

**TOWN OF YOUNGSVILLE
PLANNING BOARD MEETING
Youngsville Community House -- 115 East Main Street
February 5, 2019
6:00 P.M.**

Chairman Donnie Tharrington called the meeting to order at 6:00 P.M.

In attendance were Chairman Tharrington; Vice-Chairman Mark Hurt; Members John Cyrus, Janice Pearce, Scott Anderson, Hank Lindwall, and Bob Martin; and Board Clerk Sandi Fleming. Planning, Zoning, and Subdivision Administrator Bob Clark; Senior Planner Andy Thomas; and Town Administrator Roe O'Donnell, due to commitments elsewhere, were not present.

Chairman Tharrington welcomed all attendees and addressed the Minutes transcribed at the Board's regular meeting held on January 3, 2019.

Without additional discussion, the following Motion was made by Member Janice Pearce, seconded by Member John Cyrus, and unanimously carried:

MOTION: The Minutes of the Planning Board meeting held on January 3, 2019, are approved, as presented.

Attention was then directed to N-Focus representative Rick Flowe, who, per the Agenda, proceeded with initial presentation of Youngsville's newly drafted and proposed Unified Development Ordinance ("YDO"). Unlike Plan 2040, which serves as somewhat of a narrative characterizing the Town, the YDO consists solely of technical zoning standards and specifications, the bulk of which have been compartmentalized for easier reference and use. The Board and Zoning staff are being introduced to replacement measures significantly more concise and compliant with State law than those currently followed. "It may be a huge meal to digest, but we're gon'na consume this elephant, one bite at a time."

With that goal in mind, the Ordinance will be piecemeal delivered, reviewed, and discussed. Binders have been individually assigned for tabbed insertion of maps and materials as those items are respectively distributed at upcoming work sessions. Review pace is, of course, scaled to accommodate a target of final adoption and enactment in or about July of this year. Each session will consist of both an introductory segment for new information and a question-and-answer forum encompassing data presented at the prior meeting. The floor remains open at all times to suggestions and corrections.

I. Reading Guide and Table of Contents:

The full Ordinance consists of 23 Articles, each containing, for indexing convenience, its own separate set of page numbers. Tabs Nos. 24-30 are reserved for supporting documentation, such as updated fees and forms, applicable rules of procedure, and the Comprehensive Land Use Plan and Map from which the YDO and official Zoning Map are carved.

The Reading Guide is our tool for sifting 23 Articles into three categorical “buckets,” so to speak – the first containing zoning guidelines; the second, administrative and procedural policies; and, the third, State and Federal mandates. Inasmuch as it’s evident that Bucket No. 2 is the least colorful of the three, strategy is simply to empty it as soon as possible and devote our time, instead, to more core topics of interest. Articles 1, 3, 4, 5, and 6 are the first “batch” to be absorbed – Article 2 has been pulled as food for thought at a later session.

II. Article 1: Purpose and Authority, Official Zoning Map:

The YDO, as the same may from time to time be amended, will supersede, in its entirety, the Zoning Ordinance now in place. Its content is designed to implement Plan 2040 (currently pending adoption by the Board of Commissioners), and its purpose is to regulate land usage in such a manner as to promote the health, safety, and general welfare of all citizens who reside and/or own an interest in real property lying within our designated zoning jurisdiction.

This Ordinance is authorized and governed by and is supplemental to the General Statutes of the State of North Carolina – what the Statutes enable, the Ordinance establishes. Its intent is not to repeal or abrogate any other legally existing easement, covenant, restriction, agreement, vesting, or permit. In the event, however, that a requirement or standard of the YDO is more or less restrictive than another said easement, covenant, restriction, agreement, or permit, the higher standard, or stricter interpretation, shall prevail. Where, on the other hand, the Ordinance prescribes regulations in addition to those set by the General Statutes, State law takes precedence.

When it comes to conflict between specifications stated within the YDO itself, the stricter of the standards will always apply, with but one exception – regulations for overlays in some instances overrule those for underlying districts. If inconsistency exists between text and maps or illustrations, text shall control, and construction of that text is, as directed by today’s society, gender-neutral.

A severability clause is included, allowing that, should any provision or standard of the YDO be deemed by a court of law to be invalid or unenforceable, all remaining stipulations are thereby unaffected and shall remain in full force. Its provisions, nevertheless, will have no effect or bearing of any kind on legal proceedings, violations, citations, or permits pending at the time of enactment.

The Official Zoning Map is incorporated into and made a part of the Ordinance. It, and any revisions thereto, must bear the Town seal, be attested by the Town Clerk, reflect the Town boundaries, and be properly filed in the Town Hall. District boundaries may follow easily distinguishable, surveyed lot lines, or they may be set by bordering rights-of-way (even if abandoned), utility easements, or waterways, in which case it’s always the centerline of that roadway, alley, railroad, easement, stream, river, canal, lake, or body of water that serves as the marked boundary. Flood Hazard Areas are best determined by Corps of Engineering maps, and the Zoning Map itself contains a scale for use in coinciding lines. In the event of dispute, authority to interpret lies with the Board of Adjustment. Split zoning is to be avoided wherever possible.

One facet that sets the YDO a step above is its provision for states of emergency. Amazingly, few Ordinances actually address natural disasters and/or phenomena. Common sense suggests that zoning compliance take a back seat should Homeland Security issue an “Imminent Threat Alert,” or FEMA be forced to bring in an influx of trailers to accommodate flood victims, or, if, even, thousands of RV’s invade town to watch a solar eclipse. Our rules and specifications allow the Planning, Zoning, and Subdivision Administrator (“Zoning Administrator”), upon resolution of the Board of Commissioners, to temporarily suspend some or all zoning regulations during such a dilemma. Once expiration is declared by Federal or State authority, or by the Mayor upon resolution of the Commissioners, suspension is rescinded, and reinstatement is immediate.

III. Article 3: Definitions, Abbreviations & Symbols:

This section, together with Article 18, to be subsequently introduced, serves merely as a glossary of relative terms – any word not listed takes the applicable meaning set forth in a standard dictionary. The symbols displayed are fairly common, but many of the abbreviations provided will prove to be invaluable when it comes to review and interpretation.

IV. Article 4: Planning Board & Board of Adjustment:

Though subordinate to the Board of Commissioners, it is the Planning Board and Board of Adjustment that literally carry out the duties and responsibilities and fulfill the goals of Town Plan 2040 and the YDO. All meetings and hearings are public, as are the Minutes prepared thereof.

A. Planning Board:

This is the advisory unit that offers, on behalf of the citizens of the Town of Youngsville, opinions and recommendations to the Board of Commissioners. It consists of seven (7) members, four (4) of whom reside within Town limits and three (3) of whom live within the Town’s extraterritorial jurisdiction (“ETJ”). In-Town members are appointed by the Youngsville Board of Commissioners; ETJ members, by the Franklin County Board of Commissioners. But for initial appointment, each serves a three (3)-year term. Initially, three (3) members (including one from the ETJ) serve for three (3) years; two (2) (including one from the ETJ), for two (2) years; and two (2) (including one from the ETJ), for one year.

Attendance of at least four (4) members is necessary to constitute a meeting quorum.

B. Board of Adjustment:

The Board of Adjustment (“BOA”) acts in a quasi-judicial capacity to arbitrate appeals and requests for variances from standards imposed by the YDO. This body is comprised of five (5) members, three (3) of whom reside within the Town limits and two (2) of whom live within the ETJ. In-Town members are appointed by the Youngsville Board of Commissioners; ETJ members, by the Franklin County Board of Commissioners. But for initial appointment, each serves a three (3)-year term. Initially, two (2) members (one being from the ETJ) serve for three

(3) years; two (2) (including one from the ETJ), for two (2) years; and one ETJ member, for one year. The Board of Commissioners may, in its discretion, appoint alternate members as well, to serve in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a new member. Variance rulings require a four-fifths vote – otherwise, simple majority adequately decides.

As is true in any tribunal environment, ex parte communication, fixed opinion, and familial association are prohibited. If an objection is raised to a member's participation and that member fails to recuse himself or herself, the remaining members shall by majority vote rule on the objection. "It is for these reasons," stated Mr. Flowe, "that I strongly recommend deviation from a Board of Commissioners and a Board of Adjustment acting as one and the same."

Public record is kept of the vote of each member on every matter, and of the absence of a vote by any member. Final disposition shall be by recorded resolution revealing findings of fact, and written decisions are properly delivered to all parties involved.

Planning Board and BOA rules of procedure are kept on file at Town Hall, and the Zoning Administrator shall serve as staff and provide technical assistance to both Boards.

V. Article 5: Amendments to Development Ordinance and Zoning Map:

The Board of Commissioners has authority to amend, supplement, modify, or repeal any provision of the YDO and Zoning Map. Such an amendment will be evaluated for compliance with Town Plan 2040 and may require, for the sake of compatibility, revision of the Comprehensive Land Use and Master Plan as well.

Proposed changes may be initiated not only by the Commissioners but also by the Planning Board, our Zoning Administrator, or any owner or resident holding an equitable interest in land affected by the Ordinance. Under no circumstances is a conflict of interest among Boards permissible.

Prior to filing an application for amendment, any applicant (or agent with written, notarized authorization) must meet and discuss proposed plans with the Zoning Administrator. If the proposal requires rezoning, the applicant and Zoning Administrator shall also arrange a meeting with representatives of the neighborhood in which the subject property is located. A completed application, with filing fees, and required supporting documentation, such as legal descriptions and surveys, must be submitted to Zoning staff approximately a month in advance of the Planning Board meeting at which the matter is to be presented. The Board will then review, consider consistency with and reasonableness under Town Plan 2040, and make its recommendation, in writing, to the Board of Commissioners for public hearing and final action. Should review entail additional information or consideration, leeway of an eight (8)-day meeting continuance is allowed.

Upon receipt of recommendation, the Board of Commissioners shall schedule a public hearing. Notification of that hearing is to be published, once weekly for two (2) consecutive weeks, in a newspaper of general circulation within the affected area. First publication must appear not less

than ten (10) or more than twenty-five (25) days prior to date of hearing. In addition, within the same window of time, written notice will be delivered, typically by first-class mail using addresses last listed on County tax records, to the applicant and/or owner and all vestees of abutting properties. Certification of notice must be provided to the Board, and signs shall be prominently and properly posted at the parcel or parcels of land being reviewed. If notices exceed fifty (50) in number, rules and procedures surrounding a one-half page publication may be followed instead.

Upon reviewing all pertinent data, the Board of Commissioners may take whatever action it deems appropriate, including tabling the application to accommodate additional neighborhood meetings. Prior to approval or rejection, it must adopt a written statement describing the consistency of its findings with Town Plan 2040.

Unless waived pursuant to the terms of the YDO, no application pertaining to the affected property can be accepted or considered for a period of four (4) months (a time line at this point subject to revision by the Planning Board) subsequent to final ruling by the Board of Commissioners.

Conditional zoning (“CZ”) is an option under the YDO that provides marked flexibility in development while ensuring compatibility with neighboring uses – and it affords a degree of land use certainty not possible with rezoning. Attached hereto, and incorporated herein, is Section 5.4 of Article 5 of the drafted Ordinance, setting forth the applicable districts, general requirements, and application procedure prescribed for the CZ designation.

VI. Article 6: Variances and Administrative Appeals:

The purpose of a variance administered by the BOA is never to remove inconveniences and financial burdens or increase profitability of a proposed development. To the contrary, this recourse is specifically designed to grant relief from Ordinance requirements that render land difficult or impossible to use because of some unique physical characteristic, or other factor, of the property.

In no scenario shall the BOA grant a variance:

- A. With respect to any Conditional Use Permit adopted pursuant to the YDO;
- B. That would alter, modify, change, or suspend the specifications set forth in the Ordinance for conditional use;
- C. That would increase flood levels within a designated floodway district during regulatory flood discharge;
- D. Which would permit a use or density not otherwise allowed in the district in which the subject property is located;
- E. Permitting a non-conforming use of land, buildings, or structures;
- F. On any parcel previously submitted for a variance within the three (3) immediately preceding years; and/or
- G. Conflicting with the North Carolina State Building Code, the North Carolina Fire Prevention Code, or any corresponding regulation.

Once the Zoning Administrator has consulted with the applicant and the application and fees are properly accepted, the request is scheduled for consideration at a public hearing by the BOA. The hearing must be held within thirty-six (36) days of receipt of the completed application, and notices shall be delivered to the applicant owner, to vestees of all properties abutting and/or lying within 500 feet of the subject parcel, and to any other person making written request for same at least ten (10) days prior to date of hearing. Mailing and sign postings will be as hereinabove stated, and, upon review, the Board may grant, deny, or conduct an additional public hearing pertaining to the request.

Decision of the BOA should be based on competent, substantial evidence, and each person offering corroboration must be sworn by the Clerk. The following findings of fact are always necessary:

- A. Unwarranted hardship would result from strict enforcement of the Ordinance;
- B. The hardship imposed must be due to conditions peculiar to the specific property, such as location, size, or topography;
- C. Self-created hardship is not acceptable; and
- D. The requested variance is consistent with the spirit, purpose, and intent of the YDO, in a way that secures public safety and achieves substantial justice.

Effective date is that on which the BOA's written decision is filed with the Clerk. It shall be properly delivered to all applicable parties, and certification thereof made to the Clerk. If the variance is granted, the applicant may proceed with obtaining a permit under the Ordinance; if denied, application for rehearing pursuant to the YDO may be timely filed. Construction and/or operation upon the subject property must commence within twenty-four (24) months of date of issuance of the variance; otherwise, the grant will expire.

An appeal can be made to the Franklin County Superior Court within thirty (30) days from receipt of the Board's written decision – if transmittal is by first-class mail, rather than by personal or electronic delivery, three (3) additional days shall be allowed for filing.

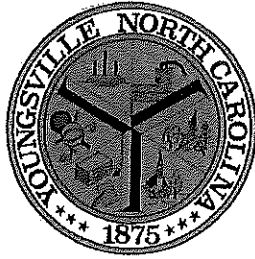
The majority, by far, of permits issued, or denied, pursuant to the YDO do not involve rezoning, conditional zoning, or variances, and, thus, are or are not issued, absent Board review, by the Zoning Administrator and his staff. An appeal of those actions can also be directed to the BOA, in the manner and pursuant to the rules and procedures attached and incorporated herein as Section 6.2, Article 6, of the Ordinance.

Inasmuch as the next regular meeting of the Board is set for March 5, it was suggested by Mr. Flowe that an interim work session be scheduled for February 28. Member response supported March 19 instead, and the Clerk was instructed to make arrangements accordingly.

Member Hank Lindwall pointed out that State and Federal laws have changed drastically since our current Ordinance was enacted more than a quarter of a century ago – and there seems to be no shortage these days of attorneys with new formats and criteria.

To acknowledge public comment, Chairman Tharrington recognized attendee Jim Moss, of Mosswood Partners. "I'd like to respond merely," remarked Mr. Moss, "that it's gratifying to observe firsthand the dedication, principles, and progress of this Board."

With no additional reflection or report by Planning staff, the meeting was adjourned at 7:20 P.M.



Town of Youngville

Planning and Zoning Administration
Post Office Box 190, Youngville, NC 27596

MINUTES – CONDITIONAL ZONING ATTACHMENT

5.4 Conditional Zoning

5.4-1 Purpose.

Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a Primary General Use District. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.

5.4-2 Conditional zoning districts.

Conditional zoning is available for any of the Primary General Use District classifications enumerated in Article 8 of this Ordinance, except for those that require a site-specific development plan as part of the application (e.g., Traditional Neighborhood Development (TND) Overlay District, Heavy Industry (HIO) Overlay District). The conditional zoning designation shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" (e.g. "C 74(CZ)"; "IND(CZ)").

5.4-3 General requirements.

The following provisions shall apply in the administration of conditional zoning:

(A) A conditional zoning application shall be considered only upon request of the owner of the affected property or a duly authorized representative of the property owner demonstrated by written, signed and notarized documentation.

(B) Prior to submittal of the application, it is required that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development, and include a report of any such meetings in accordance with Section 5.3-1(B) of this Article its application.

(C) All standards and requirements of the corresponding Primary General Use District shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive than the general use standards.

(D) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.

(E) The conditions agreed upon pursuant to the Conditional Zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.

(F) Minor modifications to the approved Conditional Zoning ordinance may be approved by the *Planning, Zoning & Subdivision Administrator*. The minor modifications authorized herein are intended to provide relief where conditions established by the Conditional Zoning ordinance create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of ordinance adoption and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the zoning. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

1. A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by Article 14 (Flexible Development Standards) of this Ordinance are met.
2. A reduction of up to 25 percent in the number of parking spaces required for the use provided that the proposed development is located within ½ mile of either the Town Center District (TC) or the Mixed Use (MU-1 and MU-2) and on-street parking is available.
3. Any other minor modification in accordance with the limitations and procedures prescribed in this chapter, unless a Conditional Zoning ordinance adopted pursuant to this section specifies otherwise.

Any other modifications must be approved by the Town Board of Commissioners as an amendment to the Conditional Zoning ordinance, and may be referred to the Planning Board or *Planning, Zoning & Subdivision Administrator* as appropriate. The *Planning, Zoning & Subdivision Administrator* shall in every case have the discretion to decline to exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the Conditional Zoning ordinance.

(G) Any violation of a provision of a Conditional Zoning ordinance shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any other such violation.

(H) If for any reason any provision of a Conditional Zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire Conditional Zoning ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the Town Board of Commissioners.

(I) If no formal action (e.g. construction plan submittal, permit application, etc.) has been taken to begin the development of the property in accordance with the Conditional Zoning ordinance within 24 months of its approval by Town Board of Commissioners, or no vested right has been obtained, then the property shall revert to its previous zoning classification, or the *Planning, Zoning & Subdivision Administrator* may initiate appropriate action to rezone the affected property to any other classification.

(J) If the use or uses commenced pursuant to a Conditional Zoning ordinance adopted pursuant to this section are abandoned or discontinued or no vested right has been obtained then the property shall revert to its previous zoning classification, or the *Planning, Zoning & Subdivision Administrator* may initiate appropriate action to rezone the affected property to any other classification.

(K) No variances or conditional use permits may be issued for developments on property that is subject to a Conditional Zoning ordinance.

5.4-4 Application procedure.

When applying for Conditional Zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for Conditional Zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in this article for zoning map and zoning text amendments, except as provided below:

(A) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.

(B) The application and supporting materials shall be reviewed by the *Planning, Zoning & Subdivision Administrator* in accordance with its procedures for reviewing applications for conditional use permits prior to the meeting of the Planning Board at which the application is to be considered. The recommendations and comments of the *Planning, Zoning & Subdivision Administrator* shall be reported to the Planning Board. In addition, the *Youngsville Planning, Zoning & Subdivision Administrator* shall evaluate Conditional Zoning applications on the basis of the criteria for conditional use permits set out in Article 7, and shall submit said report at the public hearings on said applications.

(C) Following review by the *Planning, Zoning & Subdivision Administrator*, the Planning Board shall hold a public hearing on applications for Conditional Zoning. Notice of the public hearing shall be provided in accordance with the provisions of the requirements of this ordinance for zoning map amendments. After holding the public hearing, the Planning Board may recommend approval of the application, including recommending conditions for the zoning; recommend denial of the application; or continue the consideration of the application in order to receive further information regarding the application. In those cases where, upon hearing the application, the Planning Board feels that more information is needed, questions have arisen, or other circumstances occur in which additional time is needed to enable the Planning Board to make a decision, consideration of the application may be continued. The Planning Board may, by majority vote of members present, continue the consideration of the application until the next regularly scheduled Planning Board meeting. The Board shall direct the appropriate person(s) to obtain the needed information, provide answers to questions, or other action(s) during this time to enable the Planning Board to make a decision at the next regularly scheduled meeting. The Planning Board shall take action (affirmative or negative recommendation) on continued items at their next regularly scheduled meeting.

(D) Upon receipt of the recommendations from the Planning Board, the Town Board of Commissioners shall hold a public hearing on the application for Conditional Zoning. Notice of the public hearing shall be provided in accordance with the provisions for public hearings for zoning map amendments as set forth in Section 5.3-3(B) of this Ordinance and the North Carolina General Statutes. (N.C.G.S. 160A-384)

(E) The Town Board of Commissioners's consideration of an application for Conditional Zoning is legislative in nature, and the Board of Commissioners may consider any relevant information in its deliberations, including the criteria for issuing conditional use permits specified in Article 7. Consideration shall be given to adopted land use plans for the area, small area plans, corridor plans, and other land use policy documents, and to surrounding land uses. The Town Board of Commissioners may adopt or not adopt a Conditional Zoning ordinance, or may continue its consideration of the application as necessary or appropriate.

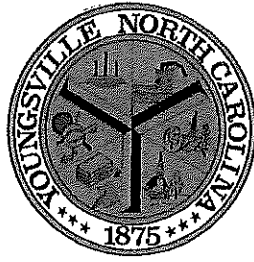
(F) During the adoption of a Conditional Zoning ordinance, specific conditions may be proposed by the petitioner, Town Board of Commissioners, Planning Board, or Town staff, but only those conditions mutually approved by Town Board of Commissioners and the petitioner may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed in a conditional use district shall be limited to those that address the conformance of the development and use of the site to Town ordinances, an officially adopted land use, comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

(G) Specific findings of the Town Board of Commissioners are not required for action on an application for Conditional Zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared for each conditional use district.

(H) Upon adoption of a Conditional Zoning ordinance, the Official Zoning Map of the Town of Youngsville shall be amended to add the conditional zoning district. The *Planning, Zoning & Subdivision Administrator* shall maintain a book or file for Conditional Zoning ordinances, and each Conditional Zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.

(I) The Conditional Zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this Ordinance.

(J) Conditional Zoning ordinances are legislative in nature, and judicial review of Conditional Zoning ordinances shall be as provided by law for zoning ordinances.



Town of Youngville

Planning and Zoning Administration
Post Office Box 190, Youngville, NC 27596

MINUTES – APPEALS OF ADMINISTRATIVE DECISIONS ATTACHMENT

6.2 Appeals of Administrative Decisions

- 6.2-1 Purpose. Appeals to the *Board of Adjustment* from the decisions of the *Planning, Zoning & Subdivision Administrator* of the Town of Youngsville are permitted as provided for in this section.
- 6.2-2 Decisions that may be appealed. Any final and binding order, requirement, or determination made in writing by an administrative officer charged with enforcing the provisions of this Ordinance may be appealed to the *Board of Adjustment*. Any such decision shall be given to the owner of the property that is subject to the decision and to the party who sought the decision, if different than the property owner. Said notice shall be delivered by personal delivery, electronic mail or by first-class mail.
- 6.2-3 Parties who may file an appeal. Any person who has standing under NCGS 160A-393(d) or the Town of Youngsville may bring an appeal to the *Board of Adjustment*.
- 6.2-4 Period to File an Appeal. The property owner or other party shall have thirty (30) days from the date of receipt of the written decision within which to file an appeal. Any other person or entity with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to appeal.
- 6.2-5 Constructive Notice. It is presumed that persons with standing to appeal shall have constructive notice of the decision from the date a sign has been posted, such sign containing the words "Zoning Decision" in letters at least six (6) inches high and identifying the means to contact a Youngsville official for information about the decision, with said sign being posted for a minimum of ten (10) days. Posting of the sign shall be the responsibility of the landowner or applicant. Posting of signs is not the only form of constructive notice.
- 6.2-6 Filing of Appeal.
(A) The appeal shall be filed with the *Planning, Zoning & Subdivision Administrator* in writing and shall contain information identifying the property, the owner and

- the purpose for the request.
- (B) The appeal shall be accompanied by a fee as established by the Town of Youngsville.
 - (C) Upon acceptance of the appeal application by the *Planning, Zoning & Subdivision Administrator*, the appeal hearing shall be scheduled for consideration by the *Board of Adjustment* within thirty-six (36) days of the date of submittal of a complete application. Notwithstanding, the appellant can apply for an expedited hearing to occur within fifteen (15) days of such filing as provided in Subsection D below.
 - (D) The filing of an appeal shall stay the enforcement of the action appealed unless the *Planning, Zoning & Subdivision Administrator* certifies to the *Board of Adjustment* after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life and property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In such case, enforcement proceedings shall not be stayed except by a restraining order granted by the Superior Court of the county in which the subject property is located on notice to the administrative official from whom the appeal is taken, with due cause shown. If enforcement proceedings are not stayed, the appellant may file for an expedited hearing of the appeal to occur within fifteen (15) days after such request is filed.

6.2-7 Action by the Board of Adjustment.

- (A) Upon receiving the appeal application, the *Board of Adjustment* shall hold a public hearing on the appeal. Notice of the hearing shall be as provided in Section 6.1-4. The person whose decision is being appealed shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is being taken. Said information shall also be provided to the applicant and to the owner of the property that is subject to the appeal, if such person(s) is not the applicant.
- (B) The public hearing shall be conducted in accordance with rules of procedure of the *Board of Adjustment* and in accordance with the North Carolina General Statutes. All persons providing evidence at the hearing shall be sworn or affirmed by either the Chair or the Clerk to the Board. The official who made the decision that is being appealed shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the public hearing.
- (C) Either after the public hearing or at a subsequent or continuation meeting to be held within 30 days of the close of the public hearing, the *Board of Adjustment* shall adopt an order reversing, affirming, wholly or partly, or modifying the contested action. The *Board of Adjustment's* decision shall be based upon competent, material and substantial evidence.
- (D) The *Board of Adjustment* shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the requirements of this Ordinance.

- (E) *The Board of Adjustment* shall not reverse or modify the contested action unless there is a concurring vote of a majority of the Board's members. For purposes of this section, vacant positions and members of the Board who are disqualified from voting on the hearing decision shall not be considered "Board members" for calculation of the majority if there are no qualified alternate Board members available to take the place of such members.
- (F) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.
- (G) Any decision made by the Board of Adjustment regarding an appeal shall be reduced to writing and reflect the Board's decision of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair and shall be filed with the Town Clerk. The effective date of the decision shall be upon the date it is filed with the Town Clerk. The decision shall be delivered by the Administrator or their designee via personal delivery, electronic mail or by first class mail to the applicant, property owner and to any person who has submitted a written request for a copy prior to the close of the public hearing on the case. The person making such deliveries shall certify that the deliveries have been made.

6.2-8 Effect of reversal or modification. In the event that the *Board of Adjustment* reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the *Board of Adjustment* unless an appeal is taken on the Board's decision.

6.2-9 Appeal from Board of Adjustment. An appeal from any decision of the *Board of Adjustment* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Any such petition to the Superior Court shall be filed by the later of thirty (30) days after the decision becomes effective or after a written copy of the decision is delivered to the applicant, property owner, and to any other person who has submitted a written request for a copy of the decision, prior to the date the decision becomes effective. Said decision shall be delivered by personal delivery, electronic mail, or by first class mail. When first class mail is used to deliver the notice, three (3) days shall be added to the time to file the petition.