

UDO-CC27

AN ORDINANCE AMENDMENT PROPOSED BY CITY-COUNTY PLANNING BOARD STAFF TO AMEND CHAPTERS 3 AND 10 OF THE *UNIFIED DEVELOPMENT ORDINANCES* (UDO) TO REVISE BOARD OF ADJUSTMENT PROCEDURES.

Be it ordained by the _____, that the Unified Development Ordinances are amended as follows:

Section 1. Section 3.2.1 of the UDO is amended as follows:

3.2.1 APPEALS AND INTERPRETATIONS

The appeal or interpretation request is subject to the following:

A. GENERAL

1. The Board of Adjustment shall hear and pass upon appeals from and shall review any decision made by the Director of Inspections or a designee.
2. The Board of Adjustment shall also hear and pass upon all other matters upon which it is required to act under this Ordinance. the appeal request is subject to the following standards.

B. APPLICABILITY

7. Only written decisions or determinations shall be appealed.
8. A decision includes any final and binding order, requirement, or determination.
9. The Director of Inspections or a **designee** ~~designee~~, shall give written notice to the owner of the property that is subject of the decision and to the party who sought the decision, if different from the owner.
10. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail.
11. The owner or other party receiving the written notice shall have thirty (30) days from receipt of the written notice, decision, or determination to file an appeal.
12. Any other person or party with standing to appeal shall have thirty (30) days from receipt of any source of actual or constructive notice of the decision or determination to file an appeal.

C. PROCEDURE

The procedure to be used in processing appeals and interpretations of decisions of the Director of Inspections or a designee authorized by the Board of Adjustment

7. FILING

a. Applications for appeals of decisions, determinations or interpretations of the Director of Inspections or a designee to be considered in any month by the Board of Adjustment shall be made by the property owner or the owner's authorized agent or any other party with standing to the City/County Clerk not less than twenty (20) days prior to the established meeting date of that month. Each petition shall be accompanied by:

~~b. — A fee as authorized in Section 3.1.1a, fees.~~

~~c. — The written decision of the Director of Inspections or a designee that is the subject of the requested appeal or interpretation.~~

i. A fee as authorized in Section 3.1.1A, Fees.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

ii. The written decision of the Director of Planning and Development Services or their designee that is the subject of the requested appeal or interpretation.

8. POSTING

a. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date the landowner or applicant posts a sign on the property using six inch (6 inch;) letters with the words "ZONING DECISION" or "SUBDIVISION DECISION" along with information identifying the means to contact an official for information about the decision in a prominent location on the property for at least ten (10) days.

b. Posting of such signs is not the only form of constructive notice.

c. Verification of the posting shall be provided by the owner or applicant to the official who made the decision.

9. TRANSMITTAL

a. The Director of Inspections or a designee shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken.

b. The Director of Inspections or a designee shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

10. STAY

a. An appeal of a notice of violation or other enforcement action stays enforcement of the action appealed from unless the official who made the decision certified to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in the affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance.

b. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

c. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such request is filed.

d. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed. Otherwise, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

11. HEARING

a. The official who made the decision shall be present at the hearing as a witness.

b. The appellant may not be limited at the hearing to matters stated in the notice of appeal.

c. If any party or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing.

12. VOTING ON APPEALS/INTEPRETATIONS

a. A majority **vote** of the members shall be required to ~~overturn a decision of the Director of Inspections~~ **reverse any order, requirement, decision, or determination of the Director of Planning and Development Services** or a **their** designee.

b. 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.

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

D. APPEALS OF WATERSHED-RELATED DECISIONS

The Zoning Board of Adjustment of the jurisdiction shall serve as the Watershed Review Board and provide administrative review of and variances to the standards in **Section 8.2, Salem Lake Watershed Protection**, and **Section 8.3, Watershed Protection (F)**.

7. ADMINISTRATIVE REVIEW

a. APPEALS

The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Stormwater Director or a **their** designee in the enforcement of **Section 8.2, Salem Lake Watershed Protection**, or **Section 8.3, Watershed Protection (F)**.

b. APPEAL PROCEDURE

- i. An appeal from a decision of the Stormwater Director or a **their** designee must be submitted to the Watershed Review Board within thirty (30) days from the date the order, interpretation, decision, or determination is made.
- ii. All appeals must be made in writing stating the reasons for appeal.
- iii. Following submission of an appeal, the Stormwater Director or a **their** designee shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

c. STAYS BASED ON APPEAL

- i. An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of these standards.
- ii. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the officer from whom the appeal is taken and upon due cause shown.

d. HEARING

- i. The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time.
- ii. At the hearing, any party may appear in person, by agent or by attorney.

E. APPEALS OF STORMWATER-RELATED DECISIONS

The Board of Adjustment of the City of Winston-Salem shall hear and pass upon appeals from and shall review any decision made by the Stormwater Director or their designee in the enforcement of Chapter 75, Article I-Illicit Stormwater Discharges and Connections and Article IV-Post Construction Stormwater of the Code of Ordinances of the City of Winston-Salem, entitled "Stormwater Management."

NOTE: Items to be removed are indicated with a ~~strikethrough~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 2. Section 3.2.11 of the UDO is amended as follows:

3.2.11 SITE PLAN

D. APPLICABILITY

7. PLANNING BOARD AND ELECTED BODY REVIEW

a. The provisions of these standards apply to site plans required to be submitted for review and recommendation or approval by the Planning Board and/or the Elected Body, or staff as identified in Section 10.1, Authorities.

b. Site plan and application requirements for other approvals or permits are determined by the Director of Inspections.

8. SITE PLAN APPROVAL REQUIRED FOR PERMIT

No building permit shall be issued on a lot until the site plan requirements of these standards are met.

9. USES AND ACTIVITIES REQUIRING SITE PLANS

A site plan shall be submitted in conjunction with the following:

a. SITE SPECIFIC DEVELOPMENT PLANS

Site specific development plans pursuant to establishing vested rights, as identified in Section 2.7, Vested Rights;

b. USES REQUIRING REVIEW OR PERMIT

Uses identified in Table 5.1.1, Principal Use Table, which require:

i. Planning Board review;

ii. ~~Special use permit~~ **Use Permit** from the Board of Adjustment **and review by the Planning Board per** Section 3.2.13.D.4, Planning Board Report; or

iii. ~~Special use permit~~ **Use Permit** from the Elected Body.

c. REQUEST FOR SPECIAL USE DISTRICT ZONING

Request for special use district zoning pursuant to Section 3.2.19D, Special Use Districts, including:

i. One-phase requests; and

ii. Two-phase requests, including the first phase site plan submittal and the second phase final development plan.

d. USES IN CERTAIN DISTRICTS

Any use requested within the YR, NO, NB, NSB, C, MU-S, NCO, TO, H, and HO zoning districts;

e. OLDER NEIGHBORHOODS

Any use requested under the Supplementary Standards for Older Neighborhoods of Section 6.4.1, Standards for Older Neighborhoods (F).

D. SPECIFIC SUBMITTAL REQUIREMENTS

The additional specific site plan submittal information required for different types of applications shall be determined from Table 3.2.11D, Site Plan Submittal Requirements. The additional submittal requirements for each application form shall be as provided in this section.

NOTE: Items to be removed are indicated with a ~~strikethrough~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

TABLE 3.2.11D: SITE PLAN SUBMITTAL REQUIREMENTS

TYPE OF APPLICATION	SUBMITTAL REQUIREMENTS
Table 5.1.1, Principal Use Table, Use Requiring Planning Board Review	Form 1
Table 5.1.1, Principal Use Table, Use Requiring Special Use Permit from Board of Adjustment and Review by the Planning Board	Form 1
Table 5.1.1, Principal Use Table, Use Requiring Special Use Permit from Elected Body	Form 1
Special Use District Zoning	
One-Phase	Form 1
Except Manufactured Home	Form 3
Except Manufactured Home on Individual Lot (on $\leq 1 \frac{1}{2}$ acre)	Form 2
Two-Phase	Form 1
First Phase Site Plan	
Second Phase Final Development Plan	
Development Plan	-
Use in NSB and C Districts	Form 1
Use in MU-S Districts	Form 1 or 2
Use in H and HO Districts	Section 4.9.5

1. FORM 1 REQUIREMENTS

a. APPLICABILITY

i. The following forms of development shall use the Form 1 submittal requirements:

1. Applications for special use district rezonings other than a single manufactured home ~~on one and one-half (1.5) acres or less;~~
2. Final development plans for the second phase of two-phase special use district rezoning, including uses in MU-S;
3. Special use permits **Use Permits** issued by the Elected Body and the Board of Adjustment which require Planning Board review;
4. Uses requiring site plan review by the Planning Board; and
5. Uses **in** the NSB and C districts.

2. FORM 2 REQUIREMENTS

Applications for the first phase of a two-phase special use district rezoning **for a single manufactured home on one and one-half (1.5) acres or less and for**, ~~including~~ uses in the MU-S District, shall contain the following information:

3. FORM 3 REQUIREMENTS

Applications for special use district rezoning for a single manufactured home ~~on one and one-half (1.5) acres or less~~ shall contain the following information:

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Section 3. Section 3.2.13 of the UDO is amended as follows:

3.2.13 SPECIAL USE PERMIT

C. APPLICATION PROCEDURE FOR A SPECIAL USE PERMIT SPECIAL USE PERMIT APPROVAL BY ELECTED BODY PROCEDURE

2. APPLICATION AND FEES

Applications for ~~special use permits~~ **Special Use Permits** to be considered by the Elected Body shall be submitted in the appropriate electronic plan review system by the date shown on the Planning Board calendar of significant dates for the next regularly scheduled Planning Board meeting accompanied by a completed application form and other required information, site plans meeting the requirements for site plan submittal in **Section 3.2.11, Site Plan**, and fees in accordance with **Section 3.1.1A, Fees**.

3. NOTICE

- a. The Planning Board shall post on the property a notice of public meeting at least ten (10) days prior to the date of the meeting of the Planning Board.
- b. A sign is required on the property at a conspicuous location(s). Location(s) which are not conspicuous or require additional notification to the public, will be required to have directional sign(s) posted.
- c. Each sign(s) or each directional sign(s) will have a charge as determined by the Director of Planning.
- d. The signs are, and shall remain, the property of the governmental agency which provided them, and shall be prepared, posted and reclaimed by it.
- e. The sign serves as constructive notice of the Elected Body public hearing.
- f. The review of the site plan by the Planning Board is not a public hearing.

4. ADVERTISEMENT

The Elected Body shall duly advertise a public hearing.

5. NOTIFICATION TO PROPERTY OWNERS AND ADJACENT PROPERTY OWNERS FOR AN ELECTED BODY SPECIAL USE PERMIT

Letters shall be sent via first class mail to the subject property owner(s) and all property owners within five hundred (500) feet of any portion of the subject property for which the Special Use Permit is requested.

D. SPECIAL USE PERMIT APPROVAL BY BOARD OF ADJUSTMENT PROCEDURE

7. APPLICATIONS

Applications for special use permits to be considered in any month by the Board of Adjustment shall be made by the property owner or the owner's authorized agent to the Director of Planning and Development Services, or designee, in the appropriate electronic plan review system not less than twenty (20) days prior to the established meeting date of that month. Each petition shall be accompanied by:

- a. Fee as authorized in **Section 3.1.1A, Fees**.
- b. **For Special Use Permits that do not require Planning Board review, a** scaled site plan (plot plan) of the property which may be prepared by either professional or nonprofessional persons showing the location of any existing and proposed structure(s) and any relevant notations on the site plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application. (F)
- c. **For Special Use Permits that do not require Planning Board review, a** scaled site plan (plot plan) of the property showing the location of any existing and proposed structure(s) and any relevant notations on the site

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plan concerning the request. Staff shall determine if a site plan is required with an appeal or interpretation application. (W)

d. For Special Use Permits that require Planning Board review, a scaled site plan that meets Form 1 requirements as detailed in Section 3.2.11.D, Specific Submittal Requirements.

e. Any other written materials the applicant would like to submit to the Board for consideration of the application.

6. BOA VOTING PROCEDURE FOR VOTING ON SPECIAL USE PERMITS

a. A majority vote of the members shall be required to issue a ~~special use permit~~ **Special Use Permit**.

b. 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. Section 3.2.16 of the UDO is amended as follows:

3.2.16 VARIANCE

A. 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:

1. General dimension requirements for zoning districts listed in **Section 4.1.4, Dimensional Requirements**, and shall only include minimum zoning lot area and width, minimum setbacks, maximum impervious surface cover, or maximum height;
2. Floodplain regulations as specified in **Section 8.1.2D, Variance Procedures**;
3. Vehicular use landscaping requirements as specified in **Section 6.2.2, Landscaping Standards – Forsyth County**, and **Section 6.2.1, Landscaping and Tree Preservation Standards – Winston-Salem**;
4. Bufferyard requirements as specified in **Section 6.3, Bufferyard Standards**;
5. Setback and landscaping requirements of the TO District as specified in **Section 4.9.3, TO Thoroughfare Overlay District**;
6. 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;
7. Off-street parking and loading as specified in **Section 6.1, Off-Street Parking and Loading**;
8. Delay of building permits within designated Transportation Plan corridors as specified in **Section 7.6.2A, Public Rights-of-Way**;
9. *Residential infill setback requirements as specified in **Section 6.4.2, Supplementary Standards for Residential Development in GMA 2 (W)***; and
10. Conservation Standards for the NCO District as specified in **Section 4.9.2, NCO Neighborhood Conservation Overlay District**; and
11. *Post construction stormwater requirements as specified in Chapter 75, Article IV-Post Construction Stormwater of the Code of the City of Winston-Salem.*

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

M. VARIANCE OF POST CONSTRUCTION STORMWATER REQUIREMENTS

The Board of Adjustment of the City of Winston-Salem shall hear and decide requests for variances from the Stormwater Director or their designee in the enforcement of Chapter 75, Article IV-Post Construction Stormwater of the Code of Ordinances of the City of Winston-Salem, entitled "Stormwater Management."

Section 5. Section 10.1.3.A of the UDO is amended as follows:

10.1.3 BOARD OF ADJUSTMENT

A. FORSYTH COUNTY – ESTABLISHMENT AND MEMBERSHIP (F)

1. CREATION

A Forsyth County Board of Adjustment, consisting of five (5) members, with two (2) alternate members, appointed by the Elected Body (Board of Commissioners) has been established and is hereby continued.

2. MEMBERSHIP

a. TENURE

- i. The members are to serve for terms of three (3) years, except that the initial Board of Adjustment is to consist of one appointee for a term of one year; two (2) appointees for terms of two (2) years, and two (2) appointees for terms of three (3) years.
- ii. Thereafter, all appointments are to be for terms of three (3) years.
- iii. The two (2) alternate members are to serve for terms of three (3) years, except that initially one alternate member shall serve for a term expiring April 30, 1989, and one alternate member shall serve for a term expiring April 30, 1990.
- iv. Thereafter, alternate member appointments are to be for a term of three (3) years.

b. VACANCIES

Any vacancy on the Board of Adjustment is to be filled by the Elected Body for the remainder of the unexpired term.

c. REMOVAL FOR CAUSE

Any member of the Board of Adjustment may be removed for cause by the Elected Body upon written charges and after a public hearing.

d. ALTERNATE MEMBERS

In the absence or temporary disqualification of any regular member at a regular or special meeting of the Board of Adjustment, an alternate member or members may sit on the Board of Adjustment and serve in replacement while attending the regular or special meeting, and shall have and exercise all the powers and duties of a regular member for that meeting.

2. MAJORITY VOTE **VOTING PROCEDURES**

~~The concurring vote of a majority of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Director of Inspections, or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass judgment, or to grant a variance from the provisions of this Ordinance.~~ **The Forsyth County Board of Adjustment shall follow the voting procedures detailed in Section 3.2, further detailed below:**

- i. A majority vote of the members shall be required to reverse any order, requirement, decision, or determination of the Director of Planning and Development Services or their designee, as required in Section 3.2.1.C.6.a, Voting on Appeals/Interpretations.**
- ii. A majority vote of the members shall be required to issue a Special Use Permit, as required in Section 3.2.13.D.6.a, BOA Procedure for Voting on Special Use Permits.**

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underscore are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

iii. The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a variance, as required in Section 3.2.16.G.4.a, Voting on Variance Requests.

c. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

2. COMPENSATION

The per diem compensation of the members of the Board of Adjustment shall be fixed by the Elected Body.

3. RULES AND PROCEDURES

a. A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker.

b. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

c. The Board of Adjustment shall adopt other rules and procedures as it deems necessary, as long as they do not conflict with the rules and procedures established in this section.

NOTE: Items to be removed are indicated with a ~~strikethrough~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

Section 6. Section 10.1.3.B of the UDO is amended as follows:

10.1.3 BOARD OF ADJUSTMENT

B. WINSTON-SALEM ~~ESTABLISHMENT AND MEMBERSHIP (W)~~

1. CREATION

A Winston-Salem Board of Adjustment, consisting of five (5) members, with two (2) alternate members, appointed by the Elected Body (City Council) has been created and is hereby continued; providing, however, that one additional regular member and one additional alternate member in accordance with Section 160d-307 of the North Carolina General Statutes are to be appointed by the Board of County Commissioners of Forsyth County, upon recommendation of the City Council, from persons who reside outside but within the extraterritorial zoning jurisdiction of the City of Winston-Salem, said members to have the same powers, duties, and responsibilities as all other members.

2. MEMBERSHIP

a. TENURE

The members are to serve for terms of three (3) years.

b. VACANCIES

Any vacancy on the Board of Adjustment is to be filled by the Elected Body for the remainder of the unexpired term; provided, however, that a vacancy in a position filled by appointment of the Board of County Commissioners is to be filled by the Board of County Commissioners.

c. REMOVAL FOR CAUSE

Any member of the Board of Adjustment may be removed for cause by the Elected Body upon written charges and after a public hearing.

d. ALTERNATE MEMBERS

In the absence or temporary disqualification of any regular member at a regular or special meeting of the Board of Adjustment, an alternate member or members may sit on the Board of Adjustment and serve in replacement while attending the regular or special meeting, and shall have and exercise all the powers and duties of a regular member for that meeting.

3. ~~FOUR-FIFTHS (4/5) VOTE REQUIRED~~ **VOTING PROCEDURES**

~~a. The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of the Director of Inspections, or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass judgment, or to grant a variance from the provisions of this Ordinance.~~ **The Winston-Salem Board of Adjustment shall follow the voting procedures detailed in Section 3.2, further detailed below:**

i. A majority vote of the members shall be required to reverse any order, requirement, decision, or determination of the Director of Planning and Development Services or their designee, as required in Section 3.2.1.C.6.a, Voting on Appeals/Interpretations.

ii. A majority vote of the members shall be required to issue a Special Use Permit, as required in Section 3.2.13.D.6.a, BOA Procedure for Voting on Special Use Permits.

iii. The concurring vote of four-fifths (4/5) of the Board shall be necessary to grant a variance, as required in Section 3.2.16.G.4.a, Voting on Variance Requests.

b. *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 ~~super~~majority if there are no qualified alternates available to take the place of such members.*

2. COMPENSATION

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

The per diem compensation of the members of the Board of Adjustment shall be fixed by the Elected Body.

3. RULES AND PROCEDURES

a. A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker.

b. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

c. The Board of Adjustment shall adopt other rules and procedures as it deems necessary, as long as they do not conflict with the rules and procedures established in this section.

Section 7. Section 10.1.3.C of the UDO is amended as follows:

10.1.3 BOARD OF ADJUSTMENT

C. POWERS AND DUTIES

1. SPECIAL USE PERMITS AUTHORIZED BY THE BOARD OF ADJUSTMENT

The Board of Adjustment shall review all requests for permits as designated in **Table 5.1.1, Principal Use Table**, and **Section 5.2, Use-Specific Standards**.

2. VARIANCES

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 **Section 4.5, General Residential Zoning District Standards**, **Section 4.6, General Commercial Zoning Districts**, **Section 4.7, General Industrial Zoning Districts**, and **Section 4.8, General Institutional and Mixed-Use Zoning Districts**, 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 8.1.2D, Variance Procedures**.

c. The Board of Adjustment shall adopt other rules and procedures as it deems necessary, as long as they do not conflict with the rules and procedures established in this section.

d. Bufferyard requirements as specified in **Section 6.3, Bufferyard Standards**;

e. Setback and landscaping requirements of the TO District as specified in **Section 4.9.3, TO Thoroughfare Overlay District**;

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 6.1, Off-Street Parking and Loading**;

h. Delay of building permits within designated Transportation Plan corridors as specified in **Section 7.6.2A, Public Rights-of-Way**;

i. Residential infill setback requirements as specified in **Section 6.4.2, Supplementary Standards For Residential Development In GMA 2 (W)**; and

j. Conservation Standards for the NCO District as specified in **Section 4.9.2, NCO Neighborhood Conservation Overlay District**; and

NOTE: Items to be removed are indicated with a ~~strike through~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.

k. *Post construction stormwater requirements as specified in Chapter 75, Article IV-Post Construction Stormwater of the Code of the City of Winston-Salem.*

3. APPEALS AND INTERPRETATIONS

a. GENERAL

i. The Board of Adjustment shall hear and pass upon appeals from and shall review any decision made by the Director of Inspections or a designee.

ii. The Board of Adjustment shall also hear and pass upon all other matters upon which it is required to act under this Ordinance, including but not limited to, decisions of the Housing Conservation Administrator, the Watershed Administrator, the Erosion and Sedimentation Control Administrator, the Subdivision Administrator, the **Stormwater Director** and the Historic Resources Commission (HRC).

1. QUASI-JUDICIAL DECISIONS

- a. The Board shall determine contested facts and make its decision within a reasonable time.
- b. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.
- c. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards.
- d. The written decision shall be signed by the Chair or Secretary of the Board.
- e. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board.
- f. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.
- g. The person required to provide notice shall certify that proper notice has been made.
- h. **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).**

Section 8. The UDO is amended as follows:

The specific words “Director of Planning and Development Services” shall replace the specific words “Director of Inspections” and the specific words “Director of Planning” wherever they currently exist in the UDO.

The specific words “or their designee” shall replace the specific words “or a designee” wherever they currently exist in the UDO if and only if the specific words “or a designee” follow the specific words “Director of Planning and Development Services”, “Director of Inspections”, or “Director of Planning”.

Section 9. This Ordinance shall be effective upon adoption.

NOTE: Items to be removed are indicated with a ~~strikethrough~~; items to be added are shown as **highlighted**. Items with a single underline are applicable to Forsyth County only, and *italicized* items are applicable to Winston-Salem only.