

## ARTICLE TWO – ADMINISTRATION AND BOARDS:

### Sec. 2.1 Town Council: <sup>47 48 49 50</sup>

**Sec. 2.1.1 Responsibilities.** The Town of Unionville Town Council shall have the following responsibilities in relation to the administration of this Ordinance:

- A. Hear and decide applications for amendments to the text, schedules, and map portions of this Ordinance, which shall be processed in accordance with the provisions detailed herein. In exercising this power, the Council is bound by the State enabling legislation, the terms of this Ordinance, and applicable court decisions in carrying out its legislative function.
- B. Establish Rules of Procedure for the conduct of hearings and other proceedings before the Town Council in exercising responsibilities identified herein.
- C. Create land-use related study committees and appoint persons to same.<sup>51</sup>
- D. Refers items to the Planning Board for study.<sup>52</sup>
- E. Make the necessary appointments to the Planning Board and Board of Adjustment.
- F. Provide, by appropriation, funds for the administration of this Ordinance.

### Sec. 2.1.2 Conflicts of Interest: <sup>53</sup>

- A. A member of the Town Council shall not vote on any legislative decision regarding a development regulation contained in this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identified financial impact on the member.
- B. A member of the Town Council shall not vote on any zoning amendment if the landowner of the property subject to the rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

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<sup>47</sup> Regulations need to reference the role of the elected officials. This section takes the Place of Section 40 (town council) of the current ordinance.

<sup>48</sup> Current regulations indicate the Town Council processes special use permits. NFOCUS Staff is recommending this be handled by the Board of Adjustment.

<sup>49</sup> Current regulations indicate the Town Council makes final decisions on temporary use permits. NFOCUS is recommending this be handled by staff as an administrative process with the adoption of specific development criteria.

<sup>50</sup> NOTE: current regulations indicate the Town Council will approve major development permits and final plats. There are bills moving through the General Assembly that would prohibit such action. NFOCUS Staff is recommending this become the responsibility of staff. Additional detailed shall be provided herein explaining our rationale.

<sup>51</sup> Existing language from Section 40 (a) (5) of the current ordinance.

<sup>52</sup> Existing language from Section 40 (a) (6) of the current ordinance.

<sup>53</sup> Language is included within the various separate sections associated with each board/staff position involved with the application of the Ordinance to address 'conflicts of interest'.

## **Sec. 2.2 Land Use Administrator:** <sup>54 55</sup>

### **Sec. 2.2.1 Responsibilities**

- A. This Ordinance and the provisions set forth herein shall apply to all property within The Town of Unionville. The Town Council shall appoint a duly qualified Land Use Administrator to be responsible for the impartial administration of this Ordinance.
- B. The Administrator shall have the responsibility for the administration, interpretation, and enforcement of this Ordinance and is referred to herein as 'Director'.
- C. The Director is an employee of The Town of Unionville hired by and reporting to the Town Manager and shall have the following duties in respect to this Ordinance:
  - 1. Supervising the Planning, Zoning, and Subdivision Administrator in their administration, interpretation, and enforcement of this Ordinance;<sup>56</sup>
  - 2. Exercise the duties of the Floodplain Administrator when necessary as detailed in **Section 2.3** of this Ordinance;
  - 3. Exercise the duties of the Watershed Administrator when necessary as detailed in **Section 2.4** of this Ordinance;
  - 4. Exercise the duties of the Planning, Zoning and Subdivision Administrator when necessary as detailed in **Section 2-5.5** of this Ordinance.
- D. The individual appointed to fulfill this responsibility shall be a certified member in good standing with either the American Institute of Certified Planners (AICP) or the North Carolina Association of Zoning Officials (NCAZO) having first met examination requirements, and subsequently meeting certification maintenance requirements.<sup>57</sup>

### **Sec 2.2.2 Oath of Office** <sup>58</sup>

The person designated as the Director shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in N.C.G.S.160A-61.

### **Sec. 2.2.3 Conflicts of Interest** <sup>59</sup>

The Director shall not make a final decision on an administrative decision pursuant to this Ordinance if the outcome of the decision would have a direct, substantial, and readily identified financial impact on the Director, or staff member, or if the applicant or other

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<sup>54</sup> Current regulations reference the duties of the Land Use Administrator in Section 37. Is this the current term used to reference staff?

<sup>55</sup> NFOCUS is recommending the duties be properly defined.

<sup>56</sup> This is a reference to the 'general planning staff' for the Town. If there are other staff members assigned administration and/or enforcement duties, this would cover those staff.

<sup>57</sup> NOTE: NFOCUS is recommending the Town consider such certification requirements. If current staff do not have these certifications, the section will have to be removed.

<sup>58</sup> All staff charged with the enforcement, interpretation, and administration of the Ordinance should be sworn.

<sup>59</sup> Conflict of interest statements are being included for all staff, advisory boards, and the elected officials consistent with State law.

person subject to that decision is a person with whom the Director, or staff member, has a close familial, business, or other associational relationship.

**Sec. 2.3 Floodplain Administrator**<sup>60</sup>

- A. The Floodplain Administrator shall hereby be appointed to administer and implement the provisions of this Ordinance relating to the development and enforcement of various provisions associated with:
  - 1. Flood damage prevention regulations, and
  - 2. State and Federal regulations concerning floodplain development.
- B. Duties of the Floodplain Administrator are detailed in Article \_\_\_\_\_ of this Ordinance.

**Sec. 2.4 Watershed Administrator**<sup>61</sup>

It shall be the duty of the watershed administrator to administer and enforce the provisions of the County watershed protection district standards, established consistent with the authority granted under Section 1.8 (C), in accordance with the provisions of Section 4.7<sup>62</sup>, and Article \_\_\_\_\_ of this Ordinance.

**Sec. 2.5 Planning, Zoning, and Subdivision Administrator:**<sup>63</sup>

**Sec. 2.5.1 Applicability and Establishment of Planning, Zoning & Subdivision Administrator**

- A. The Planning, Zoning and Subdivision Administrator shall have the authority to administer and enforce the provisions of the Ordinance within this area of jurisdiction.
- B. The Planning, Zoning and Subdivision Administrator shall report to the Director.
- C. The Planning, Zoning and Subdivision Administrator may be multiple employees as designed by the Director, duly sworn as detailed herein.<sup>64</sup>

**Sec. 2.5.2 Administrator as Enforcement Officer.**

- A. Establishment and Authority. Unless specifically set forth otherwise in this Ordinance, the Town of Unionville Planning, Zoning and Subdivision Administrator (hereafter 'Staff') shall be the Enforcement Officer with the duty of administering and enforcing the provisions of this Ordinance.

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<sup>60</sup> This is designed to 'capture' the duties related to the administrator and enforcement of the town's flood damage prevention ordinance. We have the option of simply referencing the Article of the flood damage prevention ordinance here as well.

<sup>61</sup> Language reflects the current State model watershed ordinance.

<sup>62</sup> Highlighted section references may change during UDO development.

<sup>63</sup> This position is intended to reflect 'staff' positions with the town. planning department. If none, duties shall be collapsed into the Administrator section.

<sup>64</sup> This section is to reflect the Division of the host community may have more than one employee who can be sworn to serve as the 'Planning, Zoning, and Subdivision Administrator'. The title is not intended to simply refer to one staff person but to anyone duly sworn to enforce this Ordinance.

- B. Staff may enter any building, structure, or premises as provided by law, to perform any duty imposed upon him/her by this Ordinance.

**Sec. 2.5.3 Conflict of Interest.** Staff, shall not make a final decision on an administrative decision required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable impact on the staff member or if the applicant or other person subject to that decision is a person with whom the member has a close familial, business, or other associational relationship per N.C.G.S. 160D-109(c).

**Sec. 2.5.4 Oath of Office.** Staff shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in N.C.G.S.160A-61.

**Sec. 2.5.5 General Duties.** <sup>65</sup>

Staff shall:

- A. Establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same.
- B. Issue permits and certificates pursuant to this Ordinance.
- C. Review and approve development plans and permit applications to assure the requirements of this Ordinance have been satisfied.
- D. Make determinations and interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance.
- E. Maintain all records pertaining to the provisions of this Ordinance in their office(s) and make said records open for public inspection; <sup>66</sup>
- F. Periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this Ordinance per N.C.G.S.160D-403(e);
- G. Investigate, or cause to be investigated, purported violations of this Ordinance.
- H. Enforce the provisions of this Ordinance.
- I. Serve as Watershed and Floodplain Administrator in the administration and enforcement of watershed and floodplain regulations as contained within this Ordinance.
- J. Issue notice of corrective action(s) when required.
- K. Use the remedies provided in this Ordinance to gain compliance.
- L. Be authorized to gather evidence in support of said activities.
- M. Receive appeals and forward cases to the appropriate body;
- N. Serve as staff to the Town of Unionville Planning Board and Board of Adjustment;  
and
- O. Perform other duties as may be assigned by the Board of Commissioners.

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<sup>65</sup> Staff has expanded on the existing list to ensure proper 'capture' of applicable duties.

<sup>66</sup> Records are retained consistent with public retention policies. Some records are retained in perpetuity consistent with State standards.

### **Sec. 2.5.6 Conditions on Authority:** <sup>67</sup>

When rendering decisions on the approval of development projects, the interpretation of this Ordinance, or the issuance of permits, Staff shall determine if the application is consistent with the requirements of this Ordinance and issue all appropriate permits or other approvals. The following limitations apply:

- A. Issuance of a permit authorizing the excavation, construction, moving, alteration, or use of land shall in no case be construed as waiving any provision of this Ordinance.
- B. Under no circumstances is Staff permitted to grant exceptions to the actual meaning of any clause, standard, or regulation contained in this Ordinance to any person making application to excavate, construct, move, alter, or use either building, structures or land.
- C. Under no circumstances is Staff permitted to make changes to this Ordinance or to vary the terms of this Ordinance in carrying out assigned duties.
- D. Staff shall issue a permit when an applicant demonstrates that the standards established by this Ordinance are complied with regardless of whether the use of the permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties.
- E. Staff shall revoke a zoning compliance permit if it is found to be issued in violation of any of the provisions of this Ordinance, or if the conditions as stated on the permit are not carried out.
- F. If an application for a permit is disapproved, Staff shall state in writing the cause for such disapproval.
- G. Staff shall issue a Stop Work Order pursuant to Article 9 of this Ordinance if it is determined that irreparable injury will occur if an alleged violation is not terminated immediately.

### **Sec. 2.6 Technical Review Committee (TRC)** <sup>68</sup>

- A. Establishment and Intent. There is hereby established a Technical Review Committee (TRC) to assist the Planning Department in the execution of its functions with respect to processing applications submitted in accordance with the provisions of this Ordinance.
- B. Intent The TRC is an informal advisory committee to allow various entities to review and discuss issues associated with a submitted application to assist with the development of a formal recommendation as to the disposition of the request by the Department.
- C. Duties and Responsibilities. The TRC has the following duties and responsibilities. The Committee shall:

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<sup>67</sup> Staff is recommending new language with the intention of establishing a practical 'rule of conduct' for staff in the administration and enforcement of this Ordinance.

<sup>68</sup> NFOCUS Staff is recommending an internal advisory committee be formally established to review and comment on development applications. This will ensure potential issues/areas of concerns are identified and addressed as part of the development review process.

- i. Review proposed text and atlas amendments, Conditional Zoning Districts, Special Use Permits, rezonings, subdivisions or other similar technical issues that may be referred.
- ii. Review in cooperation with the Director the relationship between the Comprehensive Plan and this Ordinance.
- iii. Produce, as required, for all governing bodies and planning boards a report on such proposed text and atlas amendments, Conditional Zoning Districts, Special Use Permits, rezonings, subdivisions or other similar technical issues that may be referred.
- iv. Render technical advice and recommendations related to this Ordinance and its operation.

D. Membership TRC may consist of representatives from:

- i. Town Planning,
- ii. County Building Inspections and Health Department representatives (well and septic division) <sup>69</sup>
- iii. Parks and Recreation staff,
- iv. Emergency Services(i.e., Sheriff and Fire Marshal),
- v. Economic Development, <sup>70</sup>
- vi. N.C. Department of Transportation District Engineer or designee,
- vii. Public Utility companies, and
- viii. County Board of Education.

E. Meetings: Staff shall convene and chair meetings of the TRC, which shall meet bi-weekly as there are projects to review. The minutes of each meeting of the Committee are to be maintained as a separate document in the nature of a public record in the office of the Director. Meetings shall not be open to the public.

- a. Agenda materials for meetings shall be distributed to members one calendar week prior to the meeting date for review.
- b. Staff shall develop rules of procedure governing the conduct of the TRC meeting including, but not limited to meeting time and date, format of meeting (i.e. online in person, hybrid, etc.) submittal and format of comments from members, review and approval of minutes, and all other relevant matters.

**Sec. 2.7 Planning Board and Board of Adjustment:** <sup>71 72</sup>

**Sec. 2.7.1 Boards Established**

<sup>69</sup> If applicable. Language may be modified to reference municipal public works department or even a County public works department if public utilities (water/sewer) exists within a municipality that are managed by a County.

<sup>70</sup> Also if applicable. Must be evaluated on a client to client basis.

<sup>71</sup> Language meets current State law requirements.

<sup>72</sup> Collapses Article III part(s) 1 and 2 (beginning with Section 21) into a central section.

The following boards are hereby established to carry out the duties and responsibilities set forth in this Ordinance and in fulfillment of the goals and purposes of this Ordinance:

- A. Planning Board
- B. Board of Adjustment

**Sec. 2.7.1 (A) Planning Board** <sup>73</sup>

1. Authority. There is hereby created a planning agency, pursuant to G.S. 160D-301 to be known as the Town of Unionville Planning Board.
2. Membership by Appointment. The Planning Board shall consist of **seven (7) members, 5 regular members and 2 alternates**<sup>74</sup>. All members shall have equal rights, privileges and duties, except as defined by adopted Rules of Procedure. All members shall be appointed for three (3) year terms except in making the original appointments. In making the original appointment three (3) members shall be appointed for a three (3) year term; two (2) members shall be appointed for a two (2) year term; and two (2) members shall be appointed for a one (1) year term.
3. Oath of Office. Any person appointed to the board shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in G.S.160A 61.
4. Powers and Duties. The Planning Board shall have the following powers and duties:
  - a. <sup>75</sup>To provide recommendations to the Town Council regarding map amendments (rezoning), text amendments, and other matters on which the Council seeks advice.
  - b. To develop and update a Comprehensive **Land Use Plan** and Future **Land Use Map** for the planning and development regulation jurisdiction, including any small area plans or special studies, subject to specific direction and assignment from the Board of County Commissioners.
  - c. To render opinions and make recommendations on all issues, requests, and petitions related to the Ordinance and the Land Use Plan that may be adopted and/or amended from time to time and that require approval by the Town Council.
  - d. To make decisions on the approval of Concept Plans applications for Major subdivisions; and <sup>76</sup>

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<sup>73</sup> Section 22, 23, and 24 of the existing ordinance are best handled as part of the Planning Board's rules of procedure. NFOCUS will provide a template for these rules for review and discussion.

<sup>74</sup> Composition and membership based on local community needs. NFOCUS are asking for guidance on the establishment of term limits and what final membership numbers currently are.

<sup>75</sup> Section 25 of the current ordinance.

<sup>76</sup> NFOCUS is recommending the Planning Board only review a concept plan for major subdivisions and not take formal action on approval. Why? There are bills under review by the General Assembly that will prohibit boards

- e. To make such other studies and plans and review such other related matters as directed/assigned by the Town Council.
5. Voting. A simple majority of the Board membership shall be required to affirm any decision, recommendation, or statement of the Board.
6. Conflicts & Violations of Due Process. A member of the Planning Board shall not participate in or vote on any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker.

A member shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable impact on the member.

A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship with an affected person. 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. (G.S. 160D-109).

#### **Sec. 2.7.1 (B) Board of Adjustment** <sup>77 78</sup>

1. Authority. Pursuant to G.S. 160D-302, there is hereby created a Board of Adjustment.
2. Membership by Appointment. The Board of Adjustment shall consist of five (5) members and two (2) alternates as detailed herein<sup>79</sup>. All members shall have equal rights, privileges and duties consistent with the adopted Rules of Procedure. All members shall be appointed for three (3) year terms except in making the original appointments.
3. Seating Members. In making the original appointment two (2) members shall be appointed for a three (3) year term; two (2) members shall be appointed for a two (2) year term; and one (1) member shall be appointed for a one (1) year term.
4. Alternates. The Town Council may, in its discretion, appoint alternate members to serve on the Board of Adjustment in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment

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(Planning Board and Town Councils) from taking action (approving/denying) subdivision projects. We are incorporating this anticipated change.

<sup>77</sup> Language updated to ensure consistency with NCGS 160D. This has been moved from Section 29 of the current ordinance.

<sup>78</sup> As with the Planning Board, NFOCUS staff will be recommending the adoption of rules of procedure that include Sections 30, 31, portions of 32, and 33 of the current ordinance.

<sup>79</sup> Again, membership numbers updated consistent with client needs.

of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members.

Each alternate member, while attending any regular or special meetings of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. (G.S. 160D-302(a)).

5. Oath of Office. Any person appointed to the board shall take and subscribe to the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in G.S.160A 61.<sup>80</sup>
6. Powers and Duties. The Board of Adjustment shall have the following powers and duties:
  - a. To hear and decide appeals from an order, denial of a permit or other written decision made by an administrative official charged with enforcing this Ordinance.
  - b. To hear and decide requests for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation result in a loss of privileges shared by other properties within the same zoning district.
  - c. To serve as the Watershed Review Board and hear and decide variances and appeals from any decision or determination made by the Watershed Administrator in the administration and/or enforcement of the provisions of the County's Watershed Overlay District standards as detailed in Article \_\_\_\_\_ this Ordinance;
  - d. To hear and decide appeals and requests for variances from the requirements of the Flood Damage Prevention provisions of this Ordinance, as set forth in Article \_\_\_\_\_ of this Ordinance; and
  - e. To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance and/or any ordinance duly adopted wherein the Board of Adjustment is designated to hear appeals or other duties.
7. Voting. A four-fifths vote of the members shall be required to grant a variance; otherwise, a simple majority of the Board membership shall be required to affirm, reverse or modify any written order, decision, or interpretation of the Enforcement Officer charged with enforcing this Ordinance; to decide in favor of the applicant on a matter [other than variances] upon which the Board is required to pass; Vacant positions on the Board of Adjustment and members who are disqualified from voting on a matter before the Board of Adjustment 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.
8. Conflicts & Violations of Due Process. A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that

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<sup>80</sup> All Board members are required to be sworn.

would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process 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. 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. (G. S. 160D-109).<sup>81</sup>

9. Proceedings. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep minutes showing the vote of each member on each question and the absence or failure of any member to vote. The final disposition of each matter decided by the Board of Adjustment shall be by recorded resolution indicating the reasons for the decision, based on findings of fact obtained by testimony under oath or affirmation and conclusions of law which shall be public record. On all appeals, applications and other matters brought before the Board of Adjustment, the Board shall inform in writing all the parties involved of its decision and the reasons for that decision.

#### **Sec. 2.7.2 Meetings, Hearings, and Procedures of all Boards<sup>82</sup>**

- A. All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedures set forth in these regulations and with the rules of procedure adopted for the Planning Board, and Board of Adjustment. Rules of procedure may be amended by the respective board membership; however, such amendment shall be approved by the Board of Commissioners to become effective.
- B. The rules of procedure shall be kept on file at the office of the Director and shall be made available to the public both online at the County's website and at any meeting or hearing.
- C. No rules or procedures shall conflict with this Ordinance; if conflicts occur this Ordinance shall take precedence.
- D. Members shall take the oath of office administered by the Town Clerk prior to taking part in any agenda items before the board upon which a member is appointed in accordance with G.S.160D-309 and G.S.160A-61.
- E. Staff. Staff shall serve as staff to the Planning Board, and Board of Adjustment; and shall provide technical assistance to the Planning Board and Board of Adjustment as required.

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<sup>81</sup> Again, staff includes language in the UDO Model from the Statute to ensure consistency where appropriate.

<sup>82</sup> Staff will need to ensure there are updated rules of procedure for both Board's as we complete any UDO.