



PROPOSED AGENDA
Bermuda Run Town Council Meeting
Tuesday, March 9, 2021
6:00PM
Bermuda Run Town Hall

Mission: "The Town of Bermuda Run exists to provide core public services that enhance the quality of life for its residents and an environment for the business community to thrive".

1. Call to Order

2. Pledge of Allegiance

3. Moment of Silence

"It is the intent of the Town Council to solemnize the proceedings of this meeting and the business brought before the governing board, to offer the opportunity for a reflective moment of silence."

4. Adoption of the Agenda

Motion: _____ Second: _____ In Favor: _____ Opposed: _____

5. Approval of the February, 2021 Town Council Meeting Minutes

Motion: _____ Second: _____ In Favor: _____ Opposed: _____

6. Citizens' Comments

7. Public Hearing – Zoning Text Amendment 2020-03

The proposed administrative text amendments are intended to comply with North Carolina Session Law 2019-111.

- Davie County Senior Planner, Amy Flyte, presents the proposed amendments
- Mayor Rick Cross Opens the Public Hearing
- Mayor Rick Cross Closes the Public Hearing

The Town Council is requested to take action on the issue as outlined under **Town Board Action** on page 18 of 18 in the Planning Staff Report.

Motion: _____ Second: _____ In Favor: _____ Opposed: _____

8. Council / Mayor Comments

9. Town Manager Comments

10. Adjourn

Motion: _____ Second: _____ In Favor: _____ Opposed: _____

Town of Bermuda Run

Town Council Meeting Minutes

February 9, 2021 – 6:00 PM

The Town Council of Bermuda Run held its scheduled meeting on Tuesday, February 9, 2021 at 6:00 PM. The meeting was held at the Bermuda Run Town Hall.

Council Members Present: Mayor Rick Cross, Heather Coleman, Curtis Capps, Mike Ernst, Chris Fowler, and Ken Peacock

Council Members Absent:

Also Present: Lee Rollins, Town Manager; Cindy Poe, Town Clerk; Brian Williams, Attorney

Call to Order Mayor Rick Cross called the meeting to order.

Pledge of Allegiance

Moment of Silence

It is the intent of the Town Council to solemnize the proceedings of this meeting and the business brought before the governing board, to offer the opportunity for a reflective moment of silence.

Adoption of the Agenda

Council Member Curtis Capps made a motion to approve the agenda. Council Member Ken Peacock seconded the motion. The motion was approved by a vote of five (5) in favor and none opposed.

Approval of the January 12, 2021 Town Council Meeting Minutes

Council Member Heather Coleman made a motion to approve the January 12, 2021 meeting minutes. Council Member Ken Peacock seconded the motion. The motion was approved by a vote of five (5) in favor and none opposed.

Public Comments

There were none.

Presentation – 2021 Property Revaluation Process

Davie County Tax Administrator, Brian Myers, shared the process of updating Davie County's and the Town of Bermuda Run's real property values to reflect fair market value as of January 1, 2021. The Town of Bermuda Run which currently has 1,796 parcels (7.12% of Davie County) contracts with Davie County for tax collection. The addition of Comet Bermuda Run Apartments has positively affected the Town's tax base. Questions included the effects of Covid19 on the housing market (high demand, low inventory), the access to gated properties for review, and how the appeals process works. The Board of Equalization and Review is appointed by Commissioners and included citizens from all over the county. (Overall, appeals are usually less than 5%.)

Proposed Action Items:

A. Resolution: Recognition of Black History Month

The Bermuda Run Town Council recognizes the month of February, 2021 as Black History Month in the Town of Bermuda Run.

Council Member Mike Ernst made a motion to approve the resolution naming February, 2021 as Black History Month in the Town of Bermuda Run. Council Member Curtis Capps seconded the motion. The motion was approved by a vote of five (5) in favor and none opposed.

Mayor Rick Cross added that Davie County Senior Services will be holding Black History Month events on February 10 and February 17 at 3 pm and all residents are invited to attend.

Council/ Town Manager/ Mayor Comments

Ken Peacock – Appreciated the presentation by Brian Myers, adding that it was very informative.

Heather Coleman – Looked forward to Brian's presentation, and appreciated the leadership of the Town.

Curtis Capps – Very informative meeting; thanked all guests for their attendance.

Chris Fowler – Honored to serve on the Town Council – also thanked everyone for their participation.

Mike Ernst – Felt the meeting was very educational and it helps the Council understand how the County operates. Also added that observing Black History Month is very important.

Lee Rollins – Amy Flyte with Davie Development and Facilities Services will be at the February Council Agenda Meeting to discuss proposed Chapter 160-D changes.

Rick Cross – Covid19 Vaccine Update – Davie County doing an outstanding job.

Thanked the Council and Staff for participation in the two Planning Sessions (1/26/21 and 2/2/21) where representatives of Davie County (Sheriff JD Hartman, County Manager Davie Bone, and Terry Bralley, Economic Development) gave updates.

Thanked Brian Myers with the Tax Office for his presentation.

Thanked the County Staff and the School System for continuing to do an amazing job.

Adjourn

With no further business to discuss, Council Member Heather Coleman made a motion to adjourn.

Council Member Chris Fowler seconded the motion. The motion was approved by a vote of five (5) in favor and none opposed.

Approved

Respectfully Submitted

Rick Cross, Mayor

Cindy Poe, Town Clerk

(7.)



**NOTICE OF PUBLIC HEARING
BERMUDA RUN TOWN COUNCIL**

NOTICE IS HEREBY GIVEN, pursuant to G.S. 160A-364, that the Town Council of Bermuda Run will meet at **6:00 P.M. on Tuesday, March 9, 2021** at the Town Hall, located at 120 Kinderton Blvd., Suite 100, Bermuda Run, NC 27006, to hold a public hearing and to receive public comment on the following items:

Zoning Text Amendment 2020-03. The Board will review text amendments of the Zoning Ordinance regarding compliance with General Statute 160D.

All interested parties are invited to attend the public hearing and present their comments to the Bermuda Run Town Council. Please call the Bermuda Run Town Hall at (336) 998-0906 if you have questions or if you need special accommodations for the meeting. Hearing impaired persons desiring additional information or having questions regarding this subject should call the North Carolina Relay Number for the Deaf at 1-800-735-8262 or 711 for mobile phones.

PUBLICATION DIRECTIONS

Publish in the Notices section of the Newspaper

Publish on the following Dates:

February 25, 2021 &
March 4, 2021

Send bill and affidavit of publication to:

Bermuda Run Town Clerk
Town of Bermuda Run
120 Kinderton Boulevard, Suite 100
Bermuda Run, NC 27006



Bermuda Run Planning Board/Board of Adjustment

Regular Meeting Minutes

Wednesday, October 21, 2020

3:00 PM

Bermuda Run Town Hall

I. Call to Order

Attendee Name	Title	Status
Tom Brady	Board Member	Present
Bryan Thompson	Alternate Member	Absent
Lynn Senger	Vice Chairman	Present
Lynn Marcellino	Board Member	Absent
Rod Guthrie	Chairman	Present
David Strand	Board Member	Present
Erin Hege	Alternate Member	Present

II. Recognition of Quorum

The Chairman recognized that there was a quorum.

III. Approval of Planning Board Agenda

RESULT: APPROVED [UNANIMOUS]
MOVER: Tom Brady
SECONDER: Lynn Senger
AYES: Brady, Senger, Guthrie, Strand, Hege
ABSENT: Marcellino, Thompson

IV. Approval of Planning Board Minutes: Wednesday, September 16, 2020

RESULT: APPROVED [UNANIMOUS]
MOVER: Tom Brady
SECONDER: Erin Hege
AYES: Brady, Senger, Guthrie, Strand, Hege
ABSENT: Marcellino, Thompson

V. Citizen Comments

There was none.

VI. Permit Reports & Zoning Administrator Updates

Permit reports & activity report were included in the agenda packet for reference.

VII. Town Manager's Update

Mr. Rollins updated the Planning Board on a design waiver that they are likely to see next month.

VIII. Planning Board Cases

1. Amy Flyte introduced to the Board for their review Design Waiver 2020-02 submitted for property along Webb Way for a proposed warehousing self storage facility.

The request included six individual waivers, requiring six separate votes.

Design Waiver 1: Gateway Corridor Overlay requirements

RESULT:	Deny [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	Tom Brady
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

Design Waiver 2: Colors of the doors and roof trim (blue)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	Lynn Senger
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

Design Waiver 3: Roofs – required parapet on all sides of the building

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	Tom Brady
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

Design Waiver 4: Building Façade, articulating features

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	David Strand
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

Design Waiver 5: Building Façade, primary entrances – a second design feature required

The request was withdrawn by the applicant.

Design Waiver 6: Windows (required windows along front facades)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	Lynn Senger
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

2. Amy Flyte introduced to the Board for their review Zoning Text Amendment 2020-03 which includes changes to the Zoning Ordinance to come into compliance with recently adopted North Carolina General Statutes 160D.

Chairman Guthrie opened the public comment.

Chairman Guthrie closed the public comment.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Tom Brady
SECONDER:	Lynn Senger
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson

IX. Other Business

A reminder for Board members to drive past Masonettes to see existing fencing.

X. Board Member Comments

There was none.

XI. Adjournment

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Erin Hege
SECONDER:	Tom Brady
AYES:	Brady, Senger, Guthrie, Strand, Hege
ABSENT:	Marcellino, Thompson



TO: Town Board
FROM: Planning Staff
DATE: March 9, 2021
RE: ZTA 2020-03 160D

Applicable Sections: Chapters 1, 2, 3, 9, 10, 11 and 12 of Zoning Ordinance

Purpose of Proposed Text Amendments and Background Information

The proposed administrative text amendments are intended to comply with North Carolina Session Law 2019-111.

The principal impact of 160D is to:

- (1) Consolidate current city and county enabling statutes now in Article 18, Chapter 153A and Article 19, Chapter 160A into a single, unified new Chapter 160D of the General Statutes.
- (2) Place these statutes into a more logical, coherent organization, facilitating ease of finding relevant provisions and clarifying how the statutes relate to one another.
- (3) Provide uniform authority, definitions and procedures for cities and counties, while retaining broad substantive policy discretion for ordinances adopted by individual jurisdictions.

While not making major policy shifts in existing legislation, the legislation modernizes the language of the statute to remove obsolete terminology and clarify existing provisions without making substantive changes. In addition, a number of consensus reforms that have the broad support of the local government and development community are incorporated.

The 160D proposal was developed by the N.C. Bar Association. The legislation was introduced as H. 548 in 2015 and as S. 419 in 2017. The bill was introduced in the 2019 session of the General Assembly as S. 422 and H. 448. On May 6, 2019 the Senate passed the bill as introduced as Part II of S. 355. The House of Representatives passed the bill with only a few technical tweaks on June 26. The Governor signed the bill on July 11. It is S.L. 2019-111. It initially was to become effective January 1, 2021 in order to allow time in 2020 to incorporate amendments made to affected statutes by other legislation enacted in 2019. That incorporation was made by S.L. 2020-25. Therefore, Chapter 160D was made effective upon the adoption of that legislation, June 19, 2020. However, local governments have until July 1, 2021 to adopt conforming amendments to their local development regulations, with Chapter 160D becoming effective for each jurisdiction, as those amendments are adopted (or no later than July 1, 2021).

All city and county zoning, subdivision, and other development regulations, including unified-development ordinances, will need to be updated by that date to conform to the new law. Without making major policy changes or shifts in the scope of authority granted to local governments, the law includes many clarifying amendments and consensus reforms.

In 2014, the Zoning, Planning, and Land Use section of the North Carolina Bar Association initiated an effort to modernize the framework of the state's enabling statutes for planning and development regulation. The proposed legislation was extensively circulated, reviewed, and revised over a five-year period. Suggestions from city and county attorneys, attorneys who represented development interests, zoning officials, planning officials, and various organizations interested in development regulation (including the League of Municipalities, the N.C. Association of County Commissioners, the N.C. Home Builders Association, and others) were incorporated into successive drafts of the legislation.

Intentional differences between city and county authorities, principally the exemption of agricultural uses from county zoning coverage, are retained, but otherwise the statutory provisions for cities and counties will be identical.

Chapter 160D also places these statutes into a more logical, coherent organization. Provisions that affect all development regulations (such as definitions and provisions on moratoria, vested rights, and conflicts of interest) are placed together in one article, followed by articles that address geographic jurisdiction, creation and duties of boards, administration of regulations, the process for adoption and amendment of regulations, and judicial review of regulations. There are also detailed articles for major functions, including planning, zoning, subdivision, building and housing codes, environmental regulation, historic preservation, and community development.

Summary of text changes:

Ordinance Section	Summary:
1.1 Authority	General Statute reference updated
2.1 Applicability	General Statute reference updated for bona fide farm exemption
2.2 Vested Development Rights & 2.3 Transitional Development Rights	General Statute references updated; permit approvals defined
3.3 Manufactured Home Overlay District	Removal of age restriction
Chapter 9: Additional Conditions for Certain Uses	General Statute reference updated
10.2 Flood Damage Preventions	Update map reference
11.1 Staff	Updated conflict of interest language
11.2 The Boards	Updated conflict of interest language; required oath of office; General Statute references updated; Evidentiary hearing process updated
11.6 Special Use Permits	Conditions for Special Use Permits; General Statute references updated
11.7 Appeals	General Statute reference updated
11.9 Amendments	Conditions updated; General Statute reference update; conflict of interest language; adopted statement of reasonableness and consistency statement
11.12 Development Agreements	General Statute reference updated
11.13 Enforcement	Delivery of Notice; Notice for stop work orders; revocation of development approvals; General Statute reference updated
12.3 Definitions	Update required terms; remove minimum size requirement for manufactured homes

Staff Recommendation

Staff recommends review and approval of the proposed text amendments.

Zoning Text Amendment.

Proposed text amendment for table of uses in sections of the Zoning Ordinance. New text will be **bold and underlined**. Deleted text will have a ~~strikethrough~~.

CHAPTER 1 AUTHORITY AND PURPOSE

1.1 Authority

These regulations are adopted pursuant to the authority vested in the Town of Bermuda Run by its charter, the Session Laws, and the General Statutes of North Carolina, particularly ~~Chapter 160a, Article 19, Part 3~~ **Chapter 160D** and any special local legislation enacted by the General Assembly for the Town of Bermuda Run.

CHAPTER 2 APPLICABILITY OF ORDINANCE

2.1 Applicability

No building, structure, or land shall be used, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, enlarged, or structurally altered; nor shall any changed use be established for any building, structure, or land, unless in conformity with the general provisions of this ordinance and the specific provisions for the district in which it is located, except as otherwise provided by these regulations. In accordance with ~~NCGS 160A-360~~ **G.S. 160D-903**, bona fide farms located within the extraterritorial jurisdiction (ETJ), except swine farms as defined by NCGS 106-802, are exempt from the zoning regulations of this Ordinance, but any use of farm property for non-farm purposes is subject to these regulations. Swine farms are not permitted within the jurisdiction of these regulations.

2.2 Vested Development Rights

(A) In general.

Any amendments, modifications, supplements, repeal or other changes in these regulations or the zoning maps shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:

(1) For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to ~~G.S. 160A-418~~ **G.S. 160D-403C; -1110-1111** and the building permit has not been revoked pursuant to ~~G.S. 160A-422~~ **G.S. 160 -403(f); -1115**; or

(2) For which a zoning permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this section; or

(3) For which a vested right has been established and remains valid and unexpired pursuant to this section.

(4) Vested rights established by local government approvals are as follows:

(a) Six months - Building permits. - Pursuant to G.S. 160D-1109, a building permit expires six months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.

(b) One year - Other local development approvals. - Pursuant to G.S. 160D-403(c), unless otherwise specified by statute or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.

For purposes of this section, substantially commencement of work shall be determined by the Town Manager based on any of the following:

(1) The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;

(2) The development has installed substantial on-site infrastructure; or

(3) The development has received and maintained a valid building permit for the construction and approval of a building foundation.

Even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, as calculated and tolled pursuant to N.C.G.S. 160D-108.

(C) Seven years - Multiphase developments. - A multiphase development shall be vested for the entire development with the zoning regulations and , subdivision regulations in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multiphase development. For purposes of this subsection, "multiphase development" means a development containing 25 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

(B) Statutory Vested Rights

~~The vested rights provisions of G.S. 160A-385.1 shall apply.~~ Development approvals and site-specific vesting plans shall be vested for a period of two (2) years from the date of approval. A site-specific vesting plan or development approval may receive a vesting period of up to five (5) years upon approval by the Town Council. This section shall not apply to development agreements approved in accordance with G.S. ~~160A-400.2-32~~ **160D-101** and Section 11.12 of this Ordinance.

(C) Declaration of a vested right upon voluntary annexation.

A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established. The Town may require the petitioner to provide proof of any claimed vested rights. A statement that declares that no zoning vested right has been established or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right which may have existed shall be terminated.

2.3 Transitional Development Rights

Property subject to a valid site-specific development plan approved by Davie County that is in effect as of the effective date of this ordinance shall be allowed to continue to develop in compliance with the terms and conditions of that site-specific development plan for a period of five years from the effective date of this ordinance, subject to the provisions and limitations of G.S. ~~160A-385.1(e)~~ **G.S. 160D-102; 160D-100(d).**

3.3. Overlay Districts

(A) *Manufactured Home Overlay District (MH)*

(3) *Dimensional requirements and supplemental standards*

- c) Manufactured homes shall be a minimum of fourteen feet wide ~~and manufactured no earlier than July 13, 1994,~~ and shall meet or exceed the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction.

CHAPTER 9 ADDITIONAL CONDITIONS FOR CERTAIN USES.

9.1 Accessory Communication Antennae

(D) The project must meet all provisions included in NCGS 160D-935 that the Town is authorized to require. Additionally, ~~the standards for collocation of small wireless facilities in NCGS 160A400.54 160D-935 shall be met.~~

9.5 Agriculture, Bonafide Farms

(A) In accordance with ~~NCGS 160A-360(k)~~ G.S. 160D-903, property that is located in the extraterritorial jurisdiction (ETJ) and that is used for bona fide farm purposes is exempt from zoning regulations. Property that is located in the ETJ and that ceases to be used for bona fide farm purposes shall become subject to zoning regulations.

9.54 Telecommunication Towers / Wireless Support Structures

(C) New Wireless Support Structures & Substantial Modifications

(2) Necessity of Structure

(a) Subject to ~~NCGS 160A-400.52~~ 160D-933, prior to approval of a new wireless support structure or substantial modification, the applicant shall provide evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new structure, that residential, historic and designated scenic areas cannot be served from outside the area, and that the proposed height of the structure or replacement structure is necessary to provide the applicant's desired service. The application shall also provide evidence that collocation on an existing wireless support structure is not feasible.

(S) Collocation of Small Wireless Facilities

Collocation of small wireless facilities within rights-of-way, as defined by this Section, are permitted pursuant to ~~NCGS 160A-400.54-57~~ 160D 935-938, and, where not in conflict with statute, shall meet the design requirements for light poles in of Section 6.3 of this Ordinance.

Chapter 10 ENVIRONMENTAL PROTECTION

10.2 Flood Damage Prevention

All properties located within a Special Flood Hazard Areas are subject to regulation by the Town of Bermuda Run's Flood Damage Prevention Ordinance adopted on September 9, 2008 **and the most recently adopted FIRM maps**. Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) for Davie County its accompanying Flood Insurance Rate Map Panels (5861, 5862, 5863, 5871, 5872, 5873, & 5882).

Chapter 11 ADMINISTRATION

11.1 Staff

(A) Zoning Administrator

(9) No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

11.2 The Boards

(A) Planning Board.

(2) Members.

Each member and alternate shall be appointed by the Town Council for a term of three (3) years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Council may appoint certain members for less than three (3) years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1st date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent that original members shall serve terms of one (1), two (2), or three (3) years plus a period of time between their initial appointments and June 30th of the year of their initial appointment. A member shall be eligible for reappointment at the end of his expired term for any position on the board for which he is qualified. For purposes of this section, original appointments refer to members and alternates appointed upon first establishment of the Planning Board. The ETJ member shall have all of the obligations and duties of the other members of the Planning Board, including rights to vote on all matters coming before the board. All members shall, before entering their duties, qualify by taking an oath of office.

(6) Conflict of Interest. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted

pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board 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.

If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(B) Board of Adjustment
(2) *Members*

Each member and alternate shall be appointed by the Town Council for a term of three (3) years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Council may appoint certain members for less than three (3) years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1st date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent that original members shall serve terms of one (1), two (2), or three (3) years plus a period of time between their initial appointments and June 30th of the year of their initial appointment. A member shall be eligible for reappointment at the end of his expired term for any position on the town board for which he is qualified. For purposes of this section, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment. The ETJ member shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the board. All members shall, before entering their duties, qualify by taking an oath of office.

(7) Quasi-Judicial Decisions and Judicial Review

- b) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to ~~G.S. 160A-393~~ 160D-1402. If a person with standing under G.S. 160D-1402 would like to appeal a quasi judicial decision, a petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

- d) The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) G.S. 160D-1402 may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(e) Administrative Materials. - The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

(f) Presentation of Evidence. - The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402.

(8) Conflict of Interest. A member of any board exercising quasi-judicial functions pursuant to this Chapter 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. 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, or a financial interest in the outcome of the matter.

If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

11.6 Special Use Permits

(D) Staff Review

(3) Cooperation.

The developer is strongly encouraged to work closely with staff and neighboring property owners before and during the application and review process to minimize delays and address concerns which may arise in the review process.

Prior to the action on the proposed Special Use Permit, staff may meet with the petitioner to discuss the proposed plan and suggest features to be included in the Special Use Permit proposal. The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. During the evidentiary hearing, the Board of Adjustment may suggest additional features to be included or reflected in the proposal prior to taking action on the request.

Specific conditions applicable to Special Use Permit may be proposed by the petitioner or the town or its agencies, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations or permit requirements. These mutually approved conditions shall be listed and signed by the applicant/petitioner during the evidentiary hearing.

Conditions and site-specific standards shall be limited to those that address the conformance of the development and use of the site to town ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

(M) Appeals.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393 G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

11.7 Appeals

(A)

- (1) Any person who has standing under G.S. ~~160A-393(d)~~ 160D-1402 or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a

notice of appeal with the Administrator and Town clerk. The notice of appeal shall state the grounds for the appeal.

- (7) When hearing an appeal pursuant to ~~G.S. 160A-400.9(e)~~ **G.S. 160D-705(b); 160D-947** or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in ~~G.S. 160A-393(k)~~ **G.S. 160D-102; 160D-1402.**

11.9 Amendments

(B) Initiation.

Any amendment to the zoning text or map, except for the classification of property to a conditional district may be initiated by:

- (1) The Town Council or the Planning Board.
- (2) The property owner(s), upon filing an official petition including a complete application.
- (3) ~~A petitioner other than a board or property owner.~~ **No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:**
 - (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.**
 - (2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage."**

(E) Conditional district rezonings.

(3) Conditions.

Prior to the action on the proposed amendment (which may also include a period after the public hearing) any Planning Board or Town Council member (or any group of members not comprising a majority of such board) may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal. The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. During the public hearing, the Town Council may suggest additional features to be included or reflected in the proposal prior to taking action on the request. Specific conditions applicable to these districts may be proposed by the petitioner or the city or its agencies, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. **These mutually approved conditions shall be listed and signed by the applicant/petitioner during the Town Council hearing.** Conditions and site-specific standards imposed in a conditional

district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

(J) Recommendation and decision.

(6) A Town Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. In addition, no member of the Planning Board shall vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Town Council member or Planning Board 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.

If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(7) Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(8) Additional Reasonableness Statement for Rezoning. - When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

11.12 Development Agreements

The Town of Bermuda Run may enter into development agreements as authorized in North Carolina General Statute ~~160A-400.22~~ G.S. 160D-1001-1012 and outlined in North Carolina General Statute ~~160A-400.20 through 160A-400.32 (inclusive)~~. Nothing in this Section shall obligate the Town to enter into development agreements, and such agreements shall be entered into only at the request of the developer

(B) Procedures

(1) Pursuant to North Carolina General Statute ~~160A-400.22~~ G.S. 160D-1001-1012, the governing body of the local government is authorized to enter into the development agreement by a simple majority vote of the governing body, subject to the content and procedures set forth in North Carolina General Statutes ~~160A-400.25 through 160A.32 (inclusive)~~ 160D-1001-1012.

(2) A public hearing shall be held with notice given in accordance with North Carolina General Statute ~~160A-364~~ G.S. 160D-1005.

11.13 Enforcement

Whenever there is a violation of this ordinance, the Zoning Enforcement Officer may take any or all of the following actions to stop such violation. When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Chapter or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued.

The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity.

The notice of violation may be posted on the property.

The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

(A) *Permit revocation.*

~~The Zoning Administrator may revoke any zoning permit issued by staff after written notification to the permit holder when violations of this ordinance have occurred, when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, or a permit has been mistakenly issued in violation of this ordinance.~~

In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the Zoning Administrator by notifying the holder in writing stating the reason for the revocation.

The Zoning Administrator shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.

The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this Chapter, the provisions of G.S. 160D-405(f) regarding stays shall be applicable.

(B) Stop Work Orders.

Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this ordinance, the Zoning Administrator may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail.

The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud.

Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405.

No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

12.3 Definitions

BEDROOM: A fully enclosed interior room as shown on the building plan for the structure having, as a minimum, a doorway, window and closet.

BUILDING. ~~A temporary or permanent structure having a roof and walls and which can be used for the shelter, housing, or enclosure of persons, animals, or goods.~~ **Any structure used or intended for supporting or sheltering any use or occupancy.**

CLOSE FAMILIAL RELATIONSHIP. A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half and in law relationships.

DWELLING. A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

DWELLING UNIT. ~~A room or combination of rooms containing a bathroom and kitchen facilities, and designed for and used as a permanent or secondary residence by one (1) family.~~ **A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.**

SLEEPING UNIT. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

MANUFACTURED HOME, CLASS A. A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria, the intent of which is to insure that a Class A manufactured home, when installed, shall have substantially the appearance of an onsite, conventionally built, single- family dwelling:

- (A) The manufactured home has a length not exceeding four times its width, with the length measured along the longest axis and width measured at the narrowest part of the other axis.
- ~~(B) The manufactured home has a minimum of 1,000 square feet of enclosed heated living area.~~

Planning Board Recommendation

The Planning Board was introduced to the text amendments at their September 16th meeting and again at their October 21st meeting. The Planning Board voted to recommend approval on 10/21 with a unanimous vote (5-0). Please see the attached Planning Board meeting minutes.

Town Board Action:

Following review of the proposed text amendments, the Board is requested to take action following a motion and a second for one of the items below:

- **Approval:** The Board finds that the amendment is consistent with the Town of Bermuda Run Comprehensive Plan and considers the action to be reasonable and in the public interest as it brings the Town's Zoning Ordinances with newly adopted general statute.
- **Approval with changes:** The Board finds that the amendment is not fully consistent with the Town of Bermuda Run Comprehensive Plan, but the changes agreed upon will make it fully consistent and considers the action to be reasonable and in the public interest.
- **Denial:** The Board finds that the amendment is not consistent with the Town of Bermuda Run Comprehensive Plan and does not consider the action to be reasonable and in the public interest.
- **Defer:** The amendment needs additional consideration.