

**ACTION REQUEST FORM**

**DATE:** August 12, 2014  
**TO:** The Honorable Mayor and City Council  
**FROM:** A. Paul Norby, Director of Planning and Development Services

**COUNCIL ACTION REQUEST:**

Request for Public Hearing on Zoning Text Amendment proposed by the City Attorney's Office

**SUMMARY OF INFORMATION:**

Zoning Text Amendment proposed by the City Attorney's Office to amend Chapter B.6 to eliminate the Planning Board Findings of Fact requirement for elected body Special Use Permits and to substitute a site plan completeness check (UDO-251).

**PLANNING BOARD ACTION:**

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

**UDO - 251**  
**AN ORDINANCE PROPOSED BY THE CITY ATTORNEY'S OFFICE**  
**AMENDING CHAPTER B OF THE *UNIFIED DEVELOPMENT ORDINANCES***  
**TO ELIMINATE THE PLANNING BOARD FINDINGS OF FACT REQUIREMENT**  
**FOR ELECTED BODY SPECIAL USE PERMITS**  
**AND SUBSTITUTE A PLANNING BOARD SITE PLAN REVIEW ACTION**

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 VI – Administration is hereby amended as follows:

**6-1 ADMINISTRATION**

**6-1.3 PLANNING BOARD**

(A) Site Plan Review

The Planning Board shall review all requests for permits requiring a site plan review, as **designated as a “P” or designated as an “A” or “E”** in Table B.2.6 **and not exempted in Section B.6-1.4(A)** to assure that **the requirements of** Section B.2-5 and other applicable **provisions of the UDO** are met.

- (1) Approval and Conditions. The Planning Board shall approve any requests for permits which meet all the requirements of this Ordinance, and deny any such requests which do not meet all the requirements of this Ordinance. The Planning Board may, as part of its approval, require the following conditions to reduce impacts associated with the project:
- (a) Public right-of-way dedication to meet projected needs for roads shown on the ~~Transportation Plan~~ **Comprehensive Transportation Plan**, or for other roads as determined by the City of Winston-Salem or North Carolina Department of Transportation.
  - (b) Road and/or sidewalk improvements as recommended by the City of Winston-Salem or North Carolina Department of Transportation.
  - (c) Access control, including the location, number, and dimensions of driveways; and combining driveways with and providing connections to adjacent properties, as recommended by Planning staff or other appropriate agencies.
  - (d) Reorientation of parking areas or building access to insure on-site traffic flow and pedestrian safety.
  - (e) Dedication or granting of easements for greenways identified on the adopted Greenway Plan.
  - (f) Screening and location of dumpsters, loading areas, on-site utilities, or other visually obtrusive features as determined by the Planning Board.

- (g) Space for public transit vehicle maneuvering and/or public transit shelter if determined necessary by the Winston-Salem Transit Authority.
  - (h) Stormwater management plans as recommended by Planning staff and appropriate agencies.
  - (i) Location and screening of improvements or activities which may generate substantial noise.
  - (j) Compliance with recommendations of the City of Winston-Salem or State of North Carolina or other governmental departments reviewing the projects.
  - (k) Compliance with all applicable conditions previously approved for the property in question.
  - (l) Water and sewer service, if necessary for the development project, are available in adequate capacity.**
- (2) Special Use District Zoning. No separate site plan review by the Planning Board is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.
- (3) Staff Changes. The Planning Board may, by resolution, allow the Planning staff to grant staff changes to site plans and conditions after the site plans and conditions have been approved by the Planning Board. Such resolution shall include authority for staff to make changes as consistent with law and the intent of the original site plan or conditions.
- (B) Special Use Permits Approved by the Board of Adjustment or the Elected Body. The Planning Board shall review **for compliance with the requirements of this ordinance and subsection (a)(1) above** ~~and make recommendations concerning~~ the site plans submitted in conjunction with requests for special use permits issued by the Board of Adjustment or the Elected Body in accordance with Section B.6, unless the applications are otherwise exempted in Section B.6-1.4(A)(2).
- (C) Amendments to the Zoning Ordinance and the *Official Zoning Maps*  
The Planning Board shall review all requests for amendments to the Zoning Ordinance and the Official Zoning Maps and make recommendations to the Elected Body, in accordance with Section B.6-2.
- (D) Application Procedures  
Complete applications for Planning Board Reviews shall be submitted at least thirty-one (31) calendar days prior to the next regularly scheduled Planning Board meeting, including a completed application form and other required information, site plans meeting the requirements for site plan submittal in Section B.7, and fees in accordance with Section B.8.

6-1.5 SPECIAL USE PERMITS AUTHORIZED BY THE ELECTED BODY

- (A) Elected Body Review  
The Elected Body shall review all requests for permits as designated in Table B.2.6 and, in doing so, shall follow quasi-judicial procedures.
- (B) Public Hearing  
Applications for special use permits requiring approval by the Elected Body may be approved after the Elected Body receives a report **on conformance of the site plan with UDO requirements** and ~~recommendation~~ from the Planning Board and holds a duly advertised public hearing in each case.
- (C) Permit Issuance  
No zoning or building permit shall be issued until a special use permit for the requested use has been approved by the Elected Body ~~acting on the recommendation of the Planning Board~~.
- (D) ~~Planning Board Findings~~ **RESERVED**  
~~Findings of the Planning Board accompanying a favorable recommendation shall include:~~
- ~~(1) The development is in conformity with Legacy;~~
  - ~~(2) Water and sewer service are available in adequate capacity;~~
  - ~~(3) Where buildings greater than thirty five (35) feet in height are proposed within the City of Winston-Salem limits, there is adequate access for aerial fire-fighting equipment;~~
  - ~~(4) Streets and highways, both within and in the vicinity of the development, are of such design and traffic carrying capacity that the development will not create a traffic hazard;~~
  - ~~(5) General layout and design of the development meet all requirements of this Ordinance;~~
  - ~~(6) Adequate, safe and convenient provision is made for vehicular and pedestrian movement on the site with particular attention paid to the needs of public safety equipment and personnel (fire, police, etc.) and service vehicles and personnel (sanitation, postal delivery, etc.);~~
  - ~~(7) The Planning Board may recommend to the Elected Body conditions as identified in Section B.6 1.3(A)(1) for the issuance of the special use permit to reduce impacts associated with the project.~~

(E) Elected Body Decision

The Elected Body shall consider the matter and the ~~recommendations~~ **review of the site plan by** of the Planning Board and may:

- (1) Approve. Approve the application and direct issuance of the special use permit therefor;
- (2) Approve with Conditions. Approve the application with the conditions as recommended by the Planning Board or additional conditions as specified in Section B.6-1.3(A)(1) to assure that the site will be developed in a manner conducive to the public health, safety and welfare, and direct issuance of the special use permit; or,
- (3) Deny. Deny the application.

No vote greater than a majority vote shall be required for the Elected Body to issue a special use permit. For the purposes of this section, vacant positions on the Elected Body and members who are absent or excused from voting on a special use permit shall not be considered members of the Elected Body for calculation of the requisite majority.

(F) Required Findings

The Elected Body shall issue a special use permit only when the Elected Body makes an affirmative finding as follows:

- (1) That the use 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;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
- (4) That the location and character of the use, if developed according to the application and plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with *Legacy*?

No provision of this Ordinance shall be interpreted as conferring upon the Elected Body the authority to approve an application for a special use permit for any use unless authorized in Table B.2.6. In approving an application for the issuance of a special use permit, the Elected Body may impose additional conditions as identified in Section B.6-1.3(A)(1). If the Elected Body denies the application for the issuance of a special use permit, it shall enter the reasons for denial in the minutes of the meeting at which the action was taken.

- (G) Extension of Permit  
In considering any request for extension of the permit, ~~the Planning Board may recommend and~~ the Elected Body may, in the public interest, make such changes in the conditions under which the permit was granted as may be indicated by any new information relating to the property or to the use proposed.
- (H) Special Use District Zoning  
No separate special use permit is required for a use which is permitted as a part of a special use district zoning adopted by the Elected Body and which meets the requirements of this Ordinance.
- (I) Application Procedure for a Special Use Permit
- (1) Application and fees. Applications for Special Use Permits shall be submitted at least thirty-one (31) calendar days prior to 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 B.7, and fees in accordance with Section B.8.
  - (2) Notice. 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. 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. Each sign(s) or each directional sign(s) will have a charge as determined by the Director of Planning. The signs are, and shall remain, the property of the governmental agency which provided them, and shall be prepared, posted and reclaimed by it. **The sign serves as constructive notice of the Elected Body public hearing. The review of the site plan by the Planning Board is NOT a public hearing.**
  - (3) Advertisement. The Elected Body shall duly advertise a public hearing.
  - (4) Notification to Property Owners and Adjacent Property Owners for an Elected Body Special Use Permit. Notification to property owners and adjacent property owners shall be handled as follows:
    - (1) 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.

**Section 2.** This ordinance shall be effective upon adoption.

**STAFF REPORT**

**DOCKET #** UDO-251  
**STAFF:** [Chris Murphy](#)

**REQUEST**

An ordinance proposed by the City Attorney’s Office amending the *Unified Development Ordinances* (UDO) to eliminate the Planning Board findings of fact requirement for Elected Body special use permits and substitute a Planning Board site plan review action.

**BACKGROUND**

The current requirement of sending an Elected Body special use permit (SUP) plan to the Planning Board to hold a public hearing on findings of fact different to those considered by the Elected Body in their public hearing is unnecessary (see Table below for a comparison between the “findings of fact”). There is no legal requirement for the process that is being used. The discussions, considerations and issues voiced at the Planning Board, either by the Planning Board members or others, cannot be considered by the Elected Body, as it is hearsay information (information not presented in the public hearing before the Elected Body). Additionally, the practice of holding two (2) separate public hearings and discussing two (2) different sets of findings of facts, is confusing to the citizens and leaves them without a clear understanding of where to voice their concerns.

<b>Planning Board Findings of Fact</b>	<b>Elected Body Findings of Fact</b>
1. The development is in conformity with <i>Legacy</i> ;	1. That the use 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;
2. Water and sewer service are available in adequate capacity;	2. That the use meets all required conditions and specifications;
3. Where buildings greater than thirty-five (35) feet in height are proposed within the City of Winston-Salem limits, there is adequate access for aerial fire-fighting equipment;	3. That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
4. Streets and highways, both within and in the vicinity of the development, are of such design and traffic-carrying capacity that the development will not create a traffic hazard;	4. That the location and character of the use, if developed according to the application and plan submitted and approved, will be in
5. General layout and design of the development meet all requirements of this Ordinance;	
6. Adequate, safe and convenient provision is made for vehicular and pedestrian movement on the site with particular attention paid to the needs of public safety	

<p>equipment and personnel (fire, police, etc.) and service vehicles and personnel (sanitation, postal delivery, etc.);</p> <p>7. The Planning Board may recommend to the Elected Body conditions as identified in Section B.6-1.3(A)(1) for the issuance of the special use permit to reduce impacts associated with the project.</p>	<p>harmony with the area in which it is to be located and in general conformity with Legacy.?</p>
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**ANALYSIS**

The proposed text amendment eliminates the requirement for a Planning Board public hearing. In place of the public hearing, the Planning Board will conduct a “Planning Board Review (PBR)” of the site plan, certifying that the site plan meets UDO requirements and recommending additional conditions necessary to alleviate possible impacts to surrounding property owners from the proposed use. This will not be a public hearing item – the report and minutes that come out of the Planning Board meeting will center solely on compliance of the site plan to the UDO requirements and any recommended conditions of approval. As a result, there will not be any hearsay information considered by the Elected Body. This simplifies the process and places the focus of the discussion in the Quasi-judicial proceedings of the Elected Body – where they legally should be heard.

**RECOMMENDATION**

**APPROVAL**



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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-251  
JULY 10, 2014**

Chris Murphy presented the staff report.

**PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Clarence Lambe moved approval of the text amendment.

SECOND: Paul Mullican

VOTE:

FOR: Unanimous

AGAINST: None

EXCUSED: None

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A. Paul Norby, FAICP  
Director of Planning and Development Services

**TO:** Mayor Allen Joines and Members of the City Council  
**FROM:** A. Paul Norby, Director of Planning and Development Services  
**DATE:** August 12, 2014  
**SUBJECT:** UDO-251 (Text Amendment regarding Findings of Facts for Elected Body Special Use Permits)

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Winston-Salem, NC 27102  
CityLink 311 (336.727.8000)  
Fax 336.748.3163

Planning staff will be briefing the Community Development/Housing/General Government Committee on UDO-251 (a text amendment regarding Findings of Facts for Elected Body Special Use Permits) at its August 12, 2014 meeting.

UDO-251 eliminates the requirement for the Planning Board to have a public hearing and make findings of fact for a special use permit that goes to the Elected Body. This is proposed in conjunction with the City Attorney's office to reduce confusion in the roles of the two bodies. The Planning Board under this amendment would review the site plan for compliance with UDO requirements.

If you have any questions or comments which you would like addressed before the Community Development/Housing/General Government Committee meeting, please contact me at 747-7061 or pauln@cityofws.org.

**City Council:** Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; Molly Leight, South Ward; Jeff MacIntosh, Northwest Ward; Derwin L. Montgomery, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

**Forsyth County Commissioners:** Richard V. Linville, Chairman; Gloria D. Whisenhunt, Vice Chair; Mark Baker; Walter Marshall; David R. Plyler, Bill Whiteheart; Everette Witherspoon; County Manager: Dudley Watts, Jr.

**City-County Planning Board:** Arnold G. King, Chair; Allan Younger, Vice-Chair; Tommy Hicks; Clarence R. Lambe, Jr.; Darryl Little; Barry A. Lyons; Lynne Mitchell; Paul W. Mullican; Brenda J. Smith