

Regular Meeting Minutes of the Town of Highlands Board of Commissioners Meeting of April 15th, 2021, at the Highlands Community Building, 71 Poplar Street, Highlands, North Carolina

Town Board Present: Mayor Pro Tempore Amy Patterson, Commissioner Brian Stiehler, Commissioner Marc Hehn and Mayor Pat Taylor

Town Board Absent: Commissioner John Dotson and Commissioner Donnie Calloway

Also Present: Town Manager Josh Ward, Town Attorney Jay Coward, MIS/GIS Director Matt Shuler, Police Chief Andrea Holland, Parks & Recreation Director Lester Norris, Planning & Development Director Assistant Michael Mathis and Town Clerk Gibby Shaheen

1. Meeting Called to Order

Mayor Taylor called the meeting to order at 7:00pm.

2. Moment of Silence & Pledge of Allegiance

Mayor Taylor held a moment of silence then led the Pledge of Allegiance.

3. Public Comment Period

Jerry Moore said the vaccination initiative was great, but one person was not recognized, he came early and stayed late and is an asset to our community, then he thanked Lester Norris for all of his hard work.

4. Adjust and Approve the Agenda

Town Manager Josh Ward asked to add Emergency Council Resolution after Covid-19 Restrictions Discussion.

MAYOR PRO TEMPORE PATTERSON MADE A MOTION TO APPROVE THE AGENDA AS AMENDED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

5. Approval of the March 11th, 2021, Special Meeting Minutes

COMMISSIONER STIEHLER MADE A MOTION TO APPROVE THE MARCH 11TH, 2021, SPECIAL MEETING MINUTES AS PRESENTED, WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND THE VOTE WAS UNANIMOUS.

Approval of the March 18th, 2021, Regular Meeting Minutes

COMMISSIONER STIEHLER MADE A MOTION TO APPROVE THE MARCH 18TH, 2021, REGULAR MEETING MINUTES AS PRESENTED, WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND THE VOTE WAS UNANIMOUS.

6. Reports

A. Mayor

Mayor Taylor applauded Town Manager Josh Ward, Public Works Director Lamar Nix, and the NC Department of Transportation for the coordination of the road paving project; announced House bill in state legislature that would eliminate single family zoning and change tree ordinances and urged citizens to reach out to legislature; and reported Plateau pickup took place Saturday and volunteers picked up NC 106, NC 64 and NC 28 and it was a great community effort and should be on an ongoing basis instead of once a year.

B. Commissioners and Committee Reports

Commissioner Stiehler announced the Scholarship Golf tournament had been cancelled last year due to COVID and the CDC guidelines, but are planning on being able to hold the event in the fall.

Commissioner Hehn reported there were vacancies for the CNA class at the hospital.

C. Town Manager

Town Manager Ward reported the Fiber Construction is in the testing phase and should be completed in the next couple of weeks, the 1st draft of the Contract has been reviewed and re-submitted to Hotwire; Fire Department Construction update we've been waiting on the soil engineer's plan to remove water with the help of Bryson's and should be getting started back next week; and the resurfacing was a smooth project and they should be completing painting, including painting the bricks red, and the Satulah Road and NC Highway 28 intersection, we decided to put a tree in the middle of the landscaping section.

6. Consent Agenda

Public Works Department
Police Department
Parks & Recreation Department
Planning & Development Department
Treasurer's Report

COMMISSIONER STIEHLER MADE A MOTION TO ACCEPT THE CONSENT AGENDA AS PRESENTED, WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND THE VOTE WAS UNANIMOUS.

7. Public Hearing: Proposed Conditional Zoning for the Performing Arts Center

A. Open Public Hearing

MAYOR PRO TEMPORE PATTERSON MADE A MOTION TO OPEN THE PUBLIC HEARING ON THE PROPOSED CONDITIONAL ZONING FOR THE PERFORMING ARTS CENTER AT 7:35PM, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

B. Staff Comments/Recommendation

Assistant Planning & Development Director Michael Mathis stated a petition for a conditional zoning district was submitted to the Town of Highlands Planning Department by the Performing Arts Center (PAC). According to the Unified Development Ordinance (UDO), § 4.5.2 (D) **Petition Submission Requirements**, "Changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as an application for a new conditional zoning district and shall be processed in accordance with the procedures in this Section." The petition concerns properties at 507 Chestnut Street (PIN # 7540428089), 483 Chestnut Street (PIN # 7540427232), and Lots 317/ 319 of Laurel Street (PIN # 7540419987). As a condition of final approval, the PAC will need to combine these three (3) parcels into one 2.05-acre lot. According to a report created by Stillwell Engineering, PA, the Finished Built Upon Area (BUA) will make-up 69% of the overall lot. Per § 8.4.1 (A) **General**, "When approved as a Special Nonresidential Intensity Allocation (SNIA), nonresidential uses may be permitted up to a maximum of seventy percent (70%) built-upon area in up to five percent (5%) of the balance of the watershed which is outside the critical area. Projects must minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts." The PAC is requesting to be zoned G-I CZ, and the Use of the property will not change. The Planning Board reviewed this item on February 22 and recommended it be approved. The Zoning Board of Adjustments reviewed this on March 10 and recommended approval. Also, at their March 10 meeting, the Zoning Board granted a variance request allowing the new building to encroach into the 25-foot setback off of Chestnut Street. Staff recommendation is to approved the Conditional Zoning Request as submitted.

C. Public Comments

There were no comments.

D. Close Public Hearing

COMMISSIONER STIEHLER MADE A MOTION TO CLOSE THE PUBLIC HEARING FOR THE PROPOSED CONDITIONAL ZONING FOR THE PERFORMING ARTS CENTER AT 7:39PM, WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND THE VOTE WAS UNANIMOUS.

E. Council Action



**An Ordinance Amending the Official Zoning Map of the Town of Highlands
Ordinance #2021-04-Ord**

Be it ordained by the Town of Highlands Board of Commissioners:

1. Pursuant to Article 4. Applications and Permits Sec. 4.5 Conditional Zoning Districts of the Unified Development Ordinance Highlands, North Carolina amendments of the Unified Development Ordinance and Zoning Map of the Town of Highlands is hereby amended to combine Parcel No. 7540419987, Parcel No. 7540428089 and Parcel No. 7540427232 into one parcel consisting of 2.05 acres.
2. The zoning designation of the combination of Parcel No. 7540419987, Parcel No. 7540428089 and Parcel No. 7540427232 will remain Conditional GI and is reflected on Zoning Map #2021-02-Map.
3. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this the 15th day of April, 2021.

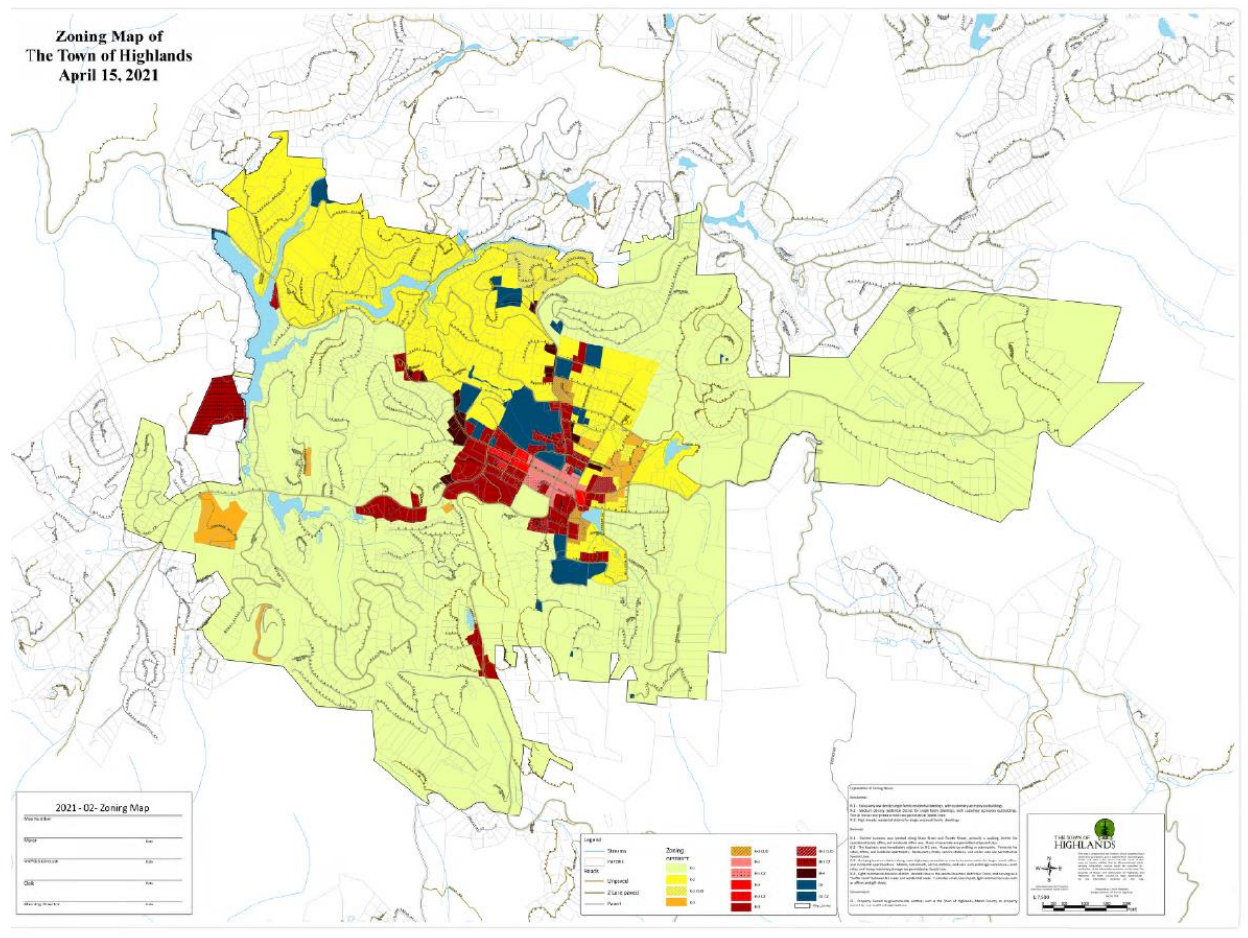
Patrick Taylor, Mayor

Attest:

Gilberta B. Shaheen, Town Clerk

Approved as to form:

Jay K. Coward, Town Attorney



**STATEMENT OF CONSISTENCY
WITH THE TOWN OF HIGHLANDS LAND USE PLAN FOR THE AMENDMENT TO
THE ZONING MAP OF THE TOWN OF HIGHLANDS
PER NCGS 160A-383**

Zoning Map Amendment for PIN #'s: 7540427232; 7540428089; 7540419987

BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Highlands, North Carolina, that in accordance with provisions of North Carolina General Statute 160A-383, the Board hereby finds and determines that the amendment to the Zoning Map of the Town of Highlands is consistent with the goals, objectives, and policies of the Town's adopted Land Use Plan. Specifically, the zoning map amendment will not alter the current Use of the property. It will also remain a G-I CZ zoning district.

MAYOR PRO TEMPORE PATTERSON MADE A MOTION TO APPROVE THE ORDINANCE AMENDING THE ZONING MAP, THE 2021-02 -ZONING MAP AND STATEMENT OF CONSISTENCY AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER HEHN AND THE VOTE WAS UNANIMOUS.

8. Request Public Hearing for Amendments to the Unified Development Ordinance for NCGS 160D Compliance

Assistant Planning & Development Director Michael Mathis stated in 2019, the North Carolina General Assembly adopted the long-debated complete reorganization of its planning and development regulation statutes. Originally introduced as Senate Bill 422 and House Bill 448, the legislation was adopted as Part II of S.L. 2019-111. To conform with this new statutory framework, every city and county development regulation in the state will need to be updated by July 1, 2021. The new Chapter 160D consolidates the previous county enabling statutes (Article 18 of Chapter 153A) and the city enabling

statutes (Article 19 of G.S. Chapter 160A) into a single, unified new Chapter. The Planning Board reviewed these amendments on March 22 and recommended approval. Staff recommendation is to set a public hearing for the May 20th meeting.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 1 – General Provisions, Sec. 1.6 Zoning Map of the Town of Highlands, North Carolina

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 1.6 - Zoning Maps of the Town of Highlands, North Carolina

~~The Zoning Map and all explanatory matter thereon accompanies and is hereby made a part of this Ordinance and, together with a copy of this Ordinance, shall be permanently kept on file in the office of the Town Clerk.~~

(a) Zoning Map. – Zoning district boundaries adopted pursuant to this Chapter shall be drawn on a map that is adopted or incorporated within a duly adopted development regulation. Zoning district maps that are so adopted shall be maintained for public inspection in the office of the Town Clerk or such other office as specified in the development regulation. The maps may be in paper or a digital format approved by the Board of Commissioners.

(b) Incorporation by Reference. – Development regulations adopted pursuant to this Chapter may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. For these maps a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps. When zoning district boundaries are based on these maps, the regulation may provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map shall be maintained for public inspection as provided in subsection (a) of this section.

(c) Copies. – Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the Town Clerk in accordance with G.S. 160D-105, shall be admissible into evidence and shall have the same force and effect as would the original map.

(2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20__ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 2 – Definitions, Sec. 2.3 Definitions

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 2 – DEFINITIONS

Sec. 2.3 - Definitions

Accommodation: Any part of a building used as or constituting a unit used as temporary lodging for an individual or a single family. See also hotel, motel, and tourist home.

Adult Establishments: Adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult live entertainment business, or other such adult establishment as outlined in the current N.C.G.S.

Affiliate: A person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control of another person.

Alley: Any strip of land, publicly or privately owned, which is at least twenty (20) feet in width and set aside for public or private vehicular access to adjoining properties.

Antenna Array: One (1) or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure.

Apartment: A room or suite of rooms in a building comprising a dwelling unit separate from others in the building, and typically having its own separate bath, sanitary, and kitchen facilities. Such apartments are in most cases rented from the owner by those dwelling in them.

Apartment, Incidental: An apartment located within a building used primarily for commercial uses.

Basement: The lowest level of a building that is wholly or partly below ground. For the purposes of this Ordinance, a basement shall not be deemed a habitable story if it is fifty percent (50%) or more below grade, and is used only for storage and mechanical space; a basement that is less than fifty percent (50%) below grade, or is used for any other purpose, shall be deemed a habitable story.

Being Conducted: A land-disturbing activity that has been initiated and permanent stabilization of the site has not been completed.

Best Management Practices (BMP): A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals in Watershed Overlay Districts.

- A. *Structural BMP* - A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing or other characteristics; to approximate the pre-development hydrology and runoff water quality on a developed site; or to achieve any combination of these goals. Structural BMPs include physical practices such as detention ponds, constructed wetlands, vegetative practices, filter strips, grassed swales and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment system" and similar terms used in this Ordinance.
- B. *Non-Structural BMP* - Non-Structural BMPs include but are not limited to education, proper fertilizer and pesticide applications, street sweeping, maintenance of structural BMPs, litter control, and proper maintenance of developed lands.

Board of Commissioners: The Board of Commissioners of the Town of Highlands.

Borrow: Fill material which is required for on-site construction and is obtained from other locations.

Brewpub: A brewery that sells twenty-five percent (25%) or more of its beer on-site. The beer is brewed primarily for sale on the brewery site. The beer is often dispensed directly from the brewery's storage tanks.

Buffer, Landscape: The use of vegetation, berms, walls, fences or some combination thereof to visibly separate a use of property from another adjacent use or road.

Buffer, Riparian: The protected strip or zone of land adjacent to a lake or natural watercourse. See also Trout and Vegetative Buffers.

Buffer, Trout: The undisturbed zone adjacent to waters that have been classified as trout waters by the Environmental Management Commission.

Buffer, Vegetative: A zone or area of natural or planted vegetation adjacent to a lake or natural watercourse that is not classified as trout waters by the Environmental Management Commission.

Building: Any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind, including sheds, pole sheds and other open-walled buildings, carports, garages, guest cottages, and other outbuildings, and also including any extension and extrusion of the building such as balconies, decks, and porches. Satellite dish antennas shall be considered buildings under this Ordinance insofar as they shall be required to meet the setback requirement of the zoning district in which they are located. See also Customary Accessory Outbuilding and Structure definitions.

Building, Multi-Family: Any building, other than a motel, hotel, or tourist home as defined in this Ordinance, intended, designed, or used as a dwelling unit by two (2) or more families or households living independently of each other and including permanent provisions for separate living, sleeping, eating, cooking, and sanitation facilities.

Building Frontage: The distance which is occupied by a business or other activity, measured along the outside wall of the building side on which the main entrance of the business or other activity is located. If a business has a main entrance on a corner of a

building, the building frontage shall be the width of the building parallel to the main street on which it is located.

Building Wall: An exterior bearing or non-bearing vertical structure encompassing the area between the final grade elevation and the eaves of a building, which is used as an enclosing wall for a building.

Built-Upon Area: That portion of a development project in Watershed Overlay Districts that is covered by impervious or partially impervious cover, including buildings, pavement, gravel roads, decorative pavers or paving stones, and recreation facilities (e.g., tennis courts). (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

Churches and Other Places of Public Worship: A building primarily used by a nonprofit organization for organized religious services and supporting uses.

Common open space: A portion of a development site that is permanently set aside for public or private use, is held in common ownership by all individual owners within a development, and restricted from development as provided herein. Common open space may include wetlands, upland recreational area, wildlife areas, historic sites, and areas unsuitable for development in their natural state. Common open space shall not be construed to mean the space between buildings within cluster developments, or any impervious surface.

Completion of Construction or Development: The time at which no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

***Conditional Zoning:* A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.**

Condominium: Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Corner Lot: A lot abutting upon two (2) or more streets at their intersection.

Critical Area: The area in a Watershed Overlay District adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed, as defined on the Zoning Map.

Cul-de-Sac: A street permanently terminated by a turn-around.

Customary Accessory Outbuilding: Buildings customarily appurtenant to single-family dwellings such as private garages, noncommercial buildings such as greenhouses and workshops. Not a dwelling unit.

Customary Incidental Home Occupation: An occupation actually pursued or carried on within a person's place of residence by himself or family members who reside there, as well as no more than one (1) person not a resident of the premises, and including professional offices of accountants, architects, artists, attorneys, beauticians, dentists, engineers, musicians, physicians, surveyors, and family day care homes keeping less than six (6) unrelated children, but excluding veterinary, kennel, or animal shelter services for animals.

Dam: A structure and appurtenant works erected to impound or divert water, and including beaver dams.

Day Care Center: An institution that provides for the care or instruction of six (6) or more unrelated children, but excluding family day care homes keeping less than six (6) unrelated children (see Customary Incidental Home Occupation).

Development: Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration or precipitation into the soil. See also definition of "Redevelopment" this section specific to Stormwater Management.

Development, Cluster: A development pattern and technique whereby structures or building sites are grouped or arranged in close proximity to one another adjacent to permanently preserved common open space within the same development.

Development, Industrial: Any nonresidential development in a Watershed Overlay District that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity.

Development, Nonresidential: All development other than residential development, agriculture, and silviculture.

Development, Residential: Buildings for residential use, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., together with their associated outbuildings, such as garages, storage buildings, gazebos, etc., and including customary incidental home occupations.

Discharge Point: That point at which stormwater runoff leaves a tract of land.

District, Overlay: A district with supplementary regulations that are superimposed upon existing use districts. Such a district is mapped and on file with the Town Clerk.

District, Soil and Water: The Macon or Jackson County Soil and Water Conservation District created pursuant to G.S. ch. 139.

District, Underlying Use: The existing general use district shown on the Official Zoning Map of the Town of Highlands.

District, Watershed Overlay: A zoning district implementing the requirements of G.S. ch. 143, art. 21, Watershed Protection Rules, within areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission, and encompassing one (1) or more underlying use districts. The regulations of a Watershed Overlay District supplement rather than supplant the regulations of the underlying use district; whenever the regulations in one (1) district require more restrictive standards than in the other, the more restrictive standards shall apply.

Draining: Any act in furtherance of the release of water from an impoundment at a rate greater than the rate by which the impoundment is normally replenished by its usual groundwater and subsurface sources.

Driveway: A private vehicle access located on a parcel or lot serving a maximum of two (2) lots. See also definition of "Street, Private".

Dwelling: A building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, including customary accessory outbuildings belonging thereto or usually enjoyed therewith, but not including any recreational vehicle that is used solely for a seasonal vacation purpose.

Dwelling Unit: A single residential unit consisting of one (1) or more rooms designed, occupied, or intended for occupancy as separate living quarters, with cooking, sleeping, and bathroom facilities provided within the dwelling unit for the exclusive use of a single-family maintaining a household.

Dwelling, Multi-family: A building constructed in compliance with the North Carolina Uniform Building Code containing two (2) or more dwelling units on a single lot, including but not limited to, apartment buildings and condominiums.

Dwelling, Single-family: A building designed for and containing one (1) dwelling unit.

Dwelling, Single-family attached: A dwelling unit constructed in compliance with the North Carolina Uniform Building Code and located on an individual lot attached to one (1) or more dwelling units by a common party wall or walls.

Dwelling, Single-family detached: A dwelling unit constructed in compliance with the North Carolina Uniform Building Code and located on an individual lot unattached to another dwelling unit.

Dwelling, Single-family detached condominiums: Single-family detached dwelling units constructed in compliance with the North Carolina Uniform Building Code which are owned under the condominium form of ownership such that there are no individual lots associated with the units and the common areas are held in common ownership by a condominium association.

Dwellings, Single-family Zero Lot Line: A dwelling unit located on an individual lot so that one (1) of the building's sides is located directly on a side lot line notwithstanding the requirement to maintain a ten-foot setback between each building.

Easement: A right of privilege vested in the public or the owner of one (1) parcel of land to use the land of another for a specific purpose or purposes (such as road or utility rights-of-way).

Electronic Gaming Operations: Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including, but not limited to, computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. The term includes, but is not limited to, internet sweepstakes, internet sweepstakes café, video sweepstakes, or cybercafes, which have a finite pool of winners. This does not include any lottery endorsed by the State of North Carolina.

Energy Dissipater: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion: The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

Erosion, Accelerated: Any increase over the rate of natural erosion as a result of land-disturbing activity.

Erosion Control Measure, Structure, or Device, Adequate: One that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

Erosion, Natural: The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Facility, Equipment: An Equipment Facility is any structure used to contain ancillary equipment for a Wireless Communication Facility which includes cabinets, shelters, a build-out of an existing structure, pedestals, and other similar structures.

Family: One (1) or more individuals residing in a dwelling unit, living as a single housekeeping unit, and complying with the following rules:

- A. Any number of individuals related by the fifth degree of consanguinity, marriage, or adoption may occupy a dwelling unit; as long as it meets all applicable health and building code requirements;

- B. Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants who are unrelated shall not exceed five (5). In applying this provision, children who are under the age of twenty-three (23) and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant. In addition, in all cases, the limitation set out in subsection C. below shall apply; and
- C. The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

Fixture: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor lens.

Foot-candle: A unit of measurement (fc) of luminance, or the amount of light falling on a given amount of surface area. One (1) foot-candle is equal to one (1) lumen per square foot, and is the equivalent of 10.76 Lux (1 Lux = 0.0929 fc).

Full cut-off luminaire: Outdoor light fixtures shielded or constructed so that no direct light rays are emitted by the installed fixture at angles above the horizontal plane. That is, they do not shine light upward above the fixture into the sky.

Glare: Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness, or that causes annoyance or discomfort.

Grading Calculations: The result of cut + fill, as measured in cubic yards. This means that when one (1) cubic yard of earth is cut, and then that same yard if used as fill elsewhere on the property, the Town would view this as two (2) cubic yards of earth movement (sometimes this method is referred to as a "double counting"). This form of measurement takes into consideration the total disturbance of a site from its existing state.

Grantor: The Town of Highlands as represented by the Board of Commissioners acting within the scope of its jurisdiction.

Greenway or Highlands Greenway: An area for pedestrian use dedicated by easement to the Town of Highlands or dedicated by conservation easement to promote the purposes of the Highlands Greenway.

Greenway Map or Highlands Greenway Map: "Conceptual Greenway Map" as adopted by the Town and the "Highlands Greenway Map - Phase I" as adopted by the Town on November 6, 2007, as amended from time to time in accordance with this Ordinance and permanently kept on file in the office of the Town Clerk.

Gross Floor Space: The entire area of a building, including storage areas, garages, closets, hallways, and restrooms, but excluding basement or attic storage areas not accessible to the public. Gross floor space shall be measured to the outside of exterior walls.

Ground Cover: Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Hazardous Material: Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

Height, Building: The vertical distance from the established grade elevation at the center of the front of the structure to the highest point of the roof or parapet of the structure, but not including steeples, chimneys, sky lights, and roof structures for elevators, stairways, tanks, heating, ventilation and air-conditioning equipment, or similar equipment for the operation and maintenance of a building.

Height, Signage: The height of a sign shall be measured as the distance from finish grade or surface at the base of the sign, or top of sign post footing, to the top of the highest component of the sign, including the sign face or sign structure.

Height, Wireless Communication Facility: The vertical distance measured from the base of the foundation of the tower to the highest point on the Wireless Communication Facility, including the antenna array and other attachments.

High Quality Waters: Those classified as such in 15A NCAC 2B.0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to former G.S. 150B-14(c).

High Quality Water Zones: Areas within one (1) mile and draining to high quality waters.

Hotel: A hotel or motel is any building containing five (5) or more guest rooms where temporary sleeping accommodations—and in some cases minimal eating and cooking facilities—are provided for guests on a daily or weekly basis.

Impoundment: The body of water impounded by a dam.

Individual Sewer System: Any septic tank, privy, or other facility with a design capacity of three thousand (3,000) gallons per day or less and having no discharge to surface waters.

Individual Water System: Any well, spring, stream, or other source used to supply a single connection, privately owned.

Intermittent: Starting, stopping, and starting again, not constant or steady.

Lake or Natural Watercourse: Any stream, river, brook, swamp, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-Disturbing Activity: Any use of the land by any person in residential, industrial, education, institutional, or commercial development, including highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Landscape Area: The area of a parcel of property that is not devoted to buildings, parking lots, sidewalks, or driveways.

Light Trespass: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lot: A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both.

Lot of Record: A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title.

Luminaire: A lighting system, including a lamp or lamps and a fixture. This term shall be interpreted broadly as applying to all outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, permanently installed or portable, used for illumination.

Manufactured Home: A dwelling unit that is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings; ~~provided it has been constructed after July 1, 1976~~ and is composed of one (1) or more components, each of which was substantially assembled in a

manufacturing plant and designed to be transported to the home site on its own chassis. Additional specific use requirements apply in the Town of Highlands (Article 6.3.1.C).

Microbrewery: A brewery that produces less than fifteen thousand (15,000) barrels of beer per year with seventy-five percent (75%) or more of its beer sold off-site. Microbreweries sell to the public by one (1) or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and directly to the consumer through carryouts and/or on-site tap-room or restaurant sales.

Mobile Home: A manufactured home.

Modular Home: A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for one- and two-family dwellings, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on a permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two (2) or more sections, with each section being transported to the site on its own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled, or joined there.

Motel: A hotel or motel is any building containing five (5) or more guest rooms where temporary sleeping accommodations—and in some cases minimal eating and cooking facilities—are provided for guests on a daily or weekly basis.

Nonprofit Visual Art Centers: Any visual art center funded by private donors and fees from visual art classes, which is deemed to be nonprofit by the Internal Revenue Service in accordance with IRS Code Section 501(C)(3). Failure to maintain nonprofit status with the Internal Revenue Service automatically and immediately voids the visual art center special use permit.

Notice: Whenever in this Ordinance notice is required, it shall be deemed to mean the date that such certified mail is delivered.

Occupant: A person, his sub-lessee, successor, or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

Official Maps or Plans: Any maps or plans, but not including the Zoning Map, officially adopted by the Board of Commissioners as a guide for the development of the Town and surrounding area.

Outdoor Area: Any area outside the limits of the building, as defined by this Ordinance.

Outdoor Display: The placing or placement of merchandise in the Outdoor Area adjacent to a commercial establishment, for the purpose of the sale of such goods at that establishment to the public in the ordinary course of business.

Outdoor lighting: The nighttime illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Outdoor Storage Yard: The area containing materials for sale by businesses such as building supply centers, lumber yards, and hardware stores, as allowed within the Town of Highlands use table. Additional specific use requirements apply in the Town of Highlands.

Owner: Any person having charge of any real property according to the records held by the Macon or Jackson County Register of Deeds. See also below for additional definition of "Owner" specific to Stormwater Management or Self-Service Storage Facility.

Owner: For the purposes of Sec. 12.7, Stormwater Management, "Owner" shall mean the legal or beneficial owner of land including, but not limited to, a mortgagee or vendee

in possession, receiver, executor, trustee, long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants, management entities, such as those charged with or engaged in the management of properties for profit, and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner unless the secured lender is included within the meaning of "owner" under another description in this definition, such as management entity. The term "Owner" also applies to a person, association, or corporation that gains possession of the property through default of a loan.

Owner, Self-Service Storage Facility: The owner, operator, lessor, or sub-lessor of a self-service storage facility, his agent, or any other person authorized by him to manage the facility or to retrieve rent from an occupant under a rental agreement.

Parcel: A tract of real property within the jurisdiction of this Ordinance.

Parent: An affiliate that directly, or indirectly through one (1) or more intermediaries, controls another person.

Parks and Playgrounds: A park or playground available to the general public.

Parking Space, Dual-Use: A private parking space not being utilized by the primary use when closed for business, which may be shared, by written agreement, between the primary use and a restaurant when meeting the requirements of this Ordinance.

Parking Space, Public: A public parking space either located within a public parking lot or on a public street. A public parking space may be used to count towards parking requirements for restaurants when meeting the requirements of this Ordinance.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person Conducting Land-Disturbing Activity: Any person who may be held responsible for violation (unless expressly provided otherwise by this article), of the North Carolina Sedimentation Pollution Control Act of 1973 (the Act), or any order adopted pursuant to this article or the Act as amended, and all rules and orders adopted pursuant to it.

Phasing Schedule: A schedule that sets forth the timing of the development of a development proposal, including, but not limited to, provision of necessary public facilities, the number of units, as applicable, and their location on the site.

Place of Adult Entertainment: A place of adult entertainment is any place where one (1) or more of the following activities take place:

- A. The serving of food or drink by topless, partially nude, or nude waitresses/waiters;
- B. Topless dancing, go-go dancing, stripping, nude or partially nude dancing, or similar entertainment or activities.

Plan, Master: A comprehensive site plan incorporating multiple separate and distinct developments within one (1) development; including but not limited to, a Subdivision, a Planned Cluster Development or a plan that recombines multiple lots into a lesser number of lots.

Plan, Phased Development: A development plan wherein the proposed development will be constructed incrementally in a logical time and geographical sequence according to an approved Phasing Schedule.

Plan, Site: A plan, prepared to scale, showing accurately all information required by this Ordinance with respect to the development proposal.

Plan, Site Specific Development Plan: A plan accepted by the Town describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not limited to, a master plan developed with specificity or a conditional zoning plan. Unless specific items are exempted in writing by the Planning and Development Director, such a plan shall include the approximate boundaries of the site; significant topographic and natural features affecting development of the site; approximate dimensions of proposed structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. Neither a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of a property shall constitute a site specific development plan. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.

Planning Board: The Town of Highlands Planning Board.

Private Social Club: A private social club or health club is any private association occupying or meeting regularly in a building owned or rented by said association for social or recreational purposes and offering membership to individuals. No residential use shall be permitted on the premises of a private social club other than one (1) caretaker quarters. Such clubs shall include, but not be limited to, country clubs, health clubs, private spas, and exercise centers.

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

Redevelopment: For the purpose of Sec. 12.7, Stormwater Management, any rebuilding activity is considered redevelopment unless the rebuilding activity results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Restaurant: A restaurant is a place of business where food is prepared and served, and where seating is provided for the consumption of food. A business such as a bakery, delicatessen, or take-out pizza vendor, which prepares and sells food but at which food is not consumed on the premises, shall be considered a retail business rather than a restaurant under this Ordinance.

Right-of-Way: An area owned or maintained by the Town of Highlands or the North Carolina Department of Transportation for the placement of roads or utilities.

Roof Line: The edge of the roof around a building, where a building wall intersects the eave of a roof.

School, Public or Private: A public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary, secondary level, or a school for the mentally or physically handicapped. Included in this definition are preschool programs. However, this definition does not include day care facilities, individual instruction, or classes in a specialized subject.

Security lighting: Exterior lighting installed solely to enhance the security of people and property.

Sediment: Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the LDA or into a lake or natural watercourse.

Setback, Building Line: The minimum distance between a property line, road centerline, or right-of-way line and a building.

Setback, Wireless Communication: When referring to a Wireless Communication Facility, setback shall mean the required distance from the property line of the parcel on which the Wireless Communication Facility is located to the base of the Support Structure and equipment shelter or cabinet where applicable, or, in the case of guy-wire supports, the guy anchors.

Shopping Center: Four (4) or more commercial establishments planned, constructed and managed as a single unit containing a minimum of five thousand (5,000) gross square feet, and sharing common sidewalks, driveway entrances, or parking areas.

Sight Distance Triangle: That area immediately adjacent to a street intersection encompassed by a triangle ten (10) feet back from the intersection on one (1) street and thirty-five (35) feet back along the perpendicular street.

Sign: A visual display designed to advertise, identify, direct, promote, or in any way attract attention to a product, service, business, event, person, or specific location.

Siltation: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures, and which has been transported from its point of origin within the site of a LDA, and which has been deposited, or is in suspension in water.

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

Spill light: Light that goes beyond the area that was intended to be illuminated. This may also be the same as light trespass, where light spills across a property line.

Storage, Facility, Flammable Liquid: Any facility, wholesale or retail, where flammable liquids are stored in tanks of more than one thousand (1,000) gallons aggregate storage capacity.

Storage Facility, Self-Service: Any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property.

Storm Drainage Facilities: The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Storm Event: A rainfall event with a specified precipitation amount during a specified duration of time and statistical frequency of occurrence.

Storm, Ten-Year: The stormwater runoff resulting from precipitation of an intensity that is expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions as calculated according to procedures in the U.S.D.A., Soil Conservation Service's "National Engineering Field

Manual for Conservation Practices", or according to procedures adopted by any other agency of North Carolina or the United States.

Storm, Twenty-Five Year: The stormwater runoff resulting from precipitation of an intensity that is expected to be equaled or exceeded on the average, once in twenty-five (25) years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of North Carolina or the United States.

Stormwater Administrator: The Planning and Development Director of the Town of Highlands or his authorized representative.

Stormwater runoff: In general, this is the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting. For the purpose of Sec. 12.7, Stormwater Management, the runoff of Stormwater from lands, paved surfaces, and buildings calculated from a particular storm event using hydrologic and hydraulic equations and methodologies.

Street: A dedicated right-of-way intended for vehicular traffic. The term "street" shall also encompass "road."

- A. *Street, Public:* A street offered for dedication to the public. If located outside the corporate limits of the Town of Highlands, "public" means the State of North Carolina; if located within the corporate limits, "public" may mean either the State of North Carolina or the Town of Highlands.
- B. *Street, Private:* A street not offered for dedication to the public, but having an established right-of-way used or intended to be used for vehicular traffic by more than one (1) property. A driveway serving two (2) or less properties shall not be considered a street.

Structure: Anything constructed or erected, including—in addition to buildings—walls, fences, gates, mailboxes, reflectors or mirrors associated with driveways, residential parking decks (whether constructed of fill dirt or retaining walls, or other methods), and private bridges or tunnels. Wireless communications facilities, as defined herein, shall be considered structures, and shall be regulated pursuant to this Ordinance.

Structure, Support: A Support Structure is a structure designed and constructed specifically to support an Antenna Array, and may include a monopole, self-supporting (lattice) tower, guy-wire-support tower, and other similar structures. Any device (Attachment Device) which is used to attach an Attached Wireless Communication Facility to an existing building or structure (Attachment Structure) shall be excluded from the definition of and regulations applicable to Support Structures.

Structure, Water Dependent: Any structure in a Watershed Overlay District the use of which requires access to, proximity to, or siting within surface waters to fulfill its basic purpose, including boat ramps, boat houses, docks, and bulkheads. Ancillary facilities, such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water-dependent structures.

Subdivider: Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision: All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition, nor be subject to the regulations of this Ordinance:

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

Tourist home: A building or part thereof, other than a motel or hotel, where sleeping accommodations of not more than four (4) rooms are provided for occasional transient paying guests with daily charge; tourist homes shall include bed and breakfast homes or inns.

Town: The Town of Highlands, North Carolina, a political subdivision of the State of North Carolina.

Toxic Substance: Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth), or physical deformities in such organisms or their offspring, or other adverse health effects.

Tract: All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Use Designations Definitions:

- A. *Permitted:* A use is allowed by right in the respective district. Such uses are subject to all other applicable requirements of this Ordinance.
- B. *Special:* A use is allowed only by a Special Use Permit, provided that the use meets the additional requirements imposed by the Town. Such uses are subject to all other applicable requirements of this Ordinance.
- C. *Limited:* A use shall be permitted by right, provided that the use meets the additional requirements imposed by the Town. Such uses are subject to all other applicable requirements of this Ordinance.
- D. *Not Allowed:* A use that is not allowed in the respective district.

Variance, Major: A variance in a Watershed Overlay District that results in any one (1) or more of the following:

- A. The complete waiver of a management requirement;
- B. The relaxation, by a factor of more than ten percent (10%), of any management requirement that takes the form of a numerical standard; or
- C. The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

Variance, Minor: A variance in a Watershed Overlay District that does not qualify as a major variance; one which, because of its limited scope, is delegated by the Environmental Management Commission to the local jurisdiction.

Velocity: The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Wallpack: A wall-mounted luminaire.

Watershed: The entire land area contributing surface drainage to a specific point (e.g., the water supply intake), defined as Watershed Overlay Districts on the Zoning Map.

Watershed Administrator: The Planning and Development Director of the Town of Highlands or his duly authorized designee.

Wetlands: Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wireless Communications: Wireless Communications shall mean any personal wireless services as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, PCS (Personal Communication Services), SMR (Specialized Mobile Radio), ESMR (Enhanced Specialized Mobile Radio), paging, and similar services.

Wireless Communication Facility: Any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility, and a Support Structure to achieve the necessary elevation.

Wireless Communication Facility, Attached: An Antenna Array that is attached to an existing building or structure (Attachment Structure), which structures shall include, but not be limited to, utility poles, signs, water towers, rooftops, towers with any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

Wireless Communication Facility, Co-location/Site Sharing: Co-location/Site Sharing shall mean use of a common Wireless Communication Facility or common site by more than one (1) wireless communication license holder or by one (1) wireless license holder for more than one (1) type of communications technology and/or placement of an antenna array on a structure owned or operated by a utility or other public entity.

Wireless Communication Facility, Temporary: A Wireless Communication Facility to be placed in use for ninety (90) or fewer days.

Working Days: Days exclusive of Saturday, Sunday, and legal Town holidays.

Zoning Administrator: The Planning and Development Director of the Town of Highlands or his duly authorized representative.

Zoning Board: The Town of Highlands Zoning Board of Adjustment.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 3 – Administration and Review Authority, Sec. 3.4 Zoning Board of Adjustment

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 3. - ADMINISTRATION AND REVIEW AUTHORITY

Sec. 3.4 – Zoning Board of Adjustment

3.4.1 Establishment

The establishment of the Zoning Board of Adjustment created by the Ordinance entitled: The Zoning Ordinance of the Town of Highlands, 1970, is hereby re-affirmed.

The Zoning Board of Adjustment shall be governed by the terms of G.S. ch. ~~160A, art. 19, pt. 3~~, **160D, art. 7**, and by the Unified Development Ordinance of the Town of Highlands. The Zoning Board of Adjustment shall act in a quasi-judicial capacity. All members of the Board shall thoroughly familiarize themselves with these laws.

3.4.2 Terms and Compensation

A. *Terms.*

1. The regular term of office for each member shall be three (3) years. A member cannot serve more than two (2) terms consecutively.
2. The Board of Commissioners may, in its discretion, appoint alternate members to serve on the Zoning Board of Adjustment in the absence of any regular 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, while attending any regular or special meeting of the Zoning Board of Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

B. *Compensation.* Members of the Zoning Board of Adjustment shall serve without pay, but shall be reimbursed for any expenses incurred in pursuit of the Board's activities.

3.4.3 Membership, Officers and Duties

- A. *Numbers.* The Zoning Board of Adjustment shall consist of five (5) members all of which shall be appointed by the Mayor and Board of Commissioners.
- B. *Composition.* Officers of the organization shall be chairman, vice chairman, and secretary.

1. *Chairman.* A chairman shall be elected by a minimum of four (4) members of the Board of Adjustment from among its regular members. His term of office shall be one (1) year and until his successor is elected, beginning on July 1, and he shall be eligible for re-election. The Chairman shall decide upon all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matters before the Board.
 2. *Vice Chairman.* A vice chairman shall be elected by the Board in the same manner and for the same term as the Chairman. He shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same powers and duties as the Chairman.
 3. *Secretary.* A secretary shall be elected by the Board, either from within or outside its membership, to hold office during the term of the Chairman and/or until a successor Secretary shall have been appointed. The Secretary shall be eligible for re-appointment. The Secretary, subject to the direction of the Chairman and the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall make a reasonable attempt to notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any question, indicating the names of members absent or failing to vote. If the Secretary is chosen from outside the membership of the Board, the Secretary shall not be eligible to vote upon any matter.
 4. *Alternate members.* There shall be two (2) alternate members of the Zoning Board. Alternate members of the Board shall be required to attend all meetings and hearings and shall be called upon to participate in the hearing of a case where a regular member is absent or excused because of financial or other interest. At any meeting or hearing in which they are called upon to participate, alternate members shall have the same powers and duties as regular members. Alternate members may vote at the election of officers and may participate and vote on all issues, except that they may not participate or vote during hearings unless substituting for a regular member.
- C. *Report.* A written report shall be submitted from the Zoning Board to the Town Board of Commissioner on a monthly basis. This report may include activities, problems, and actions of the Zoning Board, as well as any requests or recommendations. Said reports shall be submitted by the Chairman or by the Planning and Development Director.

3.4.4 Powers and Review Authority

- A. The Zoning Board of Adjustment shall have the power to issue Special Use Permits in accordance with this Ordinance.
- B. The Zoning Board of Adjustment shall have the power to hear appeals relating to the location of district boundaries in accordance with this Ordinance.
- C. The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made in the enforcement of this Ordinance by either the Planning and Development Director or designee.
- D. Where the Zoning Board of Adjustment finds a threat to water quality and the public health, safety and welfare, it shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.
- E. The Zoning Board of Adjustment shall have the authority to grant a variance from the requirements of this Ordinance in accordance with Sec. 4.18, Variances.
- F. The Zoning Board of Adjustment shall have the authority to review and provide recommendations to the Town Board of Commissioners for applications that propose the creation of a new Conditional Zoning District.

3.4.5 Meetings, Quorum

- A. *Meetings.* Meetings shall be held at such times and places as the Zoning Board of Adjustment shall determine. All meetings shall be open to the public and conform to the North Carolina Open Meetings Law, G.S. ch. 143, art. 33C.
- B. *Quorum.* A quorum shall consist of three (3) members of the Board. In the absence of a quorum, the Chairman may continue the meeting to a time when a quorum can be obtained. The Planning and Development Director will notify members and alternates when the meeting is to be continued.

3.4.6 Rules of Procedure

~~The Zoning Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with State law and this Ordinance.~~

- A. *Process Required.* – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- B. *Notice of Hearing.* – Notice of evidentiary 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 the local development regulation. In the absence of evidence to the contrary, the local government 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 local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- C. *Administrative Materials.* – The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
- D. *Presentation of Evidence.* – The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

- E. *Appearance of Official New Issues.* – The official who made the decision or the person currently occupying that position, if the decision maker is no longer

employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

- 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 determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- G. Subpoenas. – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
- H. Appeals in Nature of Certiorari. – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).
- I. Voting. – The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- J. Decisions. – The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make 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. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- K. Judicial Review. – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-

1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

3.4.7 Decisions

- A. *Time.* Decisions by the Board shall be made not more than thirty-six (36) days from the time of the hearing.
- B. *Form.* Notice of the decision in a case, in the form of a written ruling, shall be given to the applicant by the Secretary or the Planning and Development Director as soon as practicable after the case is decided. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairman upon approval of the minutes by the Board. The record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision in an appeal may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. Where an exception or a special use permit is granted, the record shall state in detail any facts supporting findings required to be made prior to the issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance or an exception or special use permit.
- C. *Voting at Hearings.* The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a non-administrative variance from the Ordinance provisions. 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.
- D. *Public Record of Decisions.* The decisions of the Board, as filed in its minutes and written ruling, shall be a public record, available for inspection at all reasonable times.
- E. *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.
- F. *Appeals.* Unless specifically provided otherwise, a petition for review of a quasi-judicial decision 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 G.S. 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Applications and Permits, Sec. 4.3 Amendments to Ordinance or Zoning Map

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 4 – APPLICATIONS AND PERMITS

Sec. 4.3 - Amendments to Ordinance or Zoning Map

4.3.1 Procedure for Amendment of Ordinance or Zoning Map

- A. This Ordinance, including the Zoning Map, may be amended from time to time by the Board of Commissioners, but no amendment shall become effective unless the Board of Commissioners first submits the proposed amendment(s) to the Planning Board for recommendation and comment. The Planning Board shall have thirty (30) days after any submission within which to provide a recommendation to the Board of Commissioners that addresses consistency with the current Land Use Plan and other matters deemed appropriate by the Planning Board, but a comment that a proposed amendment may not be consistent with the Land Use Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board. If the Planning Board fails to submit a report within the thirty-day period, it shall be deemed to have recommended adoption of the requested amendment.
- B. Prior to adopting or rejecting any zoning text or map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board Meeting that at the time of action on the amendment the Board was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action is deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Town Board's statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

~~Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with the Land Use Plan and~~

~~explaining why the Board considers the action taken to be reasonable and in the public interest.~~

- C. Before enacting an amendment to this Ordinance, the Board of Commissioners shall hold a public hearing on it as outlined in Sec. 4.2.4, Notice and Public Hearings, Item A.
- D. Any communication purporting to be a petition for a zoning amendment shall be regarded as mere notice to seek relief until it is made by formal application. Upon receipt of such communication, the interested party shall be supplied with the Town of Highlands Petition for Rezoning application form for presenting a formal petition. In no instance shall action be initiated by the property owner for a zoning amendment affecting the same parcel of property, or any part thereof, more often than once every twelve (12) months, except as permitted by Sec. 4.5.1, Applicability, of Sec. 4.5, Conditional Zoning Districts.
- E. All amendments to this Ordinance relating to Water Supply Watershed Protection must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the N.C. Division of Community Assistance. Under no circumstances shall the Board of Commissioners adopt any amendments, supplements, or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission.
- F. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
 - 1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
 - 2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

4.3.2 Additional Reasonableness Statement for Rezoning's

- A. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. This statement of reasonableness may consider, among other factors:
 - 1. The size, physical conditions, and other attributes of the area proposed to be rezoned;
 - 2. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
 - 3. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
 - 4. Why the action taken is in the public interest; and
 - 5. Any changed conditions warranting the amendment.

If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board's statement on reasonableness may address the overall rezoning.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Applications and Permits, Sec. 4.4 - Subdivision Review

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 4 – APPLICATIONS AND PERMITS

Sec. 4.4 - Subdivision Review

4.4.1 Compliance

- A. No land shall be subdivided without first having a plat filed of such subdivision with the Macon County and/or Jackson County Register of Deeds. All plats for the subdivision of lands shall conform to the requirements of these regulations, and shall be submitted in accordance with the procedures and specifications established herein. No plat of a subdivision of land within the jurisdiction of the Town of Highlands shall be filed or recorded by the Macon County and/or Jackson County Register of Deeds until it has been submitted to the Highlands Planning Board for review and has been given final approval by the Board of Commissioners.
- B. No final plat of a subdivision within the jurisdiction of the Town of Highlands shall be recorded by the Register of Deeds of Macon County and/or Jackson County until it has been reviewed by the Planning Board and approved by the Board of Commissioners of the Town of Highlands as provided herein. To secure such approval of the final plat, the subdivider shall follow the procedure established in this Section.
- C. Furthermore, no street shall be maintained by the Town, nor street dedication be accepted for ownership and maintenance, nor water, sewer, or other Town facilities or services be extended to or connected with any subdivision for which a final plat is required to be approved, unless and until such final plat has been approved by the Board of Commissioners. See also Sec. 4.11, Infrastructure Approvals.
- D. Approval of a Preliminary or Final Plat does not relieve the applicant of the obligation to procure any other permit, as required by this Ordinance or State and Federal Law. These include, but are not limited to, Sec. 4.13, Landscape Plan Permits, Sec. 4.14, Land-Disturbing Activity Permit, Sec. 4.14.4, Erosion and Sedimentation Control Plan Requirements, Sec. 4.16, Stormwater Management Permit, and Sec. 4.17, Sign Permit, and any permit required by the North Carolina State Building Code.

4.4.2 Exemptions

- A. In accordance with G.S. 160D-802 ~~160A-376~~, certain divisions of land are not considered "subdivisions" nor shall they be subject to the regulations of this Ordinance.

- B. See also Sec. 4.4.10, Subdivisions Not Meeting Minimum Requirements and Sec. 2.3, Definitions.

4.4.3 Performance Guarantee

To assure compliance with G.S. 160D-804 and other development regulation requirements, a subdivision regulation may provide for performance guarantees to assure successful completion of required improvements.

For purposes of this section, all of the following apply with respect to performance guarantees:

- A. Type. – The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:
1. Surety bond issued by any company authorized to do business in this State.
 2. Letter of credit issued by any financial institution licensed to do business in this State.
 3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- B. Duration. – The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.
- C. Extension. – A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the Town, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.
- D. Release. – The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Town that the improvements for which the performance guarantee is being required are complete. The Town shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to the Town's acceptance. When required improvements that are secured by a bond are completed to the specifications of the Town, or are accepted by the Town, if subject to its acceptance, upon request by the developer, the Town shall timely provide written acknowledgement that the required improvements have been completed.
- E. Amount. – The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Town may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration

regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

- F. Timing. – The Town, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.
- G. Coverage. – The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- H. Legal responsibilities. – No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
 - 1. The local government to whom the performance guarantee is provided.
 - 2. The developer at whose request or for whose benefit the performance guarantee is given.
 - 3. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.
- I. Multiple guarantees. – The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.
- J. Exclusion. – Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.
- ~~A.~~K. The Board of Commissioners may also, in its discretion, require a performance guarantee and warranty period of one (1) year on all private streets prior to accepting them as public streets, including but not limited to all related utilities and paving. See also Sec. 4.11, Infrastructure Approvals, Sec. 10.2.3, Responsibility for Maintenance, and Sec. 10.6, Improvements and Installations.
- ~~B.~~L. The Board of Commissioners may also, in its discretion, require a warranty period of one (1) year prior to accepting any water, sewer, or electrical system. See also Sec. 4.11, Infrastructure Approvals.
- ~~C.~~M. At the discretion of the Stormwater Administrator, performance securities or bonds may be required for stormwater management facilities or practices until as-built plans are approved. See also Sec. 4.16, Stormwater Management Permit.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Application and Permits, Sec. 4.6 Special Use Permit

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 4 – APPLICATION AND PERMITS

Sec. 4.6 - Special Use Permit

4.6.1 Applications

- A. All applications for a Special Use Permit shall accompany or precede the application for a Zoning Certificate as provided in Sec. 4.7, Zoning Certification, or a Certificate of Compliance as provided in Sec. 4.7.7, Zoning Certificate of Compliance, as applicable.
- B. Prior to the consideration of any application for Special Use Permit as required per Article 6, Use Regulations, of this Ordinance, the Zoning Board of Adjustment shall require that an applicant submit an application to the Planning Board for review and recommendation. Special Uses which do not involve any change in the appearance of a building or premises shall not be required to be reviewed by the Planning Board. The Planning Board shall review an application at its next regularly scheduled meeting, not to exceed thirty (30) days after the date of application, and shall submit its report to the Zoning Board prior to the Zoning Board's next meeting. The Zoning Board shall not deny any application, however, on the basis of a negative recommendation from the Planning Board. In reviewing the application, the Planning Board may consider building design, relationship of building to site, relationship of project to adjoining area, landscape and site treatment, signs, lights, street hardware, miscellaneous structures, maintenance, and any other considerations it feels reasonably affect the appearance of the project.
- C. Approval of a Special Use Permit does not relieve the applicant of the obligation to procure any other permit, as required by this Ordinance or State and Federal Law. These include, but are not limited to Sec. 4.11, Infrastructure Approvals, Sec. 4.13, Landscape Plan Permits, Sec. 4.14, Land-Disturbing Activity Permits, Sec. 4.14.4, Erosion and Sedimentation Control Plan Requirements, Sec. 4.16, Stormwater Management Permit, and Sec. 4.17, Sign Permit, and any permit required by the North Carolina State Building Code.

(Amend. of 8-18-16(1))

4.6.2 Procedure

- A. All applications for a Special Use Permit shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Planning and Development Director. An application for Special Use Permit shall be made per the requirements of Section 4.2.3, Application Requirements, and shall at a minimum contain the information listed below. See also Item B, Multi-Family Buildings, Item C, Private Social Clubs and Item D, Nonprofit Visual Art Centers for additional Special Use Permit Requirements.
 - 1. A Site Plan and twenty (20) copies, drawn to an appropriate scale and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided on the Site Plan, if applicable:
 - a. A boundary survey and vicinity map showing the property's total acreage;
 - b. The identity of neighboring properties;
 - c. Its zoning and Watershed classification(s), and the zoning setback lines;
 - d. All adjacent streets, designated as public or private;

- e. The location of stands of old growth trees, streams, marshes, wetlands, bogs, rivers, impoundments, large rock outcroppings or other significant geological features on the subject property;
 - f. All existing easements, reservations, and rights-of-way;
 - g. All existing or proposed structures, showing setbacks to rights-of-way and property lines;
 - h. Areas in which proposed structures will be located;
 - i. Proposed use of all land and structures, including the number of residential units, the number of commercial buildings and the total square footage of any nonresidential development;
 - j. All yards, buffers, screening, and landscaping required by these regulations per Sec. 4.13, Landscape Plan Permits, or proposed by the petitioner(s);
 - k. All existing and proposed points of access to public streets;
 - l. The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
 - m. Parking areas showing the number and arrangement of parking spaces and driveway entrances and circulation;
 - n. Proposed phasing, if any; including a complete Phased Development Plan and Phasing Schedule, including the date upon which construction is expected to begin and the date within which it is expected to be completed. Any Phasing schedule extending beyond the maximum five-year vested rights per Sec. 4.21.2, Establishment of a Vested Right for Special Use Permits, will require a Site Specific Development Plan and a development agreement with the Town; and
 - o. The site plan shall be neatly drawn, with a north arrow, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.
2. Elevations and a floor plan, indicating dimensions of the building, gross floor space, number of seats, or any other applicable information;
 3. A complete and detailed description of the use proposed, together with any other pertinent information which the applicant feels would be helpful to the Zoning Board of Adjustment in considering the application;
 4. A plan showing the size, type, and location of any signs proposed to be erected in conjunction with the use; and
 5. The Zoning Board of Adjustment may, in its sole discretion, waive the foregoing requirements where, for example, only minor construction, minor changes to parking areas, or changes only to the use of existing buildings is contemplated. See also Sec. 4.2.3, Application Requirements, Item E. Staff Consultation after Application Submitted.
- B. Upon receipt of an application for a Special Use Permit, the Zoning Board of Adjustment shall call a public hearing and shall give notice, as outlined in Sec. 4.2.4, Notice and Public Hearings. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations as to the application, and the Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney.
- C. Prior to the public hearing before the Zoning Board of Adjustment the Planning Board shall review said request and present to the Zoning Board of Adjustment in writing its recommendation of any Special Use Permit applications received by the staff.
- D. The Zoning Board of Adjustment shall grant and issue the Special Use Permit if and only if it finds all of the following:
1. The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
 2. The use meets all required conditions and specifications;

3. The use will not substantially injure the value of adjoining or abutting property or, in the alternative, the use is a public necessity; and
 4. The location and character of the use, as developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town and its environs.
- E. Within seven (7) days after making the decision required of it, the Zoning Board of Adjustment shall issue its written ruling, either granting or denying the Special Use Permit, and deliver copies thereof to the Planning and Development Director. The Planning and Development Director shall mail, by first class mail, to the address shown on the application, a copy of the written ruling to the applicant or his representative, but the failure to do so shall not affect the ruling.
- F. All construction approved pursuant to a Special Use Permit shall be completed in accordance with the construction schedule submitted in Sec. 4.6.2, Procedure, Item A.5, as approved by the Zoning Board of Adjustment. In the event that a significant departure from the construction schedule occurs during a project, the applicant may appear before the Board and request an amendment of the Special Use Permit. The Board may extend the construction schedule only upon a finding that delays in construction have been caused by, or are expected to be caused by, circumstances beyond the control of the applicant. Unless the construction scheduled is extended by amendment of the Special Use Permit, failure to complete construction within the approved time shall be considered a violation of the Special Use Permit, and subject to the sanctions provided in Article 15, Inspections, Violations and Enforcement.

(Amend. of 11-17-16(2))

4.6.3 Additional Application Requirements

- A. *Multi-Family Buildings.* An application for Special Use Permit for the Construction or Conversion of Multi-Family Buildings shall be made per the requirements of Section 4.2.3, Application Requirements, and shall at a minimum contain the information listed above in Item A, this Section as well as the following additional requirements:
1. A current survey of the parcel as prepared by a professional land surveyor or professional engineer licensed and authorized to survey real property in North Carolina. The survey shall indicate the metes and bounds of the parcel, the total area of the parcel and expressed in square feet, the location of all public and private roads, the location of all public utility easements within the parcel or located less than fifty (50) feet from it, the location of all streams and watercourses, and the names of all adjacent property owners;
 2. A complete set of the construction plans and specifications for each building to be erected upon the parcel, the plans to include a certification of an architect or professional engineer, duly licensed by the appropriate North Carolina authority, that the plans and specifications are in accordance with all existing building, electrical, plumbing, fire, and safety codes of North Carolina and any other authority having jurisdiction over the construction of buildings. The construction plans and specifications shall clearly state the total horizontal surface area of land occupied by the multi-family building and the measurements of building height;
 3. A complete site and landscape plan showing the perimeter of the parcel, the location of all proposed improvements thereon, the location of all existing improvements thereon that shall remain upon the parcel at the time construction is completed, and the location and description of all proposed landscaping improvements and all dimensions and measurements; and
 4. A copy of the permit from the appropriate authority to construct or expand any water distribution or sewerage disposal system or, if applicable, a permit from the appropriate authority to connect to and use any existing public water supply or water treatment and disposal system.
- B. *Private Social Clubs.* An application for Special Use Permit for the Private Social Clubs shall be made per the requirements of Section 4.2.3, Application Requirements,

and shall at a minimum contain the information listed above in Item A, this Section as well as the following additional requirements:

1. Each application shall contain a current survey of the property showing the location on the site of all buildings or facilities;
2. A complete description of all of the regular activities to be held at the club;
3. A complete set of construction plans (if a new building) or floor plans (if an existing building converted to this use); and
4. Stipulate the maximum number of members who will be permitted to join the club. If the club desires to increase the membership over the number allowed in the original permit, then the club must re-apply, and both the minimum parcel size and the amount of parking provided under Article 9, Parking and Loading, must be large enough to accommodate the increase in membership.

C. *Nonprofit Visual Art Centers.* An application for Special Use Permit for the Nonprofit Visual Art Centers shall be made per the requirements of Section 4.2.3, Application Requirements, and shall at a minimum contain the information listed above in Item A, this Section as well as the following additional requirements:

1. A current survey of the parcel as prepared by a professional land surveyor or professional engineer licensed and authorized to survey real property in North Carolina. The survey shall indicate the metes and bounds of the parcel, the total area of the parcel, and expressed in square feet, the location of all public and private roads, the location of all public utility easements within the parcel or located less than fifty (50) feet from it, the location of all perennial streams and watercourses, and the names of all adjacent property owners;
2. A complete set of the construction plans and specifications for each building to be erected upon the parcel, the plans to include a certification of an architect or professional engineer, duly licensed by the appropriate North Carolina authority, that the plans and specifications are in accordance with all existing building, electrical, plumbing, fire, and safety codes of North Carolina and any other authority having jurisdiction over the construction of buildings. The construction plans and specifications shall clearly state the total horizontal surface area of land occupied by the visual art center building and the measurements of building height; and
3. A complete site and landscape plan showing the perimeter of the parcel, the location of all proposed improvements thereon, the location of all existing improvements thereon that shall remain upon the parcel at the time construction is completed, and the location and description of all proposed landscaping improvements and all dimensions and measurements.

D. *Electronic Gaming Operations.* An application for Special Use Permit for the Electronic Gaming Operation shall be made per the requirements of Section 4.2.3, Application Requirements, and shall at a minimum contain the information listed above in Item A, this Section as well as the following additional requirements:

1. All applicable permits, including those for signage, must be issued to the applicant prior to the issuance of the Special Use Permit and the opening of business.

(Amend. of 8-18-16(1))

4.6.4 Additional Conditions as to Use

In addition to any other requirements provided by this Ordinance, the Zoning Board of Adjustment may, in issuing a Special Use Permit, designate additional conditions and requirements in connection with the application as will, in its opinion, assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be **consented to in writing by the applicant and** entered in the minutes of the meeting at which the permit is granted and also on the certificate of the Special Use Permit (or on the plans submitted therewith). All conditions so imposed shall run with the land and shall be binding upon the original applicant, as well as the applicant's heirs, successors,

or assigns, during the continuation of the use conditionally permitted or any similar use. **Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.**

4.6.5 Sanctions

In the event of failure to comply strictly with the plans, documents, and other assurances submitted and approved with the application, or in the event of failure to comply with any conditions imposed upon the Special Use Permit as provided in Sec. 4.6.4, Additional Conditions as to Use, the permit shall thereupon immediately become void. No Zoning Certificate for further construction or Certificate of Compliance under the Special Use Permit shall be issued, and all improvements to the land which were the subject of the application shall thereupon be regarded as nonconforming and shall be subject to the sanctions provided in Article 15, Inspections, Violations and Enforcement, hereof.

(Amend. of 8-18-16(1))

4.6.6 Expiration of Special Use Permits

Unless a vested right is established for a Special Use Permit as outlined in Sec. 4.21.2, Establishment of a Vested Rights for Special Use Permits, a Special Use Permit issued in accordance with this Section shall expire if a Zoning Certificate or Certificate of Compliance for such use is not obtained by the applicant within six (6) months from the date of the decision. If, after commencing work under a Special Use Permit and prior to completion of the entire project, work is discontinued for a period of twelve (12) months, the Special Use Permit shall become void, and no work may be performed until a new Special Use Permit has been issued. If, after issuance of a Certificate of Compliance for a Special Use Permit, that use is discontinued for a period of twelve (12) consecutive months, the Special Use Permit shall become void, and the use may not be re-established until a new Special Use Permit has been issued. When a Special Use Permit expires, the Zoning Board shall treat re-application for a new Special Use Permit in the same manner as any other application, and the provisions of this Ordinance currently in effect shall be applicable.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Application and Permits, Sec. 4.7 – Zoning Certification

ARTICLE 4 – APPLICATION AND PERMITS

Sec. 4.7 - Zoning Certification

4.7.1 Applicability

No person shall commence or proceed with construction of any new building, fence or wall, as defined herein, or with the reconstruction, alteration, repair, moving, or demolition of any existing building, in any Zoning District, prior to the issuance of a Zoning Certificate, in accordance with the following procedures.

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land.

4.7.2 Application Requirements

- A. Application for a Zoning Certificate shall be filed with the Planning and Development Director and may be made prior to or in conjunction with application for a permit under the North Carolina State Building Code, shall be made per the requirements of Sec. 4.2.3, Application Requirements, and shall at a minimum contain the information listed below. See also Sec. 4.7.3, Additional Requirements in Commercial Zoning Districts, and Sec. 4.7.8, Watershed Protection Permit.
 1. A Site Plan, drawn to an appropriate scale, of the parcel of property showing its actual dimensions and indicating the size, location, and distance from property lines of the proposed building, any other existing building(s), and any other improvements proposed to be accomplished, including but not limited to driveways, sidewalks, and parking areas;
 2. A drawing of the proposed building drawn to scale and in sufficient clarity and detail to indicate the nature and character of the work to be done, and consisting at minimum of a floor plan and elevations of the building (except, however, that the Planning and Development Director may approve minor construction work without compliance with this requirement);
 3. The use to which the completed project shall be devoted; and
 4. Any other information the Planning and Development Director may deem reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this Ordinance.
- B. The Planning and Development Director shall review each element of the application and if he is satisfied that the work described therein complies with the Zoning Ordinance, he shall issue a Zoning Certificate; said Certificate may be issued prior to or in conjunction with application for a permit under the North Carolina State Building Code. After a Zoning Certificate has been issued, no changes or deviations from the terms of the application, plans, or permit shall be made until specific written approval has been obtained from the Planning and Development Director. If the Planning and Development Director finds the application to be deficient or the information contained therein to be contrary to the provisions of this Ordinance, he shall reject the application and deny the applicant's request for a Zoning Certificate in writing, setting forth the reasons for the rejection and denial.
- C. Approval of a Zoning Certificate does not relieve the applicant of the obligation to procure any other permit, as required by this Ordinance or State and Federal Law. These include, but are not limited to Sec. 4.13, Landscape Plan Permits, Sec. 4.14, Land-Disturbing Activity Permits, Sec. 4.14.4, Erosion and Sedimentation Control Plan Requirements, and Sec. 4.17, Sign Permit and any permit required by the North Carolina State Building Code.
- D. A Zoning Certificate shall expire six (6) months after the date of issuance if the work authorized has not been commenced. If after commencement the work is discontinued for a period of twelve (12) months, the Certificate shall immediately

expire. Upon expiration, the Certificate shall become void, and no work may be performed until a new Certificate has been secured.

- E. A Zoning Certificate shall be in writing and may contain a provision requiring the development to comply with all applicable State and local laws. The Planning and Development Director may issue Zoning Certificates in print or electronic form. Any Zoning Certificate issued exclusively in electronic form shall be protected from further editing once issued.
- F. Applications for Zoning Certificates may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a Zoning Certificate for such development as is authorized by the easement.

4.7.2.1 Revocation of Zoning Certificate

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

4.7.2.2 Permit Choice

If a development permit applicant submits a permit application for any type of development and a rule or ordinance is amended, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. If an applicable rule or ordinance is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Applications and Permits, Sec. 4.9 - Appeals

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 4 – APPLICATIONS AND PERMITS

Sec. 4.19 - Appeals

4.19.1 Appeal of Administrative Decision to Zoning Board of Adjustment

- A. *Types of Appeals.* The Zoning Board of Adjustment shall hear and decide all appeals from requirements of this Ordinance and review any order, requirement, decision, or determination made by the Planning and Development Director and Stormwater Administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the ordinance and those based upon alleged hardship resulting from strict interpretation of this Ordinance.
- B. *Procedure for Filing Appeals*
 1. No appeal shall be heard by the Zoning Board of Adjustment unless a written notice of appeal is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Planning and Development Director and Stormwater Administrator. Appeals shall be made upon the form furnished for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed. **In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.**
 2. Appeals shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Planning and Development Director and Stormwater Administrator. All documents, pleadings, and transcripts or certified copies thereof, constituting the record upon which the action being appealed from was taken, shall forthwith be transmitted to the Zoning Board of Adjustment by the Planning and Development Director and Stormwater Administrator. Upon service of the notice of appeal, accompanied by the supporting documents, upon the Chairman or Vice Chairman of the Zoning Board of Adjustment, the Board shall forthwith fix a date within a reasonable time thereafter for the hearing of the appeal or for a hearing upon any other matter properly referred to it; the Zoning Board of Adjustment shall call a public hearing as outlined in Sec. 4.2.4, Notice and Public Hearings, shall give due notice thereof to the parties in interest, and render a decision upon the same within a reasonable time after the hearing.

At the hearing, any party may appear in person or be represented by his authorized agent or attorney.

3. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness.

C. The decision of the Zoning Board of Adjustment shall be filed in the office of the Planning and Development Director or the Stormwater Administrator, and a copy shall be mailed by registered, certified mail return receipt requested, to every party who has filed a request for such copy with the Secretary or Chairman of the Zoning Board of Adjustment at the time of the hearing of the case. The mailing address of such requestor shall be set forth on such request.

4.19.2 Appeal of Land Disturbance Permit Decision to Board of Commissioners

A. *Land-disturbing Activities Plan and Permit Appeals.* Except as provided in item 5 below, the appeal of a disapproval or approval with modifications of a plan, and the denial of an application for a land-disturbing permit, (all being referred to herein as a "rejection") shall be governed by the following provisions:

1. A rejection by the Town shall entitle the person submitting the plan to a public hearing if such person submits to the Town a written demand for a hearing within **thirty (30)** ~~fifteen (15)~~ days after receipt of written notice of the rejection;
2. A hearing held pursuant to this section shall be conducted by the Town's Board of Commissioners within twenty (20) days after the date of the submission of the written demand for a hearing;
3. The Town's Board of Commissioners will render its final decision on any plan within twenty (20) days of the public hearing;
4. If the Town upholds the rejection following the hearing, the aggrieved person shall then be entitled to appeal the Town's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B.0118(d); and
5. In the event that a plan is disapproved pursuant to Sec. 4.14.4, Erosion and Sedimentation Control Plan Requirements, Item J, Deadline for Decisions on Revised Plans, the applicant may appeal the Town's disapproval of the plan directly to the North Carolina Sedimentation Control Commission.
6. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness.

4.19.3 Appeal of Zoning Board of Adjustment Decision

Appeals from the Zoning Board of Adjustment shall be taken to the appropriate court of record within thirty (30) days as provided in G.S. **160D-1405(d)** ~~160A-388(e2)~~.

4.19.4 Appeal of Board of Commissioners Zoning Decisions

Appeals from legislative zoning decisions by the Board of Commissioners shall be to the appropriate court of record within sixty (60) days as provided for in G.S. 1-54.1.

4.19.5 Stays

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case,

enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)

Article 4 – Applications and Permits, Sec. 4.20 Expiration or Extensions and Sec. 4.21 Statutory Vested Rights Determination

(EXISTING CODE LANGUAGE IN BLACK & **PROPOSED AMENDMENTS IN RED.**)

ARTICLE 4 – APPLICATIONS AND PERMITS

Sec. 4.20 - Expiration or Extensions

Certain permits do expire within a fixed time frame. Unless otherwise specified in this Ordinance or as provided for by State law, any order or decision or the Zoning Board of Adjustment granting an exception, Special Use Permit, or a variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within six (6) months from the date of the decision.

4.20.1 Table

Procedure	Expiration	Extension	Process	Notes
Preliminary Plat	One Year	One Time, One Year	Request to BOC	Sec. 4.4.5.E
Conditional Zoning w/Site Specific Development Vesting Plan	Two Years	Up to Five Years	Vested Rights Determination	Sec. 4.21.1
Special Use Permit - if Zoning Certificate or Certificate of Compliance not obtained	Six Months after date of issuance	No	Void Upon Expiration	Sec. 4.6.6
Special Use Permit - if Zoning Certificate or Certificate of	Twelve months	No	Void Upon Expiration	Sec. 4.6.6

Compliance obtained but work discontinued				
Special Use Permit w/Site Specific Development Plan	Two Years	Up to Five Years	Vested Rights Determination	Sec. 4.21.2
Zoning Certificate/Watershed Protection Permit - no work commenced	Six Months after date of issuance	No	Void Upon Expiration	Sec. 4.7.2.D
Zoning Certificate/Watershed Protection Permit - work commenced then discontinued	Twelve Months	No	Void Upon Expiration	Sec. 4.7.2.D
Erosion and Sed. Control Plan	Not to Exceed Three Years	No	Void Upon Expiration	Sec. 4.14.4.C
Dam Impoundment Draining Permit	Sixty Days	Yes	Written Permission from Watershed Admin.	Sec. 4.15.2.A.1.a & 2.a
Stormwater Management Permit	One Year	One Year, One Time	Request to Stormwater Admin.	Sec. 4.16.3.I
Sign Permit - Temporary Sign for Planned Development	Three Years	One Time, Two Years	Request to Plan & Dev. Dir.	Sec. 4.17.3.A.3
Variance - ZBA, where no Zoning Certificate/Watershed Protection Permit or Certificate of Compliance/Watershed Protection Occupancy Permit	Six Months	No	Void Upon Expiration	Sec. 4.18.2.E
Multi-Phased Development (Projects of at least 25 acres)	Seven Years	No	Vested Rights Determination	Sec. 4.21.3

Sec. 4.21 - Statutory Vested Rights Determination

4.21.1 Establishment of a Vested Right for Conditional Zoning District

An approved Conditional Zoning District accompanied by a Site Specific Development **Vesting** Plan establishes vested rights pursuant to G.S. ~~160A-385.1~~ **160D-108.1**, for the period of two (2) years from the date of approval by the Board of Commissioners, except that such vested rights may be altered as allowed by G.S. ~~160A-385.1(e)~~ **160D-108.1**. Vested rights shall remain effective beyond the end of the period of time established pursuant to this Section for any buildings or uses for which a valid building permit has been issued during the vested rights period, so long as such building permit is valid.

(Amend. of 8-18-16(1))

4.21.2 Establishment of a Vested Right for Special Use Permits

A. An applicant for a Special Use Permit may also apply to establish a "vested right" in accordance with G.S. ~~160A-385.1~~ **160D-108.1**. Such vested right shall confer upon the

property owner the right to undertake and complete the development and use of the property under the terms and conditions of the Special Use Permit issued in conjunction therewith, and shall preclude any zoning action of the Town of Highlands which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in said Permit. The establishment of a vested right shall not preclude, however, the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use; nor shall it preclude the application of ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the Town of Highlands, such as the North Carolina State Building Code. Otherwise, any applicable new or amended regulation shall become effective with respect to property for which a vested right has been established only upon the expiration or termination of the vested right in accordance with paragraph (C) of this Section.

- B. In order to establish a vested right, an applicant shall submit a "Site Specific Development Plan" as defined by Section 4.6.2, Procedure, of this Ordinance. Each map, plat, site plan, or other document submitted evidencing a site specific plan shall contain the following notation: "APPROVAL OF THIS PLAN ESTABLISHES A VESTED RIGHT UNDER N.C.G.S. ~~160A-385.1~~ **160D-108.1**. UNLESS TERMINATED AT AN EARLIER DATE, THE ZONING VESTED RIGHT SHALL BE VALID UNTIL (DATE)"
- C. A right which has been vested shall remain vested for a period of two (2) years, and shall not be extended by any amendment or modification of the site specific plan approved by the Board. Notwithstanding Sec. 4.6.6, Expiration of Special Use Permits, the Special Use Permit issued in conjunction with the vested right shall be valid during this entire period of time. A right which has been vested, together with the Special Use Permit which has been issued in conjunction therewith, shall expire or terminate as follows:
1. At the end of the applicable vesting period with respect to buildings and uses for which no valid Zoning Certificate applications have been filed;
 2. With the written consent of the affected property owner;
 3. Upon findings, by ordinance and after notice and a public hearing as outlined in Sec. 4.2.4, Notice and Public Hearings, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed in accordance with said Permit;
 4. To the extent that the affected property owner receives compensation for all costs, expenses, and other losses incurred by the landowner—including, but not limited to, all fees paid in consideration of financing—and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval of said Permit, together with interest thereon at the legal rate until paid, but not including any diminution in the value of the property which is caused by such action;
 5. Upon findings, by ordinance and after notice and a public hearing on it as outlined in Sec. 4.2.4, Notice and Public Hearings, that the property owner or his representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval by the Zoning Board of said Permit; and
 6. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in said Permit, in which case the Zoning Board may modify the affected provisions upon a finding, by ordinance and after notice and a public hearing on it as outlined in Sec. 4.2.4, Notice and Public Hearings, that the change in State or federal law has a fundamental effect on the Permit.
- D. In all other respects, the provisions of this Ordinance governing application for a Special Use Permit shall apply to the establishment of a vested right. Specifically, no vested right may be established except upon the calling of a public hearing and giving of notice required as outlined in Sec. 4.2.4, Notice and Public Hearings. The Zoning Board may also, in conjunction with the Special Use Permit issued together with the vested right, designate additional conditions and requirements in connection with the

application in accordance with Sec. 4.6.4, Additional Conditions as to Use. Nothing in this Section shall exempt the site specific plan from subsequent review by the Zoning Board to ensure compliance with the terms and conditions of the original approval, provided that such review is not inconsistent with the original approval. Nothing in this chapter shall prohibit the revocation of the original approval in accordance with Sec. 4.6.5, Sanctions, nor exempt the property owner from the penalties and remedies provided for in Article 15, Inspections, Violations and Enforcement.

Sec. 4.21.3 Vested Rights for Multi-Phased Developments

A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 – Application and Permits, Sec. 4.1 – Interpretation of this Ordinance

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS IN RED.)

ARTICLE 4. APPLICATION AND PERMITS

Sec. 4.1 - Interpretation of this Ordinance

4.1.1 Applicability

- A. When uncertainty exists, the director of the appropriate department, or designee, as identified below, shall be authorized to make all interpretations concerning the provisions of this Ordinance. In making these interpretations, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body;
 - 3. Deemed neither to limit nor repeal any powers granted under State statutes; and
 - 4. Require application of the more stringent provisions wherever the provisions of this Ordinance appear to impose conflicting provisions that cannot otherwise be reconciled.
- B. *Other Interpretations.* The Planning and Development Director generally shall make all interpretations of this Ordinance but shall not make interpretations of the following matters:

1. All interpretations of matters relating to the North Carolina Building Code shall be made by Macon County or Jackson County;
2. All interpretations of matters relating to the Public Works Specifications Manual shall be made by the Town Engineer and Public Works Director; and
3. The Planning and Development Director may defer interpretation of additional sections of this Ordinance to appropriate Town and/or County Officials.

4.1.2 Request for Interpretation

A request for interpretation shall be submitted in writing.

4.1.3 Action by Planning and Development Director

A. The Planning and Development Director shall:

1. Review and evaluate the request in light of the text of this Ordinance, the Official Land Use Map and any other relevant information;
2. Consult with Macon County or Jackson County inspection departments and coordinate with other Town staff, including the Town Attorney, as necessary; and
3. Render an opinion.

B. The ~~interpretation~~ **determination** shall be provided to the applicant, in writing, **by personal delivery, electronic mail, or first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.**

4.1.4 Official Record

The Planning and Development Director shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

4.1.5 Appeal

Final action on an official interpretation of this Ordinance by the Planning and Development Director may be appealed in accordance with Sec. 4.19.1, Appeal of Administration Decision to Zoning Board of Adjustment.

4.1.6 Compliance and Permit

No development or redevelopment shall occur except in compliance with the requirements of this Ordinance unless exempted. No development for which a permit is required pursuant to this Ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit. See also Sec. 15.1.2, Inspections.

4.1.7 Permit Choice and Vested Rights

- A. **Findings.** – The General Assembly recognizes that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, to secure the reasonable expectations of landowners, and to foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108.1 strike an appropriate balance between private expectations and the public interest.
- B. **Permit Choice.** – If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a

development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

- C. Vested Rights. – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:
1. Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.
 2. Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.
- D. A site-specific vesting plan pursuant to G.S. 160D-108.1. A multi-phased development pursuant to subsection (f) of this section. A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.
- E. Duration of Vesting. – Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive. The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use. Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, G.S. 160D-108 Page 2 the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.
- F. Multiple Permits for Development Project. – Subject to subsection (d) of this section, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and

sedimentation control permit or a sign permit is not an initial development permit.

- G. **Multi-Phased Development.** – A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.
- H. **Continuing Review.** – Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.
- I. **Process to Claim Vested Right.** – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.
- J. **Miscellaneous Provisions.** – The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
- K. **[Definitions. –]** As used in this section, the following definitions apply:
1. **Development.** – As defined in G.S. 143-755(e)(1).
 2. **Development permit.** – As defined in G.S. 143-755(e)(2).
 3. **Land development regulation.** – As defined in G.S. 143-755(e)(3).
 4. **Multi-phased development.** – A development containing 25 acres or more that is both of the following:
 - i. Submitted for development permit approval to occur in more than one phase.

Subject to a master development plan with committed elements showing the type and intensity of use of each phase. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 5(a), 50(b), 51(a), (b), (d).)



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20__ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 4 –Application and Permits, Sec. 4.5 Conditional Zoning Districts
(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 4. APPLICATION AND PERMITS

Sec. 4.5 - Conditional Zoning Districts

4.5.1 Applicability

Conditional Zoning District decisions are legislative decisions subject to judicial review using the same procedures and standard of review as apply to general use zoning district decisions.

- A. When considering a petition for a conditional zoning district, the Board of Commissioners shall act in accordance with this Section. Notwithstanding the twelve-month prohibition in Sec. 4.3.1, Procedure for Amendment of Ordinance or Zoning Map, Item C, petitioner(s) may seek rezoning to a conditional zoning district or changes to an adopted conditional district until such time as the Board of Commissioners either denies or adopts the project as a conditional zoned district. Conditional Zoning Districts shall be allowed as outlined in Sec. 5.5, Conditional Zoning Districts Intent Statements, in accordance with the following procedures.
- B. Approval of a Conditional Zoning District does not relieve the applicant of the obligation to procure any other permit, as required by this Ordinance or State and Federal Law. These include, but are not limited to Sec. 4.7, Zoning Certification, Sec. 4.11, Infrastructure Approvals, Sec. 4.13, Landscape Plan Permits, Sec. 4.14, Land-Disturbing Activity Permits, Sec. 4.14.4, Erosion and Sedimentation Control Plan Requirements, Sec. 4.16, Stormwater Management Permit, and Sec. 4.17, Sign Permits, and any permit required by the North Carolina State Building Code.

(Amend. of 8-18-16(1); Amend. of 11-17-16(2))

4.5.2 Petition Submission Requirements

Property may be rezoned to a conditional zoning district only in response to a petition executed and submitted by all the owners of all of the property to be included in the district.

- A. An application for Conditional Zoning District shall be made per the requirements of Sec. 4.2.3, Application Requirements, and shall at a minimum contain the information listed below:
1. A fully executed property owners' petition for conditional zoning. If the Petitioner is other than owner(s) an authorization form is required;
 2. Twenty (20) copies twenty-four inches by thirty-six inches (24" x 36") is required. It must be prepared by a professional land surveyor or engineer, legibly drawn to a scale of not less than two hundred (200) feet to one (1) inch, indicate the exact boundary lines of the parcel of property to be rezoned, list the owners names, zoning classifications, and watershed districts of the adjoining properties, and show the location of any existing buildings on the subject property;
 3. If a Conditional Zoning District is accompanied by a Site Specific Development Plan, it shall be drawn to an appropriate scale, and provide supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined Ordinance requirements, will govern the development and use of the property. The following information must be provided on the Site Specific Development Plan, if applicable:
 - a. A boundary survey and vicinity map showing the property's total acreage;
 - b. The identity of neighboring properties;
 - c. Its parcel identification number (PIN), current zoning designation and requested zoning, Watershed classification(s), and the zoning setback lines;
 - d. Any adjacent streets, designated as public or private;
 - e. The location of stands of old growth trees, streams, marshes, wetlands, bogs, rivers, impoundments, large rock outcroppings or other significant geological features on the subject property;
 - f. All existing easements, reservations, and rights-of-way;
 - g. All existing or proposed structures, showing setbacks to rights-of-way and property lines;
 - h. Areas in which proposed structures will be located;
 - i. Proposed use of all land and structures, including the number of residential units, the number of commercial buildings and the total square footage of any nonresidential development;
 - j. All yards, buffers, screening, and landscaping required by these regulations per Sec. 4.13, Landscape Plan Permits, or proposed by the petitioner(s);
 - k. All existing and proposed points of access to public streets;
 - l. The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
 - m. Parking areas showing the number and arrangement of parking spaces and driveway entrances and circulation;
 - n. Proposed phasing, if any; including a complete Phased Development Plan and Phasing Schedule, including the date upon which construction is expected to begin and the date within which it is expected to be completed. Any Phasing schedule extending beyond the maximum five-year vested rights per Sec. 4.21.1, Establishment of a Vested Right for Conditional Zoning District, will require a development agreement with the Town; and
 - o. The site plan shall be neatly drawn, with a north arrow, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

4. The Planning and Development Director has the authority to waive any application requirement where the type of use or scale of the proposal makes providing that information unnecessary or impractical;
5. In addition to the foregoing petition requirements, the petitioner(s) shall submit a written statement with the petition analyzing the reasonableness of the proposed rezoning to a conditional zoning district. This statement shall address the compatibility of the proposed rezoning with the Land Use Plan, the proposed site and the surrounding area;
6. In the course of evaluating the proposed use, the Planning and Development Director, the Zoning Board of Adjustment, the Planning Board, or the Board of Commissioners may request additional information from the petitioner;
7. The site plan and any supporting text shall constitute part of the petition for all purposes under this Section; and
8. The Planning and Development Director may require the petitioner to submit more than one copy of the petition and site plan for circulation to government agencies for review and comment.

B. Approval of Petition

1. When reviewing a petition for the reclassification of property to a conditional zoning district, proposed specific conditions to be applied to the proposed district may be submitted by the petitioner(s), the Town or its agencies, or any affected person, but only those conditions ~~mutually~~ approved by the Board of Commissioners and **consented to by** the petitioner(s) **in writing** may be incorporated into this Ordinance and Zoning Map. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, erosion control, watershed protection, density, setbacks, structure height, the provision for open space, and other matters that the Board of Commissioners may find appropriate or the petitioner(s) may propose. The petitioner(s) shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.
2. A petition for reclassification of property to a conditional zoning district pursuant to this section, where such property is located partially or entirely within the Highlands Greenway, as shown on the "Town of Highlands Greenway Plan Map," shall not be granted without the dedication to the Town of Highlands of a recreation easement for a strip of property for said Greenway ranging between twenty-five (25) and fifty (50) feet in width, as determined to be necessary by the Town in its sole discretion, to promote the purposes of the Greenway project. Upon the effective date of a resolution of the Board of Commissioners that an easement dedicated to the Town of Highlands is no longer required for the Highlands Greenway, the easement shall terminate and the Town shall, upon request of the owner, and at the owner's expense, file in the Register of Deeds for Macon County or Jackson County an instrument providing for such termination as a matter of public record.

C. Effect of Approval

1. If property is rezoned to a conditional zoning district, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category and use, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the Zoning Ordinance for the approved district and are binding on the property as an amendment to this Ordinance and Zoning Map.
2. If property is rezoned to a conditional zoning district, the petitioner shall comply with all requirements established Sec. 4.7, Zoning Certification, for obtaining a building permit and certificate of occupancy. Only those uses and

structures indicated in the approved petition and site plan shall be allowed on the subject property.

D. *Amendments to Approved Conditional Zoning District*

1. Changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as an application for a new conditional zoning district and shall be processed in accordance with the procedures in this Section.

E. *Review of Adopted Conditional Zoning Districts.* It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. The Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, it may recommend in writing to the Board of Commissioners that the property be classified to another district.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
 Article 4 – Applications and Permits, Sec. 4.2 Common Review Procedures

(EXISTING CODE LANGUAGE IN BLACK & **PROPOSED AMENDMENTS IN RED.**)

ARTICLE 4 – APPLICATION AND PERMITS

Sec. 4.2 - Common Review Procedures

4.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow. See also Sec. 3.7.1, Summary of Review Authority Table.

Procedures	Notes
Amendments to Ordinance or Zoning Map	Sec. 4.3
Subdivision Review	Sec. 4.4
Performance Guarantee	Sec. 4.4.3
Planned Cluster Developments	Sec. 4.4.9

Subdivisions Not Meeting Minimum Requirements	Sec. 4.4.10
Conditional Zoning Districts	Sec. 4.5
Special Use Permit	Sec. 4.6
Zoning Certification	Sec. 4.7
Structures Located within Rights-of-Way	Sec. 4.7.5
Structures Located in Wetlands	Sec. 4.7.6
Zoning Certificate of Compliance	Sec. 4.7.7
Watershed Protection Permit	Sec. 4.7.8
Watershed Protection Occupancy Permit	Sec. 4.7.9
Outdoor Display	Sec. 4.8
Tower and Antennae Use Certificate	Sec. 4.9
Shared Parking for Restaurants	Sec. 4.10
Infrastructure Approvals	Sec. 4.11
Tree Removal Permits	Sec. 4.12
Landscape Plan Permits	Sec. 4.13
Land-Disturbing Activity Permits	Sec. 4.14
Erosion and Sedimentation Control Plan Requirements	Sec. 4.14.4
Dam Impoundment Draining Permit	Sec. 4.15
Stormwater Management Permit	Sec. 4.16
Sign Permit	Sec. 4.17
Administrative Variances	Sec. 4.18.1
Zoning Board of Adjustment Variances	Sec. 4.18.2
Appeals	Sec. 4.19
Expiration or Extensions	Sec. 4.20
Statutory Vested Rights Determination	Sec. 4.21

(Amend. of 8-18-16(1))

4.2.2 Pre-Application Conference

- A. Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Planning and Development Director to discuss procedures, standards and regulations required for development approval in accordance with this Ordinance.

- B. A mandatory pre-application conference with the Planning and Development Director shall be required for the following development reviews:
 - 1. Applications for Ordinance Amendment or Zoning Map Change;
 - 2. Subdivision;
 - 3. Applications for Special Use Permits; and
 - 4. Applications for Conditional Zoning.
- C. A mandatory pre-application conference with the Town Engineer and Public Works Administrator shall be required for the following development reviews:
 - 1. Subdivision.
 - 2. [Reserved.]

4.2.3 Application Requirements

The following requirements shall apply to all applications for development approval identified in Sec. 4.2.1, Applicability:

- A. *Forms.* Applications required under this Ordinance shall be submitted on forms and in such numbers and format as required by the appropriate checklist, unless otherwise stated in specific Sections below. The Planning and Development Director shall maintain the official forms of all permits required by this Ordinance. Permits required by the Public Works Specification Manual will be maintained by the Town Engineer and Public Works Administrator. The forms shall be available from the Town offices. All forms shall include, at a minimum, the following information provided by the applicant:
 - 1. Contact information for the individual or firm submitting the application;
 - 2. Contact information for the individual or firm on whose behalf the application is being submitted;
 - 3. Identification of the property affected by the application, such as legal description, address, or PIN as may be appropriate; and
 - 4. Any other information requested by the Planning and Development Director, or the provisions of this Ordinance.
- B. *Fees.* The Town has established a fee schedule for the review and approval of plans and permit applications. In establishing the fee schedule, the Town has considered and will consider in the future the administrative and personnel costs incurred for reviewing the plans and applications and for related compliance activities.
 - 1. All applications and fees shall be filed with the appropriate department; and
 - 2. Filing fees shall be established from time to time to defray the actual cost of processing the application. This may include the fees of other consultants to review applications, at the discretion of the Planning and Development Director.
- C. *Applications Sufficient for Processing*
 - 1. Applications shall contain all required information as described on forms available from each development involved in the review process, unless modified by the department, in writing, pursuant to item 2, below.
 - 2. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant should rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
 - 3. Once the application has been determined sufficient for processing, copies of the application shall be referred by the appropriate department to the appropriate reviewing entities.

4. The applicant may be required to present evidence of the authority to submit an application.
 5. An application shall be considered to have been accepted for review only after it has been determined to be complete as provided above, not upon submission to the Town.
- D. *Application Deadline.* Applications sufficient for processing shall be submitted to the Town in accordance with the established schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.
- E. *Staff Consultation after Application Submitted*
1. Upon receipt of the application sufficient for processing, the Director of the appropriate department shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this Ordinance, that the applicant has submitted all of the information they intend to submit, and that the application represents precisely and completely what the applicant proposed to do.
 2. If the application is for a Special Use Permit and the applicant plans to request a waiver from the ZBA of any of the requirements listed under Sec. 4.6.2, Procedure, as allowed by item A.5 of that section, those requirements shall be identified in writing by the applicant and the Planning and Development Director shall provide to the ZBA a written letter indicating a recommendation of support for or opposition against the request for the waiver.
 3. Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed before the appropriate approving authority in accordance with the standard procedures. However, if the Director of the appropriate department believes the application is incomplete, a recommendation to deny the application on this basis shall be provided to the appropriate approving authority.
- F. *Related Applications*
1. Necessarily related applications for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a pre-requisite such as approval of Utilities before a Zoning Certificate can be issued, or variance or Special Use Permit shall not be eligible for final approval until the required variance or use permit has been granted.
 2. Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related application until the denied or disapproved application is resolved.
- G. *Phased Development Plan.* A phased development plan shall be deemed approved prior to the effective date of this Ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:
1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan or site specific plan that has been approved.
 2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this Ordinance to that phase of development would not require a material change in that phase of the plan.

4.2.4 Notice and Public Hearings

Notice shall be required for applications for development approval and/or appeal as shown in the table below:

Procedure	Published	Mailed	Posted
------------------	------------------	---------------	---------------

UDO Amendment/ Comprehensive Plan Update	X (twice)		
Zoning Map Change	X (twice)	X	X
Special Use Permit	X	X	X
Variances (not administrative)	X	X	X
Appeal	X	X	X

A. Before enacting an amendment to this Ordinance, the Board of Commissioners shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two (2) successive weeks in a newspaper having general circulation in the Highlands area. The notice shall be published the first time not less than ten (10) days, nor more than twenty-five (25) days before the date fixed for the hearing. The day of publication is not counted in computing these times, but the day of the hearing is included.

B. For Zoning Map changes, the Board of Commissioners shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two (2) successive weeks in a newspaper having general circulation in the Highlands area. The notice shall be published the first time not less than ten (10) days, nor more than twenty-five (25) days before the date fixed for the hearing. The day of publication is not counted in computing these times, but the day of the hearing is included. All abutting property owners shall receive written notice by first class mail to the address shown on the county tax listing. **For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.** The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

C. For Special Use Permit, Variance, and Appeal applications, public notice shall be given once, prior to the meeting, in a newspaper having general circulation in the Highlands area. All abutting property owners shall receive written notice by first class mail to the address shown on the county tax listing. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

D. **Adoption and Effect of Plans. – Plans shall be adopted by the Board of Commissioners with the advice and consultation of the planning board. Adoption and amendment of a comprehensive or land-use plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. Plans adopted under this Chapter may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110. Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect. Plans adopted under this Chapter do not expand, diminish, or alter the scope of authority for development regulations adopted under this Chapter. Plans adopted under this Chapter shall be considered by the planning board and Board of Commissioners when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and G.S. 160D-605. If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 11, 51(a), (b), (d).)**



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ____ yeas to ____ nays by The Board of Commissioners at its regular meeting on the ____ day of _____, 20__ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 5 – Zoning Districts, Sec. 5.5 Conditional Zoning Districts Intent Statements

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

Article 5 – Zoning Districts

Sec. 5.5 - Conditional Zoning Districts Intent Statements

5.5.1 Purpose

- A. There are land uses of such nature that rezoning a property to a general use district designation that permits such a use(s) by right may not be appropriate for a particular property. The review process established by this section provides for the accommodation of such uses by permitting reclassification of a property into a "parallel" conditional zoning district in which site plans and individualized development conditions are imposed to ensure compatibility of the proposed use with the use and enjoyment of neighboring properties.
- B. A parallel conditional zoning district is a zoning district in which the permitted uses are of the same character or type, except as modified by the legislative decision creating the parallel district, as the uses permitted in the corresponding general use district having the same designation or name. Thus, a parallel conditional zoning district shall be identified by the same designation as the underlying general use district followed by the letters "CZ", example: "R-3 (CZ)". Following adoption of a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate conditional zoning district designation.
- C. Due consideration shall be given to the allocation of suitable areas for parks, playgrounds, schools, or other facilities to be dedicated for public use.

5.5.2 Procedure

Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the Town or its agencies, but only those conditions approved by the Town and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, the Town may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited

to those that address the conformance of the development and use of the site to the Town's ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 6 – Use Regulations, Sec. 6.3 Residential Uses

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 6 USE REGULATIONS

Section 6.3 Residential Uses

6.3.1 Single-family Dwelling

Single-family Dwellings in the Town shall be permitted in accordance with Sec. 6.2, Use Table, subject to the following standards:

- A. Single-family dwelling shall include both single-family detached dwellings on individual lots held in fee-simple and single-family detached condominiums.
- B. Modular homes are allowed ~~wherever~~ **wherever** single-family dwelling detached use is allowed. Modular homes shall expressly exclude manufactured homes.
- C. Manufactured homes, as defined by this Ordinance, are allowed as a regulated use for single-family dwelling detached. ~~provided they have been constructed after July 1, 1976.~~ All of the following conditions shall apply:
 1. Lot dimensional standards shall be the same as for single-family detached in the applicable district;
 2. The unit is occupied by persons owning the land on which the unit is located;

3. The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on the site;
 4. A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, is installed under the unit;
 5. The finished width of the base unit is not less than twenty-four (24) feet;
 6. The pitch of the roof has a minimum vertical rise of one (1) foot for each four (4) feet of horizontal rise (1:4) and the roof is finished with shingles;
 7. The exterior siding consists predominantly of horizontal or vertical vinyl, aluminum, wood, or hardboard siding; and
8. The unit shall exceed forty (40) feet in length.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
 Article 15 – Inspections, Violations and Enforcement, Sec. 15.3 Notices of Violation

(EXISTING CODE LANGUAGE IN BLACK & **PROPOSED AMENDMENTS**
IN RED.)

ARTICLE 15 – INSPECTIONS, VIOLATIONS AND ENFORCEMENT

Sec 15.3 Notices of Violations

15.3.2 Service of Notice of Violation

The Director shall serve the ~~offender~~ **landowner and the holder of the development approval** with a copy of the Notice of Violation **by personal delivery, electronic delivery, or first-class mail** ~~in any manner as provided for service of process in the North Carolina Rules of Civil Procedure (Rule 4)~~, provided however, that refusal to accept the Notice of Violation, or failure to notify the Director of a change of address shall not relieve the offender's obligation to pay the stated penalty. **The Director may post the notice of violation on the property.**

15.3.3 Filing of Notices of Violation

All Notices of Violation shall be filed in the office of the Director in a book specially designated for this purpose, with the date of the filing clearly and indelibly stamped or written on the Notice at the time of filing. **The Director shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.**

15.3.4 Appeals

Except for appeals of violations of the North Carolina Sedimentation and Pollution Control Act of 1973 (G.S. ch. 113A), an appeal of a Notice of Violation may be taken to the Zoning Board of Adjustment in accordance with the provisions of Sec. 4.19, Appeals, and relevant statutes. Appeals under the North Carolina Sedimentation and Pollution Control Act of 1973 (G.S. ch. 113A) shall be taken under G.S. ch. 150B, art. 3.

15.3.5 Complaints Regarding Violations

Any person may file a written complaint with the Director whenever a violation of a provision of this Ordinance occurs or is alleged to have occurred. The Director shall:

1. properly record the complaint;
2. promptly investigate ~~it~~ **the complaint, provided that they follow the inspection process as stated in § 160D-403(e); and**

take appropriate action, provided, however, that a complaint shall not be a prerequisite of inspection or enforcement of any provision of this Ordinance.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of _____ yeas to _____ nays by The Board of Commissioners at its regular meeting on the _____ day of _____, 20____ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 15 – Inspections, Violations and Enforcement, Sec. 15.7 Minimum Standards for Habitability

(EXISTING CODE LANGUAGE IN BLACK & **PROPOSED AMENDMENTS IN RED.**)

ARTICLE 15 – INSPECTIONS, VIOLATIONS AND ENFORCEMENT

Sec. 15.7 Minimum Standards of Habitability

15.7.6.1 Abandonment of Intent to Repair

- A. If the dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to section G.S. 160D-1203(4) or after the Planning Director issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this subdivision, then the Board of Commissioners may find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, and welfare of the Town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and

would render unavailable property and a dwelling that might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing board may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

- a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days.
- b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.



ORDINANCE AMENDMENT

Pursuant to an affirmative vote of _____ yeas and _____ nays by the Board of Commissioners of the Town of Highlands at its regular meeting on the _____ day of _____, 2021, and an affirmative vote of ___ yeas to ___ nays by The Board of Commissioners at its regular meeting on the ___ day of _____, 20___ if required, the following ordinances are hereby AMENDED:

Unified Development Ordinance of Highlands, NC (UDO)
Article 15 - Inspections, Violations and Enforcement, Sec. 15.1 Construction and Interpretation

(EXISTING CODE LANGUAGE IN BLACK & PROPOSED AMENDMENTS
IN RED.)

ARTICLE 15 – INSPECTIONS, VIOLATIONS AND ENFORCEMENT

Sec. 15.1 Construction and Interpretation

15.1.1 Purpose

This Article shall be construed to provide for the exercise of all remedies provided for in G.S. 160A-175 and 160D-403, and to provide for the efficient administration and enforcement of the other articles in the Town's Unified Development Ordinance (referred to in this Article as the "Ordinance"). In this article, "Director" shall mean the person, or the designees of the person, who is the Planning and Development Director, the Stormwater Administrator, or the Watershed Administrator, as the context indicates, and including any interim positions or other positions established by the Board of Commissioners to administer the other articles of this Ordinance.

15.1.2 Inspections

- A. The Director **and Code Enforcement Officer** shall have the following duties and authority:
1. To enter upon and investigate the condition of uninhabited buildings within the Town to determine if such buildings are in violation of the ordinance;
 2. To enter upon all premises within the Town, at reasonable times, for the purpose of making any inspections reasonably related to enforcement of the provisions of this Ordinance;
 3. To periodically inspect all properties upon which land-disturbing activity is occurring to determine whether the measures required in the plan are effective in controlling erosion and sedimentation resulting from the land-disturbing activity;
 4. At the time of inspections, to present proper credentials if requested;
 5. To obtain any necessary inspection warrants under G.S. 15-27.2 and comply with all requirements of said Statute;
 6. To determine compliance with this Ordinance; and
 7. To investigate complaints and alleged violations of this Ordinance.
 8. **To Obtain the appropriate consent before inspecting areas not open to the public, or that an appropriate inspection warrant has been secured.**
- B. *Interference with Inspections.* It shall be a violation of this Ordinance for any person or entity to do any of the following:
1. To refuse entry or access to the Director **or Code Enforcement Officer** when entry is requested for purposes described in this Ordinance; and
 2. To obstruct, hamper, or interfere with the Director **or Code Enforcement Officer** in carrying out official duties.
 3. **If the Director or Code Enforcement Officer is asked to leave the property they must leave immediately.**

Notice of the foregoing provision entitled "Interference with Inspections" shall be included in the certificate of approval of each plan.

By signing a Zoning Certificate, the Owner or Owner's representative is allowing Town staff to inspect the property at their discretion, so long as the follow the Inspection rules in Sec. 15.1.2 of this Ordinance.



**STATEMENT OF CONSISTENCY
WITH THE TOWN OF HIGHLANDS LAND USE PLAN FOR THE
AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE ("UDO")
OF THE TOWN OF HIGHLANDS PER NCGS 160A-383**

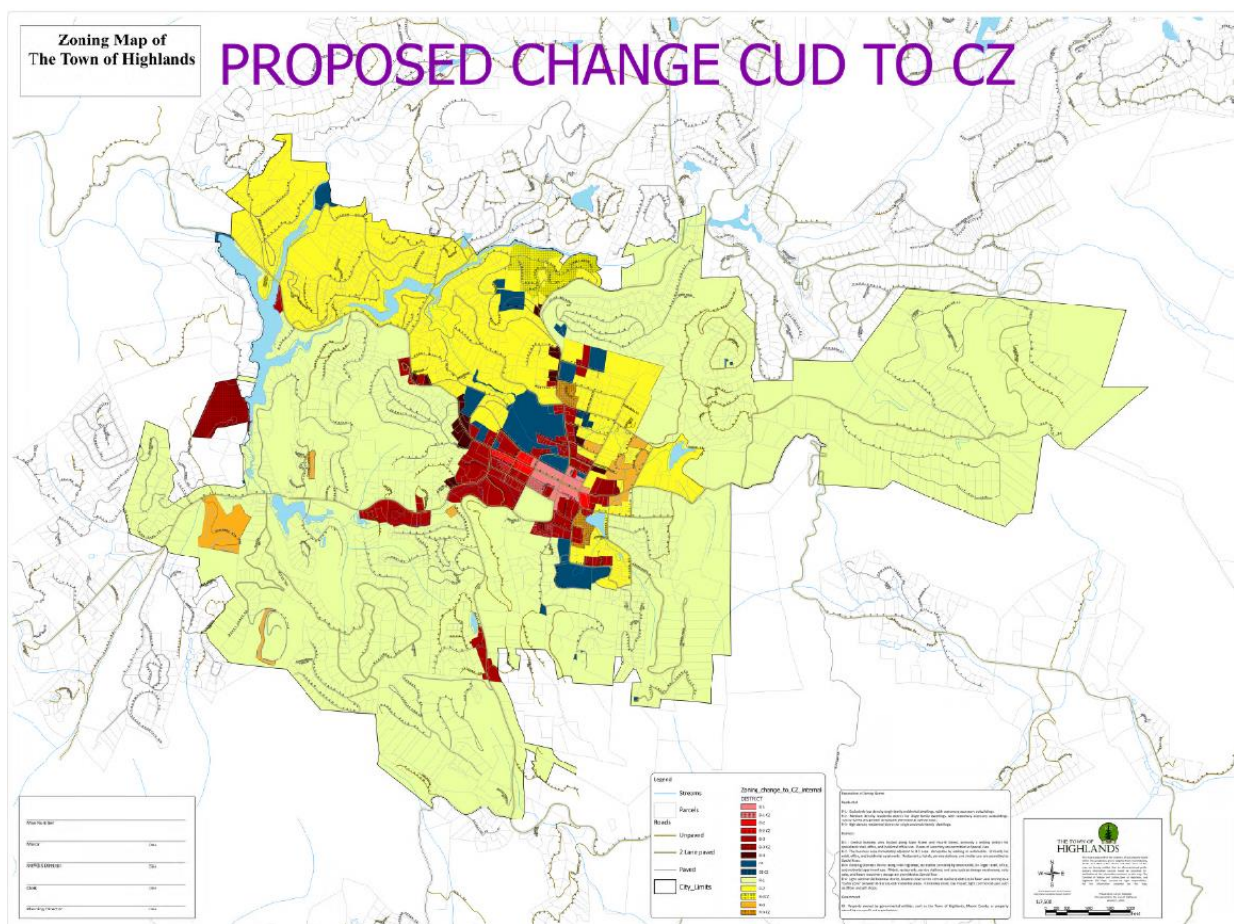
**Ordinance Amendment
Pertaining to 160D Regulations**

BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Highlands, North Carolina, that in accordance with provisions of North Carolina General Statute 160A-383, the Board hereby finds and determines that the amendments to the Unified Development Ordinance of the Town of Highlands, is consistent with the goals, objectives, and policies of the Town's adopted Land Use Plan. Specifically, the amendments will align the Town's Code with the State Statute.

MAYOR PRO TEMPORE PATTERSON MADE A MOTION TO SET A PUBLIC HEARING FOR THE AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE FOR NCGS 160D COMPLIANCE FOR THE REGULAR BOARD MEETING SCHEDULED FOR MAY 27TH, 2021, WHICH WAS SECONDED BY COMMISSIONER HEHN AND THE VOTE WAS UNANIMOUS.

9. Request Public Hearing for Zoning Map Amendments Converting Existing Conditional Use Districts to Conditional Zonings for NCGS 160D Compliance

Assistant Planning & Development Director Michael Mathis stated with the implementation of NCGS 160D, the state is requiring all cities and counties to eliminate Conditional Use Zoning Districts. Also, the state is requiring that all existing Conditional Use Districts convert to Conditional Zoning Districts. No conditions will be amended by this zoning change, just the property's zoning classification on our Zoning Map. The Planning Board reviewed this on March 22 and recommended approval. Staff recommendation is to set a public hearing for the May 20th meeting.



**STATEMENT OF CONSISTENCY
WITH THE TOWN OF HIGHLANDS LAND USE PLAN FOR THE AMENDMENT TO
THE ZONING MAP OF THE TOWN OF HIGHLANDS
PER NCGS 160A-383**

Zoning Map Amendment Per 160D Update

BE IT HEREBY RESOLVED by the Board of Commissioners of the Town of Highlands, North Carolina, that in accordance with provisions of North Carolina General Statute 160A-383,

the Board hereby finds and determines that the amendment to the Zoning Map of the Town of Highlands is consistent with the goals, objectives, and policies of the Town's adopted Land Use Plan. Specifically, with the adoption of N.C.G.S 160D, all Conditional Use Zoning Districts are to be converted to Conditional Zoning Districts.

COMMISSIONER STIEHLER MADE A MOTION TO SET A PUBLIC HEARING FOR THE ZONING MAP AMENDMENTS CONVERTING EXISTING CONDITIONAL USE DISTRICTS TO CONDITIONAL ZONINGS FOR NCGS 160D COMPLIANCE FOR THE REGULAR BOARD MEETING SCHEDULED FOR MAY 27TH, 2021, WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND THE VOTE WAS UNANIMOUS.

10. Covid-19 Restrictions Discussion

Discussion was held and the Board decided to continue with the mask requirement in the business district, because it's not feasible to social distance on our sidewalks.

11. Highlands Emergency Council Resolution

Town Manager Josh Ward said he was contacted by Mary Anne Creswell and the Emergency Council had received a grant to construct an awning to help give shelter and it would help the look. Ward continued that it would encroach in the setback and would require the Resolution from the Board to allow it to be constructed.



Resolution Authorizing Zero Setback for The Highlands Emergency Council, Inc. Building Resolution No. 2021-02-Res

WHEREAS, Article 8 – Dimensional and Density Standards, Sec. 8.1 General, Sec. 8.1.2 number 6. of the Unified Development Ordinance provides for publicly owned structures used for public purposes to be allowed a zero setback upon resolution of the Board of Commissioner of the Town of Highlands; and

WHEREAS, the Town owns the property located at 71 Poplar Street, which includes the building housing The Highlands Emergency Council, Inc., which is a nonprofit corporation that assists citizens in need with miscellaneous household items, clothes and food; and

WHEREAS, The Highlands Emergency Council, Inc. wishes to construct an awning on the front of the building to keep donations and citizens out of the weather. The awning addition will encroach into the 25 foot setback on Poplar Street.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Town of Highlands resolves to approve the zero setback restriction for The Highlands Emergency Council, Inc. located at 71 Poplar Street, Highlands, NC to construct an awning.

Upon motion duly made and seconded, the above resolution was unanimously adopted by the Board of Commissioners at a regularly scheduled meeting held on the 15th day of April, 2021, in the Highlands Community Building, 71 Poplar Street, Highlands, NC.

Patrick L. Taylor, Mayor

ATTEST:

Gilberta B. Shaheen, Town Clerk

MAYOR PRO TEMPORE PATTERSON MADE A MOTION TO APPROVE THE RESOLUTION AS PRESENTED, WHICH WAS SECONDED BY COMMISSIONER STIEHLER AND THE VOTE WAS UNANIMOUS.

12. Adjournment

AS THERE WERE NO FURTHER MATTERS TO COME BEFORE THE BOARD OF COMMISSIONERS, COMMISSIONER STIEHLER MOVED TO ADJOURN WHICH WAS SECONDED BY MAYOR PRO TEMPORE PATTERSON AND UPON A UNANIMOUS VOTE, THE TOWN BOARD ADJOURNED AT 8:11PM.

Patrick Taylor
Mayor

Gilberta B. Shaheen
Town Clerk