

Notes for Planning Board/Board of Commissioners:

Comments Received Regarding the Wake Forest UDO & MSSD Since Delivery of March 1, 2013 Draft (Revised 5/2/12)

Comments submitted via email:

Comment #1 – Submitted by Wendell Wiley

Let me open by stating I believe the UDO in itself is a great idea, it is always beneficial to consolidate, streamline and standardize processes.

Having said that I do have a couple of concerns to comment on:

- 1) Ambiguity of wording in the "special use" section should be revisited. "Substantially Injure" leaves too much to individual interpretation and frankly I don't believe there should be injury to one party if the other party is making money as a result of injuring the value of someones else property!
Staff Response: "Substantially injure" is standard language in NC (and nationally) for evaluating requests for variances, special use permits and other quasi-judicial permits. Courts in NC have delivered many rulings to establish the appropriate threshold of discretion for quasi-judicial decisions, and the "substantially injure" language rests squarely within that line. In NC, the "substantially injure" language is specifically supported by a 1972 NC Court of Appeals case (Kenan vs. Board of Adjustment) which established the 4 general standards that most NC ordinances now use as a guide for evaluating SUP applications.
- 2) The proposed rezoning of O&I to RMX along the 98 "bypass"/Calvin Jones "Hwy" corridor from Lowes Home Improvement to Lowes Food Store should also be revisited. I firmly believe that if the RMX is adopted the corridor will turn into wholly residential. That scenario is in NO way beneficial to existing residents that use this corridor on a daily basis at this time. This corridor would be better served for offices or institutions (Satellite Campus for Wake Tech or Vocational/Technical schools, medical or dental offices and the like, for example).
Staff Response: The current O-I Zoning District allows a variety of land uses including multi-family developments and has served as a "mixed-use" zoning district in the past. As part of the UDO, the O-I District is being eliminated and replaced for the most part by RMX (in some cases NB & GR10). The area referenced at the public hearing falls within an "urban context" and is currently zoned O-I. Changing the zoning to RMX will provide a zoning with similarly allowed land uses as the existing O-I Zoning District and allow the property to develop in an "urban context" as recommended in the Wake Forest Community plan and various sections of the UDO.

Comment #2 - Submitted by Anonymous

There should be a town ordinance that restricts what type of trees are planted near property lines. Today a builder or any private citizen could plant a fast growing tree which can grow 20 feet wide a foot from the property line and intrude into a neighbor's property causing foreseen issues without any guidance or protection from this town. I am one of these property owners with this issue and would like to see this town find a better way to control how trees our planted near property lines.

Staff Response: The town's Official Tree Planting List is not a part of the UDO. It is maintained by the town's Urban Forestry Board.

Comment #3 – Submitted by Suzanne Harris (HBA)

I would like to take this opportunity to thank you and the staff for the invitation to participate in the conversations that led to the draft of the UDO. I found the staff to be very professional and willing to hear my concerns. Of course, there are still elements to the draft UDO that will come before you tonight that our industry has concerns with.

I will briefly bullet our issues and plan to attend the April 8th Open House to discuss them further. Also, feel free to contact me if you have any questions.

- Chapter 5 – Generally speaking, we oppose building design standards and believe that the market drives the housing and the “design”. We believe that a local government does not have the legislative authority to dictate the type of siding, the color, the location of the garage, or any other elements that are not already in the most up to date NC Residential Building Code. Please reconsider Chapter 5, specifically, section 5.5 that deals with detached houses, townhouses and apartment buildings.

Staff Response: The town is well within its authority to impose design standards on new development. That said, the town is aware of the current legislation working its way through the NC General Assembly that will limit the application of design standards on single family homes (HB 150). The town is moving forward under the assumption that HB 150 will pass as currently proposed, and Section 5.5 of the UDO has been edited to comply with the restrictions in that legislation.

- Chapter 6 – We have concerns over the maximum allowed block lengths and suggest instead to consider a maximum block perimeter to allow for topography issues. Also, we are concerned over the stringent requirements for pedestrian/bicycle connections required in 6.5.3. Quite an expense will exist if a developer has to connect to all greenways, parks, cul-de-sac to cul-de-sac and do it all to the Federal ADA standards. Who is going to be responsible for maintaining these connections if they are for the “public”? Please reconsider the stringency of the connectivity requirements and the burden of who has to maintain them.

Staff Response: The Community Plan emphasizes connectivity in new development, and specifically recommends street connections every 400 to 600 feet. Any further changes in this regard will require specific direction from the Board of Commissioners.

- Chapter 7 – Section 7.5.3 is requiring that no residential unit within a development be further than ¼ mile, as measured along a road or pedestrian path, from a recreation space or publicly accessible park facility. This requirement is quite stringent and will add additional cost and cause a loss of lots. Please reconsider the distance requirement for this section and perhaps instead require no further than a ½ mile. It seems rather ironic to say people will not walk/bike to a park (a place to exercise) if it's more than ¼ mile away, when that is less than a 5 minute walk. Consequently, a ½ mile would take maybe 10 minutes.

Staff Response: Convenient access to parks and open space is a goal discussed in the Community Plan. ¼ mile is the typical distance that people are willing to walk to accomplish daily tasks, and the UDO Committee felt that this was an appropriate distance to apply. Any further changes in this regard will require specific direction from the Board of Commissioners.

- Chapter 12 – I wanted to resurrect an issue that is very troublesome to us. Currently, the Town of Wake Forest has the exact same restrictions on residential building whether you are building in the current 100 year floodplain or if you are in the future conditions flood hazard area. To my

understanding, the future conditions flood hazard area is the area that the town determined to be "future floodplain" if the entire town were built out to the maximum density possible under the zoning in place at the time it was determined, and assuming the stormwater controls were those that were in place at the time the area was determined. Essentially, I see it as a total worst case (likely never to happen) scenario. The problem we have with doing this is that the Town is essentially "taking" away development potential based on at full build-out "worst case scenario" that likely will never happen, not even in 30 years. Now, I understand from my conversations with staff that the amount of land we are talking about falling into this category is relatively small, however, it is someone's land that is affected. Not only that, but it sets a bad precedent, in our opinion, that other local governments will look to and perhaps emulate. Please consider reevaluating this policy of the town and instead have a second set of restrictions (not as stringent) for those areas you determine to be in the future conditions flood hazard areas.

Staff Response: The UDO continues the town's current restrictions on development in the future conditions flood hazard area. Any changes in this regard will require specific direction from the Board of Commissioners.

Comment #4 – Submitted by Dora Pearce

The draft UDO states one of the intents and purposes is to promote among other things affordable housing. Which elements of the UDO promote affordable housing and what is the definition of affordable housing being used?

Staff Response: While the UDO doesn't include any type of mandatory inclusionary housing requirements, the overall approach of the UDO will promote the development of more affordable housing in Wake Forest in two important ways. First, the UDO has more flexible use requirements that will allow the development of high-quality multifamily housing (both rental and owner-occupied) in the urban districts. Multifamily dwelling units typically imply more reasonable rental and/or ownership costs to potential residents than traditional single-family neighborhoods, and will therefore provide housing options for a wider range of income earners. The UDO includes expanded design standards and design review processes to govern multifamily housing and ensure that it is of high-quality and compatible with adjacent development.

Another factor of housing affordability is the cost of transportation for residents. Commuting to work and travelling to accomplish other basic daily tasks demands a significant portion of household income for residents in conventional suburban development. The UDO will help to reduce transportation costs by encouraging mixed-use development in the urban districts that locate residents, employers, shopping, schools, recreation and other essential activities within a walkable/bikeable distance of one another. Providing this diversity of uses in close proximity will allow residents to accomplish daily tasks without the significant cost that lengthy automobile commutes imply.

All of this will be market-dictated and implemented by private developers. Again, the intent of the UDO is to encourage the development of more affordable housing in Wake Forest, but it does not require the inclusion of affordable housing.

Comments at Public Hearing on 4/2/13:

Why is O-I being changed to RMX in areas along Dr. Calvin Jones Hwy?

Staff Response: The current O-I Zoning District allows a variety of land uses including multi-family developments and has served as a "mixed-use" zoning district in the past. As part of the UDO, the O-I District is being eliminated and replaced for the most part by RMX (in some cases NB & GR10). The area referenced at the public hearing falls within an "urban context" and is currently zoned O-I. Changing the

zoning to RMX will provide a zoning with similarly allowed land uses as the existing O-I Zoning District and allow the property to develop in an "urban context" as recommended in the Wake Forest Community plan and various sections of the UDO.

Why is "substantially injured" in findings of fact for SUP in new UDO?

Staff Response: "Substantially injure" is standard language in NC (and nationally) for evaluating requests for variances, special use permits and other quasi-judicial permits. Courts in NC have delivered many rulings to establish the appropriate threshold of discretion for quasi-judicial decisions, and the "substantially injure" language rests squarely within that line. In NC, the "substantially injure" language is specifically supported by a 1972 NC Court of Appeals case (Kenan vs. Board of Adjustment) which established the 4 general standards that most NC ordinances now use as a guide for evaluating SUP applications.

How will the adoption of the effect applications that have already been submitted?

Staff Response: Plans & applications submitted prior to the effective date of the UDO will be processed under the old land use rules & regulations.

There should have been better public notice of the UDO process.

Staff Response: Per N.C.G.S. 160A-384, for larger-scaled zoning amendments that affect more than 50 properties (such as the zoning map amendments associated with the UDO), the Town can elect to publish the notice of hearing in the local newspaper, provided that each advertisement is not be less than one-half of a newspaper page in size. The advertisement is only effective for property owners who reside in the area of general circulation of the newspaper and owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing, shall be notified via first class mail. This requirement was met and throughout this entire process, staff has made efforts to notify the public and solicit their input through public informational meetings, webpage/UDO blog updates, advertisements & articles in local newspapers (The Wake Weekly, News & Observer & Triangle Business Journal), Focus on Wake Forest segments (local television program), announcements on the Town's government access channel, articles in the Town's bi-monthly newsletter, press-releases, emails, phone calls, & flyers mailed with utility bills.

Comments from Open House on 4/8/13:

UDO should require Special Use Permits for non-residential uses that will have an impact on adjacent residential properties within 1000'.

Staff Response: The UDO subcommittee, including Town Staff and the consultants, were directed by the Board of Commissioners at the outset of the UDO rewrite process to eliminate as many SUP requirements as possible by establishing consistent standards that ensure compatibility between residential and non-residential uses. The UDO subcommittee has reviewed the use allowances and supplemental use requirements in detail and believes that the standards currently proposed provide adequate protection to existing and future residential uses. Any further changes in this regard will require specific direction from the Board of Commissioners.

UDO should require inch for inch replacement for the removal of specimen trees.

Staff Response: Section 8.4.3.D requires replacement of specimen trees removed during construction by trees/landscaping of equal value as determined by the Administrator (in this case the town's Urban Forester). The "equal valuation" language was chosen in favor of an inch-for-inch replacement because it provides more flexibility to both the developer and the town's Urban Forester to uphold the intent of the

ordinance, while still providing significant deterrent toward the removal of specimen trees. Any further changes in this regard will require specific direction from the Board of Commissioners.

UDO should increase baseline requirements for landscaping in RMX to match rural and suburban district requirements.

Staff Response: The UDO subcommittee has reviewed the landscaping requirements in detail and believes that the standards currently proposed provide adequate protection to existing and future development. Any further changes in this regard will require specific direction from the Board of Commissioners.

Concerns were expressed about the retrofit overlay: eliminate completely, remove HB from the retrofit, or remove Gateway Commons from within this area. (Follow up comments were received via e-mail following the Open House)

Staff Response: The intent of the Conventional District Retrofits (Section 2.5.2) is to allow walkable, mixed-use development in areas that are currently regulated by predominantly auto-oriented standards. This is a direct response to specific policy statements for existing commercial areas from the Wake Forest Community Plan. These policy statements call for the redevelopment of existing auto-oriented commercial areas as pedestrian-oriented, walkable/bikeable mixed-use nodes. Further, the application of the Conventional District Retrofits option is limited to the area of town designated by the Community Plan Growth Strategies Map as the "Town Center" zone. Staff, the consultant team, and the UDO subcommittee agreed that the Conventional District Retrofit tool is an ideal way to support the recommendations of the Comprehensive Plan in these limited areas while allowing existing auto-oriented development to remain in compliance.

*While the Conventional District Retrofits permit greater flexibility in the density and types of uses that can be accommodated in certain locations (in accordance with the specific recommendations of your Comprehensive Plan), **the approval process has been written to include an expansion of your existing architectural design standards as well as a series of procedural checks and balances that will allow the Board of Commissioners and the Design Review Board to ensure neighborhood compatibility and require a high-quality of design.** This does NOT provide a simple by-right pass through for developers to build multifamily, commercial or mixed-use development.*

In the preparation of the UDO, staff, the consultant team, and the UDO subcommittee were very aware that ensuring compatibility between multifamily/mixed-use nodes and existing single family residential neighborhoods is of utmost concern to town residents, both in the use of Conventional District Retrofits and other areas. For this reason the UDO was written to include a higher standard of quasi-judicial review for mixed-use multi-family development through 3 procedural checks.

- 1. Any development which involves the subdivision of land into 4 or more lots, or the dedication of public utilities/streets will require extra review as a "Major Subdivision" (15.9.2). This process requires the Board of Commissioners to specifically find, among other standards, that the proposed development "will not be detrimental to the use or development of adjacent property or other neighborhood uses." (See Section 15.9.2.1 for the other specific Findings of Fact that must be made to approve Major Subdivisions.)*
- 2. Any development requires an Enhanced Transportation Impact Analysis (as defined in Section 6.11.1) will require extra review as a Major Site Master Plan (15.8.2) which is subject to the same requisite findings as Major Subdivisions.*

- 3. Any development which exceeds any number of thresholds outlined in Section 15.8.5.A is subject to Major Architectural Design Review (15.8.5). The thresholds for this type of review have been intentionally set at relatively low levels, so that development of any significant size will be required to go through this extra review process. For example, any multifamily development containing 8 or more units requires Major Architectural Design Review. Also, all mixed-use or non-residential projects in the districts that can be applied using the Conventional District Retrofit tool require Major Architectural Design Review. This review process is administered by the Design Review Board and requires that board to specifically find, among other standards, that the proposed development "conforms to the character of the neighborhood, considering the location type and height of buildings or structures and the extent of landscaping on the site." This is guided by the Discretionary Review Standards in Section 5.9 which include several pages of language focused exclusively on ensuring neighborhood compatibility.*

In addition to those 3 procedural checks, Chapter 5 includes expanded provisions for the design of multifamily (Section 5.5) and commercial (Section 5.6) buildings specifically. These are design standards that must be followed regardless of the size of any proposed development or the process by which it is approved.

Finally, in response to citizen concerns regarding the Conventional District Retrofits tool, language was added to Section 2.5.2 to require a Neighborhood Meeting to be held by any applicant choosing to pursue development under an urban district designation within 300 feet of single family residences.

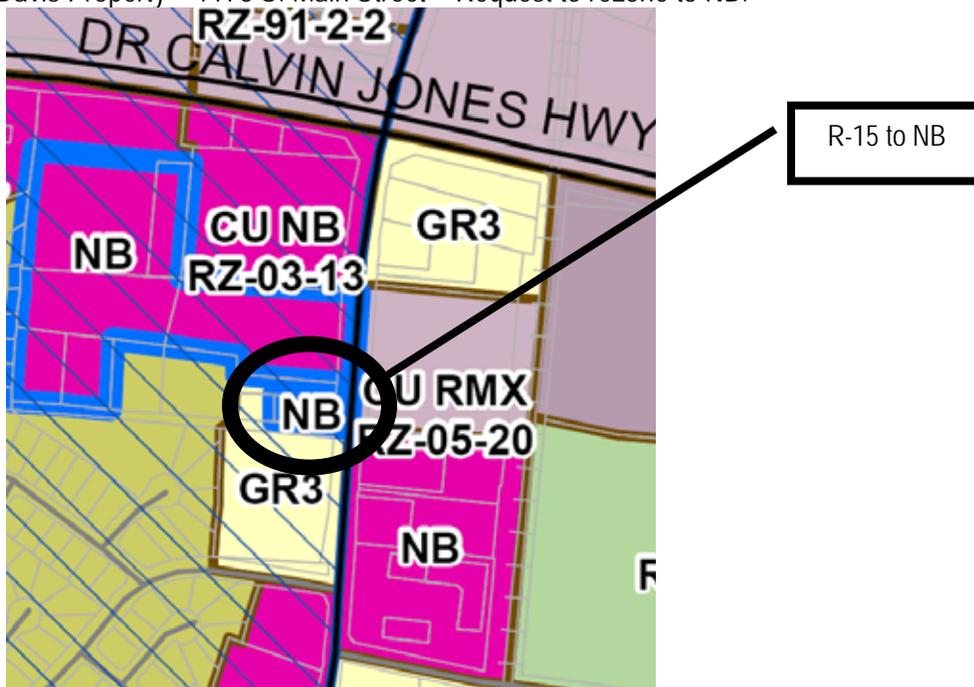
Any further changes regarding the Conventional District Retrofits tool will require specific direction from the Board of Commissioners.

Remove the following uses from NB: Gas stations, pawnshops, halfway homes, bar and taverns, and night clubs.

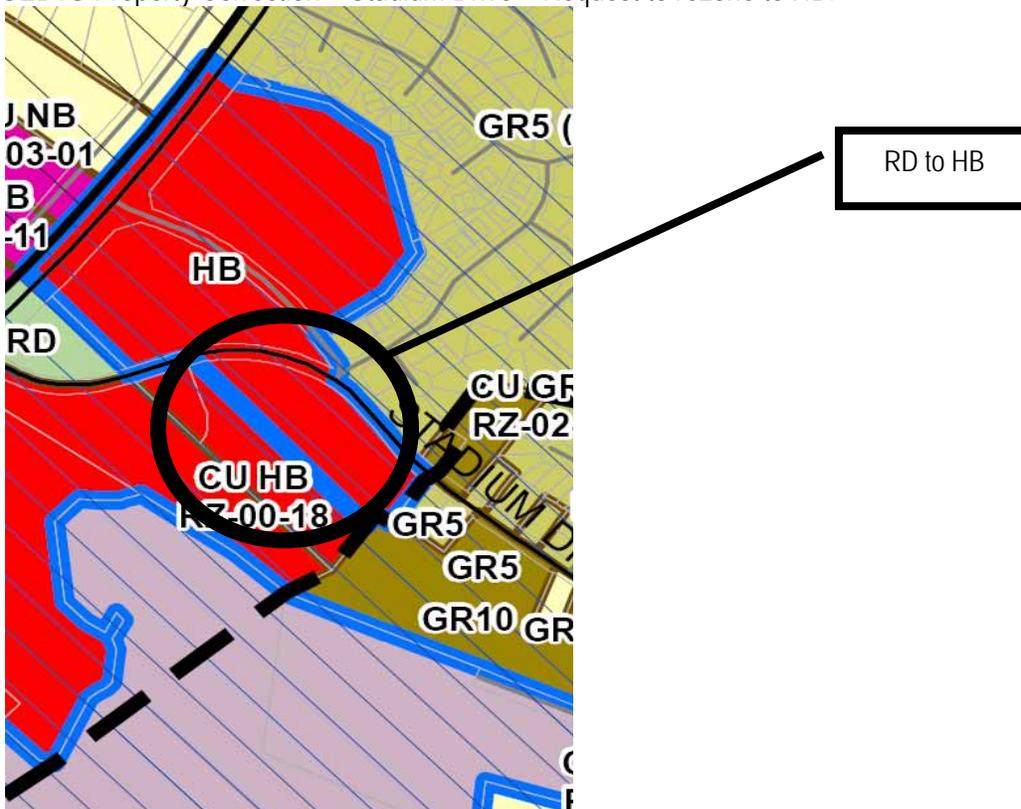
Staff Response: *The UDO subcommittee has reviewed the use allowances and supplemental use requirements in detail and believes that the standards currently proposed provide adequate protection to existing and future residential uses. Any further changes in this regard will require specific direction from the Board of Commissioners.*

Map Changes:

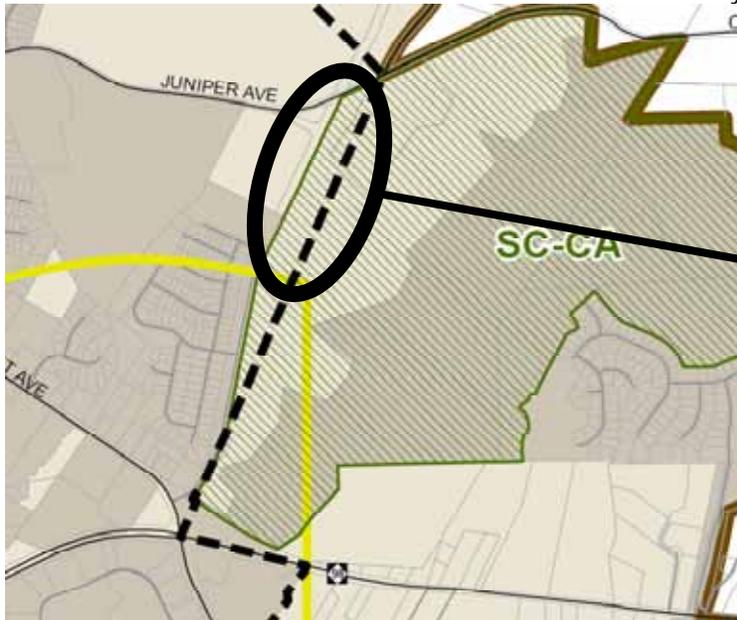
Davis Property – 1176 S. Main Street – Request to rezone to NB.



SEBTS Property Correction – Stadium Drive – Request to rezone to HB.

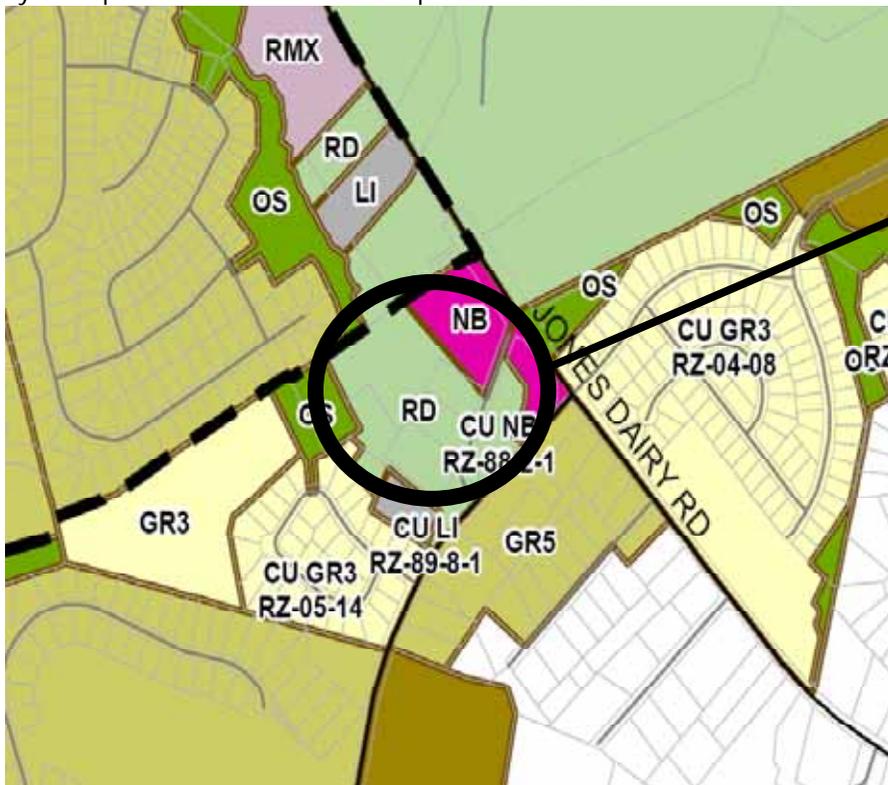


Smith Creek Watershed Line Correction – removed from overlay.



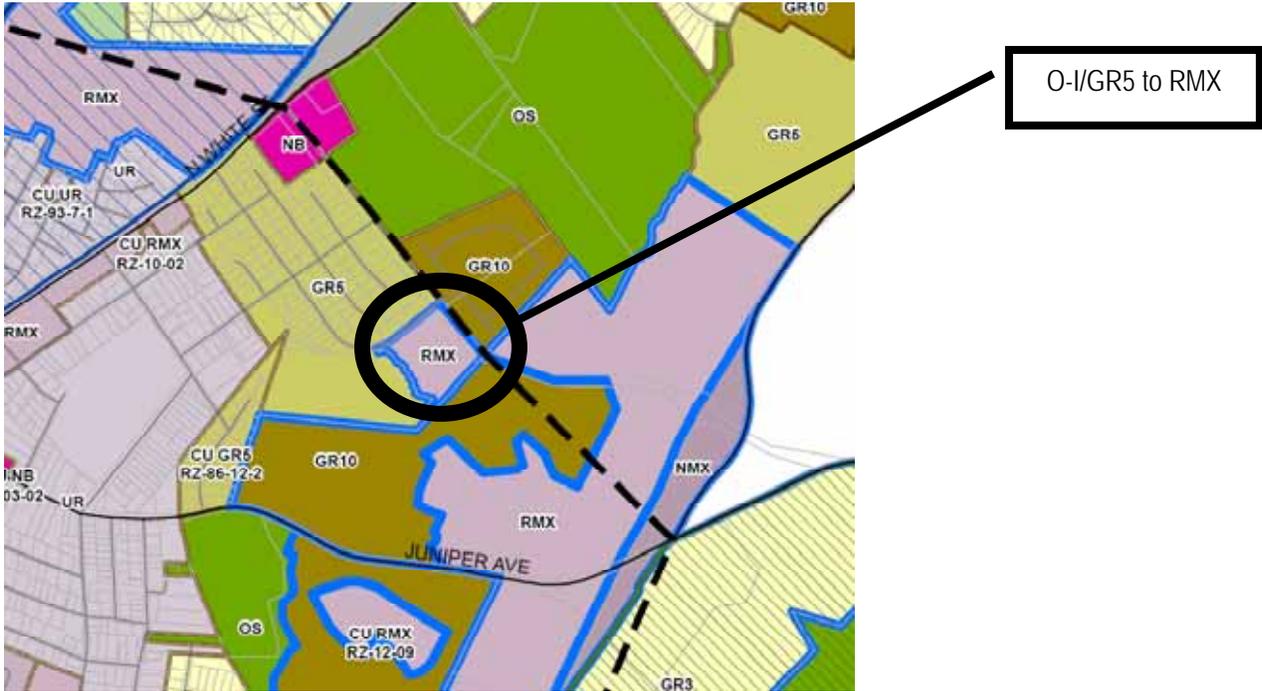
Remove from Watershed

Byrd Properties – Chalk Road – Request to rezone to NMX.



RD/NB to NMX

Granite Property & Management – Intersection of Royal Mill Ave./Flaherty Ave. – Request to rezone to RMX.



Notes for Planning Board/Board of Commissioners:

*Summary of Changes to Wake Forest UDO & MSSD since Delivery of 3.1.2013 Adoption Draft
(Revised 5/2/12)*

Minor Typos & Corrections – The following changes have no effect on either the specific standards imposed by the UDO & MSSD or the application/administration of standards.

Code Reference	Change
UDO Table of Contents	Edited as needed to reflect correct page numbers.
Cover & Chapter Footers	Edited to reflect the draft date.
1.5	The North Carolina General Statutes reference was changed for consistency with other NCGS references in the UDO.
1.7.2.A	Language was changed to clarify that previously granted plan approvals and previously granted permits are subject to the same conditions.
2.1.B	“Special Flood Hazard Districts” do not exist as separate overlays. Language corrected to reflect this.
2.2.5	The notations under the table were simplified to make them easier to understand.
3.2.1	The “GR5” notation was removed from the supplemental standards for multifamily dwellings because multifamily dwellings are not permitted in the GR5 District.
4.3.3.A	The order of 4.3.3.A.2 and 4.3.3.A.3 was switched so that the “Calculating Yards” provisions are appropriately located with the companion diagram.
5.5.4.A	Language adjusted to clarify the applicability of the section reference.
5.5.4.B	Language simplified to clarify regulatory intent and the applicability of the section reference.
5.6.5.A	Typo corrected
5.7.3.A	Subsection title changed to better reflect applicable provisions.
6.3.6	The “Subdivision Surveys” section was moved here from the MSSD. Subsequent sections were renumbered as necessary.
6.5.2.G	Typo corrected
6.5.3.F	Typo corrected and the reference to a “Type 2 Trail” was clarified.
6.8.3	Manual of Specifications, Standards and Design was abbreviated to MSSD.
6.10.2.C	Typo corrected
6.10.2.E	Typo corrected
6.11.1	Typo corrected
6.11.2.I	Typo corrected
8.2.4.B	Typo corrected
9.3	Reference to additional parking restrictions in Chapter 5 added to the notation under the Permitted Parking Locations table.
9.8.1.C.2	Typos corrected
10.3.8.C.3	Typo corrected
11.4.2.B	Typo corrected
11.6.2	Typo corrected
14.1.1.G	Typo corrected
15.2.4	The “Permit Validity Period” for Vested Rights applications was corrected to match the text for that section.
15.7.3	Typo corrected

15.7.3.E.2.a.ii	Typo corrected
15.8.2, 15.9.2	Language was added to clarify the process by which the Planning Board and Board of Commissioners reach a recommendation/decision.
15.8.4.G	The section reference was clarified
15.10.3.D	Typos corrected
15.13.3.A.4	Language clarified and typos corrected
15.13.3.C.4	Typo corrected
15.14.7	Typo corrected
15.16.1	Typo corrected and language adjusted to clarify vested rights sunset period as set out in NCGS.
15.16.2	Language was added to clarify the process by which the Planning Board and Board of Commissioners reach a recommendation/decision
15.16.3	Language adjusted to clarify vested rights sunset period as set out in NCGS.
16.3.5.D	The North Carolina General Statutes reference was changed for consistency with other NCGS references in the UDO.
MSSD Table of Contents	Chapter 3 title corrected
MSSD Chapter 1	References to the MSSD Appendix A were clarified to avoid confusion with the UDO.
MSSD 2.2.8.A.2	Language added to clarify when the 1-year 24-hour storm is intended to be evaluated for detention basins.
MSSD 3.6	The “Subdivision Surveys” section was moved to the UDO.
MSSD Chapter 7	References to Chapter 3 title were corrected

Substantive Changes – *The following changes have some substantive effect on the specific standards imposed by the UDO & MSSD or the application/administration of standards. In most cases that effect is extremely minor. Only the rows highlighted in red represent a significant departure from the language in the previous draft of the UDO. Those changes were made in response to staff and citizen comments received during the first public hearing and open house.*

Code Reference	Change
1.5	“Rezoning” were added to processes that must be consistent with adopted plans and policies.
2.3.3	Staff determined that the “Billiard/Pool Hall use was redundant with other use designations and unnecessary. The use “Billiard/Pool Hall” was eliminated and incorporated into the “Amusements, Indoor” use.
2.5.2	In response to citizen concerns regarding the Conventional District Retrofits tool, language was added to require a Neighborhood Meeting to be held by any applicant choosing to pursue development under an urban district designation within 300 feet of single family residences.
5.5.1	The applicability of design standards for residential buildings was restricted to comply with the proposed HB 150 currently under consideration by the NC General Assembly.
8.5.3.A	The text for “Option 2” was corrected to require 2 understory trees as indicated in the companion diagram.
15.5.2.E & F	Minor changes were made to the standards for quasi-judicial hearings in accordance with the Town Attorney’s recommendations.

15.8.2.M, 15.8.5.J, 15.9.2.M, 15.10.4.A, 15.12.4, 15.13.4	Minor changes were made to the standards for appeals in accordance with the Town Attorney's recommendations.
15.10.3.C	The 65-day maximum period for Board of Commissioners review on quasi-judicial decisions was carried over to Special Use Permit applications.
15.11.3.K, 15.11.4.O	The applicable appeals process language was adjusted in accordance with the Town Attorney's recommendations.
15.12.2	Changes were made to the filing procedures for appeals of administrative decisions in accordance with the Town Attorney's recommendations.
15.13.B	Changes were made to the "Sufficient Grounds for Variance" language in accordance with the Town Attorney's recommendations.
15.13.3.B.1	Changes were made to the "unnecessary hardship" language in accordance with the Town Attorney's recommendations.
15.14.7	The window for an appeal to the superior court was reduced to 30 days in accordance with the Town Attorney's recommendations.
16.2.3.C.2	Language regarding the responsibility for stormwater management violations that was unintentionally left out of the original draft has been carried over.
16.2.5	Unnecessary language was eliminated and the Board of Commissioners action against illegal subdivisions of land was clarified in accordance with the Town Attorney's recommendations.
16.3.5.D	A clarification was added regarding liens imposed as a result of violations in accordance with the Town Attorney's recommendations
16.3.9	Unnecessary language was eliminated and the provisions for injunctive relief were edited in accordance with the Town Attorney's recommendations.
17.3	Staff determined that the "Billiard/Pool Hall use was redundant with other use designations and unnecessary. The definition for "Billiard/Pool Hall" was eliminated and incorporated into the "Indoor Amusements, Indoor" definition.
17.4	A definition for "Townhouse" was added.
MSSD 2.2.8	The language was adjusted to reflect the intent of the MSSD to apply on-site detention language to all non-single family residential development.
MSSD 2.2.8.B.5	The minimum drawdown time for the first inch of post development runoff was decreased to 1 day in accordance with the Phase II Stormwater Standards.