

**ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD**

QUARTERLY PUBLIC HEARING AGENDA

November 25, 2013

7:00 P.M.

Department of Social Services

Hillsborough Commons

113 Mayo Street

Hillsborough, North Carolina

NOTE: Information is available on-line at the "Meeting Agendas" link at:

<http://www.orangecountync.gov/>

and also in the Planning Department or the County Clerk's Office

NOTICE TO PEOPLE WITH IMPAIRED HEARING: Audio amplification equipment is available on request. If you need this assistance, please call the County Clerk's Office at (919) 245-2130.

A. OPENING REMARKS FROM THE CHAIR

B. PUBLIC CHARGE

The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the Board and with fellow residents. At any time should any member of the Board or any resident fail to observe this public charge, the Chair will ask the offending member to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

C. PUBLIC HEARING ITEMS

1. **Unified Development Ordinance (UDO) Text Amendment** – To review government-initiated amendments to the Unified Development Ordinance (UDO) to change the existing standards for home occupations, modify and clarify existing regulations and definitions associated with home occupations, and allow for the exemption of special events organized or affiliated with a governmental or non-profit agency. The amendments also seek to find a balance between the trend for small home based businesses and the typical character and enjoyment of residential neighborhoods.
2. **Unified Development Ordinance (UDO) Text Amendment** – To review government-initiated amendments to the Unified Development Ordinance (UDO) to incorporate recent changes in State law with respect to the review and processing of applications proposing the development or modification of telecommunication facilities.

- 3. Unified Development Ordinance (UDO) Text Amendment** – To review government-initiated amendments to the Unified Development Ordinance (UDO) to incorporate recent changes in State law with respect to items reviewed and acted upon by the Orange County Board of Adjustment.

D. ADJOURNMENT

**ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: November 25, 2013

**Action Agenda
Item No. C.1**

SUBJECT: Unified Development Ordinance Text Amendment Related to Home Occupations

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance (UDO) Amendment Outline Form and Section 419 of the North Carolina Building Code
2. Proposed Text Amendments
3. Proposed Amendment Summary Spreadsheet
4. Planning Board Minutes and Ordinance Review Committee Notes
5. Map of Potential Major Home Occupation Locations

INFORMATION CONTACT:

Ashley Moncado, Planner II (919) 245-2589
Craig Benedict, Director (919) 245-2575

PURPOSE: To hold a public hearing on a Planning Board and Planning Director initiated Unified Development Ordinance (UDO) text amendment regarding existing home occupation standards contained within the UDO. The amendment also involves the renumbering and reformatting of Sections 2.22, 5.4.3, and 5.5.3.

BACKGROUND: At the January 9, 2013 Planning Board meeting, Board members discussed areas of interest to be worked on in the coming year. Many of these items were elements highlighted in the UDO Implementation Bridge report prepared when the UDO was adopted in 2011. One item presented by the Planning Board and referenced in the Implementation Bridge was the need to review home occupation requirements to determine if there is a need to revise existing standards.

In July 2013, staff began working with the Planning Board to review and revise home occupation standards contained in the UDO, including reviewing the standards of some neighboring jurisdictions. The Planning Board and staff discussed this topic in July, September, October, and November and meeting minutes/notes are included in Attachment 4. Agenda materials for past Planning Board meetings are available at <http://www.co.orange.nc.us/planning/planningboard.asp>.

As the graphic at the end of the abstract depicts:

The goal of the proposed amendment was to create a reasonable balance between supporting home based businesses in the county and protecting the character and enjoyment of residential neighborhoods.

Planning Board discussions also reflected the fact that many artist studios are, or can be, considered home occupations; the desire to update regulations to better accommodate artist studios in the county was discussed at the February 2014 BOCC Retreat and at the May 14 work session when “Agricultural Support Enterprises” was presented.

The proposed amendments:

- Create two categories of home occupations: Minor and Major
- Change the existing standards to allow for an increase in the number of square feet that can be used for home occupation purposes,
- Increase the number of allowable onsite employees,
- Permit larger scale home occupations (“Major”) in the Agricultural Residential (AR) and Rural Residential (R-1) zoning districts, and
- Allow for the exemption of special events organized or affiliated with a governmental or non-profit agency.

The proposed amendments also modify and clarify existing regulations and definitions associated with home occupations. Attachment 1, the Amendment Outline Form approved by the BOCC on September 5, provides additional background information on the proposal. Proposed text amendment language can be found in Attachment 2 within a “track changes” format (red text for proposed additions and red strikethrough for proposed deletions). Additionally, Attachment 3 contains a spreadsheet summarizing proposed revisions to Sections 2.22, 5.3.4, and 5.5.3. Finally, Attachment 5 includes a countywide map identifying parcels greater than five acres in size in the AR (Agricultural Residential) and R-1 (Rural Residential) zoning districts that would allow for a major home occupation.

Legal ads for the public hearing were placed in a newspaper of general circulation in the County in accordance with Section 2.8.7 of the UDO.

Joint Planning Area (JPA) Agreement

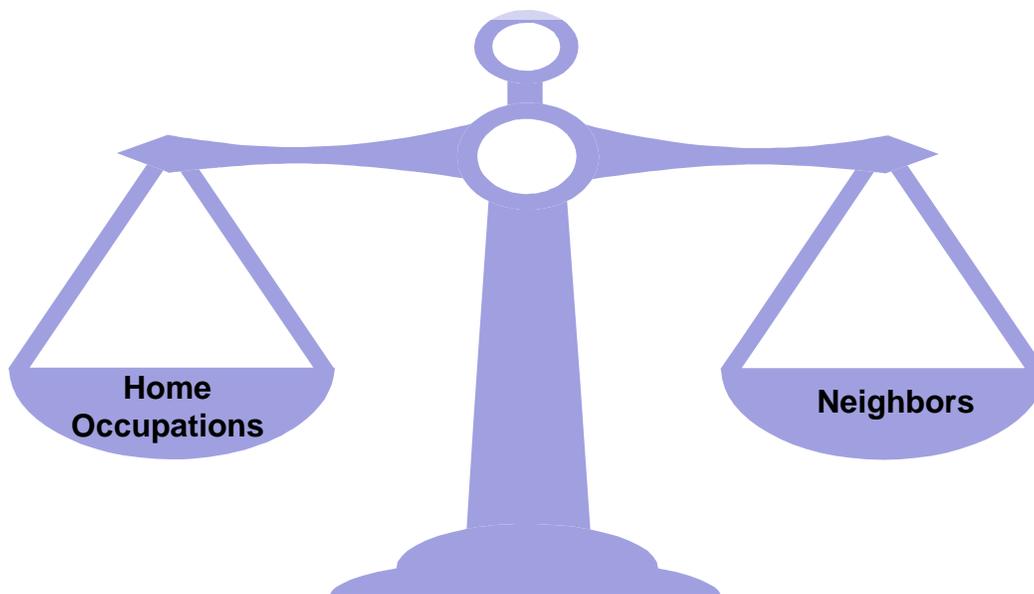
The opportunity for comment by the JPA partners (Towns of Chapel Hill and Carrboro) is required for all UDO text amendments that may affect the RB (Rural Buffer) zoning district. Since “Minor” Home Occupations will continue to be allowed in the RB district and some of the standards for a “Minor” home occupation are changing, the proposed text amendments were submitted to the JPA partners for review and comment on November 7, 2013. To date, no comments have been received.

FINANCIAL IMPACT: Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2013-14 Departmental funds budgeted for this purpose. Existing planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

RECOMMENDATION(S): The Planning Director recommends the Board:

1. Receive the proposed amendments to the UDO as detailed in this abstract and attachments.
2. Conduct the public hearing and accept public, BOCC, and Planning Board comment on the proposed amendments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the **January 23, 2014** BOCC regular meeting.
4. Adjourn the public hearing until **January 23, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Strive to create a reasonable balance between supporting home based businesses and protecting the character and enjoyment of residential neighborhoods



** Proposed uses exceeding home occupation regulations may apply for a conditional use permit or relocate to a commercial zoning district.*

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2013-03
Home Occupation Standards

A. AMENDMENT TYPE

Map Amendments

- Land Use Element Map:
From:
To:
- Zoning Map:
From:
To:
- Other:

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:

- UDO General Text Changes
- UDO Development Standards
- UDO Development Approval Processes

Section(s):

1. Section 2.22 *Home Occupations*
2. Section 5.4.3 *Special Events*
3. Section 5.5.3 *Home Occupations*

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Board and Planning Director are proposing to initiate a text amendment to modify existing language

relating to the regulation of home occupations within the county.

At the January 9, 2013 Planning Board meeting, Board members discussed areas of interest for planning staff to address for the next year. One item, which was highlighted in the UDO Implementation Bridge report prepared when the UDO was adopted in 2011, included the need to review existing home occupation standards for a potential revision. At that time, Board members expressed concern with the existing standards limiting home occupations by being too restrictive with the required square footage allowances and number of permitted non-residential employees. As a result, the Board requested staff to proceed with reviewing existing standards. To address the Planning Board's request, staff presented information at the July 10, 2013 Planning Board meeting, including a summary of current standards contained in the UDO, a comparison with other local jurisdictions' standards, and items of consideration to facilitate and promote the use of home occupations. Following review and discussion, the Board asked staff to proceed with an amendment to the UDO addressing their comments and areas of interest relating to the UDO Implementation Bridge report.

At the September 4 Planning Board meeting, staff presented draft language based on Planning Board comments received at the July meeting for review. Additionally, at this time, staff presented Section 419, Live/Work Units, from the 2012 North Carolina Building Code regarding the review and permitting of home occupations that are classified as live/work units. Although planning staff considers this Section of the building code, adopted in 2012, to be restrictive, local governments cannot amend laws, codes and/or rules adopted by the State. Staff anticipates that this Section of the building code will result in prospective home occupation applicants deciding to locate their home occupation in an accessory structure if the home occupation comprises of more than ten percent of their home's square footage. A copy of Section 419 is included at the end of this form.

At the October 2 Ordinance Review Committee (ORC) meeting staff presented proposed amendment language for Board comment. Following this meeting, planning staff identified concerns with the proposed recommendations and requested a meeting with the Planning Board Chair and Vice Chair to discuss and review the Board's recommendation. The Planning Board Vice Chair was unable to attend, but did provide comments regarding proposed recommendations to staff and the Planning Board Chair. At the October 16 meeting with Chair Hallenbeck proposed standards based on Planning Board's recommendation were revised in order to create a reasonable balance between supporting home based businesses in the county and protecting the character and enjoyment of residential neighborhoods.

Revised recommendations were presented at the November 6 ORC meeting. During this meeting, members stated concern with existing standards prohibiting specific uses from receiving a home occupation permit [See UDO Section 5.5.3(2)(a)(iii)] but

no specific amendment requests were made. Chair Hallenbeck suggested members to provide their concerns in writing to staff and the BOCC. To date no written comments have been received.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: ‘cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners’.

The purpose of the proposed amendment is to develop standards that accommodate and encourage the use of home occupations while protecting the residential character of neighborhoods and meeting standards of the North Carolina Building Code in order to incorporate recommendations of the Implementation Bridge into the Unified Development Ordinance. Proposed standards will allow for smaller and larger scale home occupations with the development of two categories including a minor home occupation and a major home occupation. Uses such as artist studios often are considered home occupations and the updated standards will apply to artist studios. This is a topic that was raised at the February 2013 BOCC retreat and the May 14, 2013 BOCC work session when “Agricultural Support Enterprises” was discussed. Additional amendments to Section 5.4.3 *Special Events* will address reviewing and permitting events conducted by the home occupation. Specifically, allowing nonprofit or government organized events, including the Orange County Open Studio Tour, to be exempt from the existing special event and Class B Special Use Permit process in order to support and accommodate these events within the county. Also, see Section D of this Form.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

Economic Development Overarching Goal: Viable and sustainable economic development that contributes to both property and sales tax revenues, and enhances high quality employment opportunities for County residents.
Economic Development Objective 1.5: Identify barriers to development of desirable businesses and local businesses, and mitigate these barriers.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

September 5, 2013

b. Quarterly Public Hearing

November 25, 2013

c. BOCC Updates/Checkpoints

November 5, 2013 – approve legal ad for public hearing
January 2014 – receive Planning Board recommendation

d. Other

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements.

a. Planning Board Review:

July 10, 2013 – discussion of topic
September 4, 2013 – further discussion
October 2, 2013 – Ordinance Review Committee
November 6, 2013 – Ordinance Review Committee
December 4, 2013 – recommendation to BOCC

b. Advisory Boards:

c. Local Government Review:

The proposed text amendments were
submitted to the JPA Partners on
November 7, 2013.

d. Notice Requirements

Consistent with NC State Statutes – legal ad prior to public hearing

e. Outreach:

- General Public: _____
- Small Area Plan Workgroup: _____
- Other: _____

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2013-14 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

Proposed amendments to existing home occupation standards include two types of home occupations. The first type, minor home occupations, follows the existing review process in place for home occupations with revisions allowing for an increase in square footage and number of employees in all residential districts. The second type, major home occupations, is proposed in order to accommodate larger scale accessory business uses in the AR (Agricultural Residential) and R-1 (Rural Residential) zoning districts. A Class B Special Use Permit will be required for major home occupations. The number of employees and permitted amount of square footage utilized in a major home occupation shall be determined with the approved special use permit.

Additional minor revisions to existing standards will address traffic generation, accessory structures, outdoor storage space, vehicle weight restrictions, and landscaping for all home occupations. Proposed amendments will introduce standards addressing the total number of students, customers, and/or clients permitted per day and address the review of special events for home occupations. Finally, definitions referencing minor home occupations and major home occupations are proposed within Article 10. The Planning Board and staff have endeavored to be mindful of any adverse impacts that may occur in the various types of residential districts found in the county while creating the amendment package.

E. SPECIFIC AMENDMENT LANGUAGE

See Attachment 2 for proposed language

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Attachment 2

UDO AMENDMENT PACKET NOTES:

The following packet details the proposed modifications to existing home occupation standards. Proposed regulations include the establishment of two new home occupation categories allowing for minor and major (larger scale) home occupations. The amendment package also proposes the re-numbering and reformatting of Sections 2.22, 5.4.3, and 5.5.3, to accommodate the new standards.

As the number of affected pages/sections of the existing UDO are being modified with this proposal, staff has divided the proposed amendments into the following color coded classifications:

- **Red Underlined Text:** Denotes new, proposed text, that staff is suggesting be added to the UDO
- **Red Strikethrough Text:** Denotes existing text that staff is proposing to delete

Staff has included footnotes within the amendment package to provide additional information/rationale concerning the proposed amendments to aid in your review.

Only those pages of the UDO impacted by the proposed modification(s) have been included within this packet. Some text on the following pages has a large “X” through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment or footnotes from previous sections ‘spill over’ onto the included page. Text with a large “X” is not proposed for modification.

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

(3) Structural stormwater measures that are designed, constructed and maintained in accordance with the NC DWQ Stormwater BMP Design Manual, approved accounting tool, and requirements listed in Section 6.14 will be presumed to meet the required performance standards of Section 6.14. Submittals containing measures not designed to these specifications, may be approved on a case by case basis provided the applicant provides adequate data and information showing how the deviations meet the requirements of Section 6.14.

(C) Plan Approval

The Erosion Control Officer is authorized to approve any Stormwater Management Plan which is in conformance with the performance standards specified in the NC DWQ Stormwater BMP Design Manual, and other requirements of this Ordinance.

(D) Approved Plan a Prerequisite

The Erosion Control Officer is not authorized to issue any permits for development on any land that is defined as new development under Section 6.14 of this Ordinance unless and until a Stormwater Management Plan in compliance with the requirements of this Ordinance has been approved.

(E) Design of Permanent Nutrient Export Reduction Structural Stormwater Measures

When a permanent nutrient export reduction structural stormwater measure is required for new development to meet the requirements of this Ordinance, a North Carolina registered professional engineer shall prepare the plan with the Engineer's Certification of Stormwater Management affixed, signed, sealed and dated.

SECTION 2.22: HOME OCCUPATIONS

2.22.1 Application Requirements

- (A)** An application for a Home Occupation Permit shall be filed with the Planning Director on forms provided by the Planning Department.
- (B)** Application forms shall be prepared so that when completed a full and accurate description of the proposed use, including its location, appearance, and operational characteristics are disclosed.
- (C)** An application for a minor home occupation shall include a plot plan that adheres to the requirements of Sections 2.4.3 and 5.5.3.
- (D)** An application for a major home occupation shall require a Class B Special Use Permit and adhere to the requirements of Sections 2.5.3, 2.7, and 5.5.3.

2.22.2 Conditions of Approval

- (A)** If conditions are attached to the approval of a permit, they may address deficiencies in meeting specific Ordinance requirements or they may address specific impacts which result from the operation of the home occupation.
- (B)** If conditions address specific impacts which result from the operation of the home occupation, the conditions may include, but not be limited to the following limitations:
 - (1)** Hours of operation;
 - (2)** Number of vehicles to be parked on the premises;
 - (3)** The location of an accessory building, storage area or parking on the property.
- (C)** The Planning Director may require greater setbacks and/or additional landscaping or screening to adequately screen the home occupation from adjoining properties.

5.4.3 Special Events

(A) Arts and Cultural Special Events

- (1) All arts and cultural special events organized, conducted, and affiliated with a nonprofit or government entity, including the annual Orange County Open Studio Tour, shall be exempt from the special event review and permitting process.¹

(B) General Standards of Evaluation²

- (1) The application shall include a written description of the type of event planned, the number of participants for any single event, the frequency of the events, the anticipated hours of operation, the potential dates for the events, and the method and adequacy of sewage disposal, recycling and waste disposal, access, parking, lighting, and signage;
- (2) The plot plan shall be accompanied by written approval from the Orange County Division of Environmental Health regarding the adequacy of the water-supply and wastewater disposal;
- (3) The plot plan shall have written approval from the Orange County Fire Marshal;
- (4) The applicant shall submit a copy of notification sent to the Orange County Sheriff's Department stating the type of events, number of participants, date(s) and hours of operation, and emergency contact information. A location map must be attached to the notice provided to the Sheriff;
- (5) Lot size shall be adequate to accommodate all proposed activities including safe vehicular and pedestrian circulation;
- (6) The proposed activity will occur on no more frequently than seven days in a 30-day period, and on no more than 50 days per year; and
- (7) Signs shall be permitted in accordance with Section 6.12.11(D).

(C) Standards for Class B Special Use Permit

(1) Submittal Requirements

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) A written description of the exact type of event planned, the maximum number of participants, the frequency of the event, anticipated dates and hours of operation, method and adequacy of sewage disposal, recycling and waste disposal, access, parking, lighting, and signage;
- (b) A site plan showing the boundaries of the area to be used for the events, the locations of access points, parking, service areas, activity areas, restrooms, solid waste disposal/recycling facilities, lighting, and signage;
- (c) Written comments from the Orange County Health Department, Division of Environmental Health regarding the adequacy of plans restroom facilities and food preparation/handling arrangements; and
- (d) Written comments from the Orange County Fire Marshal and Sheriff's Department regarding the adequacy of parking, access, or other factors related to public safety.

¹ Proposed amendments regarding arts and cultural special events will address concerns with accommodating and permitting community wide events conducted by a nonprofit or government organization more efficiently. These standards will allow art and studio home occupations that participate in these events to be exempt from the Class B Special Use Permit process.

² Adding a new (A) resulted in the automatic renumbering of subsequent subsections.

SECTION 5.5: STANDARDS FOR RESIDENTIAL USES

5.5.1 Accessory Structures and Uses

(A) General Standards of Evaluation

- (1) Accessory structures and uses shall not be located in any required front open space and shall conform to the principal setbacks of the district where located unless otherwise provided in this Section.
- (2) An attached private garage, or carport, not exceeding 12 feet in height, may occupy a portion of the required side open space, provided that this does not result in a required side open space of less than 7% of the lot width, nor a total, when combined with the required side open space of the lot immediately adjacent, of less than eight feet.
- (3) Mobile homes as accessory structures to residential uses are prohibited.

5.5.2 Efficiency Apartment

(A) General Standards of Evaluation

- (1) There shall be no more than one efficiency apartment, whether detached or attached, on any lot.
- (2) The efficiency unit shall contain no more than 800 square feet of gross floor area.
- (3) The residential lot shall meet the minimum lot size requirements of the zoning district in which it is located.
- (4) The efficiency unit shall comply with the N.C. Residential Building Code including minimum light/ventilation and room sizes.
- (5) The efficiency unit shall be accessory to the principal dwelling unit and may be attached or detached.
- (6) The efficiency unit shall be served by an approved water supply and sanitary facilities.
- (7) The efficiency unit shall remain in the same ownership as the primary residence.

5.5.3 Home Occupations

(A) General Standards

(1) Submittal Requirements

In addition to the completed application form, applicants for a **minor or major home** occupation shall submit the following to the Planning Department:

(a) Minor Home Occupations

- (i) A plot plan of the property on which the home occupation is to be located. The plot plan shall show:
 - a. The location of the residence **and/or** accessory building in which the home occupation is to be located in relation to existing property lines and adjacent homes;
 - b. The location, number, and means of access to required off street parking areas; and
 - c. The location and type of required landscaping and/or screening.
- (ii) A floor plan of the residence **and/or** accessory building in which

the home occupation is to be located showing the location, size, and use of each room or area within the residence and/or accessory building.

(b) Major Home Occupations

- (i) A site plan of the property on which the home occupation is to be located. The site plan shall show:
 - a. The location of the residence and/or accessory building in which the home occupation is to be located in relation to existing property lines and adjacent homes;
 - b. The location, number, and means of access to required off street parking areas; and
 - c. The location and type of required landscaping and/or screening.
- (ii) A floor plan of the residence and/or accessory building in which the home occupation is to be located showing the location, size, and use of each room or area within the residence and/or accessory building.

(2) Standards of Evaluation

(a) All Home Occupations

- (i) No home occupation may be operated in a residence except as permitted under this Ordinance and only after a Home Occupation Permit has been issued in accordance with the provisions of Section ~~2.21~~ 2.22 of this Ordinance.
- (ii) Home based business operations that do not include nonresident employees located onsite, signage, onsite retail sales, or onsite students, customers, and/or clients do not require a home occupation permit.
- (iii) Uses Not Permitted
 - a. The following activities are explicitly prohibited as home occupations:
 - i. Automotive repair,
 - ii. Automotive service,
 - iii. Automotive detailing,
 - iv. Body shop,
 - v. Hauling, and
 - vi. Building, electrical, plumbing, mechanical, grading or other construction contracting.
 - b. The above list is not intended to include all uses which may be unsuitable as a home occupation. Home Occupation applications for other uses may be denied if the Standards of Evaluation listed herein are not fully met.
- (iv) No equipment or process shall be employed that will cause noise, vibration, glare, odor or electrical interference detectable to the normal senses at the lot lines in the case of detached dwelling units or outside the dwelling unit, in the case of attached dwelling units.

- (v) The on-premises sale and/or delivery of goods which are not produced ~~or modified in a manner that adds value to the product~~ on the premises is prohibited, except in the case of the delivery and sale of goods incidental to the provision of a service. ~~No goods, products, or commodities purchased and secured for the main purpose of onsite resale shall be permitted.~~
- (vi) ~~All events conducted in connection with the home occupation and exceed the number of permitted daily students, customers, and/or clients contained within Sections 5.5.3(A)(2)(b)(i)d and 5.5.3(A)(2)(c)(i)g must adhere to Section 5.4.3, Special Events.³~~
- (b) **Minor Home Occupations**
- (i) **General Operations**
- ~~The following requirements apply to minor home occupations in all residential districts:~~
- a. ~~The owner or operator of the home occupation must live in a residence located on the same zoning lot as the home occupation. ~~No more than two individuals not living in the residence may work in the home occupation.~~ Minor home occupations shall not exceed three nonresident employees onsite at any one time.~~
- b. ~~In all residential districts ~~except RB, AR and R-1~~, no more than 35% of the floor area of the dwelling unit or ~~500~~ 750 square feet, whichever is less, may be used for the home occupation.~~
- c. ~~Up to three students, customers, and/or clients shall be permitted onsite at any one time, not to exceed a total of six students, customers, and/or clients per day.~~
- (ii) **Limitations on Traffic Generation**
- a. ~~Traffic generated by visitors, customers, or deliveries shall not exceed more than two business trips per hour, more than eight trips per day or more than two deliveries of products or materials per week. All deliveries must be made by vehicles of a size normally used for household deliveries.⁴~~
- b. ~~Parking generated by the home occupation shall be met off the street and ~~other than~~ not in a required yard area.~~
- c. ~~There shall be no use of a vehicle with a load capacity in excess of one ton ~~on a gross vehicle weight in excess of~~ 14,000 pounds used in connection with the home~~

³ Approved home occupations that conduct special events onsite are required to adhere to Section 5.4.3 *Special Events*. Home occupations that participate in a nonprofit or government organized event including the annual Orange County Open Studio Tour shall be waived from the special event review process as proposed within Section 5.4.3 *Special Events*.

⁴ Existing standards regulating the number of trips and deliveries per hour, day, and week were found to be inconsistent with proposed language limiting the number of students, customers, clients, and event attendees onsite per day. As a result, these standards are being proposed to be removed to allow traffic generation standards concerning daily trips and parking to be regulated by the number of permitted students, customers, clients, and event attendees onsite at any one time or per day. Additionally, proposed standards shall allow for an increase in deliveries while limiting the type of vehicle to a size normally used for household deliveries.

occupation⁵. including vehicles used for delivery or pick-up. Vehicles with the permitted load capacity generally include large pick-up trucks, and delivery trucks and vans such as those used by UPS, but would not include vehicles such as tractor trailers or dump trucks.⁶

(iii) Use of Accessory Structures

- a. An accessory building containing up to ~~4000~~ 1,500 square feet may be utilized in the RB, AR and R-1 residential zoning districts, detailed in Section 3.3, provided that building has the appearance of a residential accessory structure.⁷
- b. The accessory structure must be screened from view of the road and adjacent property by a densely planted evergreen hedge of shrubs or trees. In lieu of an evergreen hedge, a six foot stockade fence and deciduous ~~plant materials~~ vegetation planted along the outside of the fence may be used for screening purposes.
- c. New structures built for the purpose of conducting a home occupation shall not exceed ~~4000~~ 1,500 square feet in area.
- d. An existing accessory structure which is larger than ~~4000~~ 1,500 square feet may be used for the home occupation provided that no more than ~~4000~~ 1,500 square feet is used for the home occupation and the area is physically separated by walls or other barriers. In order to qualify as an existing accessory structure for the purpose of conducting a home occupation, the structure must have been constructed to meet building code requirements applicable to a residential accessory structure, and must have been in existence for at least 36 months.

(iv) Use of Outdoor Storage

- a. Up to 500 square feet of outdoor storage area ~~may be used~~ shall be permitted only in the RB, AR and R-1 zoning districts provided that it:
 - i. Is clearly defined on the site plan and on the ground.
 - ii. Is located at least 40 feet from any lot line or road right-of-way; and
 - iii. Is totally screened from the view from the road and from adjacent property in the same manner as is required for accessory buildings.

⁵ Weight standards have been modified replacing load capacity with the more common and familiar vehicle gross weight standard. The proposed weight of 14,000 pounds will allow for the use of standard and larger sized pick-up trucks in connection with all home occupations.

⁶ Staff recommends the existing language to be revised in order to avoid a potential inconsistency with standards contained within item a.

⁷ Revised standards are proposed to allow the use of accessory structures up to 1,500 feet in all residential districts contained within Section 3.3, Residential Districts, instead of limiting this use to only the RB, AR, and R-1 districts.

(c) Major Home Occupations

(i) General Operations

The following requirements apply to major home occupations:

- a. Major home occupations shall be permitted only in the AR and R-1 zoning districts.
- b. All major home occupations shall be located on parcels at least five acres in size.
- c. All accessory structures, outdoor storage space, and parking areas used in conjunction with the home occupation shall be setback at least 80 feet from all property lines and public or private roadways.
- d. The owner or operator of the home occupation must live in a residence located on the same zoning lot as the home occupation. Up to six permanent and/or temporary nonresident employees may be permitted onsite at any one time with the exact number established in the Special Use Permit.
- e. The total amount of square footage permitted for a residential dwelling unit used in conjunction with a major home occupation, which exceeds standards referenced in Section 5.5.3.A.2(b)(i)b, shall be determined with the approved Special Use Permit, but in no case shall the total exceed 50% of the floor area of the dwelling unit.
- f. Up to eight students, customers, and/or clients shall be permitted onsite at any one time, not to exceed a total of fifteen students, customers, and/or clients per day.

(ii) Limitations on Traffic Generation

- a. All major home occupations shall conform to the standards of Section 5.5.3(A)(2)(b)(ii).
- b. Major home occupations located on public roadways may be required to submit a driveway permit prior to approval.
- c. Major home occupations located on shared private roadways shall be required to submit a private road maintenance agreement prior to approval.

(iii) Use of Accessory Structures

- a. An accessory building containing up to 2,500 square feet may be utilized, with the approval of a major home occupation, on tracts totaling five to ten acres in size. An Accessory building containing up to 3,000 square feet may be utilized, with the approval of a major home occupation, on tracts greater than ten acres in size.
- b. The accessory structure must be screened from view of the road and adjacent property by a densely planted evergreen hedge of shrubs or trees. In lieu of an evergreen hedge, a six foot stockade fence and deciduous vegetation planted on the outside of the fence may be used for screening purposes.
- c. New accessory structures built for the purpose of conducting a home occupation shall not exceed square

footage allowances referenced in Section 5.5.3.A(2)(e)(iii)a.

- d. An existing accessory structure which is larger than the permitted size referenced in Section 5.5.3.A(2)(e)(iii)a may be used for the home occupation provided that no more than the permitted amount of square feet is used for the home occupation and the area is physically separated by walls or other barriers. In order to qualify as an existing accessory structure for the purpose of conducting a home occupation, the structure must have been constructed to meet building code requirements applicable to a residential accessory structure, and must have been in existence for at least 36 months.

(iv) Use of Outdoor Storage Space

- a. Up to 500 square feet of outdoor storage area may be used in conjunction with major home occupations provided that it is:
 - i. Clearly defined on the site plan and on the ground.
 - ii. Located at least 80 feet from any lot line or road right-of-way; and
 - iii. Totally screened from the view from the road and from adjacent property in the same manner required for accessory buildings.

5.5.4 Mobile Home Parks

(A) Standards for MHP-CZ

(1) Permitted Uses and Structures

In addition to Mobile Homes, as defined by this Ordinance, the following accessory structures and uses shall be permitted:

- (a) Caretaker's or manager's home or office.
- (b) Service buildings and areas necessary to provide washing and drying machines for domestic laundry, sanitation, rest rooms, storage, vending machines, and other similar services provided by the facility for the use and convenience of the mobile home park tenants.
- (c) Recreation buildings/facilities and areas serving only the mobile home park in which they are located.
- (d) Customary accessory buildings and facilities necessary for operation of the mobile home park in which they are located.
- (e) Storage buildings for individual mobile home spaces and intended for the exclusive use of the occupants of the mobile home space.
- (f) Fenced, communal storage areas provided by the park operator for boats, campers, and other accessory vehicles belonging to park residents.
- (g) Sales of mobile homes already located on approved and established mobile home stand spaces.

(2) Mobile Home Stand Space Requirements

High-Density Option

One of two approaches available for development in some watershed overlay districts. Generally, the high-density option relies on density limits and engineered stormwater controls to minimize the risk of water pollution.

Highest Adjacent Grade (HAG)

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

Historic structure

Any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c) Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program," which has been approved by the Department of the Interior; or
- d) Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program". (CLG Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966, as amended).

Holiday Decoration

Holiday displays, decorations and greetings, which relate to any federally designated holiday, legal holiday or religious holiday.

Home Occupation, Major

An accessory business use which is owned and operated by the resident of the property, located on a single parcel of land at least five acres in size in the AR and R-1 zoning districts, and is clearly incidental and subordinate to the principal residential use of the property. Major home occupations, which do not meet the standards of a minor home occupation, shall accommodate for larger scale accessory business uses by allowing for an increase in square footage, number of onsite employees, students, customers, clients, and annual events with an approved Class B Special Use Permit.

Home Occupation, Minor

An accessory business use which is owned or operated by the resident of a residentially-zoned property which business and is clearly incidental and subordinate to the principal residential use of the property.

Hotel, Motel, Motor Lodge, Motor Inn, Inn, Tourist Court

A building or group of attached or detached buildings containing, in combination, ten or more lodging units, or ten or more dwelling units intended primarily for rental or lease to transients by the day or week, as distinguished from multi-family dwellings, rooming houses and residential hotels in which rentals and leases are for weekly or longer periods and occupants are generally residents rather than transients.

Hotel, Residential

A building or group of attached or detached buildings containing, in combination, ten or more lodging units available for occupancy only for periods of thirty days or longer, provided, however, that temporary lodging units for guests of regular tenants may be provided in any residential hotel, with number of such units limited to 10% of the number of tenant lodging units.

Immediate Neighborhood

A subdivision or area of the county which distinguishes it from other subdivisions or areas by virtue of its location within the service area of a park site or sites as shown on the adopted "Recreation Service Area Boundaries Map" on file in the Planning Department.

Proposed Amendment Summary Spreadsheet

Revised Standards			
	Existing Language	Proposed Language	
		Minor Home Occupations	Major Home Occupations
Application Requirements Section 2.22.1	An application shall include a plot plan that adheres to the requirements of Sections 2.4.3 and 5.5.3.	An application for a minor home occupation shall include a plot plan that adheres to the requirements of Sections 2.4.3 and 5.5.3.	An application for a major home occupation shall require a Class B Special Use Permit and adhere to the requirements of Sections 2.5.3, 2.7, and 5.5.3.
Special Events Section 5.4.3	All proposed Special Events must follow the Class B Special Use Permit process.	All special events planned, conducted, and affiliated with a nonprofit or government organization including county wide tours such as the annual Orange County Open Studio Tour shall be exempt from the special event review and permitting process.	
Standards of Evaluation Section 5.5.3(A)(2)		No home occupation may be operated in a residence except as permitted under this Ordinance and only after a Home Occupation Permit has been issued in accordance with the provisions of Section 2.22 of this Ordinance.	
		The following activities are explicitly prohibited as home occupations: automotive repair, automotive service, automotive detailing, body shop, hauling, and building, electrical, plumbing, mechanical, grading or other construction contracting.	
		No equipment or process shall be employed that will cause noise, vibration, glare, odor or electrical interference detectable to the normal senses at the lot lines in the case of detached dwelling units or outside the dwelling unit, in the case of attached dwelling units.	
		The on-premises sale and/or delivery of goods which are not produced on the premises are prohibited, except in the case of the delivery and sale of goods incidental to the provision of a service.	
		Home based business operations that do not include nonresident employees located onsite, signage, onsite retail sales, or onsite students, customers, and/or clients do not require a home occupation permit.	
General Operations 5.5.3(A)(2)(b)(i) and 5.5.3(A)(2)(c)(i)	The owner or operator of the home occupation must live in a residence located on the same zoning lot as the home occupation. No more than two individuals not living in the residence may work in the home occupation.	The owner or operator of the home occupation must live in a residence located on the same zoning lot as the home occupation. Minor home occupations shall not exceed three nonresident employees onsite at any one time.	The owner or operator of the home occupation must live in a residence located on the same zoning lot as the home occupation. Up to six permanent and/or temporary nonresident employees may be permitted onsite at any one time with the exact number established in the Special Use Permit.

Existing language to be revised within the referenced section of the UDO

Existing language to remain within the referenced section of the UDO

Proposed language to be added within the referenced section of the UDO

Proposed Amendment Summary Spreadsheet

<u>Revised Standards</u>			
	Existing Language	Proposed Language	
		Minor Home Occupations	Major Home Occupations
General Operations 5.5.3(A)(2)(b)(i) and 5.5.3(A)(2)(c)(i)	In all residential districts except RB, AR and R-1, no more than 35% of the floor area of the dwelling unit or 500 square feet, whichever is less, may be used for the home occupation.	In all residential districts no more than 35% of the floor area of the dwelling unit or 750 square feet, whichever is less, may be used for the home occupation.	The total amount of square footage permitted for a residential dwelling unit used in conjunction with a major home occupation, which exceeds standards referenced in Section 5.5.3.A.2(b)(i)b, shall be determined with the approved Special Use Permit, but in no case shall the total exceed 50% of the floor area of the dwelling unit.
		All events conducted in connection with the home occupation and exceed the number of permitted daily students, customers, and/or clients contained within Sections 5.5.3(A)(2)(b)(i)d and 5.5.3(A)(2)(c)(i)g must adhere to Section 5.4.3, Special Events.	
		Up to three students, customers, and/or clients shall be permitted onsite at any one time, not to exceed a total of six students, customers, and/or clients per day.	Major home occupations shall only be permitted in the AR and R-1 zoning districts.
			All major home occupations shall be located on parcels at least five acres in size.
			All accessory structures, outdoor storage space, and parking areas used in conjunction with the home occupation shall be setback at least 80 feet from all property lines and public or private roadways.
Up to eight students, customers, and/or clients shall be permitted onsite at any one time, not to exceed a total of fifteen students, customers, and/or clients per day.			
Limitations on Traffic Generation 5.5.3(A)(2)(b)(ii) and 5.5.3(A)(2)(c)(ii)	Traffic generated by visitors, customers, or deliveries shall not exceed more than two business trips per hour, more than eight trips per day, or more than two deliveries of products or materials per week.	All deliveries must be made by vehicles of a size normally used for household deliveries.	
	Parking generated by the home occupation shall be met off the street and other than in a required yard area.	Parking generated by the home occupation shall be met off the street and not in a required yard area.	

Existing language to be revised within the referenced section of the UDO

Existing language to remain within the referenced section of the UDO

Proposed language to be added within the referenced section of the UDO

Proposed Amendment Summary Spreadsheet

<u>Revised Standards</u>			
	Existing Language	Proposed Language	
		Minor Home Occupations	Major Home Occupations
Limitations on Traffic Generation 5.5.3(A)(2)(b)(ii) and 5.5.3(A)(2)(c)(ii)	There shall be no use of a vehicle with a load capacity in excess of one ton in connection with the home occupation including vehicles used for delivery or pick-up. Vehicles with the permitted load capacity generally include large pick-up trucks, and delivery trucks and vans such as those used by UPS, but would not include vehicles such as tractor trailers or dump trucks.	There shall be no use of a vehicle with a gross vehicle weight in excess of 14,000 pounds used in connection with the home occupation	
			Major home occupations located on public roadways may be required to submit a driveway permit prior to approval.
			Major home occupations located on shared private roadways shall be required to submit a private road maintenance agreement prior to approval.
Use of Accessory Structures Sections 5.5.3(A)(2)(b)(iii) and 5.5.3(A)(2)(c)(iii)	An accessory building containing up to 1000 square feet may be utilized in the RB, AR and R-1 zoning districts, provided that building has the appearance of a residential accessory structure.	An accessory building containing up to 1,500 square feet may be utilized in the residential zoning districts, detailed in Section 3.3, provided that building has the appearance of a residential accessory structure	An accessory building containing up to 2,500 square feet may be utilized with the approval of a major home occupation on tracts totaling five to ten acres in size.
			An accessory building containing up to 3,000 square feet may be utilized with the approval of a major home occupation on tracts totaling eleven acres or more in size.
		The accessory structure must be screened from view of the road and adjacent property by a densely planted evergreen hedge of shrubs or trees. In lieu of an evergreen hedge, a six foot stockade fence and deciduous vegetation planted along the outside of the fence may be used for screening purposes.	
Use of Outdoor Storage Space Sections 5.5.3(A)(2)(b)(iv) and 5.5.3(A)(2)(c)(iv)	Up to 500 square feet of outdoor storage area may be used in the RB, AR and R-1 zoning districts	Up to 500 square feet of outdoor storage area shall only be permitted in the RB, AR and R-1 zoning districts.	Up to 500 square feet of outdoor storage area may be used in conjunction with a major home occupation in the AR and R-1 zoning districts.

Existing language to be revised within the referenced section of the UDO

Existing language to remain within the referenced section of the UDO

Proposed language to be added within the referenced section of the UDO

Proposed Amendment Summary Spreadsheet

<u>Revised Standards</u>			
	Existing Language	Proposed Language	
		Minor Home Occupations	Major Home Occupations
Definitions Section 10.1	An accessory business use, which is owned or operated by the resident of residentially-zoned property, which business is clearly incidental and subordinate to the principal residential use of the property.	An accessory business use which is owned or operated by the resident of a residentially-zoned property and is clearly incidental and subordinate to the principal residential use of the property.	An accessory business use which is owned and operated by the resident of the property, located on a single parcel of land at least five acres in size in the AR and R-1 zoning districts, and is clearly incidental and subordinate to the principal residential use of the property. Major home occupations, which do not meet the standards of a minor home occupation, shall accommodate for larger scale accessory business uses by allowing for an increase in square footage, number of onsite employees, students, customers, clients, and annual events with an approved Class B Special Use Permit.

Existing language to be revised within the referenced section of the UDO

Existing language to remain within the referenced section of the UDO

Proposed language to be added within the referenced section of the UDO

MINUTES
ORANGE COUNTY PLANNING BOARD
JULY 10, 2013
REGULAR MEETING

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Stephanie O'Rourke, Eno Township Representative; Buddy Hartley, Little River Township Representative; Tony Blake, Bingham Township Representative; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township; Paul Guthrie, At-Large Chapel Hill Township

MEMBERS ABSENT: Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Rachel Hawkins, Hillsborough Township Representative; Johnny Randall, At-Large Chapel Hill Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

Agenda Item 8: Home Occupations – To make a presentation on existing home occupation regulations, information on how some other local governments handle the topic, and discuss Planning Board member's ideas on potential amendments. This topic is included in the UDO's "Implementation Bridge" as a topic for further evaluation and is an Interest Area for some Planning Board members.

Presenter: Ashley Moncado, Special Projects Planner

Ashley Moncado: The purpose of this item is to review existing home occupations standards to address Planning Board's areas of interest from the January Planning Board meeting as well as the Implementation Bridge in order to determine if existing standards may or may not need to be revised.

Ashley reviewed the existing standards for home occupations in the UDO under Section 5.5.3. then proceeded with reviewing home occupations standards from other local communities in order to determine the next steps.

Paul Guthrie: What is telecommunications, a person who is employed as a consultant that does all their work by telecommunications, is that under this ordinance?

Michael Harvey: We have approved home occupations depending on the proposed activity. If someone is truly doing something at the house with the only rationale behind it is that if the neighbors complain, we can legitimately say they obtained the appropriate permit.

Paul Guthrie: What about artist's studios that don't have walk in business but produce?

Michael Harvey: We have permitted art studios. The biggest complaint is they feel they deserve to have more space and we treat every home occupation the same.

Pete Hallenbeck: My answer would be that you are employed by someone else and you happen to work at home. The artist is a home business and they are the business owner and they are working at home, that would be the distinction.

Paul Guthrie: We need to think very broadly about what we are trying to do and what our definitions are or you may spend the full time permitting or helping permit 30,000 home businesses in Orange County.

55
56 Pete Hallenbeck: I would agree with that.

57
58 *Ashley Moncado continued presentation.*

59
60 Pete Hallenbeck: This comment is from the time I spent on the Efland Small Planning Area and this subject came
61 up a lot. The Efland area had this overlay put onto it. The goal was that Efland is the County's Town. It is not
62 incorporated but has water, sewer, it can do denser development. There was lot of discussion about what defines
63 home business and one distinction was the concept of professional services and the poster child for thinking about
64 this was the difference between someone who wanted a barber shop and someone who had an engineering
65 consultation firm. The barber shop would have "anyone" come down with a lot of traffic and the engineer would
66 have a lot less traffic. There was some reluctance to try to qualify that one too much but it was a good example
67 down a private road where you could get neighbors riled up. My comments are, the two person limit, I would like to
68 see changed to three but I realize some people don't like that. I would also see the concept that you could have
69 two people and a third person up to a year. You've got a business and it is growing, you hire the third person and
70 keep them for a year, it is time to get a place of business. The square footage limit; Orange County has a 500
71 square foot limit but Chapel Hill has a 750 foot. Orange County could go to 750 and it wouldn't be too bad. The
72 deliveries limit, I just don't get, I understand some people love to shop so there will be deliveries. I don't see a
73 reason to have a limit. The parking is good. Basically you have to have enough room for the employees. I would
74 like to see a set of standard that can be applied for rural districts (R1), rural areas of the county that might be
75 different than the municipalities.

76
77 Paul Guthrie: You don't mean municipalities? Basically, we are talking largely about outside municipal limits.

78
79 Pete Hallenbeck: Yes. I would also put the rural buffer in with the municipalities just because there is lot in the
80 UDO giving the rural buffer more protection. The idea is to avoid urban sprawl. It is difficult to start listing
81 professions.

82
83 Stephanie O'Rourke: My first thought is about the employees' requirement. How do you determine that? We have
84 a business but we would only have two or three onsite.

85
86 Michael Harvey: On site. You could have 100 employees but only have two onsite.

87
88 Tony Blake: I agree with Pete on the square footage. I think 500 feet is restrictive. The number of employees is if
89 you have three, you are sort of allowing the seasonal businesses to take advantage of that. As far as deliveries, I
90 think you need to be able to handle the truck size. The accessory structure is the one place I see as the difference
91 between the rural buffer and zoning, etc. You could technically say a farm is a home business. You could word
92 that so that the 1,000 foot square limit was just inside certain zones.

93
94 Buddy Hartley: The square footage, I don't see why Orange County has 500 and Chapel Hill has 750. Maybe we
95 need to have a difference between a rural and the inside where you a larger development site. If it is in a
96 development you could have problems with the home owner's association.

97
98 Craig Benedict: This would be no means preempt a home owner's association if the HOA has restrictions.

99
100 Pete Hallenbeck: If you have more than 1,000 square feet of product things are going pretty well. That may be
101 where the limit of visitors can be used.

102
103 Craig Benedict: We understand these entrepreneurs starting a small business in their house and we have been
104 complaining we don't have places for the small business to move to. We hope they grow out of this into the 2,000
105 square foot strip center, etc.

106

Approved 9/4/13

107 Andrea Rohrbacher: The challenges that I faced in Chapel Hill in a residential neighborhood was a woman that ran
108 mediation classes. Every Tuesday, Wednesday and Thursday night, there were 10 cars lined up on the street.
109 That became burdensome.

110 Pete Hallenbeck: That speaks to the number of visitors and onsite parking.

111

112

113 Tony Blake: It also speaks to hours of business.

114

115 Stephanie O'Rourke: How would you differentiate if they were having a Wednesday night ladies night?

116

117 Andrea Rohrbacher: I think it was because this was three nights a week. In the Chapel Hill ordinance, some way
118 that you can have an art studio with power, running water but there is something in there that was specifically
119 targeting student housing that it wasn't a livable structure. They wanted to avoid someone building a 750 foot
120 structure to rent to a couple of students.

121

122 Michael Harvey: If you apply for home occupation, there are standards we use to see if efficiency apartment
123 applies.

124

125 Andrea Rohrbacher: What do we allow as identification if it was a consulting type business.

126

127 Pete Hallenbeck: If you're a consultant, you don't need a sign. Review the signage.

128

129 Andrea Rohrbacher: What about daycares?

130

131 Michael Harvey: Daycares is not a home occupation, it is a separate permitting process.

132

133 Stephanie O'Rourke: Wouldn't the homeowners association or the restrictive covenants be over that?

134

135 Craig Benedict: Also the parking code.

136

137 Andrea Rohrbacher: I would not want to go over three employees.

138

139 Tony Blake: Three includes the resident as well?

140

141 Michael Harvey: You can't have more than two employees that don't live at the residence.

142

143 Andrea Rohrbacher: I don't have any feeling about square footage, going to 750 would be good.

144

145 James Lea: Most of them have already been covered.

146

147 Herman Staats: Is a farm covered as a home occupation?

148

149 Perdita Holtz: Farms are exempt from zoning regulations.

150

151 Herman Staats: Are there specs that guide the private roads maintenance agreement?

152

153 Pete Hallenbeck: If you have a place that has three, four or five homes on the road and there is a legal agreement
154 about how to pay for the road maintenance then basically, we don't want this agreement to force a single house
155 with a long driveway to do something.

156

157 Herman Staats: Is there an exemption that all these things can be dealt with on a case by case basis.

158

159 Craig Benedict: There has to be clarity on what is exempt and what is not. Various criteria, it is so tight that there
160 is not too many ways to make it through. We need to mention what is clearly exempt by definition.

Approved 9/4/13

161
162 Perdita Holtz: If you wanted to allow more intensive home occupation, you could think about a Class B permit.
163
164 Paul Guthrie: My comment is a home business, you may get two times you can exceed the number of people.
165 This county would be decimated if you followed the language in this draft. Think very carefully about what you
166 write. This is running against the grain. Is there any exemption for doctors and lawyers?
167
168 Michael Harvey: We have doctors that work out of the house.
169
170 Paul Guthrie: How many things will you have to process? You are trying to liberalize something that has not been
171 enforced so I hope you have a good idea about where the work load will go.
172 *****

Pete Hallenbeck, Chair

MINUTES
ORANGE COUNTY PLANNING BOARD
SEPTEMBER 4, 2013
REGULAR MEETING

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Buddy Hartley, Little River Township Representative; Tony Blake, Bingham Township Representative; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township; Paul Guthrie, At-Large Chapel Hill Township; Stephanie O'Rourke, Eno Township Representative

MEMBERS ABSENT: Johnny Randall, At-Large Chapel Hill Township; Vacant- Hillsborough Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tom Altieri, Comprehensive Planning Supervisor; Tina Love, Administrative Assistant II

OTHERS PRESENT: Tim O'Rourke

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

Agenda Item 7: Home Occupations – To continue discussion on home occupation regulations and review potential changes to the regulations.
Presenter: Ashley Moncado, Special Projects Planner

Ashley Moncado: (Reviewed abstract).

Paul Guthrie: Does that immediately kick in industrial requirements for those who sell food?

Ashley Moncado: I don't think it does. I think it depends on the scale. The live work unit information is less restrictive.

Maxecine Mitchell: Does home occupation include bed and breakfast?

Ashley Moncado: No, that would be considered a business.

Ashley Moncado: Continued presentation.

James Lea: If you have a tax service that is 11%, do you have to meet Section 419 so that person would have to deal with fire protection?

Ashley Moncado: Yes.

Craig Benedict: This doesn't make sense for the home occupation so we are asking are you really restricting the 10%. We may go talk to the Department of Insurance.

Pete Hallenbeck: We don't have a lot of say in this because this is a state regulation.

James Lea: This is extremely restrictive.

55
56 Tony Blake: Is there a definition for home office?
57
58 James Lea: Office, hair stylist, etc.
59
60 Pete Hallenbeck: You may also have the situations to where all these changes occur and there is a problem with
61 the numbers, we at least have the format and can change the numbers.
62
63 Andrea Rohrbacher: Does telecommuting apply?
64
65 Ashley Moncado: Yes. This was more for onsite. As long as you don't exceed four all at once, you could operate
66 as home occupation.
67
68 Paul Guthrie: How do you define visitor? If you have 10 students, that may wipe out some occupations. We
69 should be knowledgeable about these types of limitations.
70
71 Pete Hallenbeck: Let's go around the room for comments.
72
73 Paul Guthrie: I only wanted to indicate that we do have a home business, an artist, and we have almost no visitors.
74 Some of the definitions, visitors, deliveries, are so imprecise. Do delivery trucks count toward that number?
75
76 Pete Hallenbeck: Michael Harvey would be able to look at those to check them.
77
78 Andrea Rohrbacher: My first concern is students per day. The way this is written if that I had a summer craft
79 session with a morning session of 10 students and an afternoon session with 10 students that would not be
80 allowed. My second question is about the number of events per year. If I had a seasonal business, I bake wedding
81 cakes, I would like to have 2 events in the spring and one in the fall or open houses per year and then my kitchen is
82 in my home and it meets all the standards for me to do the wedding cakes and I also do my home cooking, where
83 does that land in this?
84
85 Herman Staats: Keep these issues in mind when we have additional public meetings related to this so we can
86 modify these to better accommodate everyone.
87
88 James Lea: Looking at the revised standards dealing with minor and major home occupations sounds great with a
89 little tweaking until you get to the new standards and pretty much it says all home occupations that exceed 10% or
90 more. If you have any type of business, you will exceed the 10% of the floor area if you have a reception area.
91 Then we get into Section 419 is extremely restrictive for any business.
92
93 Buddy Hartley: I don't think we can change state law. I think what we have done is a good start.
94
95 Maxecine Mitchell: I hope we don't discourage people with small business and expenses.
96
97 Tony Blake: I would like to see documentation as to when 419 applies.
98
99 Ashley Moncado: It applies to everything.
100
101 Tony Blake: I am not going to invite building inspectors to the house.
102
103 Lisa Stuckey: I want to reiterate my employee issue which I think is a lot more flexible. In the Chapel Hill one it
104 states that no equipment or process shall be employed that will cause noise, vibration, etc. If you are putting a
105 business in a home it is part of the impact. What about signs?
106
107 Ashley Moncado: The signage was not brought up.
108

Approved 10/2/13

109 Maxecine Mitchell: The HOA has restrictions also.

110

111 Lisa Stuckey: How will this be enforced?

112

113 Craig Benedict: If it is blatantly evident, we will look into it.

114

115 Pete Hallenbeck: I like on the first page that the major occupations located on a shared private road will be
116 required to submit a private road maintenance agreement. Private road agreements will tear everybody up. The
117 major home occupations have a 3,000 foot limit. I would imagine if an artist bought 10 or 30 acres and wanted to
118 renovate a barn, they would not have a problem with that. I think how this topic resonates on the board and other
119 people. I want to address the sprinkler system, my home is sprinklered and it is real simple. I wish there was a
120 way to say if the house was more than 2,000 square feet, it had to be sprinkled. Under the Telecommunicating
121 section shall not be considered a home occupation, maybe we should be put in there that if you have employees
122 who telecommute, they are working for you but stay in their home, and they will not be considered employees on
123 site. The events per year limits, you need to be careful because if you had a time during the summer where every
124 Saturday 15 cars show up, that is starting to hit that impact limit. You could spread the impact of that over a period
125 of time. We did touch on the fact that the Orange County sign limit was much bigger than the Chapel Hill one so we
126 need to think about that.

127

128 Paul Guthrie: If the sprinkler does not pass the minimum requirements for the sprinkler system, you will not get a
129 permit. You need to have a separate unattached generator.

130

Pete Hallenbeck, Chair

SUMMARY NOTES
ORANGE COUNTY PLANNING BOARD
JULY 10, 2013 OCTOBER 2, 2013
ORDINANCE REVIEW COMMITTEE

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NOTE: A quorum is not required for Ordinance Review Committee meetings.

MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Paul Guthrie, At-Large, Chapel Hill Township; Tony Blake, Bingham Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Planning Systems Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 4: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – HOME OCCUPATION
To review and comment upon proposed revisions to the UDO regarding Home Occupation standards.
Presenter: Ashley Moncado, Special Projects Planner

Paul Guthrie: For the record, we have a home business in my house.

Lisa Stuckey: I have a home business in my house too.

Pete Hallenbeck: I work out of my home too.

Ashley Moncado: (Reviewed abstract).

Paul Guthrie: Have you been able to identify what the traffic work load it going to be to the planning department as a result of these regulations?

Michael Harvey: I have no concerns based on the provisions. I believe the regulations proposed are reasonable. I don't believe it will increase the workload tremendously.

Paul Guthrie: You don't know how many applications you will get. I think technically the provision with regard to the number of special events is still going to exclude the art tour because the number of 30 will breach that. We have a very strong arts community and I need to think through how you do not become an impediment to that.

Ashley Moncado: Other counties don't have limits on people but limitations on parking and other things. They are more restrictive.

Paul Guthrie: You want to look at that dynamic.

Pete Hallenbeck: You can get a special permit for that event.

Paul Guthrie: The arts community is already buzzing about this. My other concern is the parking requirement could be difficult for some folks. The other comment is regarding the maintenance; you may want to clarify that and be prepared that may be a problem.

Approved 11/6/13

- 54 Pete Hallenbeck: On page 86 regarding parking, parking shall be met off the street and not required yard area, so when
55 people come to these events, they can't park on the street.
56
- 57 Ashley Moncado: They would have to be in your area and not in the setback.
58
- 59 Pete Hallenbeck: Could you put setback instead of yard area?
60
- 61 Perdita Holtz: No, because of the way yard is defined and used in the UDO and other places.
62
- 63 Michael Harvey: There is an opportunity for you to go through a process to seek regress. We don't want to have a commercial
64 impact on a private road.
65
- 66 Pete Hallenbeck: On the outside storage space, there is 500 square feet, for the major home occupations that is part of the
67 application. In the minor home occupation application, where is that?
68
- 69 Ashley Moncado: It should be indicated on the plot plan.
70
- 71 Michael Harvey: We are not regulating the UPS truck for home delivery. If your home occupation needs a vehicle to support
72 operations there is a limit. Also, there are specific land uses prohibited as home occupations.
73
- 74 Paul Guthrie: Zoning ordinance cannot prohibit a small business homeowner from owning a bigger truck, which I question.
75
- 76 Michael Harvey: By using it as part of the business parked on the property, it can become regulated.
77
- 78 Ashley Moncado: We will look into it again.
79
- 80 Maxecine Mitchell: Can they load the equipment and leave?
81
- 82 Ashley Moncado: That it still be used in connections with home occupations.
83
- 84 Maxecine Mitchell: It would not be permitted?
85
- 86 Ashley Moncado: No.
87
- 88 Maxecine Mitchell: If someone is already using his or her vehicle?
89
- 90 Ashley Moncado: That standard is already in place.
91
- 92 James Lea: If I decide to start a tree service and had a two or three ton truck, I could not park that at my house?
93
- 94 Ashley Moncado: No.
95
- 96 Tony Blake: If it fit in a garage, could you keep it there?
97
- 98 Ashley Moncado: No.
99
- 100 Pete Hallenbeck: Let us see what people feel is a good size.
101
- 102 Paul Guthrie: I am not too upset with the one ton. This is a thicket and reality is it going to be very controversial when you hit
103 someone that has been grandfathered in.
104
- 105 Herman Staats: I think if you consider, I have dually which is more than one ton. One ton may be too low.
106
- 107 James Lea: I would agree. Some of the language suggests that you could not have dually there.

Approved 11/6/13

108
109 Maxecine Mitchell: I don't know what a one-ton truck is. If you have a landscaping business, they have trucks and long
110 trailers.
111
112 Ashley Moncado: There is language already in the UDO.
113
114 Tony Blake: Any language that is not a split axle truck.
115
116 Pete Hallenbeck: Rather than a ton limit, an axle limit.
117
118 Lisa Stuckey: Delivery trucks, UPS or FedEx are okay with me.
119
120 Pete Hallenbeck: If you had a small business, would this be something you could apply for a variance on.
121
122 Michael Harvey: I am hesitating to say yes because there may not be hardship. This is not to promote small business use for
123 a property but home occupation. Anybody can apply for anything. I don't see the limitation that is providing such a limit on
124 your use of property as warranting a variance.
125
126 Pete Hallenbeck: I would say one or two ton.
127
128 Paul Guthrie: The five-acre provision worries me because of the entrepreneur starting out.
129
130 Pete Hallenbeck: I think part of the five acres is that we are applying the same rules whether you had a one acre lot or 100
131 acre farm.
132
133 Ashley Moncado: We'll look into all the suggestions and changes and get back to you at the November Planning Board
134 Meeting.
135

Pete Hallenbeck, Chair

SUMMARY NOTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 6, 2013
ORDINANCE REVIEW COMMITTEE

NOTE: A quorum is not required for Ordinance Review Committee meetings.

MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lisa Stuckey, Chapel Hill Township Representative; James Lea, Cedar Grove Township Representative; Paul Guthrie, At-Large, Chapel Hill Township; Tony Blake, Bingham Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – HOME OCCUPATION
 To continue review and comment upon proposed revisions to the UDO regarding Home Occupation standards.
Presenter: Ashley Moncado, Special Projects Planner

Ashley Moncado: Reviewed abstract.

Paul Guthrie: The word “using”, does that mean the small business or anybody delivering too?

Ashley Moncado: A regular delivery truck.

Paul Guthrie: You can’t control the size of a truck.

Pete Hallenbeck: The biggest truck the homeowner can use for the small business.

Ashley Moncado: Continued presentation. This is scheduled to be reviewed at the Quarterly Public Hearing on November 25, 2013.

Paul Guthrie: I think these are very good changes. Is there any way to judge what the workload issue will be for implementing this process?

Craig Benedict: We will do outreach meetings to explain these rules.

Lisa Stuckey: On page 18 it states that activities prohibited are “and building, electrical, plumbing, etc. I don’t understand why they are being excluded.

Ashley Moncado: That is existing language currently in the UDO because of the nature of the business.

Pete Hallenbeck: There is a difference between the plumber who drives his truck home and has storage somewhere else.

Lisa Stuckey: What is wrong with plumbers?

Michael Harvey: The problem with trade contractors is they turn their houses into a storage area. We don’t allow trade contractors to build storage areas.

Tony Blake: What differentiates the person at the end of my road who has 40 acres and a grading contracting business, not residential from the guy up the street who is a plumber with 30 acres and a separate barn that he stores supplies in?

Michael Harvey: I would make the argument that the way the regulations are currently written that you don't want people going back and forth getting tools and supplies.

Lisa Stuckey: It doesn't make sense. I struggle with this 3,000 square feet size accessory building and use.

Pete Hallenbeck: Currently this ordinance is saying we don't want construction things getting out of hand but we are going to allow artists, lawyers and engineers. Those are what we want to have for home occupations.

Paul Guthrie: Isn't it true that anybody existing will be grandfathered in under the law?

Michael Harvey: If you are doing it now, it is illegal.

Paul Guthrie: This is an anti-small business regulation.

Michael Harvey: I think that is a very gross misrepresentation of this regulation.

Craig Benedict: We are trying to balance what people expect in a neighborhood.

Pete Hallenbeck: It sounds like there are many people here who are saying these changes are good you are questioning this broad restriction of construction practices. If anyone wants to write that up for the BOCC, we can include that in the package to them.

Perdita Holtz: There are other options; people can apply for a zoning change for a conditional use district.

Pete Hallenbeck: Let us leave that to the hearing, to present that and other options.

Potential Major Home Occupation Locations

Attachment 5

Caswell

Person

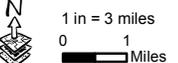
Alamance

Durham

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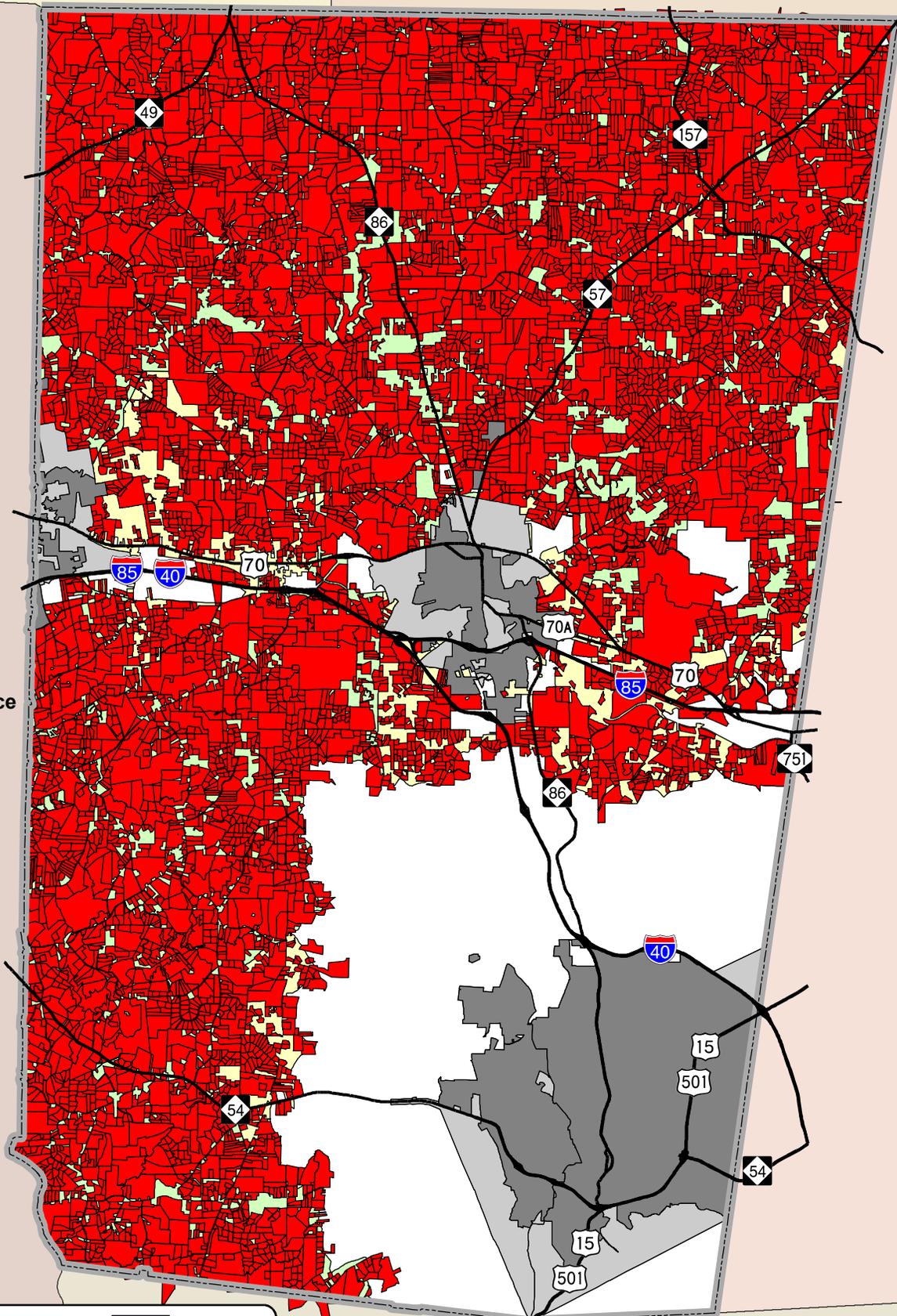
	Parcels >= 5 Acres *		City Limits
	AR		ETJ
	R1		

* Some parcels are only partially within R1 or AR zones



1 in = 3 miles
0 1 Miles

Orange County Planning and Inspections
Brian Carson (10/24/2013)



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**ORANGE COUNTY
BOARD OF COUNTY COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: November 25, 2013

**Action Agenda
Item No. C.2**

SUBJECT: UDO Text Amendment Related to Telecommunication Facilities

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

INFORMATION CONTACT:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Comprehensive Plan and Unified Development Ordinance Outline Form (UDO & Zoning 2013-04) 2. Session Law 2013-185 3. UDO Amendment Package | <p>Michael D. Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2575</p> |
|--|--|

PURPOSE: To hold a public hearing on a Planning Director initiated text amendments to the Unified Development Ordinance (UDO).

BACKGROUND: Session law 2013-185, adopted on June 26, 2013, has modified how local governments process new telecommunication tower applications and established new criteria related to the processing of applications, including:

- Prohibition on requiring information related to the specific need for a proposed telecommunication facility, including the addition of additional wireless coverage or capacity, as part of the application package.
- Local governments cannot require '*proprietary, confidential, or other business information*' to justify the need for a new telecommunication facility.
- Limits the fee local governments can collect for a third party consultant to review applications for co-locations.
- Mandatory review timelines/deadlines for local governments to act on co-location applications.

Staff is proposing to revise existing language within the UDO to ensure consistency with State law.

Attachment 1 provides additional background on the proposal. Attachment 2 contains a copy of the relevant Session Law. Attachment 3 contains the proposed amendments in a "track changes" format (red text for proposed additions and red strikethrough for proposed deletions).

Ordinance Review Committee (ORC) Review: The Planning Board ORC reviewed the proposed amendments at its October 2, 2013 ORC meeting where there were no comments on the proposal.

The required Planning Director analysis is contained in Section B.2 of Attachment 1.

Notification Procedural Requirements: Legal ads for the public hearing were placed in a newspaper of general circulation in the County in accordance with Section 2.8.7 of the UDO.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION: The Planning Director recommends the Board:

1. Receive the proposed text amendment(s).
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the **January 23, 2014** BOCC regular meeting.
4. Adjourn the public hearing until **January 23, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2013-04

UDO Text Amendment(s) incorporating recent changes in State law concerning the regulation of telecommunication facilities

A. AMENDMENT TYPE

Map Amendments

- Land Use Element Map:
From:
To:
- Zoning Map:
From:
To
- Other:

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:

- UDO General Text Changes
- UDO Development Standards
- UDO Development Approval Processes

Section(s):

1. Section 2.7.14 *Changes to Approved Plans*, and
2. Section 5.10 *Standards for Telecommunication Facilities* inclusive

of the UDO to incorporate recent changes to State law with the processing of new applications and equipment change out requests for telecommunication towers.

Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated text amendment(s) to incorporate recent changes in State Law, specifically Session Law 2013-185, related to the processing and review of applications for new telecommunication facilities or equipment/antenna change outs.

The Session Law, adopted on June 26, 2013 modifies establishes new criteria related to the processing of applications, including:

1. Local governments can no longer require information concerning the specific need for the proposed wireless support structure, including if the proposal seeks to add additional wireless coverage or capacity, as part of the application package.
2. Local governments cannot require '*proprietary, confidential, or other business information*' to justify the need for a new telecommunication facility.
3. Limits the fee local governments can collect for a consultant to review applications for co-locations (i.e. equipment change out) to \$1,000.00.
4. Mandates review timelines/deadlines for a local government to act on co-location applications. The Session Law establishes a 45 day time limit on review so long as the application is complete.
5. The law establishes 'exemptions' for certain modifications to telecommunication facilities from a zoning review process.

A copy of the Session Law can be found in Attachment 2 for review.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: '*cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners*'.

The amendments are necessary to ensure Orange County's process is consistent with recent changes in State Law.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

N/A

4. New Statutes and Rules

Session Law 2013-185 *An Act to Facilitate the Deployment of Mobile Broadband and other Enhanced Wireless Communication Services by Streamlining the Processes Uses by State Agencies and Local Governments to Approve the Placement of Wireless Facilities in their Jurisdictions (Attachment 2)*.

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

- a. BOCC Authorization to Proceed

September 5, 2013

- b. Quarterly Public Hearing

November 25, 2013

- c. BOCC Updates/Checkpoints

November 5, 2013 – BOCC members approve the legal advertisement for the November 25, 2013 Quarterly Public Hearing.
October 2, 2013 – Planning Board Ordinance Review Committee (ORC)
November 25, 2013 – Quarterly Public Hearing with this item on the agenda.
January 23, 2014 - Receive Planning Board recommendation.

- d. Other

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

- a. Planning Board Review:

October 2, 2013 – Ordinance Review Committee (ORC).
This item was reviewed at the October 2, 2013 ORC meeting where there were no comments on the proposal by Board members.
December 4, 2013 – Recommendation

- b. Advisory Boards:

- c. Local Government Review:

- d. Notice Requirements

Legal advertisement will be published in accordance with the provisions of the UDO.

e. Outreach:

<input type="checkbox"/> General Public:	
<input type="checkbox"/> Small Area Plan Workgroup:	
<input checked="" type="checkbox"/> Other:	Staff will ask the County’s current telecommunication consultant, the Center for Municipal Solutions, to review and comment on the amendments. This review is part of their existing contract with the County and will not result in additional cost.

3. FISCAL IMPACT

Modification of existing language will not require the outlay of additional funds by the County. Processing of the amendment shall be handled by staff utilizing existing budgeted funds.

D. AMENDMENT IMPLICATIONS

Language within the UDO will be consistent with recent modifications to State law.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:
 Michael D. Harvey
 Planning
 (919) 245-2597
 mharvey@orangecountync.gov

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-185
HOUSE BILL 664**

AN ACT TO FACILITATE THE DEPLOYMENT OF MOBILE BROADBAND AND OTHER ENHANCED WIRELESS COMMUNICATIONS SERVICES BY STREAMLINING THE PROCESSES USED BY STATE AGENCIES AND LOCAL GOVERNMENTS TO APPROVE THE PLACEMENT OF WIRELESS FACILITIES IN THEIR JURISDICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19 of Chapter 160A of the General Statutes reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"§ 160A-400.50. Purpose and compliance with federal law.

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(a1) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

"§ 160A-400.51. Definitions.

The following definitions apply in this Part.

- (1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) Application. – A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.
- (2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.
- (3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.
- (4) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.~~The installation of~~



- ~~new wireless facilities on previously approved structures, including towers, buildings, utility poles, and water tanks.~~
- (4a) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located. ~~Equipment enclosure.~~ – ~~An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.~~
- (5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- (7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (7a) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.
- a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.
- (8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
- (8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.
- (9) Wireless facility. – The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, ~~receivers~~-base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.
- (10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

§ 160A-400.51A. Local authority.

A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements.

consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

"§ 160A-400.52. Construction of new wireless support structures or substantial modifications of facilities and wireless support structures.

(a) ~~A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.~~

(b) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a city must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A city's review of an application for the ~~placement, construction,~~ placement or construction of a new wireless support structure or substantial modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the city may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A city may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A city may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the city may review the following:

- (1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the ~~antenna~~ wireless facility placement instead of the construction of a new ~~tower~~ wireless support structure, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new ~~tower~~ wireless support structure or initial ~~antenna~~ wireless facility placement or a proposed height increase of a substantially modified tower wireless support structure, or replacement ~~tower~~ wireless support structure ~~or collocation~~ is necessary to provide the applicant's designed service.
- (3) A city may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the ~~tower~~ existing wireless support structure is unwilling to enter into a contract for such use at fair market value. Cities may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

(d) ~~A collocation application entitled to streamlined processing under G.S. 160A-400.53 shall be deemed complete unless the city provides notice in writing to the~~

~~applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.~~

~~(e) The city shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 160A-400.53 and under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.~~

~~(f) A city may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a city on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the city in connection with the regulatory review authorized under this section. The foregoing does not prohibit a city from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a city for review of the application may not be used for either of the following:~~

- ~~(1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.~~
- ~~(2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.~~

~~(g) The city may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A city shall not deny an initial land-use or zoning permit based on such documentation. A city may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.~~

~~(h) The city may not require the placement of wireless support structures or wireless facilities on city owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on city owned or leased property, including an expedited approval process.~~

~~(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.~~

"§ 160A-400.53. Collocation and eligible facilities requests of wireless support structures, facilities.

~~(a) Pursuant to section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a city may not deny and shall approve any eligible facilities request as provided in this section. Nothing in this Part requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size. A city may require an application for collocation or an eligible facilities request. Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.~~

~~(a1) A collocation or eligible facilities request application is deemed complete unless the city provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A city may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, State, and local safety requirements. A city may not deem an application incomplete for any issue not directly~~

related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

(a2) The city shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the city shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(a3) A city may impose a fee not to exceed one thousand dollars (\$1,000) for technical consultation and the review of a collocation or eligible facilities request application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. A city may engage a third-party consultant for technical consultation and the review of a collocation application. The fee imposed by a city for the review of the application may not be used for either of the following:

- (1) Travel expenses incurred in a third-party's review of a collocation application.
- (2) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

~~(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.~~

~~(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:~~

- ~~(1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.~~
- ~~(2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.~~
- ~~(3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.~~
- ~~(4) The additional wireless facilities comply with all federal, State and local safety requirements.~~
- ~~(5) The collocation does not exceed the applicable weight limits for the wireless support structure."~~

SECTION 2. Article 18 of Chapter 153A of the General Statutes reads as rewritten:

"Part 3B. Wireless Telecommunications Facilities.

"§ 153A-349.50. Purpose and compliance with federal law.

(a) Purpose. – The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(a1) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), which creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a county's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) Compliance with the Federal Communications Act. – The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332 as amended, section 6409 of the federal Middle Class

Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

"§ 153A-349.51. Definitions.

The following definitions apply in this Part:

- (1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2a) Base station. – A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.
- (2) Application. – A formal request submitted to the county to construct or modify a wireless support structure or a wireless facility.
- (3) Building permit. – An official administrative authorization issued by the county prior to beginning construction consistent with the provisions of G.S. 153A-357.
- (4) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.~~The installation of new wireless facilities on previously approved structures, including towers, buildings, utility poles, and water tanks.~~
- (4a) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.~~Equipment enclosure. — An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.~~
- (5a) Fall zone. – The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.
- (6) Land development regulation. – Any ordinance enacted pursuant to this Part.
- (7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.
- (7a) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.
 - a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
 - b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
 - c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.
- (8) Utility pole. – A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

- (8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.
- (9) Wireless facility. – The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, ~~receivers~~, receivers-base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.
- (10) Wireless support structure. – A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

"§ 153A-349.51A. Local authority.

A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

"§ 153A-349.52. Construction of new wireless support structures or substantial modifications of facilities and wireless support structures.

~~(a) A county may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a county from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 153A-349.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.~~

(b) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a county must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A county's review of an application for the placement, construction, placement or construction of a new wireless support structure or substantial modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the county may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A county may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A county may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application the county may review the following:

- (1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development or zoning issue including evidence that no existing or

previously approved wireless support structure can reasonably be used for the ~~antenna-wireless facility placement~~ instead of the construction of a new ~~tower-wireless support structure~~, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new ~~tower-wireless support structure~~ or initial ~~antenna-wireless facility placement~~ or a proposed height increase of a substantially modified tower-wireless support structure, or replacement ~~tower-wireless support structure~~ or collocation is necessary to provide the applicant's designed service.

- (3) A county may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the ~~tower-existing wireless support structure~~ is unwilling to enter into a contract for such use at fair market value. Counties may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

~~(d) A collocation application entitled to streamlined processing under G.S. 153A-349.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.~~

~~(e) The county shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 153A-349.53 and under this section within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.~~

(f) A county may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a county on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the county in connection with the regulatory review authorized under this section. The foregoing does not prohibit a county from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a county for review of the application may not be used for either of the following:

- (1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.
- (2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(g) The county may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A county shall not deny an initial land-use or zoning permit based on such documentation. A county may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The county may not require the placement of wireless support structures or wireless facilities on county owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on county owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article.

"§ 153A-349.53. Collocation and eligible facilities requests of wireless support structures, facilities.

(a) Pursuant to section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), a county may not deny and shall approve any eligible facilities request as provided in this section. Nothing in this Part requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities. Routine maintenance includes activities associated with regular and general upkeep of transmission equipment, including the replacement of existing wireless facilities with facilities of the same size. A county may require an application for collocation or an eligible facilities request. ~~Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.~~

(a1) ~~A collocation or eligible facilities request application is deemed complete unless the county provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. A county may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, State, and local safety requirements. A county may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.~~

(a2) ~~The county shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the county shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.~~

(a3) ~~A county may impose a fee not to exceed one thousand dollars (\$1,000) for technical consultation and the review of a collocation or eligible facilities request application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. A county may engage a third-party consultant for technical consultation and the review of a collocation or eligible facilities request application. The fee imposed by a county for the review of the application may not be used for either of the following:~~

- (1) ~~Travel expenses incurred in a third party's review of a collocation application.~~
- (2) ~~Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.~~

(b) ~~Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.~~

(c) ~~The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:~~

- (1) ~~The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.~~
- (2) ~~The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.~~
- (3) ~~The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.~~
- (4) ~~The additional wireless facilities comply with all federal, State, and local safety requirements.~~

- (5) ~~The collocation does not exceed the applicable weight limits for the wireless support structure."~~

SECTION 3. G.S. 146-29.2 reads as rewritten:

"§ 146-29.2. Lease provisions for communications towers or interest in real property for communication purposes.

(a) The following definitions apply in this section:

- (1) Antenna. – Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (2) Buildings. – Structures owned or leased by the State on which equipment may be placed or attached.
- (3) Collocation. – The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable building and line safety codes.
- (4) Equipment. – Antennas, transmitters, receivers, cables, wires, transformers, power supplies, electric and communication lines necessary for the provision of television broadcast signals, radio wave signals, wireless data or wireless telecommunication services to a discrete geographic area, and all other apparatuses and appurtenances, including shelters, cabinets, buildings, platforms, and ice bridges used to house or otherwise protect equipment.
- (5) Ground area. – The area of real property surrounding the base of towers on which the equipment and appurtenances necessary for the operation and stability of the towers, including guy wires and security fencing, are constructed or installed.
- (6) Provider. – Any person that is engaged in the transmission, reception, or dissemination of television broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communications service, or the provisioning of wireless infrastructure.
- (7) Tower. – New or existing structures, such as a monopole, lattice tower, guyed tower, fire observation tower or water tower that are designed to support or are capable of supporting equipment used in the transmission or receipt of television broadcast signals, radio wave signals, or electromagnetic radio signals used in the provision of wireless communication service.

(b) The State may lease real property, or may grant an easement or license with an interest in real property for the following communication purposes:~~any interest in real property, for the purposes of~~

- (1) ~~construction and placement of communications~~Constructing, installing, and operating towers and equipment on State land, land or for placement of antennas upon State-owned structures.
- (2) Installing and operating equipment on towers, buildings, or ground area owned or leased by the State.

(c) If otherwise feasible and determined by the Department of Administration to be in the best interest of the State:

- (1) New towers constructed on State land shall be designed for collocation. This requirement shall not apply to towers constructed on State land by the State or any of its agencies or by a "public entity" as that term is defined in G.S. 146-29.1(b).
- (2) The State shall encourage the collocation of equipment on existing towers and buildings owned by the State.
- (3) The State shall sublease for collocation purposes space on any tower or ground area leased by the State, if allowed under the terms of the lease.
- (4) The State shall, to the extent practicable, adopt standard terms and conditions for applications to lease, easements, or other conveyances of an interest in real property for communication purposes.

(d) Pursuant to G.S. 143-341(4)f., the Governor, acting with the approval of the Council of State, may adopt rules authorizing the Department of Administration to enter into or approve

classes of leases, easements, or licenses with an interest in real property for the purposes set forth in this section. The rules may allow for execution of leases or other instruments by the Department of Administration rather than execution of the instruments in the manner prescribed in G.S. 146-74 through G.S. 146-78.

(e) Land in the State Parks System, as defined in G.S. 113-449.9, may only be leased or conveyed for the purposes of this section upon the approval of the Secretary of the Department of Environment and Natural Resources. Lease or conveyance of land in the State Parks System for the purposes of this section shall comply with the requirements of Articles 2 and 2C of Chapter 113 of the General Statutes. When selecting a location for a communications tower or antenna in the State Parks System, the State shall choose a location that minimizes the visual impact on the surrounding landscape. No land acquired or developed using funds from the Federal Land and Water Conservation Fund shall be leased or conveyed for the purposes of this section.

~~The following additional requirements shall apply to such leases:~~

- ~~(1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.~~
- ~~(2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.~~
- ~~(3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.~~
- ~~(4) The State shall not lease lands of the State Parks System for such purposes.~~

~~For purposes of this section, "co-locate and co-location" mean the sharing of a communications tower by two or more services.~~

~~(f) City and county ordinances apply to communications towers and antennas authorized under this section."~~

SECTION 4. Sections 1 and 2 of this act become effective October 1, 2013, and apply to applications received on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:08 p.m. this 26th day of June, 2013

ATTACHMENT 3

UDO AMENDMENT PACKET NOTES:

The following packet details staff's proposed modifications to existing regulations to incorporate recent changes in State law with respect to the review and processing of applications for the development of telecommunication facilities.

As the number of affected pages/sections of the existing UDO are being modified with this proposal staff has divided the proposed amendments into the following color coded classifications:

- **Red Underlined Text:** Denotes new, proposed text, that staff is suggesting be added to the UDO
- **Red-Strikethrough Text:** Denotes existing text that staff is proposing to delete

Staff has included footnotes within the amendment package to provide additional information/rationale concerning the proposed amendments to aid in your review.

Only those pages of the UDO impacted by the proposed modification(s) have been included within this packet. Some text on the following pages has a large "X" through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment or footnotes from previous sections 'spill over' onto the included page. Text with a large "X" is not proposed for deletion.

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

2.7.11 Conditions of Approval

- (A) The Board of County Commissioners or the Board of Adjustment, as appropriate, may impose such reasonable conditions upon approval of a Special Use as will afford protection of the public health, safety and general welfare, ensure that substantial justice is done, and equitable treatment provided.
- (B) Conditions shall run with the land and use, and shall be binding on the original applicant(s) as well as all successors, assigns and heirs.
- (C) The Special Use Permit shall include a statement that if any condition of a Special Use Permit shall be held invalid or void, then the permit itself shall be void and of no effect.
- (D) It shall be stated in the Special Use Permit that the Permit shall automatically expire within 12 months of the date of approval if the use has not commenced or construction has not commenced or proceeded unless a timely application for extension of this time limit is approved by the Board of County Commissioners as provided in Section 2.7.13.

2.7.12 Notification of Board Action

- (A) The Planning Director shall send a notice of the relevant Board's action on the application by certified mail to the applicant. A copy of the decision shall be filed in the Planning Department within five business days of the relevant Board's action.
- (B) The Planning Director, in the case of approval or approval with conditions, shall issue the necessary permit in accord with the Board's action.
- (C) The Planning Director, but not a designee, shall certify that the Special Use Permit with any imposed conditions is as approved by the Board of County Commissioners or Board of Adjustment, as appropriate, with a report provided to the County Manager.
- (D) Once the Special Use Permit has been certified, the applicant shall record the permit with the Orange County Register of Deeds in a format prepared by the Planning Director. Failure to do so within 90 days from certification shall invalidate the Special Use Permit.

2.7.13 Time Limits and Extensions

- (A) If a request is received before the Special Use permit expires, the Board of County Commissioners, for good cause shown, may extend the expiration deadline six months upon the favorable recommendation of the Planning Board.
- (B) The application for an extension request shall be submitted a minimum of six months prior to the expiration of the Special Use Permit.
- (C) No changes shall be made to the terms and/or conditions of approval.
- (D) Only one approval of a time extension is permitted, and it shall be based on evidence presented by the applicant showing that permits have been pursued in a timely manner, and that delays have resulted from factors beyond the control of the applicant.
- (E) For developments which require approval of a Special Use Permit, the applicant may request that the Special Use Permit be vested as a Site Plan for a period of not less than two nor more than five years. For vesting purposes, Site Plans and Preliminary Plans may also be approved as a Special Use Permit at the request of the applicant. See Section 2.5 for information regarding site plans.

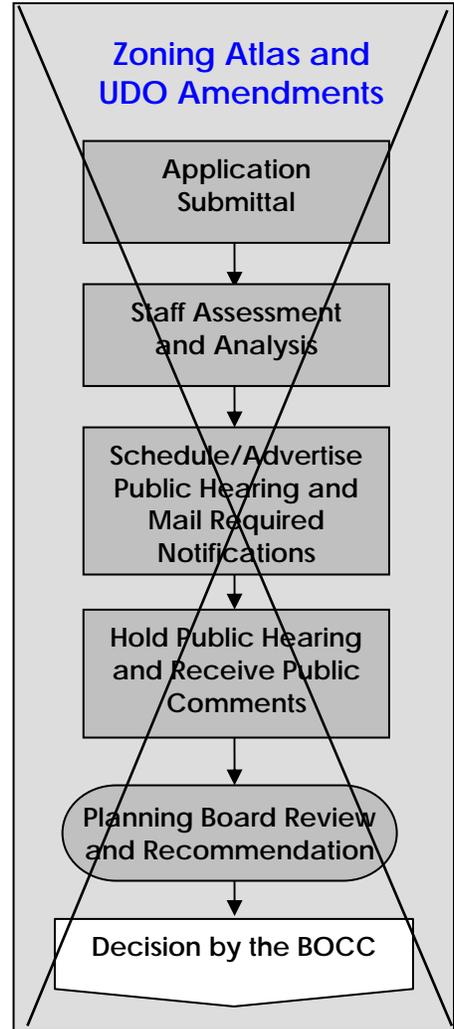
2.7.14 Changes to Approved Plans

- (A) The Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving Board, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board having jurisdiction.

- (B) The following criteria shall constitute a modification:
- (1) Any change in a condition imposed during the approval of a special use permit.
 - (2) Any change in use or enlargement of approved use.
 - (3) Any increase in intensity of use. An increase in intensity of use shall be considered to be an increase in usable floor area and/or an increase in the number of dwelling or lodging units.
 - (4) Structural alterations which significantly affects the basic size, form, style, ornamentation, and/or character of the building as shown on the approved site plan or described in the applicant's narrative.
 - (5) Substantial change in the amount and/or location of open space, recreation facilities or landscape screening.
 - (6) Any increase in the size or number of approved signs.
 - (7) Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved.
 - (8) Substantial changes in pedestrian and/or vehicular access or circulation.
 - (9) Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval.
 - (10) Any change in the location or extent of street and utility improvements or rights-of-way, including water, sewer and storm drainage facilities, which would provide a different level of service.
 - (11) For telecommunication facilities, a modification shall also include the following:¹
 - (a) An increase in the existing vertical height of the structure by:
 - (i) More than 10% in the height of the tower or the height of 1 additional antenna with separation from the nearest existing antenna not to exceed 20 feet
 - ~~(10)~~(ii) Above established height limits as detailed within this Ordinance or within the approved permit application,
 - (b) An increase in height requiring the telecommunication provider to demonstrate compliance with other State or Federal regulations, most notably the installation of lighting.
 - (c) The addition of an appurtenance to the body of the telecommunication facility that protrudes horizontally from the edge of the wireless support structure the greater of:
 - (i) More than 20 feet or
 - (ii) More than the width of the wireless support structure at the level of the appurtenance.
 - (d) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.
- ~~(11)~~
- (C) The Planning Director shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for approval of the Special Use. The determination shall be based upon the request of the applicant, the review of the record of the approval of the original request and the Planning Director's findings under the criteria of subsection (B) above.

¹ Staff has added language from the Session Law into this Section of the UDO to further detail what constitutes a 'modificaiton' to a telecommunication facility.

- (D) The Planning Director shall, if it is determined that the proposed action is a minor change, state the findings in writing to the applicant. The applicant shall file an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the approved site plan.
- (E) If it is determined that the proposed action is a modification, the Planning Director shall require the applicant to submit a request for modification of the approved special use permit. The following procedures shall be adhered to in the case of a modification:
 - (1) The applicant shall provide an amended site plan and written narrative outlining the specific changes requested.
 - (2) The Planning Director shall submit the request to the Board that approved the original application.
 - (3) The Board shall set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a modification of an approved special use permit shall be held in conformity with the relevant public notification requirements contained in this Article.
 - (4) The Board may approve, approve with conditions, or deny the application for a modification.
 - (5) The Planning Director shall file the Board's action in the Planning Department as an amendment request to the original application and shall notify the applicant of the Board's action.



SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

2.8.2 Amendment Initiation

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
 - (1) The Board of County Commissioners on its own motion;
 - (2) The Planning Board,
 - (3) Application, by any person or agency, or
 - (4) The Planning Director.
- (B) If a request for consideration of an amendment proposal is submitted directly to the Board of County Commissioners, said Board may decline to consider the request or may refer the amendment proposal to the Planning Director for preparation of an amendment application.

Staff Note: We are including all of Section 5.10 to provide the Board with the necessary context of proposed amendments. This amendment, however, is only intended to address incorporation of new language in State law. Staff cannot make wholesale changes to non relevant sections due to the nature of the public hearing legal advertisement.

...e removed within 12 months from the date the use of the facility.

...cture is removed the property, the owner shall obtain ...sion Control permits to re-stabilize the property. The ...npletion shall be determined by the Orange County ...ficer.

...rovide financial security in form and amount acceptable ...ecure the expense of dismantling and removing said

...he facility, the Department shall cause a notice to be ...e Orange County Registrar of Deeds office indicating ...pecial Use Permit has been revoked.

SECTION 5.10: STANDARDS FOR TELECOMMUNICATION FACILITIES

5.10.1 Intent

The regulations contained herein are designed to provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services through the community with the goal of establishing reliable wireless service to the public, governmental agencies, and first responders in a manner that provides for the public safety and general welfare of its citizens.

5.10.2 Master Telecommunications Plan (“Plan”)

- (A) The Plan is intended to assist providers in their search for suitable locations to build their service network. The County may develop the Plan (map), which would display locations within the County’s zoning jurisdiction where property owners have expressed formal, written, interest in allowing construction of telecommunications equipment.
- (B) Information that may be shown on the base Plan will include, but not limited to:
 - (1) Existing towers,
 - (2) Major transmission lines,
 - (3) County-defined Natural Areas,
 - (4) Historic properties,
 - (5) Scenic corridors,
 - (6) Known bird migratory patterns through the County,
 - (7) Voluntary Agricultural Districts, and
 - (8) Publicly-owned or quasi-public lands.
- (C) In order to participate in the Plan, all owner(s), or their legally binding representatives, shall submit an application on a form prepared by the Planning Department requesting inclusion.
- (D) All telecommunication providers who elect to construct facilities on properties in the Plan shall provide all necessary and requested information to the County’s telecommunications consultant.
- (E) Modification of the Plan may be considered annually at the February Quarterly Public Hearing. Any applicant requesting modification of the Plan shall make application to the Planning Director on or before December 1st of each year. The fee for modifying the Plan shall be that as set forth in the Orange County Schedule of Fees.
- (F) Withdrawal from the Plan is permitted if any owner submits, to the Planning Director, a notarized statement requesting same. Upon receipt of the request, including any fee for modifying the Plan as set forth in the Orange County Schedule of Fees, the Planning

Director shall inform interested parties that the property has been withdrawn from consideration. Removal of the property from the Plan shall be processed as a modification as detailed herein.

5.10.3 Annual Telecommunications Projection Meeting (ATPM)

(A) Purpose and Outcome

- (1) The purpose of the ATPM meeting is to allow for a complete review of collocation opportunities, address coverage issues, and discuss the location of needed telecommunication support structures with providers who intent on submitting development applications for action by the County. The intended outcome of the meeting is to allow the County and interested parties to develop a plan for facility deployment within the County that provides reasonable coverage based on the needs of the County and its residents, while minimizing the total number of needed telecommunication support facilities, including minimizing the intrusiveness of such facilities, and encouraging the development of a more efficient telecommunication network.
- (2) The intended outcome of the meeting is an understanding amongst the Planning Director and providers on areas of the County where telecommunication support facilities are needed and application request for the year should be focused.

(B) Applicability

- (1) By December 31st of each calendar year, telecommunication providers shall submit to the Planning Director a plan indicating proposed search rings for anticipated telecommunication support structures. This plan shall identify areas where providers are looking to locate facilities, as well as identify those areas of the County that are underserved by existing facilities.
- (2) As of the effective date of this Ordinance amendment any pending applications that have not received a zoning compliance permit or a special use permit shall meet all requirements of this Ordinance, including, but not limited to submission deadlines, application standards and processing, excluding the ATPM requirement.

(C) Meeting Specifics

- (1) The meeting shall occur by the end of January of each calendar year.
- (2) Attendees shall include all carriers and tower companies who have either filed applications the previous year or anyone who has expressed an interest in filing an application to construct a telecommunication support facility within the County.
- (3) The County shall notify each party of the date, time, and place of the meeting no later than 30 days prior to the meeting.
- (4) Those individuals/firms intent on submitting development applications are expected to attend the meeting. While a lack of attendance will not prevent the submittal of an application, it will prevent the applicant's ability to participate in the discussions outlining the areas of concentration for the location of telecommunication support structures for that given year.

- (D) Applications for the development of telecommunication support structures shall be processed in accordance with the provisions of this Ordinance.

5.10.4 Existing Wireless Telecommunications Support Structures

- (1) Telecommunications equipment as accessory uses may be placed on existing wireless support structures in accordance with the provisions of this Ordinance.

- (2) Notwithstanding the other provisions of Section 5.10, telecommunications towers in existence as of December 10, 2002, may be replaced with a wireless support structure of equal or less visual impact after approval by the Planning Director. However, if the proposed new wireless support structure would not be consistent with the minimum standards under Section 5.10, replacement must be approved as provided for in this Ordinance.

5.10.5 Wireless Telecommunications Support Structures and Equipment as Principal or Accessory Uses

- (A) Wireless telecommunications support structures shall be permitted as a principal or accessory use in accordance with the Table of Permitted Uses and as follows:
- (1) On property owned by the County or any public entity, except those designated as historic properties or sites, the County may, in its sole discretion as the owner of the property, authorize the application and use of County property after the applicant executes a lease agreement acceptable to the County.
 - (2) Wireless telecommunications facilities, as part of existing utility poles shall be permitted as an accessory use. Wireless facilities shall be constructed as part of the existing utility poles or as replacements for the existing utility poles. No freestanding towers constructed exclusively for personal wireless services shall be permitted within utility easements.
 - (3) The placement of new wireless telecommunications support structures shall be in accordance with the Table of Permitted Uses, except as permitted in the Master Telecommunications Plan ("Plan") or by Section 5.10.6 of this Ordinance.

5.10.6 Administrative Approval of Certain Telecommunication Facilities

(A) Applicability

The following telecommunication facilities may be approved administratively by the Planning Staff provided that all of the provisions contained in Section 5.10 are met:

- (1) New stealth telecommunications wireless support structures up to 75 feet in height that are sufficiently disguised so as to minimize visual impact;
- (2) Any wireless support structure less than 75 feet in height;
- (3) Any wireless support structure less than 200 feet in height located on property that is owned or leased by Orange County; and
- (4) Any wireless support structure less than 200 feet in height on which the owner of such facility permits the County to collocate its wireless facilities on the structure at no charge to the County when the location of such facility is of benefit to the County as determined in the sole discretion of the County.
- (5) A written decision approving or denying an application for administrative approval of a telecommunication facility under this section shall be issued no later than 45 days following the submission of a complete application.
- (6) Collocation applications meeting the following requirements:
 - (a) The proposed additional facility will not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached consistent with Section 2.7.14 of the Ordinance.²

² NCGS 153A-349 now allows for modification of an existing, permitted, telecommunication facility under certain set parameters. Staff has included a new definition of 'Substantial Modification – Telecommunication Facility' in Article 10 of the UDO to incorporate this allowance. Staff is including language within the proposal, specifically in Section 2.7.14, requiring additional permitting if the height of the tower is increased beyond what was originally

~~(b)~~ The proposed additional facility will not increase the ground space approved in the site plan for equipment enclosures and ancillary facilities.³

~~(e)(b)~~ The proposed additional facility will comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.

~~(e)(c)~~ The proposed additional wireless facilities comply with all federal, State, and local safety requirements.

~~(e)(d)~~ The proposed additional facility does not exceed the applicable weight limits for the wireless support structure.

(B) Submittal Requirements

All applications for telecommunication facilities that are eligible for administrative approval shall be submitted and reviewed in accordance with the standards of Section 5.10.8 of this Ordinance.

5.10.7 Antennas Not Located on Wireless Telecommunications Support Structures

(A) General Standards

- (1) To minimize adverse visual impacts, stealth antenna types shall be preferred. If a non-stealth antenna is proposed, the application shall be required to demonstrate, in a technical manner acceptable to the Planning Director, why the stealth antenna (i.e. an antenna incorporated into the architecture of the building or fully screened from view from sight proximate to the antenna) cannot be used for the particular application. This does not preclude a combination of the various types of antennas.
- (2) Antenna dimensions shall be subject to approval by the Planning Director. A statement shall be submitted, prepared by a professional engineer competent to evaluate antenna choices, to certify the technical need for the required dimensions.
- (3) Prior to the issuance of a Building Permit by the Inspections Division, the application shall provide evidence that the wireless telecommunication support structure or antennas are in compliance with FAA regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.

(B) Standards for Stealth Rooftop or Building, Water Tower, or Transmission Line Mounted Antennas

In addition to the standards established in Subsection A above, the following are applicable to all Stealth Rooftop or Building, Water Tower, or Transmission Line Mounted Antennas:

- (1) Antennas shall not exceed 20 feet above the roofline of the building or support structure, water tank, or transmission line;
- (2) Commercial advertising shall not be allowed on an antenna;
- (3) Signals, lights, or illumination shall not be permitted on an antenna, unless required by the FCC or the FAA;

approved by the County (i.e. over 200 feet required a Class A Special Use Permit) or if additional State/Federal regulations have to be adhered to, most notably a lighting requirement.

³ Staff deleted this section as new State regulations allows for an increase in existing equipment compounds associated with the review/processing of a collocation application.

- (4) Any related unstaffed equipment building shall not contain more than 600 square feet of gross floor area per user or exceed 12 feet in height;
- (5) Documentation shall be required denoting that the erection of an antenna will not compromise the structural integrity of the building, water tank, or transmission line;
- (6) If an antenna is erected on a transmission line, documentation shall be required outlining that the antenna will not interfere, or be interfered with, by the normal operating characteristics of the transmission line;
- (7) If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than 25% of the roof area, and shall comply with all State of North Carolina Building Code requirements for the proposed and existing building; and
- (8) Approval of the Planning Director to ensure consistency with the definition of stealth facility is required. Each application shall contain a rendering or photograph of the antenna including, but not limited to, colors and screening devices.

(C) Standards for Non-Stealth Rooftop or Building, Water Tank or Transmission Line Mounted Antennas

In addition to the standards established in Sub-Section (A) above, the following are applicable to all Non-Stealth Mounted Antennas:

- (1) Antennas shall not exceed 20 feet above the roofline of the subject building or support structure, water tank, or transmission line;
- (2) Antennas shall only be permitted on buildings or structures that are at least 33 feet tall. Antennas may be placed on buildings less than 33 feet tall if public safety needs warrant the antenna;
- (3) Antennas, and related equipment buildings, shall be located or screened to minimize the visual impact of the antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated;
- (4) Commercial advertising shall not be allowed on an antenna;
- (5) Signals, lights, or illumination shall not be permitted on an antenna, unless required by the FCC or the FAA;
- (6) Any related unstaffed equipment building shall not contain more than 600 square feet of gross floor area per user or be more than 12 feet in height;
- (7) If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than 25% of the roof area, and shall comply with all State of North Carolina Building Code requirements for the proposed and existing building;
- (8) Antennas may be located on utility poles pursuant to the following regulations:
 - (a) The maximum height of the pole with antenna shall not exceed 70 feet in height.
 - (b) The utility poles shall be located on public property, within public easements, or public rights-of-way.
 - (c) The antenna shall be of a size and placement that is structurally compatible with the engineering design of the pole pursuant to the North Carolina State Building Code and attested to by a professional engineer licensed in the State of North Carolina, and competent to evaluate antenna choices.

- (d) The antenna shall not extend more than ten feet above the existing pole height. If the pole is replaced to withstand the addition of telecommunications equipment, then the same restriction shall apply except that the utility pole may be 20 feet higher than the adjacent pole heights.
- (e) Placement of an antenna on a utility pole shall only be on poles owned or operated by a public utility authorized to operate in the County, a County franchisee, or Orange County.
- (f) All relocation costs associated with any relocation of the antenna necessitated by roadway or sidewalk improvements shall be borne by the telecommunications provider.

5.10.8 Wireless Telecommunications Support Structures – Submittal and Review Requirements

(A) General Submittal Requirements for all Telecommunication Support Structures

(1) Submittal Requirements

- (a) A site plan and site plan application package prepared in accordance with Section 2.5 shall be presented for approval to the Planning Division including all requirements for site development plan approval as required.
- (b) A detailed description of the proposed telecommunication support structure (i.e. monopole, self-supporting lattice, etc.) including a detailed narrative description and explanation of the specific objective(s) for the new facility including a description as to the coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage for the proposed telecommunication support structure.
- (c) Elevation drawings and color renderings of the proposed tower showing:
 - (i) The vertical rendition of the telecommunication support structure(s) identifying all users and attachments,
 - (ii) All related fixtures, structures, appurtenances and apparatus including the height of said structures above the lowest adjacent pre-existing grade,
 - (iii) The materials that will be used on site for said structures including their color and any proposed lighting and shielding devices, and
 - (iv) If the facility is intended to be a stealth, as defined herein, the colors and screening devices for the Planning Director to verify consistency with applicable definitions.
- (d) A signed statement from the applicant certifying that the proposed telecommunication support structure:
 - (i) Shall be maintained in a safe manner,
 - (ii) Is in compliance with all conditions of all applicable permits and authorizations without exception, and
 - (iii) Is in compliance with all applicable and permissible local, State, and Federal rules and regulations.
- (e) A statement, prepared by a professional engineer licensed in the State of North Carolina, which through rational engineering analysis, certifies the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, and any associated regulations; and

- describes the tower's capacity, including an example of the number and type of antennas it can accommodate.
- (f) A statement stating how the proposed tower will minimize visual intrusiveness to surrounding properties in the area. Criteria that may be used for such evidence may be height and type of existing trees surrounding the proposed tower, and local topography.
 - (g) A copy of the installed foundation design including a geotechnical sub-surface soils investigation, evaluation report, and foundation recommendation for the proposed wireless support structure.
 - (h) The existing cell sites (latitude, longitude, power levels) to which this proposed site will be a handoff candidate.
 - (i) Propagation studies of the proposed site and showing all adjoining planned, proposed, in-service or existing sites. This will include all of the modeling information used to produce the study including, but not limited to, any assumptions made about ambient tree height.
 - (j) The search ring utilized in finding the proposed site.
 - (k) The number, type, height, and model of the proposed antennas along with a copy of the applicable specification sheet(s).
 - (l) The make, model and manufacturer of the tower and antenna(s), antenna heights and power levels of proposed site. This will include documentation establishing the azimuth, size, and centerline height location of all proposed and existing antennas on the structure.
 - (m) The frequency, modulation and class of service of radio or other transmitting equipment.
 - (n) The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier.
 - (o) The actual intended transmission and the maximum effective radiated power of the antenna(s).
 - (p) The direction(s) of maximum lobes and associated radiation of the antenna(s).
 - (q) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC.
 - (r) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices.
 - (s) A written affidavit stating why "the proposed site is necessary for their communications service" (e.g., for coverage, capacity, hole-filling, etc.) and a statement that there are no existing alternative sites within the provided search ring and there are no alternative technologies available which could provide the proposed telecommunications service need without the tower.
 - (t) A copy of the FCC license applicable for the intended use of the facility as well as a copy of the 5 and 10 year building out plan required by the FCC.

Some or all of items listed in (h) through (r) may be required to be provided on a propagation study data form to be provided by the County.

(2) Additional Submittal Requirements – ~~Co-location~~ Collocation⁴ of Antennas

In addition to the requirements denoted herein, applications for the ~~co-~~ location collocation of antennas on existing structures shall be required to submit the following:

- (a) The age of the existing tower in years, including the date of the grant of the original permit or authorization for the existing tower;
- (b) For a wireless support structure that is five years old or older, or for a guyed structure that is three years old or older, a copy of the latest ANSI Report done pursuant to the latest edition of ANSI-EIA/TIA 222F – Annex E for any self-supporting tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the application. No Building Permit shall be issued for any wireless support structure where the structure being attached to is in need of remediation, unless and until the County Planning and Inspections Department has approved all remediation work needed has been completed or a schedule for the remediation work.
- (c) A Structural Report signed by a Professional Engineer licensed to do business in the State and bearing that engineer's currently valid stamp, showing the structural adequacy of the wireless support structure to accommodate the proposed modification or antenna array Collocation, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;
- (d) If attaching to a structure other than a tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF radiation (i.e. Non-Ion Emitting Radiation), will be comply with the most recent FCC regulations governing RF radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. Compliance with the FCC's regulations, in such an instance the RF radiation from all facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a Professional Engineer licensed in the State.
- (e) If the modification or antenna array Collocation collocation⁵ is 30 feet or more above ground level, then a signed document such as the FCC's "Checklist to Determine whether a Wireless support structure may be Categorically Excluded" shall be provided to verify that the modification or antenna array ~~co-~~ location collocation will fully comply with the current FCC's RF emissions regulations. If not categorically excluded, a complete RF emissions study is required to enable compliance verification, including providing all calculations so that such may be verified prior to issuance of a Building Permit;

If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that

⁴ Correction of spelling to ensure consistency within the UDO.

⁵ Correction of a grammatical error. There is no need for the word to be capitalized.

section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with yellow and black striped warning tape or a suitable warning barrier, as well as placing RF radiation signs as needed and appropriate to warn individuals of the potential danger;

- (f) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services caused by the new installation.

(3) Standards of Evaluation – ~~Co-locations~~Collocations and Towers Requiring Administrative Approval

- (a) A proposed tower shall not be permitted if it is not substantially necessary for the telecommunications service need identified pursuant to the standards of this Ordinance.
- (b) Tower height shall be measured from the base of the tower to the highest point of the proposed antenna(s), with lightning rod, to be located atop the tower structure.
- (c) Telecommunications towers shall conform with all of the requirements of this Ordinance.
- (d) All towers shall be engineered to allow for ~~co-locations~~collocations. No co-locator shall be refused access for ~~co-location~~collocation by charging exorbitant lease fees. Public safety provider ~~co-locations~~collocations shall take priority over other co-locators.
- (e) A telecommunications consultant shall provide Planning Staff assistance on exorbitant rate leases.
- (f) All wireless support structures shall satisfy all applicable public safety, land use, or zoning issues required in this Ordinance, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (g) Applicants shall evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures within the applicant's search ring.
- (h) Prior to issuing a building permit for the collocation of an antenna array on an existing facility, an applicant shall demonstrate that the collocation is located appropriately on the facility with the overall goal being to preserve the carrying capacity of the facility for future collocations and to minimize the visual intrusiveness and impact, including the profile of the facility.
- (i) In determining the necessary height for a facility, or the height of a collocation on a facility, the signal strengths analyzed shall be the threshold or lowest signal strength at which the customer equipment is designed to function, which may be required to be determined by the manufacturer's published specifications for the customer equipment.
- (j) Approval of the Planning Director to verify consistency with the definition of stealth facility is required.
- (k) All telecommunications towers shall be placed in heavily wooded areas on the site to the maximum extent possible so as to lessen the visual intrusiveness of the structure and accessory structures.
- (l) No tower shall be permitted to exceed its designed loading capacity. For all wireless support structures attached to existing structures, the engineer certification statement shall include certification that the structure can support the load superimposed from the wireless support

structure. All wireless support structures shall have the capacity to permit multiple users; at a minimum monopole wireless support structures shall be structurally designed to accommodate four users and self-support/lattice or guyed wireless support structures shall, at a minimum accommodate three users.

(B) General Submittal Requirements – Special Use Permits

In addition to the general submittal requirements detailed herein, and the specific submittal requirements for all Special Use Permit applications detailed within Section 2.7 of this Ordinance, applicants shall be required to adhere to the following:

(1) Overall Policy and Desired Goals

The overall policy and desired goals for Special Use Permits for wireless telecommunications support structures shall be promoting and encouraging, wherever possible, the following:

- (a) Alternatives to constructing new wireless support structures, including but not limited to the ~~co-location~~ collocation of wireless telecommunications equipment and mitigating the visual effect of a wireless telecommunication support structure to an extent not commercially impracticable; and
- (b) The placement, height and quantity of wireless telecommunications towers and equipment in such a manner, including but not limited to the use of stealth technology or camouflage techniques, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications support structure, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

(2) Balloon Test

- (a) The applicant shall, at least six weeks prior to a Class B Special Use Permit public hearing and at least 11 weeks prior to a Class A Special Use Permit public hearing, conduct a balloon test whereby the applicant shall arrange to fly, or raise upon a temporary mast, a minimum of 10'3" in length, brightly colored red or orange balloon at the maximum height of the proposed new wireless support structure.
- (b) The balloon test shall be flown for at least four consecutive daylight hours starting sometime between 10:00 A.M. and 2:00 P.M. on the dates chosen.
- (c) A notice of the dates (including a second date in case of poor visibility, weather or atmospheric conditions on the initial date), times, and location of the balloon test shall be mailed, by certified mail, return receipt requested, by the applicant, to all persons owning property within 1,000 feet of the subject parcel no less than 14 days in advance of the first test date. The data contained within the office of Orange County Land Records shall be used as the primary source for determining which residents are to receive notice of the balloon tests.
- (d) The primary date shall be on a weekend (excluding legal holidays), but to prevent delays in the processing of the application, and in case of poor weather or atmospheric conditions on the initial date, the secondary date may be a weekday.
- (e) The applicant shall inform the County Planning Staff, in writing, of the dates and times of the test at least 14 days in advance.

- (f) The applicant shall also post a sign on the subject property, and directional signs posted at locations to be determined by Planning Staff. The signs shall measure no more than nine square feet in area and no less than four square feet in area, giving the contact information of the County Planning Department, the proposed dates, times, and location of the balloon test. The signs shall be posted to meet the same time limits as provided for in the balloon test notification as stated above.

(3) Submittal Requirements

In addition to the information required herein as well as Section 2.7, the following shall be submitted as part of the application:

- (a) A site plan showing the following:
- (i) The entire site (including property boundary lines) and size of all existing structures within 500 feet of the site,
 - (ii) Existing and proposed structures on site,
 - (iii) The fall zone of the tower,
 - (iv) Existing and proposed topography at a contour interval of five feet and
 - (v) Any officially designated floodways and floodplains, or the presence of alluvial soils.
- (b) Plans, and elevations for all proposed structures and descriptions of the color and nature of all exterior material, along with the make, model, and manufacturer of the proposed structure, maximum antenna heights, and power levels.
- (c) A Landscape and Tree Preservation Plan drawn at the same scale as the site plan, showing the existing and proposed trees, shrubs, ground cover and other landscape materials. This plan shall minimize adverse visual effects of wireless telecommunications support structures and antennas through careful design, siting, landscape screening and innovative camouflaging techniques.
- (d) Evidence that the applicant has investigated the possibilities of placing the proposed equipment on an existing wireless support structure. Such evidence shall consist of:
- (i) A listing of all wireless telecommunications support structures within a two mile radius of the proposed wireless support structure site and a listing of all wireless support structure, utility poles and other structures in the vicinity of the proposed facility that are technically feasible for utilization by the applicant to fill all or a substantial portion of the telecommunications service need identified by the Applicant pursuant to section 5.10.8(A)(1)(s). Documents shall be submitted at the time of application filing that indicates the applicant's ability or inability to co-locate on the identified tower(s) and reasons why.
 - (ii) Delineation of the boundaries of the maximum search ring within which the telecommunication equipment can function as intended. The following information shall be provided for all existing wireless support structures within the search ring:
 - a. Wireless telecommunication support structure height;
 - b. Existing and planned wireless support structure users;
 - c. Whether the existing wireless telecommunication support structure could accommodate the

- telecommunication equipment to be attached to the proposed wireless support structure without causing structural instability or radio frequency interference; and
- d. If the proposed telecommunication equipment cannot be accommodated on the existing wireless telecommunication support structure, assess whether the existing wireless support structure could be structurally strengthened or whether the antennas transmitters and related equipment could be protected from electromagnetic interference, and generally describe the means and projected cost of shared use of the existing wireless support structure; and
 - e. Any restrictions or limitations of the FCC or FAA that would preclude the shared use of the wireless support structure;
 - f. Propagation studies of all adjoining planned, proposed, in-service, or existing sites, and;
 - g. Any additional information requested by the County.
- (iii) A summary explanation of why proposed telecommunication equipment cannot be located on any of the existing wireless support structures in the search ring.
- (e) Documentation from applicable state or federal agencies indicating requirements, which affect the appearance of the proposed wireless support structure, such as lighting and coloring.
 - (f) Draft bond which will guarantee the removal of the wireless support structure in the event that it is abandoned or unused for a period of 12 months.
 - (g) A listing of, and current tax map identifying, all property owners within 1,000 feet of the parcel and addressed, first class stamped envelopes to the property owners for notifications of the public hearing in accordance with Sections 2.7.5 and 2.7.6 of this Ordinance.
 - (h) A report containing any comments received by the applicant in response to the balloon test along with color photographs from various locations around the balloon.
 - (i) Evidence that the balloon test requirement has been met, including a notarized statement and listing of the property owners notified of the test, a copy of a current Orange County Tax Map showing the subject property and all properties within the notification ring, and copies of the certified mail returned receipts from the mail-out.
 - (j) A notarized statement that the sign posting requirement has been met.
 - (k) Photographs of a clearly visible balloon floated at the proposed tower location to the maximum height of the tower, as well as photographs with the proposed tower and associated antennas superimposed upon them showing what the proposed tower will look like. Photographs shall be taken from locations such as: property lines, and/or nearby residential areas, historic sites, roadways, including scenic roads and major view corridors, and other locations as deemed necessary by the Planning Staff to assess the visual impact of the proposed tower.
 - (l) The Special Use Permit application shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.

- (m) An Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum. Based on the results of the Analysis, including the Visual addendum, the County may require submission of a more detailed visual analysis. The scope of the required Environmental and Visual Assessment will be reviewed at the pre-application meeting.
- (n) If required, a Visual Impact Assessment, which shall include:
 - (i) A “Zone of Visibility Map” shall be provided in order to determine locations from which the tower may be seen.
 - (ii) Panorama photo simulations of the proposed wireless support structure, superimposed on the existing landscape, to scale, showing “before and after” views including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents
 - (iii) An assessment of the visual impact of the wireless support structure base, guy wires and accessory buildings from abutting and adjacent properties and streets shall be considered to determine the need of screening.
- (o) All applications shall contain a demonstration that the wireless support structure is sited so as to have the least visually intrusive effect reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the telecommunications tower.
- (p) A statement, prepared by a professional engineer licensed in the State of North Carolina, which through rational engineering analysis, certifies the tower's compliance with applicable standards as set forth in the State of North Carolina Building Code, and any associated regulations; and describes the tower's capacity, including an example of the number and type of antennas it can accommodate.

(4) Standards of Evaluation

- (a) The telecommunications equipment planned for the proposed wireless support structures cannot be accommodated on an existing wireless support structures due to one or more of the following reasons:
 - (i) The planned equipment would exceed the structural capacity of existing and approved wireless support structures, considering existing and planned use of those wireless support structures and the wireless support structures cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
 - (ii) The planned equipment would cause radio frequency interference with other existing or planned equipment for these wireless support structures, and the interference cannot be prevented at a reasonable cost.
 - (iii) Existing or approved wireless support structures do not have space on which the equipment can be placed so it can function effectively and reasonably in parity with similar existing or approved equipment.
 - (iv) No tower or other suitable facility exists in an area where the equipment to be placed on the tower will function in its intended manner.

- (b) Location of Wireless Support Structures
- (i) Applicants for facilities shall locate, site and erect said facilities according to the following priorities, in the following order:
 - a. On existing County-owned facilities without increasing the height of the tower or structure.
 - b. On existing Facilities without increasing the height of the tower or structure.
 - c. On County-owned properties or facilities.
 - d. On properties in areas zoned for commercial or industrial use.
 - e. On properties in areas zoned Agricultural Residential (AR).
 - f. On properties in areas zoned for residential use.
 - (ii) If an Applicant proposes to place telecommunications equipment at a location that is not a preferred priority 1 site, then the Applicant must provide a detailed explanation as to why a higher priority site is not proposed. The explanation shall be in the form of a written report demonstrating the Applicant's review of the above locations in order of priority and the reason(s) for the site selection. The explanation shall, at a minimum, include the information required by section 5.10.8(B)(3)(e).
 - (iii) The application shall not be approved unless it demonstrates that the telecommunications equipment may not be sited at a higher priority site because of commercial impracticability or because no higher priority site is available that would serve to provide the telecommunications service need identified by the Applicant as provided for in section 5.10.8(A)(1)(s).
 - (iv) An Applicant may not by-pass sites of higher priority merely because the site proposed is the only site leased or selected. Agreements between providers limiting or prohibiting ~~ee-~~ location collocation shall not be a valid basis for any claim of commercial impracticability.
 - (v) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, an application shall not be approved if it conflicts with the provisions and requirements of this Ordinance.
 - (vi) Wireless support structures shall not be located within one-half ($\frac{1}{2}$) mile of any existing monopole, lattice or guyed wireless telecommunications support structure.
 - a. An exception may be allowed when the applicant can sufficiently demonstrate that:
 - i. Appropriate space on the existing telecommunication wireless support structure is not available; or
 - ii. The applicant has made good faith effort to negotiate an agreement with the owner of the existing wireless telecommunication support structure and has been unsuccessful, which must be documented in writing; or

- iii. The telecommunication equipment on the existing wireless telecommunication support structure is not compatible with the proposed telecommunication equipment of the applicant; or
 - iv. Adequate coverage by the applicant cannot be met at the location of the existing wireless telecommunication support structure; or
 - v. The existing wireless telecommunication support structure cannot be reasonably modified to accommodate additional ~~co-location~~collocation by the applicant.
- b. Exceptions shall only be allowed after a thorough analysis of the search area, provided by the applicant is performed by the County's consultant or Staff, indicating that coverage is not possible on an existing wireless support structure at the four-carrier capacity or other user capacity that can be achieved. There must be an 80% approval vote of the deciding board for this specific finding to pass the exception criteria.
- (c) **Setbacks**
- (i) Within or adjacent to residential zoning districts, minimum setbacks from the base of the wireless support structure to the property boundary shall be equal to 110% of the wireless support structure height.
 - (ii) If the wireless support structure is proposed as an accessory use to a residential use, the setback shall be 110% of the wireless support structure height from any residence or dwelling unit on the subject property.
 - (iii) Adjacent to non-residential uses or non-residential zoning districts, minimum setbacks from the base of the wireless support structure to the property boundary shall be the greater of 20% of the tower height, or the minimum required setback.
 - (iv) All buildings and other structures to be located on the same zoning lot as a telecommunication tower wireless support structure shall conform with the setbacks established for the zoning district or as established through the subdivision process, whichever is greater.
- (d) **Access**
- (i) At a wireless telecommunications support structure site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access.
 - (ii) Maximum use of existing roads, whether public or private, shall be made to the extent practicable.
 - (iii) Road construction shall, at all times, minimize ground disturbance and the cutting of vegetation.
 - (iv) Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- (e) **Landscaping and Buffers**
- (i) A Type C Landscape Buffer shall be provided between the

- wireless support structures and its accessory structures and adjoining property/properties.
- (ii) Existing vegetation may be removed only to the extent necessary to accommodate the wireless support structures, equipment buildings, and support structures such as guy wires.
 - (iii) Plantings around the compound perimeter, outside of any fence or wall, shall be composed entirely of fast growing evergreen vegetation.
 - (iv) New plantings and existing vegetation used for screening shall be at least six feet in height or greater at planting.
 - (v) Proposed plantings (name, type, height) shall be shown on the Landscape Plan for the facility.
 - (vi) Landscaping shall provide a screen on a year-round basis.
- (f) The visibility of the balloon to adjacent properties and the surrounding area shall not constitute sole justification of denial of a permit application, but is an indication of what location on the site may be less visually intrusive.
- (g) The applicant shall demonstrate and provide a description in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed facility.
- (h) The site plan shall indicate a location for at least two equipment buildings in addition to that proposed for use by the applicant.
- (i) All utilities at a facility site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- (j) All wireless support structures shall satisfy all applicable public safety, land use, or zoning issues required in this Ordinance, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (k) Fences and Walls
- (i) An eight foot fence or wall shall be required around the base of any wireless support structures. This fence or wall shall encompass all accessory equipment within the compound.
 - (ii) Fences shall be required around guy wire tie downs
 - (iii) A fence or wall may be placed around the perimeter of the facility to include guy wire tie downs and associated equipment should the applicant/owner wish to do so.
- (l) The communications tower is structurally designed to support additional users as provided for in Section 5.10.8(A)(3)(d), and the Special Use Permit includes a statement that the owner of the wireless support structure is willing to permit other user(s) to attach communication equipment which do not interfere with the primary purpose of the wireless support structure, provided that such other users agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment.
- (m) To minimize the number of antenna arrays and thus the visual impact, the County may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will

not work technologically and that such would have the effect of prohibiting the provision of service in the County.

- (n) Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings.
- (o) Both the wireless telecommunications support structure and any and all accessory or associated telecommunication equipment and related facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth technology as may be required by the County.
- (p) Antennas
 - (i) All new or replacement antennas, except omni-directional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible on any facility, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the applicant can prove that it is technologically impracticable.
 - (ii) If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- (q) Lighting
 - (i) The wireless support structures will not be artificially lighted unless required by the FAA, FCC or other federal or state agency. Where such agencies allow a choice between painting the tower or installing strobe lighting, painting shall be the preferred choice.
 - (ii) If lighting is legally required or proposed, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and federal regulations.
 - (iii) For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is visible from the air, as intended by the FAA.
 - (iv) All outdoor lighting not regulated by the FCC shall comply with the Outdoor Lighting Standards set forth in Section 6.11 of this Ordinance.
- (r) The tower and antenna will not result in a significant adverse impact on the view of or from any historic site, scenic road, or major view corridor.
- (s) Facilities, including antennas, towers and other supporting structures, such as guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and

telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

- (t) All abandoned communication wireless support structures shall be removed within 12 months of the cessation of use. A bond or other security guaranteeing the removal of the tower in the event that it is abandoned or unused for a period of 12 months shall be posted. A cost estimate shall be provided by a qualified General Contractor licensed in the State of North Carolina. The amount of the security shall be 110% of the estimate.
- (u) A determination shall be made that the facility and its equipment will comply with all federal, state and local emission requirements, and the Special Use Permit shall include a statement that the facility and its equipment will comply with all federal, state and local emission requirements.
- (v) Electro-Magnetic Radiation Levels
 - (i) The Special Use Permit shall include a condition that the electro-magnetic radiation levels maintain compliance with requirements of the FCC, regarding emission of electromagnetic radiation.
 - (ii) Within 30 days of installation of equipment on the tower, and within 30 days of the installation of any additional equipment in the future, the tower owner shall provide documentation of emission levels in relation to FCC standards.
 - (iii) In addition, the tower owner must provide documentation of emission levels within five working days if so requested by Orange County.
 - (iv) Orange County may make such requests at any time, not to exceed two times per year.
- (w) "High Voltage", "No Trespassing" and Other Signs
 - (i) If high voltage is necessary for the operation of the telecommunications tower or any accessory structures, "HIGH VOLTAGE - DANGER" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.
 - (ii) "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and shall be spaced no more than 40 feet apart.
 - (iii) The letters for the "HIGH VOLTAGE - DANGER" and "NO TRESPASSING" warning signs shall be at least six inches in height. The two warning signs may be combined into one sign. The warning signs shall be installed at least five feet above the finished grade of the fence.
 - (iv) The warning signs may be attached to freestanding poles if the content of the signs would, or could, be obstructed by landscaping. Signs noting federal registration (if required) shall be attached to the tower structure in compliance with federal regulation.
 - (v) Facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area.

- (vi) A sign no larger than four square feet containing the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s) shall be installed. The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet.
- (vii) On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting.
- (viii) The use of any portion of a tower for signs or advertising purposes including company name, banners, streamers, etc. shall be strictly prohibited.
- (ix) Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless repairs to the tower are being made.

(5) Bond Security

- (a) The applicant and the owner of record of any proposed facility property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a tower and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Section and conditions of any Special Use Permit issued pursuant to this Section.
- (b) The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit. Tower Inspection

(6) Liability Insurance

- (a) A holder of a Special Use Permit for a wireless support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in the following amounts:
 - (i) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate; and
 - (ii) Automobile Coverage: \$1,000,000.00 per occurrence/\$2,000,000 aggregate; and
 - (iii) A \$3,000,000 Umbrella coverage; and
 - (iv) Workers Compensation and Disability: Statutory amounts.
- (b) For a wireless support structure on County property, the Commercial General Liability insurance policy shall specifically name the County as an additional insured. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- (c) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least 30 days prior written notice in advance of the cancellation of the insurance.

- (d) Renewal or replacement policies or certificates shall be delivered to the County at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (e) Before construction of a permitted facility is initiated, but in no case later than 15 days prior to the grant of the building permit, the holder of the Special Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the County shall not be deemed to comply with this Section.

(C) General Building and Inspection Standards for all Telecommunication Support Structures

(1) Tower Inspection

- (a) Telecommunication tower owners shall submit a report to the County Inspections Division certifying structural and electrical integrity upon completion of the initial construction and at intervals as specified in this Section.
- (b) Inspection records shall be kept by the tower owner and made available upon request to the Inspections Division during regular business hours.
- (c) The following inspection schedule shall be followed, except in cases where a tower has no structures other than those associated with telecommunication tower use located within the tower's fall zone.
 - (i) At least once every 36 months, or 36 months from the date of a ~~co-location~~ collocation approval, a structural engineer who is regularly involved in the maintenance, inspection and/or erection of telecommunications towers shall inspect the tower and submit a report to the Inspections Division within a reasonable time thereafter. At a minimum, this inspection shall be conducted in accordance with the provisions of this Ordinance and in accordance with the tower inspections check list provided in the EIA-222 (as amended from time to time). This is considered a major inspection review.
 - (ii) At least once every 12 months, a visual inspection from the ground shall be conducted by a properly trained staff member of a tower provider or tower consultant and a report shall be filed with the Inspections Division within a reasonable time thereafter. This inspection shall include, but shall not be limited to, visual inspection of tower foundations, structures, guys, and connections for evidence of settlement or later movement; soil erosion; condition of paint or galvanizing; rust or corrosion, loose or missing bolts, loose or corroded lightning protection connectors; tower plumbness, significant variation in guy sags (i.e. tensions), and other material areas or matters relating to the structural integrity of the tower. This is considered a minor inspection review.
 - (iii) In addition to the regularly scheduled major and minor inspections set forth herein, a minor inspection, at a minimum, will be conducted if the tower or its appurtenances are noted at any time to be visibly damaged. Additionally, a major inspection shall be conducted if the visible damage to the tower is significant or when, after conducting a minor inspection, significant questions remain about the structural integrity of the tower.

- (d) The Inspections Division may conduct periodic inspections of telecommunications towers to ensure electrical integrity. The owner of the telecommunication tower may be required by the County to have more frequent inspections should there be reason to believe that the electrical integrity of the tower is jeopardized. The County reserves the right to require additional inspections if there is evidence that the tower has a safety problem or is exposed to extraordinary conditions.
- (e) Any tower found, through inspection by the owner or by inspection of the Inspections Division, to be structurally unsafe and cannot be brought into compliance within 180 days shall be removed at the owner's expense.
- (f) Current or former EIA standards shall apply to the addition of antennas or other appurtenances to communications towers under the following conditions:
 - (i) Additions to towers constructed prior to the effective date of this Ordinance, regardless of whether the additions are accounted for in the original design, shall comply with the current EIA standards, and the wind loading specified therein. Additions to towers constructed subsequent to the effective date of this Ordinance shall comply with standards set forth elsewhere in this Section.
 - (ii) Existing towers that will not have any additional attached appurtenances shall at a minimum comply with the EIA standards in existence at the time the tower was erected.
 - (iii) Replacement of antennas or other appurtenances shall at a minimum comply with the EIA standard in existence at the time the tower was erected if the replacement does not add to the original design loading.
 - (iv) If a structural analysis shows a tower is not in compliance with the appropriate EIA standards, the owner shall submit an application to the Inspections Division with a plan to bring the tower into compliance within six months.
 - (v) Analysis of Existing Towers
 - a. Within 12 months of the effective date of this Ordinance an analysis commissioned by tower owners and prepared by a North Carolina Licensed Professional Engineer (P.E. Analysis) shall be performed on all towers in excess of 100 feet in height and shall be submitted to the Inspections Division.
 - b. The analysis shall determine the tower's compliance or lack thereof with the EIA standard in effect at the time the tower was constructed and when the most recent structural loading change was made.
 - c. For all towers less than six years old, a current existing P.E. analysis of the tower may be submitted in lieu of the new P. E. analysis required above.
 - d. If the tower does not meet the aforementioned EIA standards, the letter or existing P.E. analysis shall include the types of modifications that would be required to bring the tower up to standard.
 - e. All existing towers shall be subject to the annual electrical inspection conducted by the Inspections Division including any associated inspection fees.

- f. The Inspections Division shall be notified in writing when a required analysis is complete. A copy of the analysis report shall be made available to the County Inspections Division upon request. That report shall also give details of the net result of any changes made to the tower or its appurtenances since the last inspection.

(D) Fees

- (1) A filing fee as set by the Board of County Commissioners shall be paid upon application for a Site Plan/Zoning Compliance Permit Application, a Building Permit application, or Special Use Permit.
- (2) An inspection fee is due the County at the time of all required future inspections as detailed within Section 5.10.8(C)(1)(c) of this Ordinance. Such fees may reflect the County's fully allocated costs, and shall not exceed such costs.
- (3) Public land or right-of-way lease agreements shall be established by separate instrument and recorded prior to the issuance of Building Permits.
- (4) Consultant Fee. Regardless of the type of telecommunication support structure proposed (i.e. administrative approval, special use permit, ~~co-location~~ collocation, etc.) an applicant is required to submit a fee to cover the County's telecommunications consultant to review the application. An escrow account of an amount determined by the Board of County Commissioners, as denoted on the adopted fee schedule, shall be paid by check to Orange County to pay associated consultant review fees during all phases of the application review process. The Board of County Commissioners shall determine the amount of charges or fees assessed to an applicant on account of an outside consultant in advance and incorporate these charges and fees into an application fee that is based on the reasonable costs of the services the County incurs in connection with the application review. The fees and charges paid by the applicant for the services of a consultant shall not exceed what is usual and customary for wireless facilities and support structures. The foregoing does not prohibit the County from imposing additional reasonable cost-based fees for the actual costs incurred by the County for a consultant's review of an application due to amendments or revisions to the original application. The amount of the consultant charges incorporated into the application fee shall be separately identified and disclosed to the applicant upon request. ~~A partial escrow payment of \$1,000 shall be submitted at the pre-application meeting to cover associated consulting fees incurred prior to the formal submittal of an application. The escrow amount required at the formal application submittal shall be reduced by the \$1,000 partial payment amount.~~⁶ Any unused funds in the account after either the approval of the Certificate of Occupancy (CO), or the expiration of the Special Use Permit approval, whichever is sooner, shall be returned to the designated party.

5.10.9 Removal of Wireless Support Structures and Facilities

- (A) The owner of any facility shall be required to provide a minimum of 30 days written notice to the County Clerk prior to abandoning any facility.
- (B) **County Determination**
Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require facility removal:

⁶ Staff is deleting references to the payment of fees. The breakdown of fees required for the review of a project is best handled on the adopted fee schedule and not within the actual Ordinance. We need to rely on the adopted fee schedule to identify all required fees and not continue to have references to specific dollar amounts within the Ordinance.

- (1) Facilities that have been abandoned (i.e. not used as facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days of abandonment;
 - (2) Permitted facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - (3) Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization and the Special Use Permit may be revoked.
- (C) If the County makes such a determination as noted above, then the County shall notify the holder of the Special Use Permit for the facility within 48 hours that said facility shall be removed.
- (D) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such facility, and all associated structures, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the County. However, if the owner of the property upon which the facility are located wishes to retain any access to the facility, the owner may do so with the approval of the County.
- (E) If a facility is not removed or substantial progress has not been made to remove the facilities within 90 days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the facility at the sole expense of the owner or Special Use Permit holder.
- (F) If the County removes, or causes to be removed a facility, and the facility owner does not claim and remove it from the site to a lawful location within ten days, then the County may take steps to declare the facility abandoned, and sell them and their components.
- (G) Temporary Use Permit/Agreement
- (1) Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the facility, for no more than 90 days, during which time the holder of the Special Use Permit shall develop a suitable plan for facility removal, conversion, or re-location, subject to the approval of the County, and the holder of the Special Use Permit and the County shall execute an agreement to such plan.
 - (2) If such a plan is not developed, approved and executed within the 90 day time period, then the County may take possession of and dispose of the affected facility in the manner provided in this Section and utilize the bond.

SECTION 5.11: STANDARDS FOR WASTE MANAGEMENT FACILITIES

5.11.1 Solid Waste Collection Facilities Owned and Operated by A Public Agency for the Purpose of Disposal of Household Waste by Orange County Residents

- (A) **General Standards**
- (1) The site shall consist of a parcel, or easement across a parcel, (whether owned or leased by the public agency) which has been recorded by the Orange County Register of Deeds.
 - (2) The parcel or easement across the parcel, (whether owned or leased by the public agency) on which the facility is located shall contain a minimum area of 40,000 square feet.
 - (3) The parcel or easement shall have frontage on a State maintained road.
 - (4) A Type B landscape buffer, 30' in width, shall be provided along the perimeter of the parcel or easement.

Subdivision, Minor

A division of a tract of land that does not:

- a) Create more than five lots, including the residual acreage, from any one tract of land in any 24 month period;
- b) Dedicate or improve any new public street other than widening an existing public street;
- c) Extend public water and/or sanitary sewerage systems other than laterals to serve individual lots;
- d) Necessitate the installation of drainage improvements which would require easements through one or more lots to serve other lots; and
- e) At the option of the applicant, involve vesting of the subdivision for a period greater than one year.

Substantial damage

Damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of "substantial improvement." Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

Substantial improvement

Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one year period whereby the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either any correction of existing violations of State or Orange County health, sanitary, or safety code specifications which have been identified by the Orange County code enforcement official and which are the minimum necessary to assure safe living conditions, or any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Support System

A combination of footers, piers, caps, and shims that will, when properly installed, support the mobile home. Masonry walls may be installed as a cosmetic feature.

Telecommunication Facilities, Accessory Use

A use incidental to, subordinate to, and subservient to the principal use of the property. As defined in this section an accessory use is a secondary use.

Telecommunication Facilities, Antenna

A system of electrical conductor communications equipment that transmits and/or receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Telecommunication Facilities, Applicant

Any wireless service provider or wireless support structure owner submitting an application for a wireless facility.

Telecommunication Facilities, Application

A formal request, containing all necessary and required documentation, submitted to Orange County to construct or modify a wireless support structure or a wireless facility.

Telecommunication Facilities, Base Station

A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.⁷

⁷ The term base station is new to State Law and we are adding the definition to the UDO.

Telecommunication Facilities, Building Code

The most recently adopted or amended edition of the North Carolina State Building Code.

Telecommunication Facilities, Building permit

An official Orange County administrative authorization to begin construction consistent with the provisions of N.C.G.S. 153A-357.

Telecommunication Facilities, Collocation

The installation of new wireless facilities on previously approved structures, including wireless support structures, buildings, utility poles, and water tanks. The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.⁸

Telecommunication Facilities, Commercial Impracticability or Commercially Impracticable

The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular financial return on investment or profit, standing alone, and for a single site, shall not deem a situation to be commercially impracticable and shall not render an act or the terms of an agreement commercially impractical.

Telecommunication Facilities, Equipment Compound

An area surrounding or near the base of a wireless support structure within which a wireless facility is located.⁹

Telecommunication Facilities, EIA-222

Electronics Industries Association Standard 222 (Structural Standards for Steel Antenna Wireless support structures and Antenna Support Structures).

Telecommunication Facilities, Equipment enclosure

An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

Telecommunication Facilities, Eligible Facilities Request

A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.¹⁰

Telecommunication Facilities, Existing Structure/Building

For purposes of this Section, any building or structure that currently exist on a parcel of land. Such structures may include, but shall not be limited to, telecommunications wireless support structures, overhead transmission line support structures, water tanks, silos, churches, schools, and utility poles.

Telecommunication Facilities, Extraordinary Conditions

Conditions subsequent to a hurricane, flood, tornado, or other natural or other disaster.

Telecommunication Facilities, FAA

The Federal Aviation Administration or its duly designated and authorized successor agency.

⁸ Our existing definition has, which was taken from State law, been modified to comply with recent changes adopted as part of the 2013-185 Session Law.

⁹ Adding a new definition detailed within the Session Law.

¹⁰ Adding a new definition detailed within the Session Law. Appropriate reference has also been included within the telecommunication regulations section of the UDO.

Telecommunication Facilities, Personal Wireless Services (PWS) or Personal Telecommunications Service (PTS)

As defined and used in the 1996 Telecommunications Act.

Telecommunication Facilities, Repairs and maintenance

The replacement or repair of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted, but does not constitute a modification to a wireless facility or support structure.

Telecommunication Facilities, Roofline

The overall ridgeline of the structure, not including cupolas, elevator towers, clock towers or other similar features.

Telecommunication Facilities, Search ring

The area within which a wireless support structure must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Telecommunication Facilities, Self-Support/Lattice Wireless support structure

A tapered structure broad at the base and narrower at the top consisting of cross-members and diagonal bracing and without guyed support.

Telecommunication Facilities, Stealth or Stealth Technology

A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless support structures, which shall mean building the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as Distributed Antenna System (DAS) or its functional equivalent or camouflage where the structure is disguised to make it less visually obtrusive and not recognized to the average person as a wireless support structure.

Telecommunication Facilities, Substantial Modification

The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure.

Telecommunication Facilities, Telecommunication Equipment

Equipment, which is located either upon a telecommunication tower or a structure and includes some form of antenna for the purpose of transmitting and receiving wireless services.

Telecommunication Facilities, Wireless facility Stealth

A wireless support structure designed using stealth technology such that its primary purpose is, or visually appears to be, something other than the support of telecommunications equipment, the apparent purpose of the wireless support structure is customarily considered as accessory to a use that is allowed in the zoning district, and the structure and its primary use comply with this Ordinance.

Telecommunication Facilities, Utility pole

A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Telecommunication Facilities, Unforeseen Events

Condemnations of existing telecommunications wireless support structures for road projects, casualty of existing telecommunications wireless support structures, blocking of signals from new construction necessitating a relocation of a telecommunication wireless support structure, or the need to replace an

existing telecommunication wireless support structure for capacity issues, or for other reasons deemed necessary by the County Planning Director or his/her designee.

Telecommunication Facilities, Whip Antenna

A cylindrical antenna that transmits and/or receives signals in 360 degrees.

Telecommunication Facilities, Wireless facility

The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area. This may also be referred to as a Personal Wireless Facility.

Telecommunication Facilities, Wireless support structure

A new or existing structure, such as a monopole, lattice, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Telecommunication Facilities, Wireless Telecommunications Facility (WTF), Includes both Telecommunications Site and Personal Wireless Facility

A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit wireless support structures of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

Temporary Residential Mobile Home

A mobile home, intended for residential use for a limited period of time, for purposes of providing for custodial care under a Class B Special Use Permit or providing temporary residential space during the installation of a replacement mobile home or construction of a stick-built or modular residential unit on the same lot, and for 30 days after the issuance of Certificate of Occupancy for the permanent unit. The temporary mobile home is not attached to a permanent or semi-permanent foundation.

Temporary Use Building

A building, not intended for residential use, consisting of one or more modules constructed off the ultimate site of use. The building is also not attached to a permanent or semi-permanent foundation.

Ten-Year Transition Land

Land located in areas that are in the process of changing from rural to urban densities and/or intensities, that are suitable for higher densities and/or intensities and could be provided with public utilities and services within the first 10-year phase of the Comprehensive Plan update or where such utilities and services are already present or planned. Non-residential uses implemented in accordance with small area plans and/or overlay districts may be appropriate.

Tourist Home

A building or group of attached or detached buildings containing, in combination, three to nine lodging units for occupancy for daily or weekly periods, with or without board, and primarily for occupancy by transients, as distinguished from rooming houses, in which occupancy is primarily by residents rather than transients.

Traffic Generation: Low

Uses which generate an average of less than 200 vehicle trips per day.

**ORANGE COUNTY
BOARD OF COUNTY COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: November 25, 2013

**Action Agenda
Item No.** C.3

SUBJECT: UDO Text Amendment Related to Board of Adjustment Operation and Procedures

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

INFORMATION CONTACT:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Comprehensive Plan and Unified Development Ordinance Outline Form (UDO & Zoning 2013-05) 2. Session Law 2013-126 3. UDO Amendment Package | <p>Michael D. Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2575</p> |
|--|--|
-

PURPOSE: To hold a public hearing on a Planning Director initiated text amendments to the Unified Development Ordinance (UDO).

BACKGROUND: Session Law 2013-126, adopted June 19, 2013, has modified procedural and notification requirements for the Board of Adjustment. These changes include:

- Changing the votes necessary for the Board to approve a Special Use Permit application from 4/5th of members to a simple majority,
- Clarifying the procedure(s) for requesting and issuing of subpoenas,
- Clarifying the appeals timeframe for Board of Adjustment decisions to be submitted to Superior Court, and
- Clarifying notification requirements with respect to who is notified of a Board decision.

Staff is proposing to revise existing language within the UDO to ensure consistency with State law.

Attachment 1 provides additional background on the proposal. Attachment 2 contains a copy of the relevant Session Law. Attachment 3 contains the proposed amendments in a “track changes” format (red text for proposed additions and red strikethrough for proposed deletions).

Ordinance Review Committee (ORC) Review: The Planning Board ORC reviewed the proposed amendments at its October 2, 2013 ORC meeting where there were no comments on the proposal.

The required Planning Director analysis is contained in Section B.2 of Attachment 1.

Notification Procedural Requirements: Legal ads for the public hearing were placed in a newspaper of general circulation in the County in accordance with Section 2.8.7 of the UDO.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION: The Planning Director recommends the Board:

1. Receive the proposed text amendment(s).
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the **January 23, 2014** BOCC regular meeting.
4. Adjourn the public hearing until **January 23, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2013-05

UDO Text Amendment(s) incorporating recent changes in State law concerning
procedural and notification requirements for the Board of Adjustment

A. AMENDMENT TYPE

Map Amendments

- Land Use Element Map:
From:
To:
- Zoning Map:
From:
To:
- Other:

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:

- UDO General Text Changes
 UDO Development Standards
 UDO Development Approval Processes

Section(s):

1. Section 2.5 4 *Site Plan Review – Procedures and Timeframes*
2. Section 2.10 *Variances*
3. Section 2.11 *Interpretations*
4. Section 2.12 *Board of Adjustment*
5. Section 2.25 *Appeals*

of the UDO to incorporate recent changes to State law with respect
to items reviewed and by the Orange County Board of Adjustment

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated text amendment(s) to incorporate recent changes in State Law, specifically Session Law 2013-126, related to the processing and review of variance, interpretation/appeal, and special use permit applications by the Board of Adjustment (BOA).

The Session Law modifies and updates procedural and notification requirements for the various applications reviewed by the BOA, including:

1. Allowing for a simple majority vote on appeal and special use permit applications. The General Statutes previously required a four-fifths vote of BOA members to grant on all applications before them.

It should be noted variance requests are still required to be approved by a four-fifths vote.

2. Adds new language spelling out the local government's responsibility for informing a property owner of public hearings dates/times.
3. Adds new language establishing the manner in which planning decisions can be advertised. We now have an option of posting a sign on a property where a zoning decision/determination has been made.

This is in furtherance of allowing for a broader 'notification' of planning decisions to the general public.

4. Clarifies deadlines for filing appeals of BOA decisions with Superior Court.
5. Modifies language establishing the criteria for the issuance/denial of a variance.

A copy of the Session Law can be found in [Attachment 2](#).

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners'*.

The amendments are necessary to ensure our process is consistent with recent changes in State Law.

It should be noted staff is not proposing modifications of existing notification standards. State law, for example, requires we notify adjacent property owners of a hearing by the BOA on a variance, appeal, or special use permit 10 days prior to said meeting via first class mail.

The County currently sends this notice via certified mail 15 days prior to the hearing. We **will not** be changing this requirement as part of this amendment process.

3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)

N/A

4. New Statutes and Rules

Session Law 2013-126 *An Act To Clarify And Modernize Statutes Regarding Zoning Board of Adjustment* (included in Attachment 2)

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

September 5, 2013

b. Quarterly Public Hearing

November 25, 2013

c. BOCC Updates/Checkpoints

November 5, 2013 – Approve legal advertisement for the November 25, 2013 Quarterly Public Hearing.
 October 2, 2013 – Planning Board Ordinance Review Committee (ORC) (BOCC members can read agenda materials)
 November 25, 2013 – Quarterly Public Hearing
 January 23, 2014 - Receive Planning Board recommendation.

d. Other

2. PUBLIC INVOLVEMENT PROGRAM

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

a. Planning Board Review:

October 2, 2013 – Ordinance Review Committee (ORC).
 This item was reviewed at the October 2, 2013 ORC meeting where there were no comments from Board members.
 December 4, 2013 – Recommendation

b. Advisory Boards:

c. Local Government Review:

d. Notice Requirements

Legal advertisement will be published in accordance with the provisions of the UDO.

e. Outreach:

<input type="checkbox"/> General Public:	
<input type="checkbox"/> Small Area Plan Workgroup:	
<input type="checkbox"/> Other:	

3. FISCAL IMPACT

Modification of existing language will not require the outlay of additional funds by the County. Processing of the amendment shall be handled by staff utilizing existing budgeted funds.

Costs of mailings and/or legal notices shall continue to be offset by application fees for various projects acted upon by the BOA.

D. AMENDMENT IMPLICATIONS

Language within the UDO will be consistent with recent modifications to State law.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:
 Michael D. Harvey
 Planning
 (919) 245-2597
 mharvey@orangecountync.gov

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**SESSION LAW 2013-126
HOUSE BILL 276**

**AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS
OF ADJUSTMENT.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-388 reads as rewritten:

"§ 160A-388. Board of adjustment.

(a) Composition and Duties. – ~~The city council zoning or unified development ordinance~~ may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original ~~members of such board, members~~ or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years ~~to the end so that thereafter~~ the terms of all members shall not expire at the same time. The council ~~may, in its discretion, may~~ appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate ~~member, while attending any regular or special meeting of the board and member serving on behalf of any regular member, shall have and may exercise~~ member has all the powers and duties of a regular member. ~~A city~~ The ordinance may designate a planning board or governing board to perform any ~~or all~~ of the duties of a board of adjustment in addition to its other ~~duties, duties~~ and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) ~~A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule,~~



~~by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.~~

(b1) Appeals. – The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- (5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall

meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.
- (8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- (9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
- (10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use hear and decide special and conditional use permits, all to be permits in accordance with the principles, conditions, safeguards, standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) Variances. – When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit spirit, purpose, and intent of the ordinance shall be observed, ordinance, such that public safety and welfare secured, safety is secured, and substantial justice done. is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

(1) ~~The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" members of the board for calculation of the requisite supermajority majority if there are no qualified alternates available to take the place of such members.~~

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Quasi-Judicial Decisions and Judicial Review. –

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

(2) ~~Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any certiorari pursuant to G.S. 160A-393. A petition for review by the superior court shall be filed with the clerk of superior court within by the later of 30 days after the decision of the board is filed in such office as the ordinance specifies, is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

(f) Oaths. – ~~The chairman chair of the board of adjustment or any member temporarily acting as chairman, chair and the clerk to the board are is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.~~

(g) Subpoenas. – ~~The board of adjustment adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d)~~

may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its order-subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 2.(a) G.S. 160A-388(e1) is recodified as G.S. 160A-388(e)(2).

SECTION 2.(b) G.S. 160A-388(e)(2), as recodified by Section 2(a) of this act, reads as rewritten:

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

SECTION 3.(a) G.S. 153A-345 is repealed except that any local modification to that section in effect on September 30, 2013, shall be treated as a local modification to G.S. 160A-388 from October 1, 2013, through June 30, 2015.

SECTION 3.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-345.1. Board of adjustment.

(a) The provisions of G.S. 160A-388 are applicable to counties.

(b) For the purposes of this section, as used in G.S. 160A-388, the term "city council" is deemed to refer to the board of county commissioners, and the terms "city" or "municipality" are deemed to refer to the county.

(c) If a board of county commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall, if practicable, have at least one resident as a member of the board of adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of adjustment appointments."

SECTION 4. G.S. 160A-381(c) reads as rewritten:

"(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities."

SECTION 5. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345."

SECTION 6. G.S. 153A-44 reads as rewritten:

"§ 153A-44. Members excused from voting.

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or ~~153A-345(e1)-160A-388(e)(2)~~. For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 7. G.S. 153A-336(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), ~~153A-345(e2)-160A-388(e2)(2)~~, and 153A-349 shall apply to those appeals."

SECTION 8. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with ~~G.S. 153A-345~~. G.S. 160A-388."

SECTION 9. G.S. 153A-349(c) is repealed.

SECTION 10. G.S. 153A-349.8(c) reads as rewritten:

"(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~G.S. 153A-345(b)~~. G.S. 160A-388(b1)."

SECTION 11. G.S. 160A-75 reads as rewritten:

"§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or ~~160A-388(e1)-160A-388(e)(2)~~. In all other cases, a failure to vote by a member who is physically present in the council chamber,

or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 12. G.S. 160A-377(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), ~~160A-388(e2)~~, ~~160A-388(e2)(2)~~, and 160A-393 shall apply to those appeals."

SECTION 13. G.S. 160A-393(c)(3) reads as rewritten:

"(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in ~~G.S. 160A-388(e1)~~, ~~G.S. 160A-388(e)(2)~~, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 14. G.S. 160A-393(j)(2) reads as rewritten:

"(2) Whether, as a result of impermissible conflict as described in ~~G.S. 160A-388(e1)~~, ~~G.S. 160A-388(e)(2)~~, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 15. This act becomes effective October 1, 2013, and applies to actions taken on or after that date by any board of adjustment.

In the General Assembly read three times and ratified this the 10th day of June, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:20 p.m. this 19th day of June, 2013

ATTACHMENT 3

UDO AMENDMENT PACKET NOTES:

The following packet details staff's proposed modifications to existing regulations to incorporate recent changes in State law with respect to items reviewed and acted upon by the Orange County Board of Adjustment.

As the number of affected pages/sections of the existing UDO are being modified with this proposal staff has divided the proposed amendments into the following color coded classifications:

- **Red Underlined Text**: Denotes new, proposed text, that staff is suggesting be added to the UDO
- **~~Red-Strikethrough Text~~**: Denotes existing text that staff is proposing to delete

Staff has included footnotes within the amendment package to provide additional information/rationale concerning the proposed amendments to aid in your review.

Only those pages of the UDO impacted by the proposed modification(s) have been included within this packet. Some text on the following pages has a large "X" through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment or footnotes from previous sections 'spill over' onto the included page. Text with a large "X" is not proposed for deletion.

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

(G) Effect of Approval

- (1) Approval of a CZD is binding on the property and the development and use of the subject property shall be governed by the Ordinance requirements applicable to the specific CZD district and all approved conditions.
- (2) The applicant shall comply with all requirements established in the CZD Ordinance. Only those uses and structures included in the CZD Ordinance and approved site plan shall be allowed on the subject property.

(H) Zoning Atlas Designation

Following approval of the CZD district by the Board of County Commissioners, the subject property shall be identified on the Zoning Atlas by the appropriate district designation.

(I) Alterations to an Approved CZD

- (1) Except as provided in Section 6.7.2 for MPD-CZ projects, changes to approved plans and conditions of development shall be treated as changes to the zoning atlas and shall be processed as an amendment to such as contained in this Article.
- (2) The Planning Director may approve minor changes without going through the amendment process. The Planning Director, at his/her discretion, may elect not to allow any proposal as a minor change and will forward the detailed application for changes to the Planning Board and Board of County Commissioners for consideration in accordance with the procedures outlined herein.
- (3) A minor change is one that will not:
 - (a) Alter the basic relationship of the proposed development to adjacent property,
 - (b) Alter the approved land uses,
 - (c) Increase the density or intensity of development, and/or
 - (d) Decrease the off-street parking ratio or reduce the buffer yards provided at the boundary of the site.

2.9.3 Public Hearing and Notification Requirements – CUD and CZD

The requirement for a public hearing shall follow the procedures for a Zoning Atlas Amendment in Section 2.8.6. Notice of the public hearing shall follow the procedures in Section 2.8.7.

SECTION 2.10: VARIANCES

2.10.1 Purpose

The procedures of this section authorize the Board of Adjustment to modify or vary regulations of this Ordinance when strict compliance with the regulation or standard would result in ~~practical difficulties or~~ unnecessary hardships upon the subject property.¹

2.10.2 Application Requirements

- (A) Applications for a Variance shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance. Ten copies of the application and supporting documentation shall be submitted.
- (B) Applications shall include:
 - (1) The section reference, and copy of the existing regulatory language, that is the subject of the application,

¹ Language is recommended for deletion in order to be consistent with recent modifications to State law.

- (2) A description of the specific modification sought by the applicant. For example, if the request is for a modification of a corner lot setback requirement, the applicant shall provide the exact reduction of the established corner lot setback requested as part of the application,
- (3) A plot plan, site plan, or other similar document(s) denoting the physical impact of the proposed request on the parcel,
- (4) A narrative outlining the answers to the five required findings detailed within Section 2.10.3 of the Ordinance justifying the issuance of the variance, and
- (5) Copies of any additional information deemed essential by the applicant justifying the approval of the request.

2.10.3 Authorized Variances

A variance may be approved by the Board of Adjustment in cases ~~involving where practical difficulties or unnecessary hardships would result from carrying out the strict letter of the Ordinance~~, when substantial evidence in the official record of the application supports all of the following findings:

- ~~(A)~~ The alleged hardships or practical difficulties are unique and singular to the property of the applicant and are not suffered in common with other property similarly located. ~~Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~
- ~~(B)~~ The alleged hardships and practical difficulties that would result from failure to grant the variance extend to the inability to use the land in question for any reasonable use in conformity with the provisions of this Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.²
- ~~(C)~~(B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance. The variance, if approved, will not substantially interfere with or injure the rights of others whose property would be affected by approval of the variance.
- ~~(D)~~(C) The variance is in harmony with and serves the general intent and purpose of this Ordinance and the adopted Comprehensive Plan. ~~The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~
- ~~(E)~~(D) Approving the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Ordinance and the individual hardships that will be suffered by a failure of the Board of Adjustment to grant a variance. ~~The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.~~³

² Recent revisions to State Law include language indicating it shall: ‘not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property’. As a result we can no longer have such language in the UDO to the contrary.

³ Portions of existing subsections (D) and (E) have been combined to reflect wording changes in State law with respect to the required findings for the granting of a variance. Staff has modified this entire section to ensure required findings are consistent with new language in State law.

2.10.4 Additional Criteria for Authorized Variances – Special Flood Hazard Area Overlay Zoning District

In addition to the criteria contained within Section 2.10.3, any application for a variance from the Special Flood Hazard Area Overlay Zoning District shall abide by the following additional criteria:

- (A) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (B) In considering variances from the requirements of the Special Flood Hazard Area Overlay Zoning District, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:⁴
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to Orange County;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the Orange County Comprehensive Plan and floodplain management program for the area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges; and
 - (12) The request for a variance is not after-the-fact or for a situation of one's own making.
- (C) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (D) Upon consideration of the factors listed above and the purposes of this Ordinance, the Board of Adjustment may attach such reasonable conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.
- (E) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- (F) Conditions for Variances:
 - (1) Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

⁴ Standards governing the issuance of a variance within a floodplain are consistent with FEMA requirements. Applicants are still required to demonstrate compliance with these provisions when requesting a variance.

- (3) Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship;
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and,
 - (d) That the circumstances on the subject property are unique to the subject property and not to properties in general.
- (G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
- (H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.

2.10.5 Additional Criteria for Authorized Variances –Watershed Protection Overlay District

- (A) Minor variances for dimensional requirements of the Watershed Protection Overlay District may be approved by the Board of Adjustment in accordance with Section 2.12 of this Ordinance.
- (B) The Board of Adjustment may approve variance applications to allow the use of off-site septic easements for lots created before January 1, 1994, and for non-conforming lots of record.
- (C) A description of each project receiving a variance and the reason for granting the variance shall be submitted for each calendar year to the Division of Water Quality on or before January 1st of the following year.
- (D) All other local governments having jurisdiction within the watershed area and the entity using the water supply for consumption shall be notified of the variance application at least 15 days prior to action on the application. The Planning Department shall notify other local governments via first class mail.
- (E) **Modifications of the Impervious Surface Ratio**

Modifications of the Impervious Surface Ratios may be requested through one of the following provisions:

 - (1) Through variance procedures of the Board of Adjustment, as described in this subsection (2.10.5).
 - (2) Through approval and recordation of a conservation agreement, as provided in Article 4 of Chapter 121 of the N.C. General Statutes, between Orange County and a land owner that prohibits development of land in a protected watershed in perpetuity.
 - (a) In such cases, a modification of the required impervious surface ratios may be approved administratively but only to the extent that additional land in the same watershed is conserved or protected from development. In such instances, the land that will be subject to a conservation agreement must be adjacent to the land proposed for development and for which a modification of the impervious surface ratios is sought.

- (i) As an example, a person owning a 40,000 square foot lot and subject to a 12% impervious surface ratio would be limited to 4,800 square feet of impervious coverage. If the person's plans called for 5,500 square feet of coverage (a difference of 700 square feet), the recording of a conservation easement on 5,833 square feet of contiguous property would satisfy the impervious surface ratio requirements. (12% of 5,833 square feet is 700 square feet.)
- (b) The conservation easement shall describe the property restricted in a manner sufficient to pass title, provide that its restrictions are covenants that run with the land and, in form, be approved by the County Attorney.
- (c) The conservation easement shall, upon its recording, be in the place of a first priority lien on the property (excepting current ad valorem property taxes) and shall remain so unless, with the approval of Orange County, it is released and terminated.
 - (i) Orange County shall require the priority of the conservation easement to be certified by an attorney-at-law, licensed to practice law in the State of North Carolina and approved to certify title to real property by a lending institution (bank or savings and loan association) doing business in Orange County.
- (d) Orange County approval of a release or termination of the conservation agreement shall be declared on the document releasing or terminating the agreement.
 - (i) The document shall be signed by the Orange County Manager, upon approval of the Orange County Board of Commissioners.
 - (ii) No such document shall be effective to release or terminate the conservation agreement until it is filed for registration with the Register of Deeds of Orange County.

2.10.6 Procedure for Certain Stream Buffer Variance Requests

Requests for variances from stream buffer requirements within 50-feet from the top of the stream bank shall abide by the following procedure:

- (A) The Erosion Control Officer shall make a finding of fact as to whether the following requirements have been met:
 - (1) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the stream buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
 - (a) If the applicant complies with the provisions of the stream buffer requirements, he/she can secure no reasonable return from, nor make reasonable use of, his/her property.
 - (i) Merely proving that the variance would permit a greater profit from the property will not be considered adequate justification for a variance.
 - (ii) Moreover, the Erosion Control Officer shall consider whether the variance is the minimum possible deviation from the stream buffer requirements that will make reasonable use of the property possible.
 - (b) The hardship results from application of the stream buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.

- (c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
 - (d) The applicant did not cause the hardship by knowingly or unknowingly violating the stream buffer requirements.
 - (e) The applicant did not purchase the property after the effective date of the stream buffer requirements, and then request a variance.
 - (f) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread.
 - (i) If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
 - (g) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
 - (h) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (B)** If the Erosion Control Officer determines that a variance request meets the requirements in (A) above, then he/she shall prepare a preliminary finding and submit it to the State's Environmental Management Commission.
- (C)** Preliminary findings on variance requests sent to the State's Environmental Management Commission shall be reviewed by said Commission within 90 days after receipt by the Director of the Environmental Management Commission.
- (D)** The purpose of the State Environmental Management Commission's review is to determine if it agrees with the Erosion Control Officer's findings regarding whether that the requirements in subsection (A) have been met.
- (E)** The following actions shall be taken depending on the State Environmental Management Commission's decision on the variance request:
- (a) Upon the State Environmental Management Commission's approval, the Erosion Control Officer shall issue a final decision granting the variance.
 - (b) Upon the State Environmental Management Commission's approval with conditions or stipulations, the Erosion Control Officer shall issue a final decision, which includes these conditions or stipulations.
 - (c) Upon the State Environmental Management Commission's denial, the Erosion Control Officer shall issue a final decision denying the variance.
- (F)** Requests for appeals of determinations made by the State's Environmental Management Commission that the requirements of subsection (A) have not been met shall be made to the State's Office of Administrative Hearings.

2.10.7 Unauthorized Variances

- (A)** Other than stream buffer variances outside of the first 50-feet from the centerline of a stream, the Board of Adjustment is not authorized to grant variances to any of the standards of:
- (1) Article 7 - Subdivision Design and Improvements,
 - (2) Section 6.15 - Erosion and Sedimentation Control,
 - (3) Section 6.14 - Stormwater Management, and
 - (4) Section 6.16 - Environmental Impact Reports

- (B) The Board of Adjustment is not authorized to grant a variance that would permit a use in a district where that use is neither a Permitted Use nor a Special Use.

2.10.8 Review Procedures

- (A) Applications for a Variance shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application.
- (C) The assessment shall be introduced at the hearing and become part of the record.

2.10.9 Findings of Fact

- (A) Required findings of fact, as listed in Section 2.10.3, shall be made in the indicated order by the Board of Adjustment.
- (B) The Board of Adjustment is not empowered to grant a variance without an affirmative finding of fact supported by substantial evidence in the record of proceedings before the Board.

2.10.10 Conditions of Approval

The Board of Adjustment may impose ~~reasonable conditions upon the approval of any variance to insure that the public health, safety, and general welfare are protected and substantial justice done.~~ appropriate conditions provided that such conditions are reasonably related to the variance.⁵

2.10.11 Notice Requirements

Notice of matters before the Board of Adjustment shall follow the procedures in Section 2.12.6.

SECTION 2.11: INTERPRETATIONS

2.11.1 Generally

An appeal from an order, requirement, decision or determination of the Planning Director shall be decided by the Board of Adjustment based upon its findings of fact and to achieve the intent of this Ordinance. In exercising this power, the Board of Adjustment shall act in a prudent manner so that the purposes of this Ordinance shall be served. The effect of the decision shall not be to vary the terms of this Ordinance nor add to the list of Permitted Uses in the districts.

2.11.2 Application Requirements

- (A) Applications for an appeal of an interpretation of a decision, file determination, directive, Notice of Violation, or other similar determination shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance. Ten copies of the application and supporting documentation shall be submitted.
- (B) Applications must be received by the Planning Director no later than 30 days after the decision, file determination, directive, Notice of Violation, or other similar determination was made.

2.11.3 Stay on Further Proceedings

- (A) An appeal to the Board of Adjustment from a decision or determination of the Planning Director stays all proceedings in furtherance of the decision or determination appealed from, except as provided herein.

⁵ Staff is recommending existing language referencing ‘public health, safety, general welfare’ as well as ‘substantial justice’ be deleted as this wording does not appear in the Statute.

- (B) An appeal to the Board of Adjustment of a determination or decision of the Planning Director shall not stay further proceedings in furtherance of the decision or determination appealed from, if the Planning Director ~~determines-certifies to the Board of Adjustment in an affidavit~~ either:
- (1) ~~That, in the opinion of the Planning Director, a stay would cause imminent peril to life and/or property. A stay would cause imminent peril to life or property, or,;~~
 - (2) ~~That the~~The situation appealed from is transitory in nature and, therefore an appeal would seriously interfere with enforcement of the Ordinance.
- ~~(3)(C)~~ In either instance, the Planning Director shall place in the determination facts to support the conclusion if (B)(1) and/or (B)(2) are invoked.
- ~~(C)(D)~~ If (B)(1) and/or (B)(2) are invoked, and approved by the Board of Adjustment, enforcement proceedings shall not be stayed except through the issuance of a restraining order issued by a court of competent jurisdiction. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal.⁶

2.11.4 Review Procedures

- (A) Applications for an appeal of an interpretation shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The conduct of the hearing shall be consistent with the provisions of Section 2.12 of this Ordinance.
- (C) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application. The assessment shall include all relevant facts utilized in rendering the disputed decision and the rationale for the interpretation made by the Planning Director.
- (D) The assessment shall be introduced at the hearing and become part of the record.
- (E) Upon hearing all evidence associated with the application, the Board of Adjustment shall close the hearing and render a decision on the matter to affirm, modify, or reverse the decision of the Planning Director.

2.11.5 Findings of Fact

The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

2.11.6 Notice Requirements

Notice requirements shall follow Section 2.12.6(A). Other subsections of Section 2.2.6 are not applicable to applications for an appeal of an interpretation.

SECTION 2.12: BOARD OF ADJUSTMENT

2.12.1 General Provisions

- (A) The Board shall act on all applications before it.
- (B) The Board shall act on any appeal of a Stop Work Order issued by the Planning Director at its next regularly scheduled meeting or at a special meeting called for that purpose.

⁶ Staff is adding new language consistent with changes in State law.

2.12.2 Quasi-Judicial Proceedings

- (A) The Board of Adjustment acts in a quasi-judicial capacity. However, it is not intended that its proceedings be conducted as formally as those before courts.
- (B) The rules of procedure and evidence set forth in this Ordinance shall be followed to protect the interests of all parties and the public.
- (C) The presiding officer shall administer oaths to all witnesses and shall make rulings necessary to preserve fairness, order, or proper decorum in any matter before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class I misdemeanor.
- (D) Any member of the Board of Adjustment or any interested party may object to, and the presiding officer may exclude, any evidence, testimony, or statement that is deemed incompetent, irrelevant, immaterial, or unduly repetitious and therefore fails to reasonably address the issues before the Board of Adjustment.

2.12.3 Evidence and Testimony

- (A) **Interested Party**
 - (1) Any interested party may present evidence or testimony, cross-examine witnesses, inspect documents, and offer evidence or testimony in explanation or rebuttal.
 - (2) Any member of the Board of Adjustment may question any interested party.
 - (3) Persons other than interested parties may make competent, relevant, and material comments.
- (B) **Subpoenas**
 - (1) The Board of Adjustment may subpoena witnesses and compel the production of evidence.
 - (2) To request issuance of a subpoena, persons with standing as detailed under NCGS 160A-939 (d), shall make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas in those cases where testimony or evidence is deemed to be relevant, reasonable in nature and scope, and not oppressive.
 - (3) The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board.
 - ~~(2)~~(4) If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment, or the party seeking the subpoena, may apply to the General Court of Justice for an order requiring that its order be obeyed, and the Court will have jurisdiction to issue those orders after notice to all proper parties.
 - ~~(3)~~(5) No testimony of any witness before the Board of Adjustment, pursuant to a subpoena issued in exercise of the power conferred by this subsection, may be used against the witness in any civil or criminal action, other than a prosecution for false swearing committed on the examination.
 - ~~(4)~~(6) Anyone who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

2.12.4 Quorum and Vote Required

- (A) A quorum of the Board is necessary to conduct any business and shall consist of four members.
- (B) The affirmative vote of four of the members of the Board shall be necessary in order to effect any variation in this Ordinance.

- ~~(1) Reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this Ordinance, or~~
- ~~(2) Decide in favor of the applicant any matter upon which it is required to pass by this Ordinance including, but not limited to, the issuance of Class B Special Use permits, or~~
- ~~(3) Effect any variation in this Ordinance.~~
- (C) A majority of the members shall be required to decide on the issuance of a Class B Special Use Permit or an appeal application.

2.12.5 Notification of Board Action

- (A) Within five working days after Board action, the Planning Director shall have available in the Planning Department's office a notice of decision of the Board's action.
- (B) The Planning Director shall notify the parties to an application or appeal of the Board's disposition. This includes the applicant, the property owner if different from the applicant, or any individual who has submitted a written request for a copy prior to the date the decision becomes effective.⁸ This notice shall be made by registered or certified mail within five working days of the Board's actions.⁹
- (C) The Planning Director shall keep a copy of the Board's action on file.

2.12.6 Notice Requirements for Matters Before the Board

- (A) The Board shall give notice of matters coming before it by causing notice to be placed in a newspaper of general circulation in Orange County. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than ten days nor more than 25 days prior to the meeting date. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (B) In the case of application for a Class B Special Use permit or variance the Planning Director shall give written notice by certified mail to adjacent property owners. This notice shall be given not less than 15 days prior to the meeting date. Adjacent property owners are those whose property lies within 500 feet of the affected property and whom are currently listed as property owners in the Orange County tax records.
- (C) The Planning Director shall post on the affected property a notice of the Board meeting at least ten days prior to the meeting date.
- (D) In the case of an appeal of a Stop Work Order issued by the Planning Director, the Planning Director shall give written notice by certified mail to the property owner, and/or person(s) engaged in the alleged violation. Notification of adjacent property owners, posting of property, and publication of a hearing notice is not required.

SECTION 2.13: EXEMPT SUBDIVISIONS

2.13.1 Generally

- (A) ~~Persons proposing divisions of land that do not constitute a subdivision must request a determination of an exempt subdivision status with the Planning Director. Activities that do not constitute a subdivision are found in Section 7.2.1.~~

⁷ Simple majority vote is now all that is necessary to approve a SUP or act on an appeal.

⁸ State law now allows for individuals to petition the Board of Adjustment requesting notification of any decision. We are incorporating this allowance with the proposed modification.

⁹ Staff sends out notice of decisions via certified mail. State law was modified to allow for first-class mail to be utilized. We are not recommending changing our current procedure as we believe sending decisions via certified mail ensures we have a record of our actions.

(B) Public Hearing Required

- (1) The EIS, along with all comments received during the review period, shall be presented for public hearing concurrently with the development project.
- (2) If a public hearing before the Board of County Commissioners is not required for approval of the development project, then a special hearing shall be scheduled. The hearing shall take place no later than 30 days after the close of the public review period or receipt of comments from the State Clearinghouse, whichever is later.

(C) Notice of Public Hearing

- (1) Notice of the public hearing to review the EIS and receive public comment shall be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing.
- (2) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

(D) Board of County Commissioners Action

- (1) The Board of County Commissioners shall receive the EIS and all comments as information only. The information presented may be used only to determine compliance with specific development standards established in this Ordinance.
- (2) No action shall be taken on the development project until after the EIS has been presented to the Board of County Commissioners.

(E) Effect on Other Permits and Actions

Construction or installation of any major development project shall not commence until subsequent to the filing of a Finding of No Significant Impact or acceptance of the Final EIS by the Board of County Commissioners.

SECTION 2.25: APPEALS

Section 2.25-SECTION 2.26: APPEALS¹⁰

2.25-12.26.1 Generally

Appeal applications shall be filed in accordance with Section 2.2 within 30 days of the decision being appealed on forms provided by the Planning Department, if applicable.

2.25-22.26.2 Planning Director Decisions

(A) Site Plans or Other Decision Pertaining to this Ordinance

Any decision of the Planning Director regarding a site plan application or other decision pertaining to this Ordinance not listed in (B) through (D) below may be appealed to the Board of Adjustment according to the provisions set forth in Section 2.12 of this Ordinance.

- (1) An appeal to the Board of Adjustment from a decision or determination of the Planning Director stays all proceedings in furtherance of the decision or determination appealed from, except:
 - (a) Situations that, in the opinion of the Planning Director, a stay would cause imminent peril to life and/or property.

¹⁰ The appeals section is proposed to be re-numbered as part of a current amendment proposal associated with Neighborhood Information meetings for governmental uses. This amendment was heard at the September 9, 2013 Quarterly Public Hearing and will be decided upon by the BOCC on November 5, 2013.

- (b) That the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of the Ordinance.

In either instance in (a) and (b) above, the Planning Director shall place in certificate the facts to support the conclusion.

(B) Exempt Subdivisions

- (1) The decision of the Planning Director regarding an exempt subdivision application may be appealed to the Board of County Commissioners.
- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(C) Minor Subdivisions

- (1) The decision of the Planning Director regarding a minor subdivision application may be appealed to the Board of County Commissioners.
- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(D) Major Subdivisions – Final Plat

- (1) The decision of the Planning Director regarding a Major Subdivision Final Plat application may be appealed to the Board of Commissioners.
- (2) The Board of Commissioners shall have final approval authority, and where applicable, all Final Plats shall contain information and/or conditions approved by the Board of Commissioners.
- (3) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision.
- (4) The applicant shall be notified, in writing, of the Board of Commissioners' decision.

2.25-32.26.3 Planning Board Decisions

(A) Major Subdivisions – Concept Plan

- (1) The decision of the Planning Board regarding Concept Plan Development Options may be appealed to the Board of Commissioners.
- (2) Any notice of appeal shall be filed, in writing, with the Planning Director within 15 days after the date of the Planning Board's decision.
- (3) If the appeal involves a plan/map approval, 16 copies of the plan/map shall be submitted along with the written appeal.
- (4) The Board of Commissioners shall have final approval authority, and, where applicable, all Concept Plan Development Options shall contain information and/or conditions approved by the Board of Commissioners.
- (5) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision. The applicant shall be notified, in writing, of the Board of Commissioners' decision within ten days after said decision is made.

2.25.42.26.4 Board of Adjustment Decisions

- (A) Every decision of the Board shall be subject to review at the request of ~~any aggrieved party~~any person who has standing as detailed within NCGS 160A-393 (d) by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the availability of the notice of decision (2.12.5(A)).

2.25.52.26.5 Board of County Commissioners Decisions

(A) **Quasi-Judicial Decisions**

- (1) Quasi-judicial decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of ~~any any person who has standing as detailed within NCGS 160A-393 (d) aggrieved party~~ by the Superior Court by proceedings in the nature of certiorari.
- (2) The appeal to the Superior Court must be filed within 30 days of the filing of the decision of the Board of County Commissioners by the Planning Director or the delivery of the notice of the decision to the applicant, whichever is later.

(B) **Legislative Decisions**

- (1) Legislative decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of any aggrieved party by the Superior Court.
- (2) The appeal to the Superior Court must be filed from the date of adoption of said Ordinance within the prescribed period below:
- (a) 60 days in cases involving the appeal of an Ordinance amending the Zoning Atlas,
 - (b) 1 year (365 days) in cases involving the appeal of an Ordinance amendment the UDO,
 - (c) 3 years (1,035 days) in cases involving an appeal based on an alleged defect in the adoption process of an Ordinance amending the UDO.

2.25.62.26.6 Water Supply Watershed Critical Area Boundary Line

Appeal applications disputing the Planning Director's decision regarding the location of a Water Supply Watershed Critical Area boundary line shall be accompanied by:

- (A) A survey prepared by a North Carolina registered land surveyor or professional engineer depicting the differences between:
- (1) The locational criteria in Section 4.2,
 - (2) The official Watershed map on file in the Planning Department, and
 - (3) The boundary line the applicant asserts is correct.
- (B) A detailed explanation describing the differences in the three boundary lines contained in (A) above.

2.25.72.26.7 Special Flood Hazard Overlay District

- (A) Any property owner who has received an order to take corrective action in accordance with Section 9.7 may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten business days following issuance of the final order.
- (B) The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

2.25-82.26.8 Soil Erosion and Sedimentation Control

(A) Appeal of Erosion Control Plan

Except as provided in subsection (D) below, the appeal of a disapproval, approval with modifications, or approval with conditions of an Erosion Control Plan shall be governed by the following provisions:

- (1) The disapproval of, modification of, or conditions of approval attached to any proposed Erosion Control Plan by the Erosion Control Officer shall entitle the person submitting the plan to an appeal of the decision to the Orange County Planning Director.
- (2) If the Planning Director upholds the decision, the person shall be entitled to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.

(B) Hearings

(1) Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring outside the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The Board of County Commissioners will render its final decision on any Erosion Control Plan appeal within 30 days of receipt of the Planning Board recommendation.

(2) Other than Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring within the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by a designated agency of the appropriate town or city board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The said designated agency shall make recommendations to the appropriate town or city board within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The said appropriate town or city board will render its final decision on any Erosion Control Plan appeal within 30 days of the receipt of the recommendations from the said designated agency conducting the hearing.

(C) Appeal from Local Government's Decision

If the local governing body upholds the disapproval, modification, or conditions of approval of a proposed Erosion Control Plan following the public hearing, the applicant shall be entitled to appeal the local government's action to the North Carolina Sedimentation Control Commission as provided in Section 113A-61(c) of the General Statutes and Title 15A NCAC 4B.0118.

(D) Appeal of Erosion Control Plan if Disapproval Based on Applicant's Past Performance

The applicant may appeal disapprovals issued under the provisions of Section 2.19.11 of this Ordinance directly to the North Carolina Sedimentation Control Commission.

(E) Appeal of Land-Disturbing Stop Work Order

- (1) The person conducting the land-disturbing activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (2) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (3) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (4) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.25.92.26.9 Stormwater Management Plan

- (A) Appeals of the Erosion Control Officer's decision on a Stormwater Management Plan shall be made to the Orange County Planning Director.
- (B) If the Planning Director upholds the decision, the applicant shall be entitled to a public hearing if the applicant submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.
- (C) The hearing shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand for a hearing.
- (D) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing.
- (E) The Board of County Commissioners shall render its final decision on any stormwater management plan upon which a hearing is requested within 30 days of receipt of the recommendations from the Planning Board.

2.25.402.26.10 Appeal of Stop Work Orders Regarding Stormwater Management Provisions

- (A) The person conducting the development activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (B) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (C) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (D) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.25.442.26.11 Appeals from Final Decisions Regarding Soil Erosion and Sedimentation Control Civil Penalties

- (A) **Appeal from Board of County Commissioners or Other Governing Body Decisions**
Appeal from the final decision of the governing body regarding civil penalties assessed for violations of the soil erosion and sedimentation control provisions of this Ordinance shall be to the Superior Court of the county where the violation occurred, or in the county where the violator's residence or principal place of business is located.