



Vision Statement:

As the Town of Aberdeen grows, we will retain our unique history and character and provide the services and amenities to continuously enhance the quality of life for our citizens.

Agenda
Regular Board Meeting
Aberdeen Town Board

September 28, 2015
Monday, 6:00 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

1. Call to Order
 - a. Pledge of Allegiance.
2. Setting of the Agenda
3. Consent Agenda

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held except on request by a member of the Board of Commissioners.

- a. Minutes of Board Meeting on August 24, 2015, Work Session on September 14, 2015, and Closed Session on September 14, 2015.
4. Informal Discussion and Public Comment
 - a. Swearing in of Police Officer Britton Emert.
5. Financial Report

No Financial Report this month
6. Old Business
7. Public Hearings and New Business
 - a. Continuation of Public Hearing for Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC.

- b. Consider action on Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC.
 - c. Public Hearing on the following UDO Text Amendments:
 - (1) UDO #15-03 Regarding Administrative Mechanisms.
 - (2) UDO #15-07 Regarding Appeals.
 - (3) UDO #15-05 Regarding Hearing Procedures.
 - (4) UDO #15-06 Regarding Permits and Plats.
 - (5) UDO #15-12 Regarding Variances.
 - (6) UDO #15-09 Regarding Permissible Uses.
 - (7) UDO #15-10 Regarding Special Exceptions.
 - d. Consider action on the following UDO Text Amendments:
 - (1) UDO #15-03 Regarding Administrative Mechanisms.
 - (2) UDO #15-07 Regarding Appeals.
 - (3) UDO #15-05 Regarding Hearing Procedures.
 - (4) UDO #15-06 Regarding Permits and Plats.
 - (5) UDO #15-12 Regarding Variances.
 - (6) UDO #15-09 Regarding Permissible Uses.
 - (7) UDO #15-10 Regarding Special Exceptions.
 - e. Resolution to Accept Renewed Surety Bonds to Guarantee Infrastructure at Legacy Lakes.
 - f. Resolution to Accept a Letter of Credit to Guarantee Installation of Sidewalks for Phase 1 of the Meadow Ridge Subdivision.
 - g. Resolution Directing the Clerk to Investigate a Petition for Voluntary Annexation submitted by Peggy Hendrix for property located at 1210 Pee Dee Road.
 - h. Resolution Accepting Financing Terms for 2 police vehicles, 1 fire vehicle, and 4 police in-car cameras.
8. Other Business
- a. Grants Update Presentation.
9. Adjournment

SPECIAL ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES OR IMPAIRMENTS WILL BE MADE UPON REQUEST TO THE EXTENT THAT REASONABLE NOTICE IS GIVEN TO THE TOWN OF ABERDEEN

Minutes
Regular Board Meeting
Aberdeen Town Board

August 24, 2015
Monday, 6:00 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Town Board met Monday, August 24, 2015 at 6:00 p.m. for the Regular Board Meeting. Members present were Mayor Robert A. Farrell, Mayor Pro-tem Jim Thomas, and Commissioners Joe Dannelley, Elise Goodwin, and Pat Ann McMurray. Commissioner Buck Mims was not in attendance for the meeting. Staff members in attendance were Planner Jae Kim, Police Chief Tim Wenzel, Deputy Police Chief Carl Colasacco, Deputy Police Chief Todd Weaver, Officer Justin Newberry, Officer Jesse Smith, Officer Christina Ricks, Officer Joshua Kearns, Officer Brian Chavis, Officer Leigh Ann Brooks, Officer Farley Bowers, Officer Anthony Williams, Town Manager Bill Zell, and Town Clerk Regina Rosy. Tim Marcham, Richard Ray, Kenneth Byrd, Wilma Laney, Ernestine Chapman, Barbara Allred, John May, Reporter for the Pilot Ted Natt, Boy Scout Troop 800 members Brandon Bassett, Mike Bassett, and Johnny Williamson, and approximately 6 other citizens were also in attendance for the meeting.

1. Call to Order

Mayor Farrell called the meeting to order at 6:02 p.m.

a. Pledge of Allegiance.

Mayor Farrell asked everyone to please stand for the Pledge of Allegiance.

2. Setting of the Agenda

A motion was made by Commissioner McMurray, seconded by Commissioner Goodwin, to approve the setting of the agenda as presented. Motion unanimously carried 4-0.

3. Consent Agenda

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held except on request by a member of the Board of Commissioners.

- a. Minutes of Special Called Meeting on June 22, 2015, Board Meeting on June 22, 2015, Special Called Meeting on June 29, 2015, Emergency Meeting on June 30, 2015, Special Called Meeting on July 20, 2015, and Work Session on August 10, 2015.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to approve the consent agenda as presented. Motion unanimously carried 4-0.

4. Informal Discussion and Public Comment

- a. Police Department Officer Recognition.

Police Chief Tim Wenzel recognized Lieutenant Leigh Ann Brooks for achieving the Advanced Law Enforcement Certificate. Police Chief Tim Wenzel recognized Christina Ricks for achieving her Accident Reconstructionist Certification.

- b. Request by Ken Byrd to give an update on the library and Request for a commitment of property.

Ken Byrd stated the Friends of the Aberdeen Library are slowly accumulating donations towards the library. Mr. Byrd stated the goal at this point is to buy the Styers Property. Mr. Byrd stated to date, \$8,000 has been collected. Mr. Byrd stated he would like to ask for an obligation from the Town Board for the property located beside the Styers Property, which the Town owns, and for the property to be held by the Town for the library to build a parking lot on. Commissioner Goodwin asked if there is any obligation on the land currently. Manager Zell stated there are currently no obligations on the land. Mayor Pro-tem Thomas asked if approval by the Board tonight and inclusion in the minutes would be enough to make this official. Manager Zell stated he feels that would get the ball rolling on this. A motion was made by Commissioner Goodwin, seconded by Mayor Pro-tem Thomas, that the Board authorizes the Mayor to write a letter to the Friends of the Library committing the proposed piece of property to the Friends of the Aberdeen Library for 5 years in the event they develop the Styers property for a new library in Aberdeen. Commissioner Dannelley asked about the historic district, and what issues may come up because of that. Mr. Byrd stated the Styers house can not be removed for 1 year, and after that time, it can be removed from the site. Commissioner Dannelley asked if neighbors to the property have been consulted on their thoughts about this site for the library.

Mr. Byrd stated no, he has not contacted neighbors around the site yet. Commissioner Dannelley asked if this commitment is critical at this point towards the fundraising efforts for the library. Mr. Byrd stated an election is upcoming, and there could be potential leadership changes, and he wants to make sure that this effort continues moving forward. Commissioner Dannelley asked if the American Legion folks have been talked with. Mr. Byrd stated the American Legion folks are not overly enthusiastic. Commissioner McMurray stated she feels like the proposed location is in the heart of Aberdeen, and is a great location. Motion unanimously carried 4-0.

- c. Richard Ray gave a brief history of the Ray's Mill Pond Park and the history behind it. Mr. Ray stated he would like the area around the Bethesda Cemetery to remain as it is, and undisturbed.
- d. Brandon Bassett, with Boy Scout Troop 800, presented the Town Board with a plaque for their support with his Eagle Scout Project.

5. Financial Report

Manager Zell stated there will be no financial report until the October Board Meeting.

6. Old Business

None

7. Public Hearings and New Business

- a. Continuation of Public Hearing for Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC. – Public Hearing will be continued to September 14, 2015.

Mayor Farrell opened the Continuation of the Public Hearing for Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC. Mayor Farrell stated this public hearing will be continued to September 14, 2015 on request by the property owner of the property.

- b. Public Hearing for an Annexation petition submitted by PCC Realty, LLC for property located at The Pit Golf Links off of NC Highway 5.

Mayor Farrell opened the Public Hearing for an Annexation petition submitted by PCC Realty, LLC for property located at The Pit Golf Links off of NC Highway 5. Planner Kim stated staff recommends the Board accept input from the public and John May is here this evening as well to answer any questions. John May stated this piece of property was never annexed into the Town of Aberdeen. Mayor Farrell stated this is approximately 400 acres of land. Mr. May stated to his knowledge there is not currently any development proposed for this piece of property. With no further discussion, Mayor Farrell closed the public hearing on an Annexation petition submitted by PCC Realty, LLC for property located at The Pit Golf Links off of NC Highway 5.

- c. Consider action on an Ordinance to Extend the Corporate Limits of the Town of Aberdeen, North Carolina for Annexation #49-115.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Dannelley, to approve an Ordinance to Extend the Corporate Limits of the Town of Aberdeen, North Carolina for Annexation #49-115. Motion unanimously carried 4-0.

8. Other Business

None

9. Adjournment

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to adjourn the Board Meeting. Motion unanimously carried 4-0.

Regina M. Rosy, Town Clerk

Minutes were completed in
Draft form on August 24, 2015

Robert A. Farrell, Mayor

Minutes were approved
on September 28, 2015

Minutes
Work Session
Aberdeen Town Board

September 14, 2015
Monday, 6:00 p.m.

Robert N. Page Municipal Building
Aberdeen, North Carolina

The Aberdeen Town Board met Monday, September 14, 2015 at 6:00 p.m. for the Work Session. Members present were Mayor Robert A. Farrell, Mayor Pro-tem Jim Thomas, and Commissioners Joe Dannelley, Pat Ann McMurray, and Eleese Goodwin. Commissioner Buck Mims was not in attendance for the meeting. Staff members in attendance were Planning Director Pam Graham, Planner Jae Kim, Athletic Coordinator Joseph Keel, Town Manager Bill Zell, and Town Clerk Regina Rosy. Attorney T.C. Morphis, Barbara Allred, Ken Byrd, Ray Shaw, Tammy Lyne, Mr. and Mrs. Brian Bowles, Jeff McCluskey, Jerry & Pat Caddell, Bill Marts, Frankie Holt, Tim Marcham, Mike Garrison, Reporter for The Pilot Ted Natt, and approximately 14 other citizens were also in attendance for the meeting.

Mayor Farrell called the meeting to order at 6:00 p.m.

Mayor Farrell asked the Board members to recuse him from participating in agenda items 1 and 2 due to being Chairman for the Bethesda Cemetery. A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to recuse Mayor Farrell from agenda items 1 and 2. Motion unanimously carried 4-0. Mayor Farrell left the podium at this point.

1. Continuation of Public Hearing for Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC.

Mayor Pro-tem Thomas stated in an email he received, it was stated that he has a conflict of interest as well. Mayor Pro-tem Thomas stated he does not recall the date of when the conversation took place, but he did have a conversation in the company of friends regarding the parcel of land related to Conditional Use Permit #15-03, and some confusion was had about who owned the property. Mayor Pro-tem Thomas stated Mr. Alan Casavant had told him that acreage would be sold for \$12,000 an acre to adjoining property owners. Mayor Pro-tem Thomas stated he contacted Clyde Patterson, who lives in Broadway. Mayor Pro-tem Thomas asked Mr. Patterson if he owned the property in question, and Mr. Patterson stated he owns the property, and Alan Casavant represents him. Mayor Pro-tem Thomas

stated he does not know Ms. Lyne, which is who the email was from. Attorney Morphis asked if this conversation was before or after the current conditional use permit application. Mayor Pro-tem Thomas stated the conversation took place prior to the current conditional use permit application for this property. Commissioner Dannelley stated he does not see any grounds to recuse Mayor Pro-tem Thomas. A motion was made by Commissioner Dannelley, seconded by Commissioner Goodwin, that no conflict of interest was identified for Mayor Pro-tem Thomas related to the Bethesda Ives Conditional Use Permit application. Motion unanimously carried 3-0.

Mayor Pro-tem Thomas stated an email from Director Graham was received this afternoon at 12:38 p.m. with an optional layout for the proposed subdivision. Mayor Pro-tem Thomas stated due to the late receipt of this additional information, he believes it may be best to continue this public hearing to the next regularly scheduled meeting which would be September 28, 2015, so that staff and Board members have time to review this information.

Commissioner McMurray stated she is not familiar enough with the additional proposal to discuss this evening. Jeff McCluskey stated the ordinance clearly states in Section 152-214(d) that stub-streets are encouraged. Mr. McCluskey stated if the Board decides that stub-streets are not compliant, then option B is just another option that the Board could consider that does not include stub-streets. But otherwise, Mr. McCluskey stated the Board is free to move forward with the original proposal for discussion.

Attorney Morphis stated he wants to be very careful that we do not slip into a public hearing. Attorney Morphis stated it is up to the Board whether to continue the public hearing tonight or not, and either choice is defensible. A motion was made by Commissioner McMurray, seconded by Commissioner Goodwin, to continue the Public Hearing to 9/28/15. Motion unanimously carried 4-0. Agenda Item scheduled for Public Hearing on 9/28/15.

2. Consider action on Conditional Use Permit #15-03 submitted by Bethesda Ives, LLC.

Agenda Item delayed to 9/28/15. Agenda Item scheduled for New Business on 9/28/15.

Mayor Pro-tem Thomas stated at this time the meeting will relocate to the Conference Room.

Once the meeting relocated to the Conference Room, the following people were in attendance: Mayor Robert A. Farrell, Mayor Pro-tem Jim Thomas, and Commissioners Joe Dannelley, Pat Ann McMurray, and Elease Goodwin; Staff members in attendance were Planning Director Pam Graham, Planner Jae Kim, Athletic Coordinator Joseph Keel, Town Manager Bill Zell, and Town Clerk Regina Rosy; Others in attendance included Lisa Carriker, Mr. & Mrs. Brian Bowles, Tim Marcham, Barbara Allred, Ken Byrd, Ted Natt, Attorney T.C. Morphis, and Frankie Holt.

3. Special Event Permit Request submitted by Aberdeen Elementary School.

Athletic Coordinator Joseph Keel stated Lisa Carriker has submitted a special events permit application for The Tiger 5k Fun Run as a fundraiser for Aberdeen Elementary School on October 31, 2015. Athletic Coordinator Keel stated most of the road blocking will take place on Elm and Chapin Streets. Athletic Coordinator Keel stated the Fire Department will provide 2 EMTs for the event, Parks & Recreation will provide the use of grills, picnic shelter and power for the concessions and band, no police officers will be needed for traffic direction since volunteers will be utilized, and no barricades will be needed. Mayor Pro-tem Thomas asked for confirmation that no running will take place on US Highway 1. Athletic Coordinator Keel stated none of the race will take place on US Highway 1. A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Dannelley, to approve a Special Event Permit Request submitted by Aberdeen Elementary School. Commissioner Dannelley asked if this will be a recurring event. Ms. Carriker stated the goal is to become a part of the Sandhills Race Series and make it an annual event. Motion unanimously carried 4-0.

4. UDO Text Amendments.

- a. UDO Text Amendment #15-03 Regarding Administrative Mechanisms.
- b. UDO Text Amendment #15-07 Regarding Appeals.
- c. UDO Text Amendment #15-05 Regarding Hearing Procedures.
- d. UDO Text Amendment #15-06 Regarding Permits and Plats.

- e. UDO Text Amendment #15-12 Regarding Variances.
- f. UDO Text Amendment #15-09 Regarding Permissible Uses.
- g. UDO Text Amendment #15-10 Regarding Special Exceptions.

Director Graham stated Town staff has prepared a number of proposed ordinance amendments, some of which were mandated by recent changes to state law, and one that has been prepared in response to a recent court decision. Agenda Item scheduled for Public Hearing on 9/28/2015.

5. Proposed Amendments to the Planning Department Fee Schedule.

Planning Director Pam Graham stated she and Rodney Childress have been working on updates to the Planning Department Fee Schedule. Director Graham stated the revisions are suggested in an effort to clarify fees for applicants and staff, to ensure that appropriate fees are being charged, and to eliminate categories that are redundant or have seen no use in recent years. Director Graham reviewed the proposed changes to the fee schedule which include the following:

- Sheds are now classified according to their construction – stick-built sheds are handled the same as residential additions; portable sheds are handled separately with a flat fee of \$50 to reflect the single inspection that is required for these;
- Electrical permit categories have been simplified to eliminate categories of varying amperage that have become obsolete. A flat fee of \$150 will be charged for amperage up to 200, and each additional 200 amps will carry an additional fee of \$150;
- Generator installations are now accounted for in the Electrical Alternations category with a flat fee of \$50. The per outlet charge has also been removed;
- Miscellaneous categories have been added for electrical and mechanical work not already covered in an existing category;
- Tents that require inspection per the building code are included, with a flat \$50 fee;
- Fire Suppression Systems (wet and dry chemical systems as opposed to sprinklers) are included, with a flat \$100 fee;

- Terminology for Manufactured Homes is updated and Modular Homes are included as a separate category, indicating that they are to be treated the same as stick built residential;
- Site Plan Review fees are clarified to prevent double fees for subdivisions. All subdivisions are charged for preliminary and final plat review as a single charge of \$150 + \$10 per each lot over ten. Major subdivisions are also charged a \$250 conditional use permit fee due to the public hearing requirement. The additional Site Plan Review charge of \$250 + \$20 per acre over one applies to proposals other than subdivisions because such proposals do not require preliminary/final plat review;
- Code of Ordinances Text Amendments not requested by staff are now separate from UDO Text Amendments, and carry a fee of \$150 as opposed to \$300 due to there being no public hearing requirement for code amendments;
- Special Event fees have been removed from the Fee Schedule and are now handled by the Parks & Recreation Department.

Mayor Farrell asked if these fees are in line with the surrounding jurisdiction fees. Director Graham stated the fees are very comparable to surrounding jurisdictions. A motion was made by Commissioner Dannelley, seconded by Mayor Pro-tem Thomas, to approve the proposed amendments to the Planning Department Fee Schedule by resolution. Motion unanimously carried 4-0.

6. Consideration of Applicants for Planning Board Appointment.

Director Graham stated there are currently two empty seats on the Planning Board that remain to be filled due to individuals moving outside of the jurisdiction and/or expiration of their term. Kelvin Watson was an in-town appointee and Peter Koch served as an ETJ alternate. Both terms expired in June 2015. Mr. Watson has moved from the jurisdiction and therefore is not eligible for reappointment. Mr. Koch has declined to be considered for reappointment due to health issues. Director Graham stated staff is requesting Tim Marcham be reappointed to the Planning Board with a term expiration of June 2018. Director Graham stated there are 4 applicants for the remaining regular position, and there are no applications for the ETJ alternate position. Director Graham stated the 4 applicants for the regular

position are Ron Utley, Mike Ratkowski, Brian Bowles, and Bill Prevatte. A motion was made by Commissioner McMurray, seconded by Commissioner Dannelley, to reappoint Tim Marcham to the Planning Board as a regular member and appoint Brian Bowles to the Planning Board with term expirations of June 2018. Motion unanimously carried 4-0.

7. Resolution of Support for Moore County Comprehensive Transportation Plan.

Mayor Farrell stated he received a call from a business merchant on US Highway 1 that was concerned about the adverse affect on his business. Mayor Pro-tem Thomas stated he sees this as a great opportunity to plant trees/shrubbery in the center of the superstreet. Frankie McNeil shared his thoughts on the super street being proposed, and how he believes it will create more traffic on the roads, because when you want to go to a business on the other side of the street, you will have to pass it twice to go there. Mayor Pro-tem Thomas suggested talking with the Police Chief to see his thoughts on it, since New Jersey already has these super streets in place. Mayor Farrell asked if there is a timeline where this resolution needs action tonight. Director Graham stated Southern Pines has adopted a resolution, and she does not want to delay action on this item unless it is necessary. Commissioner Dannelley asked what involvement the Town will have once the plan is approved, so that the Board can make sure the concerns of business owners and citizens alike are factored into that design. Commissioner Dannelley stated he would like to show support now with the resolution, but he wants it to be a collaborative effort going forward. Director Graham stated NCDOT has assured the Town that they will continue to work with Town staff and business owners as they move forward with this project.

A motion was made by Commissioner Dannelley, seconded by Commissioner Goodwin, to approve the Resolution of Support for Moore County Comprehensive Transportation Plan. Motion unanimously carried 4-0.

8. Resolution to Accept Renewed Surety Bonds to Guarantee Infrastructure at Legacy Lakes.

Planner Kim stated the surety bonds guaranteeing infrastructure at Legacy Lakes is set to expire on 10/10/15. Planner Kim stated this resolution is to accept renewed surety bonds to guarantee infrastructure at Legacy Lakes. Mayor Farrell asked how long the unfinished roads can remain unfinished without the top coat of

paving. Planner Kim stated the last contact for El Star stated the top coat would be started in 2016. Ken Byrd stated the residents were told the top coat would be put on this past spring, then were later told this fall, now they are hearing 2016. Mr. Byrd stated it is very inconvenient for residents having to dodge manhole covers. Director Graham stated the original conditional use permit stated the top coat would not be required until development reaches 25%. Mr. Byrd stated at the current rate of development, the neighborhood will never reach 25%. Mayor Farrell asked if there is any way to tie the approval of these surety bonds to progress being made on the top coat. Director Graham stated she will need to research the conditional use permit for the project and see what the language is. Attorney Morphis recommended putting off action to 9/28/15 until some research could be done. The Board agreed to delay action until 9/28/15. Agenda Item scheduled for New Business on 9/28/15.

9. Resolution to Accept a Letter of Credit to Guarantee Installation of Sidewalks for Phase 1 of the Meadow Ridge Subdivision.

Director Graham stated Jackie Speight is the developer at Meadow Ridge, and the surety is primarily for sidewalks. Director Graham stated 4-5 homes are being built at a time. Director Graham stated she has worked directly with the bank on this issue, since Jackie is out of Town for personal reasons. Director Graham reviewed the terms of the letter of credit. Director Graham stated the replacement Letter of Credit is being prepared by Select Bank and should be available shortly. Director Graham stated this item could be delayed for action until the letter is received, if the Board would prefer. The Board agreed to delay action until 9/28/15. Agenda Item scheduled for New Business on 9/28/15.

10. Strategic Transportation Investments – Aberdeen Pedestrian Projects.

Director Graham stated the department put forth some projects for NCDOT funding and one of those was approved, which was the crossing across US Highway 1 to Aberdeen Lake Park. Director Graham stated the other item approved by resolution at that time, but did not make the cut, was the Johnson Street sidewalk. Director Graham stated we are now at the beginning of the process again, to present projects for consideration of funding, and staff would like to forward this project in the process. Commissioner Dannelley stated since all the ducks are in a row for this project, he would recommend putting this item back before NCDOT for

consideration. There was some discussion about adding sidewalks at Mike's Place, going to the residential neighborhoods. Director Graham stated the challenge, is that project is not in position to move forward at this point, which leaves us with the Johnson Street sidewalk project which is ready to move forward. The Board agreed to move forward with the Johnson Street sidewalk project.

11. Other Business.

a. Discussion on new trash pick-up schedule.

Mayor Farrell was concerned about citizens that have a Monday pick-up day, and all the holidays that fall on Monday. Commissioner Dannelley and Mayor Pro-tem Thomas stated they would like to see the Manager and staff look at this again, and see how Monday pick-up days could be handled on holidays.

b. Ditches on roadside.

Commissioner McMurray wanted to know how often the ditches on the roadside are dug out and cleaned. Manager Zell stated he will have Public Works work on that.

c. Main Street application.

Director Graham stated Aberdeen was selected for the Main Street Program. A meeting will be held next week with representatives from the NC Department of Commerce.

d. Findings of Fact.

Director Graham stated the Findings of Fact for conditional use permits typically reiterate decisions by the Board for a conditional use permit. Director Graham stated she discussed with the Attorney options available. Attorney Morphis stated there are a variety of items that could be approved by conditional use permit. Attorney Morphis stated in Aberdeen he really thinks it depends on how complicated the project is. Attorney Morphis stated he thinks staff is looking for some guidance on if providing findings of fact in advance to the Board is necessary for all conditional use permits. Attorney Morphis stated he thinks findings of fact may be helpful in complicated conditional use permits. Commissioner Dannelley asked how

staff would determine if the conditional use permit is complex or not? Attorney Morphis stated one option might be to determine during the public hearing if findings of fact are needed before a decision can be made. Commissioner Dannelley suggested making the decision at the Work Session prior to the public hearing, so that staff has guidance on how to prepare.

- e. Ken Byrd thanked the Board for their letter of support for the Friends of the Aberdeen Library.
- 12. Closed Session pursuant to N.C.G.S. 143-318.11(a)(3) to discuss a matter within the attorney-client privilege.

A motion was made by Commissioner Dannelley, seconded by Commissioner Goodwin, to go into Closed Session pursuant to N.C.G.S. 143-318.11(a)(3) to discuss a matter within the attorney-client privilege. Motion unanimously carried 4-0.

The Board returned from Closed Session.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin to open regular session. Motion unanimously carried 4-0.

- 13. Adjournment.

A motion was made by Mayor Pro-tem Thomas, seconded by Commissioner Goodwin, to adjourn the Work Session. Motion unanimously carried 4-0.

Regina M. Rosy, Town Clerk

Minutes were completed in
Draft form on September 14, 2015

Robert A. Farrell, Mayor

Minutes were approved
on September 28, 2015



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 4517 **Date Submitted:** 9/16/15

Agenda Item Title: Continuation of Public Hearing for Conditional Use Permit CU #15-03 Submitted by Bethesda Ives, LLC

Date of Board Meeting to hear this item: 9/28/2015

Board Action Requested:

New Business
Old Business
Public Hearing
Other Business

Information Only
For Action at Future Meeting Date _____
Informal Discussion & Public Comment
Consent Agenda

Summary of Information:

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):



Town of Aberdeen Planning & Inspections Department

115 N. Poplar Street PO Box 785

Aberdeen, NC 28315

(910) 944-7024

MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015 – Public Hearing

New information is shown in bold type

Applicant:

Bethesda Ives, LLC

Request:

Conditional Use
Permit CU #15-03
for a 38 Lot
Residential
Subdivision

Location:

West of Bethesda
Road near Bethesda
Presbyterian Church

Parcel ID:

00054112

Zoning:

R20-16

Existing Use:

Vacant

Proposed Use:

Major Subdivision

Prepared by:

Pamela Graham,
Planning Director

Description of Conditional Use Permit Request

Bethesda Ives, LLC requests a conditional use permit (CUP) for a 38 lot residential subdivision on a vacant tract comprising a total of 51.46 acres. The property is accessed from Bethesda Road just north and across from the historic church structure. The applicant seeks approval of the use, open space, and number of lots subject to final engineering through the Site Plan Review process. Additional construction detail will be provided at that time for staff review. **A public hearing was held on the item on June 22, 2015 and continued until the next regular meeting (August 10, 2015). Prior to the 8/10 meeting, staff accepted data from citizens that was believed to warrant further review and the public hearing was continued until August 24, 2015, however, the applicant requested a delay until the September Work Session so that their engineer could attend the public hearing. The department's consulting engineer, Mr. Gary McCabe with Red Line Engineering has provided a written review of the data with supporting documents. The review is enclosed with this memo.**

In addition to Mr. McCabe's report, new information has also been received by heirs to the property to the south of the proposed development. These items, enclosed for reference, are as follows:

1. **A written document indicating that the heirs have provided a "Right of First Refusal" to the Bethesda Cemetery Association for their property adjoining the subject property;**
2. **A written statement signed by the heirs reiterating their commitment to the Bethesda Cemetery Association for right of first refusal, and clarifying that they have no plans to sell the property in the near future.**

And finally, the applicants have provided an alternative plan, labeled "Option B", along with the following statement from their consulting engineer, Jeff McCluskey:

“I believe that it takes care of the concerns with Road D along with getting the cul-de-sacs below 500’. We would prefer not to do this plan, but if the concern with the stub street not being needed this is what is being proposed.”

Staff has provided a separate analysis of “Option B” on pages 10-11 of this memorandum. Based on Mr. McCluskey’s statement, should the Board determine that the applicant’s original proposal does not comply with the UDO, then the Board should consider whether Option B complies with the UDO.

Procedural Issues

§152-146 Table of Permissible Uses of the Town of Aberdeen Unified Development Ordinance (UDO) requires that all major subdivisions receive approval by the Town Board, and a recommendation by the Planning Board, for a conditional use permit.

A recommendation is within the authorized jurisdiction of the Town Board.

The UDO directs in §152-54 that the Planning Board shall make a recommendation for issuance of a conditional use permit unless it concludes, based upon the information submitted, that:

1. The requested permit is not within its jurisdiction according to the Table of Permissible Uses, or
2. The application is incomplete, or
3. If completed as proposed in the application, the development will not comply with one or more requirements of this chapter. (The “chapter” in this context is the UDO).

Furthermore, as directed by §152-54(D), even if the Board finds that the application complies with all other provisions of this chapter, it may still deny the permit if it concludes, based upon the information submitted, that if completed as proposed, the development, more probably than not,

1. Will materially endanger the public health or safety, or
2. Will substantially injure the value of adjoining or abutting property, or
3. Will not be in harmony with the area in which it is to be located, or
4. Will not be in general conformity with the land-use plan, thoroughfare plan, or other plan specifically adopted by the Town Board.

Following a recommendation by the Planning Board to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The Town Board acts in a quasi-judicial capacity when considering a conditional use permit application and shall consider the recommendations of the Planning Board and staff in their decision. Though they are not bound by those recommendations, they are required to use the same criteria in formulating their decision as is used by the Planning Board in their recommendation.

In considering whether to approve an application for a conditional use permit, the Town Board shall proceed according to the following format:

1. A simple majority vote is required to approve any motion related to the issuance of a conditional use permit.
2. The Town Board shall consider whether the application is complete. If the Town Board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the

application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. If a motion to this effect is not approved, this shall be taken as an affirmative finding by the board that the application is complete. *Staff has deemed the application to be complete.*

3. The Town Board shall consider whether the application complies with all of the applicable requirements of the UDO. If a motion to this effect passes, the Town Board need not make further findings concerning such requirements. If a motion fails or is not made then a motion shall be made that the application be found not in compliance with one or more of the requirements of the UDO. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Town Board to be unsatisfied through this process.
4. If the Town Board concludes that the application fails to comply with one or more requirements of the UDO, the application shall be denied. If the Town Board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in subsection 152-54(D). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. (*§152-54(D) may be found in the second full paragraph of page 2*)

Subsequent to an approved CUP, the applicant will be required to submit fully engineered construction documents for inter-departmental review to insure that the development has met all Federal, State and local regulations and permitting requirements, as well as any conditions attached to the CUP approval. No permits authorizing development shall be issued until compliance with all applicable regulations and conditions has been demonstrated.

Zoning (Exhibit attached)

The property is located north/northwest of the intersection of Bethesda Road and Bethesda Avenue in the R20-16 zoning district. The R20-16 District was established for the principal use of land for low-density resident agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses that would likely render them undesirable for farms and future development. The attached Vicinity Zoning map shows the parcel abuts R20-16 zoning to the north, south, and east, R10-10 zoning to the west, and I-H (Heavy Industrial) zoning for approximately 860 feet of the southern boundary near the western corner. The I-H property is owned by Aberdeen & Rockfish Railroad. Other districts represented in the general vicinity include R30-18 (Alexander and Barnell Streets) and R6-10 to the west beyond the rail line (between Sycamore Street and US 1).

Open Space

Required open space is proposed in excess of the 20% requirement due to the existence of +/- 27.51 acres of wetlands contained within the parcel, limiting buildable area. An existing sewer line crosses the property at several points within the delineated wetlands. The UDO requires that the open space be "usable" in that it:

1. Is not encumbered with any substantial structure;

2. Is not devoted to use as a roadway, parking area, or sidewalk;
3. Is not part of a roadway median;
4. Is not part of any privately owned lot that is used or intended for use for residential purposes;
5. Is legally and practicably accessible to the general public or to the residents of the development where the open space is located; and
6. Does not consist of multiple small, noncontiguous pieces of land which are, as a practical matter, inaccessible to all or most of the residents of the development.

The UDO further provides that water bodies, such as ponds or lakes, and wetland areas associated with recreational trail systems may also be counted toward open space requirements, as long as they satisfy the following:

1. Are at least fifty (50) feet in width and function or will function as a substantial visual buffer; and
2. Are configured or improved (e.g. through the installation of trails) in such a way as to be conducive to actual use for pedestrian connections to community facilities and for recreational purposes (i.e. walking or jogging) by the residents of the development where the land is located.

The choice as to the areas to be set aside as usable open space shall remain with the developer, provided that all UDO provisions are met.

*Article XIII, §152-198 requires that a minimum of 20% of usable open space be provided for Single Family Residential developments. The total land area of the proposed project is 51.46 acres; conceptual plans indicate that approximately 27.51 acres, or 53.8%, is being offered. The minimum 20% requirement could be met with 10.3 acres if more buildable acreage was present. The applicant proposes to construct an 8' wide natural walking trail along the sewer easement to meet the usability requirement for open space. Utilization of the easement will reduce the need for vegetation removal to install the trail. **Continued maintenance of the open space, including the walking trail, shall be the responsibility of the developer, through establishment of a Homeowners' Association in accordance with UDO §152-179 and 152-180.***

The open space proposal is in compliance with the UDO.

Landform and General Site Layout (Exhibit attached)

The property is vacant and heavily wooded with the exception of the sewer easement and an unnamed stream that loosely follows much of the western property boundary. The stream is likely intermittent and reaches an identified floodplain just offsite near the railroad line. The topography is relatively gentle and sloping to the west towards the stream and floodplain with the steepest slopes occurring on lots to the north of Proposed Road "C" and the five lots proposed for the end of EL Ives Drive. The wetlands in the area would be expected to perform an important function in reducing flooding to the lower-lying areas both on site and beyond, as well as providing wildlife habitat. One wetland crossing is proposed with Road "A" with an expected impact area of 4,064 square feet. The vast majority of the wetlands are included in the open space calculation, however, seventeen (17) lots have wetlands within their boundaries with nine (9) of these incorporating

wetlands into the building envelope. The sketch plan indicates a typical building footprint on the three lots that have the greatest amount of wetlands within the building envelope (lots 27, 37 and 38) as well as two lots with atypical configurations that limit buildable area (lots 18 and 20) to show the buildability of those lots. **Buildability in this instance refers strictly to the lot's ability to meet the dimensional standards required for the district.**

UDO Article XVI, Part 2, states in part:

- §152-261 To the extent practicable, all development shall conform to the natural contours of the land, and natural and preexisting man-made drainage ways shall remain undisturbed;

The proposed streets follow existing rights-of-way and/or align themselves with existing slopes to the extent practicable. The existing drainageway/stream will remain undisturbed by the proposed sketch plan. Staff recommends that rear lot lines that encroach into the wetlands be altered to coincide with the wetland boundary when doing so would not make the lot unbuildable (lots 1, 6, 29, 30, 31, 32, 33, 34, 35, and 36 can likely achieve this with some adjustments to side lot lines and lot size). Also recommended is that setback lines on lots 5, 17, 27, 28, 37, and 38 be adjusted to coincide with the wetland boundary. This recommendation has been included in the list of recommended conditions as condition #9.

- §152-263 All developments shall be constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such developments;

Development activities are anticipated to be confined to the higher elevations on the property which are heavily buffered by wetlands at lower elevations. Curb and gutter is not proposed. Vegetated swales within the rights-of-way are recommended in keeping with a low impact development design and to provide the opportunity for point source absorption of stormwater and less impact to the lower lying areas.

- UDO Article XIV, §152-215 states: Streets shall be related appropriately to the topography of the area. In particular, streets shall be designed to facilitate the drainage and storm water runoff objectives set forth in Article XVI ... and the street grades shall conform as closely as practicable to the original topography. This concept is reiterated in §152-218 (A): Subcollector, local, and minor residential streets shall be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.

The proposed streets follow existing rights-of-way and/or align themselves with existing slopes to the extent practicable. The street layout does exhibit some curvature where existing rights-of-way are not dictating form. Proposed Road "A" in particular takes measures to run at cross-slope to the natural contours and make crossing of the wetland at a location that has the best opportunity to lessen impacts.

Notes and graphic representation provided on the conceptual plan indicate compliance with the dimensional standards for the R20-16 District, as specified below. Staff will confirm compliance with minimum dwelling unit and building height requirements prior to the issuance of zoning permits for each lot.

Zoning District	Min. Lot Area (in square ft. or acres)	Min. Area per D.U. (in square ft.)	Min. Lot Width (in feet)	Min. Front Yard Setback (in feet)	Min. Side Yard Setback (in feet)	Min. Rear Yard Setback (in feet)	Maximum Bldg. Height (in feet)
R20-16	20,000	1,600	100	35	15	30	35

Transportation

The project proposes a single access point from Bethesda Road. Approximately 350 vehicle trips per day would be anticipated from the development, well below the 600 trip Town of Aberdeen requirement for a traffic impact analysis as dictated by §152-163.21 of the UDO. The proposed access from Bethesda Road will require DOT approval.

Staff has determined that a Traffic Impact Analysis will not be required by the UDO for the project.

Three new streets are proposed for the project as well as two stub-outs and an approximately 200' extension of EL Ives Drive culminating in a new cul-de-sac as required by the UDO. The primary road is identified on the sketch plan as Proposed Road "A" which utilizes an unopened right-of-way from Bethesda Road with a length of approximately 460 feet. Beyond that point, Road "A" will continue into the development, ending in a cul-de-sac on an interior piece of higher ground to access eleven lots. Sidewalks are proposed for both sides of Road "A" for the portions that are fronted by lots for the development on both sides of the road. Road "A" is proposed to include a single sidewalk for the portion that connects lots 17 and 38 (fronted by wetlands on both sides), the portion that connects lots 6 and 12 which fronts wetlands on one side, and the first 432 feet as measured from Bethesda Road. Existing platted lots on the north side of that portion are not owned by the applicant. The total length of Road "A" from the closest connection with an acceptable turnaround (Road/Stubout "D") is 899 feet.

The applicant has requested relief from the requirement that sidewalks be installed on both sides of all roads in the development, as stated on the plan "in an effort to be low impact and to help with meeting the green growth criteria that in certain areas sidewalk would only be installed on one side of the street with proposed lots and that in areas without houses abutting the road sidewalk wouldn't be installed. Areas that developer requests sidewalk not be installed between lots 17-38 (approximately 940 lf); lots 6-12 (approximately 750 lf)". The UDO provides for some flexibility to the Board's decisions on conditional and special use permits in §152-60(B), which states: "The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this chapter unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements." The extensive presence of wetlands on the site does present extraordinary circumstances, and the request for sidewalk relief is limited to areas where the road abuts wetlands and no building lots are located, as well as along properties that are outside of the development boundary.

Additionally, §152-217(F) allows for the permit-issuing authority to permit walkways constructed with materials other than concrete when it concludes that:

- (1) Such walkways would serve the residents of the development as adequately as concrete sidewalks; and*
- (2) Such walkways would be more environmentally desirable or more in keeping with the overall design of the development.*

Due to the existence of wetlands along the routes proposed for a reduction in the sidewalk requirement, the Board may authorize walkways of a design suitable for environmentally sensitive areas to reduce impervious surfaces and the resulting stormwater-driven pollutants that may impact the wetlands. Staff recommends that only those areas of roadway that are adjacent to wetlands be considered for a reduction in the requirement. The Planning Board, during their deliberations at their 5/21/15 meeting, recommended a revision to the conditions that would allow for partial relief from the sidewalk requirement but also required that the applicant create an additional section in the proposed natural walkway system to make a connection in the area to the north of proposed Road "A". This connection is reflected in the attached "Pedestrian Plan" with a revision date of 5/29/15.

Proposed Road "B" also utilizes a portion of an unopened right-of-way and will connect Road "A" with Road "C" and an improved section of Dunoon Street. Road "B" will be a connector road of approximately 400 feet in length. A sidewalk is proposed for the western side of the road, adjacent to the boundary of the development.

Proposed Road "C" will provide a connection from Road "B" to Dunoon Street and continue for approximately 650 feet, culminating in a cul-de-sac. Road "C" provides access to six lots in the proposal and is shown to have sidewalks on both sides of the street.

Proposed Road "D" is a stubout for potential future connection to undeveloped property to the south that is outside of the proposed project area. The inclusion of stubout roads are addressed in §152-214(A) and (D) of the UDO:

"The street system of a subdivision shall be coordinated with existing, proposed, and anticipated streets outside the subdivision or outside the portion of a single tract that is being divided into lots as provided in this section ... Whenever connections to anticipated or proposed surrounding streets are required by this section, the street right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles."

Though the inclusion of stubout roads in a subdivision design is addressed in the UDO, the permit-issuing authority (Town Board) must determine if the proposal meets the intent of the specific language. In particular, as stated in the paragraph above (reference to §152-214), the purpose of a stubout road is to provide coordination with existing, proposed, and anticipated streets outside of the subdivision. Subsequent to the last public hearing date on this item, staff received two documents from heirs to the Margaret Troutman property that would potentially be accessed by the proposed stubout road. It

should be noted that if the Board determines that the stubout road does not meet the intent of the relevant UDO language, the Proposed Road "A" cul-de-sac will exceed the 900 foot maximum allowed, as measured from the next nearest connecting road ("Unopened R/W Road B"). The documents include:

1. A signed Right of First Refusal offered to the Bethesda Cemetery Association. This document gives the Cemetery Association the right to be the first party allowed to purchase the property if and when it is offered for sale. It does not guarantee the transaction; the Cemetery Association would have the right to decline, at which point the property could be offered or marketed to others.
2. A signed document that states: *This statement is intended to clarify our position concerning the proposed stub road planned for the Bethesda Ives LLC development plan leading to a 28 acre undeveloped parcel owned by the Troutman HRS. This parcel has passed through three generations of the Troutman family and has never been offered for sell, nor do we have any plans to sell in the near future. Our family has never been approached by Bethesda Ives LLC to purchase our property for future development. Therefore we believe the said road was planned only to meet the requirements needed for plan approval. Our family is committed to the Bethesda Cemetery Association for first right of refusal should we decide to sell our property, or receive an offer to purchase that generates an interest in selling the property.*

Aberdeen's Fire Inspector has advised staff that the stubout is not required by the portions of the Fire Code that have been adopted by the town, and that, due to its length of 42 feet, provides limited usefulness as a turnaround for emergency vehicles. Regarding the length of the cul-de-sac Road "A", he advised that the length of the road is not a concern but would look for an engineered design of the wetland crossing that would allow accessibility to the full length of the road during major rain events. This level of engineering would be expected to be provided by the applicant for the Site Plan Review process, following approval of the conditional use permit.

The existing paved portion of Dunoon Street is accessed from EL Ives Drive and is approximately 170 feet in length. It provides access to two corner EL Ives Drive lots whose homes have driveways off of Dunoon. The remaining +/- 230 feet of Dunoon is an unopened right-of-way. Three vacant lots face this section of Dunoon and are not included in the project proposal. The applicant proposes to construct approximately 75 feet of roadway including a single sidewalk to the end of the Dunoon right-of-way to provide frontage to a corner lot (lot #11) of the proposed development. The street would be stubbed out to allow for future connection of the two portions of Dunoon. The future connection would require approximately 225 linear feet of roadway construction. The developer is only required to improve the roads to the property line of the subdivided property.

The proposed cul-de-sac at EL Ives Drive is currently required by the UDO for dead end streets. The applicant is proposing to cap off the end of EL Ives with a cul-de-sac bulb for access to the five lots planned in that portion of the project and to meet UDO requirements. No sidewalks currently exist on EL Ives and staff does not recommend the proposed bulb be designed to include a sidewalk. However, the applicant has proposed

that the natural walkway system make a connection to the new EL Ives cul-de-sac to provide access to the open space in the development.

§152-217 of the UDO allows for residential minor streets, local streets and subcollectors to be constructed with six-foot wide shoulders and grass drainage swales on either side in lieu of curb and gutter, so long as the street grade does not exceed a grade of six (6) percent. *The applicant proposes swaled shoulders in lieu of curb and gutter, a common Low Impact Design feature where conditions allow.*

§152-218 calls for all permanent dead-end streets to be developed as cul-de-sacs. Except where no other practicable alternative is available, such streets may not extend more than 500 feet, and in no case shall be permitted to be over 900 feet, measured to the center of the turnaround. *Proposed Road "A" measures 899 linear feet from the nearest connection (Road/Stubout "D"), which falls just under the 900 foot maximum requirement. If the Board determines that the stubout road does not meet the intent of the relevant UDO language, the Proposed Road "A" cul-de-sac will exceed the 900 foot maximum allowed, as measured from the next nearest connecting road ("Unopened R/W Road B").*

Landscaping and Screening

Street trees are required in accordance with §152-315: *Along both sides of all newly created streets ... the developer shall either plant or retain sufficient trees so that, between the paved portion of the street and a line running parallel to and fifty (50) feet from the center line of the street, there is for every thirty (30) feet of street frontage at least an average of one (1) deciduous tree that has, or will have when fully mature, a trunk at least twelve (12) inches in diameter.* Staff will work with the developer to insure that this section is complied with prior to the issuance of zoning permits for lot development, using appropriate species as directed by Section 98.03 of the Code of Ordinances, and Appendix J of the UDO.

§152-317 provides for the retention and protection of large trees, specifically: *Every development shall retain all existing trees twelve (12) inches in diameter or more and no tree twelve (12) inches in diameter or greater shall be removed from the public right-of-way unless the retention of such trees would, in the opinion of the staff, unreasonably burden the development, landowner or maintenance of utilities.* The applicant has not provided a tree survey showing locations and sizes of all trees in the project area that meet this standard. The UDO requirement of a tree survey allows for the existence of significant trees to be considered when designing the project and to provide staff with documentation of the existing conditions. Staff will require a tree survey be provided for the required Site Plan Review process following approval of the conditional use permit. Clearing, grading, and lot and street layout should respect the existing conditions, including topography and significant trees.

Water and Wastewater

Town of Aberdeen water and sewer are currently accessible to the site.

General Conformity with Plans

The 2030 Land Development Plan Future Land Use Map adopted in 2005 identifies this project area as low-density residential with environmentally sensitive areas evident. This designation is consistent with both the current zoning and the existing residential uses in the immediate vicinity. The Plan also states that “conservation subdivisions” may be an appropriate development pattern for new development within the town’s jurisdiction. Conservation subdivision design is intended to identify what is important to preserve on a site with development concentrated in the more suitable portions. Considerations such as preserving farmland and environmentally sensitive areas, avoiding steep slopes, and preserving the scenic view from the roadway are common elements in conservation subdivisions.

The Aberdeen Pedestrian and Bicycle Transportation Plans recommend the following for all new residential subdivisions:

1. Sidewalks and marked crosswalks on all new roads in accordance with the design guidelines included in the Pedestrian Plan;
2. Marked sharrows, or bicycle shared-lane markings on all new roads in accordance with the guidelines in the Bicycle Plan.

The Green Growth Toolbox (GGT), adopted by the Board of Commissioners in 2010, shows the existing stream with a recommended 100 foot buffer along either side. The sketch plan being considered complies with this recommendation with the stream and wetlands being incorporated into the open space. The proposed walking trail will require sensitive placement to avoid impacts to the stream and buffer. A Green Growth Toolbox Assessment exhibit is included for reference. It should be noted that the wetlands are not included in the GGT data layer set, though they have been flagged by an environmental consultant. Staff has asked the engineer on the project to provide any available documentation that the Army Corps of Engineers has verified the delineation.

Staff considers the proposal to be in general conformity with plans adopted by the Town Board.

“Option B” Analysis

The alternative “Option B” plan offered by the applicant primarily differs from their preferred plan in the following ways:

- **Proposed Road D has been converted from a stub-out road to a cul-de-sac serving lots 25 and 26. The length of Road D as proposed in this option is 88.91 feet;**
The applicant has stated that the change has been made to address concerns with the stub-out road configuration included in the original plan. Aberdeen’s UDO addresses cul-de-sacs with the following language:
 - *Cul-de-sacs are defined as minor or local streets that terminate in a vehicular turnaround;*
 - *Minor Streets are streets whose sole function is to provide access to abutting properties and serves or are designed to serve not more than nine (9) dwelling units and are expected to or do handle less than seventy-five (75) trips per day;*

- *Local Streets are streets whose sole function is to provide access to abutting properties and serves or are designed to serve at least ten (10) but no more than twenty-five (25) dwelling units and are expected to or do handle between seventy-five (75) and 200 trips per day;*
- *UDO §152-218(C) states that except where no other practicable alternative is available, cul-de-sacs shall not extend more than 500 feet, and in no case shall be over 900 feet as measured to the center of the turnaround. There is no minimum length requirement for cul-de-sacs;*
- *The configuration of Road D in this option is compliant with the UDO;*
- **An additional cul-de-sac is being proposed by Road E, located approximately 236 linear feet from the end of Road A (also a cul-de-sac). Lots 28, 29, and 30 have been redesigned to accommodate the new Road E. The distance between Road D and E is calculated to be 986.85 feet;**
 - UDO § 152-218(F) calls for streets to be laid out so that residential blocks do not exceed 1,000 feet, unless no other practicable alternative is available. The configuration of Road E in this option is compliant with the UDO;*
- **Proposed open space is reduced from +/- 27.5 acres to +/- 27.1 acres, or 52.7%.**
 - UDO §152-198 requires that a minimum of 20% of the development acreage be set aside as permanently usable open space. The open space proposed in this option is compliant with the UDO.*

No change to the pedestrian network, including sidewalks and natural trail system, is evident in the “Option B” plan, with the exception of the inclusion of sidewalks along the entirety of the proposed streets modified by the plan. The extraordinary circumstances presented by the extensive presence of wetlands on the site still provides the Board with the ability to grant relief from the full requirement for sidewalks on both sides of all new streets. The decision to lessen wetland impacts by such relief is entirely at the Board’s discretion.

Quasi-judicial Procedure

As a quasi-judicial matter, the Town Board must consider all evidence presented during the public hearing in their decision regarding conditional use permits, and even if they find that an application complies with all other provisions of the UDO, may still deny a permit if it concludes, based upon the information submitted at the hearing, that the development, more probably than not:

1. Will materially endanger public health or safety?
2. Will substantially injure the value of adjoining or abutting property?
3. Will not be in harmony in the area in which it is to be located?
4. Will not be in general conformity with the Land Use Plan or other plans specifically adopted by the Board?

It should also be noted that staff has received a “Protest Petition” signed by ten affected property owners which references NCGS §160A-385. Staff has explained to the individuals who submitted the petition (Mr.

and Mrs. Caddell) that such petitions are only relevant for rezonings or other map amendments and do not apply to the current circumstances of this proposal. The Caddells wished to submit the petition for information to the Board to express their wish that the proposal be denied. The Board may not consider this to be a formal protest petition as provided for in the General Statutes referenced, but may consider it as a general protest to the proposal by affected property owners. The petition is enclosed for reference.

Also enclosed is a report provided by the Caddells that was prepared by the Department of Agriculture Soil Conservation Service in 2003. The Caddells have asked that staff review the report and assess the potential impact of the proposed development in relation to the report, however, §152-55(B) of the UDO states that the burden of presenting evidence to the permit-issuing board sufficient to lead it to conclude that the application should be denied for any reason shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application. Staff does not feel that they have the authority to determine the potential impacts of the development as it relates to the report's data.

Furthermore, as noted in the opening paragraph of this memo, data regarding stormwater runoff and soils on and near the site was provided to staff by Mr. Jerry Hall that has now been reviewed by the town's consulting engineer, Mr. Gary McCabe. These items are enclosed for reference. In brief, Mr. McCabe's review states the following:

1. **Based on available data, the entire site appears to be above the nearest base flood elevation;**
2. **It does not appear that the proposed development will significantly alter the overall drainage patterns of the approximately 632 acre drainage area;**
3. **The development will require permitting from the North Carolina Dept. of Environment and Natural Resources (NCDENR) and possible the Army Corp. of Engineers;**
4. **Soils and stormwater runoff data provided by Mr. Hall is incomplete and contains some inaccuracies which could be misleading;**
5. **A pre vs. post development analysis of stormwater runoff rates is recommended during the site plan review process;**
6. **While soils maps can provide a general sense of existing soils and their characteristics, an evaluation by a licensed geotechnical engineer and/or soil scientist is recommended during the site plan review process;**
7. **The eleven (11) proposed lots and the proposed single wetland crossing that contain Tillery silty loam soils represent the most marginal soil suitability within the proposed developed area; a geotechnical engineer's evaluation should address these lots, design of the roadway and the wetland crossing, and stormwater and utility improvements.**

Recommendations and Suggested Motions

Planning staff's review of the proposal has identified few issues regarding the proposal's compliance with the Town of Aberdeen UDO, and these are limited to the applicant's request to be relieved of the sidewalk requirement in certain areas of the plan. The Board may determine that the presence of wetlands on the site

and the instances where the proposed roads do not front buildable land presents extraordinary circumstances that would warrant flexibility in the sidewalk requirement, as provided for in §152-60(B) of the UDO. Condition #7 is included as an option for the Board's consideration.

The Board also has an option of approving alternate materials for sidewalks within the development if they conclude that:

- (1) *Such walkways would serve the residents of the development as adequately as concrete sidewalks; and*
- (2) *Such walkways would be more environmentally desirable or more in keeping with the overall design of the development.*

Staff recommends that the Board accept public comment regarding Conditional Use Permit CU #15-03 during the public hearing scheduled for June 22, 2015 and render a decision on the application at their earliest convenience. The following is a recommended format for motions to be made at that time.

- Motion 1: CU #15-03 (is/is not) within the jurisdiction of the Town Board according to the Table of Permissible Uses.
- Motion 2: CU #15-03 (is/is not) complete as submitted.
- Motion 3: CU #15-03, if completed as proposed, (will comply with all/will not comply with one or more) comply with one or more requirements of the UDO. If not, specify the requirement.
- Motion 4: CU #15-03 (satisfies/does not satisfy) Finding #1: will not endanger public health or safety. If not, list why.
- Motion 5: CU #15-03 (satisfies/does not satisfy) Finding #2: will not substantially injure the value of adjoining or abutting property. If not, list why.
- Motion 6: CU #15-03 (satisfies/does not satisfy) Finding #3: will be in harmony with the area in which it is located. If not, list why.
- Motion 7: CU #15-03 (satisfies/does not satisfy) Finding #4: will be in general conformity with Land Use Plan or other plans specifically adopted by the Board. If not, list why.

Per UDO §152-54(c), If the Board votes that the application is not complete as submitted (Motion #1), or that the proposal will not comply with one or more requirements of the UDO if completed as proposed (Motion #2), the application may not be approved. If the Board votes that the application satisfies all requirements of the UDO and findings 1-4, they shall approve the application.

- Motion 8: Based on the Findings of Fact and the evidence presented, the Town Board:

- Issues denial of CU #15-03 based on the following: _____.
- Issues approval of CU #15-03.
- Issues approval with conditions of CU #15-03 as follows.

Recommended Conditions (Planning Board amendments to the conditions are indicated in red)

1. Conditional Use Permits (CUPs) run with the land and as such CU #15-03 applies to the entirety of the property reflected in Parcel ID #00054112. An amendment to the CUP is needed to remove property from the CUP or to make changes to the CUP. If an activity is a use by right, it is not subject to the CUP.
2. The proposed use is authorized by the CUP, however, approval of CU #15-03 is contingent on a successful inter-departmental review to insure that the development has met all Federal, State and local regulations and permitting requirements, as well as any conditions attached to the CUP approval. Plans submitted for this review shall include, but not be limited to, tree survey indicated all trees with a dbh of 12" or greater, utility locations including size, material, and vertical alignment of waterlines, engineering calculations assuring that proposed stormwater measures meet or exceed the requirements of Article XVI, Part 2, Drainage, Erosion Control and Stormwater Management of the UDO.
3. Any and all required permits and/or approvals from other regulatory agencies must be in place prior to issuance of a Notice to Proceed by the Planning Department.
4. The development is authorized to create a maximum of thirty-eight (38) single family lots and construction documents generally based on the Site Sketch Plan with a revision date of 5/29/15 **(or the Site Sketch Plan – Option B with a revision date of 9/12/15.)**
5. Open Space shall generally comply with the 5/29/2015 Site Sketch Plan **(or the 9/12/15 Site Sketch Plan – Option B)** and Pedestrian Plan, including proposed improvements, and in no case may be reduced to less than 20% of the total land area for the development. **Prior to approval of the Final Plat for the subdivision, the developer shall establish a Homeowners' Association with covenants to include a policy for maintenance of the open space, including any improvements such as walking trails. A copy of the covenants shall be provided to staff for review and record-keeping. Covenants shall comply with the requirements of §152-179 and 152-180.**
6. Tree harvest and mass grading are not authorized as a result of this approval. Construction documents, including a grading plan, shall be reviewed by staff for compliance with the UDO.
7. In accordance with §152-60(B) of the UDO, the Board determines that the development presents extraordinary circumstances that warrant relief from strict adherence to sidewalk requirements. The applicant is to provide sidewalks and natural walking trails as indicated on the Pedestrian Plan submitted with a revision date of 5/29/15.
8. The applicant shall supply Planning staff with an assessment from US Fish and Wildlife Agency with regards to Red Cockaded Woodpecker, or other protected species, activities on the property prior to site disturbance. Evidence of such activities authorizes staff to require amendments to the plan to minimize impacts.
9. Approval of CU #15-03 is contingent upon a revised site layout plan that shows all rear **and/or side** lot lines that encroach into the wetlands have been altered to coincide with the wetland boundary when

doing so would not make the lot unbuildable. At a minimum, lots 1, 6, **12**, 29, 30, 31, 32, 33, 34, 35, and 36 shall be adjusted to meet this condition unless the applicant can provide evidence to staff that the lot will be rendered unbuildable by doing so. Additionally, setback lines on lots 5, 17, 27, 28, 37, and 38 are to be adjusted to coincide with the wetland boundary **where doing so will increase the setback area rather than lessen it. Buildability in this instance refers strictly to the lot's ability to meet the dimensional standards required for the district.**

10. Streets, sidewalks, waterlines, and sewer and stormwater facilities shall meet all UDO requirements and are to be dedicated to the Town of Aberdeen contingent upon inspection and approval by the Public Works Department. Preliminary and Final Plats shall identify any and all Town easements related to these facilities. Details shall be reviewed by staff during the Site Plan Review process following approval of the conditional use permit.
11. The Fire Department must sign off on the drawings as well as available capacity for treating fires. Hydrants are required consistent with ~~their~~ Fire Department spacing requirements. Adequate turning radius must be provided for the fire trucks currently in use.
12. Prior to approval of final plat(s), all infrastructure must be complete or guaranteed per UDO requirements, **including sidewalks.**
13. Street trees shall be installed prior to final plat approval or as a requirement of the building permit for each lot and shall be consistent with official species list provided in §98.03 of the Aberdeen Code of Ordinances or with "Trees of the Carolinas" (Appendix J of the UDO) and planted at the appropriate rate. Compliance with the street tree requirements will be reviewed by staff and staff is authorized to verify compliance prior to issuing a certificate of occupancy for each lot.
14. Sharrows and marked crosswalks shall be installed or guaranteed prior to final plat approval consistent with the requirements of the Comprehensive Pedestrian and Bicycle Plans.
15. All additional conditions or requirements as provided from the Town of Aberdeen Unified Development Ordinance are enforceable with regards to the proposal CU #15-03.
16. **Approval of CU #15-03 is contingent on evaluation of soils by a NC licensed Geotechnical Engineer or Soil Scientist where the proposed roads, houses, and utilities will be constructed prior to Site Plan approval. Staff is authorized to require amendments to the plan to accommodate/remedy any evidence of soils unsuitable for building determined by the evaluation. The evaluation shall also include design recommendations for the roadway, wetland crossing, and stormwater and utility improvements.**
17. **Approval of CU #15-03 is contingent on a hydrologic analysis performed by a NC licensed engineer of the downstream unnamed tributary to Aberdeen Creek to determine if it has sufficient capacity to accept the proposed increase in stormwater runoff as a result of the subdivision proposed by CU #15-03.**

Enclosures: Mc2 Site Sketch Plan dated 5/29/2015
Mc2 Pedestrian Plan dated 5/29/2015
Site Sketch Plan – Option B dated 9/12/15
CUP Application
Vicinity Zoning Map

Site Aerial

Green Growth Toolbox Assessment

Overlay Map

Affected Party Petition

2003 Soil Conservation Service Report provided by Jerry and Patricia Caddell

Stormwater runoff and soils data provided by Mr. Jerry Hall

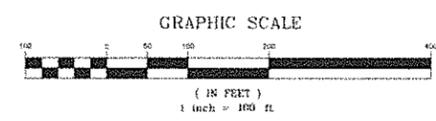
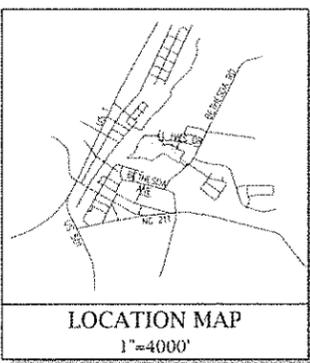
Report by Town of Aberdeen Consulting Engineer Mr. Gary McCabe

Letter to Aberdeen Town Mayor and Commissioners from Concerned Aberdeen Citizens

Staff Email to Mayor and Commissioners dated 9/2/2015

Right of First Refusal Document Provided by Margaret Troutman Heirs

Clarification Statement Provided by Margaret Troutman Heirs



DEVELOPER/OWNER: BETHESDA IVES, LLC
 PO BOX 12
 WEST END, NC 27376

PDP: 00054112
 PIN: 85705544714

JURISDICTION: TOWN OF ABERDEEN
 TOWNSHIP: SANDHILLS

DEED BOOK & PAGE: 4248 / 089

TOTAL SITE ACREAGE: 51.46 AC

CURRENT ZONING: R20-16

EXISTING USE: VACANT

PROPOSED USE: SINGLE FAMILY

TOTAL LOTS: 38

DENSITY: 0.74 DU/AC

FRONT YARD SETBACK: 35'

SIDE YARD SETBACK: 15'

REAR YARD SETBACK: 30'

MINIMUM LOT WIDTH: 100'

MINIMUM LOT AREA: 20,000 SF

PROPOSED SMALLEST LOT: 20,000 SF

OPEN SPACE REQUIRED: 20%

PROPOSED SPACE REQUIRED: 52.7% (27.1 ACRES)

PROPOSED ROAD
 E.L. IVES DRIVE EXTENSION: 100.64 LF

DUNNIN STREET EXTENSION: 139.55 LF

PROPOSED RD A (TOTAL LENGTH): 2285.19 LF
 -FROM BETHESDA TO RD B: 458.05 LF
 -FROM RD B TO RD C: 556.38 LF
 -FROM RD C TO RD D: 965.85 LF
 -FROM RD D TO CUL-DE-SAC: 235.91 LF

PROPOSED RD B: 390.88 LF

PROPOSED RD C (TOTAL LENGTH): 1164.32 LF
 -FROM RD B TO DUNNIN STREET: 487.88 LF
 -FROM RD B TO CUL-DE-SAC: 676.44 LF

PROPOSED RD D: 88.91 LF

PROPOSED RD E: 163.88 LF

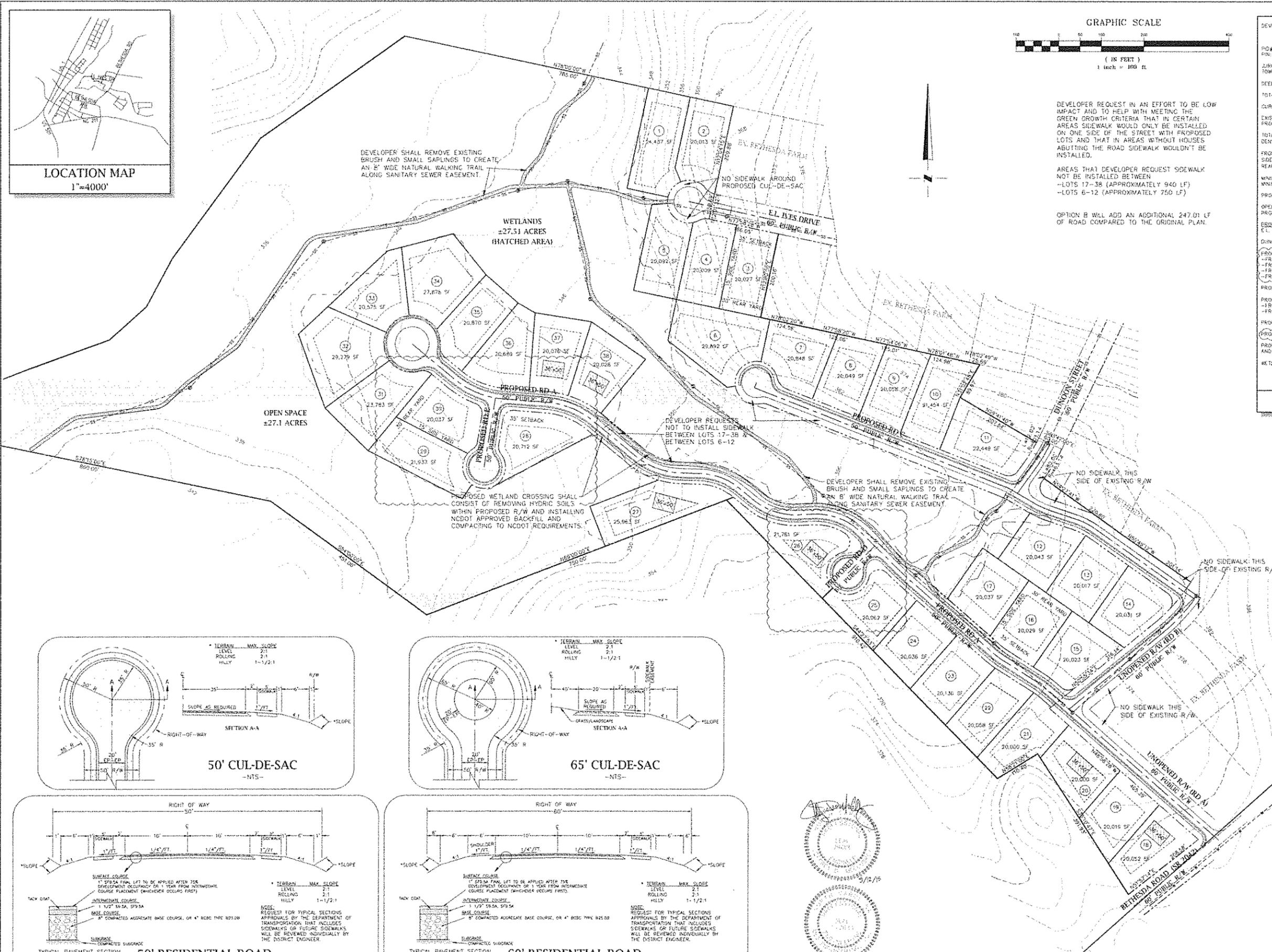
PROPOSED DEVELOPMENT WILL BE ATTACHED TO PUBLIC WATER AND SANITARY SEWER.

WETLAND IMPACTS IN R/W: 5,265 SF

DEVELOPER REQUEST IN AN EFFORT TO BE LOW IMPACT AND TO HELP WITH MEETING THE GREEN GROWTH CRITERIA THAT IN CERTAIN AREAS SIDEWALK WOULD ONLY BE INSTALLED ON ONE SIDE OF THE STREET WITH PROPOSED LOTS AND THAT IN AREAS WITHOUT HOUSES ADJUTING THE ROAD SIDEWALK WOULDNT BE INSTALLED.

AREAS THAT DEVELOPER REQUEST SIDEWALK NOT BE INSTALLED BETWEEN
 -LOTS 17-38 (APPROXIMATELY 940 LF)
 -LOTS 6-12 (APPROXIMATELY 750 LF)

OPTION B WILL ADD AN ADDITIONAL 247.01 LF OF ROAD COMPARED TO THE ORIGINAL PLAN.



DEVELOPMENT SUMMARY

Mc² ENGINEERING

Mc² ENGINEERING, INC.
 2110 BEN CRAIG DRIVE
 SUITE 400
 CHARLOTTE, NC 28262
 PHONE 704.510.9797

BETHESDA IVES, LLC
 PO BOX 12
 WEST END, NC 27376

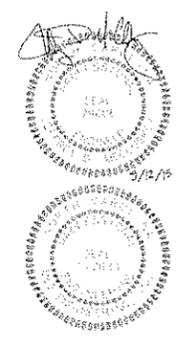
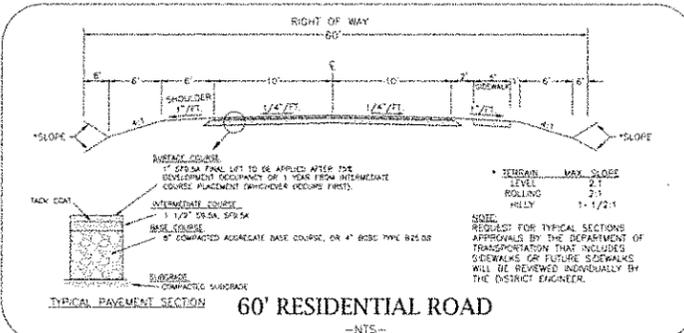
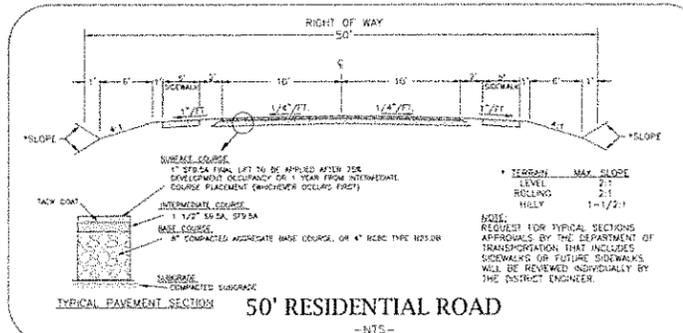
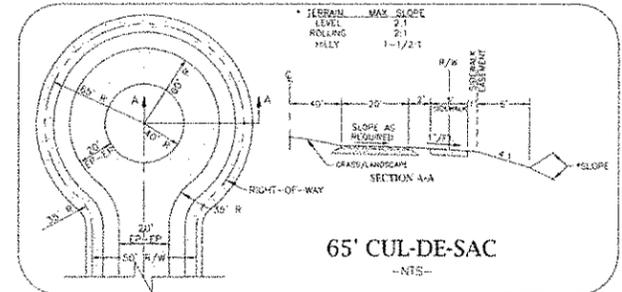
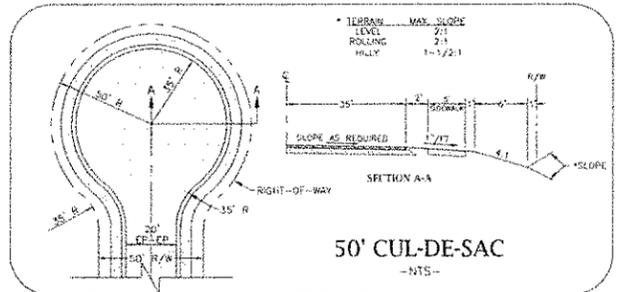
SITE SKETCH PLAN - OPTION B

REVISIONS

1	3/26/15	PLANNING COMMENTS
2	5/4/15	APPLICANT REVISIONS
3	5/29/15	PLANNING COMMENTS
4	6/12/15	OPTION B WITH CUL-DE-SACS

CAD FILE: 14-026 BASE.DWG
 PROJECT NO.: 14-026
 DESIGNED BY: JDM
 DATE: MARCH 3, 2015

SP1.0B





Town of Aberdeen

Planning Department
Phone: (910) 944-7024
Fax: (910) 944-7459

For office use only:
Application No. _____
Date Received: _____
Amount Received: _____

Conditional Use Application

NOTES: - DEADLINE FOR SUBMITTAL IS ONE MONTH PRIOR TO THE APPLICABLE MEETING DATE OF THE PLANNING BOARD.
- ALL APPLICATIONS MUST BE ACCOMPANIED BY A SITE PLAN. SEE SITE PLAN APPLICATION CHECKLIST FOR REQUIRED ITEMS.

APPLICANT INFORMATION:

Applicant: Bethesda Ives, LLC

Phone No. 910-281-0131 Cell No. 910-603-5300 Email: marketvalue@

Applicant's Address PO Box 4393, Pinehurst, NC 28374 pinehurst.net

Property Owner: Same as Applicant

Owner's Address: Same as Applicant

Property Location Address: Bethesda Rd, E.L. Ives Dr and Dunoon St PID #00054112
LRK# PIN 857015544714

CONDITIONAL USE REQUEST:

- A. Existing Zoning: R20-16
- B. Existing land use on property: Vacant
- C. Requested land use: Single Family Residential

THE BOARD MUST MAKE THE FOLLOWING FINDINGS OF FACT IN ORDER TO APPROVE A CONDITIONAL USE PERMIT. PLEASE PROVIDE INFORMATION TO SUPPORT THE FOLLOWING STATEMENTS.

STATEMENT OF JUSTIFICATION:

A. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare:

The proposed single family residential is compatible with the existing adjacent land use which is single family residential.

B. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or substantially diminish and impair property values within the neighborhood:

The proposed single family residential will be similar in nature to the existing lot sizes of the adjacent single family homes and the proposed houses will also be similar in value to the existing neighborhood. or higher in value.

C. The establishment of the conditional use will be in harmony with the area in which it is to be located and will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district:

The proposed development includes creating connections to the existing stub streets that currently exist and installing permanent cul-de-sacs for emergency vehicle turnarounds along with opening existing unopened right of ways and creating a stub connection to the South from Road "D" that will serve as a future connection.

D. The exterior architectural appeal and function plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district as to cause substantial depreciation in the property values within the neighborhood:

The proposed development will have homes that are similar in nature to the existing homes and will include a combination of siding on the sides and rear and the front elevation will generally have siding with accents of vinyl shakes, stone veneer and brick.

E. Adequate utilities, access road, drainage and/or necessary facilities have or are being provided:

The proposed development will include constructing public water and sanitary sewer along with public roads built to the Town and NCDOT standards for acceptance.

F. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets:

As mentioned above in item "C" several of the roads consist of connections to existing dead end roads that will be properly permanently dead end with a cul-de-sac or opening unopened right of ways. Ultimately the project involves 2 connections to Bethesda Road (E.L. Ives Road and an existing Unopened right of way called Road "A")

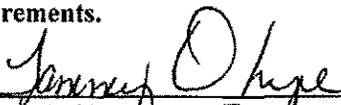
G. The conditional use will be in general conformity with the land-use plan, thoroughfare plan, or other plan specifically adopted by the Town:

The proposed plan is in conformance with the zoning and land use plan. The proposed development also has included connectivity as illustrated within the Town adopted Pedestrian Plan as illustrated in Priority Project #6 (Downtown to Malcolm Blue Greenway). The plans include sidewalks and walking trails.

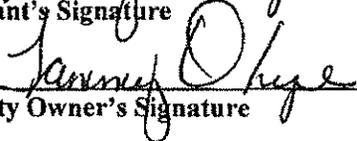
H. The conditional use in all other respects, conforms to the applicable regulations of the district in which it is located:

The proposed development is in accordance with all aspects of the zoning ordinance and Town Ordinances.

Acceptance of this application does not imply approval of this request. I realize that this application may be denied or that conditions may be attached to this request at assure compliance with applicable Zoning Code Requirements.

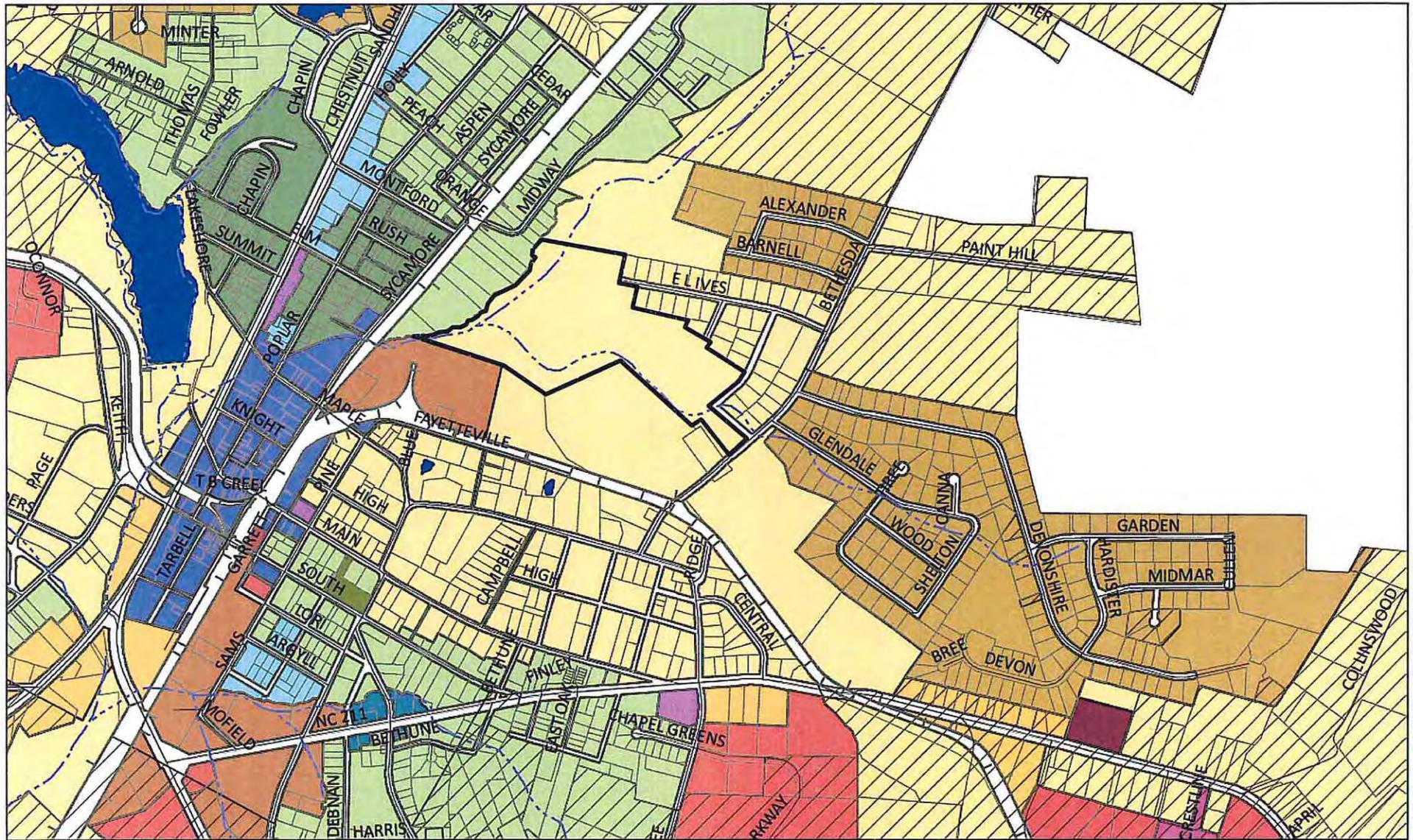

Applicant's Signature

5/7/15
Date


Property Owner's Signature

5/7/15
Date

Conditional Use Permit CU 15-03 – Vicinity Zoning



 B-1	 C-1	 HC	 RA	 R15-12	 R30-18	 R10-10-C	 Aberdeen ETJ
 B-2	 I-H	 O-1	 R6-10	 R18-14	 C-1-C	 R20-16-C	 Other Jurisdiction
 B-3	 GC	 MH	 R10-10	 R20-16	 I-H-C		

Conditional Use Permit CU 15-03 – Site Aerial





Property Proposed for
Conditional Use Permit



2' Contours



Stream



Conditional Use Permit CU 15-03 Green Growth Toolbox Assessment

500 Yr Floodplain



100 Yr Floodplain



Recommended Stream Buffer



Existing Sewer





DEVELOPER SHALL REMOVE EXISTING BRUSH AND SMALL SAPLINGS TO CREATE 2-3' WIDE NATURAL WALKING TRAIL ALONG SANITARY SEWER EASEMENT

WETLANDS
27.51 ACRES
(HATCHED AREA)

OPEN SPACE
22.73 ACRES

PROPOSED WETLAND CROSSING SHALL CONSIST OF REMOVING HYDRIC SOILS WITHIN PROPOSED R/W AND INSTALLING 18" OF APPROVED SANDFILL AND COMPACTING TO HDOT REQUIREMENTS.

DEVELOPER REQUESTS NOT TO INSTALL SIDEWALK BETWEEN LOTS 17-30 & BETWEEN LOTS 8-12

DEVELOPER SHALL REMOVE EXISTING BRUSH AND SMALL SAPLINGS TO CREATE 2-3' WIDE NATURAL WALKING TRAIL ALONG SANITARY SEWER EASEMENT

STREET STUBBED TO UNDEVELOPED PROPOSED TO THE SOUTH. STUB STREET IS APPROXIMATELY 80' LONG WHICH MEETS THE FC TURN AROUND REQUIREMENTS FOR FIRE TRUCKS

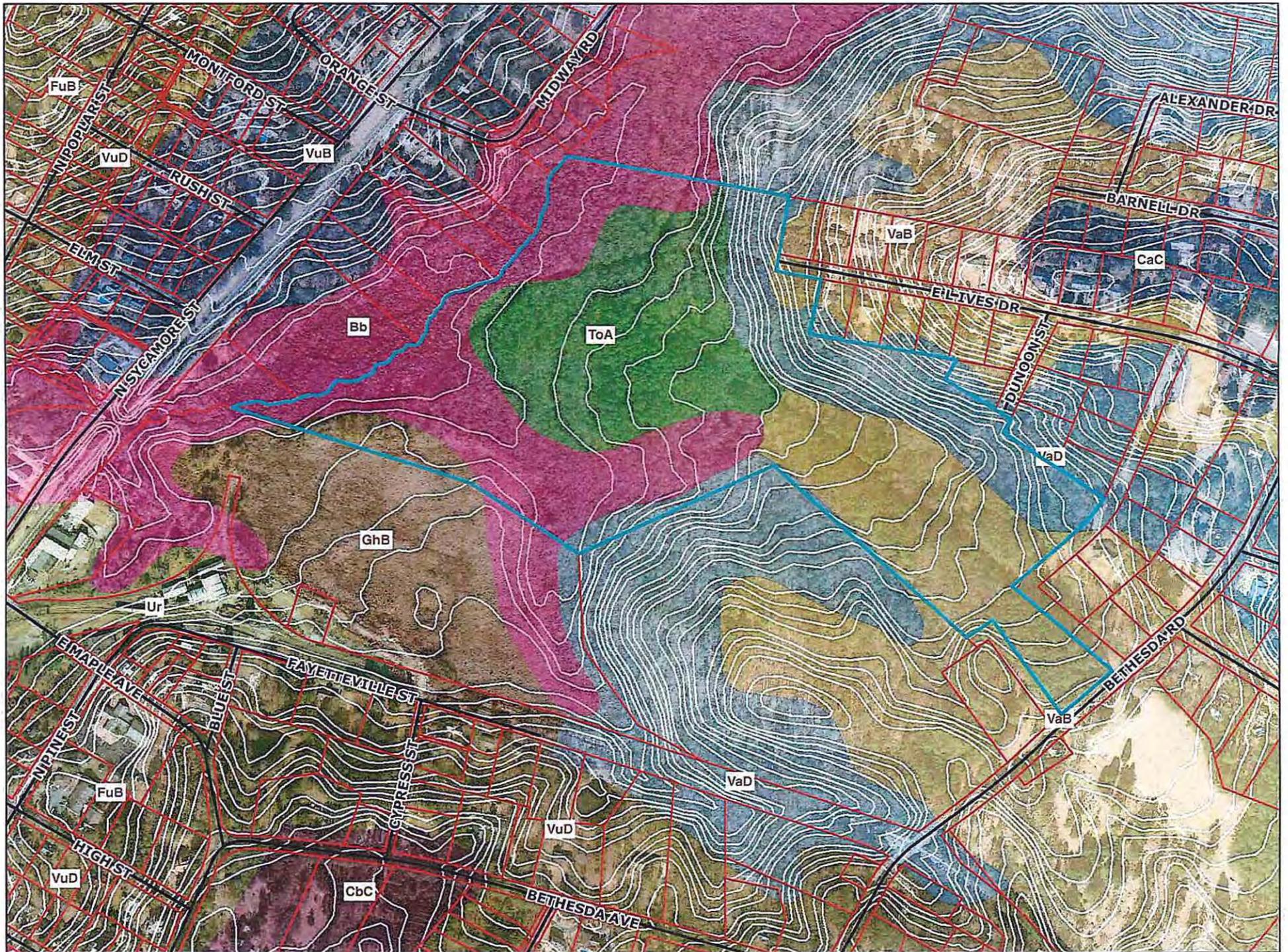
NO SIDEWALK THIS SIDE OF EXISTING R/W

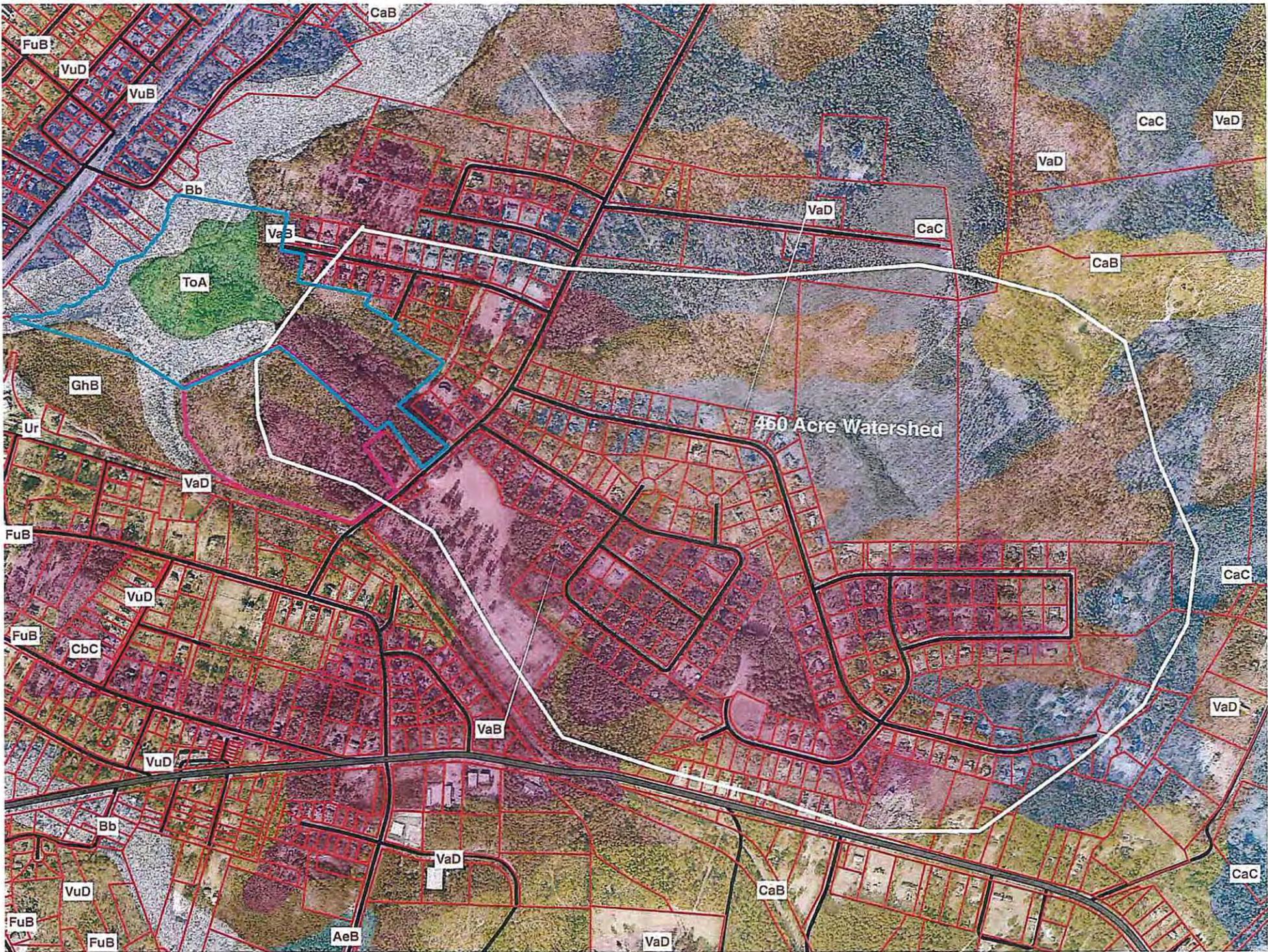
PROTEST PETITION

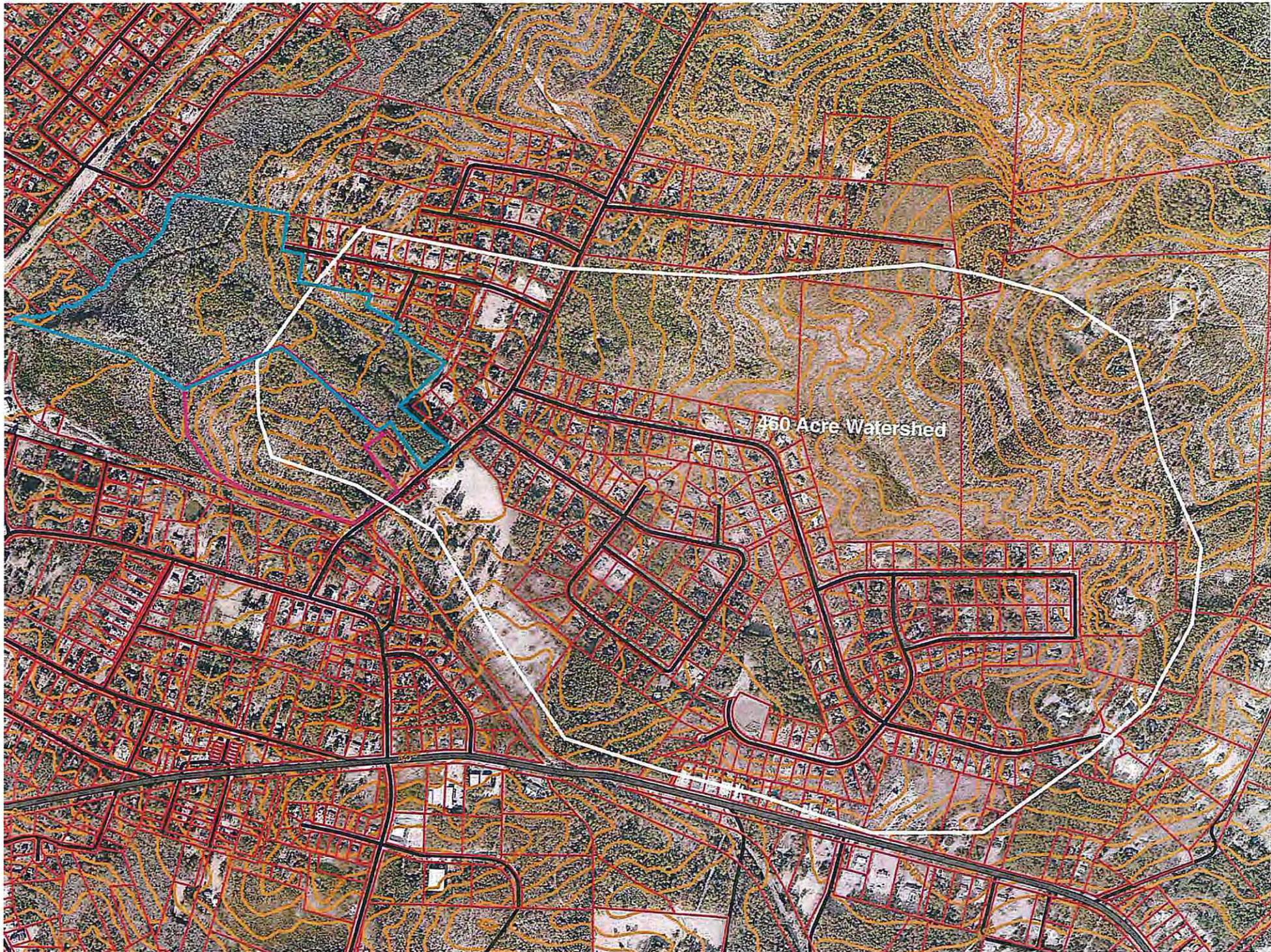
We the undersigned request the Town Of Aberdeen to consider this petition as a formal protest against the conditional use permit #15-03 submitted by Bethesda Ives, LLC. This petition has been signed by the owners of twenty percent (20%) or more of those parcels located immediately adjacent to subject property as listed on the zoning application either in the rear or on either side, extending 100 feet, or of those directly opposite extending 100 feet from the street frontage of the opposite lots as required by NC Statute Section 160A-385.

Legal Property Owner

<u>Printed Name</u>	<u>Signature</u>	<u>Address</u>
JERRY CADDELL		702 IVES DR. ABERDEEN
Patricia Caddell	Patricia Caddell	702 IVES DR. ABERDEEN
Rodney Tyner	Rodney Tyner	501 Bethesda Rd Aberdeen
DAULINE H BETHEN	Dauline H. Bethen	608 EL Ives Dr Aberdeen
Julia THOMAS	Julia Thomas	602 EL Ives Drive Aberdeen
THOMAS WHITAKER JR	Thomas Whitaker	610 E. L. IVES DR. ABERDEEN
Deborah Dreyer		601 EL Ives Dr. Aberdeen
RAFFAZZE GRONDA	Raffaele Gronda	603 EL IVES DR. ABERDEEN
DORIS T McPhaul	Doris T. McPhaul	1475 Midland Rd. # 53 Southern Pines 283
Theresa T. Hall	Theresa T. Hall	149 Mcintosh Rd. CARTHAGE, NC 282







450 Acre Watershed

The slope is the major limitation affecting recreational development. Cutting and filling help to overcome this limitation.

The land capability subclass is IVe. Based on loblolly pine as the indicator species, the woodland ordination symbol is 6R in areas of the Tatum soil and 8R in areas of the Nason soil.

ToA—Tetotum silt loam, 0 to 3 percent slopes, rarely flooded. This nearly level and gently sloping, moderately well drained soil is on stream terraces throughout the county. Individual areas are irregular in shape and range from 5 to 100 acres in size.

Typically, the surface layer is brown silt loam 4 inches thick. The subsurface layer is brownish yellow silt loam 5 inches thick. The subsoil extends to a depth of 44 inches. It is silty clay loam. The upper part is brownish yellow. The next part is yellowish brown and has red, strong brown, and brown mottles. The lower part is strong brown and has pinkish gray mottles. The underlying material to a depth of 70 inches is yellowish red silt loam that has red, pinkish gray, and light reddish brown mottles.

Included with this soil in mapping are small areas of Chewacla and Masada soils. The somewhat poorly drained Chewacla soils are along drainageways. The well drained Masada soils are in the higher positions on the landscape. Also included are wet spots, which are identified by a special symbol on the soil maps. Included soils make up about 10 percent of this map unit.

Permeability is moderate in the Tetotum soil. Available water capacity is high. Runoff is slow. Reaction is extremely acid to strongly acid, except where the surface layer has been limed. The seasonal high water table is 1.5 to 2.5 feet below the surface. The soil is subject to rare flooding of brief duration during periods of abnormally high floods.

About half of the acreage of this soil is used as cropland or pasture. The rest is used as woodland.

The commonly grown crops are corn, soybeans, and small grain. The wetness is the major limitation. A drainage system may be needed for some agricultural crops. Fescue is the primary species grown for hay and pasture. Proper stocking rates, rotation grazing, timely deferment of grazing, and restricted use during wet periods help to keep the pasture in good condition.

The dominant trees are loblolly pine, yellow-poplar, sweetgum, southern red oak, and white oak. The understory includes American holly, sourwood, flowering dogwood, greenbrier, winged elm, and red maple. Plant competition and the hazard of flooding are management concerns affecting timber production. Disking during site preparation helps to control plant competition. Using

wheeled and tracked equipment during wet periods results in ruts, surface compaction, and damage to tree roots.

The wetness is a limitation affecting recreational development. A good drainage system is needed in intensively used areas, such as playgrounds.

The land capability subclass is IIw. Based on loblolly pine as the indicator species, the woodland ordination symbol is 9W.

Ud—Udorthents, loamy. This map unit consists of sand pits, landfill, borrow pits, and fill. In these areas the natural layering sequence of the soil has been so altered by earthmoving operations, such as scraping, backfilling, trenching, and excavating, that identification of the natural soil is not feasible. These areas are identified on the soil maps by the map unit symbol and by the following special symbols—Sand Pit, Landfill or LF, Borrow Pit or BP, and Fill.

Sand pits are on Coastal Plain uplands in the southern part of the county. They include open excavations from which sand has been or is being removed for use in construction. In many places sand pits are in areas of Candor soils and, to a minor extent, Ailey soils.

These areas have short, vertical sidewalls and a relatively smooth base. They range from 3 to about 30 feet deep. The depth depends on the thickness of the sandy layer. Typically, the sand pits vary in shape and size. The largest ranges up to about 175 acres in size. The exposed loamy soil material supports plant growth. The rooting depth and the low available water capacity are limitations of the soil material.

The natural areas are commonly reseeded to loblolly pine, turkey oak, and blackjack oak. Reclaimed areas are in coastal bermudagrass and loblolly pine.

These areas have the potential for urban uses, recreational development, or wildlife habitat.

The Moore County landfill is on Coastal Plain uplands and in the Sandhills in the southern part of the county. It consists of graded trenches that are backfilled with alternate layers of solid refuse and soil material. A final cover of about 2 feet of soil is on the surface. After the final cover is added, the surface is nearly level and gently sloping.

Included in mapping are small areas of undisturbed soil, which are commonly near the edge of the mapped areas. The soil between the trenches is relatively undisturbed, except for the final cover used to smooth the entire area.

Areas of landfill are suited to plant growth. Available water capacity is generally low. A permanent plant cover is essential to protect these areas from erosion.

The characteristics of the soil material vary to such a

degree that interpretive statements cannot be made without onsite examinations of the individual areas.

Areas of borrow pits are scattered throughout the county, commonly adjacent to the major roads. They consist of areas from which the soil material has been removed for use as construction material for highways. The cuts are 5 to more than 15 feet deep. The base slope in these cuts is level and gently sloping. Most cuts have one or more short, nearly vertical side slopes. The soil material presently exposed is commonly similar to that in the subsoil and the underlying material of the closely adjacent soils. Loamy marine deposits are the most common material exposed in the cuts. Areas of less than 2 acres in size are shown by a spot symbol on the soil maps.

Included in mapping are small areas of fill material that have been pushed aside during excavation. Some of the borrow pits have been reclaimed and are seeded to grasses. A few areas are naturally reseeded to wild grasses, weeds, and loblolly pine. Because of the shallow rooting depth, the low available water capacity, the low content of organic matter, and poor soil fertility, these areas have poor physical properties for establishing and supporting plant growth.

Seeded areas have the potential for use as wildlife habitat.

Fill areas are in the southern part of the county, near lakes and drainageways. Most of these areas are used for golf courses. They are generally long, narrow strips of soil material used to raise the landscape above the normal flood stage. Available water capacity is generally moderate, and these areas have a permanent plant cover.

The land capability subclass is VIII_s. This map unit is not assigned a woodland ordination symbol.

Ur—Urban land. This map unit consists of areas where more than 85 percent of the surface is covered by buildings, streets, and parking lots. Extensive urbanization has altered the natural soils and has changed the topography and original landscape. The remaining soil surfaces are used mainly for small lawns or shrub gardens near buildings, sidewalks, and parking areas. The slope is commonly 2 to 8 percent.

Most areas are in or around the towns of Southern Pines, Aberdeen, and Pinehurst. Individual areas are irregular in shape and range from 5 to 80 acres in size. Other areas in the smaller towns in the county range from 5 to 25 acres in size.

Nearly all of the precipitation that falls in this map unit runs off, increasing the hazard of flooding in low areas. Silt from areas that have been graded and have not been stabilized can be carried into waterways and reservoirs.

Onsite examination is necessary to determine the use and management in this map unit.

The land capability subclass is VIII_s. This map unit is not assigned a woodland ordination symbol.

VaB—Vaucluse loamy sand, 2 to 8 percent slopes.

This gently sloping, well drained soil is on ridgetops throughout the Coastal Plain. Individual areas are elongated or irregular in shape and range from 5 to about 200 acres in size.

Typically, the surface layer is brown loamy sand 7 inches thick. The subsurface layer is yellowish brown loamy sand 6 inches thick. The subsoil extends to a depth of 50 inches. The upper part is moderately permeable, firm, strong brown sandy clay loam that has yellowish red mottles. The lower part is slowly permeable, very firm, reddish yellow sandy clay loam that has yellowish red mottles. The underlying material extends to a depth of 80 inches. The upper part is mottled very pale brown and reddish yellow sandy loam, and the lower part is very pale brown fine sand.

Included with this soil in mapping are small areas of Ailey, Dothan, Fuquay, and Gilead soils. Ailey, Dothan, and Fuquay soils are commonly in the smooth, less sloping areas. The moderately well drained Gilead soils are on the lower part of the slope along drainageways. Also included are wet spots, which are identified by a special symbol on the soil maps. Included soils make up about 20 percent of this map unit.

Permeability is slow in the Vaucluse soil. Available water capacity is low. Runoff is medium. Reaction is very strongly acid or strongly acid in the surface layer and subsurface layer, except where limed, and extremely acid to strongly acid in the subsoil and underlying material.

About one-third of the acreage of this soil is used as cropland. The rest is used as pasture or woodland.

The crops commonly grown on this soil are corn, tobacco, soybeans, and small grain. The hazard of erosion is the major management concern. Conservation cropping systems, cover crops, grassed waterways, diversions, field borders, and crop residue management help to control erosion. Bermudagrass hybrids are the primary species grown for hay and pasture. Pasture management includes measures that maintain the protective plant cover, which help to control erosion. Proper stocking rates, rotation grazing, and restricted use during wet periods help to keep the pasture in good condition.

The dominant trees are loblolly pine, longleaf pine, white oak, and southern red oak. The understory includes flowering dogwood, greenbrier, pineland threawn, and sourwood. No major limitations affect

and blackjack oak. The understory includes sassafras, greenbrier, blueberry, and pineland threeawn. The main limitations are the sandy surface layer and droughtiness. The loose, sandy layers in the upper 20 to 40 inches hinder the use of wheeled equipment when timber is harvested, especially when the soil is saturated or very dry.

The slow permeability, the slope, and droughtiness are the main limitations affecting urban development. Extending the distribution lines to provide a larger absorption area can help to overcome the slow permeability. Maintaining lawns may be difficult because of droughtiness. Drought-tolerant grasses and shrubs should be selected for planting. No major limitations affect local roads and streets.

The slope is the major limitation affecting recreational development. This limitation can be overcome by proper planning and careful site selection of recreational facilities. Maintaining golf fairways may be difficult because of droughtiness.

The land capability subclass is Vls. Based on longleaf pine as the indicator species, the woodland ordination symbol is 4S.

Bb—Bibb loam, 0 to 2 percent slopes, frequently flooded. This nearly level, poorly drained soil is on flood plains on the Coastal Plain. Individual areas are long and narrow and range from 10 to more than 200 acres in size.

Typically, the surface layer is black loam 12 inches thick. The underlying material extends to a depth of 70 inches. It is dark grayish brown fine sandy loam in the upper part, light brownish gray fine sandy loam in the next part, and grayish brown sandy loam in the lower part.

Included with this soil in mapping are similar soils that have a surface layer of fine sandy loam, sandy loam, or silt loam. Also included are intermingled areas where the black surface layer is more than 24 inches thick and small areas where the subsoil has more clay than is typical for the Bibb soil. Included soils make up about 25 percent of this map unit.

Permeability is moderate in the Bibb soil. Available water capacity is high. Runoff is slow. Reaction is very strongly acid or strongly acid, except where the surface layer has been limed. The seasonal high water table is at or above the surface during most of the year. This soil is frequently flooded.

Most of the acreage of this soil is used as woodland. The rest is used as pasture.

This soil is generally unsuited to cultivation. The frequent flooding and the wetness are the major management concerns. A drainage system is needed

for optimum yields. Bermudagrass hybrids are the primary species grown for hay and pasture. Restricted grazing during wet periods and rotation grazing help to keep the pasture in good condition.

The dominant trees are loblolly pine, sweetgum, yellow-poplar, blackgum, water oak, and Atlantic white-cedar. The understory includes blackgum, common reed, and redbay. The major management concerns are the flooding and the wetness. They restrict the use of equipment and increase the seedling mortality rate. They can be overcome by installing a drainage system, such as subsurface tile and ditches.

The wetness and the flooding are the major limitations affecting septic tank absorption fields, dwellings with or without basements, and local roads and streets. Because it is on flood plains, this soil should not be used as a site for dwellings. The wetness and the flooding on sites for local roads and streets can be overcome by constructing the roadbeds above the known flood stage.

The flooding and the wetness are the major limitations affecting recreational development. Floodwater can damage any structure built on this soil.

The land capability subclass is Vw. Based on loblolly pine as the indicator species, the woodland ordination symbol is 9W.

CaB—Candor sand, 0 to 4 percent slopes. This nearly level and gently sloping, somewhat excessively drained soil is on Coastal Plain uplands. Individual areas are irregular in shape and range from 5 to more than 500 acres in size.

Typically, the surface layer is grayish brown sand 13 inches thick. The subsurface layer extends to a depth of 26 inches. It is light yellowish brown sand. The subsoil extends to a depth of 80 inches. The upper part is yellowish brown loamy sand. The next part is light yellowish brown sand that has very pale brown and yellowish brown mottles. The lower part is yellowish brown sandy loam that has light yellowish brown and strong brown mottles.

Included with this soil in mapping are small areas of the well drained Ailey and Fuquay soils. These soils are in the lower, more sloping areas. Also included are wet spots, which are identified by a special symbol on the soil maps. Included soils make up about 10 percent of this map unit.

Permeability is rapid in the upper layers of the Candor soil and moderate in the lower part of the subsoil. Available water capacity is very low. Runoff is very slow. Reaction is extremely acid to strongly acid, except where the surface layer has been limed. The hazard of wind erosion is severe.

Client: Town Of Aberdeen
 County: Moore NOAA-B State: NC
 Practice: Subdivision
 Calculated By: JCH Date: 7/27/2015
 Checked By: _____ Date: _____

Drainage Area: 460. Acres (provided from RCN Calculator)
 Curve Number: 74 (provided from RCN Calculator)
 Watershed Length: 5000 Feet
 Watershed Slope: 6 Percent
 Time of Concentration: 0.94 Hours (calculated value)
 Rainfall Type: II

Storm Number	1	2	3	4	5	6	7
Frequency (yrs)	1	2	5	10	25	50	100
24-Hr rainfall (in)	3.07	3.71	4.65	5.40	6.42	7.22	8.05
Ia/P Ratio	00.23	00.19	00.15	00.13	00.11	00.10	00.09
Used	00.23	00.19	00.15	00.13	00.11	00.10	00.10
Runoff (in)	.95	1.39	2.09	2.69	3.54	4.23	4.97
(ac-ft)	36.42	53.28	80.12	103.12	135.70	162.15	190.52
Unit Peak Discharge (cfs/acre/in)	00.512	00.533	00.553	00.564	00.575	00.580	00.580
Peak Discharge (cfs)	224	340	531	697	937	1,130	1,326

Client: Town Of Aberdeen
 County: Moore NOAA-B State: NC
 Practice: Subdivision
 Calculated By: JCH Date: 7/27/2015
 Checked By: _____ Date: _____

COVER DESCRIPTION	Acres (CN)			
	Hydrologic Soil Group			
	A	B	C	D
FULLY DEVELOPED URBAN AREAS (Veg Estab.)				
Impervious Areas				
Paved parking lots, roofs, driveways	-	-	5(98)	-
Residential districts (by average lot size)				
1/3 acre	-	-	35(81)	-
Avg % imperv				
30				
OTHER AGRICULTURAL LANDS				
Woods	-	-	420(73)	-
fair				
Total Area (by Hydrologic Soil Group)			460	
TOTAL DRAINAGE AREA: 460 Acres		WEIGHTED CURVE NUMBER: 74		

Red Line Engineering, P.C.

"Engineering Relationships"

August 19, 2015

Town of Aberdeen
Attn: Mrs. Pamela Graham
115 North Poplar Street
P.O. Box 785
Aberdeen, North Carolina 28315

Re: Bethesda Ives Subdivision (CUP# 15-03)

Dear Mrs. Graham,

On July 30th, 2015, Red Line Engineering, P.C. (hereafter RLE) was engaged by the Town of Aberdeen to advise the Town regarding soils and stormwater runoff information presented by a citizen during the Conditional Use Permit public hearing process of the Bethesda Ives Subdivision (CUP#15-03). The Town provided RLE with subdivision plans, a staff report, and information from Mr. Hall. RLE was asked to review the information and determine if the information provided by Mr. Hall is accurate and relevant to the CUP process for this subdivision. As such, RLE has reviewed the documents provided, as well as other GIS, USDA and FEMA data. RLE has also gathered additional information from the design Engineer for the Bethesda Ives Subdivision, Jeffrey D. McCluskey, P.E. of Mc² Engineering, Inc.

Site Description

According to the information submitted, GIS and FEMA data, the subject property is an approximately 51.46 acre vacant parcel of land that drains to an unnamed tributary to Aberdeen Creek on the western property line. The majority of the site has gradual slopes ranging from one to four percent, with approximately 27.51 acres of delineated wetlands present on the western portion of the property adjacent to the unnamed tributary. Approximately 7.4 acres of the site is uplands with slopes ranging from six to eight percent, on average. The elevation of the site range from 336' above Mean Sea Level (MSL) at the western edge of the property to approximately 384' above MSL at Bethesda Road on the eastern edge of the property. According to the FEMA issued Flood Insurance Rate Map (FIRM) number 3710857000J, effective date of October 17, 2006, the site is not located within a 100 year flood plain. The nearest base flood elevation is 332 ft. above MSL. The entire site appears to be above the nearest base flood elevation.

Red Line Engineering, P.C.

"Engineering Relationships"

Proposed Improvements

According to the preliminary subdivision plans submitted to the Town and additional information provided by Mr. Jeffrey D. McCluskey, P.E., of Mc² Engineering, Inc., the developer intends to construct 38 lots on the vacant 51.46 acre parcel. From the preliminary subdivision plans, the developer proposes to have only one wetland crossing/impact which is less than 0.1 ac of disturbance. The proposed wetland impacts will require permitting actions with NCDENR 401 Wetlands Unit and possibly the Army Corps. Of Engineers. This permits will need to be obtained by the developer and a copy provided to the Town at the time of The Site Plan review. Please note that a Stormwater Permit and an Erosion and Sedimentation Control Permit will be necessary for this development. A copy of all calculations should be provided to the Town of Aberdeen for review, prior to approval of The Site Plan.

Per discussions with the design Engineer for the Bethesda Ives Subdivision, Mc² Engineering, Inc., the preliminary sketch plan proposes the following improvements to the site:

Asphalt Roadways	93,800 sf
Concrete Sidewalks	25,200 sf
Small Homes + Driveways	13,800 sf (5 lots)
Larger Homes + Driveways	143,880 sf (33 lots)
*Total Impervious Proposed	276,680 sf / 6.35 acres (12.34%)

****Note: The Total Impervious Area Proposed is preliminary and subject to change during the detailed design and Site Plan Review. This information is not submitted for approval by the developer at this time. However, this information was requested by RLE for the purposes of determining the probably impacts of the development.***

Stormwater Runoff

It is our understanding that, during the public hearing process, a private citizen of Aberdeen has raised a question regarding the suitability of the site for development given the existing soils present and the amount of stormwater run-off generated by the drainage area. The private citizen, Mr. Hall, provided exhibits to the Town Staff for review. As such, the Town Staff has requested that RLE review the documents and determine if they are accurate and relevant. RLE has reviewed the documents provided and has determined that there are some inaccuracies in the information provided, but mostly that the information is incomplete, and thus misleading. It appears that the private citizen was attempting to calculate the total amount of runoff of the entire drainage area. While this is useful information in modeling the pre-development conditions, it does not represent the impact of the proposed improvements. In order to determine the impact of the proposed improvements, it is necessary to perform a Pre vs Post Development Analysis of the subject property and compare the results with the runoff rates for the entire drainage area and the downstream conveyances. The exhibits provided were found to be inaccurate in regards to the delineation of the watershed, watershed length, average slope, time of concentration and curve number. Typically, the drainage area for a project is calculated from the discharge point of the property, not the middle of the property as shown on the citizens exhibit, which most likely contributed to the inaccuracies stated above. RLE has performed a rough calculation of the drainage area from the discharge point of the property, using the digital information available at the time. It appears that the drainage area is approximately 632 acres, instead of the 460 acres delineated by the citizen. It should be noted,

Red Line Engineering, P.C.

"Engineering Relationships"

no adjustments have been made for piped conveyances for this rough drainage area delineation. The average slope of the watershed was determined to be approximately 3.36%, not 6% as indicated by Mr. Hall. With regards to the soils, approximately 26% of the drainage area is comprised of Candor Sand Soils (CaC, CaB, Cbc) which belong to the hydrologic soil group A. These soils were not included in Mr. Hall's exhibit, which alters the weighted curve number significantly. With the adjustments stated above, the curve number for the entire watershed was calculated to be 64, not 74 as used by Mr. Hall.

From the total drainage area and site information available, the Time of Concentration (Tc) for the total drainage area was calculated using the Kirpich Equation, along the longest flow length in the drainage area (Please see attached Tc Exhibit). Using the SCS Curve Number Method, the Tc was then used to calculate the anticipated peak runoff rates, for the Pre and Post-Development conditions. (Please see attached Calculations.) A summary of the calculated peak runoff rates for both the Bethesda Ives Subdivision site and the Total Drainage Area is included below:

Bethesda Ives Subdivision Stormwater Peak Run-Off: 51.46 acres (SCS Curve Number Method)

Design Storm	Pre Development	Post Development	Increase	Proposed
Q2	58.84 cfs	75.22 cfs		16.38 cfs (28.60%)
Q10	123.10 cfs	141.49 cfs		18.39 cfs (14.94%)
Q25	167.26 cfs	187.75 cfs		20.49 cfs (12.26%)
Q50	203.71 cfs	226.36 cfs		22.65 cfs (11.12%)
Q100	242.23cfs	266.04 cfs		23.82 cfs (9.83%)

Total Drainage Area Stormwater Peak Run-Off: 632 acres (SCS Curve Number Method)

Design Storm	Pre Development	Post Development	Increase	Proposed
Q2	239.98 cfs	256.36 cfs		16.38 cfs (6.83%)
Q10	609.65 cfs	718.04 cfs		18.39 cfs (2.63%)
Q25	870.22 cfs	890.71 cfs		20.49 cfs (2.35%)
Q50	1,089.04 cfs	1,111.69 cfs		22.65 cfs (2.08%)
Q100	1,338.98 cfs	1,358.80 cfs		23.82 cfs (1.78%)

Red Line Engineering, P.C.

"Engineering Relationships"

Soils Discussion

It is our understanding that, the existing soils present, for the proposed Bethesda Ives Subdivision, have been questioned with regards to their suitability for development. During the preliminary sketch or concept plan portion of any project, it is common to review USDA Soils Maps of the parcel to gain a general knowledge of the soils present, their typical characteristics, and to estimate the amount and location of developable land. It is our understanding that the design Engineer, Mc² Engineering, Inc., has performed such an evaluation in their preparation of the Sketch Plan. Red Line Engineering has also reviewed this information with regards to general suitability. While soils maps can provide a general sense of the soils present and their characteristics, we highly recommend having a license Geotechnical Engineer evaluate the soils where the proposed roads and houses will be constructed, prior to Site Plan Approval. Soil Maps are not a substitute for field inspections and soil bores by a Geotechnical Engineer and/or Soil Scientist. The types of soils present on the subject parcel are a mixture of Vacluse (loamy sand), Bibb (loam), Gilead (loamy sand), Tillery (silt loam). Typically, the Vacluse loamy sands have a Hydrologic Soils Group (HSG) classification of C. These soils are well draining soils but are typically not great soils for septic systems. The proposed subdivision shall be connected to municipal water and sewer. It should be noted that the areas surrounding this property have been developed for similar residential subdivisions. As such, it can be assumed that the Vacluse portions should be suitable for similar residential development. However, geotechnical bores would be needed to verify if the soils present are suitable for the proposed improvements. Bibb loam is an undrained type of soil that is often present with wetlands. Bibb loams can have an HSG classification of D or A. Most commonly, the HSG classification of this group is D and is characterized by the presence of wetlands, which makes this soil type typically unsuitable for development. It appears that the proposed development preserves the majority of the wetlands and Bibb soils. The proposed roadway crossing of the Bibb soils and wetlands needs to be properly evaluated by a Geotechnical Engineer prior to Site Plan Approval. Gilead loamy sands are moderately well drained and are marginally suitable for development, but require site specific evaluation. The proposed improvements would have no impact to the small amount of Gilead soils onsite. The Tillery soils present onsite are the most marginal feature impacted by the proposed improvements. Tillery silty loams can have an HSG classification of D or B. There are eleven (11) residential lots proposed for the area with Tillery soils. Given the proximity to Bibb soils with wetlands present, we strongly recommend having an onsite geotechnical evaluation of these soils prior to Site Plan Approval. This area may or may not be suitable for development.

Red Line Engineering, P.C.

"Engineering Relationships"

Summary & Recommendations

According to the information provided by the Town of Aberdeen, Mc² Engineering, Inc., and the available GIS, USDA Soils and FEMA data, it does not appear that the proposed Preliminary Sketch Plan would significantly alter the overall drainage patterns of this drainage area. Even though a significant impact to the total drainage area is not anticipated, based on the information available at the time of our analysis, Red Line Engineering, P.C. recommends the following:

- Prior to Site Plan Approval, the Developer must submit, to the Town of Aberdeen for review and approval, all necessary geotechnical reports and boring logs, signed by a North Carolina Professional Geotechnical Engineer, indicating the suitability of the site for the proposed roads, utilities and houses. These reports should also include design recommendations for the roadway and wetland crossing, stormwater improvements, and utility improvements. Specifically, the area of Tillery soils, with eleven (11) proposed lots, needs to be thoroughly evaluated by a licensed Geotechnical Engineer, regarding their suitability for development.
- Prior to Site Plan Approval, the Developer should obtain and provide the Town of Aberdeen a copy of all applicable NCDENR 401 and ACE wetlands maps and permits.
- Prior to Site Plan Approval, the Developer should submit an hydrologic analysis of the downstream unnamed tributary to Aberdeen Creek to determine if it has sufficient capacity to accept the proposed increase in stormwater runoff. Given the site's proximity to the 100 year flood plain, a flood study, performed by a North Carolina Professional Engineer, is recommended. If the project would adversely affect downstream conveyances, then stormwater BMPs should be installed as part of this project to reduce the post development runoff to the pre development rates.
- Prior to Site Plan Approval, the Developer should obtain all necessary Sedimentation & Erosion Control Permits and Stormwater Permits from NCDENR. The Developer should submit a copy all Erosion Control and Stormwater Calculations to the Town of Aberdeen for review and approval. Prior to Site Plan Approval, the Developer must prove to the Town of Aberdeen's satisfaction that all existing and proposed stormwater conveyances on the Bethesda Ives property discharge at non-erosive velocities, with diffused flow. If they do not, then stormwater BMPs shall be required, to ensure diffused flow at non-erosive velocities.

Upon receipt of this document, if you have any further questions or if we can be of any further assistance, please do not hesitate to call. As always, it is a pleasure serving the Town of Aberdeen.

Regards,

Gary J. McCabe, P.E.
Red Line Engineering, P.C.



To: Aberdeen Town Mayor and Commissioners
Mayor Robert Farrell
Commissioner Jim Thomas
Commissioner Joe Dannelley
Commissioner Pat Ann McMurray
Commissioner Buck Mijms
Commissioner Elease Goodwin

From: Concerned Aberdeen citizens
Re: Bethesda Ives LLC proposal
Date: August 27, 2015

The proposed 38 home development by Bethesda Ives LLC poses many concerns and these are a few of those concerns:

--A request for sidewalks to be eliminated in several areas of the proposed development. Lots # 1, 2, 3, 4, 5 on Ives Dr. cul-de-sac do not have any sidewalks designated. This proposal includes no sidewalks on the NE side of road C (lots # 6, 7, 8, 9, 10, 11), no sidewalks on SW side of road C (lots # 12, 13, 14), no sidewalks on SE side of road B (lots # 14, 15), no sidewalks on NE side of road A (lots # 18, 19, 20) no sidewalks on N. side of road A between lots 17 - 38. This request is out of compliance with UDO.

--Variances have been requested to include changes to side lot lines and lot size for 16 of the 38 proposed lots related to wetland boundaries, which is 42% of all proposed lots. These changes will affect required minimum set backs and will affect zoning. A petition signed by adjacent property owners protesting rezoning was submitted to the town board on June 22, 2015.

--Bethesda Ives LLC proposes removing brush and small saplings to create a 8 foot wide natural walking trail, the majority of this trail lies in wetlands. The installation, maintenance and upkeep of these trails will be effected by NC Dept of Environment and Natural Resources (NCDENR) restrictions on disturbing wetlands with mechanical or power equipment.

--Safety issue, a pond is located on private property lot #27 on western side of development near intersection of proposed road A & road B. If dam is breached and the only road A in and out of subdivision is washed out, what are the evacuation / emergency plans?

-----see attached sheets for signatures

Signatures of concerned residents re: Bethesda Ives LLC:

Name:	Address:
Paul W. Johnson	717 GARDEN RD. ABERDEEN, NC
Jeanne Pottroff	717 Garden Rd Aberdeen, NC
Laura Cull	702 Ives Dr Aberdeen, NC
Perry Caswell	702 IVES DR ABERDEEN, NC
FSiobhain	608 E. Ives Dr Aberdeen NC
Pauline A Berke	608 EL Ives Dr, Aberdeen NC
Jodina Martin	606 EL Ives Drive, Aberdeen NC
[Signature]	606 EL Ives Drive Aberdeen, NC
Erin Martin	606 EL Ives Drive Aberdeen, NC
Jeanne Kouchard	605 E.L. IVES DR. ABERDEEN NC
[Signature]	603 EL Ives Dr. ABERDEEN NC
Thomas Shlyg	610 E.L. IVES DR. ABERDEEN, N.C.
Ken Morgan	613 EL Ives Dr Aberdeen NC
Sammy Kerton	701 EL Ives Dr Aberdeen NC
Hara Stockham	703 EL Ives Dr Aberdeen NC
[Signature]	703 EL Ives Dr
CHW SE	609 EL Ives Dr

Signatures of concerned residents re: Bethesda Ives LLC:

Name:

Address:

Mary F. Capstaff, 705 Ives Dr, Aberdeen, N.C.
 Elizabeth Capstaff 108 W Maple St, Aberdeen, NC
 Theresa A. Schreider 108 W Maple St., Aberdeen, NC
 Mr & Mrs Kenneth Book 805 E.L. Ives Dr. Aberdeen ^{NC}
 Mike & Anna Harris 607 EL Ives Dr. Aberdeen NC
 Deb Dreyer 601 EL Ives Dr Aberdeen NC
 Robert Keaton 701 EL Ives Dr Aberdeen NC
 Chelyna Melbourne 611 E. Ives Dr. Aberdeen, NC
 Pam Morgan 613 E. L. Ives Dr. Aberdeen, NC
 Greg Albourde 611 EL Ives Dr Aberdeen
 Bryan Bowles 700 EL IVES DR ABERDEEN, NC
 Jennifer Bowles 700 EL Ives Dr. Aberdeen, NC
 Debbie Fricolte 1125 Bethesda Rd Aberdeen, NC
 Elizabeth J. J. 1125 BETHESDA RD ABERDEEN, NC
 Mrs. Elba G. Hughes 1125 Bethesda Rd Aberdeen, NC
 William E. J. 1101 Bethesda Rd. Aberdeen, NC

Signatures of concerned residents re: Bethesda Ives LLC:

Name:

Address:

Betty J. ...

*1101 Bethesda Road
Aberdeen NC 28315*

Blank lined area for additional signatures and addresses.

From: Pam Graham
To: "[Buck Mims](#)"; "[Elease Goodwin](#)"; "[Jim Thomas](#)"; "[Joe Dannelley](#)"; "[Pat Ann McMurray](#)"; "[Robert Farrell](#)"
Cc: [Bill Zell](#); "[TC Morphis](#)"
Subject: Concerned Aberdeen Citizens letter
Date: Wednesday, September 02, 2015 12:21:00 PM
Attachments: [Caddell letter 9-1-15.pdf](#)
[SP1 0 5-29-15.pdf](#)

Good Morning All,

I received a letter with an attached list of signatures yesterday regarding the Bethesda Ives LLC subdivision proposal and it appears that copies were also sent to all of you. A scanned copy is attached for reference, as is a copy of the proposed plan.

For clarification purposes, I provide the following response to the concerns addressed in the letter:

1. The first paragraph references the requested relief from sidewalks required on both sides of the roads in specific areas of the subdivision, with the final statement that the request is out of compliance with the UDO. This issue is addressed in the staff report provided to the Board for the 8/24 meeting, as follows, and explains that the UDO does provide the ability to apply flexibility in requirements where "extraordinary circumstances" exist. Staff has determined that the presence of wetlands presents an extraordinary circumstance and has recommended that areas of roadway that are adjacent to wetlands be considered for a reduction in the sidewalk requirement. Furthermore, no sidewalks currently exist on E L Ives Drive and the town has no plans to retrofit the existing roadway with sidewalks. Staff has determined that sidewalks for the proposed extension of E L Ives Drive to create a cul-de-sac "bulb" would unnecessarily add impervious surface and would not be in keeping with the existing roadway. We have recommended that the proposed bulb not include a sidewalk.

The applicant has requested relief from the requirement that sidewalks be installed on both sides of all roads in the development, as stated on the plan "in an effort to be low impact and to help with meeting the green growth criteria that in certain areas sidewalk would only be installed on one side of the street with proposed lots and that in areas without houses abutting the road sidewalk wouldn't be installed. Areas that developer requests sidewalk not be installed between lots 17-38 (approximately 940 lf); lots 6-12 (approximately 750 lf)". The UDO provides for some flexibility to the Board's decisions on conditional and special use permits in §152-60(B), which states: "The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this chapter unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements." The extensive presence of wetlands on the site does present extraordinary circumstances, and the request for sidewalk relief is limited to areas where the road abuts wetlands and no building lots are located, as well as along properties that are outside of the development boundary.

2. The second paragraph states that variances have been requested to adjust lot

lines related to wetland boundaries. There have, in fact, been no requests for variances. Variances are a separate procedure that go before our Board of Adjustment. The request for lot line adjustments came from staff in an effort to remove wetlands from individual lot boundaries where doing so would not make the lot unbuildable. By “unbuildable”, we mean that the lot would still meet or exceed the dimensional requirements for the zoning district. Language to this effect can be found on page 4 of the 8/24 staff report, as well as in Recommended Condition #9. Staff’s experience with previous developments where wetlands have been incorporated into lot lines has led us to conclude that the sensitive land is better protected when this does not occur, and conflicts with property owners over subsequent requests (such as swimming pools, fences or sheds) are lessened. I intend to clarify the use of the term “unbuildable” in the staff report for the 9/14 meeting.

Additionally, there is no rezoning request or issue with the current R20-16 zoning of the property as a result of this proposal. The proposal will be required to meet or exceed the dimensional requirements for R20-16 zoning. Staff has, in addition to the suggested adjustment of lot lines, also recommended that setback lines on lots where wetlands may still be present be adjusted to coincide with the wetland line (keeping in mind that staff is not asking that wetlands be removed from lots when it would make the lot unbuildable). Compliance with this recommended requirement would have the effect of increasing the setback area, rather than reducing it. While the letter states correctly that the “changes will affect required minimum set backs” the result will be setbacks that exceed the UDO requirements rather than be below the minimum.

3. Paragraph 3: Staff is currently unaware of any proposal that would require the removal of brush and saplings to create the proposed walking trail for the development. While some initial clearing may be required to install a usable trail, we would expect it to be very minimal due to the fact that the vast majority of the trail route follows the sewer easement, which is currently maintained through mowing by our Public Works Department. Jurisdictional wetlands such as those on this site are regulated by the Army Corps of Engineers (as opposed to NCDENR) and any clearing beyond that which can be done by hand must be approved by that entity.
4. Finally, a small pond does exist on property owned by Rodney Tyner, located adjacent to the development. Any potential impacts from the pond, approximately 70 x 100 feet in size, will be considered when engineered drainage calculations are presented to staff during site plan review, pending approval of the conditional use permit by the Board. Our Fire Inspector has stated that he will require assurance from the engineers for the project that the development will be accessible to emergency vehicles during storm events.

If there are any questions or need for discussion please contact me. You will see

some new information in the next staff report, including a review by our consulting engineer regarding the stormwater concerns brought to us earlier and shared during the public hearing by Mr. Jerry Hall. I will include all new information in **bold type** to make it more recognizable.

Pamela Graham, RLA, AICP, CZO
Planning Director, Town of Aberdeen
115 North Poplar Street
PO Box 785
Aberdeen, NC 28315
(910) 944-7024



Aberdeen

This document is to confirm the **right of first refusal** agreement made between Bethesda Cemetery Association, Inc. and Doris T. McPhaul and Theresa T. Hall, owners of 28+ acres of property located on the west side of Bethesda Road and bordering the west and south sides of the Old Bethesda Cemetery.

On July 11, 1999 at 11AM our respective spouses, John McPhaul and Jerry Hall, met with three members of the Bethesda Cemetery Association, Inc., on our behalf. This meeting was requested by the cemetery association in regards to the possible purchase of this property. At that time we had no desire to sell the property at the offered price. However, at their request, we granted a verbal **right of first refusal** to the association should we receive an acceptable offer to purchase or decide to sell the property.

Doris T. McPhaul Doris T. McPhaul

Theresa T. Hall Theresa T. Hall

MOORE County, NORTH CAROLINA

I CERTIFY THAT THE FOLLOWING PERSONS PERSONALLY APPEARED BEFORE ME THIS DAY, EACH ACKNOWLEDGING TO ME THAT HE OR SHE SIGNED THE FOREGOING DOCUMENT: DORIS T. MCPHAUL, THERESA T. HALL

DATE: AUGUST 26, 2015



Lisa Davis
LISA DAVIS NOTARY PUBLIC

My commission expires: APRIL 21, 2019

Planning Department
Town of Aberdeen N. C.

This statement is intended to clarify our position concerning the proposed stub road planned for the Bethesda Ives LLC development plan leading to a 28 acre undeveloped parcel owned by the Troutman HRS. This parcel has passed through three generations of the Troutman family and has never been offered for sell, nor do we have any plans to sell in the near future.

Our family has never been approached by Bethesda Ives LLC to purchase our property for future development. Therefore we believe the said road was planned only to meet the requirements needed for plan approval. Our family is committed to the Bethesda Cemetery Association for first right of refusal should we decide to sell our property, or receive an offer to purchase that generates an interest in selling the property.

X Doris T. McPhaul

Doris T McPhaul Owner

X Theresa T. Hall

Theresa T Hall Owner

DRAFT - APPROVAL

DECISION OF THE TOWN OF ABERDEEN BOARD OF COMMISSIONERS

Case Number: Conditional Use Permit CU #15-03

Hearing: The Town of Aberdeen conducted a Public Hearing on June 22, 2015 to consider Conditional Use Permit application CU #15-03 as submitted by Bethesda Ives, LLC to allow a major subdivision on property including all or part of PID #00054112, located west of Bethesda Road, and continued the hearing until August 10, 2015 and again until August 24, 2015. At the request of the applicant, the Public Hearing was again continued until the September 14, 2015 meeting.

FINDINGS OF FACT

1. Bethesda Ives, LLC is the owner of record of property identified as PID #00054112.
2. On May 7, 2015, Tammy Lyne, on behalf of Bethesda Ives, LLC (APPLICANT) submitted an application for a Conditional Use Permit to develop a major subdivision on said property. The application was determined to be complete by staff.
3. On May 21, 2015 the Town of Aberdeen Planning Board voted unanimously to recommend approval with conditions of the conditional use permit application to the Town of Aberdeen Board of Commissioners.
4. The property was posted and parties duly noticed.
5. The proposed site details are as follows:

Zoning	R20-16 (Low Density Residential)
Adjacent Zoning	North: R20-16 East: R20-16 South: R20-16, I-H (Heavy Industrial) West: R10-10
Watershed	Property is not located in a protected watershed
Floodplain	N/A
Existing Use in Vicinity Project Area	Low density residential, railroad related activities
Existing Use on Property	Vacant

6. Major Subdivisions are permitted in the R20-16 Zoning District; The Unified Development Ordinance requires that such uses obtain a conditional use permit.
7. The applicant proposes a thirty-eight (38) lot subdivision on a vacant tract comprising 51.46 acres.
8. On June 22, 2015 the Board of Commissioners held a public hearing on the conditional use permit application. The hearing was continued until August 10, 2015 where it was further continued without hearing new evidence until August 24, 2015. The applicant requested an additional continuation until the September 14, 2015 meeting and the public hearing was continued without hearing new evidence until September 14, 2015. The applicant was present on June 22, 2015 to address the Board and respond to questions.

DRAFT - APPROVAL

9. Planning Director Pamela Graham presented the proposal and staff report which were entered into the record.
10. If constructed in accordance with the proposal submitted and in compliance with the Town's Ordinances and Codes, the establishment, maintenance, or operation of the subdivision will not materially endanger the public health or safety, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which it is to be located.
11. If constructed in accordance with the proposal submitted and in compliance with the Town's Ordinances and Codes, the subdivision will be in general conformity with the 2030 Land Development Plan Future Land Use Map's designation of the project area for residential uses.
12. That the conditional use shall, in all other respects, conform to the applicable regulations of the R20-16 Zoning District in which it is to be located, except as such regulations may be modified by the Board of Commissioners pursuant to the recommendation of the Planning Board.

CONCLUSIONS OF LAW

1. Aberdeen Unified Development Ordinance §152-60 provides for the ability of the Board of Commissioners to attach such reasonable requirements as to ensure that the development meets the following standards for Special Use and Conditional Use Permits:
 - Will not endanger the public health or safety,
 - Will not injure the value of adjoining or abutting property,
 - Will be in harmony with the area in which it is located, and
 - Will be in general conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Town Board.
2. That the Town of Aberdeen Board of Commissioners has jurisdiction over the persons and subject matter in this action and that the parties are properly before this Board.
3. That the applicant, Bethesda Ives, LLC, has satisfied all of the requisite standards pursuant to the Town of Aberdeen Unified Development Ordinance subject to conditions.

DECISION

Based on these Findings of Fact and Conclusions of Law, the application for Conditional Use Permit CU #15-03 is approved subject to the following conditions.

- a. Conditional Use Permits (CUPs) run with the land and as such CU #15-03 applies to the entirety of the property reflected in Parcel ID #00054112. An amendment to the CUP is needed to remove property from the CUP or to make changes to the CUP. If an activity is a use by right, it is not subject to the CUP.
- b. The proposed use is authorized by the CUP, however, approval of CU #15-03 is contingent on a successful inter-departmental review to insure that the development has met all Federal, State and local regulations and permitting requirements, as well as any conditions attached to the CUP approval. Plans

DRAFT - APPROVAL

- submitted for this review shall include, but not be limited to, tree survey indicating all trees with a dbh of 12" or greater, utility locations including size, material, and vertical alignment of waterlines, engineering calculations assuring that proposed stormwater measures meet or exceed the requirements of Article XVI, Part 2, Drainage, Erosion Control and Stormwater Management of the UDO.
- c. Any and all required permits and/or approvals from other regulatory agencies must be in place prior to issuance of a Notice to Proceed by the Planning Department.
 - d. The development is authorized to create a maximum of thirty-eight (38) single family lots and construction documents generally based on the Site Sketch Plan with a revision date of 5/29/15.
 - e. Open Space shall generally comply with the 5/29/2015 Site Sketch Plan and Pedestrian Plan, including proposed improvements, and in no case may be reduced to less than 20% of the total land area for the development. Prior to approval of the Final Plat for the subdivision, the developer shall establish a Homeowners' Association with covenants to include a policy for maintenance of the open space, including any improvements such as walking trails. A copy of the covenants shall be provided to staff for review and record-keeping.
 - f. Tree harvest and mass grading are not authorized as a result of this approval. Construction documents, including a grading plan, shall be reviewed by staff for compliance with the UDO.
 - g. In accordance with §152-60(B) of the UDO, the Board determines that the development presents extraordinary circumstances that warrant relief from strict adherence to sidewalk requirements. The applicant is to provide sidewalks and natural walking trails as indicated on the Pedestrian Plan submitted with a revision date of 5/29/2015.
 - h. The applicant shall supply Planning staff with an assessment from the US Fish and Wildlife Agency with regards to Red Cockaded Woodpecker, or other protected species, activities on the property prior to site disturbance. Evidence of such activities authorizes staff to require amendments to the plan to minimize impacts.
 - i. Approval of CU #15-03 is contingent upon a revised site layout plan that shows all rear and/or side lot lines that encroach into the wetlands have been altered to coincide with the wetland boundary when doing so would not make the lot unbuildable. At a minimum, lots 1, 6, 12, 29, 30, 31, 32, 33, 34, 35, and 36 shall be adjusted to meet this condition unless the applicant can provide evidence to staff that the lot will be rendered unbuildable by doing so. Additionally, setback lines on lots 5, 17, 27, 28, 37, and 38 are to be adjusted to coincide with the wetland boundary where doing so will increase the setback area rather than lessen it. Buildability in this instance refers strictly to the lot's ability to meet the dimensional standards required for the district.
 - j. Streets, sidewalks, waterlines, and sewer and stormwater facilities shall meet all UDO requirements and are to be dedicated to the Town of Aberdeen contingent upon inspection and approval by the Aberdeen Public Works Department. Preliminary and Final Plats shall identify any and all Town easements related to these

facilities. Details shall be reviewed by staff during the Site Plan Review process following approval of the conditional use permit.

- k. The Aberdeen Fire Department must sign off on the drawings as well as available capacity for treating fires. Hydrants are required consistent with Fire Department spacing requirements. Adequate turning radius must be provided for the fire trucks currently in use.
- l. Prior to approval of final plat(s), all infrastructure must be complete or guaranteed per UDO requirements, including sidewalks.
- m. Street trees shall be installed prior to final plat approval or as a requirement of the building permit for each lot and shall be consistent with official species list provided in §98.03 of the Aberdeen Code of Ordinances or with "Trees of the Carolinas" (Appendix J of the UDO) and planted at the appropriate rate. Compliance with street tree requirements will be reviewed by staff and staff is authorized to verify compliance prior to issuing a certificate of occupancy for each lot.
- n. Sharrows and marked crosswalks shall be installed or guaranteed prior to final plat approval consistent with the requirements of the Aberdeen Comprehensive Pedestrian and Bicycle Plans.
- o. All additional conditions or requirements as provided in the Town of Aberdeen Unified Development Ordinance are enforceable with regards to the proposal approved by CU #15-03.
- p. Approval of CU #15-03 is contingent on evaluation of soils by a NC licensed Geotechnical Engineer or Soil Scientist where the proposed roads, houses, and utilities will be constructed prior to Site Plan approval. Staff is authorized to require amendments to the plan to accommodate/remedy any evidence of soils unsuitable for building determined by the evaluation. The evaluation shall also include design recommendations for the roadway, wetland crossing, and stormwater and utility improvements.
- q. Approval of CU #15-03 is contingent on a hydrologic analysis performed by a NC licensed engineer of the downstream unnamed tributary to Aberdeen Creek to determine if it has sufficient capacity to accept the proposed increase in stormwater runoff as a result of the subdivision proposed by CU #15-03.

DRAFT - APPROVAL

The foregoing Findings on motion of Commissioner _____, seconded by
Commissioner _____, is adopted this _____ day of _____, 2015.

Ayes: _____

Nos: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

ATTEST:

Regina M. Rosy, Town Clerk

DECISION OF THE TOWN OF ABERDEEN BOARD OF COMMISSIONERS

Case Number: Conditional Use Permit CU #15-03

Hearing: The Town of Aberdeen conducted a Public Hearing on June 22, 2015 to consider Conditional Use Permit application CU #15-03 as submitted by Bethesda Ives, LLC to allow a major subdivision on property including all or part of PID #00054112, located west of Bethesda Road, and continued the hearing until August 10, 2015 and again until August 24, 2015. At the request of the applicant, the Public Hearing was again continued until the September 14, 2015 meeting.

FINDINGS OF FACT

1. Bethesda Ives, LLC is the owner of record of property identified as PID #00054112.
2. On May 7, 2015, Tammy Lyne, on behalf of Bethesda Ives, LLC (APPLICANT) submitted an application for a Conditional Use Permit to develop a major subdivision on said property. The application was determined to be complete by staff.
3. On May 21, 2015 the Town of Aberdeen Planning Board voted unanimously to recommend approval with conditions of the conditional use permit application to the Town of Aberdeen Board of Commissioners.
4. The property was posted and parties duly noticed.
5. The proposed site details are as follows:

Zoning	R20-16 (Low Density Residential)
Adjacent Zoning	North: R20-16 East: R20-16 South: R20-16, I-H (Heavy Industrial) West: R10-10
Watershed	Property is not located in a protected watershed
Floodplain	N/A
Existing Use in Vicinity Project Area	Low density residential, railroad related activities
Existing Use on Property	Vacant

6. Major Subdivisions are permitted in the R20-16 Zoning District; The Unified Development Ordinance requires that such uses obtain a conditional use permit.
7. The applicant proposes a thirty-eight (38) lot subdivision on a vacant tract comprising 51.46 acres.
8. On June 22, 2015 the Board of Commissioners held a public hearing on the conditional use permit application. The hearing was continued until August 10, 2015 where it was further continued without hearing new evidence until August 24, 2015. The applicant requested an additional continuation until the September 14, 2015 meeting and the public hearing was continued without hearing new evidence until September 14, 2015. The applicant was present on June 22, 2015 to address the Board and respond to questions.

9. Planning Director Pamela Graham presented the proposal and staff report which were entered into the record.
10. If constructed in accordance with the proposal submitted and in compliance with the Town's Ordinances and Codes, the establishment, maintenance, or operation of the subdivision will not materially endanger the public health or safety, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which it is to be located.
11. If constructed in accordance with the proposal submitted the subdivision will be in general conformity with the 2030 Land Development Plan Future Land Use Map's designation of the project area for residential uses.
12. §152-218 of the UDO requires that all permanent dead end streets be developed as cul-de-sacs, that except where no other practicable alternative is available such streets may not extend more than 500 feet, and in no case shall they be permitted to be over 900 feet.
13. If constructed in accordance with the proposal submitted, proposed cul-de-sac Road "A" measures 899 feet from the nearest connection (proposed stubout Road "D").
14. §152-214 of the UDO states that subdivision streets shall be coordinated with existing, proposed, and anticipated streets outside the subdivision, and that, in meeting this requirement, the street right-of-way within the subdivision shall be extended and the street developed to the property line of the subdivided property at a point where the connection to the anticipated or proposed street is expected.
15. The Town Board has determined that there are no existing, proposed or anticipated streets outside of the subdivision that will make the connection to the proposed stubout Road "D". The Town Board further finds that proposed stubout Road "D" is not required or necessary, and that it is not a valid point of linear measurement for proposed cul-de-sac Road "D".
16. The Town Board finds that the linear measurement of proposed cul-de-sac Road "D" will exceed the 900 foot maximum allowed for cul-de-sacs by the UDO and that the proposal is thereby not in compliance with this requirement.

CONCLUSIONS OF LAW

1. Aberdeen Unified Development Ordinance §152-60 provides for the ability of the Board of Commissioners to attach such reasonable requirements as to ensure that the development meets the following standards for Special Use and Conditional Use Permits:
 - Will not endanger the public health or safety,
 - Will not injure the value of adjoining or abutting property,
 - Will be in harmony with the area in which it is located, and
 - Will be in general conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Town Board.
2. That the Town of Aberdeen Board of Commissioners has jurisdiction over the persons and subject matter in this action and that the parties are properly before this Board.
3. That the applicant, Bethesda Ives, LLC, has not satisfied all of the requisite standards pursuant to the Town of Aberdeen Unified Development Ordinance, specifically:

DRAFT - DENIAL

- a. §152-218(C) requirement that all permanent dead-end streets shall be developed as cul-de-sacs, that except where no other practicable alternative is available, such streets may not extend more than 500 feet, and that in no case shall such streets be permitted to be over 900 feet.

DECISION

Based on these Findings of Fact and Conclusions of Law, the application for Conditional Use Permit CU #15-03 is denied.

The foregoing Findings on motion of Commissioner _____, seconded by Commissioner _____, is adopted this _____ day of _____, 2015.

Ayes: _____

Nos: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

ATTEST:

Regina M. Rosy, Town Clerk



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 4517 **Date Submitted:** 9/16/15

Agenda Item Title: UDO Text Amendments # 15-03, 15-07, 15-05, 15-06, 15-12, 15-09, and 15-10

Date of Board Meeting to hear this item: 9/28/15

Board Action Requested:

New Business	<input type="checkbox"/>	Information Only	<input type="checkbox"/>
Old Business	<input type="checkbox"/>	For Action at Future Meeting	<input type="checkbox"/> Date _____
Public Hearing	<input checked="" type="checkbox"/>	Informal Discussion & Public Comment	<input type="checkbox"/>
Other Business	<input type="checkbox"/>	Consent Agenda	<input type="checkbox"/>

Summary of Information:

The following UDO Text Amendments have been scheduled for Public Hearing on 9/28/15.

UDO #15-03 Regarding Administrative Mechanisms (required by NCGS),
UDO #15-07 Regarding Appeals (required by NCGS),
UDO #15-05 Regarding Hearing Procedures (required by NCGS),
UDO #15-06 Regarding Permits and Plats (required by NCGS),
UDO #15-12 Regarding Variances (required by NCGS),
UDO #15-09 Regarding Permissible Uses (required by NCGS),
UDO #15-10 Regarding Special Exceptions (discretionary).

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

MEMORANDUM

To: The Aberdeen Board of Commissioners

CC: Bill Zell, Town Manager; Pamela Graham, Aberdeen Planning Director

From: T.C. Morphis and Al Benshoff, Town Attorney's Office

Date: September 4, 2015

The Town staff has prepared a number of proposed ordinance amendments, some of which were mandated by recent changes to state law, and one that has been prepared in response to a recent court decision. This memorandum provides an overview of why each amendment has been proposed.

Non-Discretionary Amendments

- UDO Article III (Administrative Mechanisms)
- UDO Article V (Appeals, Variances, Special Exceptions and Interpretations)
- UDO Article VI (Hearing Procedures)
- UDO Article IV (Permits and Plat Approvals)
- Variances (Variances)

Amendments With Some Discretion

- Section 152-149, "Permissible Uses and Specific Exclusions" (Permissible Uses)

Entirely Discretionary Amendments

- Special Exceptions (Special Exceptions)

Non-Discretionary Amendments

UDO Article III (Administrative Mechanisms)

In 2013, the General Assembly modernized G.S. § 160A-388, which has traditionally governed matters before boards of adjustment. The statute updates board of adjustment procedures and quasi-judicial procedures for all municipal boards in general. The proposed amendments will bring UDO Article III into compliance with the statute. In an effort to make the UDO more user-friendly, the amendment also moves several ordinances dealing with hearing procedures to other UDO articles, where hopefully they will be easier to find and use.

UDO Article V (Appeals, Variances, Special Exceptions and Interpretations)

The proposed amendments to UDO Article V would bring that portion of the article pertaining to appeals (Sec. 152-92) in line with the revised G.S. § 160A-388.

UDO Article VI (Hearing Procedures)

The proposed amendment would bring UDO Article VI into compliance with G.S. § 160A-388 and 160A-393, which governs appeals of quasi-judicial appeals to Superior Court.

UDO Article IV (Permits and Plat Approvals)

The proposed amendment would bring UDO Article IV in line with the current statutory requirements of G.S. § 160A-375 and 160A-388. The substance of the article has not been affected.

Variances (Variances)

The amendment regarding variances brings the UDO section pertaining to variances (Sec. 152-93) into line with G.S. § 160A-388.

Amendments With Some Discretion

Section 152-149, “Permissible Uses and Specific Exclusions” (Permissible Uses)

The North Carolina Court of Appeals in *Land v. Village of Wesley Chapel*, 206 N.C. App. 123, 131, 297 S.E.2d 458, 463 (2010) held that, ““Zoning regulations are in derogation of common law rights and they cannot be construed to include or exclude by implication that which is not clearly their express terms. It has been held that well-founded doubts as to the meaning of obscure provisions of a Zoning Ordinance should be resolved in favor of the free use of property.” (Quoting, *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966)). Applying this rule, the *Land* Court struck down a provision very similar to the one contained in Aberdeen Unified Development Ordinance Section 152-149(B), which reads as follows: “[A]ll uses that are not listed in section 152-146 (the Table of Permissible Uses), even given the liberal interpretation mandated by subsection (A), are prohibited.”¹ The proposed amendment eliminates this language and adopts a new standard that hopefully will be workable for the Town. While the Board of Commissioners does not have to adopt the amendment exactly as it is written, the Board should adopt some ordinance amendment to address *Land v. Village of Wesley Chapel*.

Entirely Discretionary Amendments

Special Exceptions (Special Exceptions)

The special exception amendment was not mandated by statutory changes. Instead, staff has proposed the amendment as a way to address certain situations involving accessory structures that do not comply with the UDO.

¹ As an interesting side note, the language struck down came from the model unified development ordinance developed by Mike Brough in 1985. The language had been widely adopted by smaller North Carolina municipalities because they generally lack the resources to attempt to regulate every conceivable land use.



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Request:

UDO Text
Amendment #15-03
Regarding
Administrative
Mechanisms

Prepared by:

Pamela Graham,
Planning Director

Description of Request

The attached text amendment draft is being proposed to bring the town's UDO into compliance with general statutes. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

In 2013, the General Assembly modernized G.S. § 160A-388, which has traditionally governed matters before boards of adjustment. The statute updates board of adjustment procedures and quasi-judicial procedures for all municipal boards in general. The proposed amendments will bring UDO Article III into compliance with the statute. In an effort to make the UDO more user-friendly, the amendment also moves several ordinances dealing with hearing procedures to other UDO articles, where hopefully they will be easier to find and use.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest*. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-04. Staff recommends that the Board consider approval of the attached UDO amendment #15-04 and make the following motions:

- Motion 1:** UDO #15-04 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-04 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-04 is reasonable and in the public interest, or
- UDO #15-04 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest: *(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)*

Motion 3: The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:

- Amend Article III “Administrative Mechanisms” as indicated in the attached draft text amendment

Enclosures: Memorandum from Town Attorney’s Office
UDO #15-04 Text Amendment Draft
NCGS 160A-388

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE III, "ADMINISTRATIVE MECHANISMS" (RED-LINE VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (*see*, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article III, "Administrative Mechanisms," is amended as follows:

ARTICLE III - Administrative Mechanisms

Part 1. Planning Board.

[Section 152-21, "Appointment and Terms of Planning Board Members," is not amended.]

§ 152-22. Meetings of the Planning Board.

(A) The Planning Board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with section 152-67, "Applications to be Processed Expeditiously."

(B) When the Board acts solely in its advisory capacity (for example, when it considers rezoning applications), it need not conduct its meetings (or portions of meetings) strictly in accordance with the quasi-judicial procedures set forth in articles III, IV, V, and VI of this chapter. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

(C) When the Planning Board considers special use permits, it acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in articles III, IV and VI of this chapter.

(D) Minutes shall be kept of all Board proceedings.

(E) All Board meetings shall be open to the public, and whenever feasible the agenda for each Board meeting shall be made available in advance of the meeting.

(F) Whenever the Board is called upon to consider a special use permit request or to make recommendations concerning a conditional use permit request, notice shall be given in accordance with section 152-102~~(B)~~.

[Sections 152-23 through 152-28 are not amended.]

Part 2. Board of Adjustment.

[Sections 152-29 and 152-30 are not amended.]

§ 152-31. Powers and Duties.

When sitting as the Board of Adjustment, the Board shall have the following powers and duties:

(A) ~~Appeals~~Administrative review. ~~To hear and decide appeals from decisions of the Land Use Administrator or his or her designee charged with enforcement of this chapter. To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by the administrative officer in the carrying out or enforcement of any provision of this chapter. The Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises.~~ To this end, the Board shall have all the powers of the officer from whom the appeal is taken. An appeal to the Board of Adjustment shall be conducted in accordance with the provisions of section 152-92, "Appeals." ~~section 152-91, "Appeals."~~

(B) Variances. ~~To~~When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board shall vary any of the provisions of the ordinance ~~authorize upon appeal in specific cases such variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship.~~ Requests for variances shall be processed and considered in accordance with the provisions of section 152-92, "Variances."

(C) Interpretations. The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions in accordance with section 152-93, "Interpretations."

(D) Voting. The concurring vote of four-fifths a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of this chapter, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance. The concurring vote of four-fifths of the members of the Board shall be necessary to ~~or~~ grant a variance from the provisions of this chapter. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting ~~on a quasi-judicial matter~~ shall not be considered "members of the board" for calculation of the requisite ~~super~~majority. A failure to vote by a member who is physically present at the Board meeting and who has not been recused or excused from the voting shall be recorded as an affirmative vote.

~~(E) Conflicts of interest. A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte~~

~~communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.*~~

~~(E)(F)~~ Oaths. The Chairman or any member temporarily acting as Chairman is authorized in his or her official capacity to administer oaths to witnesses in any matter coming before the Board.

~~(F)(G)~~ Subpoenaing witnesses.

~~(1) Board Issued Subpoenas: The Board may subpoena witnesses and compel the production of evidence. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (See also section 152-92).~~

~~(2) Subpoenas Requested by Others: To request issuance of a subpoena, persons with standing under section 152-92(B), "Appeals," may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled.~~

~~§ 152-32 through § 152-36. Reserved.†~~

~~§ 152-32. Filing Appeals.~~

~~(A) Appeals from the enforcement and interpretation of this chapter and requests for variances shall be filed with the Land Use Administrator specifying the grounds thereof. The Administrator shall transmit to the Board of Adjustment all applications and records pertaining to such appeals and variance requests. An appeal stays all proceedings in furtherance of the action appealed from, unless the Land Use Administrator or other administrative officer certifies in writing to the Board that a stay would, in his or her opinion, cause imminent peril to life and property or that because the violation charged is transitory in nature a stay would seriously interfere with the enforcement of this chapter. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.~~

~~(B) Time to appeal. An appeal must be taken within thirty (30) days after the date of the decision or order appealed from, except that:~~

* This subsection has been updated and moved to section 152-107.

† Sections 152-32 through 152-36 have been moved to UDO Articles V and VI.

~~(1) — If the decision or order appealed from is the issuance of a permit or some other decision relating to the development of property not owned by the appellant, then the appellant may take an appeal within the later of (i) thirty (30) days after the date of the decision or order appealed from or (ii) ten (10) days after the appellant knows or any reasonably observant neighbor of the property in question should know of the decision or order appealed; and~~

~~(2) — An appeal of a civil penalty must be taken within ten (10) days after receipt of the notice of the civil penalty.~~

~~(C) Hearing of appeal. After receipt of notice of an appeal, the Board Chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within thirty (30) days from the filing of such notice of appeal.~~

~~(D) Notice. At least one (1) week prior to the date of the hearing, the town shall furnish adjoining property owners with written notice of the hearing.~~

~~**§ 152-33. — Fees for Appeals and Variance Requests.**~~

~~A fee shall be paid to the town for each application for an appeal or variance. The fee shall be adopted and periodically amended by the Board of Commissioners (acting in its capacity as the Board of Commissioners) as needed to cover the administrative costs and advertising associated with the appeal or variance. A copy of the fee schedule shall be available for review in the office of the Town Clerk.~~

~~**§ 152-34. — Appeal from the Decision of the Board of Adjustment.**~~

~~Every decision of the Board of Adjustment shall be subject to review by the Moore County Superior Court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the Board of Adjustment is filed in the office of Land Use Administrator, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

~~**§ 152-35 through § 152-36. Reserved.**~~

Part 3. Land Use Administrator.

[Part 3, Sections 152-37 through 152-39, have not been amended.]

Part 4. Town Board of Commissioners.

§ 152-40. Town Board of Commissioners.

(A) The Town Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in articles III, IV and VI of this chapter. Notice of meetings to consider a conditional use permit application shall be given in accordance with section 152-102(B).

(B) In considering proposed changes in the text of this chapter or the zoning map, the Town Board acts in its legislative capacity and must proceed in accordance with the requirements of article XX of this chapter.

§ 152-41 through § 152-45. Reserved.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE III, "ADMINISTRATIVE MECHANISMS" (FINAL VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (*see*, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article III, "Administrative Mechanisms," is amended as follows:

ARTICLE III - Administrative Mechanisms

Part 1. Planning Board.

[Section 152-21, "Appointment and Terms of Planning Board Members," is not amended.]

§ 152-22. Meetings of the Planning Board.

(A) The Planning Board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with section 152-67, "Applications to be Processed Expeditiously."

(B) When the Board acts solely in its advisory capacity (for example, when it considers rezoning applications), it need not conduct its meetings (or portions of meetings) strictly in accordance with the quasi-judicial procedures set forth in articles III, IV, V, and VI of this chapter. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

(C) When the Planning Board considers special use permits, it acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in articles III, IV and VI of this chapter.

(D) Minutes shall be kept of all Board proceedings.

(E) All Board meetings shall be open to the public, and whenever feasible the agenda for each Board meeting shall be made available in advance of the meeting.

(F) Whenever the Board is called upon to consider a special use permit request or to make recommendations concerning a conditional use permit request, notice shall be given in accordance with section 152-102.

[Sections 152-23 through 152-28 are not amended.]

Part 2. Board of Adjustment.

[Sections 152-29 and 152-30 are not amended.]

§ 152-31. Powers and Duties.

When sitting as the Board of Adjustment, the Board shall have the following powers and duties:

(A) Appeals. To hear and decide appeals from decisions of the Land Use Administrator or his or her designee charged with enforcement of this chapter. To this end, the Board shall have all the powers of the officer from whom the appeal is taken. An appeal to the Board of Adjustment shall be conducted in accordance with the provisions of section 152-92, "Appeals."

(B) Variances. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board shall vary any of the provisions of the ordinance. Requests for variances shall be processed and considered in accordance with the provisions of section 152-92, "Variances."

(C) Interpretations. The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions in accordance with section 152-93, "Interpretations."

(D) Voting. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of this chapter, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance. The concurring vote of four-fifths of the members of the Board shall be necessary to grant a variance from the provisions of this chapter. For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting shall not be considered "members of the board" for calculation of the requisite majority. A failure to vote by a member who is physically present at the Board meeting and who has not been recused or excused from the voting shall be recorded as an affirmative vote.

(E) Oaths. The Chairman or any member temporarily acting as Chairman is authorized in his or her official capacity to administer oaths to witnesses in any matter coming before the Board.

(F) Subpoenaing witnesses.

(1) Board Issued Subpoenas: The Board may subpoena witnesses and compel the production of evidence. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this

subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (See also section 152-92).

(2) Subpoenas Requested by Others: To request issuance of a subpoena, persons with standing under section 152-92(B), "Appeals," may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled.

§ 152-32 through § 152-36. Reserved.*

Part 3. Land Use Administrator.

[Part 3, Sections 152-37 through 152-39, have not been amended.]

Part 4. Town Board of Commissioners.

§ 152-40. Town Board of Commissioners.

(A) The Town Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in articles III, IV and VI of this chapter. Notice of meetings to consider a conditional use permit application shall be given in accordance with section 152-102(B).

(B) In considering proposed changes in the text of this chapter or the zoning map, the Town Board acts in its legislative capacity and must proceed in accordance with the requirements of article XX of this chapter.

§ 152-41 through § 152-45. Reserved.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

* Sections 152-32 through 152-36 have been moved to UDO Articles V and VI.

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

§ 160A-388. Board of adjustment.

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

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

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

(b) **Repealed by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.**

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

- (1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- (5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- (7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. - The ordinance may provide that the board of adjustment may hear and decide special and conditional use permits in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

(d) Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, 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. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. -

(1) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

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

(e1) Recodified as subdivision (e)(2) by Session Laws 2013-126, s. 1, effective October 1, 2013, and applicable to actions taken on or after that date by any board of adjustment.

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

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

(2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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

(g) Subpoenas. - The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30; 1991, c. 512, s. 2; 1993, c. 539, s. 1088; 1994, Ex. Sess., c. 24, s. 14(c); 2005-418, s. 8(a); 2009-421, s. 5; 2013-126, ss. 1, 2(a), 2(b); 2013-410, s. 25(a).)



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Request:

UDO Text
Amendment #15-07
Regarding Appeals,
Variances, Special
Exceptions and
Interpretations

Prepared by:

Pamela Graham,
Planning Director

Description of Request

The attached text amendment draft is being proposed to bring the town's UDO into compliance with general statutes. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

The proposed amendments to UDO Article V would bring that portion of the article pertaining to appeals (Sec. 152-92) in line with the revised G.S. § 160A-388.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with*

adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-07. Staff recommends that the Board consider approval of the attached UDO amendment #15-07 and make the following motions:

- Motion 1:** UDO #15-07 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-07 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-07 is reasonable and in the public interest, or
- UDO #15-07 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest:
(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)

- Motion 3:** The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:
- Amend Article V “Appeals, Variances, Special Exceptions and Interpretations” as indicated in the attached draft text amendment.

Enclosures: UDO #15-07 Text Amendment Draft
 (NCGS 160A-388 is enclosed with UDO #15-03 Regarding Administrative Mechanisms)

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE V, "APPEALS, VARIANCES, SPECIAL EXCEPTIONS AND INTERPRETATIONS" (RED-LINE VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (see, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article V, "Appeals, Variances, Special Exceptions and Interpretations," is amended as follows:

ARTICLE V - Appeals, Variances, Special Exceptions and Interpretations

§ 152-91. Fees for Appeals and Variance Requests.

A fee shall be paid to the town for each application for an appeal or variance. The fee shall be adopted and periodically amended by the Board of Commissioners as needed to cover the administrative costs and advertising associated with the appeal or variance. A copy of the fee schedule shall be available for review in the office of the Town Clerk.

§ 152-912. Appeals.

~~(A) — An appeal from any order, requirement, decision, or determination of the Administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Administrator a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the Administrator when delivered to the Planning Department, and the date and time of filing shall be entered on the notice by the planning staff. This subsection shall not apply to appeals of the approval or denial of a minor subdivision plat, which decision must be appealed to the Moore County Superior Court in accordance with G.S. 160A-377. (Amended 10/29/2013)~~

~~(B) — An appeal must be taken within thirty (30) days after the date of the decision or order appealed from.~~

~~(C) — Whenever an appeal is filed, the Administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.~~

~~(D) — An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board of Adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of~~

~~Adjustment or by a court of record on application, on notice to the Administrator and on due cause shown.~~

~~(E) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the Administrator.~~

(A) As used in this section, the term "decision" includes any final and binding order, requirement, or determination.

(B) **Who May Appeal.** Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision of the Land Use Administrator or his or her designee to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal. Persons having standing pursuant to G.S. 160A-393(d) include the following:

(1) Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

(2) Has an option or contract to purchase the property that is the subject of the decision being appealed.

(3) Was an applicant before the decision-making board whose decision is being appealed.

(4) Any other person who will suffer special damages as the result of the decision being appealed; or

(5) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(C) **Notice of Land Use Administrator's or Designee's Decision.** The official who made the decision shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(D) **Time to File Appeal.** The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to

appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(E) **Notice of Appeal Period.** It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Additional Public Notice requirements for all quasi-judicial hearings are found in section 152-102 "Notice of Hearing."

(F) **Record on Appeal.** The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(G) **Stay of Enforcement.** An appeal of a notice of violation or other enforcement decision stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(H) **Hearings Within a Reasonable Time.** Subject to the provisions of subsection (G) above, the board of adjustment shall hear and decide the appeal within a reasonable time.

(I) **Hearing.** The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(J) **When hearing an appeal pursuant to G.S. 160A-400.9(e) (i.e. from a decision of the Historic Preservation Commission granting or denying a certificate of appropriateness) or any other**

appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(K) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The board of adjustment may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

[Sections 152-92 and 152-92.1, and 152-93 are renumbered as follows:

§ 152-92~~3~~. Variances.

§ 152-92~~.14~~. Special Exceptions.

§ 152-93~~5~~. Interpretations.]

§ 152-94~~6~~. Requests to be Heard Expeditiously.

As provided section 152-67, "Applications to Be Processed Expeditiously," the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with section 152-92, above, and article VI of this chapter, and obtain the necessary information to make sound decisions.

~~§ 152-95. Burden of Proof in Appeals and Variances.*~~

~~(A) — When an appeal is taken to the Board of Adjustment in accordance with section 152-91, "Appeals," the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.~~

~~(B) — The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in subsection 152-92(C) as well as the burden of persuasion on those issues remains with the applicant seeking the variance.~~

~~§ 152-96. Board Action on Appeals and Variances.†~~

~~(A) — With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four fifths vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the Board's decision if supported by more than one fifth of the Board's membership (excluding vacant seats).~~

* Section 152-95 has been moved to Section 152-104.

† Section 152-96 has been updated and moved to Section 152-108.

~~(B) — Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four fifths majority) on each of the five required findings stated in subsection 152-92(C). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 152-92(C) shall include a statement of the specific reasons or findings of fact supporting such motion.~~

~~(C) — A motion to deny a variance may be made on the basis that any one or more of the five criteria set forth in subsection 152-92(C) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats).~~

§ 152-97 through § 152-100. Reserved.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE V, "APPEALS, VARIANCES, SPECIAL EXCEPTIONS AND INTERPRETATIONS"
(FINAL VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (*see*, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article V, "Appeals, Variances, Special Exceptions and Interpretations," is amended as follows:

ARTICLE V - Appeals, Variances, Special Exceptions and Interpretations

§ 152-91. Fees for Appeals and Variance Requests.

A fee shall be paid to the town for each application for an appeal or variance. The fee shall be adopted and periodically amended by the Board of Commissioners as needed to cover the administrative costs and advertising associated with the appeal or variance. A copy of the fee schedule shall be available for review in the office of the Town Clerk.

§ 152-92. Appeals.

(A) As used in this section, the term "decision" includes any final and binding order, requirement, or determination.

(B) **Who May Appeal.** Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision of the Land Use Administrator or his or her designee to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal. Persons having standing pursuant to G.S. 160A-393(d) include the following:

(1) Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

(2) Has an option or contract to purchase the property that is the subject of the decision being appealed.

(3) Was an applicant before the decision-making board whose decision is being appealed.

(4) Any other person who will suffer special damages as the result of the decision being appealed; or

(5) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(C) **Notice of Land Use Administrator's or Designee's Decision.** The official who made the decision shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(D) **Time to File Appeal.** The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(E) **Notice of Appeal Period.** It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Additional Public Notice requirements for all quasi-judicial hearings are found in section 152-102 "Notice of Hearing."

(F) **Record on Appeal.** The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(G) **Stay of Enforcement.** An appeal of a notice of violation or other enforcement decision stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or

permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(H) **Hearings Within a Reasonable Time.** Subject to the provisions of subsection (G) above, the board of adjustment shall hear and decide the appeal within a reasonable time.

(I) **Hearing.** The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(J) When hearing an appeal pursuant to G.S. 160A-400.9(e) (i.e. from a decision of the Historic Preservation Commission granting or denying a certificate of appropriateness) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(K) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The board of adjustment may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

[Sections 152-92 and 152-92.1, and 152-93 are renumbered as follows:

§ 152-93. Variances.

§ 152-94. Special Exceptions.

§ 152-95. Interpretations.]

§ 152-96. Requests to be Heard Expeditiously.

As provided section 152-67, "Applications to Be Processed Expeditiously," the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with section 152-92, above, and article VI of this chapter, and obtain the necessary information to make sound decisions.

§ 152-97 through § 152-100. Reserved.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Request:

UDO Text
Amendment #15-05
Regarding Hearing
Procedures

Prepared by:

Pamela Graham,
Planning Director

Description of Request

The attached text amendment draft is being proposed to bring the town's UDO into compliance with general statutes. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

The proposed amendment would bring UDO Article VI into compliance with G.S. § 160A-388 and 160A-393, which governs appeals of quasi-judicial appeals to Superior Court.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with*

adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-05. Staff recommends that the Board consider approval of the attached UDO amendment #15-05 and make the following motions:

- Motion 1:** UDO #15-05 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-05 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-05 is reasonable and in the public interest, or
- UDO #15-05 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest: *(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)*

- Motion 3:** The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:
- Amend Article VI “Hearing Procedures for Appeals and Applications” as indicated in the attached draft text amendment.

Enclosures: UDO #15-05 Text Amendment Draft
 NCGS 160A-393
 (NCGS 160A-388 is enclosed with UDO #15-03 Regarding Administrative Mechanisms)

**AN ORDINANCE AMENDING ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE VI, "HEARING PROCEDURES FOR APPEALS AND APPLICATIONS"
(RED-LINE VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (*see*, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article VI, "Hearing Procedures for Appeals and Applications," is amended as follows:

ARTICLE VI - Hearing Procedures for Appeals and Quasi-Judicial Applications

§ 152-101. Hearing Required on Appeals and Quasi-Judicial Applications.

(A) Before making a decision on an appeal or an application for a special use permit, special exception, conditional use permit, variance, or a petition from the planning staff to revoke a special use permit or a conditional use permit, the Planning Board, Town Board or Board of Adjustment, as the case may be, shall hold a hearing on the appeal or application.

(B) Subject to subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(C) The Planning Board, Town Board or Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The hearing Board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six (6) weeks or more elapses between hearing dates.

§ 152-102. Notice of Hearing.

~~(A) The Administrator shall give notice of any hearing required by section 152-91, "Appeals," as follows:~~

~~(1) Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten (10) days before the hearing; and~~

~~(2) Notice shall be given to neighboring property owners by mailing a written notice not later than ten (10) days before the hearing to those persons who have listed for taxation real property any portion of which is located within 150 feet of the lot that is the subject of the application or appeal. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted not less than seven (7) days prior to the hearing.~~

~~(B) Whenever the Planning Board is called upon to consider a special use permit request or to make recommendations concerning a conditional use permit request and whenever the Board of Commissioners is called upon to consider a conditional use permit request, the Planning staff shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location, and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the board's agenda at a specified date and time. Such notice(s) shall be posted at least seven (7) days prior to the meeting at which the matter is to be considered; and~~

The Administrator shall give notice of any hearing required by section 152-25 "Powers and Duties of Planning Board"; 152-31, "Powers and Duties [of the Board of Adjustment]"; 152-92, "Appeals"; 152-93 "Variances"; 152-94, "Special Exceptions"; 152-54, "Special and Conditional Use Permits"; and 152-95, "Interpretations" as follows:

(A) Notice of all quasi-judicial hearings conducted pursuant to this chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Town may rely on the Moore County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.

(B) Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(C) The notices required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

§ 152-103. Evidence.

(A) The provisions of this section apply to all hearings for which a notice is required by section 152-101.

(B) All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn.

(C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (i.e. crucial findings) shall be based upon ~~reliable evidence. competent, material and substantial evidence in the record. ~~Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.~~~~

(D) Competent Evidence.

(1) Competent evidence (i.e. evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

(2) Competent evidence shall not include the opinion testimony of lay witnesses as to any of the following:

- (a) The use of property in a particular way would affect the value of other property;
- (b) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or
- (c) Matters about which only expert testimony would generally be admissible under the rules of evidence.

§ 152-104. Burden of Proof in Appeals and Variances.

(A) When an appeal of the Administrator’s decision is taken to the Board of Adjustment in accordance with section 152-92, “Appeals,” the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in subsection 152-93(D) as well as the burden of persuasion on those issues remains with the applicant seeking the variance.

§ 152-104.5. Modification of Application at Hearing.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Planning Board, Town Board or Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

(B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

§ 152-1056. Record.

(A) A tape or digital recording shall be made of all hearings required by section 152-101, and such recordings shall be kept for at least two (2) years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town for at least two (2) years.

§ 152-107. Conflicts of Interest.

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

§ 152-108. Board Action on Appeals and Variances.

(A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the simple majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order.

(B) Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four required findings stated in subsection 152-92(D). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 152-93(D) shall include a statement of the specific reasons or findings of fact supporting such motion.

(C) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in subsection 152-93(D) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

§ 152-1069. Written Decision.

~~(A) Any decision made by the Planning Board, Town Board or Board of Adjustment regarding an appeal or variance or issuance or revocation of a conditional use permit shall be reduced to writing and served upon the applicant or appellant and all other persons who made a written request for a copy.~~

~~(B) In addition to a statement of the Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts, whenever this chapter requires the same as a prerequisite to taking action.~~

(A) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and conclusions of law and their application to the applicable standards.

(B) The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

§ 152-110. Appeals of Quasi-Judicial Decisions.

Every quasi-judicial decision shall be subject to review by the Moore county Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 152-108. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

§ 152-107 through § 152-110. Reserved.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE VI, "HEARING PROCEDURES FOR APPEALS AND APPLICATIONS"
(FINAL VERSION)**

WHEREAS, the North Carolina Assembly amended to G.S. § 160A-388 to update the quasi-judicial procedures used by municipal boards (*see*, S.L. 2013-126 and S.L. 2013-410), and the Unified Development Ordinance must be amended to conform these new standards and procedures;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article VI, "Hearing Procedures for Appeals and Applications," is amended as follows:

ARTICLE VI - Hearing Procedures for Appeals and Quasi-Judicial Applications

§ 152-101. Hearing Required on Appeals and Quasi-Judicial Applications.

(A) Before making a decision on an appeal or an application for a special use permit, special exception, conditional use permit, variance, or a petition from the planning staff to revoke a special use permit or a conditional use permit, the Planning Board, Town Board or Board of Adjustment, as the case may be, shall hold a hearing on the appeal or application.

(B) Subject to subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

(C) The Planning Board, Town Board or Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The hearing Board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six (6) weeks or more elapses between hearing dates.

§ 152-102. Notice of Hearing.

The Administrator shall give notice of any hearing required by section 152-25 "Powers and Duties of Planning Board"; 152-31, "Powers and Duties [of the Board of Adjustment]"; 152-92, "Appeals"; 152-93 "Variances"; 152-94, "Special Exceptions"; 152-54, "Special and Conditional Use Permits"; and 152-95, "Interpretations" as follows:

(A) Notice of all quasi-judicial hearings conducted pursuant to this chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing;

to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Town may rely on the Moore County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.

(A) Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(B) The notices required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

§ 152-103. Evidence.

(A) The provisions of this section apply to all hearings for which a notice is required by section 152-101.

(B) All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn.

(C) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (i.e. crucial findings) shall be based upon competent, material and substantial evidence in the record.

(D) Competent Evidence.

(1) Competent evidence (i.e. evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

(2) Competent evidence shall not include the opinion testimony of lay witnesses as to any of the following:

- (a) The use of property in a particular way would affect the value of other property;
- (b) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or
- (c) Matters about which only expert testimony would generally be admissible under the rules of evidence.

§ 152-104. Burden of Proof in Appeals and Variances.

(A) When an appeal of the Administrator's decision is taken to the Board of Adjustment in accordance with section 152-92, "Appeals," the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in subsection 152-93(D) as well as the burden of persuasion on those issues remains with the applicant seeking the variance.

§ 152-105. Modification of Application at Hearing.

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Planning Board, Town Board or Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

(B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

§ 152-106. Record.

(A) A tape or digital recording shall be made of all hearings required by section 152-101, and such recordings shall be kept for at least two (2) years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

(B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town for at least two (2) years.

§ 152-107. Conflicts of Interest.

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

§ 152-108. Board Action on Appeals and Variances.

(A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the simple majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order.

(B) Before granting a variance, the Board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four required findings stated in subsection 152-92(D). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in subsection 152-93(D) shall include a statement of the specific reasons or findings of fact supporting such motion.

(C) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in subsection 152-93(D) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

§ 152-109. Written Decision.

(A) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and conclusions of law and their application to the applicable standards.

(B) The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

§ 152-110. Appeals of Quasi-Judicial Decisions.

Every quasi-judicial decision shall be subject to review by the Moore county Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with section 152-108. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

§ 160A-393. Appeals in the nature of certiorari.

(a) Applicability. - This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. - A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.

(2) Person. - Any legal entity authorized to bring suit in the legal entity's name.

(3) Quasi-judicial decision. - A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. - An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made.

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

(4) Set forth the relief the petitioner seeks.

(d) Standing. - A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:

a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or

an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. - The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. - Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. - The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. - Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (1) of subsection (d) of this section shall have standing to intervene and shall be allowed to intervene as a matter of right.

(2) Any person, other than one described in subdivision (1) of subsection (d) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (d) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (d) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(i) The Record. - The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. - The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

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

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review. -

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by substantial competent evidence in view of the entire record.

f. Arbitrary or capricious.

(2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(l) Decision of the Court. - Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. - Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. (2009-421, s. 1(a); 2013-126, ss. 13, 14.)



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Request:

UDO Text
Amendment #15-06
Regarding Permits
and Final Plat
Approval

Prepared by:

Pamela Graham,
Planning Director

Description of Request

The attached text amendment draft is being proposed to bring the town's UDO into compliance with general statutes. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

The proposed amendment would bring UDO Article IV in line with the current statutory requirements of G.S § 160A-375 and 160A-388. The substance of the article has not been affected..

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with*

adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-06. Staff recommends that the Board consider approval of the attached UDO amendment #15-06 and make the following motions:

- Motion 1:** UDO #15-06 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-06 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-06 is reasonable and in the public interest, or
- UDO #15-06 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest: *(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)*

- Motion 3:** The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:
- Amend Article IV “Permits and Final Plat Approval” as indicated in the attached draft text amendment.

Enclosures: UDO #15-06 Text Amendment Draft
 NCGS 160A-375
 (NCGS 160A-388 is enclosed with UDO #15-03 Regarding Administrative Mechanisms)

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE IV, "PERMITS AND FINAL PLAT APPROVAL"
(RED-LINE VERSION)**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article IV, "Permits and Final Plat Approval," is amended as follows:

ARTICLE IV - Permits and Final Plat Approval

Part 1. Certificates of Zoning Compliance and Special Use and Conditional Use Permits.

[Section 152-46, "Permits Required," is not amended.]

§ 152-47. No Occupancy, Use or Sale of Lots Until Requirements Fulfilled.

(A) Issuance of a certificate of zoning compliance, special use permit or a conditional use permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or make necessary improvements to a subdivision. However, except as provided in sections 152-53, "Authorizing Use or Occupancy Before Completion of Development Under Certificate of Zoning Compliance"; 152-61, "Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use and Conditional Use Permits"; and 152-62, "Completing Developments in Phases," the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a conditional use or special use permit have been complied with.

(B) Additionally, a certificate of zoning compliance must be issued for all projects for which a special use permit or conditional use permit has been issued or which are subject to a conditional zoning district. The certificate of zoning compliance must be issued prior to the issuance of a building permit to show compliance with this chapter and the applicable special use or conditional use permit or the regulations and conditions of the applicable conditional zoning district.

(C) Nothing in this section shall prevent an owner or agent of the owner from entering into a contract to sell or lease land pursuant to N.C. Gen. Stat. § 160A-375 (b).

[Sections 152-48 through 152-545 are not amended.]

§ 152-56. Recommendations on Special Use Permit Applications.

(A) When presented to the Planning Board at the hearing, the application for a special use permit shall be accompanied by a report setting forth the planning staff's proposed findings

concerning the application's compliance with section 152-49, "Applications to Be Complete," and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Planning Board.

(B) The applicant may submit reports, arguments, proposed findings or other documents to the Land Use Administrator (on a schedule to be established by the Land Use Administrator) to be forwarded to the Planning Board with the Land Use Administrator's report as required in subsection 152-56 (a).

(C) If the staff report proposed a finding or conclusion that the applicant fails to comply with section 152-49 or any other requirements of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(D)(C) The Planning Board may, by general rule applicable to all cases or any class of cases, or on a case-by-case basis, refer applications to an advisory committee to obtain its recommendations.

§ 152-57. Recommendations on Conditional Use Permit Applications.

(A) Before being presented to the Town Board, an application for a conditional use permit shall be referred to the Planning Board for action in accordance with this section. The Town Board may not hold a hearing on a conditional use permit application until the Planning Board has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the Planning Board, the Town Board may continue the public hearing to allow the Planning Board more time to consider the application.

(B) When presented to the Planning Board, the application shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 152-49 and other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Town Board. If the planning staff report proposes a finding or conclusion that the application fails to comply with section 152-49 or any other requirement of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(C) The applicant may submit reports, arguments, proposed findings or other documents to the Land Use Administrator (on a schedule to be established by the Land Use Administrator) to be forwarded to the Planning Board with the Land Use Administrator's report as required herein.

(D)(C) The Planning Board shall consider the application, the applicant's submission (if any) and the attached staff report in a timely fashion, and may, in the Chairperson's discretion, hear from the applicant or members of the public. ~~(Notice to the adjoining property owners is provided for in subsection 152-22(E)).~~

(E)(D) After reviewing the application, the Planning Board shall report to the Town Board whether it concurs in whole or in part with the staff's proposed findings and conditions, and to the

extent there are differences, the Planning Board shall propose its own recommendations and the reasons therefore.

~~(F)~~(E) In response to the Planning Board's recommendations, the applicant may modify this application prior to submission to the Town Board, and the planning staff may likewise revise its recommendations.

[Sections 152-58 through 152-60 have not been amended.]

§ 152-61. Authorizing Use, Occupancy, or Sale Before Completion of Development Under a Special Use or Conditional Use Permits.

(A)

(1) In cases when, because of weather conditions or other factors beyond the control of the special use or conditional use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the permit-issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides a surety bond, letter of credit or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve (12) months) determined by the permit-issuing board. The performance guarantee shall be payable to or in favor of the town and shall be in an amount equal to 125% of the entire project cost, as estimated by the developer and approved by the permit-issuing board. The permit recipient may elect which performance guarantee he or she will use from the range specified by this subsection.

(2) In the case of a failure on the part of the developer to timely complete all improvements, the Administrator shall immediately call either the entire performance guarantee or as much of said guarantee as is necessary to complete the remaining improvements. The town shall return to the developer any funds not spent in completing the improvements.

(3) The permit issuing board may, but is not required to, release a portion of any performance guarantee as the improvements are completed.

(B) When the permit-issuing board imposes additional requirements upon the permit recipient in accordance with section 152-60 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

(1) A surety bond or other security to the permit-issuing board is furnished and administered by the town in the manner described in subsection (A);

(2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; or

(3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by section 152-115, "Penalties and Remedies for Violations," and section 152-116, "Permit Revocation and Building Permit Denial."

(C) With respect to subdivisions in which the developer is selling only undeveloped lots, the Town Board may authorize final plat approval and the sale of lots before all the requirements of this chapter are fulfilled if the subdivider provides a surety bond, letter of credit or other security satisfactory to the Town Board to ensure that all of these requirements will be fulfilled within not more than twelve (12) months after final plat approval. The subdivider may elect which performance guarantee he or she will use from the range specified by this subsection. The performance guarantee shall be furnished and administered in the manner described in subsection (A).

(D) Nothing in this section shall prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, as provided in G.S. § 160A-375.

[Section 152-62 through 152-75 are not amended. Part 2, "major and Minor Subdivisions," sections 152-76 through 152-85 are not amended.]

§ 152-86. Review of Major Subdivision Conditional Use Permit Decisions.

Every decision to approve or deny a conditional use permit for a major subdivision shall be subject to review by the Moore County Superior Court in the nature of certiorari in accordance with section 152-110 of this chapter and pursuant to G.S. 160A-393.

§ 152-867 through § 152-89. Reserved.

[Part 3, "Vested Rights," is not amended.]

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
ARTICLE IV, "PERMITS AND FINAL PLAT APPROVAL"
(FINAL VERSION)**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Article IV, "Permits and Final Plat Approval," is amended as follows:

ARTICLE IV - Permits and Final Plat Approval

Part 1. Certificates of Zoning Compliance and Special Use and Conditional Use Permits.

[Section 152-46, "Permits Required," is not amended.]

§ 152-47. No Occupancy, Use or Sale of Lots Until Requirements Fulfilled.

(A) Issuance of a certificate of zoning compliance, special use permit or a conditional use permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or make necessary improvements to a subdivision. However, except as provided in sections 152-53, "Authorizing Use or Occupancy Before Completion of Development Under Certificate of Zoning Compliance"; 152-61, "Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use and Conditional Use Permits"; and 152-62, "Completing Developments in Phases," the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a conditional use or special use permit have been complied with.

(B) Additionally, a certificate of zoning compliance must be issued for all projects for which a special use permit or conditional use permit has been issued or which are subject to a conditional zoning district. The certificate of zoning compliance must be issued prior to the issuance of a building permit to show compliance with this chapter and the applicable special use or conditional use permit or the regulations and conditions of the applicable conditional zoning district.

(C) Nothing in this section shall prevent an owner or agent of the owner from entering into a contract to sell or lease land pursuant to N.C. Gen. Stat. § 160A-375 (b).

[Sections 152-48 through 152-545 are not amended.]

§ 152-56. Recommendations on Special Use Permit Applications.

(A) When presented to the Planning Board at the hearing, the application for a special use permit shall be accompanied by a report setting forth the planning staff's proposed findings

concerning the application's compliance with section 152-49, "Applications to Be Complete," and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Planning Board.

(B) The applicant may submit reports, arguments, proposed findings or other documents to the Land Use Administrator (on a schedule to be established by the Land Use Administrator) to be forwarded to the Planning Board with the Land Use Administrator's report as required in subsection 152-56 (a).

(C) If the staff report proposed a finding or conclusion that the applicant fails to comply with section 152-49 or any other requirements of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(D) The Planning Board may, by general rule applicable to all cases or any class of cases, or on a case-by-case basis, refer applications to an advisory committee to obtain its recommendations.

§ 152-57. Recommendations on Conditional Use Permit Applications.

(A) Before being presented to the Town Board, an application for a conditional use permit shall be referred to the Planning Board for action in accordance with this section. The Town Board may not hold a hearing on a conditional use permit application until the Planning Board has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the Planning Board, the Town Board may continue the public hearing to allow the Planning Board more time to consider the application.

(B) When presented to the Planning Board, the application shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 152-49 and other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Town Board. If the planning staff report proposes a finding or conclusion that the application fails to comply with section 152-49 or any other requirement of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(C) The applicant may submit reports, arguments, proposed findings or other documents to the Land Use Administrator (on a schedule to be established by the Land Use Administrator) to be forwarded to the Planning Board with the Land Use Administrator's report as required herein.

(D) The Planning Board shall consider the application, the applicant's submission (if any) and the attached staff report in a timely fashion, and may, in the Chairperson's discretion, hear from the applicant or members of the public.

(E) After reviewing the application, the Planning Board shall report to the Town Board whether it concurs in whole or in part with the staff's proposed findings and conditions, and to the

extent there are differences, the Planning Board shall propose its own recommendations and the reasons therefore.

(F) In response to the Planning Board's recommendations, the applicant may modify this application prior to submission to the Town Board, and the planning staff may likewise revise its recommendations.

[Sections 152-58 through 152-60 have not been amended.]

§ 152-61. Authorizing Use, Occupancy, or Sale Before Completion of Development Under a Special Use or Conditional Use Permits.

(A)

(1) In cases when, because of weather conditions or other factors beyond the control of the special use or conditional use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the permit-issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides a surety bond, letter of credit or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve (12) months) determined by the permit-issuing board. The performance guarantee shall be payable to or in favor of the town and shall be in an amount equal to 125% of the entire project cost, as estimated by the developer and approved by the permit-issuing board. The permit recipient may elect which performance guarantee he or she will use from the range specified by this subsection.

(2) In the case of a failure on the part of the developer to timely complete all improvements, the Administrator shall immediately call either the entire performance guarantee or as much of said guarantee as is necessary to complete the remaining improvements. The town shall return to the developer any funds not spent in completing the improvements.

(3) The permit issuing board may, but is not required to, release a portion of any performance guarantee as the improvements are completed.

(B) When the permit-issuing board imposes additional requirements upon the permit recipient in accordance with section 152-60 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

(1) A surety bond or other security to the permit-issuing board is furnished and administered by the town in the manner described in subsection (A);

(2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; or

(3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by section 152-115, "Penalties and Remedies for Violations," and section 152-116, "Permit Revocation and Building Permit Denial."

(C) With respect to subdivisions in which the developer is selling only undeveloped lots, the Town Board may authorize final plat approval and the sale of lots before all the requirements of this chapter are fulfilled if the subdivider provides a surety bond, letter of credit or other security satisfactory to the Town Board to ensure that all of these requirements will be fulfilled within not more than twelve (12) months after final plat approval. The subdivider may elect which performance guarantee he or she will use from the range specified by this subsection. The performance guarantee shall be furnished and administered in the manner described in subsection (A).

(D) Nothing in this section shall prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, as provided in G.S. § 160A-375.

[Section 152-62 through 152-75 are not amended. Part 2, "major and Minor Subdivisions," sections 152-76 through 152-85 are not amended.]

§ 152-86. Review of Major Subdivision Conditional Use Permit Decisions.

Every decision to approve or deny a conditional use permit for a major subdivision shall be subject to review by the Moore County Superior Court in the nature of certiorari in accordance with section 152-110 of this chapter and pursuant to G.S. 160A-393.

§ 152-87 through § 152-89. Reserved.

[Part 3, "Vested Rights," is not amended.]

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

§ 160A-375. Penalties for transferring lots in unapproved subdivisions.

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance 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 such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat

has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1977, c. 820, s. 2; 1993, c. 539, s. 1087; 1994, Ex. Sess., c. 24, s. 14(c); 2005-426, s. 3(a).)



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Request:

UDO Text
Amendment #15-12
Regarding
Variances

Prepared by:

Pamela Graham,
Planning Director

Description of Request

The attached text amendment draft is being proposed to bring the town's UDO into compliance with general statutes. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

The amendment regarding variances brings the UDO section pertaining to variances (Sec. 152-93) into line with G.S. § 160A-388.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with*

adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-12. Staff recommends that the Board consider approval of the attached UDO amendment #15-12 and make the following motions:

- Motion 1:** UDO #15-12 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-12 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-12 is reasonable and in the public interest, or
- UDO #15-12 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest:
(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)

- Motion 3:** The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:
- Amend UDO § 152-92 “Variances” as indicated in the attached draft text amendment.

Enclosures: UDO #15-12 Text Amendment Draft
 (NCGS 160A-388 is enclosed with UDO #15-03 Regarding Administrative Mechanisms)

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO VARIANCES (RED-LINE VERSION)**

WHEREAS, the North Carolina General Assembly amended G.S. § 160A-388 to modify and modernize the standards for issuing variances (see, S.L. 20143-126);

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-92, "Variances," is amended as follows:

§ 152-92. Variances.

(A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. Applications shall conform to section 152-48, "Who May Submit Permit Applications," and section 152-49, "Applications to Be Complete." See also section 152-31(C), "Powers and Duties of the Board of Adjustment."

(B) When presented to the Board of Adjustment at the hearing, the application for a variance shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 152-49 and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Board of Adjustment. If the staff proposes a finding or conclusion that the application fails to comply with section 152-49 or any other requirement of this ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(C) The applicant may submit reports, arguments, proposed findings or other documents to the Administrator (on a schedule to be established by the Administrator) to be forwarded to the Board with the Administrator's report required in subsection 152-92 (b).

~~(C) — A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:~~

~~(1) Literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the ordinance;~~

~~(2) Granting the variance requested will not confer on the applicant any special privilege that is denied by the ordinance to other land, structures, or buildings in the same district;~~

~~(3) The special conditions and circumstances do not result from the actions of the applicant;~~

~~(4) The hardship relates to the applicant's land, rather than personal circumstances;~~
and

~~(5) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.~~

(D) When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

~~(E)(D)~~ An applicant need not meet the criteria of subsections ~~(C)(1) and (2)~~ (D) if he or she can prove to the satisfaction of the Board that (i) the need for the variance arises out of an error by the town staff (i.e. the applicant relied in good faith upon an error made by the town staff), (ii) in the absence of the variance the applicant will suffer significant hardship, and (iii) the variance will not have an adverse effect on the surrounding properties.

~~(E)(F)~~ In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

~~(F)(G)~~ A variance may be issued for an indefinite duration or for a specified duration only.

~~(G)(H)~~ The nature of the variance and any conditions attached to it shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance may simply note the issuance of the variance and refer to the written record of the variance for further information.

All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO VARIANCES (FINAL VERSION)**

WHEREAS, the North Carolina General Assembly amended G.S. § 160A-388 to modify and modernize the standards for issuing variances (see, S.L. 20143-126);

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-92, "Variances," is amended as follows:

§ 152-92. Variances.

(A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. Applications shall conform to section 152-48, "Who May Submit Permit Applications," and section 152-49, "Applications to Be Complete." See also section 152-31(C), "Powers and Duties of the Board of Adjustment."

(B) When presented to the Board of Adjustment at the hearing, the application for a variance shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 152-49 and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Board of Adjustment. If the staff proposes a finding or conclusion that the application fails to comply with section 152-49 or any other requirement of this ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(C) The applicant may submit reports, arguments, proposed findings or other documents to the Administrator (on a schedule to be established by the Administrator) to be forwarded to the Board with the Administrator's report required in subsection 152-92 (b).

(D) When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(E) An applicant need not meet the criteria of subsections (D) if he or she can prove to the satisfaction of the Board that (i) the need for the variance arises out of an error by the town staff (i.e. the applicant relied in good faith upon an error made by the town staff), (ii) in the absence of the variance the applicant will suffer significant hardship, and (iii) the variance will not have an adverse effect on the surrounding properties.

(F) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

(G) A variance may be issued for an indefinite duration or for a specified duration only.

(H) The nature of the variance and any conditions attached to it shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Description of Request

Request:

UDO Text
Amendment #15-09
Regarding
Permissible Uses

Prepared by:

Pamela Graham,
Planning Director

The attached text amendment draft is being proposed to respond to case law. A Memorandum provided by the Town Attorney's office states the following in regard to this proposed amendment:

The North Carolina Court of Appeals in *Land v. Village of Wesley Chapel*, 206 N.C. App. 123, 131, 297 S.E.2d 458, 463 (2010) held that, "Zoning regulations are in derogation of common law rights and they cannot be construed to include or exclude by implication that which is not clearly their express terms. It has been held that well-founded doubts as to the meaning of obscure provisions of a Zoning Ordinance should be resolved in favor of the free use of property." (Quoting, *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966)). Applying this rule, the *Land* Court struck down a provision very similar to the one contained in Aberdeen Unified Development Ordinance Section 152-149(B), which reads as follows: "[A]ll uses that are not listed in section 152-146 (the Table of Permissible Uses), even given the liberal interpretation mandated by subsection (A), are prohibited."¹ The proposed amendment eliminates this language and adopts a new standard that hopefully will be workable for the Town. While the Board of Commissioners does not have to adopt the amendment exactly as it is written, the Board should adopt some ordinance amendment to address *Land v. Village of Wesley Chapel*.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with

¹ As an interesting side note, the language struck down came from the model unified development ordinance developed by Mike Brough in 1985. The language had been widely adopted by smaller North Carolina municipalities because they generally lack the resources to attempt to regulate every conceivable land use.

the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest*. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-09. Staff recommends that the Board consider approval of the attached UDO amendment #15-09 and make the following motions:

- Motion 1:** UDO #15-09 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or
- UDO #15-09 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

- Motion 2:** UDO #15-09 is reasonable and in the public interest, or
- UDO #15-09 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest:
(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)

Motion 3: The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:

- Amend UDO § 152-149 “Permissible Uses and Specific Exclusions” as indicated in the attached draft text amendment.

Enclosures: UDO #15-09 Text Amendment Draft

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO PERMITTED USES (RED-LINE VERSION)**

WHEREAS, the North Carolina Court of Appeals in *Land v. Village of Wesley Chapel*, 206 N.C. App. 123, 131, 297 S.E.2d 458, 463 (2010) held that, “Zoning regulations are in derogation of common law rights and they cannot be construed to include or exclude by implication that which is not clearly their express terms. It has been held that well-founded doubts as to the meaning of obscure provisions of a Zoning Ordinance should be resolved in favor of the free use of property.” (Quoting, *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966)). Applying this rule the Land Court struck down a provision very similar to the one contained in Aberdeen Unified Development Ordinance Section 152-149(B);

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-149, “Permissible Uses and Specific Exclusions,” is amended as follows:

§ 152-149. Permissible Uses and Specific Exclusions.

(A) The presumption established by this ordinance is that all legitimate uses of land are permissible within at least one zoning district in the Town's planning jurisdiction. Therefore, because the list of permissible uses set forth in section 152-146 (the Table of Permissible Uses) cannot be all inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.

~~(B) Notwithstanding subsection (A), all uses that are not listed in section 152-146 (the Table of Permissible Uses), even given the liberal interpretation mandated by subsection (A), are prohibited. Nor shall section 152-146 be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible in other zoning districts.~~

(B) Notwithstanding subsection (A), if the proposed use is not listed in section 152-146 (the Table of Permissible Uses), even given a liberal interpretation, the permit-issuing authority shall apply the minimum ordinance standards for the use found in the Table of Permissible uses that is most closely related to the land use impacts of the proposed use and issue the permit. The Land Use Administrator or the Planning Board may request that the Town Board initiate an ordinance amendment addressing such proposed use. If the adoption of such an amendment occurs after the Land Use Administrator receives an application for a zoning compliance permit, special use permit or conditional use permit, however, the ordinance standards in effect at the time the application is received shall apply.

(C) Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

(1) Any use that involves the manufacture, handling, sale, distribution, or

storage of any highly combustible or explosive materials in violation of the Town's fire prevention code;

(2) Stockyards, slaughterhouses, abattoirs and rendering plants;

(3) The keeping of swine. This prohibition is adopted pursuant to authority granted by G.S. Chpt. 160A, Art. 19, Part 3 and G.S. 160A-186;

(4) Except as provided by this ordinance, salvage yards, junk yards and all other types of recycling facilities;

(5) Use of a recreational vehicle as a temporary or permanent residence. (Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within one year of the effective date of this ordinance); and

(6) With the exception of roadside stands which are permitted subject to section 152-163.18, use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted. Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within thirty (30) days.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO PERMITTED USES (FINAL VERSION)**

WHEREAS, the North Carolina Court of Appeals in *Land v. Village of Wesley Chapel*, 206 N.C. App. 123, 131, 297 S.E.2d 458, 463 (2010) held that, “Zoning regulations are in derogation of common law rights and they cannot be construed to include or exclude by implication that which is not clearly their express terms. It has been held that well-founded doubts as to the meaning of obscure provisions of a Zoning Ordinance should be resolved in favor of the free use of property.” (*Quoting, Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966)). Applying this rule the *Land* Court struck down a provision very similar to the one contained in Aberdeen Unified Development Ordinance Section 152-149(B);

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-149, “Permissible Uses and Specific Exclusions,” is amended as follows:

§ 152-149. Permissible Uses and Specific Exclusions.

(A) The presumption established by this ordinance is that all legitimate uses of land are permissible within at least one zoning district in the Town's planning jurisdiction. Therefore, because the list of permissible uses set forth in section 152-146 (the Table of Permissible Uses) cannot be all inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.

(B) Notwithstanding subsection (A), if the proposed use is not listed in section 152-146 (the Table of Permissible Uses), even given a liberal interpretation, the permit-issuing authority shall apply the minimum ordinance standards for the use found in the Table of Permissible uses that is most closely related to the land use impacts of the proposed use and issue the permit. The Land Use Administrator or the Planning Board may request that the Town Board initiate an ordinance amendment addressing such proposed use. If the adoption of such an amendment occurs after the Land Use Administrator receives an application for a zoning compliance permit, special use permit or conditional use permit, however, the ordinance standards in effect at the time the application is received shall apply.

(C) Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

(1) Any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials in violation of the Town's fire prevention code;

(2) Stockyards, slaughterhouses, abattoirs and rendering plants;

(3) The keeping of swine. This prohibition is adopted pursuant to authority

granted by G.S. Chpt. 160A, Art. 19, Part 3 and G.S. 160A-186;

(4) Except as provided by this ordinance, salvage yards, junk yards and all other types of recycling facilities;

(5) Use of a recreational vehicle as a temporary or permanent residence. (Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within one year of the effective date of this ordinance); and

(6) With the exception of roadside stands which are permitted subject to section 152-163.18, use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted. Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within thirty (30) days.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk



MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015

Description and Background of Request

Request:

UDO Text
Amendment #15-10
Regarding Special
Exceptions

Prepared by:

Pamela Graham,
Planning Director

Draft changes to §152-92.1 (Special Exceptions) are also being considered in light of a recent instance that staff has encountered. Staff brought the proposal to the Town Board for input during their June 8th Work Session, and was directed to prepare a draft amendment for a recommendation from the Planning Board. The Planning Board, during their August 20, 2015 meeting, recommended approval with modified language. The events leading to the consideration of an amendment are as follows.

During a site inspection for a lot under construction located at 175 Devon Circle staff observed a pre-fab shed on the adjacent property that did not appear to meet the required ten foot side setback requirement. In following up on the shed it was discovered that no zoning permit had been pulled and staff began attempting contact with the property owners, Alan and Lindsey Colvin. Communication was difficult, as Mr. Colvin had been deployed to Afghanistan, but ultimately it was relayed to staff that the developer/home builder Murray Williamson had been contracted to install the shed and pour a concrete slab as a base and the homeowners had assumed it was handled per town requirements and code. Staff began an enforcement case on the matter, but delayed levying civil penalties as we attempted to work with the homeowners using a less stringent approach. We reached out to the town attorney to see if other options were available and the possibility of utilizing the “Special Exception” section of the UDO was discussed. Special Exceptions allow for special circumstances to be considered when setback requirements are not being met, however, the language applies to primary structure setback requirements and does not address accessory structures specifically. The UDO typically treats these two types of structures differently, only requiring a ten foot setback for accessory structures (other than garages) where the side setback for primary structures is typically fifteen feet.

Staff is proposing that the Town Board consider adding a new subsection (F) to the Special Exception language that specifically addresses accessory structures, which would allow for setback reduction to as little as zero feet when the following requirements have been met:

1. That issuance of the permit will not create a threat to the public health or safety; and
2. That issuance of the permit will not adversely affect the value of adjoining or neighboring properties. Competent evidence of this must be demonstrated, with one method being that a petition signed by affected property owners be submitted stating that they do not believe their property values will be adversely affected by issuance of the permit.

Procedural Issues

§152-322 of the Town of Aberdeen Unified Development Ordinance (UDO) requires that proposed amendments to the UDO shall be referred to the Planning Board for consideration and recommendation to the Town Board. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the town and any other officially adopted plan that is applicable and describe in what manner it is or is not consistent. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board.

In addition to the plan consistency requirement, the Planning Board must include a statement in their recommendation regarding whether the proposal is reasonable and in the public interest, and in what manner it is or is not reasonable and in the public interest.

Following a recommendation to the Town Board for approval or denial of an application, the item will be scheduled for a public hearing where public input can be accepted by the Town Board in advance of a final decision. The central issue to be considered regarding amendments is whether the proposed amendment advances the public health, safety, or welfare. The statement included with the Town Board's decision on the amendment shall *describe whether the action is consistent with adopted plans and explaining why the Board considers the action taken to be reasonable and in the public interest*. The decision is legislative in nature as opposed to quasi-judicial, and is not subject to judicial review.

Plan Consistency

The 2030 Land Development Plan adopted in 2005 does not address the potential need for notifications of this type and staff has located no references to this matter in other plans adopted by the town. *The proposed text amendment is not inconsistent with plans adopted by the town in that the issue is not addressed in the plans.*

Recommendations and Suggested Motions

During their August 20, 2015 meeting, the Planning Board unanimously recommended approval of UDO #15-10, with amended language as indicated in **bold blue type** in the attached draft amendment (red type indicates changes proposed by staff for consideration, bold blue type indicates Planning Board recommended changes). Staff recommends that the Board consider approval of the attached UDO amendment #15-10 and make the following motions:

Motion 1: UDO #15-10 is not inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen, or

UDO #15-10 is inconsistent with comprehensive plans that have been adopted by the Town of Aberdeen.

Indicate the applicable plan and briefly how the amendment is or is not consistent:

Motion 2: UDO #15-10 is reasonable and in the public interest, or

UDO #15-10 is not reasonable and in the public interest.

Briefly explain why the amendment is or is not reasonable and in the public interest:
(Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments)

Motion 3: The Town of Aberdeen Board of Commissioners (approves/denies) the following amendment to the Town of Aberdeen UDO:

- Amend UDO § 152-92.1 as indicated in the attached draft text amendment.

Enclosures: UDO #15-10 Text Amendment Draft
Images of Accessory Structure on the Colvin's lot

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO SPECIAL EXCEPTIONS (RED-LINE VERSION)**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-94, "Special Exceptions," is amended as follows:

§ 152-94. Special Exceptions.

See also Appendix H.

(A) An application for a special exception permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning Department.

(B) All of the provisions of this article applicable to the processing of variance applications shall also apply to special exception permit requests, except the provisions of subsections 152-9~~23~~~~(D)(C)~~ and 152-~~96~~~~108~~(B) and (C).

(C) The Board of Adjustment may issue a special exception permit for the purposes and under the circumstances set forth in either subsection (D), (E) or (F) of this section and the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. If the applicant presents a petition, signed by the owners of all properties adjacent to the subject property entitled to receive notice of the hearing on the application pursuant to section 152-102(A)(2), and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.

(D) The Board of Adjustment may issue a special exception permit under this section to allow a reduction of up to fifty percent (50%) in the required distances that buildings must be set back from lot boundary lines under section 152-186, "Building Setback Requirements," provided that:

- (1) The reduction may be permitted only for buildings on lots used for conforming residential purposes in residential districts and where the building in question has existed for at least three (3) years prior to the application for the special exception permit;

- (2) In no case may the reduction allow a building to be located closer to a lot boundary line than a distance equal to one-half of the minimum building separation requirement established by the North Carolina State Building Code or allow the location of a building in such proximity to a pre-existing building as to violate the minimum building separation requirement of the North Carolina State Building Code; and
- (3) Reductions may be allowed under this section only for setbacks from lot boundary lines, not setbacks from street right-of-way lines.

(E) The Board of Adjustment may issue a special exception permit to authorize a structure to encroach upon a setback required under section 152-186, "Building Setback Requirements," if it finds that:

- (1) The proposed encroachment results from an addition to or an extension of an existing structure that already is nonconforming with respect to the requirements of section 152-186, "Building Setback Requirements"; and
- (2) The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

(F) Accessory Structures. Subsection 152-187(A) may be varied so that an accessory structure, other than a residential garage, may be located as little as zero no less than two (2) feet from any lot line, except street lot lines. The required setback for residential garages shall not be varied pursuant to this subsection, and the required setback from a street for any accessory structure shall not be varied pursuant to this subsection and that the property line in question be verified by a licensed surveyor or engineer.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk

**AN ORDINANCE AMENDING THE ABERDEEN UNIFIED DEVELOPMENT ORDINANCE
WITH REGARD TO SPECIAL EXCEPTIONS (CLEAN VERSION)**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF ABERDEEN THE FOLLOWING:

Section 1. Aberdeen Unified Development Ordinance Section 152-94, "Special Exceptions," is amended as follows:

§ 152-94. Special Exceptions.

See also Appendix H.

(A) An application for a special exception permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning Department.

(B) All of the provisions of this article applicable to the processing of variance applications shall also apply to special exception permit requests, except the provisions of subsections 152-93(D) and 152-108(B) and (C).

(C) The Board of Adjustment may issue a special exception permit for the purposes and under the circumstances set forth in either subsection (D), (E) or (F) of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. If the applicant presents a petition, signed by the owners of all properties adjacent to the subject property, and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.

(D) The Board of Adjustment may issue a special exception permit under this section to allow a reduction of up to fifty percent (50%) in the required distances that buildings must be set back from lot boundary lines under section 152-186, "Building Setback Requirements," provided that:

- (1) The reduction may be permitted only for buildings on lots used for conforming residential purposes in residential districts and where the building in question has existed for at least three (3) years prior to the application for the special exception permit;
- (2) In no case may the reduction allow a building to be located closer to a lot boundary line than a distance equal to one-half of the minimum building

separation requirement established by the North Carolina State Building Code or allow the location of a building in such proximity to a pre-existing building as to violate the minimum building separation requirement of the North Carolina State Building Code; and

- (3) Reductions may be allowed under this section only for setbacks from lot boundary lines, not setbacks from street right-of-way lines.

(E) The Board of Adjustment may issue a special exception permit to authorize a structure to encroach upon a setback required under section 152-186, "Building Setback Requirements," if it finds that:

- (1) The proposed encroachment results from an addition to or an extension of an existing structure that already is nonconforming with respect to the requirements of section 152-186, "Building Setback Requirements"; and
- (2) The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

(F) Accessory Structures. Subsection 152-187(A) may be varied so that an accessory structure, other than a residential garage, may be located no less than two (2) feet from any lot line, except street lot lines. The required setback for residential garages shall not be varied pursuant to this subsection, and the required setback from a street for any accessory structure shall not be varied pursuant to this subsection and that the property line in question be verified by a licensed surveyor or engineer.

Section 2. All provisions of any town ordinance or resolution in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this _____ day of _____, 2015.

Ayes: _____

Noes: _____

Absent or Excused: _____

Dated: _____

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Town Clerk



**RESOLUTION TO RENEW SURETY FOR MFV-FC PORTFOLIO LLC
FOR INFRASTRUCTURE IMPROVEMENTS FOR
Legacy Lakes, Phase 1**

WHEREAS, The Legacy (Legacy Lakes) was approved through a Conditional Use Permit granted by the Town of Aberdeen as a Residential Planned Development; and

WHEREAS, MFV-FC Portfolio, LLC posted surety for sidewalks and subdivision improvements for the development of lots and townhomes in Phase 1 of The Legacy with an expiration date of October 10, 2015; and

WHEREAS, all bonded improvements in Phase 1 of The Legacy have not been completed; and

WHEREAS, MFV-FC Portfolio, LLC offers a renewal of all surety for Phase 1 of The Legacy with an expiration of October 10, 2016 as detailed below;

MFV –FC Surety	Amount	Purpose	Expires
1080075	\$81,412.81	Sidewalks, Phase 1, Map 2	10/10/2016
1080076	\$70,265.00	Sidewalks, Phase 1, Map 1	10/10/2016
1070077	\$65,025.94	1” Road Top Coat, Phase 1, Map 1	10/10/2016
1070078	\$96,285.30	1” Road Top Coat, Phase 1, Map 2	10/10/2016
1080080	\$49,927.50	Phase 1, Map 4 paving costs for local subdivision roads	10/10/2016
1080081	\$79,915.24	Phase 1, Map 4 sidewalk improvements and 1” overlay	10/10/2016
1080082	\$132,333.62	Phase 1, Map 3, townhomes paving and curb	10/10/2016
1080083	\$29,812.50	Phase 1, Map 5 Sidewalk	10/10/2016
1080084	\$23,997.50	Phase 1, Map 5 paving	10/10/2016

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Aberdeen that the following surety bonds: 1080075, 1080076, 1080077, 1080078, 1080080, 1080081, 1080082, 1080083, 1080084 are accepted for the completion of infrastructure improvements for Phase 1 of The Legacy.

Adopted this the 28th day of September, 2015.

Robert A. Farrell, Mayor

Attest:

Regina M. Rosy, Clerk



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: P Graham **Department:** Planning

Contact Phone # 4517 **Date Submitted:** 9/17/15

Agenda Item Title: Resolution to Accept a Letter of Credit to Guarantee Installation of Sidewalks for Phase 1 of the Meadow Ridge Subdivision

Date of Board Meeting to hear this item: 9/28/15

Board Action Requested:

<p>New Business <input checked="" type="checkbox"/></p> <p>Old Business <input type="checkbox"/></p> <p>Public Hearing <input type="checkbox"/></p> <p>Other Business <input type="checkbox"/></p>	<p>Information Only <input type="checkbox"/></p> <p>For Action at Future Meeting <input type="checkbox"/> Date _____</p> <p>Informal Discussion & Public Comment <input type="checkbox"/></p> <p>Consent Agenda <input type="checkbox"/></p>
--	--

Summary of Information:

The Letter of Credit approved by the Board as surety for sidewalk installation for Phase 1 of the Meadow Ridge Subdivision expires on 10/3/2015. A replacement Letter of Credit is attached.

The Board granted a modification to the CUP for the subdivision that allowed for sidewalks to be installed on one side of each road within the subdivision (a 50% reduction). Of that amount, approximately half of the sidewalks are completed; however, the credit amount guaranteed by the letter remains at the original dollar figure of \$40,000.

Request approval at 9/28 meeting.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: Jae Kim Department: Planning

Contact Phone # 4514 Date Submitted: 9/18/15

Agenda Item Title: Resolution Directing Clerk to Investigate a Petition for Annexation submitted by Peggy Hendrix

Work Session - Board Action (date of meeting should be filled in on line) :

Information Only _____

Public Hearing _____

Approval at work session - immediate action _____

Regular Board Meeting - Board Action (date of meeting should be filled in on line):

New Business 9/28/15

Information Only _____

Old Business _____

Consent Agenda _____

Public Hearing _____

Informal Discussion & Public Comment _____

Other Business _____

Summary of Information:

Regarding the non-contiguous annexation request for lot located on 1210 Pee Dee Rd. Board action to request resolution directing clerk to investigate a petition for annexation under G.S. 160A-58.2.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):



Agenda Item # _____
Town of Aberdeen Planning & Inspections Department
115 N. Poplar Street PO Box 785
Aberdeen, NC 28315
(910) 944-7024

MEMORANDUM TO THE BOARD OF COMMISSIONERS – September 28, 2015 Regular Meeting

Description of Request

Request:

Petition for Non-Contiguous Annexation for Betty Hendrix

A petition for Non-Contiguous Annexation has been submitted by Betty Hendrix for a .47 acre parcel identified by Parcel ID #20110111 and with an address of 1210 Pee Dee Road.

Prepared by:

Jae Kim,
Planner II

The property is currently being developed for a single family dwelling, approved in July 2015. The Public Works Director has reviewed the request and is arranging for provision of municipal water to the site in accordance with the town's Water and Wastewater System Extension and Connection Policy.

Staff Recommendation

Staff recommends that the Board:

1. Accept the attached Petition Requesting Annexation including deed and survey;
2. Adopt the attached Resolution Directing the Clerk to Investigate a Petition for Annexation.

RESOLUTION DIRECTING THE CLERK TO INVESTIGATE
A PETITION RECEIVED UNDER G.S. 160A-58.1

WHEREAS, a petition requesting annexation of an area described in aforementioned petition was received on July 16, 2015 by the Zoning Administrator; and

WHEREAS, G.S. 160A-58.2 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Board of Commissioners of the Town of Aberdeen deems it advisable to proceed in response to this request for annexation:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Town of Aberdeen that:

The Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the Board of Commissioners the result of her investigation.

Adopted this the 28th day of September, 2015

Robert A. Farrell, Mayor

ATTEST:

Regina M. Rosy, Town Clerk

PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION RECEIVED

Date: JUL 16 2015

To the Board of Commissioners of the Town of Aberdeen:

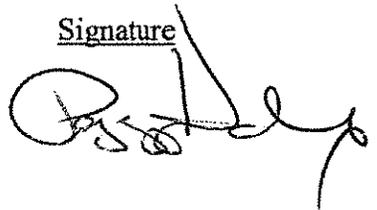
TOWN OF ABERDEEN

- 1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the Town of Aberdeen.
- 2. The area to be annexed is non-contiguous to the Town of Aberdeen and the boundaries of such territory are as follows:

(See attached) 4

(Meets and bounds description and certified map required.)

- 3. A map is attached showing the area proposed for annexation in relation to the primary corporate limits of the Town of Aberdeen. (See attached) 2, 3
- 4. We acknowledge that any zoning vested rights acquired pursuant to G. S. 160A-385.1 or G. S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

	<u>Name</u>	<u>Address</u>	Do you declare vested rights? <u>(Indicate yes or no)</u>	<u>Signature</u>
1.	Peggy Hendrix	1210 Peedee Rd Aberdeen		
2.				
3.				
4.				

Ro

FOR REGISTRATION REGISTER OF DEEDS
Judy D. Martin
Moore County, NC
May 12, 2015 04:46:15 PM
Book 4489 Page 17-18
FEE: \$26.00
INSTRUMENT # 2015005917



INSTRUMENT # 2015005917

Mail to: Atlantic Title Co. Inc.
5309 Monce Rd.
Charlotte NC 28205

NORTH CAROLINA NON-WARRANTY DEED

Excise Tax: \$0.00, no taxable consid.

Parcel Identifier No. 20110111

Verified by _____ County on the ___ day of _____, 2015.

By: _____

Mail/Box to: Grantee, PO Box 1339, Aberdeen, NC 28315

This instrument was prepared by: Jon Mendini, Attorney, Charlotte, NC

Brief description for the Index: _____

[XX] Property conveyed includes Grantors primary home, if checked.

THIS DEED made this 7 day of ^{May 2015} ~~February~~ 2015, by and between

GRANTOR	GRANTEE
Peggy U. Hendrix	Peggy U. Hendrix and David Hendrix, Wife and Husband
Mailing Address: PO Box 1339 Aberdeen, NC 28315	Property Address: 1210 Pee Dee Road Aberdeen, NC 28315

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Aberdeen, ___ Township, Moore County, North Carolina and more particularly described as follows:

1. LOT NO. 20 OF THE U.T. HIGHT, JR. PROPERTY AS SHOWN ON A PLAT ENTITLED "U.T. HIGHT, JR. PROPERTY", DATED APRIL 8, 1958, MADE BY R.C. SHEPHERD, SURVEYOR, AND FILED FOR RECORD IN MAP BOOK 5, PAGE 43, MOORE COUNTY REGISTRY, CARTHAGE, N.C., AND TO WHICH REFERENCE IS HEREBY MADE.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 4438, Page 579.

A map showing the above described property is recorded in Map Book 5, Page 43.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered.

Peggy U. Hendrix
Peggy U. Hendrix

State of North Carolina, County of Moore

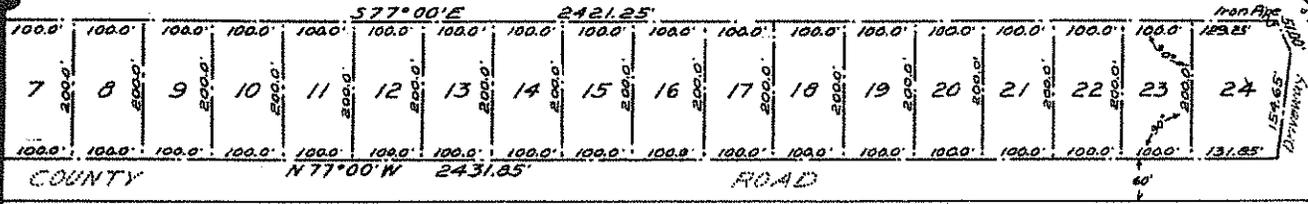
I, Jeffery Markham, a Notary Public for the County and State aforesaid, do hereby certify that Peggy U. Hendrix personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 7 day of May, 2015.

Jeffery Markham
Notary Public
Moore County, NC
My commission expires May 1, 2020

Jeffery Markham
Notary Public Jeffery Markham
My commission expires: May 1, 2020

SECTION 2



Sworn and subscribed
before me this 18th
day of April, 1958
James S. Linn Notary Public
My commission expires 11-1-60

Surveyed by R. S. St. John
April 18 1958
Register of Deeds
County and State of N.C.
April 18 1958
R. S. St. John
Notary Public

In (Section 28, State of N.C.)
The foregoing certificate of
R. S. St. John County,
acknowledged to be correct. Let the
same stand with the certificate be
acknowledged. This 18th
day of April 1958
Notary Public for Court

Plan Showing
U. T. HIGHT JR. PROPERTY
ABERDEEN, N. C.
April, 8, 1958. Scale 1"=100'

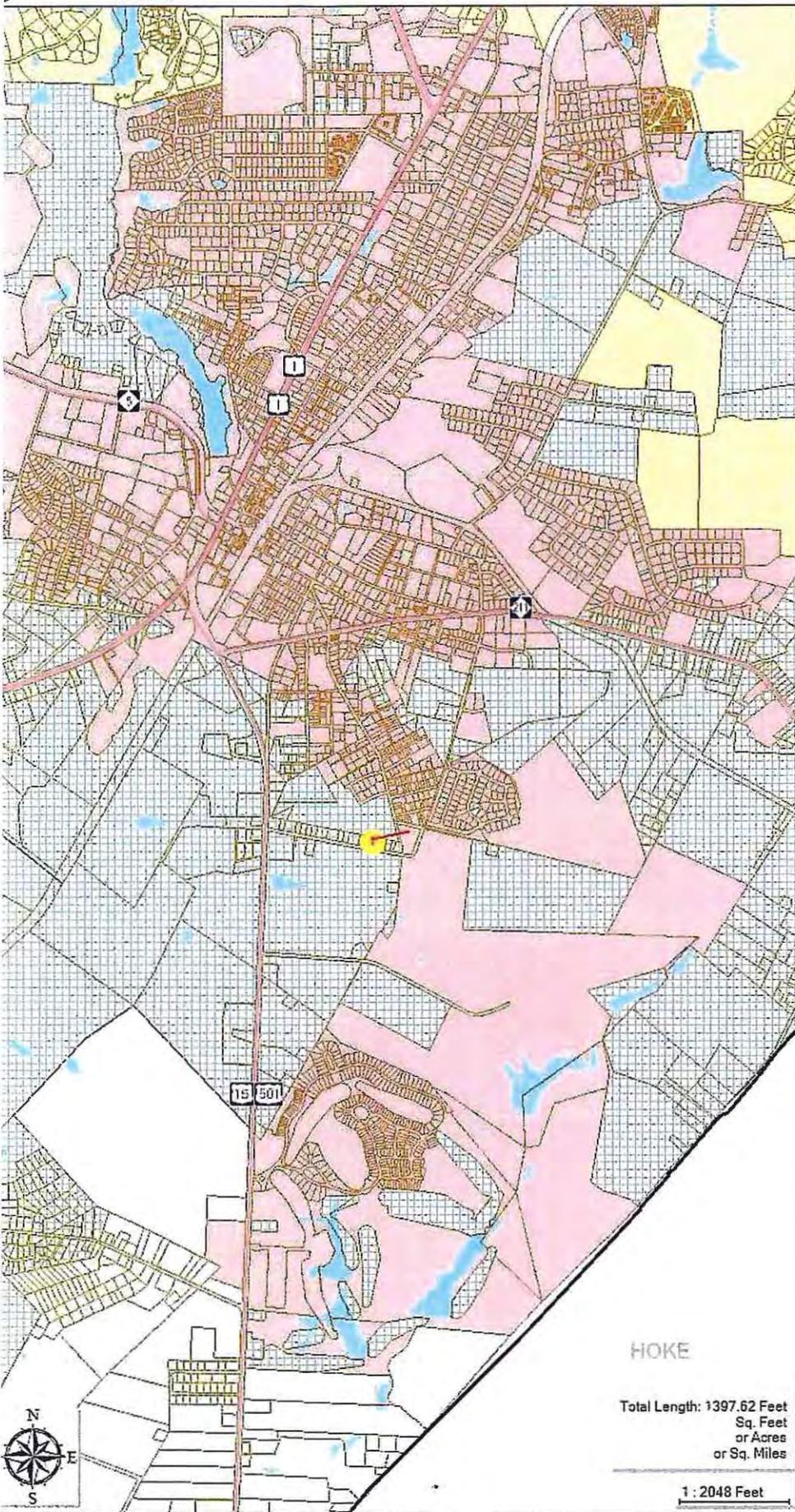


- Address
- Parcels
- ETJ
- County
- Streets
- Highways
- Lakes and Rivers



1 : 256 Feet

DISCLAIMER All the information contained on this media is prepared for the inventory of real property found within Moore County. All data is compiled from recorded deeds, plats, and other public records and data. Users of data are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information. All information contained herein was created for the County's Internal use. Moore County, its agents and employees make NO warranty as to the correctness or accuracy of the information set forth on this media whether express or implied, in fact or in law, including without limitation the implied warranties of merchantability and fitness for a particular use. Any resale of this data is strictly prohibited in accordance with North Carolina General Statute 132-10. Grid is based on North Carolina State Plane Coordinate System NAD83 (feet).

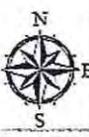


- Border Counties
- Parcels
- ETJ
- County
- Cities
 - ABERDEEN
 - CAMERON
 - CANDOR
 - CARTHAGE
 - FOXFIRE
 - PINEBLUFF
 - PINEHURST
 - ROBBINS
 - SOUTHERN PINES
 - TAYLORTOWN
 - VASS
 - WHISPERING PINES
- Highways
- Lakes and Rivers

Hoke

Total Length: 1397.62 Feet
Sq. Feet
or Acres
or Sq. Miles

1 : 2048 Feet



DISCLAIMER All the information contained on this media is prepared for the inventory of real property found within Moore County. All data is compiled from recorded deeds, plats, and other public records and data. Users of data are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information. All information contained herein was created for the County's internal use. Moore County, its agents and employees make NO warranty as to the correctness or accuracy of the information set forth on this media whether express or implied, in fact or in law, including without limitation the implied warranties of merchantability and fitness for a particular use. Any resale of this data is strictly prohibited in accordance with North Carolina General Statute 132-10. Grid is based on North Carolina State Plane Coordinate System NAD83 (feet).



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: Beth F. Wentland, Finance Officer **Department:** Finance

Contact Phone # 910-944-4502 **Date Submitted:** 9/18/2015

Agenda Item Title: Resolution Accepting Financing Terms-Vehicles and Cameras

Work Session - Board Action (date of meeting should be filled in on line) :
Information Only _____
Public Hearing _____
Approval at work session - immediate action _____

Regular Board Meeting - Board Action (date of meeting should be filled in on line):
New Business _____ **Information Only** _____
Old Business _____ **Consent Agenda** _____
Public Hearing _____ **Informal Discussion & Public Comment** _____
Other Business _____

Summary of Information:

Attached is a resolution that the bank requires the Board to approve for us to be able to proceed with a financing agreement. In this case, it is to finance 2 police vehicles, 4 police in-car cameras, as well as a pickup truck for the Fire Department, all of which are included in this year's adopted budget.

I request that the Board approve this resolution at the 9/28 board meeting. With approval at this meeting, it will ensure that we qualify for the low tax-exempt rate of 2.14%. The term of this financing shall not exceed two (2) years following closing.

As always, thank you, Beth

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

Resolution Approving Financing Terms

WHEREAS: The Town of Aberdeen (the "Town") has previously determined to undertake a project for the financing of vehicles and cameras, (the "Project"), and the Town Manager has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Town hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated September 18, 2015. The amount financed shall not exceed \$108,900.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 2.14%, and the financing term shall not exceed two (2) years from closing.
2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the Town are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Town officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.
4. The Town shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations.
5. The Town intends that the adoption of this resolution will be a declaration of the Town's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The Town intends that funds that have been advanced, or that may be advanced, from the Town's general fund, or any other Town fund related to the project, for project costs may be reimbursed from the financing proceeds.
6. All prior actions of Town officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this _____ day of _____, 2015.

By: _____
Town Mayor

By: _____
Town Clerk

SEAL



TOWN OF ABERDEEN AGENDA ITEM ACTION REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Aberdeen Board agenda. One (1) form per agenda item.

Submitted By: Daniel Martin **Department:** Planning

Contact Phone # 910.944.4506 **Date Submitted:** 9/23/2015

Agenda Item Title: Grants Update Presentation

Work Session - Board Action (date of meeting should be filled in on line) :	
Information Only _____	
Public Hearing _____	
Approval at work session - immediate action _____	
Regular Board Meeting - Board Action (date of meeting should be filled in on line):	
New Business _____	Information Only <input checked="" type="checkbox"/> _____
Old Business _____	Consent Agenda _____
Public Hearing _____	Informal Discussion & Public Comment _____
Other Business _____	

Summary of Information:

The purpose of this item is to update the board on all "off schedule" grants managed by the Planning Dept.

Special requests (i.e. Needs to be first on the agenda due to schedule of guest, etc.):

Town of Aberdeen
Planning Department-Related Grants
Status Updates

ABERDEEN BOARD OF COMMISSIONERS

Regular Board Meeting

Monday, September 28, 2015

Grant Status Summary

- All grants are “on schedule” with an exception for the following three:
 - #07-D-2451 (ITPP – Sewer Improvements)
 - #2013-125-60501-118 (Project Huggies)
 - #12-C-2438 (2012 SBEA)

#07-D-2451 / CDBG (ITPP – Sewer Improvements)

- Close-out date: 1/31/2016
- Award Amount: \$243,000

<u>Activity</u>	<u>Performance</u>
❖ Sewer	On Schedule
❖ Administration	On Schedule
❖ Job Creation	Off Schedule

Grant Inception	Total Jobs Required	Total Jobs as of 9/28/2015	Additional Jobs Needed	Grant Closeout
2/6/2013	79	57	22	1/31/2016

#2013-125-60501-118 / Building Reuse (Project Huggies)

- Close-out date: 2/27/2016
- Award amount: \$175,000

Activity

- ❖ Building Reuse costs
- ❖ Job Creation

Performance

- On Schedule
- Off Schedule

Grant Inception	Total Jobs Required	Jobs Created as of 9/28/2015	Additional Jobs Needed	Grant Closeout
2/27/2013	81	57	24	2/27/2016

12-C-2438 (2012 SBEA)

- Close-out date: 6/30/2016
- Award amount: \$225,000

Activity

- ❖ Administration
- ❖ Planning
- ❖ Machinery & Equipment
- ❖ Commercial Rehab
- ❖ Job Creation

Performance

- On Schedule
- On Schedule
- Off Schedule
- Off Schedule
- Off Schedule

Grant Inception	Total Jobs Required	Jobs Created as of 9/28/2015	Additional Jobs Needed	Grant Closeout
3/27/2013	9	1	8	6/30/2016