

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: _____ **AGENDA ITEM NUMBER:** _____

SUBJECT:-

- A. Public Hearing on zoning text amendment proposed by the City of Winston-Salem regarding clarification of Vested Rights within the UDO (UDO-126).
- B. Approval of Ordinance

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

See attached staff report.

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

ATTACHMENTS:- YES NO

SIGNATURE: _____ **DATE:** _____

ACTION REQUEST FORM

DATE: November 19, 2004
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, AICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on zoning text amendment proposed by the City of Winston-Salem regarding clarification of Vested Rights within the UDO (UDO-126).

SUMMARY OF INFORMATION:

Zoning text amendment proposed by the City of Winston-Salem regarding clarification of Vested Rights within the UDO (UDO-126).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET #: UDO-126
STAFF: Glenn Simmons

REQUEST

This UDO text amendment is a proposal suggested by the Winston-Salem City Attorney to clarify the Vested Rights provisions of Chapter B, Article I, Sections 1-5.2, 6-2.2, and 7-5.5 regarding previously approved site specific development plans associated with Special Use Permits and Special Use District Zoning.

BACKGROUND

Currently the UDO specifies various vested rights provisions and limitations associated with site specific development plans pursuant to elected body approved Special Use District Permit and Special Use District rezoning. Such developments include (1) Approved One-Phase Special Use District Zoning petition, (2) Approved Site Plan Amendment to a One-Phase Special Use District zoning petition, and (3) Approved Final Development Plan by the Planning Board pursuant to an approved Two-Phase Special Use District zoning petition. While current UDO language is clear with respect to the two year time frame under which approved site plans are not subject to ordinance changes during that period, the UDO is less clear regarding the status of such plans beyond the two year vested rights period.

The purpose of this text amendment is to clarify the legal standing of such plans after the two year vested rights period and to provide guidance on how such plans might be modified to maintain standing after that period. This amendment is in response to questions recently raised between the City Public Works Department and the City Attorney's Office regarding the legal status of site plans approved many years ago under the provisions of Special Use District zoning.

ANALYSIS

In accordance with UDO requirements, site plans and associated site plan conditions are legally binding components of Special Use Permits and Special Use District Zoning. Site specific development plans are thereby inextricably tied to the zoning approval and may be transferred from the original owner/petitioner to another. In this regard site plans are said to "run with the land" in a manner consistent with the provisions of General Use zoning classifications. General Statutes 160A-385.1 provide for site plans approved as part of Special Use Permits and Special Use District zoning to have certain vested development rights. For two years after a site specific plan is approved, the plan is not subject to any changes in local development ordinances which might invalidate or otherwise require the plan to be modified to meet more current requirements.

After two years the UDO is less clear regarding the status of site specific development plans associated with Special Use Permits and Special Use District Zoning. The current practice is to acknowledge the validity of such plans for the purposes of building permit approvals provided

that previously approved plans are modified to meet any changes in UDO development standards or relevant transportation or greenway plans which may have been adopted since the site plan was originally approved. Such changes may include additional bufferyard, parking, impervious cover, transportation, greenway, or other requirements. To the extent that such requirements can be accommodated with minimal changes, revised site plans approved through the minor staff change review process have been recognized as still being valid regardless of the time period since the original approval.

While this policy has generally worked well for plans which have been more recently approved, older plans particularly those approved prior to the adoption of the UDO, are often more problematic. Thoroughfare plan updates, watershed development limitations, and regulatory measures, locally adopted or otherwise, sometimes render previous site plans unworkable. Under such circumstances a more formal, Site Plan Amendment to a previously approved site plan must be re-reviewed and re-approved by the appropriate elected body to accommodate the required changes.

The attached UDO text amendment is intended to clarify the provisions for such changes and reaffirm the practice of handling previously approved site plans associated with Special Use Permits and Special Use District Zoning.

RECOMMENDATION

APPROVAL

Glenn Simmons presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Jerry Clark moved approval of the zoning text amendment.

SECOND: Clarence Lambe

VOTE:

FOR: Clark, Eickmeyer, King, Lambe, Mullican, Norwood, Smith

AGAINST: None

EXCUSED: None

A. Paul Norby, AICP
Director of Planning

UDO-126
AN ORDINANCE AMENDING
CHAPTER B "ZONING ORDINANCE"
OF THE *UNIFIED DEVELOPMENT ORDINANCES*
RELATED TO VESTED RIGHTS

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

Section 1. Section 1-5.2(B), "General Statutes 160A-385.1," is hereby amended by adding a new subsection (7) to read as follows:

- (7) Amendments. Minor Changes, consistent with Section 6-2.2(L) and pursuant to any related resolutions, may be approved by Planning staff. All other amendments to a site specific development plan may be approved by the Elected Body as provided in Section 6-2.2(K). Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of Minor Changes, must approve, with or without conditions, any amendments to the site specific development plan.

Subsections (7), (8), and (9) of Section 1-5.2(B) are renumbered (8), (9) and (10), respectively.

Section 2. Chapter B, Section 1-5.2 (B)(5) "Duration" is hereby amended by adding a new subsection (e) to read as follows:

- (e) Upon the expiration or termination of the vested right in accordance with this Section 1-5.2, the site specific development plan shall be subject to all current *Unified Development Ordinances* (UDO) regulations or other applicable requirements of law relating to the development of the site.

Section 3. Section 6-2.2(L), "Staff Changes," is hereby amended to read as follows:

~~"Staff Changes~~ Minor Changes

The Elected Body may, by resolution, allow the Planning staff to grant ~~staff~~ minor changes to site plans and special use district permit conditions after the site plans and conditions have been approved by ~~an~~ the Elected Body. Such resolution ~~shall~~ may include authority for staff to make such minor changes as consistent with law, ~~and~~ the intent of the original site plan or conditions ~~and which were not the subject of controversy during any public hearing or meeting.~~

NOTE: Items to be deleted are indicated with a ~~strikethrough~~. Items to be added are indicated with an underscore.

Section 4. Section 7-5.5, "Staff Changes," is hereby amended to read as follows:

~~"Staff Changes~~ Minor Changes

The Elected Body may, by resolution, allow the Planning staff to grant ~~staff~~ minor changes to site plans and special use district permit conditions after the site plans and conditions have been approved by ~~an~~ the Elected Body. Such resolution ~~shall~~ may include authority for staff to make such minor changes as consistent with law, and the intent of the original site plan or conditions and which were not the subject of controversy during any public hearing or meeting.

Section 5. This Ordinance shall be effective upon adoption.

NOTE: Items to be deleted are indicated with a ~~striketrough~~. Items to be added are indicated with an underscore.

UDO-126
AN ORDINANCE AMENDING
CHAPTER B "ZONING ORDINANCE"
OF THE *UNIFIED DEVELOPMENT ORDINANCES*
RELATED TO VESTED RIGHTS

Be it ordained by the City Council of the City of Winston-Salem, North Carolina that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 1-5.2(B), "General Statutes 160A-385.1," is hereby amended by adding a new subsection (7) to read as follows:

- (7) Amendments. Minor Changes, consistent with Section 6-2.2(L) and pursuant to any related resolutions, may be approved by Planning staff. All other amendments to a site specific development plan may be approved by the Elected Body as provided in Section 6-2.2(K). Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of Minor Changes, must approve, with or without conditions, any amendments to the site specific development plan.

Subsections (7), (8), and (9) of Section 1-5.2(B) are renumbered (8), (9) and (10), respectively.

Section 2. Chapter B, Section 1-5.2 (B)(5) "Duration" is hereby amended by adding a new subsection (e) to read as follows:

- (e) Upon the expiration or termination of the vested right in accordance with this Section 1-5.2, the site specific development plan shall be subject to all current *Unified Development Ordinances* (UDO) regulations or other applicable requirements of law relating to the development of the site.

Section 3. Section 6-2.2(L), "Staff Changes," is hereby amended to read as follows:

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UDO-126
AN ORDINANCE AMENDING
CHAPTER B "ZONING ORDINANCE"
OF THE *UNIFIED DEVELOPMENT ORDINANCES*
RELATED TO VESTED RIGHTS

Be it ordained by the Board of Aldermen of the Town of Kernersville, North Carolina that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 1-5.2(B), "General Statutes 160A-385.1," is hereby amended by adding a new subsection (7) to read as follows:

- (7) Amendments. Minor Changes, consistent with Section 6-2.2(L) and pursuant to any related resolutions, may be approved by Planning staff. All other amendments to a site specific development plan may be approved by the Elected Body as provided in Section 6-2.2(K). Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of Minor Changes, must approve, with or without conditions, any amendments to the site specific development plan.

Subsections (7), (8), and (9) of Section 1-5.2(B) are renumbered (8), (9) and (10), respectively.

Section 2. Chapter B, Section 1-5.2 (B)(5) "Duration" is hereby amended by adding a new subsection (e) to read as follows:

- (e) Upon the expiration or termination of the vested right in accordance with this Section 1-5.2, the site specific development plan shall be subject to all current *Unified Development Ordinances* (UDO) regulations or other applicable requirements of law relating to the development of the site.

Section 3. Section 6-2.2(L), "Staff Changes," is hereby amended to read as follows:

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The Elected Body may, by resolution, allow the Planning staff to grant ~~staff~~ minor changes to site plans and special use district permit conditions after the site plans and conditions have been approved by ~~an~~ the Elected Body. Such resolution ~~shall~~ may include authority for staff to make such minor changes as consistent with law, ~~and~~ the intent of the original site plan or conditions ~~and which were not the subject of controversy during any public hearing or meeting.~~

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Section 4. Section 7-5.5, "Staff Changes," is hereby amended to read as follows:

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UDO-126
AN ORDINANCE AMENDING
CHAPTER B "ZONING ORDINANCE"
OF THE UNIFIED DEVELOPMENT ORDINANCES
RELATED TO VESTED RIGHTS

Be it ordained by the Village Council of the Village of Clemmons, North Carolina that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 1-5.2(B), "General Statutes 160A-385.1," is hereby amended by adding a new subsection (7) to read as follows:

- (7) Amendments. Minor Changes, consistent with Section 6-2.2(L) and pursuant to any related resolutions, may be approved by Planning staff. All other amendments to a site specific development plan may be approved by the Elected Body as provided in Section 6-2.2(K). Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of Minor Changes, must approve, with or without conditions, any amendments to the site specific development plan.

Subsections (7), (8), and (9) of Section 1-5.2(B) are renumbered (8), (9) and (10), respectively.

Section 2. Chapter B, Section 1-5.2 (B)(5) "Duration" is hereby amended by adding a new subsection (e) to read as follows:

- (e) Upon the expiration or termination of the vested right in accordance with this Section 1-5.2, the site specific development plan shall be subject to all current Unified Development Ordinances (UDO) regulations or other applicable requirements of law relating to the development of the site.

Section 3. Section 6-2.2(L), "Staff Changes," is hereby amended to read as follows:

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AN ORDINANCE AMENDING
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Be it ordained by the Town Council of the Town of Lewisville, North Carolina that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 1-5.2(B), "General Statutes 160A-385.1," is hereby amended by adding a new subsection (7) to read as follows:

- (7) Amendments. Minor Changes, consistent with Section 6-2.2(L) and pursuant to any related resolutions, may be approved by Planning staff. All other amendments to a site specific development plan may be approved by the Elected Body as provided in Section 6-2.2(K). Prior to the issuance of a building permit for the subject site, the Elected Body in the case of amendments, or the Planning staff in the case of Minor Changes, must approve, with or without conditions, any amendments to the site specific development plan.

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