

IREDELL COUNTY PLANNING & DEVELOPMENT

PLANNING STAFF REPORT

Proposed Text Amendment – Update entire code to match the new 160D enabling statutes



EXPLANATION OF THE REQUEST

Previously the enabling statutes for development regulations were split between County and City (153A and 160A). For over 5 years there has been a lot of work to consolidate these into one Chapter known as 160D. With this consolidation, there are several changes we need to make to our current Land Development Code. Originally, the State Legislation adopted these changes with an effective date of January 1, 2021. Due to Covid-19 this deadline has been extended to July 1, 2021.

Existing text that is ~~bold and with strike through~~ is text to be removed. Text in **red and underlined** is new text to be added.

STAFF COMMENTS

A majority of the amendments included in this report are just updates to General Statutes number references there are some substantive changes. Also, many of the items were already practiced but we are adding to the code for clarification. As you will notice there are numerous places where we have only had to change the Chapter references from the old 153A to the new 160D. There was also a push for uniformity in terminology and process of types of rezonings. For several items, we already have the terminology that they have set in place. Also, for types of rezonings and removing the option of conditional use rezonings, we were ahead of the game and had already removed several years ago. There are also changes or clarification in the Statutes that don't require text changes but just process changes.

Summary of Changes

- Chapter References throughout code
- Terminology updates
- Bona fide farm
- Subdivision
- Vested Right
- Variance findings of fact
- Conflict of interest
- Definitions

TEXT AMENDMENTS

Section 1.1 Purpose

This chapter sets forth general and legal details which establish the purpose, jurisdiction and applicability of the ordinance, as well as its incorporated maps. Legal provisions are included to define how this ordinance interacts with local, state, and federal laws and details the replacement of the traditional “stand alone” ordinances with a Land Development Code (LDC). The regulations contained in this ordinance address the myriad facets of land development. **These regulations shall be made in accordance with a comprehensive plan and shall** ~~They are~~ **be** designed to, among other things:

- Promote and protect the public health and general welfare, facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the community in accordance with a Comprehensive Plan,
- Establish procedures and standards for the development of land, promote orderly growth and development, coordinate new roads and highways within subdivisions, and facilitate the further re-subdivision of larger tracts into smaller parcels of land.
- Protect the public drinking water supply.
- Establish procedures to regulate certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation.

Section 1.2 Authority

Section 1.2.1 Statutory References

This ordinance is adopted pursuant to the authority contained in the following North Carolina General Statutes:

- Chapter ~~153A, Article 18, Part 3 – Zoning~~ **160D-Article 7 – Zoning Regulation**
- Chapter ~~153A, Article 18 – Planning and Regulation of Development~~ **160D-Article 5-Planning**
- Chapter 113A, Article 4, Part 60 and the North Carolina Administrative Code, Title 15A, Chapter 4 Subchapter A-E – Erosion and Sedimentation Control
- Chapter ~~153A, Article 6, Section 121, General Ordinance Authority~~, **160D-926-Water Supply Watershed Management**, and Chapter 143, Article 21, Watershed Protection Rules – Water Supply Watershed Protection Rules delegated to Iredell County by the State of North Carolina
- Chapter 63, Article 4, Model Airport Zoning Act

- Chapter 143, Article 21, Part 6; ~~Chapter 153A, Article 18, Part 3 and 4; Chapter 153 A, Article 6 Part 121 –Statutory Authorization for floodplain management regulations for participation in the National Flood Insurance Program~~ Chapter 160d-923 Floodplain Regulation

Section 1.3.6 Bona Fide Farms Exempt

The provisions of this ordinance shall NOT apply to bona fide farms including start up farms, except that a farm property used for non-farm purposes shall NOT be exempt from regulation; except that the floodplain management provisions of Appendix G of this ordinance, regulating development in the special flood hazard areas, as required for participation in the National Flood Insurance Program, shall apply to all development including bona fide farms located within the special flood hazard areas of Iredell County.

For the purposes of this ordinance, a bona fide farm is any tract or tracts of land, which meets the criteria as established in G.S. ~~153A-340(b)(2)~~ 160D-903 together with any subsequent amendments ~~and has tax deferment on the county tax records.~~

Start-up farms requesting bona fide farm status shall provide documentation that they satisfy all the requirements set forth in G.S. ~~153A-340(b)(2)~~ 160D-903 together with any subsequent amendments ~~and that they have applied for tax deferment status with the Iredell County Tax Department.~~

Section 1.6 Relationship to the 2030 Horizon Plan

This ordinance has been adopted in accordance with the Iredell County 2030 Horizon Plan. While the board reaffirms its commitment that this ordinance and any amendments to be in conformity with adopted planning policies, the board hereby expresses its intent that neither this ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document, except to the extent that consistency with the plan and ordinances that affect areas of environmental concern as required by NCGS 113A-111 (Effect of Land Use Plan).

Section 2.1 Purpose

This Chapter establishes zoning districts and identifies the uses that are permitted within each district. In accordance with the requirement of NCGS § 160A-382 160D-703 that zoning regulation be by districts, the County, as shown on the Zoning Map accompanying this Ordinance, is hereby divided into the following districts which shall be governed by all of the uniform use and dimensional requirements of this Ordinance.

R11 Temporary Family Healthcare Structure

Temporary family healthcare structures are regulated by GS ~~160A-383.5~~ 160D-915 and are allowed as accessory to a primary structure in any single-family residential district. These structures shall meet all setback requirements for the principal structure.

R13 Family Care Home and Family Day Care Home

A family care home with six (6) or fewer persons or a family day care home with eight (8) or fewer persons may be operated as an accessory use to a principal dwelling per GS 160-D-907.

Section 6.6.1 Table 6.1 Signs permitted in all Zoning Districts

Type	Permit Required	On or Off Premises	Max. Number	Max. Copy Area	Max. Display Time
Temporary Sign	No	On	1	32	Until Event is Over
Temporary Sign	No	Off	1	9	Until Event is Over
Flags (Blade Signs)	No	On	3	-	-
Incidental object or product signs	No	On	-	-	-
Construction Fence Signage	Exempt per §153A-340 <u>160D-908</u>				
Informational/Instructional	No	On	-	10	-
Political	§153A-340. Regulation of Signs <u>136-32</u>				
Home Occupations	No	On	1	3	-
Residential Development or Recreation Facility	Yes	On	2 sign faces per entrance	32	-
Non-Residential Uses Permitted in Residential Districts*	Yes	Off	2	*	-

Section 8.5 Subdivision Defined

For purposes of this Ordinance, the word "subdivision" is defined in NCGS ~~153A-335~~ 160D-801 and shall mean 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 ~~are is~~ created for the purpose of sale or building development, (whether immediate or future), and ~~shall~~ includes all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included with the definition nor be subject to the regulations authorized by the Article: ~~However, the following is NOT included within this definition and is NOT subject to any regulations enacted pursuant to this Ordinance:~~

- A. The combination or recombination of portions of previously subdivided and recorded lots, if where the total number of lots is NOT increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.
- B. The division of land into parcels greater than ten (10) acres if where no street right-of-way dedication is involved.
- C. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where, the entire area of which is no greater than two (2) acres, in single ownership into NOT more than three (3) lots, if no street right-of-way dedication is involved and if where the resultant lots are equal to or exceed the standards of Iredell County as shown in this Ordinance.
- E. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate session under Chapter 29 of the General Statutes.

Section 8.14 Zoning Permit with Vested Rights

It is recognized that it is necessary and desirable as a matter of public policy to:

1. Provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process, and
2. Secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation.

The following section is provided based on G.S. 160D-108 and is referenced for additional clarification.

Permit Choice:

If a development permit applicant submits a permit application for any type of development and a regulation is amended, including an amendment to any applicable land development regulation, between the time the permit application was submitted and a decision is made, the application may choose which version of the rule or ordinance will apply to the permit. An applicant can choose which version of code regulations to follow when a change to the code has been made after an application has been filed with the County (160D-108(b)).

Statutory vesting

1. Six months

Building permits pursuant to G.S. 160D-1109 expire six months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.

2. One year

Other local development approvals pursuant to G.S. 160D-403(c), unless otherwise specified by statute or local ordinance expire one year after issuance unless work has substantially commenced. Expiration of a local development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.

3. Two to five years

Site-specific vesting plans. A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by Iredell County. Site-specific vesting plans shall be vested for a period of two years but not exceed five years.

4. Seven years

Multi-phase developments – Shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinance in place at the time a site plan approval is granted for the initial phase of the multiphase development. For the purpose of this section, multi-phase developments are those that contain 25 acres or more that have submitted for development to occur in more than one phase and subject to a master development plan with committed elements showing the type and intensity of use of each phase.

In any case where ~~the an~~ applicant ~~for a Zoning Permit~~ desires to obtain a ~~vest right as~~ site-specific vesting plan authorized by NCGS ~~153A-344.1~~ 160D-108 the applicant shall submit a site specific development plan consistent with Article XIV shall be subject to Public Hearings by the Planning Board and Board of Commissioners as follows:

A. Public Hearing

Notice of any Planning Board public meeting or Board of Commissioners public hearing shall be given as follows:

1. A notice shall be published in a newspaper having general circulation in Iredell County once a week, for two (2) successive weeks, the first notice to be published NOT less than ten (10) days nor more than twenty-five (25) days prior to the date established for the Board of Commissioners public hearing.
2. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the Planning Board Meeting.
3. A notice of the public hearing shall be sent by first class mail by the Planning Department to all adjoining property owners at least ten (10) days prior to the Planning Board meeting and the Board of Commissioners public hearing.

B. Planning Board Review and Recommendation

Once the public meeting has been conducted, the Planning Board shall be given an opportunity to review the application and make a recommendation to the Board of Commissioners. The Planning Board shall have up to forty-five (45) days from the date the public meeting was concluded to make such recommendation. Alternatively, the Planning Board could request additional information of the applicant in order to aid them in their review of the application. If no recommendation is made during said forty-five (45) day period (except as herein provided) the application shall forthwith be forwarded to the Board of Commissioners.

C. Board of Commissioners' Action

Once the public hearing has been conducted and concluded, the Board of Commissioners shall determine whether or not to approve the site-specific **development vesting** plan and accord the vested right. In approving an application for vested rights of a site specific development plan, the Board of Commissioners may attach fair and reasonable ad hoc conditions which tend to support the required finding of facts as herein listed. The petitioner shall be given reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Commissioners. The Board of Commissioners may NOT require the landowner to waive his vested right as a condition of developmental approval.

The Board of Commissioners may approve the site specific development plan if it has evaluated an application and determined that:

1. The use meets all required specifications of the Zoning Ordinance, and
2. The use will NOT materially endanger the public health or safety and will NOT substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the site specific development plan by the Board of Commissioners shall be adequate to meet this requirement.
3. The site specific development plan is vested for a period of greater than two (2) years, this shall be based on one or more factors so described in Section 8.16 D.

The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the site plan would be contrary to one or more of these findings) shall rest entirely with the landowner.

D. Effect of Approval

The effect of the Board of Commissioners approving a site-specific development plan shall be to vest such site plan for a period of two (2) years from the date of approval. If the landowner requests, however, the Board of Commissioners may approve a vesting period NOT to exceed five (5) years from the date of approval. The vesting of any site plan beyond a two (2) year period may only be authorized by the Board of Commissioners where it is found that due to (i) the sizing and phasing of the development; or (ii) the level of investment; or (iii) the need for the development; or (iv) economic cycles; or (v) market conditions, **and other considerations building permits for all phases of the development cannot be secured within two years.**

A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the vested right previously accorded.

A vested right, once established as herein provided, shall preclude any zoning action by the County which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development except under the following conditions:

1. The affected landowner provides written consent to the County of his desire to terminate the vested right; or,
2. The County determines, after having advertised and held a **public evidentiary** hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the ~~site specific development plan~~ **vested right**; or,
3. Compensation is made by the County to the landowner for all cost, expenses, and other losses incurred including, but NOT limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest ~~thereon at the legal rate until paid~~ **as provided in G.S. 160D-106**; or,
4. The County determines, after having advertised and held a ~~public evidentiary~~ hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations ~~which that~~ made a difference in the approval by the County of the ~~site specific development plan~~ **vested right**; or
5. Upon the enactment or promulgation of a State or Federal law or regulations ~~which that~~ precludes development as contemplated in the ~~site specific development plan~~ **vested right**. In such case the County may (after having advertised and conducted a **public evidentiary** hearing) modify the affected provisions upon a finding that the change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular site specific development plan, nothing in this section shall preclude the County from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are NOT inconsistent with the original approval.

E. Minor Modifications

A site specific development plan may be modified to the extent that changes in detail which do NOT change the basic relationship of the conditions set forth by the Board of Commissioners. Changes in detail which may be modified shall include, but NOT be

limited to the reduction in square footage of buildings and signs, and the reduction in the number of buildings or lots.

Application for a minor modification shall include a new site specific development plan and a detailed description of the proposed changes. The Planning Director may authorize minor modifications to the site specific development plan. Any applicant may appeal the decision of the Planning Director to the Board of Commissioners. In no case shall a minor modification extend the approved vesting period for the site specific development plan.

F. Revocation or Expiration of a Vested Right

The vested right resulting from the approval of a site specific development plan may be revoked by the Board of Commissioners as provided for in this Section. In addition, a revocation may occur if the Board of Commissioners determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Zoning Ordinance. The vested right shall otherwise expire at the end of the approval period established by the Board of Commissioners.

G. Revocation of Building Permit

A building permit issued by Iredell County pursuant to ~~G.S. 15A-357~~ may NOT be revoked because of the running of time on a piece of property for which a site specific development plan has been approved and the vested right period has NOT otherwise expired.

H. Amendments to the Zoning Ordinance

The establishment of a vested right on a piece of property for a site specific development plan shall NOT preclude the County from establishing and putting into place one or more overlay districts which may impose additional restrictions on said property, provided such restrictions do NOT affect the allowable type or intensity or use. Otherwise such regulations shall become effective with respect to the subject property upon the expiration or termination of the vested right. The County may also enforce on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.

Section 9.2.3 Board Decisions

The following details the different types of board decisions that are required to be obtained by this ordinance. They are broken into two categories, legislative and quasi-judicial.

A. Legislative Decisions

These types of decisions set general policies. Decisions to adopt, amend, or repeal an ordinance (including the zoning map) fall into this category. There are detailed statutory procedural requirements for legislative decisions, however the decision itself is often

discretionary. A public hearing is required to make a legislative decision, with the intent being to gain public opinion on the decision being made. The only site plan that may require a legislative decision is a Conditional Zoning request or Expansion of a Non-Conforming Use, ~~which is detailed below.~~

1. Conditional Zoning:

All Conditional Zoning applications may include a conceptual site plan, drawn to scale, and supporting text that, if approved, will become part of the amendment. The site plan must include any supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that in addition to all predetermined ordinance requirements, will govern the development and use of the property. In addition, if only rezoning a portion of a parcel, a plat must be provided, drawn to scale, showing the bearings and distances of the portion requested. The site plan, including the information detailed below shall constitute part of the petition for rezoning to a conditional zoning district.

2. Expansion of a Non-Conforming Use:

The applicant must submit a site plan, drawn to scale, that will provide an adequate amount of information to make a determination on the viability of the expansion request. It is recommended that the applicant provide a site plan that includes the items listed in 9.2.1, therefore if the request is approved it can then move forward to permitting.

B. Quasi-Judicial Decisions

These decisions include the application of specific policies to individual situations rather than the adoption of new policies and are generally heard by the Board of Adjustment. These decisions contain two key elements, the finding of facts regarding a specific proposal and the exercise of judgment or discretion in applying the policies of this ordinance.

~~1. **Expansion or Change in Kind of a Non-Conforming Use:**~~

~~The applicant must submit a site plan, drawn to scale, that will provide an adequate amount of information to make a determination on the viability of the expansion request. It is recommended that the applicant provide a site plan that includes the items listed in 9.2.1, therefore if the request is approved it can then move forward to permitting.~~

Section 11.4 Planning Board Action

The Zoning Administrator shall present any properly completed application for amendment to the Planning Board at its next regularly scheduled meeting. The Planning Board shall hold a public meeting on the proposed amendment. Notice of the public meeting shall be given in accordance with the Board's rules.

All text amendments to this Ordinance will require at least two Planning Board meetings. At the first meeting the amendments will be presented for information only. At the second meeting the amendment will be brought back for a recommendation.

All zoning map amendments will first be presented and up for recommendation from the Planning Board at the same meeting.

The Planning Board shall either recommend in favor of an amendment or in opposition to an amendment by simple majority vote of those present and voting. **When recommending an amendment to the zoning ordinance, the Planning Board must adopt a brief statement of reasonability describing whether the action is consistent or inconsistent with approved plans.** If the request is for a Conditional Zoning District, the Board may also propose conditions to their recommendation. A tie vote on a proposal shall be considered to be in opposition to such amendment. If the Planning Board fails to act on any proposed amendment within thirty one (31) days, or two regular meetings, after it is presented to the Board such failure to act (which includes tabling the item) shall be considered to be a favorable recommendation for the purposes of this procedure.

Section 11.5.2 Public Hearings

- A. Zoning amendment applications which are initially signed by less than eighty percent (80%) of the owners of all the property involved in the petition shall be placed on the Board of Commissioner's next available agenda for the consideration of setting a public hearing on the matter at a future meeting.
- B. Zoning amendment applications which are initially signed by eighty percent (80%) or more of the owners of all the property involved in the petition shall be placed on the Board of Commissioners agenda for a public hearing on the matter.
- C. No zoning amendment shall be adopted until after a public hearing shall have been held on the matter. Notice of public hearing shall be given as required by NCGS 153A, Article 18, Part 3 (Zoning). The Board of Commissioners shall take such lawful action on such amendment applications as it may deem advisable. Failure of the Board of Commissioners to set a public hearing on an amendment application shall constitute denial of that application.
- D. **When recommending an amendment to the zoning ordinance, the Board of Commissioners must adopt a statement of reasonability describing whether the action is consistent or inconsistent with approved plans.**

Section 11.6 Conditional Zoning Districts

- A. Intent

The conditional zoning districts included herein allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by **general conventional** district regulations. In addition, circumstances arise when a **general conventional** zoning district designation would NOT be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process.

G. Effect of Approval

If a petition for conditional zoning district is approved the development and use of the property shall be governed by:

1. The standards and regulations applicable to the district's zoning classification;
2. The approved site plan for the district;
3. Any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district; and
4. All general and additional rules, regulations and conditions adopted as part of the conditional zoning district shall be an amendment to these regulations and the Zoning Map.
5. **The County must obtain the applicant's/landowner's written consent and/or signature to conditions related to a conditional zoning approval to ensure enforceability.**

I. Determination – Major Change Requiring an Amendment

Before making a determination as to whether a proposed action is an amendment based upon a major change, the Planning Director shall review the record of the proceedings on the original application for the approval of the conditional zoning district.

1. A change in a specific or general use category shall constitute a new application.
2. The Planning Director shall use the following criteria in determining whether a proposed change is an amendment constituting a major change to the approved conditional zoning district:
 - a. An increase in intensity of use which means an increase in:
 - i. Usable floor area ~~by ten percent (10%) or more~~; or
 - ii. Number of dwelling or lodging units ~~ten percent (10%) or more~~; or
 - iii. Outside land area devoted to sales, displays, or demonstrations.
 - b. Any change in use resulting in a more intensive use;

- c. Any change in parking areas resulting in an increase or reduction of ten percent (10%) or more in the number of spaces approved by the Board of Commissioners;
 - d. Structural alterations significantly affecting the basic size, as shown on the approved plan;
 - e. A ten percent (10%) or more decrease in the amount or location of open space, recreation facilities, or landscape screening; and
 - f. Substantial changes in pedestrian or vehicular access or circulation.
3. If the Planning Director determines that the proposed action requires an amendment, he shall require the applicant to file a request for approval of the amendment, which shall be submitted to the Planning Board and Board of Commissioners under the process described in this article.

J. Minor Changes and Modifications

The Planning Director shall have the delegated authority to approve minor changes in the conditional zoning district provided they are in harmony with the action of the Board of Commissioners. A minor change shall mean:

- 1. Any change in location or any increase in the size or number of signs;
- 2. Any change in use resulting in a less intensive use;
- ~~3. Increases the intensity of nonresidential development by less than ten percent (10%) or 1,000 square feet, whichever is less;~~
- ~~4. Any change(s) that increases the density of residential development by less than ten percent (10%);~~
- 5. Any time an applicant agrees to impose standards that are more stringent than those previously approved by the Board of Commissioners; or
- 6. All other changes or modifications to the conditional zoning district shall be treated the same as amendments to these regulations or the zoning map.

Section 12.1.1 General Rules

The Zoning Board of Adjustment shall be governed by the terms of Chapter ~~153A, Article 18, Part 3~~ **160D-302** of the North Carolina General Statutes and by the Iredell County Zoning Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws.

Section 12.1.4 Rules of Conduct for Members

- A. Members of the Board may be removed for cause, including violation of the rules stated below.

- B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members. This is a pre-requisite to continue membership of the Board.
- C. No Board member shall take part in the hearing or determination in which he/she has a financial interest, fixed opinion, undisclosed outside contact, close family tie, ~~or~~ close business tie or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

Section 12.1.8 Decisions

A. Evidence

Quality evidence must be in the hearing to support the Board's final decision from an appeal, or application for variance or special use permit.

1. Substantial, competent, and material facts / evidence is needed to support the Board's findings.
2. Hearsay – Hearsay is admissible, however, hearsay evidence cannot be the sole basis for a crucial findings of fact. Crucial findings of fact include those that are contested.
3. Opinion Testimony by Expert – The Board is interested in fact NOT opinion, however, opinions offered by experts are an exception to this rule.

B. Time

Decisions by the Board shall be made NOT more than thirty-six (36) days from the time of hearing the case. 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.

Section 12.1.9 Stay of Proceedings

An appeal stays all proceedings and accrual of any fines assessed in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board of Adjustment that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall NOT be stayed except by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, of notice from whom the appeal is taken and on due cause shown.

Section 12.3.3 Variances

The Board may authorize variances from the terms of the Ordinance as will NOT be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

A. Zoning and Subdivision Requirements

These requirements shall apply to all regulations in the following areas:

- Zoning
- Subdivision
- Watershed
- Airport

The Board of Adjustment shall make the findings required below, taking into account the nature of the proposed request, the existing use of land in the vicinity and the probable effect of the proposed request upon traffic conditions in the vicinity, if applicable. No variance shall be granted unless the Board of Adjustment finds all of the following in the affirmative:

1. ~~That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would cause an unnecessary hardship;~~ Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. ~~That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this Ordinance;~~ The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a

reasonable accommodation under the Federal Fair Housing Act for a person with a disability;

3. ~~That the hardship suffered is NOT a result of the applicant's or property owner's own actions;~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-creating hardship; and
4. ~~That the granting of the variance will be consistent with the spirit, purpose, and intent of the Ordinance, such that the public safety is secured and substantial justice is achieved.~~ The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Section 12.3.4 Special Use Permits

The Board shall hear special use permit request to determine whether appropriate conditions and safeguards, as authorized in Chapter 2, are met. ~~In granting a Special Use Permit the Board shall make the following affirmative findings:~~

- A. ~~That the Special Use will NOT materially endanger the public health or safety, if located where proposed and developed according to the plan as proposed;~~
- B. ~~That the Special Use meets all required conditions and specifications;~~
- C. ~~That the Special Use will NOT substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and~~
- D. ~~The Special Use will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the county~~

A. In granting a Special Use Permit the Board shall make the following affirmative findings:

1. That the Special Use will NOT materially endanger the public health or safety, if located where proposed and developed according to the plan as proposed;
2. That the Special Use meets all required conditions and specifications;

- 3. That the Special Use will NOT substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and**
 - 4. The Special Use will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the county**
- B. In granting a Special Use Permit, the Board may impose such additional restrictions and requirements upon such Permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the Special Use Permit, otherwise the Permit shall be denied. Any Special Use Permit so authorized shall be perpetually binding upon the property included in such Permit unless subsequently changed or amended by the Board, as provided for in this Chapter.**
- C. The Board may change or amend any Special Use Permit, after a public hearing and subject to the same consideration as provided for in this Chapter for the original issuance of Special Use Permit.**

No proposal to amend or change any Special Use Permit shall be considered within twelve (12) months of the date of the original authorization of such Permit or within twelve (12) months of hearing of any previous proposal to amend or change any such Permit.

D. Minor Changes & Modifications

The Planning Director shall have the delegated authority to approve minor changes on the site plan for Special Use Permits provided they are in harmony with the action of the Board of Adjustment. A minor change shall mean:

- 1. Movement of structures, parking areas, or other activity areas provided they are not closer to an existing residence or one under construction;**
- 2. Changes in landscaping types provided they have not been worked out by neighbors or conditions of approval and they meet the requirements in Chapter 5;**
- 3. Changes in location of the driveway connection provided it is not closer to an existing residence or one under construction and it meets the requirements in Chapter 10. If NCDOT requires the change, then this section may not apply.**

Section 13.2 Powers and Duties of the Planning Board

The Planning Board is responsible for the following:

- A. Make studies and recommend to the Board of Commissioners plans, goals and objectives relating to the growth, development and redevelopment of the County;

- B. Develop and recommend to the Board of Commissioners policies, Ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
- C. Make recommendations to the Board of Commissioners concerning proposed Zoning Map and Land Development Code text changes (per 160D-604); enlargement of non-conforming uses; vested rights requests; and,
- D. Perform any other duties assigned by the Board of Commissioners.

Section 13.4.2 Conflict of Interest

A. Participation Prohibited

No member of the Board shall seek to influence a decision, participate in any action, or cast a vote involving any matter that is before the Board which may result in a conflict of interest as provided by State law. A conflict of interest is deemed where the outcome of a matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Furthermore, a member shall not vote on any zoning amendment 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 (GS 160D-109).

Section 16.4 Definitions

Bona Fide Farm. Bona Fide Farm. The production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products and as provided for in G.S. ~~153A-340(b)(2).~~ 160D-903.

Dwelling, Single-Family Detached (Conventional or Modular). A detached building constructed on-site or in industrialized modules in compliance with the North Carolina State Building Code and designed for or occupied exclusively by one family and which is completely surrounded by permanent open space.

Dwelling, Two Family. A detached residential building arranged or designed to be occupied by two (2) families living independent of each other. (See Section 3.1 R 7)

Dwelling, Multi-Family. A detached building constructed on-site in compliance with the North Carolina State Building Code and designed for three (3) or more dwelling units. (See Chapter 3, R 7)

Dwelling Unit. A room or combination of rooms providing complete independent living facilities including permanent provisions for living, eating, sleeping, cooking, and sanitation. The term "dwelling" shall not be deemed to include a motel, hotel, bed & breakfast, travel trailer, or other structure designed for transient travel.

APPENDIX G FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A~~ Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the **responsibility authority** to adopt regulations designed to promote the public health, safety, and general welfare.

ARTICLE 2. DEFINITIONS.

“Map Repository” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM’s Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

ARTICLE 3. GENERAL PROVISIONS.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated November 16, 2018 for Iredell County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions there to. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of Iredell County are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

(16) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.

~~(16)~~ (17) Fill is prohibited in the SFHA including construction of buildings on fill. This includes not approving Conditional Letters or Letters of Map Revision – Based on Fill (CLOMR-F or

LOMR-F) for new development. Road and utility infrastructure projects are exempt from this provision.

SECTION B. SPECIFIC STANDARDS.

(10) Other Development.

- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.
- (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (d) **Commercial storage facilities are not considered “limited storage” as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.**

ACTION NEEDED:

TO APPROVE: Motion to recommend approval of the zoning text amendments and to make a finding that the approval is consistent with the adopted 2030 Horizon Plan and that said approval is reasonable and in the public interest and furthers the goals of the 2030 Horizon Plan because it aligns our regulations with required legislative updates.

TO DENY: Motion to deny the zoning text amendments and to make a finding that the denial is inconsistent with the adopted 2030 Horizon Plan, said denial is reasonable and in the public interest and does not further the goals of the 2030 Horizon Plan because....