



To: Board of Commissioners
Planning Board

From: Andrew C. Bryant, Director

Date: October 14, 2022

Re: UDO Proposed Amendment #2022-4
Lincoln County Planning and Inspections Department, applicant

The following information is for use by the Lincoln County Board of Commissioners and Planning Board at their joint meeting/public hearing on November 7, 2022.

Proposal

The planning staff is proposing the following amendment to the Lincoln County Unified Development Ordinance:

- 1) Section 4.2.3 to remove the requirement that a Two-Family House be designed to appear as a single-family detached home in accordance with State law.
- 2) Section 8.5 Remove reference to Adequate Public Facilities Committee,
- 3) Section 9.8.7.F.3 to apply the Level of Service standard to all accesses and streets,
- 4) Section 9.20.10 to clarify the process of claiming a Common Law Vested Right,
- 5) Section 9.6.9.F to assign to authority of granting waivers to Subdivision Standards to the Board of Commissioners,
- 6) Section 9.6.9.G to remove the option to send a Preliminary Plat back to the Planning Board for additional consideration,
- 7) Section 10.5.2 to reference the provisions of state law that allow for the modernization of a billboard to a digital display if the billboard is permitted by NCDOT,
- 8) Update assorted references to Conditional Use Permits to Special Use permits throughout the ordinance.

Background

The purpose of Amendment 1 is to remove the requirement that a Two-Family House be designed to appear as a single-family detached home as prohibited by § 160D-702. (b)



PLANNING & INSPECTIONS DEPARTMENT
Joshua L. Grant, Manager

The purpose of Amendment 2 is to remove an outdated reference to the Adequate Public Facilities Committee. The Adequate Public Facilities Program was removed from the Ordinance in UDO Amendment 2021-2.

The purpose of Amendment 3 is to provide clarification that the Level of Service Standards apply to all new and existing access and streets, not just public streets.

The purpose of Amendment 4 is to clarify the approval of a Common Law Vested Right is made by the Director.

The purpose of Amendment 5 and 6 are to place the authority of granting subdivision waivers under a Quasi-Judicial process with the Board of Commissioners.

The purpose of Amendment 7 is to provide a reference to state law that allows existing billboards to be modernized if the billboard is permitted by NCDOT. The statutory reference is NCGS 136-131.2.



Unified Development Ordinance **Text Amendment Application**

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

Part I

Applicant Name Lincoln County Planning & Inspections

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

Applicant Phone Number (704)736-8440

Part II

Briefly describe the proposed text amendment.

To amend Section 4.2.3 to remove the requirement that a Two-Family House be designed to appear as a single-family detached home in accordance with State law, Section 8.5 Remove reference to Adequate Public Facilities Committee, Section 9.8.7.F.3 to apply the Level of Service standard to all accesses and streets, Section 9.20.10 to clarify the process of claiming a Common Law Vested Right, Section 9.6.9.F to assign to authority of granting waivers to Subdivision Standards to the Board of Commissioners, Section 9.6.9.G to remove the option to send a Preliminary Plat back to the Planning Board for additional consideration, Section 10.5.2 to reference the provisions of state law that allow for the modernization of a billboard to a digital display if the billboard is permitted by NCDOT, Update assorted references to Condition Use Permits to Special Use permits throughout the ordinance.

Part III

Provide the full text of the proposed amendment (on a separate sheet if necessary) with proposed deleted text shown as struck through and proposed added text underlined.

See attached pages

\$400 APPLICATION FEE MUST BE RECEIVED BEFORE PROCESSING.

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

10/03/2022

Date



Zoning Amendment

Proposed Statement of Consistency and Reasonableness

Case UDO #2022-4

Applicant Lincoln County Planning & Inspections

Parcel ID# N/A

Location N/A

Proposed amendment

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This proposed amendment **is consistent** with the Lincoln County 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.

§4.2.3. Two-family House

- A. Access shall be provided from a single driveway or from an alley, where available; and no parking space shall be located in a required yard, except for the rear yard.
- ~~B. The principal structure shall be designed and appear to be a single family detached.~~
- ~~C.B.~~ No off-road parking space shall be located closer than ten feet to any residential building wall.

§4.2.4. Townhouse

- A. Side yards are not required for interior townhouses, but road and rear yards shall be provided for all townhouses, and building separation requirements shall be maintained for all townhouse structures.
- B. All townhouse garages and parking areas shall be located to the rear of the building. No parking shall be permitted in the required road yard.
- C. The maximum number of units allowed in a single building is eight.
- D. The first floor shall be located a minimum of two feet above grade.
- E. For townhouse complexes see §4.1 for additional requirements.

§4.2.5. Multi-family

- A. No parking space shall be located in a required yard, except for the rear yard.
- B. No off-road parking space shall be located closer than ten feet to any residential building wall.
- C. Sidewalks shall be constructed within the interior of the development to link residential buildings with other destinations such as, but not limited to: parking, adjoining roads, mailboxes, trash disposal, adjoining sidewalks or greenways and on-site amenities such as recreation areas.
- D. For multi-family complexes see §4.1 for additional requirements.

§4.2.6. Upper-Story Residential

An upper-story residential unit is allowed on the upper floors of a permitted nonresidential use as set forth in the Permitted Land Use Table (see §2.2.1) and shall adhere to all dimensional standards of the permitted nonresidential use.

§4.2.7. Boarding House

- A. The dwelling shall be owner-occupied;
- B. No more than four rooms are rented per dwelling unit; and
- C. None of the rented rooms shall have private kitchen facilities.

§4.2.8. Manufactured Home, Class A

A manufactured home that consists of two or more sections and complies with the following appearance criteria:

- A. Lot dimensional standards (minimum yards, lot width, height, etc.) Shall be the same as for single-family detached in the applicable district. (See §2.4)
- B. The home shall have a length not exceeding three times its width;

Appeals

8. Enter, solely in performance of its official duties and only at reasonable times, upon private land 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, pursuance 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.

§8.4.5. Appeals

Any appeals of decisions on certificates of appropriateness shall be made to the Superior Court as provided in G.S. 106D-1402.

§8.5. Reserved Adequate Public Facilities Committee**§8.5.1. Purpose**

~~The purpose of the Adequate Public Facilities Committee (APF committee) is to facilitate determinations of adequacy, to assist applicants in the APF review process, and to monitor growth rates and the available capacity of public facilities in relation to new growth.~~

§8.5.2. Membership

~~The APF committee shall be comprised of one official from each responsible agency responsible for ensuring the adequate provision of each public facility. Where the County is the responsible agency for a particular public facility, the Board of Commissioners shall designate an appropriate County staff member to serve on the APF committee. The Director shall be the chair of the APF committee.~~

§8.5.3. Duties

~~The APF committee shall meet at least monthly to review and act upon APF applications. Determinations of adequacy shall be based on the issuance of certificates of adequacy by the responsible agencies and applicable memoranda of understanding.~~

§8.6. Director**§8.6.1. Designation**

The Director, or his/her designee, shall administer certain provisions of this UDO as may be required below. If this position should at any time be vacant, then the County Manager shall designate another County official to act as Director until the office is filled.

2. Where an existing intersection is rated below Grade "C" prior to any proposed development, the developer will be required to maintain existing transportation levels for any/all legs impacted. Final intersection grades shall include the impact of the proposed development.
3. Where a new public access or street is proposed, the TIA shall provide a Level of Service analysis for all individual movements where the proposed street(s) intersect an existing street. Intersecting street(s) with movements at an identified Level of Service below Grade "C" shall be deemed to not be in compliance with the established TIA standards.
4. All improvements will be required as conditions of the approval of a rezoning, must meet North Carolina Department of Transportation (NCDOT) standards and be included in the driveway permit issued by the NCDOT Division 12 office. Required improvements must correspond directly to the impact of the development proposal. If right-of-way necessary to complete a required improvement cannot be acquired by the applicant, then the rezoning case will be brought back before the Board of Commissioners for its consideration of the rezoning absent the condition of the specified road improvement originally applied to the rezoning request. The applicant must demonstrate that reasonable efforts to acquire the right-of-way necessary to complete the required improvement were made. The Board of Commissioners shall decide whether or not to approve the rezoning given the inability of the applicant to meet all previously required conditions.

§9.8.8. Application Modification Based on Traffic Analysis

An applicant may modify an application to minimize the traffic-related effects identified in a traffic impact analysis. Modifications may include:

- A. A reduction in the projected vehicle trips per day;
- B. The dedication of additional right-of-way;
- C. The rerouting of traffic and a proposed access and egress point;
- D. Other modification determined to be necessary.

§9.8.9. Consultants

The Director may require that an independent consultant be hired by the applicant to perform the required studies, or to review all or part of a study prepared by the applicant's consultant. The cost of the TIA study shall be paid for by the applicant. Consultants to complete the required TIA shall be selected from a list of consultants established and approved by the Board of Commissioners on a biennial basis. Other consultants may be used with the advance written approval of the Board of Commissioners.

§9.8.10. Appeal

Final action on a TIA may be appealed to the Board of Commissioners. The Board of Commissioners may approve the traffic impact analysis if the Board determines that the applicant has satisfactorily mitigated adverse traffic effects; or additional traffic from the project has an insignificant effect on the County's roads.

§9.20.9. 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 development 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, safety, and welfare if the project were to proceed as was contemplated in the site specific vesting plan;
- C. To the extent that the affected landowner received 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 the G.S. §160D-106;
- D. Upon findings, by ordinance after notice and a evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Board of Commissioners of the site specific vesting plan; or
- E. Upon the enactment or promulgation of a State or Federal Law or regulation that precludes development as contemplated in the site specific vesting plan, in which case the County 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. Process to Claim Common Law Vested Right

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 a determination or pursuing an appeal to the Board of Adjustment, a person claiming a vested right may bring an original civil action as provided by G.S. §160D-1403.1.

requirements of this UDO. The report, preliminary plat and any related application materials shall be forwarded to the Planning Board.

E. Reserved

F. Waivers

Where the Board of Commissioners 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 Board of Commissioners Planning Board shall not grant a waiver unless the Board of Commissioners 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 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 Board of Commissioners 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.

G. Action by Board of Commissioners

1. 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.

Preliminary Plat Review (Major Subdivisions Only)

5. The Board of Commissioners may approve the preliminary plat, or 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.

H. 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.

I. 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.

J. 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.

§10.5. Nonconforming Signs

§10.5.1. Amortization of Nonconforming Signs

Any sign existing at the effective date of this UDO, which does not conform to the requirements of this UDO, may be continued with the following exceptions:

§10.5.2. Enlargement and Revision of Nonconforming Signs

No nonconforming sign, including but not limited to billboards, shall be erected, replaced, or otherwise modified in such a way as to increase its nonconformity.

Reasonable repair and maintenance of nonconforming signs, including the change of an advertising message, is permitted, provided that a nonconforming sign which is damaged or deteriorated to the extent of 50 percent or more of its value shall not be replaced unless it conforms to all provisions of this subsection. This section is also subject to the provisions of NCGS 136-131.2.

§10.5.3. Removal of Nonconforming Signs

- A. Nonconforming signs, when removed for other than normal maintenance, may not be erected again, nor may any such sign be replaced with another nonconforming sign.
- B. Nonconforming signs determined by the Board of Commissioners to be a public nuisance or detrimental to the health or safety of the populace shall be removed within 30 days of such determination and written notice to that effect delivered by first-class mail to the property owner of record.
- C. All nonconforming signs shall be completely removed within 30 days of the discontinuance of a business use advertised on said sign(s).
- D. Property owners shall be responsible for removal of nonconforming signs.

§10.6. Nonconformities in the Airport Overlay (-AO)

In addition to complying with the other applicable requirements of this article, nonconformities in the -AO district may be continued and maintained subject to the provisions as set forth below.

§10.6.1. Regulations Not Retroactive

The regulations prescribed by this subsection shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this subsection or any amendment thereto, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this subsection, and is diligently prosecuted.

§10.6.2. Marking and Lighting

Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Lincolnton-Lincoln County Regional Airport Authority to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the Lincoln County.

C. Setbacks

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

1. General

No accessory structure shall be located closer than ten feet to any other structure.

2. Residential Districts

(a) 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.

(b) Accessory structures are allowed in side (interior) and rear yards no closer than ten feet to the property line; provided that, as the size of the accessory structure increases the required setback shall increase as follows:

| Size of Accessory Structure (sq. ft.) | Required Setback (ft.) |
|---------------------------------------|------------------------|
| 1,000 or Less | 10 |
| 1,001 to 2,000 | 20 |
| 2,001 to 3,000 | 30 |
| 3,001 to 4,000 | 40 |
| 4,001 or more | 50 |

3. Nonresidential Districts

(a) No accessory structure shall be located in any front or side setback.

(b) Accessory structures are allowed in a rear setback provided that no accessory structure shall be allowed within five feet of any rear yard line, except 20 feet of any rear yard line which abuts a residential district.

D. Height

The height of an accessory structure shall not exceed the height of the principal structure.

E. Area or Size

The area or size of an accessory structure shall be limited as follows:

1. On lots of 1/2 acre or less (21,780 square feet or less) in area, containing a principle residential use, the cumulative maximum area of accessory structure(s) shall be 1/2 the heated ground floor area of the principal structure or 750 square feet, whichever is greater. The area of the accessory structure(s) shall be based on the total floor area of the structure(s).
2. On lots larger than 1/2 acre in size, containing a principle residential use, the total maximum size of the accessory structure(s) shall be computed by taking 3 percent of the area over 1/2 acre (over 21,780 square feet) and adding either

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

Applicability**§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, and special use permit ~~and conditional use permit~~.
- B. Unless exempted in paragraph §9.8.2 below, a traffic impact analysis shall be required for all projects, which can be anticipated to generate at least 100 peak hour trips generated based on the latest edition of the Institute of Transportation Engineers (ITE) *Trip Generation Manual*.

§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 special use permit.
- B. Where approved by the Director, redevelopment of any site on which the additional traffic at peak hour represents an increase of less than 100 trips from the previous development, where the redevelopment is initiated within 12 months of the completion of demolition of the previous project.
- C. Minor site plans.

Commentary: 50 peak hour trips per day equates to approximately 50 dwelling units; 12,500 sq. ft. of general commercial space; 40,000 sq. ft. of office space; and 60,000 sq. ft. of industrial.

§9.8.3. Waiver Authorized

- A. The Director may waive the requirement to submit a traffic impact analysis. If the Director waives the requirement to submit a traffic impact analysis, the Director shall include the reason for the waiver in the Director's decision or recommendation on the application.
- B. The traffic generated from a proposed development for which the requirement to submit a traffic impact was waived may not endanger the public safety.

§9.8.4. Pre-application Conference

- A. All applicants required to submit a traffic impact analysis shall schedule a pre-application conference with the Director, in accordance with §9.2.1.
- B. The Director and the County's consultant, if applicable, shall determine the type and scope of the study during the pre-application conference, which may also involve representatives from other agencies or departments.

§9.8.5. Application Requirements

A traffic impact analysis prepared by a professional engineer licensed in the State of North Carolina and approved by Lincoln County shall be submitted in accordance with §9.2.2, Application Requirements. The traffic impact analysis must conform with the requirements of this section. The traffic impact analysis report must describe the study

- 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 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 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 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 in density of overall development;
- 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 conditional use~~ permit shall be amended in accordance with the procedure and standards which governed its approval.

§9.11.11. Effect of Decision

- A.** A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as specified. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or

Period of Validity

first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice that has been made, and the certificate shall be deemed conclusive in the absence of fraud.

- B.** 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 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.
- C.** 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.

§9.11.12. Period of Validity

- A.** An approved special use permit shall expire 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 two years from the date approval was granted.
- 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 conditional-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 vesting plan in accordance with §9.20.

§9.11.14. 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.

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