April 20, 2005

City-County Inspections Division
c/o Ronnie Grubbs
P. O. Box 2511
Winston-Salem, NC  27102

RE:  ZONING TEXT AMENDMENT UDO-130

Dear Mr. Grubbs:

The attached report of the Planning Board to the Forsyth County Board of Commissioners and City of Winston-Salem City Council is sent to you at the request of the Commissioners and Council Members.

When the text amendment is scheduled for public hearing, you will be notified by Jane Cole, Clerk to the County Commissioners and Renee Henderson, City Secretary, of the date on which the Commissioners and City Council will hear this petition.

Sincerely,

A. Paul Norby, AICP
Director of Planning

Attachment

pc:    Jane Cole, County Manager's Office
       Renee Henderson, City Secretary
FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: ____________________ AGENDA ITEM NUMBER: ____________

SUBJECT:-

   A. Public Hearing on Zoning Text Amendment proposed by City County
      Inspections Division to amend Chapter B, Section 5-2.8 regarding
      discontinued use (UDO-130). (Remanded back to Planning Board by City
      Council and County Commissioners.).

   B. Approval of Ordinance

COUNTY MANAGER’S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:-

   See attached staff report.

   After consideration, the Planning Board vote resulted in a tie vote.

ATTACHMENTS:-  X YES  ___ NO

SIGNATURE: ________________________________________ DATE:
**ACTIONS REQUEST FORM**

**DATE:** April 20, 2005  
**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 City County Inspections Division  

**SUMMARY OF INFORMATION:**

Zoning Text Amendment proposed by City County Inspections Division to amend Chapter B, Section 5-2.8 regarding discontinued use (UDO-130). (Remanded back to Planning Board by City Council and County Commissioners.)  

**PLANNING BOARD ACTION:**

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<th>APPROVAL</th>
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<td>FOR:</td>
<td>CLARK, FOLAN, GLENN</td>
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<tr>
<td>AGAINST:</td>
<td>KING, MULLICAN, NORWOOD</td>
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<td>SITE PLAN ACTION:</td>
<td>NOT REQUIRED</td>
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STAFF REPORT

DOCKET #: UDO-130
STAFF: Ronnie Grubbs

REQUEST

Request for Public Hearing on zoning text amendment proposed by the Inspection Division to amend Section 5.2.8 DISCONTINUANCE (UDO-130).

BACKGROUND

It has been determined, previous to the 1994 UDO, that there was a need for clarification of the definition of discontinuance of a nonconforming use. Currently, one of the conclusive evidences is "Failure to take all necessary steps to resume the nonconforming use with reasonable dispatch in the circumstances, including failure to advertise the property for sale or lease". This provision was proven ambiguous during a court case, also prior to the UDO, and legal authorities recommended inserting a new provision on “Regardless of Intent” which would eliminate anyone from claiming they intended to reopen a nonconforming use. Subsequently, there was a text amendment approved to the old zoning ordinance for that new provision. That provision was for a period of two years.

Unfortunately, the 1994 UDO did not include that same provision when it was adopted. The "Regardless of Intent" provision was carried over in the UDO for Kernersville which limited it to 180 days but was not carried over for Winston-Salem and Forsyth County. Staff believes that this was an oversight.

ANALYSIS

Staff is recommending including the provision that existed prior to the 1994 UDO with one change, decreasing the time from two years to one year. A nonconforming use is a privilege and not an entitlement and with this provision in place, it would be very difficult to reopen a nonconforming use if the use was not operated for more than 365 consecutive days. Therefore, the change would come closer to meeting the intent of the zoning ordinance which is for nonconforming uses, once the original use is abandoned, to conform to the existing zoning. This new provision with a more clarified definition of discontinuance will help accomplish that intent.

The City Legal staff has reviewed and approved the insertion of a new provision in section 5-2.8 as follows:

"Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of three hundred and sixty-five (365) consecutive days, or of land for a period of thirty (30) consecutive days."
The existing subsection (5) regarding the discontinuance of a nonconforming use of land for thirty (30) successive days will be eliminated since it has been combined into the new provision above.

**RECOMMENDATION**

**APPROVAL**

Michelle McCullough presented the staff report.

**PUBLIC HEARING** - February 10, 2005

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Carol Eickmeyer moved approval of the zoning text amendment.
SECOND: Jerry Clark
VOTE:
   FOR: Clark, Eickmeyer, Folan
   AGAINST: King, Lambe, Mullican, Norwood, Smith
   EXCUSED: None

MOTION FAILED.

During discussion by the Planning Board, the following points were made:

1. Example of a nonconforming use of land (as contrasted with a nonconforming use of a structure) would be a lumber mill or the storage of equipment on a site.

2. Clarence Lambe indicated that the former Staley's Restaurant on Reynolda Road is an example of why he believes that changing the two-year discontinued period to a one-year period is a big mistake. When the restaurant closed, the property owners attempted to sell the facility and spent eight months working on getting it rezoned, then when that failed they spent a couple more months trying to secure a tenant, then the tenant had to draw up plans and revamp the interior of the building. The new owners did manage to get a permit just before the one-year period expired, but that was extremely difficult. He noted that it can easily take a year to determine if the market has changed. He also cited situations where removing the intent would create tough situations, such as when a case is held up in court.

3. Paul Mullican: One year is just too short, especially in a situation involving a bankruptcy.

4. Carol Eickmeyer noted that we are talking about non-conforming uses.
5. The Planning Board expressed their approval of the "regardless of intent" language, but discussed the time period for a discontinued nonconforming use. They noted that the time limit could be changed in the future if a two-year period doesn't work adequately.

MOTION: Dara Folan moved approval of the zoning text amendment with a two-year period instead of the recommended one-year period.
SECOND: Clarence Lambe
VOTE:
   FOR: Clark, Folan, King, Lambe, Mullican, Norwood, Smith
   AGAINST: Eickmeyer
   EXCUSED: None

Written Comments by Planning Board Members:

Carol Eickmeyer: Inspections has requested the inclusion of "regardless of intent" into the existing ordinance. We weren't asked to write the amendment just approve it or not.

April 14th, 2005 recommended action:

Inspections Division requested that this request be remanded back to the Planning Board prior to Elected Body action in order to clarify the recommended language of two (2) years, with existing language of one (1) year that is currently contained within the § 5-2.8 (B):

The term discontinuance shall mean the voluntary termination or cessation of a use. Any one of the following shall constitute conclusive evidence of discontinuance:

(1) Any positive act indicating such discontinuance;
(2) Failure to take all necessary steps to resume the nonconforming use with reasonable dispatch in the circumstances, including failure to advertise the property for sale or lease;
(3) Regardless of intent, discontinuance of any nonconforming use of a building or of land for a period of one hundred eighty (180) days shall constitute an abandonment of such use. (K)
(4) In the case of a building or portion thereof, discontinuance of the nonconforming use for a period of three hundred sixty-five (365) consecutive days, unless the use is vested under the provisions of §1-5.2(B)(2)(a)(1), in which case the period shall be two (2) years; (F,W,C,L,WA)
(5) In the case of land but not of building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

Therefore Inspections recommends that there be consistent language within the UDO for all nonconforming uses and that the existing one (1) year language be maintained.

Recommendation: Approval as originally submitted.
PUBLIC HEARING - April 14, 2005

Ronnie Grubbs presented the staff report.

PUBLIC HEARING

FOR:  None

AGAINST:  None

WORK SESSION

During discussion by the Planning Board, the following point was made:

1. Members expressed confusion at why the elected officials remanded this case rather than simply taking the action they preferred at the time this case was before them.

MOTION: Dara Folan moved approval of the zoning text amendment with the wording "365 consecutive days".

SECONED: Lavastian Glenn

VOTE:

FOR: Clark, Folan, Glenn

AGAINST: King, Mullican, Norwood

EXCUSED: None

A. Paul Norby, AICP

Director of Planning
Be it resolved, by the Board of County Commissioners of Forsyth County, North Carolina that the *Unified Development Ordinances* (UDO) is hereby amended as follows:

**Section 1.** Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

> In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

**Section 2.** Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

**Section 3.** Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by adding a new subsection (B)(4) which reads as follows:

> Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

**Section 4.** This ordinance shall be effective upon adoption.
UDO-130
AN ORDINANCE AMENDING
CHAPTER B ZONING ORDINANCE OF
THE UNIFIED DEVELOPMENT ORDINANCES
REGARDING THE DEFINITION OF DISCONTINUANCE
FOR NONCONFORMING SITUATIONS

Be it resolved, by the City Council of the City of Winston-Salem, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

   In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

Section 2. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

Section 3. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by adding a new subsection (B)(4) which reads as follows:

   Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

Section 4. This ordinance shall be effective upon adoption.
Be it resolved, by the Village Council of the Village of Clemmons, North Carolina that the *Unified Development Ordinances* (UDO) is hereby amended as follows:

**Section 1.** Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

> In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

**Section 2.** Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

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> Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

**Section 4.** This ordinance shall be effective upon adoption.
UDO-130
AN ORDINANCE AMENDING
CHAPTER B ZONING ORDINANCE OF
THE UNIFIED DEVELOPMENT ORDINANCES
REGARDING THE DEFINITION OF DISCONTINUANCE
FOR NONCONFORMING SITUATIONS

Be it resolved, by the Town Council of the Town of Walkertown, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

Section 2. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

Section 3. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by adding a new subsection (B)(4) which reads as follows:

Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

Section 4. This ordinance shall be effective upon adoption.
AN ORDINANCE AMENDING
CHAPER B ZONING ORDINANCE OF
THE UNIFIED DEVELOPMENT ORDINANCES
REGARDING THE DEFINITION OF DISCONTINUANCE
FOR NONCONFORMING SITUATIONS

Be it resolved, by the Town Council of the Town of Lewisville, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

Section 2. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

Section 3. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by adding a new subsection (B)(4) which reads as follows:

Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

Section 4. This ordinance shall be effective upon adoption.
Be it resolved, by the Board of Aldermen of the Town of Kernersville, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by deleting the current subsection (B)(5) which reads as follows:

In the case of land but not of a building, discontinuance of the nonconforming use for a period of thirty (30) successive days.

Section 2. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by designating the current subsection (B)(4) as (B)(5).

Section 3. Chapter B, Article V, Section 5-2.8 "Discontinuance" is hereby revised by adding a new subsection (B)(4) which reads as follows:

Regardless of intent, discontinuance of any nonconforming use of a building or any portion thereof for a period of one (1) consecutive year, or of land for a period of thirty (30) consecutive days.

Section 4. This ordinance shall be effective upon adoption.