to appeal shall have thirty (30) days from receipt of any source of actual or constructive notice of the decision or determination to file an appeal. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date the landowner or applicant posts a sign on the property using six inch (6") letters with the words "ZONING DECISION" or "SUBDIVISION DECISION" along with information identifying the means to contact an official for information**

about the decision in a prominent location on the property for at least ten (10) days. Posting of such signs is not the only form of constructive notice. Verification of the posting shall be provided by the owner or applicant to the official who made the decision.

- (c) The Director of Inspections or his/her designee shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The Director of Inspections or his/her designee 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.
- (d) An appeal of a notice of violation or other enforcement action stays enforcement of the action appealed from unless the official who made the decision certified to the Board of Adjustment after notice of appeal has been filed that because facts stated in the affidavit, a stay would cause imminent 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 request is filed. Notwithstanding the foregoing, appeals of decisions granting a 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. Otherwise, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (e) The official who made the decision shall be present at the hearing as a witness. The appellant may not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing.

(f) Procedure to be Used in Processing Appeals and Interpretations of Decisions of the Director of Inspection or His/Her Designee Authorized by the Board of Adjustment.

(i) Applications for appeals of decisions, determinations or interpretations of the Director of Inspections or his/her designee to be considered in any month by the Board of Adjustment shall be made by the property owner or the owner's authorized agent or any other party with standing to the City/County Clerk not less than twenty (20) days prior to the established meeting date of that month. Each petition shall be accompanied by:

- **A fee as authorized in Section B.8.**
- **The written decision of the Director of Inspections or his/her designee that is the subject of the requested appeal or interpretation.**

(2) Board of Adjustment Authority. Upon appeal, the Board of Adjustment shall have the following powers:

(a) To hear and decide appeals based on alleged error in any order, requirement or decision made by the Director of Inspections **or his/her designee** in the enforcement of this Ordinance;

(b) To hear and decide requests for special exceptions or for the interpretation of the Official Zoning Maps or for decisions upon other special questions upon which the Board of Adjustment is authorized to pass.

(c) 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.

(d) When hearing an appeal pursuant to G.S. 160A-409(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in G.S. 160A-393(k).

~~(3) Four-Fifths (4/5) Vote Required. (W) The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or interpretation of the Director of Inspections.~~

~~(4) Majority Vote Required. (F) The concurring vote of a simple majority of the members of the Board of Adjustment shall be necessary to reverse any order requirement, decision, or interpretation of the Director of Inspections.~~

(3) **Voting on Appeals/Interpretations. A majority of the members shall be required to overturn a decision of the Director of Inspections or his/her designee. 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 if there are no qualified alternatives to take the place of such members.**

(D) Procedure to be Used in Processing Special Use Permits, **and** Variances, **Requests** ~~and Appeals and Interpretations~~ Authorized by the Board of Adjustment.

(1) Applications: Applications for special use permits or variances to be considered in any month by the Board of Adjustment shall be made by the property owner or the owner's authorized agent to the Director of Inspections not less than twenty (20) days prior to the established meeting date of that month. Each petition shall be accompanied by:

(i) A fee as authorized in Section B.8.

(ii) (F) Fifteen (15) copies of a scaled site plan (plot plan) of the property which may be prepared by either professional or non-professional persons showing the location of any existing and proposed structure(s) and any relevant notations on the site plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application.

(W) Fifteen (15) copies of a scaled site plan (plot plan) of the property showing the location of any existing and proposed structure(s) and any relevant notations on the site plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application.

(iii) Any other written materials the applicant would like to submit to the Board for consideration of the application.

(2) **Posting Posted Notice of Hearing.** The applicant shall post on the property a notice of public hearing at least ten (10) days prior to the date of the hearing before the Board of Adjustment.

Such notice shall be of sufficient size to contain, and shall contain, heavy black lettering not less than three (3) inches high on a white background and shall be posted in a conspicuous place on the premises. Where such posting is not clearly visible from the nearest public right-of-way, a second directional sign which is clearly visible from the nearest public right-of-way shall be posted. A sign shall be provided by the Director of Inspections consistent with these requirements. Such sign structure shall be removed by the applicant within thirty (30) days after said public hearing.

~~(3) Advertisement. The Board of Adjustment shall advertise a public hearing not less than ten (10) days in advance of such hearing, by a single insertion in a daily or weekly newspaper of general circulation in Winston-Salem and in Forsyth County.~~

(3) Mailed Notice of Hearing. Notice of hearings shall be mailed to the person or entity whose appeal, application or request is the subject of the public hearing; to the owner of the property that is subject to the public hearing, if different from the applicant; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other person entitled to receive notice as otherwise provided in the *Unified Development Ordinances*. The County Tax listing shall be utilized to determine the owners entitled to receive mailed notice. The notice must be deposited in the mail at least ten (10), but not more than twenty-five (25) days, prior to the date of the hearing.

(4) Voting on Special Use Permits and Variance Requests. The concurring vote of four-fifths (4/5) of the board shall be necessary to grant a variance. A majority of the members shall be required to issue a Special Use Permit. 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 if there are no qualified alternatives to take the place of such members.

(EF) **Quasi-Judicial Decisions**

~~Decisions of the Board of Adjustment regarding special use permits, variances, appeals from the Zoning Officer, and any other questions upon which the Board of Adjustment is authorized to pass, shall be filed in the office of the Secretary of the Board of Adjustment.~~

The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and 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 secretary of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. 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.

(FG) Approved Site Plans

Any site (plot) plans approved as a part of an application shall become a part of that application and shall not be changed. A modified site plan may be submitted and the changes may be approved by the Director of Inspections if in his opinion the changes are minor in nature and are consistent with the intent of the original site plan or conditions. Changes to site plans that are not considered minor by the Director of Inspections shall be approved by the Zoning Board of Adjustment.

(H) Subpoena Power

The board of adjustment through the chair, or in the chair's absence, anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, a person with standing under G.S. 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/she determines to be relevant, reasonable in nature and scope, and not oppressive. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to the subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed.

(I) Voting on All Other Matters

All other matters coming before the Board of Adjustment, such as the approval of minutes or decision regarding rehearing requests, etc. shall be decided based on majority vote. 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 if there are no qualified alternatives to take the place of such members.

Section 2. This Ordinance shall be effective upon adoption.