



# Town of Elon Planning Board Agenda

**June 1, 2021  
6:00 PM**

**Elon Town Hall with Electronic and Call-in Options**

## **Agenda Items**

### **A. Call to Order**

### **B. New Business**

- i. Review and Recommendation: LDO Text Amendment #21-01 Regarding Compliance with General Statutes Chapter 160D

### **C. Motion to Adjourn**



**MEMORANDUM TO THE PLANNING BOARD – June 1, 2021**

**Request:**

LDO Text Amendment  
#21-01 Regarding  
Compliance with  
General Statutes  
Chapter 160D

**Prepared by:**

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Assistant Town  
Manager/Planning  
Director

**Description of Request**

Elon’s Land Development Ordinance (LDO) requires updating to align with a substantial change to the NC General Statutes with regards to local planning and development regulations, specifically a new Chapter to the Statutes known as 160D. Much of these statutes were previously addressed in Chapter 160A “Cities and Towns”, and Chapter 153A “Counties” which are still in place, but were amended in 2019 when 160D was adopted and signed into law following a five-year long effort to make the changes. The objectives for the new chapter included consolidation of city and county planning and development regulations, creation of clearer language and a more logical structure, and accommodation of various case laws. The bulk of the changes are procedural in nature, but specifically require local ordinances to be updated to incorporate much of the new statutory language. Provisions that are not required but are allowed will be incorporated into our rewrite of the LDO (to be known as Land Management Ordinance, or LMO), to be completed later this year. The attached draft text amendment seeks to make our ordinance language consistent with the statutory language that is required to be included. A summary of the most impactful provisions is included in “Factors to Consider”, beginning on page 2 of this report.

**Procedural Issues**

Section 8.4 of the LDO requires that proposed amendments to the text or maps of the ordinance may be initiated by the LDO Administrator, Planning Board, Board of Adjustment, or by an interested party. Such amendments require a public hearing with public notice as specified by N.C. General Statutes, following a recommendation by the Planning Board. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety or welfare. The statement included with the Planning Board’s recommendation and the Board of Aldermen’s final decision on the amendment shall describe whether the action is consistent with adopted plans and state whether the Board considers the action taken to be reasonable and in the public interest. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

## Factors to Consider

The enclosed draft amendment includes new language in underlined red text, and language to be removed in red text with a “strikethrough”, or red line through the text. You will also notice that in most cases, only the LDO subsections that are proposed for change are included in the draft, in an attempt to apply some measure of brevity to the thirty-two page document. For this reason, you will see that the numbering of some subsections leaves the unamended subsections out, so you will have instances such as Section 6.3, beginning on page 4 of the document, beginning with subsection “C” rather than “A”. For reference, the full current LDO can be accessed on the Town’s website at <https://www.townofelon.com/town-government/departments/planning-and-zoning/documents/> and the 160D Chapter of the Statutes can be accessed at [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_160D.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_160D.html) .

The following list highlights the most impactful changes to the LDO as a result of this amendment.

1. New language in LDO subsection **6.2.1 Exceptions** to the applicability of the development review process to make accommodations for bona fide farms, or properly identified agricultural lands, in the extraterritorial jurisdiction. Text begins on page 3 of the amendment.
2. New subsection “C” under **6.3 Types of Development Proposals** to clarify exemptions to subdivision regulations. Text begins on page 4 of the amendment.
3. New subsection “D” under **6.3 Types of Development Proposals** to address development agreements. Text begins on page 5 of the amendment.
4. Amended language in **Section 6.7 Special Use Permits**, including definitions and procedures for handling amendments to and modifications of special use permits. The new subsection 6.7.3 is not specifically described in Chapter 160D; however, 160D makes multiple references to such modifications, so the new language is intended to clarify and lay the groundwork for such changes to be considered. Text begins on page 8 of the amendment.
5. Amended language in **6.8.3 Performance Guarantees**, including setting limitations on the duration of the initial guarantee and new language directing the extension of guarantees under specific situations. Additionally, this subsection describes acceptance of improvements by the Town, and the release of any guarantee on those improvements. Text begins on page 9 of the amendment.
6. Considerable new language has been added to **6.12 Vested Rights** to clarify how a vested right is obtained by a property owner, what type of development approvals may constitute a site-specific vesting plan, the effect and duration of a vested right, and enforcement options regarding vested rights. Text begins on page 10 of the amendment.
7. New and amended language in **8.2.2 Procedures for Boards and Committees** that includes descriptions and processes for quasi-judicial hearings (the Board of Adjustment engages in quasi-judicial hearings when they consider variances and appeals, otherwise this Board acts in an advisory capacity). Additionally, conflict of interest requirements for all appointed boards are clarified. Text begins on page 19 of the amendment.
8. A significant change is required regarding the extraterritorial jurisdiction (ETJ) representation on Planning Boards and Boards of Adjustment in **8.2.4.1**. Specifically, the number of Planning Board members representing the ETJ must now be calculated according to the population of the ETJ in

comparison to the Town's overall population. Staff has worked with our contracted GIS staff from the City of Burlington to determine the following calculations. Text begins on page 24 of the amendment.

- a. Elon's 7/1/2019 population estimate for all annexed area (excluding ETJ) = 12,752;
  - b. GIS staff's population estimate for Elon's ETJ (based on 2010 census and will be updated when 2020 census counts become official) is 1,599;
  - c.  $12,752 + 1,599 = 14,351$ ;
  - d. 1,599 is 11.1% of 14,351;
  - e. Elon's Planning Board and Board of Adjustment are comprised of seven regular members plus alternates;
  - f.  $7 \times 11.1\% = .78$ ;
  - g. No fewer than one ETJ representative must serve on these boards. Based on currently available population statistics, proportional representation of the ETJ limits membership to one sitting member, with one alternate;
  - h. The statute requires that the population estimates for this calculation shall be updated no less frequently than after each decennial census. Staff will recalculate the numbers after official 2020 Census counts are provided, and will update this Board when the results are known.
9. A new subsection **8.3.4 Revocation of Development Approvals** is included to permit and clarify the ability of the Town to revoke approvals when the terms of the approval have been violated. The process for revocation must follow the same process required for the original approval, including hearings if they apply. Text begins on page 26 of the amendment.
10. New and amended language in **8.4 Amendments** that address and define down-zoning requests and the processes for zoning map amendments (rezonings) and zoning text amendments. Important to the work of both the Planning Board and the Board of Aldermen in considering these requests are the more concise and clear requirements for justifications of the recommendations and final decisions regarding plan consistency. We can eliminate the matrix that leads you to declarations, descriptions, and explanations regarding the decision. From this point forward, the Planning Board is only required to advise and comment, via a brief statement, on whether the proposed action is consistent with the comprehensive plan or any other officially adopted plan that is applicable to the request. Additionally, zoning map amendments require that a reasonableness statement accompany the recommendation and final decision. As before, the amendment may be approved even if a determination is made that the proposal is inconsistent with the plan, and an approval of a zoning map amendment that is inconsistent with the plan has the effect of also amending the plan accordingly. A short list of factors that may be considered for the statement is provided. Text begins on page 27 of the amendment.
11. Lastly, **Chapter 10 Definitions** includes amended and new definitions required by G.S. Chapters 160D and 160A. In some cases these definitions are taken directly from Chapter 160D, and in others, the definitions have been added or amended to be consistent with NC Building Code Council definitions, as directed by G.S. 160A-390, later codified in Session Laws 2019-111 and amended by Session Laws 2020-3 and 2020-25.

### Plan Consistency

Envision Elon 2040, Elon's Comprehensive Land Use Plan, lists among its recommendations the following:

1. LU-8.12: Ensure that all LDO sections are up-to-date and compliant with state and federal legislation, guidance, and jurisprudence.

*The proposal is considered by staff to be consistent with the Comprehensive Land Use Plan, including the recommendation in the Plan that addresses the need for our ordinance to be compliant with state legislation.*

### **Recommendations and Suggested Motions**

Staff recommends that the Planning Board consider this application, accept public comment during the scheduled meeting, and consider a recommendation on the proposal at their earliest convenience. Staff recommends that the Planning Board recommend approval of the amendment. The motions should proceed as follows.

- Motion 1:** LDO #21-01 (is/is not) consistent with comprehensive plans adopted by the Town of Elon.  
*The proposal is considered by staff to be consistent with the Town's Comprehensive Land Use Plan. A draft statement for consideration is offered as part of Motion #4.*
- Motion 2:** LDO #21-01 (is/is not) reasonable and in the public interest.
- Motion 3:** The Town of Elon Planning Board recommends (approval/denial) of LDO #21-01 to the Elon Board of Aldermen.
- Motion 4:** In order to fully comply with N.C. General Statutes, please provide the appropriate statement:

Statement: *Staff recommendation: The proposal is consistent with the Comprehensive Land Use Plan, including the recommendation in the Plan (LU-8.12) that calls for the ordinance to maintain compliance with state legislation.*

Enclosures: LDO #21-01 Draft Amendment

**Ordinance No. #21-835**

**AN ORDINANCE TO AMEND THE ELON LAND DEVELOPMENT ORDINANCE  
TO COMPLY WITH N.C.G.S. CHAPTER 160D**

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF ELON THE FOLLOWING** *(subsections omitted from this ordinance shall remain unchanged except where renumbering is needed):*

**Section 1.** Elon Land Development Ordinance *Introduction* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

**INTRODUCTION**

**Ordinance Purpose** The Town of Elon, North Carolina adopted the *Town of Elon Land Development Plan* during the summer of 2002. The plan contains a broad range of goals and policies regarding land development in and around the town. The Land Development Plan serves as a guide for the future growth of our community into the 21<sup>st</sup> Century. In accordance with North Carolina General Statute ~~160A-383~~160D-701, the purpose of this land development ordinance is to implement the goals and policies of the Elon Land Development Plan, designed to:

- lessen congestion in the streets
- secure safety from fire, panic, and other dangers
- promote the health, safety, morals, and general welfare
- provide adequate light and air
- prevent overcrowding of land
- avoid undue concentration of population
- facilitate the efficient and adequate provision and economic provision of transportation, water, sewerage, schools, parks, and other public requirements
- conserve the value of buildings
- encourage the most appropriate use of land within the Town's corporate limits and its extraterritorial planning and zoning jurisdiction.

**Section 2.** Elon Land Development Ordinance *Chapter 1 Authority and Applicability* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

**1.3. Authority**

Planning provisions enacted within this ordinance are authorized under North Carolina General Statutes (G.S.) ~~160A-381~~ 160D-701, extending to cities the authority to enact regulations which promote the health, safety, morals, or general welfare of the community. Under Section ~~160A-382~~ 160D-703, cities are also authorized to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings,

structures, or land. This section further authorizes the establishment of overlay districts in which additional regulations different requirements may be imposed upon properties that lie within the boundary of the underlying district. These statutes also require that all such regulations must be uniform for each class or type of building throughout each district, but that the regulations in one district may differ from those in other districts.

Subdivision provisions enacted within this ordinance are authorized under North Carolina G.S. ~~160A-372~~160D-804, providing for the coordination of streets within proposed subdivisions, existing or planned streets, and other public facilities. This section further authorizes the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, or alternatively, for the provision of funds to be used to acquire recreation areas serving residents of more than one neighborhood in the immediate area. It also authorizes the distribution of population and traffic in a manner that will avoid congestion and overcrowding. The enumeration of sections of the general statutes is not intended to exclude any other section of the general statutes which grants or confirms authority to municipalities to promulgate ordinances, rules or regulations similar or identical to those set forth in this ordinance.

Pursuant to G.S. 160D-501, the Town shall reasonably maintain a comprehensive or land-use plan (“Plan”) as a condition of adopting and applying zoning regulations. Plans shall be adopted by the governing board with the advice and consultation of the planning board. Adoption and amendment of a Plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. The adopted Plan shall be advisory in nature without independent regulatory effect, and shall not expand, diminish, or alter the scope of authority for development regulations in this Ordinance or other regulations.

**Section 3.** Elon Land Development Ordinance *Chapter 3 Planning District Requirements* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

### **3.13 Manufactured Home Overlay District (MH-O)**

**3.13.2 Permitted Uses** shall be amended to include the additional provision under “Uses Permitted with Requirements”, as follows:

- (i) Manufactured homes may not be excluded as a permissible use from this subsection based on the age of the home.

**Section 4.** Elon Land Development Ordinance *Chapter 6 Development Review Process* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

## **6.2 Applicability**

### **6.2.1 Exceptions**

- A. Agricultural Areas in Municipal Extraterritorial Jurisdiction – Property that is located in the Town’s extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the Town’s zoning regulation. As used in this subsection, “property” means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes becomes subject to exercise of the Town’s extraterritorial planning and development regulation jurisdiction. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county’s floodplain regulation or all floodplain regulation provisions of the county’s unified development ordinance. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following is sufficient evidence that the property is being used for bona fide farm purposes:
1. A farm sales tax exemption certificate issued by the Department of Revenue.
  2. A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.
  3. A copy of the farm owner’s or operator’s Schedule F from the owner’s or operator’s most recent federal income tax return.
  4. A forest management plan.
- B. Pursuant to G.S. 160D-802(c), recordation of a plat shall be the only requirement for the division of a tract or parcel of land in single ownership when all of the following criteria are met:
1. The tract or parcel to be divided is not exempted under 6.3 C.2. of this Ordinance, specifically as a division into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
  2. No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division.



3. The entire area of the tract or parcel to be divided is greater than five (5) acres.
4. After division, no more than three lots result from the division.
5. After division, all resultant lots comply with all of the following:
  - i. All lot dimension size requirements of this Ordinance.
  - ii. The use of the lots is in conformity with the applicable zoning requirements.
  - iii. A permanent means of ingress and egress is recorded for each lot.

C. The LDO Administrator may waive the required development review process only in the following cases or at the discretion of the LDO Administrator when it is determined that the submission of a development plan in accordance with this Chapter would serve no useful purpose.

- ~~A.~~ 1. Individual single-family residences constructed on existing lots.
- ~~B.~~ 2. Accessory Structures on non-residential sites.
- ~~C.~~ 3. Any enlargement of a principal building by less than twenty percent (20%) of its existing size provided such enlargement will not result in an increased building footprint, or otherwise trigger additional site or landscaping improvements.
- ~~D.~~ 4. A change in principal use where such change would not result in a change in lot coverage, off-street parking, access, or other site characteristics.
- ~~E.~~ 5. Administrative permits for permitted temporary uses, signs or changes of occupancy where the use of property will not change.

**Section 6.3 Types of Development Proposals** shall be amended to include new subsections C and D as follows:

C. Subdivision Exemptions Pursuant to G.S. 160D-802, subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be subject to subdivision regulations:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town.
2. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
4. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three lots, where no street right-of-way

dedication is involved and where the resultant lots are equal to or exceed the standards of the Town.

5. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

D. Development Agreements The Town may consider and enter into development agreements with developers, subject to the procedures of G.S. 160D, Article 10. Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements. Additionally, the following provisions shall apply to development agreements.

1. For the purposes of this subsection, "Development" is defined as the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.
2. For the purposes of this subsection, "Public Facilities" is defined as major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.
3. The development agreement may, by ordinance, be incorporated, in whole or in part, into the Town's adopted development regulation. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plat, or a site plan or other development approval authorized by this Ordinance.
4. Development agreements shall be of a reasonable term, specified in the agreement and may be applied to developable property of any size.
5. Before entering into a development agreement, the Town shall conduct a legislative hearing on the proposed agreement. The notice provisions of G.S. 160D-602 applicable to zoning map amendments shall be followed for the hearing. The notice for the hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.
6. A development agreement shall, at a minimum, include all of the following:

- i. A description of the property subject to the agreement and the names of its legal and equitable property owners.
  - ii. The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
  - iii. The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
  - iv. A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the Town shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
  - v. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
  - vi. A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
  - vii. A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
7. A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement shall also provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.
8. If the Town is but one party to an agreement, with another local government constituting an additional party, the agreement must specify which local government is responsible for the overall administration of the development agreement.
9. The development agreement may also cover any other matter, including defined performance standards, not inconsistent with this Ordinance. The development agreement may include mutually acceptable terms regarding

provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required the Town shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

10. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement, as outlined in section 6.7.3 of this Ordinance.

11. Any performance guarantees under the development agreement shall comply with G.S. 160D-804.1

#### **6.4 General Development Proposal Review Process**

**Step 2** - The applicant will submit two (2) copies of a Preliminary Development Proposal to the LDO Administrator, consisting of the following items. Applications for development approvals may be made by the landowner, a lessee or person holding an option to contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement. ÷

1. Environmental Inventory
2. Schematic Design
3. Completed Application Form
4. Application Fee

Required elements for submission are listed in Section 7.4 - Development Proposal Requirements.

**Step 4** - Following the initial review process, the applicant may submit a Detailed Development Proposal, consisting of the appropriate development review fee, change in district designation application, detailed subdivision plats, site plans or major development plan, as required for review by the Technical Review Committee (TRC), Planning Board, and Board of Aldermen if required. . If a land development regulation is amended between the time a development permit application was submitted and a development approval decision is made or if a land development regulation is amended after a development approval decision has been challenged and found to be wrongfully denied or illegal, the development permit applicant may choose which adopted version of the regulation will apply to the permit and use of the building, structure, or land indicated on the development plan application, pursuant to G.S. 143-755.

**Step 7** – If a development proposal is approved following the public meeting process, the LDO Administrator will provide the necessary approvals for planning permits, preliminary and final plats and site plans. Development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State and local laws. The development approval may be issued in print or electronic form. Any development

approval issued exclusively in electronic form shall be protected from further editing once issued. To the extent consistent with the scope of statutory authority, no person shall commence or proceed with development without first securing the required development approval. Unless otherwise provided by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Ordinance attach to and run with the land.

## **6.7 Special Use Permits**

~~All Special Use Permits will be processed in accordance with the Master Plan procedures outlined in Section 6.6 above.~~ Consideration of a Special Use Permit must be conducted as a quasi-judicial public hearing process by the Board of Aldermen in accordance with subsection 8.2.2.C. The Town Board of Aldermen will give final denial or approval of all Special Use Permit applications. ~~During the quasi-judicial public hearing, all parties presenting testimony and evidence must be duly sworn in. Testimony both in favor and against the Special Use Permits application must be presented and be considered in the Findings of Fact prescribed in this section.~~ In making its decision for approval or denial of a Special Use Permit application, the Town Board of Aldermen may attach ~~fair and reasonable~~ and appropriate ~~and~~ and conditions and safeguards which support the required findings of fact. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this section shall not include requirements for which the Town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the Town, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. The applicant must be given reasonable opportunity to consider and respond to any additional requirements prior to the Board of Aldermen making its final decision.

### **6.7.3 Amendments to and Modifications of Special Use Permits**

- A. Insignificant Deviations. Insignificant deviations from a special use permit (including approved plans associated with the permit) are permissible, and the LDO Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- B. Minor Modifications. Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Unless it is requested by the permit-issuing authority, no public hearing shall be required for such minor modification(s). Minor modifications are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

- C. Major Modifications. All other requests for changes in approved plans or permits will be processed as new applications. If such requests are required to be acted upon by the Board of Aldermen or Planning Board, new conditions may be imposed in accordance with Section 6.7 of this Ordinance, but the applicant shall retain the right to reject such additional conditions by withdrawing his or her request for an amendment and may then proceed in accordance with the previously issued permit.
- D. The LDO Administrator shall determine whether amendments to and modifications of a special use permit fall within the categories set forth in subsections (A), (B), and (C), above.
- A.E. An applicant requesting a change in approved plans shall point out to the LCO Administrator, specifically and in writing, what deviation or changes are requested. The LDO Administrator shall respond in writing with a determination of whether the request constitutes an insignificant deviation, minor modification, or major modification. No changes shall be authorized except in conformity with this section.

### **6.8.3. Performance Guarantees**

- A. The LDO Administrator may authorize the commencement of the intended use or occupancy of buildings or the sale of subdivision lots if the applicant provides a performance guarantee to ensure that all of the requirements covered by the guarantee will be fulfilled within a reasonable period. ~~\_(not to exceed twelve (12) months) as determined by the LDO Administrator.~~ The duration of the performance guarantee shall initially by one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. The performance guarantee shall be payable to or in favor of the Town and shall be in an amount equal to one hundred twenty-five percent (125%) of the reasonably estimated cost of the completion of the project, as estimated by the developer and approved by the LDO Administrator. Where applicable, the costs shall be based on unit pricing. Any extension of the performance guarantee, as approved by the LDO Administrator with authorization from the Board of Aldermen, necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained. The applicant may elect which performance guarantee he or she will use from the range of options specified in G.S. ~~160A-372 (g)~~ 160D-804.1. The Town shall require the performance guarantee to be posted at the time the final plat is recorded or, upon approval of the Board of Aldermen, at an established time subsequent to plat recordation.
- B. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the Town,

and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subsection shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subsection 6.8.3.A and shall include the total cost of all incomplete improvements.

- ~~A.C.~~ The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Town that the improvements for which the performance guarantee is being required are complete. The Town shall return letters of credit or escrowed funds upon completion of the required improvements to its specification or upon acceptance of the required improvements, if the required improvements are subject to the Town's acceptance. When required improvements that are secured by a bond are completed to the specifications of the Town, or are accepted by the Town, if subject to acceptance, upon request by the developer, the Town shall timely provide written acknowledgement that the required improvements have been completed. If improvements are not complete and the current performance guarantee is expiring, the performance guarantee may be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of the extension shall remain at the election of the developer.
- ~~D.~~ In the case of a failure on the part of the developer to timely complete all improvements, the LDO Administrator, with authorization from the Board of Aldermen, may immediately call either the entire performance guarantee or as much of said guarantee as is necessary to complete the remaining improvements. The Town shall return to the developer any funds not spent in completing the improvements.
- ~~E. D.~~ The LDO Administrator, with authorization from the Board of Aldermen, may, but is not required to, release a portion of any performance guarantee as the improvements are completed.
- ~~F. E.~~ Nothing in this section shall prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, as provided in G.S. ~~160A-375~~160D-807.

## Section 6.12. Vested Rights

### 6.12.1 Vested Right Conferred

~~A vested right is conferred pursuant to NCGS 160A-385.1G.S. 160D-108 to undertake and complete the development and use of property according to the terms and conditions of a site specific development plan, approved as provided for in this Section of the~~

Ordinance. and as used in this Ordinance, a zoning vested right is defined as the right to undertake and complete the development and use of land under the terms and conditions of a development approval issued by the Town. For the purposes of this section, a site-specific vesting plan is defined as a plan of land development submitted to the Town for purposes of obtaining approval. A site-specific vesting plan must provide, with reasonable certainty, all items from the following list, and be approved according to the process described in Chapter 6 of this Ordinance for Major Development Plans. A variance, sketch plan, or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a site-specific vesting plan.

1. The boundaries of the development;
2. Topographic and natural features affecting the site;
3. The approximate location of proposed buildings, structures, and other improvements;
4. The approximate dimensions, including height, of proposed buildings and other structures;
5. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;
6. The type or types of proposed land uses; and
7. The density or intensity of development.

The development approvals that constitute a site-specific vesting plan shall be limited to the following, providing that such approvals are given in accordance with the provisions of this Ordinance.

1. Preliminary plats,
2. Final plats,
3. Major development plans, and
4. Special use permits

#### **6.12.2. Obtaining a Vested Right**

A. A developer may obtain a vested right to commence a project at a future date as provided by G.S. ~~160A-385.1~~160D-108, following an approval of a development application in accordance with this Ordinance and the applicable requirements in the North Carolina General Statutes. ~~to commence a project at a future date. A vested right is obtained automatically when a special use permit is granted by virtue of approval of a special use by the Board of Aldermen, or when the Board of Aldermen approves a site-specific development plan submitted by a developer in conjunction with an application for a planning permit with vested rights. A common law vested right is established only when the following can be demonstrated by the landowner:~~

1. There is an affirmative governmental act by the Town in the form of an approval of a permit or development approval under this Ordinance; and



2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and
3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.

A.B. A landowner seeking to claim a vested right subsequent to approval of one of the plan types listed in 6.12.1, above, shall submit information to substantiate their claim of vesting status along with an application for a determination as defined in this Ordinance.

### **6.12.3 ~~Term~~ Effect of a Vested Right**

~~The right to commence a project authorized by any of the above means vests from the date the applicable permit is authorized and remains vested for two years.~~

A. Development approvals that have an established vested right in accordance with G.S. 160D-108 and the provisions of this Ordinance shall preclude any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.

B. Except when subject to subsection “C” below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:

1. Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and G.S. 143-755;
2. Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and G.S. 143-755;
3. A site-specific vesting plan approved in accordance with this Ordinance and G.S. 160D-108.1;
4. A multi-phase development approved in accordance with this Ordinance and G.S. 160D-108; or
5. A vested right established by the terms of an approved development agreement in accordance with this Ordinance and G.S. Chapter 160D, Article 10.

C. Amendments to this Ordinance shall apply to vested development approvals if:

1. A change to State or federal law occurs and has a retroactive effect on the development or use;
2. There is written consent to be subject to the amendment by the landowner;
3. The development approval expires; or
4. The development is not undertaken or completed in accordance with the approval.

~~1~~D. The vested rights granted by this Ordinance shall run with the land. Nothing in this Ordinance shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred.

#### **6.12.4 ~~Planning Permit Required~~Duration**

Vested rights shall commence upon approval of a development application and shall continue through the maximum duration periods established in this Ordinance. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval identified in this section.

A. The duration of a development agreement shall be vested in accordance with the vesting term identified in the development agreement.

B. The issuance of a building permit establishes a vested right to development for a period of six (6) months, as long as the building permit complies with the terms and conditions of approval of that building permit.

C. Except for building permits, site-specific vesting plans, development agreements, and multi-phase developments, any development approval under this Ordinance shall be vested from changes in this Ordinance for a period of one year from the date of approval, provided the development subject to the approval complies with all applicable terms and conditions.

#### D. Site-specific Vesting Plans

1. Development approvals identified by this Ordinance as site-specific vesting plans shall be granted a vested right to develop for a maximum period of two (2) years from the date of the approval, provided the development subject to the approval complies with all applicable terms and conditions.

2. The two (2) year vesting duration of a site-specific vesting plan may be extended up to five (5) years from the date of the approval.

3. Site-specific vesting plans meeting the definition of a multi-phase development shall be vested in accordance with Subsection 10 below.

4. A site-specific vesting plan is deemed approved upon the effective date of the Town's decision approving the plan or another date determined by the Board of Aldermen upon approval.

5. Approval of a site-specific development plan with the condition that a variance or modification be obtained will not confer a vested right unless and until the necessary variance or modification is obtained.

~~1~~6. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff, pursuant to subsection 6.7.3 of this Ordinance.

## E. Multi-phase Developments

1. A multi-phase development plan that occupies at least twenty-five (25) acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval, and includes more than one phase shall be considered as a multi-phase development plan that is granted a vested right to develop for a period of seven (7) years from the date of approval of the first site plan associated with the development.
2. Vesting shall commence upon approval of the site plan for the first phase of the development.
- 2.3. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

**6.12.5 Application for a Planning Permit with Vested Rights Planning Permit Required**  
~~The applicant must submit a site specific development plan in accordance with Chapter 7 – Development Proposal Requirements, describing with reasonable certainty the type and intensity of use of the specific parcel or parcels of land.~~ A planning permit is required before commencing work on any project in which a vested right exists. The LDO Administrator will issue the planning permit for a project in which the vested right has been conferred according to the provisions of this Ordinance ~~by a special use permit. In any other case, an applicant will apply for a planning permit with vested rights as outlined in sub-section 6.12.5 below.~~

## **6.12.6 Action by the Board of Aldermen**

Upon receipt of a properly prepared site specific development plan submittal, the LDO Administrator will bring the plan to the Planning Board for its recommendations and then to the Board of Aldermen for its consideration.

- A. Public Hearing - The Board of Aldermen will conduct a quasi-judicial public hearing with notice given as provided for in Section ~~8.8.2.B.8.2.2.C~~ of this ordinance.
- B. Considerations - In considering an application for a ~~planning development approval permit~~ with vested rights, the Board of Aldermen will give due regard to whether issuance of the approval permit would serve the purpose and intent of this ordinance, secure public safety and welfare and do substantial justice. If the Board of Aldermen should find, after public hearing, that the proposed approval permit should not be granted, the request permit will be denied.
- C. Findings. In granting a planning permit development approval with vested rights the Board of Aldermen will make the following affirmative findings:
  1. ~~T~~he requested use is permitted in the district in which the property is located and complies with all the requirements of this and other applicable ordinances;
  2. ~~T~~he requested permit approval is either essential or desirable for the public convenience or welfare;

3. ~~The requested permit approval~~ will not impair the integrity or character of the surrounding or adjoining districts and will not be detrimental to the health, safety, or welfare of the community;
  4. ~~A~~adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.
- D. Additional Conditions - In granting a ~~planning permit~~development approval with vested rights, the Board of Aldermen may impose such additional restrictions and requirements ~~upon the permit~~ as it deems necessary in order to protect the public health, safety, and welfare and that the purpose and intent of this ordinance are served, ~~public welfare secured and substantial justice done~~. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. A landowner shall not be required to waive the vested rights as a condition of developmental approval. Approval of a site specific development plan with the condition that a variance or modification be obtained will not confer a vested right unless and until the necessary variance or modification is obtained.
- E. Acceptance by Applicant - If all requirements and conditions are accepted by the applicant, the Board of Aldermen will authorize the issuance of the permit; otherwise the permit will be denied. Any permit so authorized will remain vested for two years from the date of the action granting the permit.

#### **6.12.7 ~~Violations~~Enforcement**

- A. Any violation of a term or condition involved in the granting of a planning permit with vested rights will be treated the same as a violation of this ordinance and will be subject to the same remedies and penalties as any such violation. In addition, the Board of Aldermen may, after public hearing, revoke any such vested rights for failure to abide by any such term or condition.
- B. ~~In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.~~
- C. ~~In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.~~
- D. ~~In no instance shall vested rights continue if the Board of Aldermen finds, after a duly noticed public hearing, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.~~
- A.E. ~~In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within twenty-four (24) months of the discontinuance of work. This 24 month period shall not include the time associated with work stoppage resulting from an appeal or litigation.~~

### 6.12.8 Other Ordinances Apply

- A. The establishment of a vested right does not preclude the application of ~~an~~ overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity. ~~which imposes additional requirements but does not affect the allowable type or intensity of use, or other ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation, including, but not limited to,~~
- B. A vested right shall not preclude the application of changes to building, fire, mechanical, electrical and plumbing codes ~~made after the development approval where a vested right was established.~~
- C. The establishment of a vested right does not preclude, change, or impair the authority of the Town to adopt and enforce development regulations governing nonconforming situations or uses.
- D. Exceptions. A vested right, once established as provided for in this Ordinance, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in an approved vesting plan, except under on or more of the following conditions:
1. With the written consent of the affected landowner.
  2. Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the vesting plan.
  3. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the Town, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
  4. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner of the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval of the vesting plan or the phased development plan.
  5. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the vesting plan or the phased development plan, in which case the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

### 6.12.9 Changes or Amendments

~~No changes or amendments to any planning permit/development approval with vested rights may be made except after public hearing and decision shall be considered modifications to the approved development proposal and shall follow the process outlined for approval of amendments and modifications in section 6.7.3 of this Ordinance. and except as provided for in this ordinance for the original issuance of such permit. If, at the time of consideration of a proposed change or amendment to an existing permit, the permit or proposed change or amendment could not be lawfully made under ordinance conditions existing at that time, the proposed change or amendment will be denied. In addition, in no case will there be an extension of the two-year time period for which the development right is vested. Nothing herein will exempt plans related to the permit from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approvals. If a land development regulation is amended between the time a development permit application was submitted and a development approval decision is made or if a land development regulation is amended after a development approval decision has been challenged and found to be wrongfully denied or illegal, the development permit applicant may choose which adopted version of the regulation will apply to the permit and use of the building, structure, or land indicated on the development plan application, pursuant to G.S. 143-755.~~

### 6.12.10 Status at Expiration of Term

A right which has been vested will terminate at the end of the two-year vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. ~~160A-418 and G.S. 160A-422~~160D-403 will apply except that a building permit will not expire or be revoked because of the running of time while a vested right under this Section is outstanding. Any development constructed pursuant to a planning permit with vested rights for which the vested term has expired and which is not in conformance with all the terms of the ordinance because of changes made in the provisions of this ordinance, including the Land Development Ordinance map, after the issuance of the permit will be subject to the provisions of this ordinance relating to non-conformities the same as any other nonconformity.

### 6.12.11 Annexation Declaration

Any landowner who signs an annexation petition to the Town pursuant to G.S. 160A-31 or G.S. 160A-58.1 will, as part of that petition, file a signed statement declaring whether or not vested rights with respect to the property subject to the petition have been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~160D-108. If the statement declares that such rights have been established, the Town may require petitioners to

provide proof of such rights. A statement which declares that no vested rights have been established by law will be binding on the landowner and any such vested right will be terminated.

**Section 5.** Elon Land Development Ordinance *Chapter 7 Development Proposal Requirements* is amended to correctly reference General Statutes, as follows:

**7.2 Conformance with the Land Development Plan and Other Adopted Plans**

**7.2.C.3.** The responsible authority must promptly decide whether it still wishes the site to be reserved. The responsible authority will then have eighteen (18) months beginning upon the date of final plat approval within which to acquire the site by purchase or by condemnation as provided in ~~N.C.G.S. 160A-372~~G.S. 160D-804. If the responsible authority has not purchased or begun condemnation proceedings on site within eighteen (18) months, the developer may treat the land as freed from reservation.

**Section 6.** Elon Land Development Ordinance *Chapter 8 Administration and Enforcement* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

**8.1.2 Land Development Ordinance Administrator – General Duties** (*subsections not included shall remain unchanged*)

- E. Maintain all records pertaining to the provisions of the Land Development Ordinance make said records open for public inspection, including current and previously adopted zoning maps and any state or federal agency maps incorporated by reference into the zoning map. Such maps may be in paper or a digital format
- J. ~~Receive appeals and forward cases to the appropriate body~~ Make determinations regarding the development regulations contained within this Ordinance. Such determinations shall be provided in writing to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal deliver, electronic mail, or by first-class mail, and delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

**8.1.3 Conflict of Interest Responsibilities of Administrative Staff**

- A. No staff member shall make a final decision or an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member of if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other

associational relationship. If a staff member has a conflict of interest as described herein, the decision shall be assigned to the supervisor of the staff person or other staff person as may be designated by this Ordinance.

- B. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.
- C. For the purposes of this section, a “close familial relationship” means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

### **8.2.2 Procedures for ~~all~~ Boards and Committees**

- A. Before adopting, amending, or repealing any ordinance or development regulation, the Board of Aldermen shall hold a legislative hearing. An affirmative vote equal to a majority of all the members of the Board of Aldermen 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, nor ordinance nor any action having the effect of an ordinance, except an ordinance on which a public hearing must be held pursuant to G.S. 160D-601 before the ordinance may be adopted, 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 Board of Aldermen, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the Board. 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 Board. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Development regulations shall be adopted by ordinance.
- A. B. Rules of Procedure: All meetings and hearings will be open to the public and will be conducted in accordance with the procedure set forth in this Ordinance and rules of procedure adopted by the Planning Board, Board of Adjustment, Technical Review Committee, and Town Board of Aldermen. Such rules of procedures may be amended from time to time by the respective board or committee. Rules of procedure adopted by any board or committee will be kept at the offices of the Town Clerk and will be made available to the public at any meeting or hearing, and shall be posted on the Town’s website.



B. C. Quasi-judicial procedure

1. Process Required: Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, variances, or any other quasi-judicial decision.
2. Notice of Hearing: Notice of evidentiary hearings conducted pursuant to this Ordinance shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of 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 this Ordinance. In the absence of evidence to the contrary, the Town 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 ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Town 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. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
3. Administrative Materials: The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to the inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
4. Presentation of Evidence: The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

5. Appearance of Official New Issues: The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
6. Oaths: The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor, in accordance with G.S. 160D-406(f).
7. Subpoenas: The board making a quasi-judicial decision under this Ordinance 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, the applicant, the Town, and any person with standing under G.S. 160D-1402(c) 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 immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
8. Appeals in Nature of Certiorari: When hearing an appeal pursuant to G.S. 160D-947(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. 160D-1402(j).
9. Voting: The concurring vote of four-fifths of the board shall be necessary to 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 under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
10. Decisions: The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make and order, requirement, decision, or determination

that ought to be made. The board shall have all the powers of the official who made the decision. 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, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and 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. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

B.11. Judicial Review: Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

B. D. Public Notice for Legislative Hearings: See Chapter 8, Subsection 8.4.G Notification of all public hearings will be given as follows:

- ~~1. A notice of consideration for Public Hearing must be published in a newspaper having general circulation in the town once a week for two successive weeks, the first time not less than ten (10) days, nor more than twenty five (25) days prior to the date established for consideration.~~
- ~~2. For individual cases, a notice of consideration for Public Hearing will be sent by first class mail by the LDO Administrator to the affected property and to all contiguous property owners not less than ten (10) days, nor more than twenty five (25) days prior to the date established for consideration. Such mailings will be certified by the LDO Administrator that proper notice has been given, and such certification will be conclusive in the absence of fraud.~~

~~3. The site will be posted regarding the request, not less than ten (10) days, nor more than twenty five (25) days prior to the date established for consideration.~~

~~The posting must be place so as to be visible from the public right of way.~~

C.E. Record of Meetings: Each Board or Committee will keep minutes of its proceedings, showing the votes of each member upon every question, or if absent or failing to vote, indications as such. All such records and minutes will be kept on file at Elon Town Hall and will be made available to the public.

D.F. Election and Term of Officers: Unless otherwise provided by the Land Development Ordinance, a Chair and Vice-Chair of each Board or Committee will be elected by its members to serve a one (1) year term. All members appointed to boards shall, before entering their duties, qualify by taking an oath of office. The Secretary is not required to be a member of the Board or Committee.

~~E-G.~~ Attendance: Any member of a Board or Committee who attends less than 75% of the regular and special meetings held by the board during any one year period may be removed from the Board or Committee.

~~F-H.~~ Terms: Unless stipulated elsewhere, all Board or Committee appointments will be staggered four (4) year terms. Alternates will be appointed in the same manner as regular members.

~~G-I.~~ Vacancies: Vacancies created by resignation or other causes may be filled by appointment of an alternate member or a new member, as determined by the Town Board of Aldermen. Members filling such vacancies will serve the remainder of the unexpired term.

~~H-J.~~ Secretary: The LDO Administrator will serve as Secretary to all Boards and Committees established herein unless otherwise stated.

#### K. Conflicts of Interest

1. No member of the governing board or any appointed board shall vote on any legislative or advisory decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. No member of the governing board or any appointed board shall vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

2. No member of any board exercising quasi-judicial functions shall 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 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.

3. Should an objection be raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

4. For the purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

#### 8.2.3.1 Technical Review Committee - Authority and Membership

A. The Technical Review Committee (TRC), is hereby created pursuant to ~~NCGS 160A-361~~G.S. 160D-306, consisting of the following staff members, their designee or alternate:

1. LDO Administrator
2. Town Manager

3. Town Public Works Director
4. Police Chief
5. Fire Chief
6. Other agencies as appropriate

## 8.2.4 Planning Board

### 8.2.4.1 Planning Board – Authority and Membership

- A. The Planning Board is hereby created pursuant to ~~NCGS 160A-361~~G.S. 160D-301, ~~consisting of the eight (8) members and two (2) alternates, with membership to be organized~~ as follows:
1. Six (6) members and one (1) alternate consisting of citizens and residents of the Town of Elon will be appointed by the Board of Aldermen.
  2. Member(s) representative of the extraterritorial jurisdiction proportional to the population for residents of such jurisdiction, with the number of representatives being no fewer than one (1) regular member and one (1) alternate member. The population estimates for this calculation shall be updated no less frequently than after each decennial census. ~~Two (2) members and one (1) alternate consisting of citizens and residents of the area lying outside, but within one mile of the corporate limits of the Town of Elon~~Planning Board members representing the extraterritorial jurisdiction will be appointed by the Alamance County Board of Commissioners.
- B. Members and alternates will receive no compensation and will incur no obligation to the Town.

## 8.2.5 Board of Adjustment

### 8.2.5.1 Board of Adjustment – Authority and Membership

- A. The Board of Adjustment is hereby created pursuant to ~~NCGS 160A-388~~G.S. 160D-302, ~~consisting of the eight (8) members and two (2) alternates, with membership to be organized~~ as follows:
1. Six (6) members and one (1) alternate consisting of citizens and residents of the Town of Elon will be appointed by the Board of Aldermen.
  2. Member(s) representative of the extraterritorial jurisdiction proportional to the population for residents of such jurisdiction, with the number of representatives being no fewer than one (1) regular member and one (1) alternate member. The population estimates for this calculation shall be updated no less frequently than after each decennial census. ~~Two (2) members and one (1) alternate consisting of citizens and residents of the area lying outside, but within one mile of the corporate limits of the Town of Elon~~Board of Adjustment members representing the extraterritorial jurisdiction will be appointed by the Alamance County Board of Commissioners.

- B. Members and alternates will receive no compensation and incur no obligation to the Town.
- C. The Planning Board will serve as the Board of Adjustment, at the discretion of the Town Board of Aldermen.

#### 8.2.6.1 Town Board of Aldermen – Powers and Responsibilities

- A. ~~Pursuant to NCGS 160A-361,~~ The Town Board of Aldermen will have the following powers and responsibilities regarding the Land Development Ordinance:
  - 1. To consider proposed Land Development Ordinance amendments, including text amendments, map amendments and special use permits according to the procedures prescribed in Chapter 6 of this Ordinance.
  - 2. To consider proposed subdivisions and site plans and master plans.
  - 3. To make interpretations of any portion of the Land Development Ordinance.
  - 4. To hold quasi-judicial public hearings and make relevant findings of fact concerning Special Use Permit and Planning Permit with Vested Rights applications.
  - 5. To make a final decision on all Major Development Plan Proposals, Special Use Permit, and Planning Permit with Vested Rights applications.
  - 6. To consider all issues and petitions related to the Land Development Plan or other land use plans or studies.

### **8.3.3 Violations**

#### 8.3.3.2 Penalties Notices of Violation

- A. When staff determines work or activity has been undertaken in violation of a development regulation contained within the Land Development Ordinance or other local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may also be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.
- B. Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the Town’s jurisdiction at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been

given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

#### **8.3.3.32 Penalties**

I. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board 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 development regulation. In that case, enforcement proceedings are not stayed except by 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 shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this subsection, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or the Town may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

#### **8.3.4 Revocation of Development Approvals**

In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the Town by notifying the holder in writing stating the reason for the revocation. The same development review and approval process required for the issuance of the development approval, including any required notice or hearing, shall be followed in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State, or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by the Town, the provisions of G.S. 160D-405(e) regarding stays apply.

## 8.4 Amendments

### Initiation of an amendment

- A. A proposed amendment to the text or maps of this ordinance may be initiated by the LDO Administrator, Planning Board, Board of Adjustment, or by an interested party. No amendment to zoning regulations or a zoning map that down-zones shall be initiated nor enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For the purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
  - A-2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
- B. An amendment must be submitted in writing, and be accompanied by the appropriate fee as established by the fee schedule as approved by the Town Board of Aldermen.
- C. ~~Amendments will be considered under the same process as development review, as detailed in Section 6.4 of this ordinance.~~ All proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment, in accordance with G.S. 160D-604(b). If no written report is received from the planning board within thirty (30) days of referral of the amendment to that board, the Board of Aldermen may act on the amendment without the planning board report. The Board of Aldermen is not bound by the recommendations, if any, of the planning board. Notwithstanding any authority to assign duties of the planning board to the governing board that may be provided elsewhere, the review and comment required by this section shall not be assigned to the governing board and must be performed by a separate board.
- D. Plan Consistency. When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted or any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the Board of Aldermen that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Aldermen. Upon consideration by the Board of Aldermen, a brief statement describing whether its action is consistent or inconsistent with the adopted comprehensive plan shall be approved when the proposed amendment is either adopted or rejected. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-



use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the Board of Aldermen statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

E. Additional Reasonableness Statement for Rezoning. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Aldermen. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the Board of Aldermen statement on reasonableness may address the overall rezoning. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement. This statement of reasonableness may consider, among other factors:

1. The size, physical conditions, and other attributes of the area proposed to be rezoned;
2. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
3. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
4. Why the action taken is in the public interest; and
- B-5. Any changed conditions warranting the amendment.

~~D-F.~~ Notice of consideration of zoning map amendments must be given according to the notification process detailed in Section 8.2.2 of this ordinance in accordance with G.S. 160D-602, specified as follows

1. Mailed Notice. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purposes of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. If the zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance, the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least thirty (30) days prior to the hearing.
2. Optional Notice for Large-Scale Zoning Map Amendments. The first-class mail notice required under subsection 1. of this section is not required if the zoning map amendment proposes to change the zoning designation of more than fifty

(50) properties, owned by at least fifty (50) different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to make the mailed notice provided for in subsection 1. of this section, or as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection 1. of this section.

1.3. Posted Notice. When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons.

G. Notice of Consideration of Zoning Ordinance Text Amendments shall be as follows, pursuant to G.S. 160D-601:

1. Before adopting, amending, or repealing any ordinance or development regulation, the Board of Aldermen shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
2. A development regulation shall be adopted by ordinance.

#### **8.5.1 Initiation of an Appeal or Variance**

- A. An appeal of an order, requirement, decision, interpretation, determination, or citation made by the LDO Administrator may be initiated by any person who has standing under G.S. ~~160A-393(d)~~ 160D-1402.(c) or by the Town.
- C. A petition or notice for appeal or variance must be submitted in writing within thirty (30) days of receipt of the written notice of the decision, order, determination, or interpretation made by the LDO Administrator. In the absence of evidence to the contrary, notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

#### **8.5.2 Appeal Procedures**

G. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of

the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the Board 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 development regulation. In that case, enforcement proceedings are not 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 shall meet to hear the appeal within fifteen (15) days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or Town may request and the Board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

## **8.6. Annexations and Extraterritorial Jurisdiction**

### **8.6.1 Extraterritorial Jurisdiction**

- A. Pursuant to G.S. 160D-201, all of the powers granted by G.S. 160D-202 to the municipal corporate limits may also be exercised within the extraterritorial jurisdiction.
- B. Extraterritorial jurisdiction population estimates shall be updated no less frequently than with each decennial census
- C. Any proposed addition to the area of extraterritorial jurisdiction shall include a notification to owners of all parcels of land subject to the proposed addition. Such notice shall be sent by first-class mail to the last addresses as shown on the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a legislative hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160D-601, and of the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160D-303. Such notice shall be mailed at least thirty (30) days prior to the date of the hearing. The person or persons mailing the notices shall certify to the Board of Aldermen that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud. The hearing to consider extension of the extraterritorial jurisdiction, and notice thereof, may also include consideration of the initial zoning amendment for the subject properties.

**Section 7.** Elon Land Development Ordinance *Chapter 10 Definitions* is amended to correctly reference General Statutes, and to include new or amended language in accordance with G.S. Chapter 160D, as follows:

**Administrative Decision:** A decision made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Ordinance or as provided in G.S. Chapter 160D. These are sometimes referred to as ministerial decisions or administrative determinations.

**Building:** A temporary or permanent structure having a roof supported by columns or walls and which can be used for the shelter, housing, or enclosure of persons, animals, or goods. Any structure used or intended for supporting or sheltering any use or occupancy.

**Determination:** A written, final, and binding order, requirement, or determination regarding an administrative decision.

**Dwelling:** Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith., except that it does not include any manufactured home, mobile home, or recreational vehicle if used solely for a seasonal vacation purpose.

**Dwelling unit:** A room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen facilities, and designed for or used as a permanent residence by at least one family. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**Farm, bona fide:** Any tract of land used for agricultural activities as set forth in G.S. 160D-903. Except as provided in G.S. 106-743 for farms that are subject to a conservation agreement, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. containing at least three acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry, and which may include facilities for the sale of such products from the premises where produced. The definition of "farm" and "bona fide farm" will not include agricultural industries.

**Quasi-judicial decision:** A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

**Sleeping Unit:** A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**Special Use Permit:** A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

**Section 8.** All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

**Section 9.** This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, was duly adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Jerry R. Tolley, Mayor

Attest:

\_\_\_\_\_  
DiAnne C. Enoch, Town Clerk