

Motion and
Statement of Consistency with Comprehensive Plan
UDO-251

I move that the following statement be adopted in support of a **Motion to Approve** Zoning Text Amendment UDO-251.

The zoning text amendment, proposed by the City Attorney's Office to amend Chapter B, Article VI of the Unified Development Ordinances (UDO) to eliminate the Planning Board findings of fact requirement for elected body special use permits and substitute a Planning Board site plan review action, is in conformance with the recommendations of the Legacy Comprehensive Plan and is reasonable and in the public interest because:

1. The proposed text amendment clarifies the roles of the Planning Board and the Board of County Commissioners in the issuance of special use permits; and
2. The proposed text amendment eliminates the legal concerns associated with the Elected Body potentially receiving unsworn testimony through the Planning Board process.

Based on the foregoing Statement, I move adoption of UDO-251.

Second:

Vote:

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: January 12, 2015 **AGENDA ITEM NUMBER:** _____

SUBJECT:-

- A. Public Hearing on Zoning Text Amendment Proposed by the City Attorney's Office to Amend Chapter B.6 to Eliminate the Planning Board Findings of Fact Requirement for Elected Body Special Use Permits and Substitute a Planning Board Site Plan Review Action (UDO-251)

- B. Ordinance Proposed by the City Attorney's Office Amending Chapter B of the *Unified Development Ordinances* to Eliminate the Planning Board Findings of Fact Requirement for Elected Body Special Use Permits and Substitute a Planning Board Site Plan Review Action

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

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

ATTACHMENTS:- X YES ___ NO

SIGNATURE: _____ **DATE:** _____

UDO - 251

AN ORDINANCE PROPOSED BY THE CITY ATTORNEY'S OFFICE
AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES*
TO ELIMINATE THE PLANNING BOARD FINDINGS OF FACT REQUIREMENT
FOR ELECTED BODY SPECIAL USE PERMITS
AND SUBSTITUTE A PLANNING BOARD SITE PLAN REVIEW ACTION

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

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

6-1 ADMINISTRATION

6-1.3 PLANNING BOARD

x

(A) Site Plan Review

The Planning Board shall review all requests for permits requiring a site plan review, as designated as a "P" or designated as an "A" or "E" in Table B.2.6 and not exempted in Section B.6-1.4(A) to assure that the requirements of Section B.2-5 and other applicable provisions of the UDO are met.

(1) Approval and Conditions. The Planning Board shall approve any requests for permits which meet all the requirements of this Ordinance, and deny any such requests which do not meet all the requirements of this Ordinance. The Planning Board may, as part of its approval, require the following conditions to reduce impacts associated with the project:

- (a) Public right-of-way dedication to meet projected needs for roads shown on the ~~Transportation~~—Plan Comprehensive Transportation Plan, or for other roads as determined by the City of Winston-Salem or North Carolina Department of Transportation.
- (b) Road and/or sidewalk improvements as recommended by the City of Winston-Salem or North Carolina Department of Transportation.
- (c) Access control, including the location, number, and dimensions of driveways; and combining driveways with and providing connections to adjacent properties, as recommended by Planning staff or other appropriate agencies.
- (d) Reorientation of parking areas or building access to insure on-site traffic flow and pedestrian safety.
- (e) Dedication or granting of easements for greenways identified on the adopted Greenway Plan.

- (f) Screening and location of dumpsters, loading areas, on-site utilities, or other visually obtrusive features as determined by the Planning Board.
- (g) Space for public transit vehicle maneuvering and/or public transit shelter if determined necessary by the Winston-Salem Transit Authority.
- (h) Stormwater management plans as recommended by Planning staff and appropriate agencies.
- (i) Location and screening of improvements or activities which may generate substantial noise.
- (j) Compliance with recommendations of the City of Winston-Salem or State of North Carolina or other governmental departments reviewing the projects.
- (k) Compliance with all applicable conditions previously approved for the property in question.

(l) Water and sewer service, if necessary for the development project, are available in adequate capacity.

- (2) Special Use District Zoning. No separate site plan review by the Planning Board is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.
- (3) Staff Changes. The Planning Board may, by resolution, allow the Planning staff to grant staff changes to site plans and conditions after the site plans and conditions have been approved by the Planning Board. Such resolution shall include authority for staff to make changes as consistent with law and the intent of the original site plan or conditions.

(B) Special Use Permits Approved by the Board of Adjustment or the Elected Body

The Planning Board shall review, **for compliance with the requirements of this ordinance and subsection (a)(1) above,** and ~~make recommendations concerning~~ the site plans submitted in conjunction with requests for special use permits issued by the Board of Adjustment or the Elected Body in accordance with Section B.6, unless the applications are otherwise exempted in Section B.6-1.4(A)(2).

(C) Amendments to the Zoning Ordinance and the *Official Zoning Maps*

The Planning Board shall review all requests for amendments to the Zoning Ordinance and the Official Zoning Maps and make recommendations to the Elected Body, in accordance with Section B.6-2.

- (D) Application Procedures
Complete applications for Planning Board Reviews shall be submitted at least thirty-one (31) calendar days prior to the next regularly scheduled Planning Board meeting, including a completed application form and other required information, site plans meeting the requirements for site plan submittal in Section B.7, and fees in accordance with Section B.8.

6-1.5 SPECIAL USE PERMITS AUTHORIZED BY THE ELECTED

BODY (A) Elected Body Review

The Elected Body shall review all requests for permits as designated in Table B.2.6 and, in doing so, shall follow quasi-judicial procedures.

- (B) Public Hearing
Applications for special use permits requiring approval by the Elected Body may be approved after the Elected Body receives a report on conformance of the site plan with UDO requirements and ~~recommendation~~ from the Planning Board and holds a duly advertised public hearing in each case.
- (C) Permit Issuance
No zoning or building permit shall be issued until a special use permit for the requested use has been approved by the Elected Body ~~acting on the recommendation of the Planning Board.~~
- (D) ~~Planning Board Findings~~ **RESERVED**
~~Findings of the Planning Board accompanying a favorable recommendation shall include:~~
- ~~(1) The development is in conformity with Legacy;~~
 - ~~(2) Water and sewer service are available in adequate capacity;~~
 - ~~(3) Where buildings greater than thirty-five (35) feet in height are proposed within the City of Winston-Salem limits, there is adequate access for aerial fire fighting equipment;~~
 - ~~(4) Streets and highways, both within and in the vicinity of the development, are of such design and traffic-carrying capacity that the development will not create a traffic hazard;~~
 - ~~(5) General layout and design of the development meet all requirements of this Ordinance;~~

- ~~(6) Adequate, safe and convenient provision is made for vehicular and pedestrian movement on the site with particular attention paid to the needs of public safety equipment and personnel (fire, police, etc.) and service vehicles and personnel (sanitation, postal delivery, etc.);~~
- ~~(7) The Planning Board may recommend to the Elected Body conditions as identified in Section B.6-1.3(A)(1) for the issuance of the special use permit to reduce impacts associated with the project.~~

Submission of a Verified Motion by Proponents and Opponents of the Special Use Permit

At least seven (7) days before the Elected Body's consideration of a request for a special use permit, the proponents and the opponents may submit to the County Clerk or City Secretary's Office a written verified motion setting forth the basis for supporting or objecting to the issuance of the requested special use permit, which basis must be germane to the four findings that the Elected Body must make in the affirmative before issuing a special use permit pursuant to Section B.6-1.3(F).

The verified motion will be included in the Elected Body's agenda package for the item. The person(s) submitting the motion must be present and available to answer questions at the public hearing scheduled for the consideration of the request for a special use permit. If the person(s) filing the verified motion does not appear at the scheduled hearing, the Elected Body may refrain from considering said verified motion, but in no case shall the Elected Body base its findings solely on the verified motion.

Any motion submitted after the seven (7) day time period will be returned to the person filing the same for presentation at the public hearing, if such is desired.

- (E) Elected Body Decision
The Elected Body shall consider the matter and the recommendations **review of the site plan by** of the Planning Board and may:
- (1) Approve. Approve the application and direct issuance of the special use permit therefor;
 - (2) Approve with Conditions. Approve the application with the conditions as recommended by the Planning Board or additional conditions as specified in Section B.6-1.3(A)(1) to assure that the site will be developed in a manner conducive to the public health, safety and welfare, and direct issuance of the special use permit; or,

- (3) Deny. Deny the application.

No vote greater than a majority vote shall be required for the Elected Body to issue a special use permit. For the purposes of this section, vacant positions on the Elected Body and members who are absent or excused from voting on a special use permit shall not be considered members of the Elected Body for calculation of the requisite majority.

(F) Required Findings

The Elected Body shall issue a special use permit only when the Elected Body makes an affirmative finding as follows:

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
- (4) That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with *Legacy*.

No provision of this Ordinance shall be interpreted as conferring upon the Elected Body the authority to approve an application for a special use permit for any use unless authorized in Table B.2.6. In approving an application for the issuance of a special use permit, the Elected Body may impose additional conditions as identified in Section B.6-1.3(A)(1). If the Elected Body denies the application for the issuance of a special use permit, it shall enter the reasons for denial in the minutes of the meeting at which the action was taken.

(G) Extension of Permit

In considering any request for extension of the permit, ~~the Planning Board may recommend and~~ the Elected Body may, in the public interest, make such changes in the conditions under which the permit was granted as may be indicated by any new information relating to the property or to the use proposed.

(H) Special Use District Zoning

No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.

(I) Application Procedure for a Special Use Permit

- (1) Application and fees. Applications for Special Use Permits shall be submitted at least thirty-one (31) calendar days prior to the next regularly scheduled Planning Board meeting accompanied by a completed application form and other required information, site plans meeting the requirements for site plan submittal in Section B.7, and fees in accordance with Section B.8.
- (2) Notice. The Planning Board shall post on the property a notice of public meeting at least ten (10) days prior to the date of the meeting of the Planning Board. A sign is required on the property at a conspicuous location(s). Location(s) which are not conspicuous or require additional notification to the public, will be required to have directional sign(s) posted. Each sign(s) or each directional sign(s) will have a charge as determined by the Director of Planning. The signs are, and shall remain, the property of the governmental agency which provided them, and shall be prepared, posted and reclaimed by it. **The sign serves as constructive notice of the Elected Body public hearing. The review of the site plan by the Planning Board is NOT a public hearing.**
- (3) Advertisement. The Elected Body shall duly advertise a public hearing.
- (4) Notification to Property Owners and Adjacent Property Owners for an Elected Body Special Use Permit. Notification to property owners and adjacent property owners shall be handled as follows:
 - (1) Letters shall be sent via first class mail to the subject property owner(s) and all property owners within five hundred (500) feet of any portion of the subject property for which the Special Use Permit is requested.

Section 2. This ordinance shall be effective upon adoption.

TO: Chairman David Plyler and Members of the County Commissioners
FROM: A. Paul Norby, Director of Planning and Development Services
DATE: December 4, 2014
SUBJECT: UDO-251 – Change in role of Planning Board with regard to Elected Body Special Use Permits

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100 E. First Street
P.O. Box 2511
Winston-Salem, NC 27102
CityLink 311 (336.727.8000)
Fax 336.748.3163

This text amendment was proposed by the Winston-Salem City Attorney's Office in order to eliminate the procedural confusion that may be caused by the Planning Board conducting a public hearing and making its own findings of fact on items which require Elected Body Special Use Permit review. Items requiring Elected Body Special Use Permit review are handled by the Board of County Commissioners through a quasi-judicial process which includes sworn testimony and findings of fact.

The present UDO also calls for the Planning Board having a public hearing, but as only a recommending body, the Planning Board does not conduct the hearing in a quasi-judicial manner. This can create confusion for applicants and the public, as the hearing procedures are quite different. Also, none of the testimony given at the Planning Board public hearing and reported in the minutes attached to the staff report can be considered by the Commissioners because it is considered "hearsay" testimony. This amendment eliminates the Planning Board public hearing for such items and changes the Planning Board role to one of simply providing technical review of the site plan prior to the request going to the Commissioners for the required quasi-judicial public hearing.

UDO-251 was recommended by the City-County Planning Board in July 2014 and was modified by the City Council with assistance from the City Attorney to include a means for supporters or opponents of a proposal to express in advance of the Elected Body hearing any concerns that are relevant to the findings that the Elected Body has to make. A procedure was developed by which interested parties with standing can file a properly notarized verified motion that could be included in the agenda materials prior to the Elected Body hearing. This additional language was included in the version of UDO-251 which was ultimately adopted by the Winston-Salem City Council on December 1, 2014.

STAFF REPORT

DOCKET # UDO-251
STAFF: Chris Murphy

REQUEST

An ordinance proposed by the City Attorney’s Office amending the *Unified Development Ordinances* (UDO) to eliminate the Planning Board findings of fact requirement for Elected Body special use permits and substitute a Planning Board site plan review action.

BACKGROUND

The current requirement of sending an Elected Body special use permit (SUP) plan to the Planning Board to hold a public hearing on findings of fact different to those considered by the Elected Body in their public hearing is unnecessary (see Table below for a comparison between the “findings of fact”). There is no legal requirement for the process that is being used. The discussions, considerations and issues voiced at the Planning Board, either by the Planning Board members or others, cannot be considered by the Elected Body, as it is hearsay information (information not presented in the public hearing before the Elected Body). Additionally, the practice of holding two (2) separate public hearings and discussing two (2) different sets of findings of facts, is confusing to the citizens and leaves them without a clear understanding of where to voice their concerns.

Planning Board Findings of Fact	Elected Body Findings of Fact
<ol style="list-style-type: none"> 1. The development is in conformity with <i>Legacy</i>; 2. Water and sewer service are available in adequate capacity; 3. Where buildings greater than thirty-five (35) feet in height are proposed within the City of Winston-Salem limits, there is adequate access for aerial fire-fighting equipment; 4. Streets and highways, both within and in the vicinity of the development, are of such design and traffic-carrying capacity that the development will not create a traffic hazard; 5. General layout and design of the development meet all requirements of this Ordinance; 6. Adequate, safe and convenient provision is made for vehicular and pedestrian movement on the site with particular attention paid to the needs of public safety equipment and personnel (fire, police, etc.) and service vehicles and personnel (sanitation, postal delivery, etc.); 	<ol style="list-style-type: none"> 1. That the use will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved; 2. That the use meets all required conditions and specifications; 3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and, 4. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with <i>Legacy</i>?

7. The Planning Board may recommend to the Elected Body conditions as identified in Section B.6-1.3(A)(1) for the issuance of the special use permit to reduce impacts associated with the project.	
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ANALYSIS

The proposed text amendment eliminates the requirement for a Planning Board public hearing. In place of the public hearing, the Planning Board will conduct a “Planning Board Review (PBR)” of the site plan, certifying that the site plan meets UDO requirements and recommending additional conditions necessary to alleviate possible impacts to surrounding property owners from the proposed use. This will not be a public hearing item – the report and minutes that come out of the Planning Board meeting will center solely on compliance of the site plan to the UDO requirements and any recommended conditions of approval. As a result, there will not be any hearsay information considered by the Elected Body. This simplifies the process and places the focus of the discussion in the Quasi-judicial proceedings of the Elected Body – where they legally should be heard.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-251
JULY 10, 2014**

Chris Murphy presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Clarence Lambe moved approval of the text amendment.

SECOND: Paul Mullican

VOTE:

FOR: Unanimous

AGAINST: None

EXCUSED: None

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