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PLANNING AND NEIGHBORHOOD SERVICES

Zoning Staff Report

Case: ZT 2013-004 Amendment of UDO Related to the Board of Adjustment		
Reference Name	Changes to Board of Adjustment Requirements	
Applicant	Town of Indian Trail	
Submittal Date	11/5/13	
Location	Town-wide	
Tax Map Number	N/A	
Plan Consistency	Town of Indian Trail Comprehensive Plan	Consistent With Request
Recommendations & Comments	Planning Staff	Recommends Approval of Proposed Text Amendment.

Project Summary
A request to amend multiple sections of the Unified Development Ordinance (UDO) specifically in Divisions 200 & 300. The proposed amendments to the UDO are in response to a recently passed Bill in the North Carolina General Assembly, Session Law 2013-126 – **An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustments** (Attachment 1). It is important to recognize that proposed ordinance amendment ZT2013-004 is required to continue the Town's compliance with State law. All other NC local governments engaged in making quasi judicial decisions will need to undertake similar amendments to their respective ordinances.

Overview of State Law Changes
Session Law 2013-126 (H 276), effective October 1, 2013, modernizes the board of adjustment statute. The new legislation proposed by the North Carolina Bar Association does not drastically alter the fundamental aspects of the prior law, but it does make several important changes. The Session Law was unanimously approved by both the NC House of Representatives and the Senate and includes a number of stylistic and organizational changes to clarify the statute, as described below.

Outdated, awkward, and confusing language and syntax are removed. Gender-neutral language is used throughout. Related provisions are consolidated and section headings are added for readability. The law incorporates reference to recent legislation (G.S. 160A-393) on judicial review of quasi-judicial decisions. The act also modernizes the statute and establishes uniform procedures to be applied across the state. Several provisions were added to the statutes to codify case law on various points, particularly the basic due process rules for all quasi-judicial zoning matters set by Humble Oil & Refining Co. v. Board of Aldermen, 284 N.C. 458 (1974).

Other major topics that are covered in the new law also include the following;

- **Notice of Hearings** – creates a uniform notice requirement for hearings on quasi-judicial matters. The new notice provisions are similar to those required for a zoning map amendment, however, publication within a local newspapers is no longer required. The proposed UDO amendment includes removing newspaper publication for quasi judicial public hearings (i.e. Special Use Permits, Variances, Appeals), while maintaining the current 400-ft mailed notice that was approved by the Town Council (w/ support by the Planning Board), which exceeds minimum State requirements. Staff believes that the mailed notice, combined with posting an onsite sign are the most effective forms of advertising quasi-judicial public hearings.
- **Hearing Process** – authorizes the board's clerk to administer oaths to witnesses. Previously only the Chair was allowed to administer oaths. It clarifies the process for requesting and objecting to subpoenas.

- **Decisions** – must be made in a reasonable time and be signed by the chair or other duly authorized member. The decision is effective when it is filed with the clerk to the board or another official specified by the ordinance. The changes strongly suggest that a letter or other written decision document should be prepared for each quasi-judicial decision.

- **Appeals** – G. S. 160A-388(a1) defines the decisions that are subject to these appeals. It codifies the rule on the jurisdiction of the board by specifying that the decisions that can be appealed to the board are "any final and binding order, requirement, or determination" made by an administrative official charged with enforcement of a zoning or unified development ordinance.

  As with the prior statute, an appeal of an enforcement action stays enforcement unless there is imminent peril to life or property or the violation is transitory in nature. In those instances where enforcement is not stayed, the appellant may request an expedited hearing. If that request is made, the board must meet within fifteen days to hear the appeal.

  The law also expressly authorizes the parties to an appeal to agree to voluntary alternative dispute resolution (such as mediation). The zoning ordinance may set up procedures to facilitate and manage this process. Staff is not proposing to add any language to establish mediation procedures at this time.

  The statute eliminates the provision in prior law for the board of adjustment to hear cases involving disputed lot lines. The rationale for this deletion is that the board has no

particular expertise on surveying or property boundaries; thus these issues are best resolved judicially if necessary. Since the location of zoning district boundaries is an interpretation of the ordinance, a staff determination of those lines can be appealed to the board.

The statute now requires only a simple majority vote for board decisions on appeals and Special Use Permits (SUP). It is important to note that the Indian Trail Board of Adjustments has already adopted this voting protocol for cases considered since the Session Law was adopted by the State. Previously a four-fifths vote was required to overturn a staff decision or rule in favor of an appellant on an appeal or to approve an SUP.

- **Variances** – The standard for variances is simplified by deleting the "practical difficulty" language. It retains the requirement for a showing of "unnecessary hardship," which under North Carolina case law has long been the principal consideration for variances. One of the more significant substantive changes made by the law is clarification as to what should be deemed an unnecessary hardship. . G.S. 160A-388(d) provides that the hardship must result from conditions peculiar to the property (such as location, size, or topography), not the personal circumstances of the applicant. Hardships common to the neighborhood or general public also do not qualify for a variance (on the rationale that those hardships were anticipated and relief from them is more appropriately obtained through an ordinance amendment).

  A self-created hardship cannot be the basis for a variance, though purchasing the property knowing that circumstances exist that might justify a variance cannot be deemed a self-created hardship (as the new owner essentially steps into the shoes of the prior owner and is eligible to make the same request as that owner could have made). Finally, although the alleged hardship must be real and substantial, the applicant is not required to show no reasonable use could be made of the property without a variance.

Analysis
The proposed changes are based on the need for the Town's UDO to be updated to maintain compliance with recent State law. . The changes will help clarify some ambiguity in how the board should make decisions and procedural topics. Staff has reviewed the Session Law and reviews by legal and planning peers regarding how to incorporate these changes into the UDO. The Indian Trail Town Attorney has also reviewed the proposed UDO amendments.

Required Consistency Findings
The Planning Board is required to make two consistency findings, one for consistency with Town adopted plans and another regarding the benefit of the public (section 320.050). The current request before the planning board is unique in that it does not alter design guidelines or uses in the UDO, rather it focuses on administrative changes that are designed to modernize the rules and guidelines used by the Board of Adjustment.

Staff is of the opinion the following findings can be made:

1. The proposed UDO amendment is consistent with the following statement:

   Goal #3 Land Use (from recently updated Comprehensive Plan)
   Promote high quality development through efficient and predictable land development process.

2. This UDO ordinance amendment is in the best interest of the public because it makes important changes to provide a predictable process when dealing with existing and future development in Indian Trail. With outdated, awkward and confusing language being removed the changes help to modernize all ordinances across the state so that all board of adjustments are following a standardized and up-to-date process.

Staff recommends that the Planning Board make the required consistency findings and recommend adoption of this UDO Text Amendment as presented to the Town Council.

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Attachment 1: Session Law 2013-126
Attachment 2: Draft Track Changes

ATTACHMENT ONE

ATTACHMENT TWO