

UDO-XXX

AN ORDINANCE AMENDING CHAPTER B, ARTICLE III AND VI, CHAPTER C, ARTICLE V, AND CHAPTER D, ARTICLE IV OF THE UNIFIED DEVELOPMENT ORDINANCES

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. Chapter B, Article III, Section 3-4.9 – Variance (W) is hereby amended as follows:

3-4.9 VARIANCE (W)

Applications for variances from the requirements of the landscaping and screening standards may be approved by the Board of Adjustment after such Board of Adjustment holds a duly advertised public hearing in each case. Said application for a variance will be governed by the procedures set forth in Section B.6-1.4(B). ~~Approval of a variance shall include the determination that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance because of one or more of the following conditions:~~

~~(A) — NarrowUnusually narrow (less than ten (10) feet) sections of land available for planting because of existing permanent structures, existing paving, or natural features such as rock outcroppings.~~

~~(B) — Elevation ChangeElevation change of more than twelve (12) feet within the area where the screening would be located.~~

~~(C) — Public SafetySpecialized land uses such as public utilities, airports, etc. where strict adherence to the screening standard would significantly interfere with the function of that use and would create a public safety problem.~~

~~(D) — Public AgencyActions of a public agency.~~

~~(E) — Platting or DeedingDifficulties arising from the recording platting or deeding of land prior to the adoption of this Ordinance.~~

Section 2. Chapter B, Article III, Section 3-5.5 – Bufferyard Variance is hereby amended as follows:

3-5.5 BUFFERYARD VARIANCE

Application for variances from the requirements of the bufferyard standards may be approved by the Board of Adjustment in accordance with the procedures in Section B.6-1.4(B). ~~Approval of a variance shall include the determination that there are practical difficulties or~~

~~unnecessary hardships in the way of carrying out the strict letter of the ordinance because of one or more of the following conditions:~~

~~(A) — NarrowUnusually narrow (less than ten (10) feet) sections of land available for planting within the back and/or side yards because of existing permanent structures, existing paving, or natural features such as rock outcroppings.~~

~~(B) — Steep Slopes/Elevation ChangeExisting slopes in excess of two (2) to one (2:1) in locations where a bufferyard is required.~~

~~(C) — Public SafetySpecialized land uses such as public utilities, airports, etc. where strict adherence to the screening standard would significantly interfere with the function of that use and would create a public safety problem.~~

~~(D) — Public AgencyActions of a public agency.~~

~~(E) — Platting or DeedingDifficulties arising from the recorded platting or deeding of land prior to the adoption of this Ordinance.~~

Section 3. Chapter B, Article VI, Section 6-1.4 - Board of Adjustment is hereby amended as follows:

6-1.4 BOARD OF ADJUSTMENT

(B) Variances

(1) Authority.No provision of this Ordinance shall be interpreted as conferring upon the Board of Adjustment the authority to approve an application for a variance of the conditions of a permitted use except with respect to the specific waiving of requirements as to:

(a) General Dimension Requirements for Zoning Districts listed in Sections B.2-1.2, B.2-1.3, B.2-1.4 and B.2-1.5 and shall only include minimum zoning lot area and width, minimum setbacks, maximum impervious surface cover, or maximum height;

(b) Floodplain regulations as specified in Section C.2-2.7;

(c) Vehicular use landscaping requirements as specified in Section B.3-4;

(d) Bufferyard requirements as specified in Section B.3-5;

(e) Setback and landscaping requirements of the TO District as specified in Section B.2-1.6(B);

(f) Width of private access easements where such easement is for single family residential uses and where said private access easement was established prior to April 17, 1978;

(g) Off-street parking and loading as specified in Section B.3-3;

(h) Delay of building permits within designated Transportation Plan corridors as specified in Section B.3-7.1;

(i) Residential infill setback requirements as specified in Section B.3-8; **(W)** and

(j) Conservation Standards for the NCO District as specified in Section B.2-1.6(A).

(2) Limitations.The Board of Adjustment shall not grant a variance to permit a use not permitted in the applicable zoning district, nor shall it grant a variance for a site plan feature or condition adopted in conjunction with a special use district zoning.

(3) Public Hearing.Applications for variances may be approved by the Board of Adjustment after such Board of Adjustment holds a duly advertised public hearing in each case.

(4) Hardship.~~Said application for a variance may be approved only upon a finding of unnecessary hardship in meeting the dimensional requirements of this Ordinance. The hardship must arise from the recorded platting or deeding of land or any building constructed and completed prior to the adoption of this Ordinance, from any act of a public agency, or from natural conditions beyond the control of the property owner. The Board of Adjustment shall vary the provisions of the Ordinance upon a showing of all of the following~~When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(a) The unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of a variance, no reasonable use can be made of the property;

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

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

(d) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

~~(5) — Findings.The Board of Adjustment shall approve of a variance only when the Board of Adjustment makes an affirmative finding as follows:~~

~~(a) That the approval of the variance will not materially endanger the public health or safety if located where proposed and developed according to the application and plan as submitted and approved;~~

~~(b) That the use of the property otherwise meets all required conditions and specifications;~~

~~(c) That the approval of the variance will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and~~

~~(d) That the location and character of the use, if developed according to the variance, will otherwise be in harmony with the area in which it is to be located and in general conformity with Legacy.~~

~~(e) That the basis for a hardship determination in subsection B.6-1.4(B)(4) is met.~~

~~(65)~~ Review of Applications.Any such variance shall observe the spirit and purpose of this Ordinance and shall be granted only with reference to conditions and circumstances peculiar to the property involved. If the Board of Adjustment denies the application for a variance, it shall enter the reasons for the denial in the minutes of the meeting at which the action was taken.

~~(76)~~ Conditions.Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

~~(87)~~ Voting on Variance Requests.The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a variance. 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 alternatives to take the place of such members.

Section 4. Chapter B, Article IV, Section 6-2.1(O) Protest Petition is hereby amended as follows:

Section 6-2.1(O) ~~*Protest Petition*~~ **Submission of Written Statements** (W)The *Unified Development Ordinances* may from time to time be amended, supplemented, changed, modified, or repealed. **If any resident or property owner in the City submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the City Secretary at least two business days prior to the proposed vote on such change, the City**

Secretary shall deliver such written statement to the City Council. In case of a *protest* against any zoning map amendment signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change; or (ii) five percent (5%) of a one hundred (100) foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned; A street right-of-way shall not be considered in computing the one hundred (100) foot wide buffer area as long as that street right-of-way is one hundred (100) feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the one hundred (100) foot wide buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Elected Body may rely on the county tax listing to determine the owners of potentially qualifying areas. Such amendment shall not become effective except by favorable vote of three-fourths (¾) of all members of the Elected Body. For the purposes of this subsection, vacant positions on the Elected Body and members who are excused from voting shall not be considered members of the Elected Body for calculation of the requisite supermajority.

No *protest* against any zoning map amendment shall be valid or effective under the provisions of the foregoing paragraph unless such *protest* is in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do *protest* the proposed change or amendment, and unless such *protest* shall have been received by the Elected Body in sufficient time to allow at least two (2) normal workdays, excluding Saturdays, Sundays, and legal holidays, prior to the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. Such petition shall be accompanied by a map or sketch clearly showing the property of the petitioners in such detail as to show that the ownership requirements of the foregoing paragraph are met. A person who has signed a *protest* petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning map amendment. Only those *protest* petitions that meet the qualifying standards set forth above at the time of the vote on the proposed zoning map amendment shall trigger the supermajority voting requirement.

The foregoing provisions concerning *protests* shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted special use district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening provided for the special use district.

Section 5. Chapter C, Article V, Subsection 5-21.2 – Notice of Violation is, hereby, amended as follows:

5-21.2 - NOTICE OF VIOLATION

If, through inspection, it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, or has failed to comply with an approved plan, a notice of violation shall be served upon that person by registered or certified mail or other means reasonably calculated to give actual notice. The notice shall specify a date by which the person must comply with the Act, or this Ordinance, or rules or orders adopted pursuant to this Ordinance, and inform the person of the actions that need to be taken to comply with the Act, this Ordinance or rules or orders adopted pursuant to this Ordinance. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the Local Government serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation, as provided in G.S. 113A-64 and this Ordinance. **If the person engaged in the land-disturbing activity has not received a previous notice of violation under this Subsection 5-21.2, the Local Government shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the North Carolina Department of Environmental Quality, referral to a cooperative extension program, or by the provision of written materials, such as North Carolina Department of Environmental Quality guidance documents. If the Local Government is unable to deliver the notice of violation, in person, within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by N.C.G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.**

Section 6. Chapter C, Article V, Subsection 5-22.1 – Civil Penalties is, hereby, amended as follows:

5—22.1 – CIVIL PENALTIES

(A) ProcedureAny person who violates any of the provisions of ~~this section~~ **Article V of Chapter C of** the Ordinance, or rules, or orders adopted or issued pursuant to ~~this section~~ **Article V of Chapter C of** the Ordinance, or who initiates or continues a land-disturbing activity for which an erosion **and sedimentation** control plan ~~in-is~~ required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of ~~not more than~~ **up to** five thousand dollars (\$5,000.00) **per day**, except that the ~~penalty fee~~ for failure to submit

an erosion and sedimentation control plan shall be as provided in Subsection C.5-16.2. Each day of continuing violation shall constitute a separate violation. A person may be assessed an initial civil penalty of up to five thousand dollars (\$5,000.00) for the first day the violation is detected, and daily civil penalties, thereafter, for every day the violation continues. Notwithstanding any of the foregoing, if the person has not previously been assessed any civil penalty under G.S. 113A-64(a) or this Subsection 5-22.1 for any prior violation, and has since abated any continuing environmental damage resulting from the current violations, within one hundred eighty (180) days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Subsection 5-22.1 for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required will be twenty-five thousand dollars (\$25,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the day the violation is first detected. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his official duties. ~~Each day of continuing violation shall constitute a separate violation. A person may be assessed a one-time civil penalty of up to five thousand dollars (\$5,000.00) for the day the violation is first detected.~~

(B) Amount and EnforcementThe Director of Inspections shall determine the amount of the civil penalty to be assessed under this Subsection 5-22.1 and shall provide notice to the person in violation, directing the violator to either pay the assessment or contest the assessment by a written demand for a hearing within thirty (30) days after receipt of the notice of assessment. The notice shall set forth, in detail: (i) the civil penalty amount, (ii) a description of the violation for which the penalty has been imposed—and, (iii) the basis for assessment, (iv) the option available to the violator to request a remission of the civil penalty, under G.S. 113A-64.2 and Subsection 5-22.1(E), below, (v) the date by which the violator must make the remission request regarding the particular penalty, and (vi) if the violator has not previously been assessed any civil penalty under G.S. 113A-64(a) or this Subsection 5-22.1 for any prior violation, the date by which the violator must abate continuing environmental damage resulting from the violation, in order to qualify for the twenty-five thousand dollar (\$25,000) cap on cumulative total civil penalty under Subsection 5-22.1(A), above. In determining the amount of the penalty, the Director of Inspections shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this ordinance. Notice of the assessment shall

be by registered or certified mail or other means reasonably calculated to give actual notice. If payment **is not made within thirty (30) days after it is “due”, as that term is used below,** or **if** demand for hearing to contest the assessment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to the City/County Attorney for institution of a civil action in the name of the City of Winston-Salem/Forsyth County in the **appropriate division of the general courts of justice superior court of the county where the violation occurred or the violator’s residence or principle place of business is located,** for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this chapter. Such actions must be filed within three (3) years of the date the **final decision was served on the violator the assessment was due.** **An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative or judicial review of the assessment, as the case may be.**

(C) Contest of AssessmentA hearing on a civil penalty shall be conducted by the Director of Inspections within thirty (30) days after the date of receipt of the written demand for hearing. The Director of Inspections shall render his **or her** decision on the civil penalty at the conclusion of the hearing. Appeal from the final decision of the Director of Inspections shall be to the Superior Court of Forsyth County, where the violation occurred.

(D) Disbursal of PenaltiesCivil penalties collected pursuant to this Ordinance shall be used or disbursed as directed by G.S. 113A-64(a)(5).

(E) Requests for Remission of Civil Penalties

(i) A request for remission of a civil penalty imposed under G.S. 113A-64 or this Subsection 5-22.1 may be filed with the North Carolina Sedimentation Control Commission within sixty (60) days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing, pursuant to Chapter 150B of the General Statutes, and a stipulation of the facts on which the assessment was based.

(ii) The following factors shall be considered by the North Carolina Sedimentation Control Commission in determining whether a civil penalty remission request will be approved:

- (a) whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied, to the detriment of the petitioner,**
- (b) whether the petitioner promptly abated continuing environmental damage resulting from the violation,**
- (c) whether the violation was inadvertent or the result of an accident,**
- (d) whether the petitioner has been assessed civil penalties for any previous violations,**

(e) whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship, and

(f) the property tax value of the petitioner's property, upon which the violation occurred, excluding the value of any structures located on the property.

(iii) The petitioner shall have the burden of establishing that the civil penalty imposes financial hardship and of providing supporting information and documentation.

(iv) The North Carolina Sedimentation Control Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the current civil penalty will prevent payment for necessary remedial actions.

(v) The North Carolina Sedimentation Control Commission will not impose a penalty under G.S. 113A-64.2 that exceeds the civil penalty imposed by the North Carolina Department of Environmental Quality.

Section 7. Chapter C – Environmental Ordinance is, hereby, amended as follows:

All references to the term “Director of Inspections” shall be replaced with the term “Stormwater Director or his/her designee”.

Section 8. Chapter D, Article IV, Subsection 4(H) – Recording Final Plats is hereby amended as follows:

4. - MAJOR SUBDIVISIONS

(H) Recording Final PlatsThe final or record subdivision plat shall be prepared and submitted to Planning staff by the owner or owner's agent and recorded in the office of the Register of Deeds, within two (2) years after the approval of the preliminary subdivision plat by the Planning Board; ~~or otherwise, the owner or owner's agent must seek~~ an extension of preliminary subdivision approval, as provided in Subsection D.4(E), or a revised preliminary subdivision approval, as provided for in Subsection D.4(F) ~~must be granted~~. Plat(s) will be signed by Planning staff when all the following requirements have been met:

...

(2) Required Information and Certifications.Final plats will not be signed by Planning staff until all of the following information or certifications are received, if applicable:

...

(f) The developer or design engineer shall, based upon the approved infrastructure plans and in accordance with the Infrastructure Development Standards, prepare a detailed, unit price cost estimate to complete the approved infrastructure for submittal to the holder of the surety for review and approval. To this approved estimate shall be added a minimum fifty percent (50%) contingency, plus an amount estimated by the City Engineer to reimburse the City for its administrative costs to process the completion of the approved infrastructure. The amount of surety posted shall not be less than the sum of the estimated infrastructure costs, the contingency amount, and the estimated administrative costs enumerated above, **but shall, in no case, exceed one hundred twenty-five percent (125%) of the reasonably estimated cost to complete the required improvements, at the time the plat is recorded. Subject to the requirements of G.S. 160A-372, T**~~he~~ surety shall be satisfactory to the attorney of the jurisdiction as valid, sufficient and enforceable. Such surety shall be conditioned upon the performance of all work necessary to make the specified improvements within a stipulated period not to exceed two (2) years from the date of the surety. **If the improvements are not or will not be completed by the time the surety expires, the surety shall be extended, or a new surety shall be issued for an additional length of time, until the required improvements are complete.** Such surety shall provide that an action may be instituted by the jurisdiction for breach of any term(s) or condition(s) upon failure of the principal to perform the obligation(s) in all respects within one year from the end of the stipulated period during which the work required is to be performed. ~~A bond, an irrevocable letter of credit issued by a bank in a form approved by the Attorney of the jurisdiction or a deposit of funds in escrow may be accepted under the same terms and conditions applicable to sureties.~~ **The developer shall select, and the City shall accept, any of the following forms of surety: a surety bond, issued by any company authorized to do business in North Carolina, a letter of credit, issued by any financial institution licensed to do business in North Carolina, or such other form of guarantee as provides equivalent security to a surety bond or letter of credit.** ~~The~~**Any** bond, letter of credit, or deposit ~~may~~ **shall** be released by the jurisdiction when the specified improvements covered by the bond have been completed and approved by the Director of Public Works as being in accordance with the jurisdiction's standards and specifications. Notwithstanding the above requirements, if a development is financed in whole or in part through aid from the Federal Housing Authority or another agency of the federal or State governments, and said federal or State agency requires the filing of performance and payment bonds to insure completion of the specified improvements in accordance with approved plans, the filing of said performance and payment bonds is to be accepted

in lieu of the sureties describe above, so long as the local jurisdiction is named as a beneficiary of the surety posted.

Section 9. This ordinance shall be effective upon adoption.