



## LINCOLN COUNTY PLANNING & INSPECTIONS DEPARTMENT

115 W. MAIN ST., LINCOLNTON, NORTH CAROLINA 28092  
704-736-8440 OFFICE 704-736-8434 INSPECTION REQUEST LINE

To: Board of Commissioners  
Planning Board

From: Randy Hawkins, Zoning Administrator

Date: February 5, 2021

Re: UDO Proposed Amendments #2021-1  
Lincoln County Planning and Inspections Department, applicant

*The following information is for use by the Lincoln County Board of Commissioners and the Planning Board at their joint meeting/public hearing on March 1, 2021.*

### PROPOSAL

The planning staff is proposing amendments to numerous sections of the Lincoln County Unified Development Ordinance to comply with new state legislation that updates zoning and planning statutes and combines them into a single new chapter.

These enabling statutes for counties and cities have previously been found in separate chapters under different articles of the General Statutes and contained somewhat different provisions. The new Chapter 160D provides uniform authority and procedures, reorganizes the statutes and modernizes the language, but does not make any major policy shifts.

The 160D proposal was developed by the N.C. Bar Association with input from local government officials and organizations and interest groups such as developers and homebuilders. A number of consensus reforms that have the broad support of stakeholders are incorporated into the new chapter.

One of the main changes is the elimination of conditional use permits and conditional use districts. Instead, 160D relies on special use permits and conditional zoning districts to avoid confusion.

Another main change simplifies the required adoption of an explanatory statement to approve or reject a rezoning request.

The full text of the proposed amendments is included in this packet. Text proposed to be deleted is shown as struck through. Text proposed to be added is shown as underlined. In the case of use tables, C (for conditional use) is simply replaced with S (for special use). In the case of the development review table, an X is used to show deletions.

The proposal is divided into six parts:

- 1) Replacement of conditional use permits with special use permits.

- 2) Statements of consistency and reasonableness for zoning amendments.
- 3) Provisions for establishing vested rights.
- 4) Conditional zoning districts.
- 5) Historic preservation.
- 6) References to General Statutes and the addition of associated provisions.



## **LINCOLN COUNTY PLANNING & INSPECTIONS DEPARTMENT**

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### **Zoning Amendment Staff's Proposed Statement of Consistency and Reasonableness**

Case No. **UDO Amendments #2021-1**

Applicant **Lincoln County Planning and Inspections Department**

Proposed amendments **Amend various sections of the Lincoln County Unified Development Ordinance to comply with new state legislation regarding planning and zoning, N.C. General Statutes Chapter 160D.**

These proposed amendments **are consistent** with the Lincoln County Comprehensive Land Use Plan and other adopted plans in that:

**The proposed amendments make no major policy shifts in zoning and planning and are not contrary to any of the guiding principles, objectives or strategies of the Land Use Plan.**

These proposed amendments are **reasonable and in the public interest** in that:

**The proposed amendments carry out the provisions of the new legislation, which, among things, serves to eliminate confusion between conditional use permits and conditional zoning districts and simplifies the required adoption of an explanatory statement for approving or rejecting a zoning change.**



## **UDO Text Amendment Application**

Lincoln County Planning and Inspections Department  
Zoning Administrator  
115 W. Main St., Lincolnton, NC 28092  
Phone: (704) 736-8440

### **Part I**

Applicant Name **Lincoln County Planning and Inspections Department**

Applicant Address **115 W. Main St., Lincolnton, NC 28092**

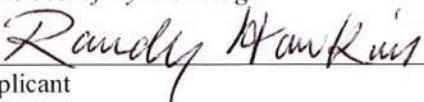
Phone Number **(704) 748-1507**

### **Part II**

Briefly describe the proposed text amendment.

**Amend various sections of the Lincoln County Unified Development Ordinance to comply with new state legislation regarding planning and zoning, N.C. General Statutes Chapter 160D.**

*I hereby certify that all of the information provided for this application and attachments is true and correct to the best of my knowledge.*

  
\_\_\_\_\_  
Applicant

Jan. 15, 2021  
\_\_\_\_\_  
Date

**1) Amend various sections to refer to special uses instead of conditional uses, delete Section 2.1.2 (Parallel Conditional Use Districts), amend Sections 9.6.9 (Preliminary Plat Review) and 9.11 (Special Use Review) to eliminate any role by the Planning Board, and amend Section 9.11.12 to state that a special use permit remains valid for at least two years after the date of approval.**

One of the main changes of Chapter 160D is to eliminate the term “conditional use permit” and replace it with “special use permit,” in order to avoid confusion with conditional zoning.

Also eliminated are conditional use districts, or what’s called a “parallel conditional use rezoning” or PCUR, whereby the legislative process of rezoning property is combined with the quasi-judicial procedure of approving a conditional use permit. Lincoln County moved away from PCURs several years ago and instead has been relying on conditional zoning districts to achieve a similar result through an entirely legislative process.

A process for approving a special use permit was included in the Unified Development Ordinance as an option when the UDO was adopted in 2019. The Planning Board was assigned the duty of making the final decision on applications, but no special uses were listed in the Use Table. (The thinking was that some uses could be designated as special uses instead of conditional uses in order to relieve some of the workload of the Board of Commissioners.)

To carry out the Chapter 160D changes, staff found that it would be simpler to delete the special use section of the UDO and to change all conditional use references to special use.

Chapter 160D states that the Planning Board may serve as a preliminary forum for review of quasi-judicial decisions, but no part of the forum or recommendation may be used as a basis for the final decision, unlike the practice that we have been following. To simplify the process, the Board of Commissioners has decided not to have the Planning Board perform any role in reviewing special use permits and preliminary subdivision plats.

In addition to the changes brought about by the legislation, staff is proposing to amend Section 9.11.12 to state that a special use permit shall expire two years from the date of approval unless a complete building permit application has been submitted and remains valid. The expiration period for a conditional use permit is currently 12 months.

## ARTICLE 2. ZONING DISTRICTS

### §2.1. Districts Established

To carry out the provisions of this UDO, within the jurisdiction of Lincoln County, the following zoning districts are established:

#### §2.1.2. Parallel Conditional Use Districts Reserved

- A. Pursuant to G.S. § 153A-342, the Board of Commissioners may establish by ordinance conditional zoning upon request by or on behalf of property owners. Parallel conditional use districts shall be designated by adding "CU" to the corresponding general use district.
- B. All zoning regulations that apply to the general use district are minimum requirements for development within the corresponding parallel conditional use district.
- C. A conditional use district may provide for greater but not lesser setbacks than those applicable to the corresponding general use district, and may specify that only one or some of the uses permissible in the general use district are permissible in the parallel conditional use district.
- D. Under each parallel conditional use district, all uses allowed as permissible in the corresponding general use district are permitted only upon issuance of a conditional use permit by the Board of Commissioners in accordance with §9.11. However, a conditional use permit is not required as a prerequisite to establish a parallel conditional use district, since the district itself may be conditioned and established first and then developed much later. However, a conditional use permit may be submitted in tandem petition for the parallel conditional use district, either by preference of the applicant or upon request by the Board of Commissioners or Director, if either finds that such permit is necessary in order to consider an application for a parallel conditional use district.
- E. If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, it is the intent of this UDO that the authorization of such conditional use permit shall be null and void and of no effect and that proceedings be instituted to rezone the property to its previous zoning classification.

#### §2.1.3. Conditional Zoning Districts

##### D. Conditions of Approval

- 1. A conditional zoning district may provide for greater but not lesser setbacks than those applicable to the corresponding general use district, and may specify that only one or some of the uses allowed (either on a permitted or a conditional special use basis) in the general use district are allowed in the conditional zoning district.

## §2.2. Permitted Land Uses

### §2.2.1. Use Table

The use table is subject to the explanation as set forth below.

#### A. Key to Types of Use

##### 1. Permitted

A "P" indicates that a use is permitted in the respective district subject to the specific use standards in Article 4. Such uses are also subject to all other applicable requirements of this UDO.

##### 2. ~~Special Reserved~~

An "S" indicates a use that may be permitted in the respective general use district only where approved by the Planning Board in accordance with §9.10. Special uses are subject to all other applicable requirements of this UDO, including the specific use standards contained in Article 4.

##### 3. ~~Conditional Special~~

An "C" "S" indicates a use that may be permitted in the respective general use district only where approved by the Board of Commissioners in accordance with §9.11. ~~Conditional Special~~ uses are subject to all other applicable requirements of this UDO, including the specific use standards contained in Article 4.

##### 4. Use Standard

The "Use Standard" column on the table is a cross-reference to any specific use standard listed in Article 4. Where no cross-reference is shown, no additional use standard shall apply.

##### 5. Uses Not Permitted

A blank cell in the use table indicates that a use is not permitted in the respective district.

#### B. Permitted Use Table

The following table lists the principal uses permitted by this UDO for general use districts. For ~~parallel conditional use districts~~, see §2.1.2; for conditional zoning districts, see §2.1.3; for overlay districts, see §2.5; for planned development districts, see §2.4.9, and for accessory structures and uses, see §4.6.

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
P = Permitted   S = Special (Error! Reference source not found.)   * = Group of Uses (Error! Reference source not found.)																
Residential Uses <sup>1</sup>	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
Single-family detached	P	P	P	P	P	P	P	P	P							
Modular (CABO)	P	P	P	P	P	P	P	P	P							
Alley-loaded house	P	P	P	P	P	P	P	P	P							Error!
Zero lot line house	P	P	P			P	P	P	P							Error!
Two-family house		P	P													Error!
Townhouse			S		S			P	P	S	S					Error!
Multi-family			S		S					S						Error!
Upper-story residential										P	P	P				Error!
Boarding house	P	P	P						P	P	P					Error!
Manufactured home, Class A	P	P	S													Error!
Manufactured home, Class B	P	P	S													Error!
Manufactured home, Class C	P	P	S													Error!
Manufactured home, Class D	S	S														Error!
Manufactured home, Class E	P	P	S													Error!
Manufactured home, Class F																Error!
Manufactured home park (<20 units)	S	S									S					Error!
Manufactured home park (>20 units)	S	S									S					Error!
Storage, private (on <2 ac.)	S	S	S	S	S											
Storage, private (on >2 ac.)	P	P	P	P	P											
Civic Uses	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
Airport, public or private	S	S														S
Adult care home	S	S	S						S	S	S					
Bus terminal, public	S	S									P		P	P		
Cemetery	P	P	S	S	S					S						Error!
Civic club or community center	S	S	S	S	S				P	P	P			P		
Coliseums 1000+ seats										S	S					
College									P	S	S	P				
Correctional facility													S			
County facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	\$4.3.5
Day care center, small group (1-6)	P	P	P	P	P			P	P	P	P	P				
Day care center (6+)	S	S	S	S	S			S	S	P	P	P	P	P	S	Error!
Day care center (6+) as accessory use													P	P	P	
Family care home	P	P	P	P	P	P	P	P	P	P	P	P				Error!
Hospital										S	P	P	S			
Museum (privately owned)										P	P	P	S			
Nursing home	S	S	S							S	S	S				
Park, open area *	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Place of worship, seating capacity <500	P	P	P	P	P				P	P	P					Error!
Place of worship, seating capacity 500 to 1000	P	P	S	S	S						P	P				Error!
Place of worship, seating capacity >1000											P	P				Reference
State or federal facility not listed as S										P	P	P		P	P	Error!
Public safety facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	\$4.3.5
Railroad terminal and yard														P		
Recreation facilities, private	S	S	S	S	S	S	S	S	S	S	S	S				
Recreation facilities, public	P	P	P	P	S	S	S	S	S	P	P					
School, elementary and secondary	P	P	P	P	P						S	S				Error!
Solar farm	S	S									S	S	S	S	S	Error!

<sup>1</sup> Some residential uses listed in this table may only be allowed in cluster subdivisions (See **Error! Reference source not found.** and **Error! Reference source not found.**)

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
<b>P = Permitted   S = Special (Error! Reference source not found.)   * = Group of Uses (Error! Reference source not found.)</b>																
Technical, trade, business school	S	S								S		P		P		
Utility, minor *	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Utility, major *	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Wireless facility and tower (up to 60 ft)	P	P	P	P	P	P			P	P	P	P	P	P	P	Error! Reference
Wireless facility and tower (60-100 ft)	S	S	S	S	S	S				S	S	S	S	P	P	Error! Reference
Wireless facility and tower (101-325 ft.)	S	S	S	S							S	S	S	S	S	Error! Reference
Commercial Uses	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
Adult establishment																S Error!
Agriculture*	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Agriculture (sales, processing) *	S	S										P				P
Agricultural supply/equipment sales	S															P
Amusement center, indoor											S					
Animal shelter											S					S
Artist studio, gallery										P	P	P				
Auctions, livestock or outdoor	S										S					S
Bank or financial institution										P	P	P	P	S		
Bar or nightclub											S					Error!
Bed & breakfast	S	S	S	S	S				P	P	P	P				Error!
Cabinet shop														S	P	
Campground	S			S							S					
Catering, food										P		P	P			
Club, private	P	P	S	S	S	S	S	S			P					Error!
Contractor's office											P		P	P		Error!
Contractor's yard													P	P		
Convenience store without fuel sales											P	P			P	
Commercial fishing lake	S	S														
Electronic gaming operation											S		S			\$4.4.6
Farm stand	S										S	S				\$4.4.7
Flea market											S	S				Error!
Florist, wholesale											S			P		
Freezer lockers														P		
Funeral home											P	P		S		
Gas station with convenience retail							S				S	P		S		Error!
Hotel, motel												P				Error!
Indoor Recreation *												P		S		
Kennel	S	S									S	S		S		Error!
Machinery repair							S							P	P	
Marina																
Microbrewery											P	P				\$4.4.12
Microbrewery combined with restaurant											P	P				\$4.4.13
Newspaper publisher											S	P	P	P	P	
Office, general *											P	P	P	P	P	
Office, professional											P	P	P	P	P	
Office, medical *											P	P	P	P	P	
Outdoor recreation, private *	S	S	S	S	S											
Outdoor recreation, public *	S	S	S	S	S							S				
Parking lot, commercial														P		
Photo finishing laboratory												P	S	P	P	
Post office											S	P	P		P	
Postal/parcel processing														P	P	
Racetrack	S													S		\$4.4.14

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
<b>P = Permitted   S = Special (Error! Reference source not found.)   * = Group of Uses (Error! Reference source not found.)</b>																
Radio or television studio											P	P	P			
Recreational club, private					S						P					§4.4.15
Restaurant, general					S						P	P	S	S		§4.4.16
Restaurant, fast food											P		S			
Retail, neighborhood *											P	P				§4.4.17
Retail, general *											P	P				§4.4.17
Riding stable	S	S	S								S					§4.4.18
Self-storage facility											S			P		§4.4.19
Service, neighborhood *											P	P		P		§4.4.20
Service, general *											P	P		P	P	§4.4.20
Shooting range, indoor											S	S				§4.4.21
Shooting range, outdoor	S										S					
Tattoo parlor/body piercing											S					
Vehicle repair *														P		§4.4.22
Vehicle sales *											S		S			§4.4.23
Vehicle service *											S	P		P		§4.4.24
Vending supply														P		
Veterinarian, animal hospital											P	P		S		§4.4.25
Winery	S	S	S	S	S											§4.4.26

**P = Permitted | S = Special Use (§9.10) | S = Conditional Use (§9.11) | \* = Group of Uses (§2.3)**

Industrial Uses	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard	
<b>2007 NAICS Classifications</b>																	
<b>Mining, oil and gas extraction</b>																	
2111 Oil and gas extraction																S	§4.5.1
2121 Coal mining																S	§4.5.1
2122 Metal ore mining																S	§4.5.1
2123 Nonmetallic mineral mining																S	§4.5.1
2124 Support activities for mining																S	§4.5.1
<b>Manufacturing</b>																	
3111 Animal food																S	
3112 Grain and oilseed milling																S	
3113 Sugar and confectionery product																P	
3114 Fruit and vegetable preserving, etc.																P	
3115 Dairy product																P	
3116 Animal slaughtering and																S	
3117 Seafood product preparation																S	
3118 Bakeries and tortilla														S	P	P	
3119 Other food															P		
3121 Beverage															P		
3122 Tobacco															S		
3131 Fiber, yarn and thread														S	P	P	
3132 Fabric														S	P	P	
3133 Textile and fabric finishing															S		
3141 Textile furnishings														S	P	P	
3149 Other textile product														S	P	P	
3151 Apparel knitting														S	P	P	
3152 Cut and sew apparel														S	P	P	
3159 Apparel accessories, other apparel														S	P	P	
3161 Leather and hide tanning															S		
3162 Footwear															P		
3169 Other leather and allied product															P		

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard	
	P = Permitted   S = Special (Error! Reference source not found.)										* = Group of Uses (Error! Reference source not found.)						
3211 Sawmills and wood preservation																S	
3212 Veneer, plywood, etc.																P	
3219 Other wood product																P	
3221 Pulp, paper and paperboard																	
3222 Converted paper product															S	P	P
3231 Printing, related support activities															S	P	P
3241 Petroleum and coal products																S	
3251 Basic chemical																S	
3252 Resin, synthetic rubber, etc.																S	
3253 Pesticides, fertilizer, etc.																S	
3254 Pharmaceutical and medicine															S	P	P
3255 Paint, coating and adhesive																S	
3256 Soap, cleaning compound, etc.															S		
3259 Other chemical product															S		
3261 Plastics product															P		
3262 Rubber product															S		
3271 Clay product and refractory															S		
3272 Glass and glass product															P		
3273 Cement and concrete product															S		
3274 Lime and gypsum product															S		
3279 Other nonmetallic mineral product															S		
3311 Iron and steel mills															S		
3312 Steel product manufacturing															P		
3313 Alumina and aluminum production															S		
3314 Other nonferrous metal production															S		
3315 Foundries															S		
3321 Forging and stamping															P		
3322 Cutlery and handtool															S	P	P
3323 Architectural and structural metals															P		
3324 Boiler, tank and shipping container															P		
3325 Hardware manufacturing															S	P	P
3326 Spring and wire product															S	P	P
3327 Machine shops; turned product															S	P	P
3328 Coating, engraving, heat treating															P		
3329 Other fabricated metal product															P		
3331 Agriculture, construction machinery															P		
3332 Industrial machinery															P		
3333 Commercial and service machinery															S	P	P
3334 HVAC and commercial refrigeration															S	P	P
3335 Metalworking machinery															S	P	P
3336 Engine, turbine equipment															P		
3339 Other general purpose machinery															P		
3341 Computer and peripheral equipment															S	P	P
3342 Communications equipment															S	P	P
3343 Audio and video equipment															S	P	P
3344 Semiconductor, other component															S	P	P
3345 Measuring and control instruments															S	P	P

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
<b>P = Permitted   S = Special (Error! Reference source not found.)   * = Group of Uses (Error! Reference source not found.)</b>																
3346 Magnetic and optical media														S	P	P
3351 Electric lighting equipment														S	P	P
3352 Household appliances														S	P	P
3353 Electrical equipment																P
3359 Other electrical component																P
3361 Motor vehicle manufacturing																S
3362 Motor vehicle body and trailer														S	P	
3363 Motor vehicle parts														S	P	
3364 Aerospace product and parts														S	P	
3365 Railroad rolling stock																S
3366 Ship and boat building																S
3369 Other transportation equipment																S
3371 Household and institutional																P
3372 Office furniture (including fixtures)																P
3379 Other furniture-related product																P
3391 Medical equipment and supplies														S	P	P
3399 Other miscellaneous														S	P	P
<b>Wholesale trade</b>																
4231 Motor vehicle, parts and supplies																P
4232 Furniture and home furnishing																P
4233 Lumber, construction materials																P
4234 Profession, commercial equipment																P
4235 Metal and mineral																P
4236 Electrical and electronic goods																P
4237 Hardware, plumbing and heating																P
4238 Machinery, equipment and																P
4239 Miscellaneous durable goods																P
4241 Paper and paper product																P
4242 Drugs and druggists sundries																P
4243 Apparel, piece goods and notions																P
4244 Grocery and related product																P
4245 Farm product raw material																P
4246 Chemical and allied products																S
4247 Petroleum, petroleum products																S
4248 Alcoholic beverage																P
4249 Miscellaneous nondurable goods																P
4251 Wholesale electronic markets																P
<b>Transportation and warehousing</b>																
4841 General freight trucking																P
4842 Specialized freight trucking																P
4855 Charter bus																P
4931 Warehousing and storage																P
<b>Other uses</b>																
Battery storage																S
Bulk storage of flammable liquids																S
Building material sales, lumberyards														S		P
Crematorium																P
Data center														P	P	P
Dry cleaning and laundry plants																P
Junkyard/salvage																S
Laboratories														P	P	P
Motor sports/team racing																P
Product distributing plant																P

## Part 1: Replace conditional use with special use

	R-R	R-T	R-S	R-SF	R-CR	R-I4	R-20	R-MR	R-MF	O-R	B-N	B-G	B-C	I-L	I-G	Use Standard
<b>P = Permitted</b>	<b>S = Special</b> (Error! Reference source not found.)															<b>* = Group of Uses</b> (Error! Reference source not found.)
Recycling facility, indoor																P
Repair and servicing of machinery, equipment or products																P
Retail sales as an accessory use to a manufacturing or distribution plant																P
Research and development *																P P P
Septic service																P
Supply houses																P
Tire recapping shop																P
Vehicle storage																P
Waste service*																S §4.5.1

## §2.5. Overlay District Standards

### §2.5.1. Eastern Lincoln Development District

#### E. Permitted Uses

Land uses in the Eastern Lincoln Development District shall be subject to the Use Table contained in Section 2.2.1 and to the following table. In addition, any use which has an anticipated peak hour trip generation of 100 trips or greater, based on the latest edition of the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, shall be considered a conditional **special** use and shall be subject to the review requirements of Section 9.11.

#### F. Permitted Use Chart

Eastern Lincoln Development District Uses		ELDD
P = PERMITTED	S = SPECIAL (9.10)	S = CONDITIONAL S = SPECIAL (9.11)
<b>Residential Uses</b>		
Single family detached		P
Modular (CAPO)		P
Alley-loaded house		P
Zero lot line house		S
Two-family house		S
Townhouse		S
Multi-family		S
Upper-story residential		S
Boarding house		S
Manufactured home, Class A		P
Manufactured home, Class B		P

Manufactured home, Class S	P
Manufactured home, Class D	P
Manufactured home, Class E	P
Manufactured home, Class F	P
Manufactured home park (<20 units)	
Manufactured home park (>20 units)	

<b>Civic Uses</b>	
Airport, public or private	
Adult care home	S
Bus terminal, public	S
Cemetery	P
Civic club or community center	S
Coliseums 1000+ seats	S
College	S
Correctional facility	
Day care center, small group (1-6 )	P
Day care center (6+)	S
Family care home	P
Hospital	S
Museum, library	P
Nursing home	S
Park, open area *	P
Place of worship, seating capacity<500	P
Place of worship, seating capacity 500 to 1000	S
Place of worship, seating capacity >1000	S
Public facility	P
Railroad terminal and yard	
Recreation facilities, private	S
Recreation facilities, public	S
School, elementary and secondary	P
Solar farm	S
Technical, trade, business school	S
Utility, minor *	P
Utility, major *	S
Wireless facility and tower (up to 60 ft)	P
Wireless facility and tower (60-100 ft)	S
Wireless facility and tower (101-325 ft.)	

<b>Commercial Uses</b>	
Adult establishment	S
Agriculture (involving livestock) *	
Agriculture (sales, processing) *	
Agricultural supply/equipment sales	S
Amusement center, indoor	S
Animal shelter	

Artist studio, gallery	S
Auctions, live stock or outdoor	
Bank or financial institution	P

Bar or nightclub	S
Bed & breakfast	S
Cabinet shop	S
Campground	
Catering, food	S
Club, private	S
Contractor's office	S
Contractor's yard	S
Convenience store without fuel sales	P/S**
Commercial fishing lake	
Farm stand	S
Flea market	S
Florist, wholesale	S
Freezer lockers	
Funeral home	P/S**
Gas station with convenience retail	S
Hotel, motel	S
Indoor Recreation *	S
Kennel	S
Machinery repair	S
Marina	
Microbrewery	P
Microbrewery combined with restaurant	P
Newspaper publisher	S
Office, general *	P
Office, professional	P
Office, medical *	P
Outdoor recreation, private *	S
Outdoor recreation, public *	S
Parking lot, commercial	
Photo finishing laboratory	S
Post office	P
Postal/parcel processing	S
Racetrack	
Radio or television studio	S
Recreational club, private	S
Restaurant, fast food	P/S**
Restaurant, general	P/S**
Retail, neighborhood *	P
Retail, general *	P/S**
Riding stable	S
Self-storage facility	S
Service, neighborhood *	P
Service, general *	P/S**
Shooting range, indoor	S

Shooting range, outdoor	
Storage, private (on <2 ac.)	
Storage, private (on 2+ ac.)	
Vehicle repair *	S
Vehicle sales *	S
Vehicle service *	S
Vending supply	S
Veterinarian, animal hospital	P/S**
Warehouse/freight movement *	S
Winery	

Industrial Uses (NAICS Codes)	
Oil & Gas Extraction (2111)	S
Nonmetallic Mineral Mining & Quarrying (2123)	S

Support Activities for Mining (2131)	S
Animal Foods (3111)	
Grain & Oilseed Milling Products (3112)	
Sugar & Confectionery Products (3113)	P
Sugar Manufacturing (311311)	S
Fruit & Vegetable Preserves & Specialty Foods (3114)	P
Fruit & Vegetable Canning (311421)	S
Dairy Products (3115)	P
Meat Products & Meat Packaging Products (3116)	
Seafood Products Prepared, Canned & Packaged (3117)	
Bakery & Tortilla Products (3118)	P
Foods, NESOI (3119)	S
Beverages (3121)	P
Ice Production (312113)	S
Breweries (31212)	S
Wineries (31213)	S
Distilleries (31214)	S
Tobacco Products (3122)	S
Fibers, Yarns & Threads (3131)	P
Fabrics (3132)	P
Finished & Coated Textile Fabrics (3133)	S
Textile Furnishings (3141)	P
Other Textile Products (3149)	P
Knit Apparel (3151)	P
Apparel (3152)	P
Apparel Accessories (3159)	P
Leather & Hide Tanning (3161)	
Footwear (3162)	P
Other Leather Products (3169)	P
Sawmill & Wood Products (3211)	S
Veneer, Plywood & Engineered Wood Products (3212)	S

Other Wood Products (3219)	S
Pulp, Paper & Paperboard Mill Products (3221)	
Converted Paper Products (3222)	P
Printed Matter & Related Products, NESOI (3231)	P
Petroleum & Coal Products (3241)	
Basic Chemicals (3251)	S
Resin, Synthetic Rubber & Artificial & Synthetic Fibers & Filament (3252)	S
Pesticides, Fertilizers & Other Agricultural Chemicals (3253)	
Pharmaceuticals & Medicines (3254)	P
Paints, Coatings & Adhesives (3255)	S
Soaps, Cleaning Compounds & Toilet Preparations (3256)	S
Other Chemical Products & Preparations (3259)	S
Plastic Products (3261)	S
Rubber Products (3262)	S
Clay & Refractory Products (3271)	S
Glass & Glass Products (3272)	S
Cement & Concrete Products (3273)	S
Lime & Gypsum Products (3274)	
Other Nonmetallic Mineral Products (3279)	S
Iron & Steel & Ferroalloy (3311)	
Steel Products From Purchased Steel (3312)	P
Alumina & Aluminum & Processing (3313)	S
Nonferrous Metal (Except Aluminum) & Processing (3314)	S
Foundries (3315)	
Crowns, Closures, Seals & Other Packing Accessories (3321)	

Crowns & Closures (bottle caps, Jar lids, etc.) (332115)	P
Metal Stamping (332116)	S
Research & Development Cutlery & Hand Tools (3322)	P
Architectural & Structural Metals (3323)	S
Boilers, Tanks & Shipping Containers (3324)	
Metal Can, Box, & Other Metal Containers (Light Gauge) Manufacturing (33243)	S
Hardware (3325)	P
Springs & Wire Products (3326)	P
Bolts, Nuts, Screws, Rivets, Washers & Other Turned Products (3327)	P
Coating, Engraving, Heat Treating, and Allied Activities (3328)	S
Other Fabricated Metal Products (3329)	P
Small Arms Ammunition (332992)	S
Ammunition (except Small Arms) (332993)	S
Small Arms (332994)	S
Other Ordnance & Accessories (332995)	S

Agricultural & Construction Machinery (3331)	S
Industrial Machinery (3332)	S
Commercial & Service Industry Machinery (3333)	P
Ventilation, Heating, Air-conditioning & Commercial Refrigeration Equipment (3334)	P
Metalworking Machinery (3335)	P
Engines, Turbines & Power Transmission Equipment (3336)	S
Other General Purpose Machinery (3339)	S
Power-Driven Handtool (333991)	P
Computer Equipment (3341)	P
Communications Equipment (3342)	P
Audio & Video Equipment (3343)	P
Semiconductors & Other Electronic Components (3344)	P
Navigational, Measuring, Electronic Components (3345)	P
Magnetic & Optical Media (3346)	P
Electric Lighting Equipment (3351)	P
Household Appliances & Miscellaneous Machines, NESOI (3352)	P
Electrical Equipment (3353)	S
Switchgear & Switchboard (335313)	P
Relays (335314)	P
Electrical Equipment & Components, NESOI (3359)	S
Motor Vehicles (3361)	S
Motor Vehicle Bodies & Trailers (3362)	S
Motor Vehicle Parts (3363)	P
Other Motor Vehicle Manufacturing (336399)	P
Motor Vehicle Brake System (33634)	S
Motor Vehicle Metal Stamping (33637)	S
Motor Vehicle Air Conditioning (336391)	S
Aerospace Products & Parts (3364)	S
Railroad Rolling Stock (3365)	
Ships & Boats (3366)	S
Transportation Equipment, NESOI (3369)	S
Household & Institutional Furniture & Kitchen Cabinets (3371)	P
Office Furniture (Including Fixtures) (3372)	P
Furniture Related Products, NESOI (3379)	S
Medical Equipment & Supplies (3391)	P
Miscellaneous Manufactured Commodities (3399)	P
Signs (33995)	S
Bookbinding	S
Building Materials Sales & Lumberyards	S
Crematorium	S
Dry Cleaning & Laundry Facilities/Plants	S
Junkyard / Salvage & Vehicle Storage	
Motor Sports / Team Racing	P
Laboratories	S

Product Distribution Centers/Plants	S
Recycling & Waste Services Facilities	
Research & Development	S
Septic Services	
Storage of Materials (batteries, flammables, etc.)	
Supply House	S
Tire Recapping	

\*Refers to Groups of Uses as defined in Section 2.3

\*\* These uses shall be ~~Conditional~~ **Special** if located adjacent to or within 100 feet of a residential zoning district.

## **ARTICLE 8. REVIEW BODIES AND OFFICIALS**

### **§8.1. Board of Commissioners**

#### **§8.1.1. Powers and Duties**

- A. The Board of Commissioners shall be responsible for the adoption of comprehensive land use plans for Lincoln County or portions thereof and amendments to those plans.
- B. In execution of the provisions of this UDO, the Board of Commissioners shall be responsible for final action regarding the following:
  1. Text amendments (§9.3);
  2. Rezonings (§9.4);
  3. Planned development review (§9.5);
  4. Preliminary plat review (§9.6);
  5. Waivers of subdivision standards (§9.6);
  6. Major site plan review (§9.7);
  7. Appeals of final decisions on TIA (§9.8);
  8. ~~Conditional~~ **Special** use review (§9.11); and
  9. Zoning vested rights (§9.20).

### **§8.2. Planning Board**

#### **§8.2.4. Powers and Duties**

##### **B. Review Authority**

The Planning Board shall make recommendations regarding the following:

1. Text amendments (§9.3);

2. Rezonings (§9.4);
3. Planned development review (§9.5);
4. ~~Preliminary plat review (§9.6);~~
5. Major site plan review (§9.7); and
6. ~~Conditional use review (§9.11).~~

**C. Final Authority**

~~The Planning Board shall be responsible for final action regarding the following:~~

4. ~~Special use review (§9.10).~~

## ARTICLE 9. DEVELOPMENT REVIEW

### §9.1. Summary of Review Authority

The following table summarizes review and approval authority under this UDO.

	Technical Review Committee	Director	Historic Committee	Board of Adjustment	Planning Board	Board of Commissioners	
	<b>TRC</b>	<b>DIR</b>	<b>HC</b>	<b>BOA</b>	<b>PB</b>	<b>BOC</b>	
Text Amendment		Review			<review>	<decision>	§9.3
Rezoning		Review			<review>	<decision>	§9.4
Planned Development Review	Review	Review			<review>	<decision>	§9.5
Minor Plat Review		Decision					§9.6
Family Plat Review		Decision					§9.6
Preliminary Plat Review		Review			<review>	<decision>	§9.6
Final Plat Review	Review	Decision					§9.6
Minor Site Plan Review		Decision					§9.7
Major Site Plan Review	Review	Review			Review	Decision	§9.7
Traffic Impact Analysis		Decision					§9.8
Zoning Permit		Decision					§9.9
Special Use Review		Review			<decision>		§9.10
Conditional <b>Special</b> Use Review		Review			<review>	<decision>	§9.11
Certificate of Appropriateness		Review	Decision				§9.12
Temporary Use Permit		Decision					§9.13
Sign Permit		Decision					§9.14
Common Signage Plan		Decision					§9.15
Floodplain Development Permit		Decision					§9.16
Floodplain Development Permit Variance		Review		Decision			§9.16
Written Interpretation		Decision					§9.17
Variance		Review		<decision>			§9.18

Administrative Appeal				<decision>				§9.19
Zoning Vested Right		Review					<decision>	§9.20
	<public hearing required>							

## **§9.2. Common Review Procedures**

### **§9.2.1. Pre-application Conference**

- A. Before submitting an application for development approval, each applicant may schedule a pre-application conference with the Director to discuss the procedures, standards and regulations required for development approval in accordance with this UDO.
- B. A pre-application conference with the Director shall be required for the following:
  - 1. Rezoning (§9.4);
  - 2. Planned development review (§9.5);
  - 3. Subdivision review (§9.6);
  - 4. Site plan review (§9.7);
  - 5. Traffic impact analysis (§9.8);
  - 6. ~~Special use review (§9.10); and~~
  - 7. ~~Conditional~~ **Special** use review (§9.11).

### **§9.2.3. Notice and Public Hearings**

#### **A. Summary of Notice Required**

Notice shall be required for applications for approval as shown below.

	Published	Mailed	Posted	
Text Amendment	■			§9.3
Rezoning	■	■	■	§9.4
Planned Development Review	■	■	■	§9.5
Preliminary Plat	■	■	■	§9.6
Major Site Plan	■	■	■	§9.7
<del>Special Use Review</del>	■	■	■	§9.10
<del>Conditional</del> <b>Special</b> use review	■	■	■	§9.11
Variance	■	■	■	§9.18
Zoning Vested Right	■	■	■	§9.20

### **§9.2.4. Required Hearings**

A public hearing shall be required for development review as shown below. Where a public hearing is required before both the Planning Board and the Board of Commissioners, such hearings shall be held concurrently and chaired by the Chairman

**Part 1: Replace conditional use with special use**

of the Board of Commissioners, unless otherwise determined by the Chairman of the Board of Commissioners.

	Board of Adjustment	Planning Board	Board of Commissioners	
	<b>BOA</b>	<b>PB</b>	<b>BOC</b>	
Text Amendment		■	■	§9.3
Rezoning		■	■	§9.4
Planned Development Review		■	■	§9.5
Preliminary Plat		■	■	§9.6
Special Use Review		X		§9.10
Conditional Special Use Review		X	■	§9.11
Variance	■			§9.18

### **§9.6.9. Preliminary Plat Review (Major Subdivisions Only)**

#### **A. Applicability**

A preliminary plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in paragraph §9.6.6 above.

#### **B. Application Requirements**

1. All applications for preliminary plat review shall be submitted in accordance with §9.2.2, Application Requirements.
2. An application for a waiver from any of the provisions of Article 5, Subdivision Standards, shall be submitted in writing by the applicant at the time the preliminary plat is filed. The application shall state the grounds for the waiver and all the facts relied upon by the applicant.
3. When a subdivision is to be developed in phases, a master plan shall be submitted for the entire development and a preliminary plat shall be submitted for each individual phase. A final plat is submitted for individual phases as each phase is developed. Each new phase shall be developed adjacent to an earlier phase.

#### **C. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

#### **D. Action by Director**

1. Upon submission of a completed application, the Director shall review the preliminary plat for consistency with the requirements of this UDO.

2. The following agencies shall be given an opportunity to review the proposed plat as needed:

- (a) County Superintendent of Schools;
- (b) County health department;
- (c) State Department of Transportation District Engineer;
- (d) Lincoln county natural resource commission (Inrc);
- (e) State Department of Natural Resources and Community Development; and
- (f) Other agencies and officials as the Director or Planning Board may deem necessary or desirable.

3. The Director shall prepare a report that reviews the application in accordance with comments provided by the Technical Review Committee, and in accordance with the adopted plans and policies of the County, and the general requirements of this UDO. The report, preliminary plat and any related application materials shall be forwarded to the Planning Board.

**E. Action by Planning Board**

~~The Planning Board shall make a recommendation on the preliminary plat to the Board of Commissioners. The Planning Board's recommendation shall include a written statement to the Board of Commissioners describing whether its recommendation is consistent with the adopted plans and policies of the County. If no written recommendation is received from the Planning Board within 30 days of referral of the preliminary plat to the Planning Board, the Board of Commissioners may proceed in its consideration of the preliminary plat without the Planning Board's recommendation.~~

**F. Waivers**

Where the Planning Board finds that extraordinary hardships or practical difficulties may result from strict compliance with Article 5, Subdivision Standards, and the intent of this UDO may be served to a greater extent by an alternative proposal, a waiver may be granted. A waiver shall not have the effect of nullifying the intent and purpose of this UDO, and the Planning Board shall not grant a waiver unless the Planning Board makes findings based upon the evidence presented in each case that:

- 1. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located;
- 2. The conditions upon which the request for a waiver are based are unique to the property for which the waiver is sought and are not generally applicable to other property;
- 3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular

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hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of this UDO are enforced; and

4. The purpose of the waiver is not based primarily upon financial consideration.
5. In granting a waiver, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this UDO.

**Commentary:** All administrative decisions are subject to appeal pursuant to §9.19.

**Action by Board of Commissioners**

1. ~~The preliminary plat shall be referred to the Board of Commissioners for final action after action is taken by the Planning Board.~~ The preliminary plat shall be considered by the Board of Commissioners in accordance with its rules of procedure and the General Statutes of North Carolina.
2. A quasi-judicial hearing shall be held after due notice has been given to the applicant and the general public. Sworn parties shall be given the opportunity to present evidence, cross-examine other parties, and inspect any documentation, and offer evidence or testimony in rebuttal.
3. Findings of fact shall be made by the Board of Commissioners that are based on sworn evidence or testimony presented at the meeting. Such evidence or testimony must be relevant, material, and competent.
4. No final action shall be deemed to have been given by the Board of Commissioners on the preliminary plat until the Board of Commissioners' written decision on the preliminary plat is delivered to the applicant by the County.
5. The Board of Commissioners may approve the preliminary plat, deny the preliminary plat, or send the preliminary plat back to the Planning Board for additional consideration.
6. If the Board of Commissioners should disapprove the preliminary plat, the reasons for such action shall be given to the applicant.

**G. Findings of Fact Required**

No preliminary plat may be approved by the Board of Commissioners unless all of the following findings are made concerning the subdivision:

1. Consistency with the adopted plans and of policies of the County.
2. The subdivision meets all required specifications of this UDO.
3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.

4. The subdivision design will comply with the requirements of §9.8 and provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

#### H. Action Following Approval

1. Upon preliminary plat approval, the applicant may initiate proceedings to begin site work and installation of improvements. All work shall be performed in compliance with the requirements of Article 5, Subdivision Standards, and other applicable regulations of Lincoln County, and the State.
2. Approval of a preliminary plat does not constitute approval of the final plat. Application for approval of the final (record) plat will be considered only after the requirements for final plat as specified in paragraph §9.6.11 below have been fulfilled and after all other specified conditions have been met.

#### I. Continuing Validity of Preliminary Plats

1. Within 24 months of the date of approval of the preliminary plat, the applicant shall submit a final plat for at least one section of the subdivision. Otherwise, the preliminary plat shall be null and void.
2. All sections of an approved preliminary plat must be submitted for final plat approval within three years of preliminary plat approval for a preliminary plat containing up to 100 lots, and within five years for a preliminary plat containing 100 lots or more. Otherwise, the preliminary plat shall be null and void.

### ~~§9.10. Special Use Review~~ Reserved

#### ~~§9.10.1. Applicability~~

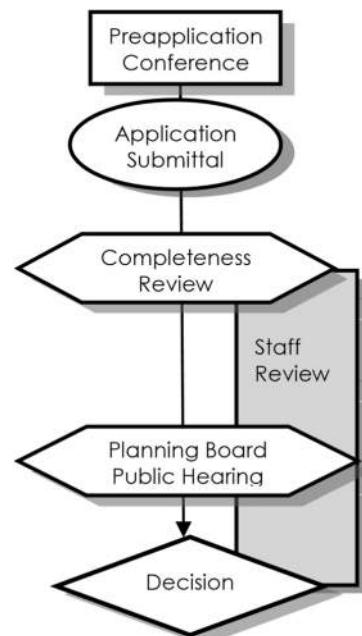
- A. ~~Special uses within each general use district are uses that may be appropriate in a particular district, but because of the increased potential for incompatibility with adjacent uses requires individual review by the Planning Board.~~
- B. ~~A special use permit shall be required for all special uses as set forth in the Permitted Land Use Table (see §2.2.1). A development comprised of uses regulated by separate rows on the table shall be reviewed using the most restrictive process from among the proposed uses.~~
- C. ~~Where a use requiring approval as a special use lies on a separate legal parcel, only the building containing the use and its separate~~

parcel shall be subject to special use review, not the entire project. However, where the separate legal parcel is an outparcel the application shall describe the relationship of the outparcel to the remaining site.

D. Notwithstanding the provisions of §2.2 to the contrary, land uses owned by Lincoln County shall not be subject to the special use review requirements of this section. Public facilities, major and minor utilities and other land uses owned by Lincoln County shall be considered Permitted Uses.

#### **§9.10.2. Pre-application Conference**

All applicants seeking special use approval shall schedule a pre-application conference with the Director, in accordance with §9.2.1.



#### **§9.10.3. Application Requirements**

- A. Concurrent with a request for a special use permit, an applicant shall submit a site plan for review and approval.
- B. An application for a special use permit shall be submitted in accordance with §9.2.2, Application Requirements.
- C. A traffic impact analysis may be required if the proposed development meets the thresholds established in §9.8, Traffic Impact Analysis.

#### **§9.10.4. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

#### **§9.10.5. Action by Director**

- A. Upon submission of a completed application, the Director shall review the special use and associated site plan for consistency with the requirements of this UDO.
- B. Upon completion of the technical review, the Director shall prepare a report that reviews the application in accordance with the adopted plans and policies of the County, and the general requirements of this UDO. The report, site plan and any related application materials shall be forwarded to the Planning Board.

**§9.10.6. Action by Planning Board**

- A. After considering the Director's comments, the Planning Board shall approve or disapprove the special use and associated site plan, or send the site plan back to the Director for additional consideration.
- B. Site plans requiring revisions shall be returned to the Planning Board within 90 days or the application shall be considered withdrawn. One extension period may be granted by the Planning Board.

**§9.10.7. Findings of Fact Required**

No special use permit shall be approved unless the following findings are made concerning the application:

- A. That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.
- B. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the applicable regulations of this UDO.
- C. That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
- D. That the application will not adversely affect the adopted plans and policies of the County, or violate the character of existing standards for development of the adjacent properties.

**§9.10.8. Additional Conditions**

- A. In granting approval of a conditional use permit, the Planning Board may impose reasonable conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right of way or easement dedication; recreation, recreation and open space, or buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions.
- B. Any additional condition approved by the Planning Board shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.
- C. Conditions of approval may include a requirement that the applicant submit an annual statement of compliance detailing how the applicant has complied with terms of the permit, including a detailed and specific report on steps taken in the prior year to comply with other applicable local, State and Federal requirements and laws. The Director shall review and approve such annual statement where the applicant is continuing to comply with the applicable requirements of the special use permit. Where the Director determines that the applicant is in violation of any requirement of this UDO or conditions of approval, the Director shall referred the permit to the Planning Board for review.

**§9.10.9. Modifications to Approved Special Use Permit****A. Minor Deviations**

The Director is authorized to approve minor deviations to a special use permit, if such change is not contrary to the approving action of the Planning Board, but shall not have the authority to approve substantial deviations as set forth below.

**B. Substantial Deviations**

Any deviation requiring evidentiary support in addition to that presented at a public hearing on applications for the original permit shall constitute a substantial deviation. Before making a determination as to whether a proposed action is a minor deviation or a substantial deviation, the Director shall review the record of the proceedings on the original application. Substantial deviations shall include the following:

1. A change in the boundaries of the approved site;
2. A change from the approved use;
3. An increase of five percent or more in the approved floor area, unless proposed addition is 500 square feet of floor area or less, whether such addition is proposed at one time or over an extended period of time;
4. An increase of five percent or more in the number of approved parking spaces, unless the proposed addition is ten or fewer spaces, whether such addition is proposed at one time or over an extended period of time;
5. Substantial change in the location of principal or accessory structures;
6. Structural alterations significantly affecting the basic size, form, style, ornamentation, and appearance of principal or accessory structures as shown on the approved site plan;
7. Substantial changes in pedestrian or vehicular access or circulation;
8. Substantial change in the amount or location of landscape screens; and
9. If a proposed amendment deviates substantially from the approved special use permit, the approved special use permit shall be amended in accordance with the procedure and standards which governed its approval.

**§9.10.10. Effect of Decision**

- A. If the Planning Board votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 12 months have elapsed from the date of denial. If the Planning Board votes to approve an application, notice of permit shall be recorded in the County Register of Deeds office. This waiting period shall not be applicable where the application for a special use permit is substantially different from the original application. The term "substantially different" as herein applied shall mean:

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1. The proposed principal use is a different classification than the use contained in the original application; or
2. The gross floor area of the proposed development is 50 percent or more smaller than contained in the original application.

B. The special use permit and additional conditions, if applicable, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs.

**§9.10.11. Period of Validity**

A. An approved special use permit shall expire 12 months from the date of approval unless the proposed development is pursued as set forth below:

1. A complete building permit application has been submitted and remains valid;
2. Where more than one building is to be built, the applicant may submit a series of building permit applications. The first application shall be submitted within 12 months from the date approval was granted. Each subsequent application shall be submitted within 180 days from the date of issuance of a certificate of occupancy for the previous building; or
3. If no building permit is required, a certificate of occupancy has been issued.

B. Once the appropriate permit has been issued, the special use permit shall remain in force unless the use, construction, or activity ceases for a period of 12 consecutive months. In such instance the special use permit shall become void. If a special use is determined by the Director to be void, such determination shall be transmitted in writing to the applicant.

C. The Director may extend the period of validity by up to 12 months.

**§9.10.12. Building Permit/Certificate of Occupancy**

A. No building permit or certificate of occupancy shall be issued until the required site plan of the proposed use or development has been approved by the Board of Commissioners.

B. In order to secure a vested right for a site plan, the applicant must submit a site-specific development plan in accordance with §9.20.

**§9.10.13. Revocation of a Special Use Permit**

A. If any conditions of a special use permit, or other requirements of this UDO are violated, the County may revoke the permit.

B. Revocation may occur after a quasi-judicial hearing is conducted by the Board of Commissioners.

C. Upon a four-fifths vote, the Board of Commissioners shall revoke the permit, and notice of such revocation shall be recorded in the County Register of Deeds office.

D. Violations of conditions of a special use permit shall be considered a violation of this UDO and thereby subject to the provisions of Article 11, Enforcement and Penalties.

#### **§9.10.14. Coordination with Variances**

Applications for variances may be submitted concurrently with a request for a special use permit. The special use permit request shall be considered first (including any site plan), and where it is denied, the variance request shall be null and void.

#### **§9.10.15. Coordination with Rezoning**

An application for a special use permit may be reviewed concurrently with a rezoning application. However, a decision shall be rendered first for any rezoning and then subsequently for any special use permit.

#### **§9.10.16. Appeal**

Final action on a special use permit may be appealed to the Board of Commissioners, which shall have the same authority as the Planning Board and shall comply with the review procedure as described in this section.

### **9.11. Conditional *Special* Use Review**

#### **§9.11.1. Applicability**

- A. Conditional *Special* uses within each general use district are uses that may or may not be appropriate in a particular district, depending of the location, the scale or size of the use, or other factors requiring individual review by the Planning Board and Board of Commissioners.
- B. A conditional *special* use permit shall be required for all conditional *special* uses as set forth in the Permitted Land Use Table (see §2.2.1). A development comprised of uses regulated by separate rows on the table shall be reviewed using the most restrictive process from among the proposed uses. Where a use requiring approval as a conditional *special* use lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to conditional *special* use review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.
- C. Notwithstanding the provisions of §2.2 to the contrary, land uses owned by Lincoln County shall not be subject to the conditional *special* use review requirements of this section. Public facilities, major and minor utilities and other land uses owned by Lincoln County shall be considered Permitted Uses.



#### **§9.11.2. Pre-application Conference**

All applicants seeking ~~conditional~~ **special** use approval shall schedule a pre-application conference with the Director, in accordance with §9.2.1.

#### **§9.11.3. Application Requirements**

- A. Concurrent with a request for a ~~conditional~~ **special** use permit, an applicant shall submit a site plan for review and approval.
- B. An application for a ~~conditional~~ **special** use permit shall be submitted in accordance with §9.2.2, Application Requirements.

#### **§9.11.7. Action by Board of Commissioners**

- A. Before taking action on the ~~conditional~~ **special** use request, the Board of Commissioners ~~shall consider the recommendations of the Planning Board. The Board of Commissioners~~ shall determine contested facts and make its decision within a reasonable time. Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards.

#### **§9.11.8. Findings of Fact Required**

No ~~conditional~~ **special** use permit shall be approved unless the following findings are made concerning the application:

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan;
- B. The use meets all required conditions and specifications;
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity;
- D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the approved Land Development Plan for the area in question; and
- E. For SNIA's approved pursuant to §7.3.4.B, §7.3.4.C, and §7.3.4.E, the proposed development shall be found to substantially increase the ad valorem tax base of the County or otherwise significantly promote or expand economic development and/or job opportunities available to Lincoln County residents, or to serve a community purpose such as a place of worship, school, or other community facility.

#### **§9.11.9. Additional Conditions**

- A. In granting approval of a ~~conditional~~ **special** use permit, the Board of Commissioners may impose reasonable and appropriate conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right-of-way or easement dedication; recreation and open space, or

**Part 1: Replace conditional use with special use**

buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions.

- B. Any additional condition approved by the Board of Commissioners shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.
- C. Conditions of approval may include a requirement that the applicant submit an annual statement of compliance detailing how the applicant has complied with terms of the permit, including a detailed and specific report on steps taken in the prior year to comply with other applicable local, State and Federal requirements and laws. The Director shall review and approve such annual statement where the applicant is continuing to comply with the applicable requirements of the ~~conditional~~ **special** use permit. Where the Director determines that the applicant is in violation of any requirement of this UDO or conditions of approval, the Director shall refer the permit to the Board of Commissioners for review.

**§9.11.10. Modifications to Approved ~~Conditional~~ **Special** Use Permit****A. Minor Deviations**

The Director is authorized to approve minor deviations to a ~~conditional~~ **special** use permit, if such change is not contrary to the approving action of the Board of Commissioners, but shall not have the authority to approve substantial deviations as set forth below.

**B. Substantial Deviations**

Any deviation requiring evidentiary support in addition to that presented at a public hearing on applications for the original permit shall constitute a substantial deviation. Before making a determination as to whether a proposed action is a minor deviation or a substantial deviation, the Director shall review the record of the proceedings on the original application. Substantial deviations shall include the following:

1. A change in the boundaries of the approved site;
2. A change from the approved use;
3. An increase of five percent or more in the approved floor area, unless proposed addition is 500 square feet of floor area or less, whether such addition is proposed at one time or over an extended period of time;
4. An increase of five percent or more in the number of approved parking spaces, unless the proposed addition is ten or fewer spaces, whether such addition is proposed at one time or over an extended period of time;
5. Substantial change in the location of principal or accessory structures;
6. Structural alterations significantly affecting the basic size, form; style, ornamentation, and appearance of principal or accessory structures as shown on the approved site plan;
7. Substantial changes in pedestrian or vehicular access or circulation; and

8. Substantial change in the amount or location of landscape screens.
- C. If a proposed amendment deviates substantially from the approved special use permit, the approved special use permit shall be amended in accordance with the procedure and standards which governed its approval.

#### **§9.11.11. Effect of Decision**

- A. If the Board of Commissioners votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 12 months have elapsed from the date of denial. If the Board of Commissioners votes to approve an application, the notice of permit shall be recorded in the Lincoln County Register of Deeds office. This waiting period shall not be applicable where the application for a ~~conditional special~~ use permit is substantially different from the original application. The term "substantially different" as herein applied shall mean:
  1. The proposed principal use is a different classification than the use contained in the original application; or
  2. The gross floor area of the proposed development is 50 percent or more smaller than contained in the original application.
- B. The ~~conditional special~~ use permit and additional conditions, if applicable, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs.

#### **§9.11.12. Period of Validity**

- A. An approved ~~conditional special~~ use permit shall expire ~~12 months~~ two years from the date of approval unless the proposed development is pursued as set forth in one of the following alternatives:
  1. A complete building permit application has been submitted and remains valid.
  2. Where more than one building is to be built, the applicant may submit a series of building permit applications. The first application shall be submitted within ~~12 months~~ two years from the date approval was granted. ~~Each subsequent application shall be submitted within 180 days from the date of issuance of a certificate of occupancy for the 3 previous building; or~~
  3. ~~If no building permit is required, a certificate of occupancy has been issued.~~
- B. Once the appropriate permit has been issued, the ~~conditional special~~ use permit shall remain in force unless the use, construction, or activity ceases for a period of 12 consecutive months. In such instance the special use permit shall become void. If a special use is determined by the Director to be void, such determination shall be transmitted in writing to the applicant.

#### **§9.11.13. Building Permit/Certificate of Occupancy**

- A. No building permit or certificate of occupancy shall be issued until the required site plan of the proposed use or development has been approved by the Board of Commissioners.

- B. In order to secure a vested right for a site plan, the applicant must submit a site-specific development plan in accordance with §9.20.

**§9.11.14. Revocation of a Conditional Special Use Permit**

- A. If any conditions of a conditional special use permit or other requirements of this UDO are violated, the County may revoke the permit.
- B. Revocation may occur after a quasi-judicial hearing is conducted by the Board of Commissioners.
- C. Upon a four-fifths vote, the Board of Commissioners shall revoke the permit, and notice of such revocation shall be recorded in the Lincoln County Register of Deeds office.
- D. Violations of conditions of a conditional special use permit shall be considered a violation of this UDO and thereby subject to the provisions of Article 11 Enforcement.

**§9.11.15. Coordination with Variances**

Applications for variances may be submitted concurrently with a request for a special use permit. The special use permit request shall be considered first (including any site plan), and where it is denied, the variance request shall be null and void.

**§9.11.16. Coordination with Rezoning Reserved**

~~An application for a conditional use permit may be reviewed concurrently with a rezoning application. However, a decision shall be rendered first for any rezoning and then subsequently for any special use permit.~~

**§9.11.17. Appeal to Court**

Any decision by the Board of Commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. ~~160A-393~~ **160D-1402**. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with §9.18-6.A.7 **G.S. 160D-406(j)**. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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## ARTICLE 1. GENERAL PROVISIONS

### **§1.8. Conditions, Limitations and Representatives**

Whenever any condition or limitation is included in an order authorizing a ~~conditional use~~ permit, special use permit, variance, certificate of occupancy, or site plan approval or is offered by an applicant in an application or public hearing for such permit or approval, it shall be conclusively presumed that the authorizing officer or body considered such

condition or limitation necessary to carry out the spirit and purpose of this UDO or the requirements of some provisions hereof, and to protect the public health, safety, and welfare, and that the officer or body would not have granted the authorization to which the condition or limitation pertains except in the belief that the condition or limitation was lawful. Any and all representations made by the applicant to the County on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the County.

## **§1.14. Transitional Provisions**

### **§1.14.1. Conforming Uses and Structures**

- A.** Any use or structure existing prior to the effective date of this UDO that conforms to the regulations of this UDO for permitted uses, and satisfies the dimensional requirements and any other applicable regulations of the district in which it is located, may be continued, provided any use, structural, or other changes shall comply with the provisions of this UDO.
- B.** Any use or structure existing prior to the effective date of this UDO that would be permitted by this UDO as a ~~conditional~~ special use in the district in which it is located, may be continued as if a ~~conditional~~ special use permit had been issued, provided that any use, structural, or other changes shall comply with the provisions of this UDO.

## **ARTICLE 2. ZONING DISTRICTS**

### **§2.1.1. General Use Districts**

#### **5. R-20 | Single-family-20**

Established as a single-family residential district, the R-20 district is intended to provide a quality residential environment and protect the quality of life for its residents and other selected uses which are permitted by ~~conditional~~ special use permit. Each lot in the district has a minimum lot area of 20,000 square feet.

## **§2.3. Use Interpretation**

### **§2.3.6. Uses Not Specifically Listed**

A. Any use not specifically listed in this UDO is expressly prohibited, unless the Director determines in accordance with §9.17, Written Interpretation, that the use is similar to a permitted individual use or permitted group of uses as listed in this UDO. Where such similar permitted individual use or permitted group of uses is subject to a use standard contained in this article or ~~conditional use or~~ special use review, the proposed use shall also be subject to such standard or approval. The Director shall not amend this UDO by adding to or eliminating any use standard for the proposed use.

### **§2.3.7. Developments with Multiple Principal Uses**

E. Where a use requiring approval as a ~~conditional~~ **special** use lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to review, not the entire project. However, where the separate legal parcel is an outparcel, the applicant shall describe the relationship of the outparcel to the remaining site.

## **§2.4.5. Conventional Subdivision Standards**

## Part 1: Replace conditional use with special use

R-CR	Single-family Detached	Zero Lot Line	Alley-loaded	Two-family	Townhouse <sup>(1)</sup>	Multi-family <sup>(1)</sup>
Use	Permitted	Not Permitted	Not Permitted	Not Permitted	Conditional Special Use	Conditional Special Use
Density (max. units/acre)	--				10	10
Site (min.) Area (acres)	None				40,000 N/A	40,000 N/A
Recreation/open space (sq. ft.)	N/A					
Parcel (min. sq. ft.) Area per building	--				40,000	40,000
Lot (without public water/sewer)					Set by Conditional Special Use Process	Set by Conditional Special Use Process
Lot area (min. acres)	22,500					
Lot width (min. ft.)	100					
Lot (with public water or sewer)					Set by Conditional Special Use Process	Set by Conditional Special Use Process
Lot area (min. acres)	20,000					
Lot width (min. ft.)	100					
Lot (with public water/sewer)					Set by Conditional Special Use Process	Set by Conditional Special Use Process
Lot area (min. sq. ft.)	14,000					
Lot width (min. ft.)	100					
Yards (min. ft.)						
Road yard	30					
Side yard (interior)	10				Set by Conditional Special Use Process	Set by Conditional Special Use Process
Side yard (total)	20					
Side yard (road)	20					
Rear yard	40					
Bulk (max.)					Set by Conditional Special Use Process	Set by Conditional Special Use Process
Height (ft.)	35					
Building coverage	35%					
Impervious surface	50%					

R-MR	Single-family Detached	Zero Lot Line	Alley-loaded	Two-family	Townhouse <sup>(1)</sup>	Multi-family <sup>(1)</sup>
Use	Permitted	Permitted	Not Permitted	Not Permitted	Conditional Special Use	Not Permitted
Density (max. units/acre)	--	--			6	
Site (min.) Area (sq. ft.)	None	None			20,000 N/A	
Recreation/open space (sq. ft.)	N/A	N/A				
Parcel (min. sq. ft.) Area per building	--	--			8,000	
Lot (min.)					Set by Conditional Special Use Process	
Lot area (sq. ft.)	10,000	6,000				
Lot width (ft.)	50	50				
Water/sewer, public	Required	Required				
Yards (min. ft.)					Set by Conditional Special Use Process	
Road yard	15	15				
Side yard (interior)	6	0				
Side yard (total)	12	10				
Side yard (road)	10	10				
Rear yard	20	20				
Bulk (max.)					Set by Conditional Special Use Process	
Height (ft.)	35	35				
Building coverage	35%	35%				
Impervious surface	50%	50%				

<sup>(1)</sup> More than one building may be established on a single lot (see Error! Reference source not found., Complexes)

## Part 1: Replace conditional use with special use

R-MF	Single-family Detached	Zero Lot Line	Alley-loaded	Two-family	Townhouse <sup>(1)</sup>	Multi-family <sup>(1)</sup>
Use	Permitted	Not Permitted	Not Permitted	Not Permitted	Permitted	Conditional Special Use
Density (max. units/acre)	--				6	6
Site (min.)						
Area (acres)	None				4	4
Recreation/open space (sq. ft.)	N/A				N/A	N/A
Parcel (min. sq. ft.)	--				21,780	21,780
Area per building						
Lot (min.)						
Lot area (sq. ft.)	6,000				Set by Conditional Use Process	Set by Conditional Special Use Process
Lot width (ft.)	50					
Water/sewer, public	Required					
Yards (min. ft.)						
Road yard	20				Set by Conditional Use Process	Set by Conditional Special Use Process
Side yard (interior)	6					
Side yard (total)	12					
Side yard (road)	10					
Rear yard	20					
Bulk (max.)						
Height (ft.)	35				Set by Conditional Use Process	Set by Conditional Special Use Process
Building coverage	35%					
Impervious surface	60%					

<sup>(1)</sup> More than one building may be established on a single lot (see Error! Reference source not found., Complexes)

## §2.4.6. Cluster Subdivision Standards

R-S	Single-family Detached	Zero Lot Line	Alley-loaded	Two-family	Townhouse <sup>(1)</sup>	Multi-family <sup>(1)</sup>
Use	Permitted	Permitted	Permitted	Permitted	Permitted	Conditional Special Use
Density (max. units/acre)	1.5	1.5	1.5	1.5	1.5	8.8
Site (min.)		5			5	5
Area (acres)	5		5			
Recreation/open space (sq. ft.)	50%	50%	50%	50%	50%	50%
Parcel (min. sq. ft.)						
Area per building	--	--	--	--	7,500	Set by Conditional Special Use Process
Lot						
Lot area (min. sq. ft.)	5,000	5,000	4,500	5,000	2,500	Set by Conditional Special Use Process
Lot width (min. ft.)	50	50	40	50	24	
Water/sewer, public	Required	Required	Required	Required	Required	
Yards (min. ft.)						
Road yard	15	15	15	15	15	Set by Conditional Special Use Process
Side yard (interior)	5	0	5	5	5	
Side yard (total)	10	10	10	10	10	
Side yard (road)	10	10	10	10	10	
Rear yard	15	15	15	15	15	
Garage setback from R.O.W.	20	20	--	20	20	
Bulk (max.)						
Height (ft.)	35	35	35	35	35	Set by Conditional Special Use Process
Building coverage	35%	35%	35%	35%	35%	
Impervious surface	50%	50%	50%	50%	50%	

<sup>(1)</sup> More than one building may be established on a single lot (see Error! Reference source not found., Complexes)

## **§2.4.8. Nonresidential District Standards**

### **C. Residential Dimensional Standards in Nonresidential Districts**

1. As set forth in the Permitted Land Use Table (see §2.2.1) certain residential uses are permitted in nonresidential districts. Dimensional standards for townhouses and multi-family are established through the ~~conditional~~ special use process (see §9.11). No townhouse or multi-family shall be established on a parcel less than 20,000 square feet in area; lots may be as small as 2,500 square feet.

## **§2.5.3. Historic Overlay District (-HO)**

### **B. Use and Development Standards**

All permitted and ~~conditional~~ special uses of the underlying zoning district are allowed subject to the specific requirements and procedures for each use.

## **§2.4.9. Planned Development District Standards**

### **B. Planned Development-Residential (PD-R) District**

#### **2. Permitted Uses**

All uses permitted by right, ~~as conditional uses~~, and as special uses in residential districts are permitted in a PD-R District (§2.2.1), subject to approval by the Board of Commissioners.

### **C. Planned Development-Commercial (PD-C) District**

#### **2. Permitted Uses**

All uses permitted by right, ~~as conditional uses~~, and as special uses in the O-R, B-N, and B-G districts are permitted in a PD-C District (§2.2.1), subject to approval by the Board of Commissioners.

### **D. Planned Development-Industrial (PD-I) District 1.**

#### **2. Permitted Uses**

- (a) All uses permitted by right, ~~as conditional uses~~, and as special uses in the B-N, B-G, I-L, and I-G districts are permitted in a PD-I District (§2.2.1), subject to approval by the Board of Commissioners.

### **E. Planned Development-Mixed Use (PD-MU) District**

## **2. Permitted Uses**

All uses permitted by right, as ~~conditional uses~~, and as special uses in the Permitted Use Table are permitted in a PD-MU District (§2.2.1), subject to approval by the Board of Commissioners.

## **§3.9. Signs**

### **§3.9.5. Specific Sign Regulations**

#### **A. On-Premises Signs**

##### **3. Freestanding Signs (pole, monument, ground signs)**

###### **(h) Location**

Freestanding signs are permitted in nonresidential districts; however, pole signs are not permitted in the B-N District. Home occupation signs shall be permitted in residential districts in accordance with §4.6.5.E or §4.6.5.F, as applicable. The Board of Commissioners may approve a freestanding sign in accordance with the standards of this section as part of a ~~conditional~~ **special** use permit in a residential district.

## **ARTICLE 4. SPECIFIC USE STANDARDS**

### **§4.2. Residential Use Standards**

The following standards shall apply to all permitted uses, ~~special uses~~, and ~~conditional~~ **special** uses, as set forth in the Permitted Land Use Table (see §2.2.1).

### **4.3. Civic Use Standards**

The following standards shall apply to all permitted uses, ~~special uses~~ and ~~conditional~~ **special** uses, as set forth in the Permitted Land Use Table (see §2.2.1).

#### **§4.3.7 Solar Farm**

**C.** A map analysis showing a radius of five nautical miles from the center of the project with any airport operations in the area highlighted shall be submitted with the ~~conditional~~ **special** use permit application. If a Federal Aviation Administration (FAA) regulated airport is located within the radius, all required information shall be submitted to the FAA for review. Proof of delivery of notification and date of delivery shall be submitted with the permit application.

## 4.4. Commercial Use Standards

The following standards shall apply to all permitted uses, ~~special uses~~ and ~~conditional special~~ uses, as set forth in the Permitted Land Use Table (see §2.2.1).

### §4.4.25. Veterinarian, Animal Hospital

B. Outdoor runs may be permitted subject to Board of Commissioners approval (see §9.11, ~~Conditional~~ Special Use Review).

## §4.5. Industrial Use Standards

The following standards shall apply to all permitted uses, ~~special uses~~ and ~~conditional special~~ uses, as set forth in the Use Table (see §2.2.1).

### §4.5.1. Waste Service, Mining and Extractive Uses

Waste service, mining and extractive uses shall be subject to the following standards:

#### I. Site Restoration

##### 1. Restoration Plan

(a) Before approval of a ~~conditional~~ special use permit for an excavation use, the operator shall submit to the Director a detailed plan for restoration of the site, including information on the anticipated future use of the restored land, existing and proposed final contours with an interval of no more than five feet. The plan shall include type and number per acre of trees or shrubs to be planted, and the location of future roads, drives, drainage courses or other improvements contemplated.

##### 2. Bonds

Before the issuance of any ~~conditional~~ special use permit, the owner shall execute a bond sufficient to ensure restoration of the site in accordance with the approved restoration plan. Such bonds shall also be approved by the Board of Commissioners as to form, sufficiency and manner of execution, and shall run for the same term as the term of the ~~conditional~~ special use permit and any renewals.

## §4.6. Accessory Structures and Uses

### §4.6.2. General

#### C. Setbacks

The following setback requirements apply to all accessory structures not specifically excepted by §2.6.10.D, Yard Encroachments:

#### 2. Residential Districts

(b) No accessory structure shall extend in front of the front line of the principal structure, unless it is set back a minimum of 100 feet from the edge of the road right-of-way. On lots adjacent to Lake Norman, the Board of Commissioners may approve a ~~conditional~~ special use permit (See §9.11) to allow an accessory structure to be located in the road yard less than 100 feet but no closer than 30 feet from the edge of the road right-of-way.

### §4.6.5. Residential Accessory Use Standards

#### A. Agricultural Labor Housing Facilities

Agricultural labor housing facilities may be approved by ~~conditional~~ special use permit pursuant to §9.11 as an accessory use to a bona fide agricultural operation, subject to the following conditions:

9. No subsequent expansion of a farm worker living facility as shown on the approved site plan for the ~~conditional~~ special use shall be allowed unless another ~~conditional~~ special use permit for that expansion is approved.

#### B. Amateur Radio and Receive-only Antennas

Amateur ratio and receive-only antennas may be installed and operated as permitted accessory uses, subject to the following conditions:

4. A ground, building or tower-mounted receive-only, citizens band or amateur radio service antenna up to 70 feet tall as a ~~conditional~~ special use pursuant to §9.11, subject to the following additional standards:

#### F. Home Occupation, Rural

A rural home occupation may be conducted in the R-R, R-T, R-S and R-CR districts only and as an accessory use to a principal dwelling; provided that such uses in the R-CR district shall be approved by ~~conditional~~ special use permit pursuant to §9.11. A rural home occupation may take place in one accessory structure on the lot and must meet the following specifications:

#### H. Maintenance and Repair of Vehicles

2. All other repairs not listed in subsection 1, above, must be conducted in a structure which is enclosed on at least three of its four sides [unless conducted in association with an auto repair or auto body shop (located in the R-R District) which has received a ~~conditional~~ special use permit]. All automobiles so repaired must be owned by the residents of the lot on which such repair is conducted.

#### K. Private Residential Quarters

Private residential quarters may be permitted by ~~conditional~~ special use permit (See §9.11) as an accessory use to a detached single-family dwelling, subject to the following requirements:

1. Private residential quarters approved as a ~~conditional~~ special use shall be subject to annual review for continued compliance in accordance with the requirements of §9.11.

### §4.7. Temporary Uses

#### M. Manufactured Home, Temporary

3. Manufactured homes may be allowed on a temporary basis in the R-S, R-SF, & R-CR districts on a permitted basis under the following conditions:

- (a) In the event of a disaster, the result of which an occupied detached single-family was destroyed [i.e., received damage greater than 50 percent of its assessed tax value as indicated on the most current tax listings], a Class C, E or F manufactured home may be placed on the lot containing the dwelling unit which was destroyed. The purpose of allowing such manufactured home on said lot is to give the occupants of the destroyed detached single-family unit a place to live while a new dwelling unit is being constructed or damage to the original dwelling unit is being repaired.
- (c) The Director shall be given the authority to issue a temporary use permit for such temporary use on a one-time basis only for a period of up to nine months. Such permit may be renewed on a one-time only basis for up to three additional months by

the Board of Commissioners if, after a public hearing, it is determined that:

(5) The permanent replacement of a structure on the lot may occur if such use and structure is in conformity with the underlying zoning district's regulations; otherwise, the Board of Commissioners may approve replacement of the structure by ~~conditional~~ special use permit approved pursuant to §9.11.

## §4.8. Lake Norman Area Standards

Principal and accessory uses on Lake Norman shall comply with the following requirements.

### §4.8.4. Piers and Docks

- A. Piers and docks located on or adjacent to Lake Norman shall comply with all applicable regulations contained in this §4.8.
- B. A single-slip pier or dock may be located on a lot without any other structures located on that lot. In such instances, that pier shall be deemed to be a principle use. Yard and bulk requirements for the pier or dock shall be waived, except as may be prescribed in this §4.8.
- C. If a single-slip pier or dock, or a boat launching ramp designed to serve one household, is located on a lot in a residential district, and such pier, dock, or launching ramp serves as the principal structure on the lot, said structure shall be allowed as a use-by-right. Any other accessory structures (i.e., picnic shelters, changing room facilities, etc.) may be allowed on the lot subject to the issuance of a ~~conditional~~ special use permit by the Board of Commissioners.
- D. Multiple boat slips, (not used for commercial purposes), or a boat launching ramp, located on a lot with a permitted principle use, shall be considered an accessory use and shall be allowed as a use-by-right.
- E. Multiple boat slips (not used for commercial purposes), or a boat launching ramp designed to serve more than one household, located on a lot without a principal use, may be allowed subject to the issuance of a ~~conditional~~ special use permit by the Board of Commissioners.
- F. In approving a ~~conditional~~ special use permit under this section, the Board of Commissioners, in addition to making the findings of fact contained in §9.11.8, shall also be required to find that:

The proposed use is so situated and developed in a manner which is well-integrated with and minimizes any negative effects upon adjoining and nearby properties.

G. The Board of Commissioners shall have the authority to attach fair and reasonable conditions to the ~~conditional~~ **special** use permit which support this (and the other) findings of fact. These conditions may include the placement of a minimum lot size for the lot(s) containing the pier, dock, or boat launching ramp.

## 7.3. Watershed Protection

### §7.3.1. Authority

The Legislature of the State of North Carolina has, in G.S. §153A-6.121, General Ordinance Authority and in G.S. §143-21, Watershed Protection Rules, delegated the responsibility and authority to local governmental units to establish water supply watershed protection programs, to regulate land use and development within water supply watersheds, and to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

### B. WS-II Watershed Area -- Balance of Watershed (WS-II-BW)

In order to maintain a predominantly undeveloped land use intensity pattern, single-family residential development shall be allowed at a maximum of one dwelling unit per acre; alternatively, lots having an area of at least 40,000 square feet are allowed. All other residential and nonresidential development shall be allowed a maximum of 12 percent impervious surface area. In addition, nonresidential uses may occupy ten percent of the balance of the watershed which is outside the critical area with a 70 percent impervious surface area when approved as a special nonresidential intensity allocation (SNTA). The Board of Commissioners may approve SNTAs consistent with the provisions of this section by ~~conditional~~ **special** use permit (See §9.11). Non-discharging landfills and sludge application sites are allowed.

### C. WS-III Watershed Areas -- Balance of Watershed (WS-III-BW)

In order to maintain a low to moderate land use intensity pattern, singlefamily residential development shall be allowed at a maximum of two dwelling units per acre; alternatively, lots having an area of at least 20,000 square feet are allowed. All other residential and nonresidential developments shall be allowed a maximum of 24 percent impervious surface area on a project-by-project basis. In addition, nonresidential uses may occupy ten percent of the balance of the watershed outside the critical area (located within the jurisdiction of this UDO) with a 70 percent impervious surface area when approved as a special nonresidential intensity allocation (SNTA). The Board of Commissioners may

**Part 1: Replace conditional use with special use**

approve SNIAs consistent with the provisions of this subsection by ~~conditional special~~ use permit (See §9.11). Non-discharging landfills and sludge application sites are allowed.

**2. Density and Impervious Surfaces****(b) All Other Residential and nonresidential**

Development shall not exceed 24 percent impervious surface area on a project-by-project basis except that up to ten percent of the balance of the watershed located outside of the critical area and within the jurisdiction of the Ordinance may be approved for nonresidential uses to 70 percent impervious surface area on a project-by-project basis by ~~conditional special~~ use permit (See §9.11). For the purpose of calculating impervious surface area, total project area shall include total acreage in the tract on which the project is to be developed. For expansions to existing development, the existing impervious surface area is not counted toward the maximum allowed 70 percent impervious surface area.

**§7.3.9. High Density Option****A. General Requirements**

1. In any designated WS-IV watershed, any development (other than a single-family residential development) may occur using the high density option subject to approval by the Board of Commissioners under the rules and guidelines herein outlined. The use of the high density option for any particular project may be approved by ~~conditional special~~-use permit (See §9.11). Where deemed necessary by the Board of Commissioners, such applications may be submitted to the Division of Environmental Management's Water Quality Section for review and recommendation.

**§9.5. Planned Development Review****§9.5.11. Action after Approval**

- F. ~~Conditional Special~~ uses not shown on the approved master plan require approval in accordance with §9.11, ~~Conditional Special~~ Use Review.

## §9.7. Site Plan Review

### §9.7.2. Site Plan Types

#### A. Minor Site Plans

(b) Projects listed below shall also be reviewed as a minor site plan provided they do not require modification of the standards established in this UDO other than those which the Director may modify administratively; and do not involve the issuance of a special use permit ~~or a conditional use permit~~ or a conditional rezoning.

#### B. Major Site Plans

##### 2. Approval Authority

The Board of Commissioners shall be responsible for approving all major site plans, including site plans associated with an approved planned development master plan (see paragraph §9.7.5 below), ~~special use permits (see §9.10)~~, and ~~conditional~~ **special** use permits (see §9.11).

## §9.8. Traffic Impact Analysis

### §9.8.1. Applicability

A. A traffic impact analysis may be required to be submitted in conjunction with applications for planned development, preliminary plat, major site plan, special use permit and conditional use permit.

### §9.8.2. Exemptions

The following projects shall not be required to submit a traffic impact analysis:

A. Developments approved prior to the effective date of this UDO that have maintained valid planned development master plans, preliminary plats, major site plans or ~~conditional~~ **special** use permit.

## ARTICLE 10. NONCONFORMITIES

### §10.3. Nonconforming Uses

#### §10.3.5. Change in Use

A. The Board of Commissioners may permit as a ~~conditional~~ **special** use (See §9.11) a change in nonconforming use, provided that the requirements of §10.3.1 through §10.3.4 above are met, and the Board of Commissioners finds that such new use would be more in character with the uses permitted in the district than the previous use. In permitting such change, the Board of Commissioners may require appropriate conditions and safeguards in accordance with the provisions of this UDO.

## §10.7. Nonconformities in the Watershed Protection Overlay (-WPO)

### §10.7.5. Nonconforming Mobile and Manufactured Homes

D. In no instance may a Class D mobile or manufactured home serve as the replacement manufactured home, except as a ~~conditional~~ **special** use in the R-R and R-T districts in accordance with the requirements of **Error! Reference source not found..**

## ARTICLE 12. DEFINITIONS

### §12.3.2. General Terms

~~CONDITIONAL~~ **SPECIAL** USE PERMIT. See §9.11.

~~CONDITIONAL~~ **SPECIAL** USE. See §9.11.

~~DISTRICT, PARALLEL CONDITIONAL~~ Zoning. See **Error! Reference source not found..**

**2) Amend Sections 9.4, 9.5 and 9.6 to simplify and clarify the requirements for adopting an explanatory statement in deciding on a rezoning application or proposed text amendment.**

Since 2005, local governing boards, when deciding on a rezoning application or proposed text amendment, have been required by state law to adopt a statement describing whether the action is consistent with a comprehensive plan and explaining why the action is reasonable and in the public interest. In 2017, the state law was amended to set out three options for an explanatory statement.

Chapter 160D does away with the three options, effectively adding a fourth option that had been lacking: finding a rezoning request is consistent with a comprehensive plan, but turning it down on the basis that it is not reasonable or in the public interest.

The new also allows a board to approve a rezoning that is inconsistent with an adopted plan without the previous requirement of explaining "the change in conditions that the board took into account in amending the plan to meet the development needs of the community." Instead, the approval automatically amends the plan.

In addition, a county boards is no longer required to adopt an explanatory statement "prior to" approving or rejecting any zoning change. Chapter 106D law allows a statement to be adopted as part of the same motion.

Chapter 160D also lists factors that may be considered as part of a statement of reasonableness in a rezoning case.

## **§9.3. Text Amendment**

**§9.3.1.** A. Amendments to the text of this UDO shall be made in accordance with the provisions of this section.

B. The Board of Commissioners shall consider amendments to the text of this UDO, as may be required from time to time.

### **§9.3.2. Initiation of Amendment**

A request to amend the text of this UDO may be initiated by the Board of Commissioners, Board of Adjustment, Planning Board, Director, or the general public.

### **§9.3.3. Application Requirements**

Applications for a text amendment shall be submitted in accordance with §9.2.2, Application Requirements.

### **§9.3.4. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

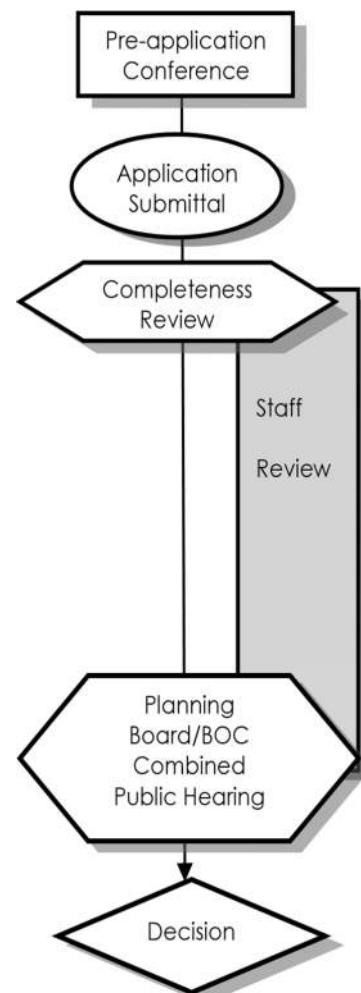
### **§9.3.5. Action by Director**

A. The Director shall draft the appropriate amendment and prepare a staff report that reviews the proposed text amendment request.

B. Following completion of technical review by staff, the Director shall forward the completed request and any related materials to the Planning Board for a recommendation.

### **§9.3.6. Action by Planning Board**

A. When conducting a review of a proposed text amendment, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall make provide a written recommendation on the text amendment request to the Board of Commissioners that addresses plan consistency and others matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the



proposed amendment by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the request without the Planning Board's recommendation.

- B.** Following Planning Board review, the Director shall forward the completed request and any related materials, including the Planning Board recommendation (if applicable), to the Board of Commissioners for final action.

#### **§9.3.7. Action by Board of Commissioners**

- A.** Before taking action on a text amendment, the Board of Commissioners shall consider the recommendations of the Planning Board and Director.
- B.** The Board of Commissioners may approve the amendment, deny the amendment, or send the amendment back to the Planning Board for additional consideration.
- C.** When ~~Prior to~~ adopting or rejecting any text amendment, the Board of Commissioners shall adopt one of the following statements:
  - 1.** ~~A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
  - 2.** ~~A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
  - 3.** ~~A statement approving the zoning amendment and containing at least all of the following:~~
    - (a)** ~~A declaration that the approval is also deemed an amendment to the comprehensive plan.~~
    - (b)** ~~An explanation of the change in conditions that the Board of Commissioners took into account in amending the plan to meet the development needs of the community.~~
    - (c)** ~~Why the action taken was reasonable and in the public interest.~~

approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining the reasonableness of the proposed amendment.

**§9.3.8. Approval Criteria**

- A.** In evaluating any proposed amendment of the text of this UDO, the Planning Board and the Board of Commissioners shall consider the following:
  - 1.** The extent to which the proposed text amendment is consistent with the remainder of the UDO, including, specifically, any purpose and intent statements;
  - 2.** The extent to which the proposed text amendment represents a new idea not considered in the existing UDO, or represents a revision necessitated by changing circumstances over time;
  - 3.** Whether or not the proposed text amendment corrects an error in the UDO; and
  - 4.** Whether or not the proposed text amendment revises the UDO to comply with State or Federal statutes or case law.
- B.** In deciding whether to adopt a proposed text amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with the adopted plans and policies of the County and the specific intent of this UDO.

**§9.3.9. Appeal to Court**

Any decision by the Board of Commissioners may be appealed within 30 days of the decision in accordance with G.S. § 153A-145.

## **§9.4. Rezoning**

### **§9.4.1. Applicability**

- A.** Amendments to the Zoning Map shall be made in accordance with the provisions of this section. The Board of Commissioners shall consider amendments to the Zoning Map, as may be required from time to time.
- B.** Rezonings should correspond with the boundary lines of existing platted lots or parcels. Where the boundaries of a rezoning request stop short of an exterior property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of this UDO.

- C.** All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, prior to advertisement of the public hearing, the rezoning shall be expanded to include all property necessary to meet zoning requirements.

### **§9.4.2. Initiation of Amendment**

A request for a rezoning may be initiated by the Board of Commissioners, the Planning Board, or the Director. An owner of land within the jurisdiction of the County (or a duly authorized agent or representative) may petition the Board of Commissioners for a rezoning.

### **§9.4.3. Pre-application Conference**

All applicants petitioning for a rezoning shall schedule a pre-application conference with the Director in accordance with §9.2.1.

### **§9.4.4. Application Requirements**

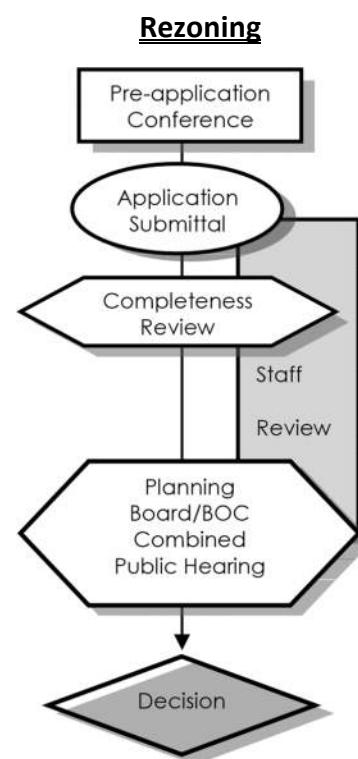
All applications for a rezoning shall be submitted in accordance with §9.2.2, Application Requirements.

### **§9.4.5. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

### **§9.4.6. Action by Director**

The Director shall prepare a staff report that reviews the rezoning request in accordance with the adopted plans and policies of the County and the general requirements of this UDO. Following completion of technical review by staff, the Director shall forward the completed request and any related materials to the Planning Board.



**§9.4.7. Action by Planning Board**

- A. The Planning Board shall make a recommendation on the rezoning request to the Board of Commissioners. The Planning Board shall advise and comment on whether the proposed ~~amendment~~ action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If no such recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the request without the Planning Board's recommendation.
- B. Following Planning Board review, the Director shall forward the completed rezoning request and any related materials, including the Planning Board recommendation, to the Board of Commissioners for final action.

**§9.4.8. Action by Board of Commissioners**

- A. Before taking action on a rezoning, the Board of Commissioners shall consider the recommendations of the Planning Board and Director.
- B. The Board of Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.
- C. When ~~Prior to~~ adopting or rejecting any ~~re~~zoning map amendment, the Board of Commissioners shall ~~adopt one of the following statements:~~
  - 1. ~~A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
  - 2. ~~A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
  - 3. ~~A statement approving the zoning amendment and containing at least all of the following:~~
    - (a) ~~A declaration that the approval is also deemed an amendment to the comprehensive plan.~~

~~(b) An explanation of the change in conditions that the Board of Commissioners took into account in amending the plan to meet the development needs of the community.~~

~~(c) Why the action taken was reasonable and in the public interest.~~

approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining the reasonableness of the proposed amendment. The statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of any area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development and the development permissible under the proposed development; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use plan map in the approved plan and no additional request or application for a plan amendment shall be required.

#### **§9.4.9. Modification of Application**

An applicant in a zoning matter may reduce the geographic scope and or propose a district of lower density or intensity from that requested in the application by filing a statement of modification with the Director.

#### **§9.4.10. Appeal to Court**

Any decision by the Board of Commissioners may be appealed within 30 days of the decision in accordance with G.S. §153-345.

## **§9.5. Planned Development Review**

### **§9.5.1. Applicability**

- A. Planned development review shall occur in accordance with the provisions of this section.
- B. The Board of Commissioners shall consider planned development rezonings, as may be required from time to time.
- C. All requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, prior to advertisement of the public hearing, the rezoning shall be expanded to include all property necessary to meet zoning requirements.
- D. All subdivisions with 50 or more dwelling units or lots shall be processed as a planned development.

### **§9.5.2. Initiation of Amendment**

An owner of land within the jurisdiction of the County (or a duly authorized agent or representative) may petition the Board of Commissioners for planned development rezoning.

### **§9.5.3. Pre-application Conference**

All applicants petitioning for planned development rezoning shall schedule a pre-application conference with the Director in accordance with §9.2.1.

### **§9.5.4. Community Involvement Meeting (CIM)**

After the pre-application conference and prior to final acceptance of an application by the Director, all applicants petitioning for planned development rezoning shall hold a community involvement meeting in accordance with the following requirements:

- A. Only the initial application for planned development review shall require a CIM. Subsequent applications for subdivision or site plan review do not require further CIMs.
- B. The purpose of the CIM shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments.
- C. The applicant shall provide notice by mail in accordance with paragraph §9.2.3.B.3. The notice shall be mailed at least ten days but not more than 25 days prior to the date of the CIM.



- D. The applicant shall prepare and submit to the Director detailed minutes that outlines attendance, major points discussed, and any agreements reached between the parties involved.
- E. Following the CIM, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. One or more revised copies of the application shall be submitted to the Director for review. No additional fee shall be required to be paid for making such changes provided the Director receives the revised application within 30 days following the CIM. If a revised application is not received during said 30 day period, the Director shall review the original application submitted.
- F. The Director may develop administrative rules pertaining to any additional requirements for the conduct of the meeting.

**§9.5.5. Application Requirements**

- A. Concurrent with a request for planned development rezoning, an applicant shall submit a master plan to govern the development and maintenance of the land within the planned development. The master plan shall be prepared by a design professional.
- B. All applications for planned development rezoning shall be submitted in accordance with §9.2.2, Application Requirements.
- C. A master plan which meets the requirements for submittal of a preliminary plat may be approved as the master plan for the development and the preliminary plat concurrently.
- D. A traffic impact analysis may be required if the proposed planned development meets the thresholds established in §9.8, Traffic Impact Analysis.

**§9.5.6. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**§9.5.7. Action by Director**

- A. Upon submission of a completed application, the Director shall schedule the master plan for review by the Technical Review Committee. The Technical Review Committee shall review the master plan for consistency with the requirements of this UDO.
- B. Upon completion of the technical review, the Director may meet with the applicant to discuss any changes in development design.
- C. The Director shall prepare a staff report that reviews the application in accordance with comments provided by the Technical Review Committee, in accordance with the adopted plans and policies of the County, and the general requirements of this UDO. The report, master plan and any related application materials shall be forwarded to the Planning Board.

**§9.5.8. Action by Planning Board**

- A.** The Planning Board shall make a recommendation on the planned development request to the Board of Commissioners. The Planning Board shall advise and comment on whether the proposed ~~amendment~~ action is consistent with any comprehensive plan that has been adopted and other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.
- B.** ~~The Planning Board's recommendation shall include a written statement to the Board of Commissioners describing whether its recommendation is consistent with the adopted plans and policies of the County.~~ If no written recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the application without the Planning Board's recommendation.
- C.** Following Planning Board review, the Director shall forward the completed planned development request and any related materials, including the Planning Board recommendation (if applicable), to the Board of Commissioners for final action.

#### **§9.5.9. Action by Board of Commissioners**

- A.** Before taking action on a planned development rezoning, the Board of Commissioners shall consider the recommendations of the Planning Board and Director. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.
- B.** The Board of Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.
- C.** ~~Prior to~~ When adopting or denying any rezoning, the Board of Commissioners shall adopt one of the following statements:
  - 1.** ~~A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~

- 2.** A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.
- 3.** A statement approving the zoning amendment and containing at least all of the following:
  - (a)** A declaration that the approval is also deemed an amendment to the comprehensive plan.
  - (b)** An explanation of the change in conditions that the Board of Commissioners took into account in amendment the plan to meet the development needs of the community.
  - (c)** Why the action taken was reasonable and in the public interest.

approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of any area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development and the development permissible under the proposed development; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use plan map in the approved and no additional request or application for a plan amendment shall be required.

#### **§9.5.10. Master Plan Approval Criteria**

The master plan review shall include and the applicant shall be responsible for successfully addressing the following:

- A.** Compliance with §2.4.9, Planned Development Districts Standards, and all other applicable requirements of this UDO;
- B.** Conformance of the proposal with the stated purpose of the requested planned development district;
- C.** Compatibility of the proposed development with the adjacent community;
- D.** The quality of design intended for each component of the project and the ability of the overall development plan to ensure a unified, cohesive environment at full build-out;
- E.** Compatible relationships between each component of the overall project;
- F.** Self-sufficiency of each phase of the overall project and phase schedule;

- G. Documentation that the proposed infrastructure improvements accommodate the additional impacts caused by the development, or documentation to assure that the development, as proposed, will not overtax the existing public infrastructure systems;
- H. The fiscal impact of the proposal and the proposed financing of required improvements;
- I. The success of the proposal in providing adequate pedestrian and bicycle links within the development and with the adjacent community;
- J. The effectiveness with which the proposal protects and preserves the ecologically sensitive areas within the development; and
- K. Other conditions deemed necessary by the Board of County Commissioners for the success of the project.

**§9.5.11. Action after Approval**

- A. Upon approval of a planned development rezoning by the Board of Commissioners and on recordation of the notice of approved the master plan, the district is deemed established. All documents (including the approved master plan) shall be an integral part of the approved proposal.
- B. The approved planned development and associated master plan shall run with the land and shall be binding on the original applicant as well as any successors, assigns and heirs. Notice of the approved master plan shall be recorded in the Lincoln County Register of Deeds Office and the Zoning Map amended.
- C. Approval of a planned development rezoning and associated master plan does not constitute site plan approval or subdivision approval (if the property is to be further subdivided), except where the master plan meets the requirements for and is approved as a preliminary plat.
- D. Property to be further subdivided shall obtain approval in accordance with §9.6, Subdivision Review. Where a preliminary plat has been approved, the applicant may move forward to provide construction plans and a final plat.
- E. Property not to be further subdivided shall obtain site plan approval as set forth in §9.7, Site Plan Review.
- F. Conditional uses not shown on the approved master plan require approval in accordance with §9.11, Conditional Use Review.
- G. Discretionary uses not shown on the approved master plan require approval in accordance §9.11, Special Use Review.

**§9.5.12. Approved Master Plan Modifications**

- A.** Amendments to an approved master plan, if minor in scope may be approved administratively by the Director. Minor changes shall include:
  - 1. Modifications, up to ten percent, of the original mixture of uses (so long as the minimum and maximum stated are maintained);
  - 2. Minor adjustments to phasing (as long as the quantity of phases remains);
  - 3. The realignment of internal roadways; and
  - 4. Minor changes or adjustments to the sign, lighting and landscape requirements may also be approved administratively by the Director.
- B.** Major modifications shall require resubmittal to the Board of Commissioners. These shall include:
  - 1. The addition of land modifications to the originally approved mixture of uses in excess of ten percent;
  - 2. A change in the number of phases within the development;
  - 3. The addition or deletion of main vehicular entrances serving the development or their relocation; and
  - 4. Major modifications shall also include any proposed revisions that are deemed by the Director to be inconsistent with the adopted plans and policies of the County.

**§9.5.13. Appeal to Court**

Any decision by the Board of Commissioners may be appealed within 30 days of the decision in accordance with G.S. §153-345.

**3) Amend Section 9.20 (Zoning Vested Rights) to clarify the process for establishing vested rights and set requirements for site specific vesting plans.**

A vested right confers upon a landowner the right to develop and use a property under the terms and conditions of a permit or approved plan, even if regulations are amended afterwards.

Chapter 160D recodifies vested right provisions, sets requirements for site-specific vesting plans, specifies that a site specific vesting plan is vested for a minimum period of two years, allows a local government to provide that rights be vested for up to five years if warranted, and provides for a multi-phased development to be vested for seven years if the development contains at least 25 acres.

## §9.20. Zoning Vested Rights

### §9.20.1. Applicability

- A. The purpose of this section is to implement the provisions of G.S. §153A 344.1 160D-108.1 pursuant to which a statutory zoning vested right is vested rights are established upon the approval of a site specific development vesting plan as defined in §12.3.2 of this UDO.
- B. Following approval or conditional approval of a site specific development vesting plan, nothing in this UDO shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval; provided that such reviews and approvals are not inconsistent with the original approval.
- C. Nothing in this UDO shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this UDO.

### §9.20.2. Establishment

- A. A zoning vested right shall be deemed is established upon the valid approval, or conditional approval, of a site-specific development vesting plan. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.
- B. The approving authority may approve a site specific development vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.
- C. Notwithstanding paragraphs A and B above, approval of a site specific development vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- D. A site specific development vesting plan shall be deemed approved upon the effective date of the approval authority's decision approving the plan or another date determined upon approval.
- E. The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the County, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable, new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this UDO.

F. A zoning vested right obtained under this section is not a personal right, but shall attach attaches to and runs with the applicable property. After approval of a site specific development vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

### 9.20.3. Application Requirements

A. An application for ~~zoning vested rights~~ shall be submitted in accordance with §9.2.2, Application Requirements. In order for a ~~zoning~~ vested right to be established upon approval of a site specific ~~development vesting~~ plan, the applicant must indicate, at the time of application, that a ~~zoning~~ vested right is being sought.

B. ~~Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan established a zoning vested right under G.S. §153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."~~

### §9.20.4. Notice and Public Hearings

The county shall hold all required public hearings and give notice in accordance with §9.23, Notice and Public Hearings.

### §9.20.5. Action by Director

The Director shall transmit to the Board of Commissioners an application for ~~zoning~~ that includes a request for vested rights.

### §9.20.6. Action by Board of Commissioners Amendment of Plans

A. ~~Before taking action on the zoning vested rights request, the Board of Commissioners shall consider the recommendations of the Director.~~

B. ~~The Board of Commissioners may approve or deny the request.~~

An approved site-specific vesting plan may be amended with the approval of the owner and the approval authority as follows: Any substantial modification must be reviewed and approved in the same manner as the original approval. Minor modifications as defined by this UDO may be approved by the Director.

### §9.20.7. Additional Conditions Continuing Review

A. ~~In granting approval of a zoning vested right, the Board of Commissioners may impose reasonable conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right-of-way or easement dedication; recreation and open space, or buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions.~~

B. ~~Any additional condition approved by the Board of Commissioners shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.~~

Following approval or conditional approval of a statutory vested right, the Director may make subsequent reviews and require approvals by the County to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The County may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable development regulations.

#### **§9.20.8. Duration and Termination of Vested Right**

- A. A zoning vested right for a site-specific vesting plan that has been vested as provided in this UDO shall remains vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to paragraph B below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- B. Notwithstanding the provisions of paragraph A above, the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in accordance with all relevant circumstances, including, but not limited to, the size of the development, density and intensity of the development, economic cycles and market conditions or other considerations. These determinations shall be in the sound discretion of the approval authority at the time the site specific development vesting plan is approved.
- C. A multi-phased development plan as defined in §12.2.3 is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.
- D. Upon issuance of a building permit, the expiration provisions of this §9.20.8 section and the revocation provisions of G.S. § 153A-362 160D-1111 and 160D-1115 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.
- E. A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

#### **§9.20.9. Termination Subsequent Changes Prohibited; Exceptions**

A vested right, once established as provided for in this section, precludes any zoning action by the County that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:

- (a) With the written consent of the affected landowner;
- (b) Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, and safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.
- (c) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in considerations of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the County, together with interest as provided in G.S. §160D-106.
- (d) Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Board of Commissioners of the site-specific vesting plan.
- (e) Upon the enactment or promulgation of a State or federal law or regulation precludes development as contemplated in the site-specific development plan, in which case the County may modify the affected provisions, upon a finding that the local government may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

#### **§9.20.10. Appeal to Court Process to Claim Vested Right**

Any decision by the Board of Commissioners may be appealed within 30 days of the decision in accordance with G.S. § 153-345. A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Director, who shall make an initial determination as to the existence of the vested right. The decision of the Director may be appealed to the Board of Adjustment. In lieu of seeking such a determination or pursuing an appeal to the Board of Commissioners, a person claiming a vested right may bring an original civil action as provided by G.S. §160D-1403.1.

### **§12.3. Defined Terms**

#### **§12.3.2. General Terms**

MULTI-PHASED DEVELOPMENT. A development containing 25 acres or more that is both of the following (1) submitted for development permit approval to occur in more than one phase and (2) subject to a master development plan with committed elements showing the type and intensity of use of each phase.

SITE SPECIFIC DEVELOPMENT VESTING PLAN. A plan of land development submitted to the County for the purpose of obtaining one of the following zoning or land use permits or approvals in which the applicant requests vesting pursuant to §9.20 of this UDO: major subdivision plat, major site permit plan, conditional special use permit, conditional use zoning district or variance Planned Development district; provided, notwithstanding the foregoing that neither a variance, a plat nor any other document that fails to The plan shall describe with reasonable certainty the type and intensity of use for specific parcel or parcels of property shall constitute a site specific development and include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate dimensions, including height, of proposed buildings and other structures; the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, pedestrian walkways, driveways and parking areas; and required landscaping areas and buffers.

**4) Amend Section 2.1.3 (Conditional Zoning Districts) to specify, in accordance with Chapter 106D, limits on conditions that may be imposed, and to more specifically define minor modifications in approved plans.**

**§2.1.3. Conditional Zoning Districts**

**A. Authority**

Pursuant to G.S. § 153A-342 160D-703(b), the Board of Commissioners may establish by ordinance various conditional zoning districts ~~upon request by or on behalf of property owners. Property may be placed in a conditional zoning district only in response to a petition by all owners of the property to be included.~~

**B. Community Involvement Meeting (CIM)**

Prior to final acceptance of an application by the Director, all applicants petitioning for conditional zoning districts shall hold a community involvement meeting (CIM) in accordance with the following requirements:

1. Only the initial application for conditional zoning districts shall require a CIM. Subsequent applications for subdivision or site plan review do not require further CIMs.
2. The purpose of the CIM shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments.
3. The applicant shall provide notice by mail in accordance with §9.2.3.B.3. The notice shall be mailed at least ten days but not more than 25 days prior to the date of the CIM.
4. The applicant shall prepare and submit to the Director detailed minutes that outlines attendance, major points discussed, and any agreements reached between the parties involved.
5. Following the CIM, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. One or more revised copies of the application shall be submitted to the Director for review. No additional fee shall be required to be paid for making such changes provided the Director receives the revised application within 30 days following the CIM. If a revised application is not received during said 30 day period, the Director shall review the original application submitted.
6. The Director may develop administrative rules pertaining to any additional requirements for the conduct of the meeting.

**C. Minimum Requirements**

All zoning regulations that apply to the general use district are minimum requirements for development within conditional zoning districts.

**D. Conditions of Approval**

1. ~~In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend and the Board of Commissioners may require that reasonable and appropriate conditions be attached to approval of the petition. Such conditions shall be limited to those that ensure conformance of the development and use to the requirements of this UDO and the approved master plan, which address the impacts reasonably expected to be generated by the development or use of the site. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the governing board. Statements that:~~
  - (a) ~~Analyze whether the rezoning is consistent with an adopted comprehensive plan and any other officially adopted plan; and~~
  - (b) ~~Other matters that the Board of Commissioners deems appropriate; and~~
  - (c) ~~Why it considers the action taken to be reasonable and in the public interest shall be prepared and accompany each final decision relative to the conditional zoning request.~~

Specific conditions may be proposed by the petitioner or the County or its agencies, but only those conditions mutually approved by the County and the petitioner may be incorporated into the zoning regulations. Conditions imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to county ordinances, plans adopted pursuant to G.S.160D-501, or the impacts reasonably expected to be generated by the development or use of the site. Unless consented to by the petitioner in writing, the County may not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design element within the scope of G.S. 160D-702(b), driveway-related improvement in excess of those allowed in G.S.136-18(29), or other unauthorized limitations on the development or use of land.

2. A conditional zoning district may provide for greater but not lesser setbacks than those applicable to the corresponding general use district, and may specify that only one or some of the uses allowed (either on a permitted or a conditional special use basis) in the general use district are allowed in the conditional zoning district.
3. ~~If, for any reason, any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, it is the intent of this UDO that the authorization of such conditional use permit shall be null and void and of no effect and that~~

proceedings be instituted to rezone the property to its previous zoning classification.

**E. Effect of Approval; Zoning Map Designation**

If a petition for a conditional zoning district is approved, the development and use of the property shall be governed by the UDO requirements applicable to the district's zoning classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation preceded by the letters CZ (i.e., CZ B-G).

**F. Minor Changes Modifications to Conditional Zoning Districts**

**1. Minor Modifications**

Minor changes in ~~an approved master plan~~ conditional zoning district may be approved by the Director, provided such changes will not:

- (a) Alter the basic relationship of the proposed development to adjacent property.**
- (b) Alter the uses permitted or increase the density or intensity of development.**
- (c) ~~Decrease the off street parking ratio or reduce the yards provided at the periphery of the site may be made with the approval of the Director on a one time basis only.~~ Change the boundaries of the approved site.**
- (d) Substantially change the vehicular access or circulation.**
- (e) Substantially change the location of principal or accessory structures, or the location or size of open space or recreation facilities.**
- (f) Significantly alter the basic size, form, style, ornamentation, and appearance of principal or accessory structures as shown on the approved site plan or described in the applicant's narrative;**
- (g) Substantially reduce the degree or change the location of landscape buffers.**

2. Such increase in building size may thereby take place provided the increase does not exceed ten percent of the existing floor area on the site or 1,000 square feet of gross floor area on the entire site, whichever is less; and provided such building, when expanded, shall lie no closer than 50 feet from any adjoining lot which lies in a residential district.

**2. Major Modifications**

A major modification in a conditional zoning district shall be subject to approval in accordance with the procedure which governed the district's approval.

**5) Amend Sections 8.4 (Historic Properties Commission) and 9.12 (Certificate of Appropriateness) to revise the name of the appointed body and to revise provisions as prescribed by Chapter 160D.**

Chapter 160D uses consistent terminology when referring to the body charged with overseeing the inventory and preservation of local historic landmarks. The shift in name to the Historic Preservation Commission carries no inherent changes to the responsibility of the Historic Properties Commission.

In addition to the change in name, Chapter 160D clarifies three items for the Commission. The first clarification is that the Commission shall follow standard quasi-judicial procedures when issuing Certificates of Appropriateness. The second change is small in form but reclassifies the "guidelines" for historic districts and landmarks as "standards". This change required some structural reorganization of the section. The final change to this section shifts the review of quasi-judicial decisions by the Commission to Superior Court instead of the Board of Adjustment.

**§8.4. Historic ~~Properties-Preservation Committee~~Commission**

**§8.4.1. Establishment**

There is hereby established the Lincoln County Historic ~~Properties-Preservation Committee~~Commission, hereafter referred to as the "~~Historic Committee~~Commission".

**§8.4.2. Composition**

**A. Number and Term**

1. The ~~Historic Committee~~Commission shall consist of ~~five-nine~~ regular members ~~and two alternates~~. Members are appointed by the Lincoln County Board of Commissioners and the Lincolnton City Council.
2. Members of the ~~Historic Committee~~Commission shall serve overlapping terms of three years. Initially, however, the following appointments shall be made:
  - (a) Two regular members and one alternate member shall be appointed for a term of one year a piece; and
  - (b) Two regular members and one alternate member shall be appointed for a term of two years a piece; and
  - (c) One regular member shall be appointed to a term of three years.
3. Thereafter, all appointments shall be for a term of three years. A member may be reappointed for up to two consecutive three-year terms. However, if a member serves for six consecutive years or after the expiration of the member's second appointment to the ~~Historic Committee~~Commission, whichever comes first, a member shall be ineligible for reappointment until one calendar year has thereafter elapsed.

4. Any member of the ~~Historic Committee~~Commission who misses more than three consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the ~~Committee~~Historic Commission and shall be replaced or reappointed by the Board of Commissioners. Absence due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the ~~Committee~~Commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**B. Membership**

~~All members of the Historic Committee shall be residents of the territorial zoning jurisdiction of Lincoln County. The Historic Commission shall be composed of nine (9) members, whose terms of office are set by the Lincoln County Board of Commissioners. The City of Lincolnton shall have two (2) appointments to the Historic Commission, which, along with the appointments from the Lincoln County BOC, totals nine (9). and a. The majority of the regular members and both of the alternate members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.~~

**C. Alternate Members**

1. ~~Alternate members shall serve in the absence of regular Historic Committee members. Such alternate members, while attending any regular or special meeting of the Committee and serving in the absence of any regular member, shall have and exercise all of the powers and duties of such regular member so absent.~~
2. No member or alternate member of the ~~Historic Committee~~Commission shall vote on any matter concerning an application for a Certificate of Appropriateness unless that member or alternate shall have been present during the hearing and deliberation concerning said application.

**§8.4.3. Proceedings**

**A. Meetings**

The ~~Historic Committee~~Commission shall establish a meeting time, and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Committee shall be open to the public and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law (G.S. §143-33C).

**B. Rules of Procedure**

The ~~Historic Committee~~Commission shall adopt and make available to the public rules of procedure for the conduct of its business.

**C. Meeting Minutes**

1. The ~~Historic Committee~~Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations and

actions.

2. The minutes of the Historic Committee Commission shall be a public record.

**D. Annual Report**

An annual report shall be prepared and submitted by the first day of March December of each year to the Board of Commissioners. Such report shall include a comprehensive and detailed review of the activities, problems and actions of the CommitteeHistoric Commission, as well as any budget requests and/or recommendations.

**§8.4.4. Powers and Duties**

In execution of the provisions of this UDO, the Historic Committee Commission shall have the following powers and duties:

**A. General Authority**

~~The Committee shall seek to promote, enhance and preserve the character of the Historic District provided the Committee shall not require the reconstruction of individual or original buildings or structures or portions thereof.~~

**B. Specific Authority**

~~The Historic Committee is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this subsection and Part 3C, Article 19 of Chapter 160A of the General Statutes of the State of North Carolina.~~

1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
2. Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";
3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks; to hold, manage, preserve, restore and improve the same such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which that will secure appropriate rights of public access and promote the preservation of the property;
4. Restore, preserve and operate historic properties;
5. Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;
6. Conduct an educational program with respect to regarding historic properties and districts within its jurisdiction;
7. Cooperate with the State, federal, and local governments in pursuance of the purposes of

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this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

8. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
9. Prepare and recommend the official adoption of a preservation element as part of the municipality's local government's comprehensive plan;
10. Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and
11. Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

**C.A. Final Authority**

The Board of AdjustmentSuperior Court shall be responsible for final action regarding Certificates of Appropriateness (§9.12).

## §9.12. Certificate of Appropriateness

### §9.12.1. Applicability

A. No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within such district until after an application for a certificate of appropriateness (COA) as to exterior features has been submitted to and approved by the Historic Committee Commission except as provided for in §9.12.12.

B. For the purpose of this section "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, landscaping and natural features, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area. Provided however, a COA shall not be required when the only change in exterior appearance is the painting of existing painted surfaces regardless of the color of paint to be applied.

B.C. The Historic Commission shall have no jurisdiction over interior arrangement. Notwithstanding subsection (A) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior

C.D. A COA must be issued by the Historic Committee Commission prior to the issuance of either a zoning or building permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this section. A COA shall be required whether or not a building permit is required. Any building permit, zoning permit or such other permit not issued in conformity with this section shall be invalid.

D.E. Lincoln County and all public utility companies shall be required to obtain a COA prior to initiating any changes in the character of road paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or roads owned or franchised by the Lincoln County or public utility companies.

E.F. Nothing in this §9.12 shall be construed to prevent:

1. Ordinary maintenance or repair of any exterior architectural feature in the Historic District which does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the Building Inspector or similar official shall certify in writing to the ~~Historic Committee~~Commission is required by the public safety because of an unsafe or dangerous condition;
2. Property owner from making any use of his property that is not prohibited by other law; or
3. Maintenance or in the event of an emergency, the immediate restoration of any existing ground utility structure without approval of the ~~Historic Committee~~Commission.

#### **§9.12.2. Application Requirements**

An application for a certificate of appropriateness shall be submitted in accordance with §9.2.2, Application Requirements.

#### **§9.12.3. Notice and Public Hearing**

- A. Prior to issuance or denial of a COA, the ~~Historic Committee~~Commission shall take such action as may reasonably be necessary to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.
- B. Where the ~~Historic Committee~~Commission deems it necessary, it may hold a public hearing concerning the application. Where the ~~Historic Committee~~Commission finds a hearing to be necessary, public notice shall be provided in accordance with the requirements of §9.2.3.

#### **§9.12.4. Action by ~~Historic Committee~~the Commission**

- A. The ~~Historic Committee~~Commission shall take action on the application and in doing so shall apply the Review Criteria, contained in §9.12.7.
- B. The ~~Historic Committee's~~Commission's action on the application shall be approval, approval with modifications, or disapproval.
- C. ~~Prior to final action on an application, the Historic Committee shall make findings of fact relative to the review criteria of §9.12.7, indicating the extent to which the application is or is not congruous with the historic aspects of the district.~~
- D.C. ~~Prior to any action to enforce a landmark or historic district regulation, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and standards not inconsistent with this part to guide the commission in determining congruity with the special character of the landmark or historic district for new construction, alterations, additions, moving and demolition. The landmark or historic district regulation may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval as an administrative decision of applications for a COA for minor works or activity as defined by the regulation; provided, however, that no application for a COA may be denied without formal action by the preservation commission. Other than these administrative decisions on minor works,~~
- E.D. ~~Decisions on COAs are quasi-judicial and shall follow the procedures of G.S.~~

**160D-4-6.** No member or alternate member shall vote on any matter concerning an application for a COA unless that member or alternate shall have been present during the hearing and deliberations concerning said application.

**F.E.** The ~~Historic Committee Commission~~ shall cause to be entered into the minutes of its meeting the reasons for its actions, whether such action be approval, approval with modifications, or denial.

#### **§9.12.5. Time Limits**

If the ~~Historic Committee Commission~~ fails to take final action upon any application within 60 days after the completed application is submitted to the Director, the application shall be deemed to be approved. The 60 day period may be extended through mutual written agreement between the ~~Historic Committee Commission~~ and the applicant.

The extension may be no longer than 30 days and may be renewed.

#### **§9.12.6. Submission of New Application**

If the ~~Historic Committee Commission~~ determines that a COA should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving; unless a period of one year has elapsed since said denial and in such case the same application may be re-submitted.

#### **§9.12.7. Review Criteria**

##### **A. Intent**

1. It is the intention of these regulations to insure, insofar as possible, that buildings or structures in the -HO district shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of same or to impose architectural styles from particular historic periods. In considering new construction, the ~~Historic Committee Commission~~ may encourage contemporary design which is harmonious with the character of the District.
2. In granting a COA, the ~~Historic Committee Commission~~ shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity.

##### **B. Exterior Form and Appearance**

The following criteria shall be considered, when relevant, by ~~the Historic Committee Commission~~ in reviewing applications for a COA. These criteria shall serve as guidelines-standards to determine whether the construction or alteration as proposed in the application for certificate of appropriateness is compatible to those properties within the -HO district:

1. Lot coverage;
2. Required yard;
3. Building or structure height;

- (a) Maximum height of all new buildings permitted in the -HO District shall be 35 feet unless the ~~Historic Committee~~Commission authorizes a height above 35 feet; provided that such authorized height shall not exceed ten percent of the average height of existing adjacent buildings; and
- (b) Chimneys, steeples, spires, cupolas and the like, not intended for human occupancy, shall be reviewed on an individual basis and shall be subject to the requirements stipulated by the certificate of appropriateness for that particular project.
- 4. Spacing of buildings, defined as the distance between adjacent buildings (i.e., the recurrent relationship of building masses to the spaces between them);
- 5. Exterior building materials, the predominant material shall be brick, stone, stucco, wood siding, or such other material that shall be compatible to those properties within the -HO district;
- 6. Proportion, shape, positioning, location, pattern and sizes of any elements of windows and other such openings;
- 7. Surface textures, the predominant texture may be smooth (stucco) or wrought (brick) or horizontal wood siding, or other such texture as shall be compatible to those properties within the -HO district;
- 8. Roof shapes, forms and materials;
- 9. Use of local or regional architectural traditions;
- 10. General form and proportions of buildings and structures, and relationship of any additions to the main structure;
- 11. Expression of architectural detailing, such as lintels, cornices, brick bond pattern, and foundation materials;
- 12. Orientation of the building to the road;
- 13. Scale, determined by the size of the units of construction and architectural details in relation to the size of man and also by the relationship of buildings and structures;
- 14. Ratio of height to width of the total building façade;
- 15. Effect of trees and other landscape elements;
- 16. Appurtenant fixtures and other features such as lighting;
- 17. Structural condition and soundness;
- 18. Walls - physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, building facades, or combinations of these;
- 19. Color - the predominant color may be that of a natural material or a painted one and shall be compatible to those properties within the -HO district; as used in this paragraph, "compatibility" shall also include original colors of structure, colors which the structure had at any time during which the style(s) of the structure were a prominent style for new construction, or any color schemes generally representative of the original or modified architectural style(s) of the structure and the neighborhood as determined by historical research;

20. Ground covers plants and other such organic materials and paving, paving block and bricks, and other such materials; and
21. Maintenance of pedestrian scale and orientation as well as provision for safe pedestrian movement.

**C. Interior Arrangement Not Considered**

The ~~Historic Committee~~Commission shall not consider interior arrangement.

**§9.12.8. Delay in Demolition of Buildings within Historic District**

- A. An application for a certificate of appropriateness authorizing the -demolition of a building, structure or site within the -HO district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 360 days from the date of approval.
- B. The maximum period of delay authorized by this section shall be reduced by the ~~Historic Committee~~Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the ~~Historic Committee~~Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.
- C. If the ~~Historic Committee~~Commission finds that a building or site has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

**§9.12.9. Review of Application by ~~Historic Committee~~the Commission**

As part of its review procedure, the ~~Historic Committee~~Commission may view the premises and may seek the advice of the North Carolina Department of Cultural Resources or such other expert advice as it may deem necessary under the circumstances.

**§9.12.10. Compliance**

- A. Compliance with the terms of the certificate of appropriateness shall be enforced by the Director. Failure to comply with a certificate of appropriateness shall be a violation of the zoning ordinance.
- B. The discontinuance of work or the lack of progress toward achieving compliance with a certificate of appropriateness for a period of six months shall be deemed as a failure to comply with a certificate of appropriateness. The certificate of appropriateness shall be effective 12 months from the date of issuance by the Director. If all necessary work or progress has not been completed within 60 days of the end of the certificate's time limit, the applicant may apply for an extension from the ~~Historic Committee~~Commission. Such application must be made 30 days prior to the end of the time limit.
- C. Nothing contained in this section shall prohibit, impair, or limit in any way the power of Lincoln County to prevent the construction, reconstruction, alteration, restoration, or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the Historic District in violation of the provisions of this section. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

### **§9.12.11. Unsafe or Dangerous Conditions**

The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition, shall not be prevented by other applicable -HO district requirements.

### **§9.12.12. Minor Work**

- A. The Director shall have the authority to issue a certificate of appropriateness if an application or inquiry falls under one of the following categories of minor work:
  1. Storm windows (providing color matches window trim);
  2. Normal size television and radio antennas (citizen band and ham operators shall require a certificate of appropriateness issued by the Historic Committee);
  3. Roof and basement ventilators;
  4. Window air conditioning units, or outdoor portions of single or two-family residential central air conditioning or heating units; and
  5. If the Director does not issue a certificate of appropriateness, he shall advise the applicant to make a formal application to the Historic Committee.
- B. The Director is not required to issue any certificate of appropriateness and may at his discretion refer any matter to the Historic Committee Commission.
- C. No application for a certificate of appropriateness may be denied without formal action by the Historic Committee Commission.

### **§9.12.13. Appeal**

Final action on a certificate of appropriateness may be appealed to the Board of Adjustment Superior Court ~~in accordance with §9.19, Administrative Appeals.~~

**6) Amend various sections of the UDO to changes references to N.C. General Statutes, to add provisions concerning appeals of zoning amendments, and to more specifically define the type of forestry activity that is not subject to a clear-cutting provision.**

**§1.1. Title**

This UDO shall be known and may be cited as the “Lincoln County Unified Development Ordinance”, and may be referred to as “this UDO”.

**§1.2. Authority and Enactment**

The Board of Commissioners, pursuant to the authority conferred by the General Assembly of the State of North Carolina in G.S. § 153A-~~Article 18~~ 160A, does hereby ordain and enact into laws these articles and sections.

**§1.4. Right-to-Farm and Ranch Policy**

In addition to the purposes set out in §1.3, Lincoln County has established, by ordinance, a “Right-to-Farm and Ranch” policy which is summarized in this section.

- A. Any agricultural operation or practice that is historical, traditional, legitimate, and reasonable shall be protected. Any new or expanded agricultural operation or practice that is legitimate and reasonable shall be encouraged.
- B. Agriculture, as a way of life, benefits all residents of Lincoln County. It is an important part of the economy and adds intrinsic value to life in Lincoln County. Agriculture, as a business, brings with it noise, odors, dust, mud, smoke and other inconveniences, such as equipment and livestock on public roads, odors from manure and feeds, odors from chemical applications, lights and noises at all hours of the day and night, and on-farm processing and marketing of crops and livestock. To maintain this way of life, Lincoln County intends to protect agricultural operators from unnecessary, intrusive litigation. Therefore, no inconvenience shall be considered a nuisance so long as it occurs as a part of non-negligent and legal agricultural practice, as stated in G.S. § 106-735 through 106-744, Agricultural Development and Preservation of Farmland, and Chapter 153A 160D.

## ARTICLE 2. ZONING DISTRICTS

**§2.3.4. Commercial Use Groups**

*Agriculture:* Bona fide farm purposes as defined by N.C. General Statutes 153A-340(b) 160D-903(a) including the production and activities relating to or incidental to the

production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry and all other forms of agricultural products having a domestic or foreign market.

## ARTICLE 7. NATURAL RESOURCE PROTECTION

### §7.3. Watershed Protection

#### §7.3.1. Authority

The Legislature of the State of North Carolina has, in G.S. §153A-6.121 **160D-926**, ~~General Ordinance Authority~~ and in G.S. §143-21**4.5**, Watershed Protection Rules, delegated the responsibility and authority to local governmental units to establish water supply watershed protection programs, to regulate land use and development within water supply watersheds, and to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

### §7.4. Floodplain Protection

#### §7.4.1. Authorization

##### A. General

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A~~ **160D-923** of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Board of Commissioners of Lincoln County, North Carolina, does ordain as follows:

## ARTICLE 8. REVIEW BODIES AND OFFICIALS

### §8.2. Planning Board

#### §8.2.1. Establishment and Composition

The Planning Board is established pursuant to G.S. §153A-321 **106D-301**.

### §8.3. Board of Adjustment

#### §8.3.1. Establishment

The Board of Adjustment is established pursuant to G.S. §153A-345 **106D-302**.

## ARTICLE 9. DEVELOPMENT REVIEW

### §9.3. Text Amendment

#### §9.3.9. Appeal to Court

Any decision by the Board of Commissioners may be appealed ~~within 30 days of the decision~~ in accordance with G.S. § 153A-145 §160D-1401 and 160D-1405(b). An action challenging the validity of a text amendment shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the text amendment.

### §9.4. Rezoning

#### §9.4.10. Appeal to Court

Any decision by the Board of Commissioners may be appealed ~~within 30 days of the decision~~ in accordance with G.S. §153-348 160D-1401 and 160D-1405(a). A cause of action as to the validity of any ordinance amending the zoning map shall accrue upon adoption of such ordinance and shall be brought within sixty days as provided in G.S §1-54.1.

### §9.5. Planned Development Review

#### §9.5.13. Appeal to Court

Any decision by the Board of Commissioners may be appealed ~~within 30 days of the decision~~ in accordance with G.S. §153-345 160D-1401 and 160D-1405(a). A cause of action as to the validity of any ordinance amending the zoning map shall accrue upon adoption of such ordinance and shall be brought within sixty days as provided in G.S §1-54.1.

### §9.9. Zoning Permit

#### §9.9.1. Applicability

- A.** It shall be unlawful to begin moving, constructing, altering, or repairing, except ordinary repairs, of any building or other structure on a site including an accessory structure, until the Director has issued a zoning permit.

- B. It shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, or to extend any use or any lot on which there is a nonconforming use, until the Director has issued a zoning permit for such intended use, including a determination that the proposed use, in all respects, conforms to the provisions of this UDO.
- C. It shall be unlawful to undertake grading, vegetation removal or any other land-disturbing activity of one acre or greater in area until the Director has issued a zoning permit for such work.
- D. In the event of the removal of all or substantially all natural vegetation on a site prior to compliance with the requirements of this section, consideration of any site specific development plan shall be delayed until the existing natural vegetation is restored or for three years, whichever occurs earlier.
- E. This provision shall not be interpreted as applying to or limiting bona fide farm operations as defined by the State of North Carolina, or ~~timber harvest operations in compliance with Division of Forest Resources "Forest Practice Guidelines."~~ forestry activity on forestland that is taxed on the basis of its present-use value under Article 12 of Chapter 105 of the General Statutes or forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes (See G.S. § 153A-452 160D-921.)

## §9.18. Variance

### §9.18.7. Appeal to Court

Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-93 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with §9.18.6.A.7. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition

## **§9.19. Administrative Appeals**

### **§9.19.1. Applicability**

The Board of Adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of this UDO. Any person who has standing under G.S. ~~160A-393(d)~~ **160D-1402(c)** or the County may appeal a decision to the Board of Adjustment. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written decision shall be delivered by personal delivery, electronic mail, or by first-class mail.

### **§9.19.8. Appeal to Court**

Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. ~~160A-393~~ **160D-1402**. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with §9.19.6.D. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.