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# ZEBULON

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NORTH CAROLINA

**TOWN OF ZEBULON  
JOINT PUBLIC HEARING AGENDA  
BOARD OF COMMISSIONERS AND PLANNING BOARD  
April 19, 2021  
7:00pm**

Due to COVID-19 we will be taking public hearing comments in writing. Comments will be read into the record at the meeting. Please get all comments of 400 words or less to the Deputy Town Clerk – Stacie Paratore (sparatore@townofzebulon.org) by 12:00pm on April 19, 2021.

**I. CALL TO ORDER**

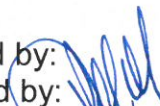
**II. PUBLIC HEARING**

- A. *TA 2021-02 160D Text Amendments.*** A staff-initiated request to amend Chapters 95, 151, of 153 of the Zebulon Code of Ordinance and the Zebulon UDO to conform to NCGS 160D.

**III. ADJOURNMENT**

STAFF REPORT  
TEXT AMENDMENT 2021-2 – 160D  
JOINT PUBLIC MEETING  
APRIL 19, 2021

**Topic: TA 2021 –02 Required Text Amendments 160-D**

Speaker: Michael J. Clark, AICP, CZO, Planning Director  
From: Michael J. Clark, AICP, CZO, Planning Director  
Prepared by: Michael J. Clark, AICP, CZO, Planning Director  
Approved by:  Joseph M. Moore II, PE, Town Manager

**Executive Summary:**

The Board of Commissioners will consider text amendments to the Unified Development Ordinance and the Zebulon Code of Ordinances necessitated by adoption of North Carolina General Statute 160D.

**Background:**

The State of North Carolina formerly regulated land use and planning through chapters 153 and 160A of the General Statutes. Chapter 153 regulated land under county jurisdiction and Chapter 160A regulated land under municipal jurisdiction. Session Law 2020-25 unified the regulation of land use and planning with the creation of Chapter 160D. All jurisdictions must modify their applicable land use and planning ordinances to reference Chapter 160D no later than July 1, 2021.

The attached text amendments reflect the modification of Zebulon's land use and planning ordinance to reference Chapter 160D. Staff intends to present the text amendments for Board consideration at their Regular Meeting on May 3, 2021. A public hearing and Planning Board recommendation is required in advance of Board consideration.

**Discussion:**

The discussion before the Board of Commissioners is to consider applicable public comment and refer the text amendments for Planning Board review and recommendation.

**Policy Analysis:**

North Carolina's cities gain their authority to act (e.g., provide services, regulate activities, raise revenues) from the North Carolina General Assembly. Zebulon's land use and planning ordinances must reflect Chapter 160D to have statutory backing and authority.

**Financial Analysis:**

Land use and planning ordinances absent statutory backing lack enforcement authority on development projects and code cases.

**Staff Recommendation:**

Staff Recommends the Board of Commissioners take any applicable public comment and refer the matter to the Planning Board for review and recommendation.

**Attachments:**

1. Proposed text amendments

# Town of Zebulon Code of Ordinances:

## § 95.01 DEFINITIONS.

PUBLIC NUISANCE TO HEALTH AND SAFETY. The existence of any of the following conditions on any vacant lot or other parcel of land within the corporate limits of the town which is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

(10) The Planning Department shall make inspections as are necessary to determine whether the noxious weeds and tall grass constitute a public nuisance. If a violation is found to exist on the property, the enforcement rules and procedures as listed within ~~Title XV, Land Use, Chapter 152, Zoning Code, Article VI, Enforcement~~[the Town of Zebulon Unified Development Ordinance and Review](#), of the Town of Zebulon Code of Ordinances shall be adhered to.

## § 151.02 AUTHORITY.

The Town Board is authorized to adopt ~~tins-this~~ ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; the Charter of the Town of Zebulon; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter ~~160A~~[160D](#), §§ 174, and 185.

(Ord. 2010-27, passed 1-6-2010)

## § 153.02 PURPOSE AND SCOPE.

(A) In order to protect the health, safety and welfare of the residents of the town and its extraterritorial area as authorized by G.S. Ch. ~~160A, Art. 19 Part 6,~~[160D, Art 12](#) it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. § ~~160A-444.~~[160D-1205](#)

(B) The provisions of this chapter shall apply to all existing housing and to all housing hereafter constructed within the Town of Zebulon and its extraterritorial jurisdiction as shown on the official extraterritorial boundary map recorded with the Register of Deeds of Wake County. This chapter establishes minimum requirements for the initial and continued occupancy of all buildings and structures used for human habitation, and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this chapter.

(1985 Code, § 153.02)

## § 153.31 COSTS, A LIEN ON PREMISES.

As provided by G.S. § ~~160A-432~~[160D-1125](#), the amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the Building Inspector pursuant to § 153.30 of this chapter shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be enforced and the costs collected as provided by [G.S. Ch. 160A, Art 10.](#)[G.S. 160D-1125.](#)

## UNIFIED DEVELOPMENT ORDINANCE:

### 1.3.2 North Carolina General Statutes:

The North Carolina General Statutes, including:

Chapter 160A, Article 8 (Police Powers);

Chapter 160A, Article 15 (Streets, Traffic, and Parking);

Chapter ~~160A, Article 19~~ [160D](#) -(Planning and Regulation of Development);

Chapter 143, Article 21 (Water and Air Resources); and

Chapter 113A, Article 4 (Sedimentation and Pollution Control).

### 1.6.2 CONFORMANCE

#### ADVISORY

Adopted policy guidance is advisory in nature and does not carry the effect of law. Except as provided in Section ~~160A-382~~ [160D-605](#) and ~~Section 160A-383~~ of the North Carolina General Statutes, consistency with adopted policy guidance shall not be a requirement for the continuing validity of any provision of this Ordinance.

#### CONSISTENCY

This Ordinance is intended to promote development that is consistent with the goals, objectives, policies, strategies, and actions contained in the Town's adopted policy guidance.

Consistency between a decision made under this Ordinance and the Town's adopted policy guidance is desirable, but is not a legal requirement.

Decisions on applications for amendments to the text of this Ordinance or to the Official Zoning Map shall be accompanied by a statement of consistency recognizing if the proposed decision is or is not consistent with the Town's adopted policy guidance in accordance with Section ~~160A-383~~ [160D-605](#) of the North Carolina General Statutes.

### 2.2.2 Annexation:

#### D. APPLICATION SUBMITTAL

1. The annexation petition shall be signed by all the owners of land proposed for annexation.
2. An annexation petition shall include a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under Section ~~160A-385.1~~ [160D-108](#) of the North

Carolina General Statutes.

#### G. ANNEXATION REVIEW STANDARDS

Approval of an annexation is a matter committed to the legislative discretion of the Town Board of Commissioners. The voluntary annexation petition may be approved upon a finding the petition complies with all the standards in Section 160A-31 or Section 160A-58 in the North Carolina General Statutes, as appropriate, and:

### 2.2.3 Appeal

#### J. APPEAL

1. Any decision by the BOA shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ [160D-1402](#) of the North Carolina General Statutes.

## 2.2.4 Building Permit

### F. BUILDING PERMIT REVIEW STANDARDS

A building permit shall be issued if the application complies with:

1. The applicable sections of the State Building Code(s);
2. The standards in Section ~~160A-417~~[160D-403](#) of the North Carolina General Statutes;
3. Any applicable requirements of the Wake County Environmental Services Department;
4. The site plan, if applicable;
5. The zoning compliance permit;
6. All other standards or conditions of any prior, applicable permits, and development approvals;  
and
7. All other applicable requirements of this Ordinance, the Town Code of Ordinances, state law, and federal law.

### H. APPEAL

1. An appeal of a decision on a building permit may be filed with the North Carolina Commissioner of Insurance, in accordance with Section ~~160A-434~~[160D-1127](#) of the North Carolina General Statutes.
2. Appeal of decisions on building inspections shall be made to the Wake County Permits and Inspections Department in accordance with their procedures and requirements.

## 2.2.5 Certificate of Occupancy

### J. APPEAL

1. Appeal of decisions on certificates of occupancy shall be made to the Wake County Permits and Inspections Department in accordance with their procedures and requirements.
2. An appeal pertaining to a State Building Code(s) issue shall be filed with to the North Carolina Commissioner of Insurance in accordance with Section ~~160A-434~~[160D-1127](#) of the North Carolina General Statutes.

## 2.2.6 Conditional Rezoning

### B. APPLICABILITY

This procedure sets out the requirements for amendments to the zoning district designation of land within the Town's planning jurisdiction as well as for land coming into the Town's planning jurisdiction via annexation in accordance with the ~~standards in Sections 160A-382 through 160A-385~~[Section 160D-703](#) of the North Carolina General Statutes.

## 2.2.7 Development Agreement

### B. APPLICABILITY

1. At the request of an applicant, the Board of Commissioners may enter into a development agreement with a developer for a development of any size and for any duration, provided the duration is specified in the agreement.
2. All development agreements shall be subject to Sections ~~160A-400.22 through 400.32~~[160D-1001-160D-1012](#) of the North Carolina General Statutes, and the provisions of this section.

## **2.2.8 Exempt Subdivision**

### **A. PURPOSE AND INTENT**

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to determine and document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section ~~160A-376~~ [160D-802](#) of the North Carolina General Statutes. Exempt subdivision reviews are provided as a courtesy, and may not be mandated by the Town.

### **E. EXEMPT SUBDIVISION REVIEW STANDARDS**

A division of land shall be certified as an exempt subdivision if it:

1. Is excluded from the definition of a subdivision in accordance with Section ~~160A-376~~ [160D-802](#) of the North Carolina General Statutes;
2. Complies with all applicable standards in Article 3: Districts;
3. Complies with all standards or conditions of any applicable permits and development approvals; and
4. Complies with all other applicable requirements in the Town Code of Ordinances.

## **2.2.18 Special Use Permit**

### **K. APPEAL**

1. A decision by the BOC on a special use permit shall be subject to review by the Superior Court of Wake

County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ [160D-1402](#) of the North Carolina General Statutes.

2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

## **2.2.21 Variance**

### **M. APPEAL**

1. Any decision by the BOA shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari and in accordance with Section ~~160A-393~~ [160D-1402](#) of the North Carolina General Statutes.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

## **2.2.22 Vested Rights Determination**

### **B. APPLICABILITY**



1. A vested right may be established, in accordance with Section ~~160A-385.1~~[160D-108](#) of the North Carolina General Statutes, and this section.
2. A vested rights determination shall be limited to development included in a site specific development plan. For the purposes of this section, a site specific development plan shall be limited to any one of the following development approvals:
  - a. Special use permits;
  - b. Preliminary plats;
  - c. Planned developments; or
  - d. Site plans.
3. An application for a vested rights determination shall be processed concurrently or after the approval of a special use permit, preliminary plat, planned development, or site plan.

#### F. EFFECT

1. A vested rights certificate shall be approved prior to issuance of a building permit.
2. Each document used to establish a site specific development plan shall bear the following notation:
 

“Approval of this plan establishes a zoning vested right under Section ~~160A-385.1~~[160D-108](#) of the North Carolina General Statutes. Unless terminated at an earlier date, the vested right shall be valid until \_\_\_\_\_(date).”
3. The establishment of a vested right shall not preclude the application of overlay zoning district provisions that impose additional requirements but do not affect the allowable type and intensity of use, or through ordinances that are general in nature and are applicable to all property subject to land use regulation by the Town, including building, fire, plumbing, electrical, and mechanical codes.

### 2.2.24 Zoning Map Amendment

#### B. APPLICABILITY

This procedure sets out the requirements for amendments to the zoning district designation of land within the Town’s planning jurisdiction as well as for land coming into the Town’s planning jurisdiction via annexation in accordance with the standards in Sections ~~160A-382 through 160A-385~~[160D-602 through 160D-605](#) of the North Carolina General Statutes.

### 2.3.6 Public Notice

#### C. PUBLIC NOTIFICATION REQUIREMENTS

1. All development applications subject to public notification shall comply with the appropriate standards in the North Carolina General Statutes. More specifically, Section ~~160A-364~~[160D-601\(a\)](#) for published notice, Section ~~160A-384(a)~~[160D-602\(a\)](#) for mailed notice, and Section ~~160A-384(c)~~[160D-602\(c\)](#) for posted notice.

#### D. PUBLISHED NOTICE REQUIREMENTS

1. When the provisions of Section ~~160A-364~~[160D-601](#) of the North Carolina General Statutes require that public notice be published, the designated review authority shall publish a notice in a newspaper that is regularly published at least one time per week and that has general circulation in the Town.

2. The content and form of the notice shall comply with the applicable requirements in the North Carolina General Statutes.

#### **E. MAILED NOTICE REQUIREMENTS**

When the provisions of Section ~~160A-384(a)~~[160D-602\(a\)](#) of the North Carolina General Statutes require that public notice be mailed, the designated review authority shall provide the required mailed public notice in accordance with the following:

1. Mailed notice specified in Table 2.3.6.C, Public Notification Requirements, shall be mailed to:
  - a. The applicant, if different from the landowner; and
  - b. All landowners entitled to receive notice in accordance with Section ~~160A-384(a)~~[160D-602\(a\)](#) of the North Carolina General Statutes, as well as Town policy, whose address is known by reference to the latest county tax listing.
2. Notice shall be deemed mailed by its deposit in the United States first class mail, properly addressed, postage paid. The content and form of the notice shall comply with Section 2.3.6.G, Notice Content, and Section ~~160A-384(a)~~[160D-602\(a\)](#) of the North Carolina General Statutes.
3. A copy of the mailed notice shall be maintained in the offices of the designated review authority for public inspection during normal business hours.
4. Mailed notice shall not be required when a zoning map amendment includes more than 50 lots or tracts owned by at least 50 different landowners, provided the Town publishes a map (occupying at least ½ of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two successive calendar weeks between 10 days and 25 days before the public hearing. Affected landowners residing outside the newspaper circulation area shall be notified via first class mail pursuant to Section 2.3.6.E, Mailed Notice Requirements.

#### **F. POSTED NOTICE REQUIREMENTS**

When the provisions of Section ~~160A-384(e)~~[160D-602\(c\)](#) of the North Carolina General Statutes require that public notice be posted, the Planning Director shall provide the required posted public notice in accordance with the following:

1. A sign (or signs) shall be placed on the subject property in a conspicuous location so as to be clearly visible to the traveled portion(s) of the respective street(s). Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way.
2. The content and form of the notice shall comply with Section 2.3.6.G, Notice Content, and Section ~~160A-384(e)~~[160D-602\(c\)](#) of the North Carolina General Statutes.

### **2.3.7 Public Hearings and Meetings**

#### **B. LEGISLATIVE PUBLIC HEARINGS**

Table 2.2, Application Review Procedures, identifies the kinds of development applications decided following completion of a legislative public hearing, which shall be conducted in accordance with the following requirements:

##### **1. PROCEDURE**

- a. Legislative public hearings shall not be conducted until

##### **2. VOTING**



- a. The Board of Commissioners shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section 2.2, Application Review Procedures.
- b. A Board of Commissioners member shall not vote on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member in accordance with Section ~~160A-381(d)~~ [160D-109](#) of the North Carolina General Statutes.
- c. A decision of the Board of Commissioners on an application shall be decided by a simple majority of the Board of Commissioners, excluding any members who are recused from voting due to a conflict of interest.

### 3.3.7.C QUASI-JUDICIAL PUBLIC HEARINGS:

Table 2.2, Application Review Procedures, identifies the kinds of development applications decided following a quasi-judicial public hearing, which shall be conducted in accordance with ~~state law~~ [G.S.160D-406](#), the review authority's rules of procedure, and the following requirements:

#### 1. NOTICE REQUIRED

Quasi-judicial public hearings shall not be conducted until after provision of required public notification in accordance with Section 2.3.6, Public Notice.

#### 2. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

[a. Parties with standing may participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments;](#)

[b. Non-parties may present competent, material, and substantial evidence that is not repetitive subject to the approval of the chairperson. ~~Any party in attendance shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of or cross-examine the applicant, the applicant's representatives, Town staff, and the Town staff's representatives.~~](#)

#### 3. LIMITATION ON EVIDENCE

a. The Chair or other presiding officer may limit or exclude incompetent evidence, immaterial evidence, repetitive evidence, and personal attacks.

b. Decisions shall not be based upon hearsay evidence though such evidence may be entered into the record.

## 3.8.2. FLOOD HAZARD OVERLAY (FHO) DISTRICT

### A. STATUTORY AUTHORIZATION, FINDINGS OF FACTS, PURPOSE AND OBJECTIVES

#### 1. STATUTORY AUTHORIZATION

The Legislature of the State of North Carolina has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry in Sections 143.215.54, 143-215.54(a), 143-215.54A, 143-215.56, 143-215.56(c), 143.215.57A, and ~~160A-458.1~~ [160D-923](#) of the North Carolina General Statutes.

### 3.8.5 Manufactured Home Overlay (MHO) District

#### B. ESTABLISHMENT

1. Manufactured Housing Overlay (MHO) districts shall only be established in accordance with Section ~~160A-383.1~~160D-910 of the North Carolina General Statutes and Section 2.2.24, Zoning Map Amendment.
2. In requesting the establishment of an MHO district, an applicant shall present factual information to ensure, in the discretion of the Board of Commissioners, that property values of surrounding lands are protected, that the character and integrity of the neighborhood are adequately safeguarded, and the proposed MHO district is consistent with these standards.
3. To assure acceptable similarity in exterior appearance between proposed manufactured dwellings and dwellings that are constructed on adjacent or nearby land, an applicant may, for illustrative purposes only, present examples of the types and design of such proposed dwellings.

### 4.3.4 Institutional Uses

#### S. Wireless Telecommunication Facilities

#### 3. GENERAL STANDARDS APPLICABLE TO ALL TYPES OF WIRELESS TELECOMMUNICATIONS FACILITIES

The following requirements shall apply to all new wireless telecommunications facilities and any modifications to an existing wireless telecommunications facility that exceeds the scope of routine

maintenance, as defined in this section.

##### a. BUILDING PERMIT REQUIRED

Prior to installation or modification exceeding the scope of routine maintenance, all wireless telecommunications facilities shall receive a building permit in accordance with the requirements in

this Ordinance.

##### b. COMPLIANCE WITH FEDERAL AND STATE REGULATIONS

i. All wireless telecommunication facilities shall comply with or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government that regulates telecommunications facilities.

ii. In addition to federal requirements, all wireless telecommunication facilities shall comply with or exceed current standards and regulations of the State of North Carolina pertaining to wireless telecommunications facilities in Sections ~~160A-400.50~~160D-930 through ~~160A-400.57~~160D-938 in the North Carolina General Statutes.

Collocations, whether on a building wall or roof, a telecommunications tower, or on another vertical projection such as a water tank or electrical transmission tower, shall comply with the standards in Table 4.2.3, Principal Use Table, Section 4.3.4.S.3, General Standards Applicable to All Types of Wireless Telecommunications Facilities, and the following standards:

All collocations shall be classified as either a major collocation or a minor collocation in accordance with Section ~~152.1465-B~~9.4, Definitions, and the following:

- a. A major collocation includes placement of antennas, antenna-support structures, and related wireless telecommunications equipment on any of the following:
- i. A building's roof;
  - ii. A building's wall;
  - iii. A vertical projection such as a water tank, electric transmission tower, or similar vertical projection not constructed for the sole purpose of providing wireless telecommunications services; or
  - iv. An existing or replacement telecommunications tower where the collocation requires a substantial modification, as defined in these standards and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes.
- b. A minor collocation includes placement of antennas, antenna-support structures, and related wireless telecommunications equipment on an existing or replacement telecommunications tower, provided no substantial modification, as defined in these standards and Section ~~160A-400.51~~[160D-931](#) in the North Carolina General Statutes, is required. A minor collocation may also be referred to as an "eligible facility," as defined in these standards and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes.
- c. In addition to the placement of antennas and antenna-support structures, collocations may also include the placement of wireless telecommunications equipment on a telecommunications tower, on a vertical projection, on the ground in close proximity to a telecommunications tower or vertical project, within an equipment compound, within an equipment cabinet, within a building, or on a building's roof.
- d. Nothing shall prohibit the replacement of an existing telecommunications tower or activities that increase the overall height of an existing telecommunications tower in order to accommodate a proposed collocation

#### 4.3.4 Institutional Uses:

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#### 5. NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES

- a. Lawfully established wireless telecommunications facilities in operation prior to January 1, 2020 that do not comply with these standards may remain and operate as nonconforming uses.
- b. In the event of conflict between these standards and the standards for nonconforming situations in Article 7 of this Ordinance, the standards in this section shall control with respect to wireless telecommunications facilities.
- c. Ordinary and routine maintenance may be performed on a nonconforming wireless telecommunications facility.
- d. Minor collocation of antennae, antenna-support structures, and related wireless telecommunications equipment is allowed in accordance with the requirements in Section ~~152.1465.F.3~~[4.3.4.S.4](#), Collocation, provided that the overall height of the existing nonconforming wireless telecommunications facility remains unchanged or is reduced.
- e. In no instance shall a collocation resulting in an increased overall height or a requiring substantial modification, as defined in this section and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes, be permitted on a nonconforming wireless telecommunications facility.

f. In the event a nonconforming telecommunications tower is removed, it shall not be replaced with another nonconforming wireless telecommunications tower.

#### 4.4.7 Standards for Specific Accessory Uses:

##### K. FAMILY HEALTH CARE STRUCTURE

One family health care structure is permitted on a lot with a single-family detached dwelling, in accordance with the standards in Section ~~160A-383.5~~[160D-915](#) of the North Carolina General Statutes, and the following standards:

##### 5.11.4. EXCLUSIONS

The following forms of signage shall not be subject to these signage standards, but may be subject to other applicable standards in this Ordinance, such as the requirement to obtain a building permit. Applicants shall be responsible for securing all required permits prior to erecting or modifying any of the following forms of excluded signage:

- A. Fence-wrap signs affixed to fences surrounding a construction site in accordance with the standards in Section ~~160A-381.1~~[160D-908](#) of the North Carolina General Statutes;
- B. Legal notices required by governmental bodies, public utilities, or civic associations;
- C. Governmental signage, including flags, street signs, traffic warning signs, and other signage provided solely for public health and safety;
- D. Building cornerstones, historical plaques, or grave markers;
- E. Signage associated with public transit stops;
- F. Holiday displays on lots within all zoning districts;
- G. Signage that is not visible from any off-site areas (e.g., entirely enclosed by opaque walls that prevent the visibility of signage from any off-site areas); and
- H. Signage associated with off-street parking spaces or the prohibition of parking in certain locations like fire lanes, bus lanes, or loading zones.

##### 6.1.4. EXEMPTIONS

The following divisions of land shall be exempt from these subdivision standards:

- A. Expedited subdivisions configured in accordance with Section 2.2.9, Expedited Subdivision;
- B. Subdivisions exempted in accordance with Section ~~160A-376~~[160D-802](#) of the North Carolina General Statutes; and
- C. Court-ordered subdivisions that comply with Chapter 29 of the North Carolina General Statutes.

##### 6.1.9. SUBDIVIDING IN VIOLATION

A. Any owner of land (or their agent) who subdivides land in the Town's jurisdiction, or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance and recorded in the office of the Register of Deeds for Wake County shall be guilty of a Class I misdemeanor in accordance with Section ~~160A-375~~[160D-807](#) of the north Carolina General Statutes.

B. The selling or transferring of land subject to these subdivision standards by any document other than a plat prepared subject to this Ordinance is a Class I misdemeanor in accordance with Section ~~160A-375~~[160D-807](#) of the North Carolina General Statutes.

C. The Town may enjoin any illegal subdivision, transfer, or sale of land by action for injunction in accordance with Article 8: Enforcement.

#### 8.8.5. REVOCATION OF PERMITS

A. The Planning Director may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.

B. Permits or certificates may be revoked, in accordance with Section ~~160A-422~~[160D-403\(f\)](#) of the North Carolina General Statutes, for any of the following:

1. Any substantial departure from the approved application, plans, or specifications;
2. Refusal or failure to comply with the requirements of State or local laws; or
3. For making false statements or misrepresentations in securing the permit, certificate, or approval.
4. Any permit or certificate mistakenly issued in violation of an applicable State or Town law may also be revoked.

#### 9.4:

##### ANTENNA COLLOCATION, MAJOR

The placement, installation, modification, or replacement of antenna and related wireless telecommunications equipment on a building's roof, on a building's wall, on a vertical projection not constructed for the provision of wireless telecommunications services, or on a telecommunications tower where the collocation requires "substantial modifications" to the telecommunications tower, as defined in this Ordinance and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes.

##### ANTENNA COLLOCATION, MINOR

The placement, installation, modification, or replacement of antenna and related wireless telecommunications equipment on a telecommunications tower that does not require "substantial modifications" and that meets the definition of an "eligible facility request" as defined in this Ordinance and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes.

##### BUILDING PERMIT

Authorization granted by the town for an applicant to begin construction of a building or structure.

For the purposes of the standards in Section 4.3.4.S, Wireless Telecommunication Facilities, Building Permit means an official administrative authorization issued by the Town prior to beginning construction consistent with the provisions of Section ~~160A-417~~[160D-1110](#) of the North Carolina General Statutes and this Ordinance.

##### COLLOCATION, MAJOR

The placement, installation, modification, or replacement of antenna and related wireless telecommunications equipment on a building's roof, on a building's wall, on a vertical projection not constructed for the provision of wireless telecommunications services, or on a telecommunications tower where the collocation requires "substantial modifications" to the telecommunications tower, as defined in this Ordinance and Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes.

#### COLLOCATION, MINOR

The placement, installation, modification, or replacement of antenna and related wireless telecommunications equipment on a telecommunications tower that does not require “substantial modifications” and that meets the definition of an “eligible facility request” as defined in this Ordinance and Section ~~160A-400.51~~ [160D-931](#) of the North Carolina General Statutes.

#### COMPREHENSIVE PLAN:

A document, adopted by the Board of Commissioners, which dictates the town’s policy in terms of transportation, utilities, land use, recreation, and housing [and has been officially adopted by the governing board pursuant to G.S. 160D-501.](#)

#### DEVELOPER:

~~A person engaging in land, site, or building development.~~ [A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.](#)

#### DEVELOPMENT:

Any man-made change to improved or unimproved real estate, including: [Any of the following:](#)

- [a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.](#)
  - [b. The excavation, grading, filling, clearing, or alteration of land.](#)
  - [c. The subdivision of land as defined in G.S. 160D-802.](#)
  - [d. The initiation or substantial change in the use of land or the intensity of use of land.](#)
- ~~buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. “Development” also includes any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.~~

For the purposes of Section 3.8.2, Flood Hazard Overlay (FHO) District:

- (a) Any manmade change to improved or unimproved real estate, including, but not limited to, the construction, erection, structural alteration, enlargement, or rehabilitation of any buildings or other structures, including farm buildings, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, clearing of vegetation; and any use or change in use of any structures or land.
- (b) Development shall also include any land disturbing activity on improved or unimproved real estate that changes the amount of impervious or partially impervious surfaces on a parcel, or that otherwise decreases the natural infiltration of precipitation into the soil.

[DEVELOPMENT APPROVAL. - An administrative or quasi-judicial approval made pursuant to G.S. 160D and UDO Article 2 that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits,](#)



variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this G.S. 160D and any Town Ordinance including plat approvals, permits issued, development agreements entered into, and building permits issued.

#### DWELLING

~~A building designed for or used by one or more families for residential purposes, but not including a hotel, motel, or mobile home.~~ 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. Dwelling shall not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

#### ELIGIBLE FACILITY REQUEST

An application for the installation of new or replacement antennas and related wireless telecommunications equipment on an existing telecommunications tower. An eligible facilities request may include increasing the height and/or replacement of an existing telecommunications tower but shall not include any activities that constitute a “substantial modification” as defined in this Ordinance and Section ~~160A-400.51~~ 160D-931 of the North Carolina General Statutes. Eligible facility requests are reviewed and decided in accordance with the procedures for a minor collocation.

#### EXPEDITED SUBDIVISION

A subdivision of three or fewer lots comprised of more than five acres in accordance with Section ~~160A-376~~ 160D-802 of the North Carolina General Statutes.

PROPERTY. - All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

#### SMALL WIRELESS FACILITY

A wireless telecommunications facility consisting of an antenna and associated wireless telecommunications equipment installed on a utility pole, public utility pole, building, or other vertical projection not specifically intended for the accommodation of wireless telecommunications facilities (e.g., a traffic signal mast arm, a light standard, sign pole, etc.) that does not exceed the maximum size requirements for such facilities as listed in Section ~~160A-400.51~~ 160D-931 of the North Carolina General Statutes.

#### SUBSTANTIAL MODIFICATION

For the purposes of the standards in Section 4.3.4.S, Wireless Telecommunication Facilities, Substantial Modification means the collocation of antenna and related wireless telecommunications equipment on an existing telecommunications tower that necessitates replacement of the existing tower, structural additions to the existing tower that increase its height or the length of protrusions from the tower, or increases in the size of the equipment

compound by an amount specified in Section ~~160A-400.51~~[160D-931](#) of the North Carolina General Statutes. Collocations requiring structural modifications are reviewed and decided in accordance with the procedures for a major collocation. Collocations involving changes to an existing telecommunications tower or equipment compound beyond those identified as “substantial modifications” in Section ~~160A-400.51~~[160D-931](#) in the North Carolina General Statutes are reviewed and decided in accordance with the procedures for a major telecommunications tower.

#### VESTED RIGHT

A right pursuant to North Carolina General Statutes Section ~~160A-385.1~~[160D-108](#) to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

#### 10.2. BOARD OF ADJUSTMENT (BOA)

The Board of Adjustment is hereby established in accordance with Section ~~160A-388~~[160D-302](#) of the North Carolina General Statutes. The BOA shall have the following powers and duties, composition, and rules of procedure under this Ordinance:

##### 10.3.2 Conflict of Interest:

In accordance with NCGS 160D-109(a) A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not 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.

#### 10.4. PLANNING BOARD

The Planning Board is hereby established in accordance with Section ~~160A-361~~[160D-301](#) of the North Carolina General Statutes. The Planning Board shall have the following powers and duties, composition, and rules of procedure under this Ordinance:

#### 10.5. TECHNICAL REVIEW COMMITTEE (TRC)

The Technical Review Committee (TRC) is hereby established in accordance with Section ~~160A-361~~[160D-306](#) and Section ~~160A-373~~[160D-803](#) of the North Carolina General Statutes. The TRC shall have the following powers, duties, composition, and rules of procedure under this Ordinance:

##### 10.5.3 RULES OF PROCEDURE

###### A. MEETINGS

1. The TRC shall establish a regular meeting schedule, and shall meet frequently enough to discuss any plats, plans or related issues submitted to it for review.
2. The Planning Director may invite applicants to attend TRC meetings.

###### B. CONFLICT OF INTEREST

1. No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or 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 under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.
2. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter 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 a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

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# ZEBULON

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NORTH CAROLINA

**TOWN OF ZEBULON  
PLANNING BOARD AGENDA  
April 19, 2021  
Following Joint Public Hearing**

Due to COVID-19 we will be taking comments in writing. Comments will be read into the record at the meeting. Please get all comments of 400 words or less to the Deputy Town Clerk – Stacie Paratore (sparatore@townofzebulon.org) by 12:00pm on April 19, 2021.

**I. CALL TO ORDER**

**II. MINUTES**

A. March 8, 2021

**III. PUBLIC HEARING**

**A. *TA 2021-02 160D Text Amendments.*** A staff-initiated request to amend Chapters 95, 151, of 153 of the Zebulon Code of Ordinance and the Zebulon UDO to conform to NCGS 160D.

**IV. ADJOURNMENT**

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Present: Laura Johnson, Michael Germano, Jessica Luther, David Lowry, Joe Moore-Town Manager, Michael Clark-Planning, Lisa Markland-Town Clerk, Stacie Paratore-Deputy Town Clerk, Eric Vernon-Attorney

Absent: Stephanie Jenkins and Gene Blount

Laura Johnson called the meeting to order at 8:38pm.

**ADOPTION OF MINUTES**

Michael Germano made a motion, second by Jessica Luther to approve the February 8, 2021 minutes as amended. There was no discussion and the motion passed unanimously.

**NEW BUSINESS**

A. *TA 2021-01 Building Maintenance Regulations*

Michael Clark explained this was a staff-initiated request to amend Chapter 95 of the Zebulon Code of Ordinances. This amendment would establish regulations regarding the conditions and appearance of non-residential buildings within the DTP (Downtown Periphery) and DTC (Downtown Core) districts.

The proposed text amendments were in response to deteriorating conditions of buildings within the Downtown Zoning Districts and the number of vacant buildings that work against the Town's effort to have a Vibrant Downtown. The proposed regulations required building exteriors to be maintained in a way that addressed safety and aesthetic concerns, and some level of display located in the front window of vacant buildings to eliminate the appearance of vacancy. Examples of some of the deteriorating conditions downtown were shown. The text amendment would create vibrancy outlined in the Town's 2030 Strategic Plan.

Staff recommended approval of TA 2021-01.

David Lowry inquired about the language modifications.

Michael detailed the changes to be made. Section 95.63(A) would change to "painted or maintained." Striking through second "does not". Section 95.63(H) would include "applicable signage requirements would have to be consistent with the Unified Development Ordinance." Under 95.66(E)(2) would read "failure to register and/or failure to implement plan. . .". Section 95.67 the Board of Appeals would be changed to Board of Adjustment. Section 95.63(E) rotting would be changed to disrepair.

David Lowry made a motion, second by Michael Germano to recommend approval of TA 2021-01 as amended. There was no discussion and the motion passed unanimously.

B. CZ 2020-06 - Old US 264, Zebulon Outdoor Storage

Meade Bradshaw explained this was a request by John Olgesby representing the property owner, Tommy Perry who was requesting a Conditional Zoning from Heavy Industrial (HI) to Heavy Industrial-Conditional (HI-C) for the property at 1817 Old US 264 Hwy.

The parcel size was approximately 15.28 acres. The vicinity map, aerial map, zoning map and pictures of the parcel were shown.

In accordance with Section 2.2.6 of the Town of Zebulon Unified Development Ordinance and NCGS 160D-703, the following conditions are agreed upon for request CZ 2020-06.

1. There shall be a maximum of 80% site coverage with washed stone surfacing and grass parking areas.
  - a. Top layer of crushed stone surfacing will be No. 5 washed stone to prevent dust.
  - b. Stone will provide semi-pervious surface to reduce total runoff by allowing infiltration.
  - c. All stone vehicular areas shall be within a security fence and screened by an opaque evergreen hedge row with a minimum height of 6 feet at the time of planting.
  - d. All stone vehicular areas shall be properly maintained, including vegetation control, smoothing, scraping, top dressing at regular intervals.
2. The entrance apron and approximately 250 feet of access road shall be paved by one of the surface materials listed in § 5.8.5.F.1 until the main entrance gate.
3. Additional landscaping shall be provided along paved access road, between pavement and security fence for additional screening of parking areas within fence.
4. There shall be a total of 40' of Type D Opaque buffer between the security fence and Old US 264 Highway.
5. There shall be a total of 30' of Type C Semi-Opaque buffer between the US 264 Highway controlled access right-of-way and the security fence. The 20' width of existing vegetation/trees within the property boundary will not be disturbed.
6. There shall be a total of 20' of Type C Semi-Opaque buffer between the adjoining property identified as Wake County PIN 2715737661 and the security fence. (
7. There shall be approximately 400 feet of 6' wide concrete sidewalk adjacent to Old US 264 Highway approximately 1' inside the existing right-of-way.
8. The applicant shall apply to annex the subject property into the Town of Zebulon within 30 days of final approval of this conditional rezoning.

\*All other applicable Unified Development Ordinance requirements shall remain as written and the requirements by other agencies will be reviewed and regulated at the time of Technical Review Committee review process.

The concept plan was shown. Staff explained the applicant wanted to use gravel in the parking area and driveway which was a deviation from code standard 5.8.5(f)(1). The code required materials to be asphalt, concrete, or of sufficient thickness for any parking areas, driveways or vehicular service areas on developed sites. Staff did not support the site being 100% gravel finding the allowance of gravel created public health and safety issues. Many uses within the Heavy Industrial District attracted and generated high traffic volumes and heavy weights. Gravel required



more frequent maintenance and degraded quicker when exposed to all weather events than other surface treatments such as asphalt, concrete, or pervious surfaces. The quicker degradation and higher traffic volumes created unsounded surfaces for parking, storing, walking and ADA accessibility. The resolution of these issues required a large amount of staff time and magnified the frequency of code enforcement needs.

The Unified Development Ordinance Section 2.2.6.K provides the following standards in which the Board was to base a decision:

1. Whether the proposed conditional rezoning advances the public health, safety, or welfare;
2. Whether the extent to which the proposed conditional rezoning is appropriate for its proposed location, and is consistent with the purposes, goals, objective, and policies of the Town's adopted policy guidance;
3. Whether an approval of the conditional rezoning is reasonable and in the public interest;
4. Whether the extent to which the concept plan associated with the conditional rezoning is consistent with this Ordinance and
5. Any other factors as the Board of Commissioners may determine to be relevant.

Michael Germano asked if there was a runoff issue on the site. Staff was not aware one. Michael Clark explained Wake County was monitoring the site clearing to make sure there were no further economic degradation to the site.

Michael Germano made a motion, second by Jessica Luther to recommend denial of CZ 2020-06 finding the proposal was not consistent with Standards four and two. There was no discussion and the motion passed unanimously.

C. RZ 2020-02, 1513 N. Arendell Avenue

Michael Clark explained this was a staff-initiated rezoning request to amend the official Zoning Map from Heavy Industrial (HI) to Heavy Commercial (HC) for the property at 1513 N. Arendell Avenue. The parcel size was approximately 1.32 acres. The vicinity map, aerial map, zoning map and pictures of the parcel were shown.

The subject parcel was zoned HB-Heavy Business under the previous zoning code, however due to a file corruption with the GIS file used for the rezoning as part of the Unified Development Ordinance, the subject property was designated as LI Light Industrial in error. The site was currently occupied by Bojangles and under the LI Light Industrial, it was an existing, nonconforming use. The rezoning to HC would bring the use into conformance with the UDO.

Staff recommended approval of RZ 2020-02.

David Lowry made a motion, second by Michael Germano to recommend approval of RZ 2020-02. There was no discussion and the motion passed unanimously.

D. RZ 2020-03, 49 Green Pace Road

Michael Clark explained this was a staff-initiated request to amend the official Zoning Map from Light Industrial (LI) to Heavy Commercial (HC) for a section of the property at 49 Green Pace

Rd. that fronts on N. Arendell south of 1513 N. Arendell Ave. The parcel size is approximately 1.31 acres. The vicinity map, aerial map, zoning map and pictures of the parcel were shown.

The property was zoned LI-Light Industrial as part of the previous zoning code until January 1, 2020. Due to a file corruption with the GIS file used for the rezoning as part of the Unified Development Ordinance, the property was designated as LI Light Industrial in error. The site was currently vacant but was part of the tract owned and operated by BB&T.

Staff recommended approval of RZ 2020-03.

Jessica Luther made a motion, second by Michael Germano to recommend approval. There was no discussion and the motion passed unanimously.

E. RZ 2020-04 213 Moss Road

Michael Clark explained this was a staff-initiated rezoning request to amend the official Zoning Map from Residential (R-2) to Heavy Commercial (HC) for the property at 213 Moss Road. The parcel size was approximately 1.27 acres. The vicinity map, aerial map, zoning map and pictures of the parcel were shown.

The property at 213 Moss Road was rezoned from Residential to HB Commercial in 2012 and remained in that classification as part of the previous zoning code. Due to a file corruption with the GIS file used for the rezoning as part of the Unified Development Ordinance, the subject area was designated as R2- Residential in error. The site was currently occupied by a commercial use and owned by Wilbur and Theresa Pulley.

Staff recommended approval of RZ 2020-04.

It was clarified this was a residential property with a commercial structure on the property. Staff was not able to determine if the commercial structure was still in operation.

There was discussion about the possibility of the property being sold and used as a different commercial business.

It was clarified that the property owner was not requesting the current rezoning. The property owner had previously requested to be rezoned approximately 10 years ago to a commercial use and staff was correcting a technical error in the UDO. The surrounding properties were zoned residential except one property across the street which was commercial.

Michael Germano asked if neighborhood commercial would be more in line with the intent of the space. Staff explained the use would not be permissible under the neighborhood zoning classification.

There was discussion about changing the zoning to neighborhood commercial with a nonconforming use to protect the surrounding residential properties.

Michael Germano made a motion, second by David Lowry to recommend approval of RZ 2020-04 as amended for the property at 213 Moss Road to be rezoned as neighborhood commercial

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finding it would be more appropriate for the context and geographical location of the particular site and finding it is consistent with Section 2.2.2.4(J). There was no discussion and the motion passed with a vote 3 to 1 with Michael Germano, David Lowry, Laura Johnson voting in favor and Jessica Luther voting in opposition.

Michael Clark spoke about the upcoming Joint Public Hearings. The Planning Department updated the Interactive Development map on the Town's website.

David Lowry asked for extra time to review 160D.

Michael Germano made a motion, second by Laura Johnson to adjourn. There was no discussion and the motion passed unanimously.

Adopted this the 19<sup>th</sup> day of April 2021.

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Gene Blount—Chair

SEAL

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Stacie Paratore, CMC—Deputy Town Clerk