

Notes for Planning Board/Board of Commissioners:

*Comments Received Regarding the Wake Forest UDO & MSSD Since Delivery of March 1, 2013 Draft
(Revised 5/17/13)*

Comments Received at Public Hearing on 5/7/13:

The Conventional District Retrofit tool is an attempt to circumvent public input on development and ignore the public will.

*Response: Many of the comments received during the public hearing were focused on this mischaracterization of the Conventional District Retrofit process. The truth is that the Conventional District Retrofit tool does **NOT** provide a simple by-right pass through for developers to build multifamily, commercial or mixed-use development. It is true that instead of a legislative rezoning hearing, public input would be received through a series of public quasi-judicial hearings. It is not true that the Conventional Districts Retrofit tool circumvents public input. The specific applicability of these public quasi-judicial hearings is discussed at length in the previous responses to public comment.*

Further, the Conventional District Retrofit tool was included as an implementation mechanism for the specific recommendations of the Wake Forest Community Plan. An extensive public input process informed the creation of that plan, and as such it is among the most thorough and reliable indicators of the public interest and public will that the Town has at its disposal. In this regard, implementing the Community Plan through regulatory tools such as the Conventional District Retrofits is very directly supporting the public interest.

The Town has had a “casual disregard” for public input in the preparation of the UDO.

Response: Not only has the Town fulfilled its legal obligations for public notice under the North Carolina General Statutes, Town Staff has gone above and beyond those minimum notice obligations in an attempt to engage the public in the code review process.

- Dozens of public meetings, workshops and code progress reports have occurred over the past 29 months;*
- A group of 11 Wake Forest citizens representing a variety of backgrounds and interests have reviewed and edited the code on two separate occasions;*
- Frequent notices and articles regarding the UDO preparation have appeared in the Wake Forest Gazette during the preparation of the UDO;*
- The Town has sent notice with utility bills to inform residents of upcoming hearings; and*
- Town Staff has maintained a public blog on the Town website to inform residents of the progress on the project.*

The implication that Town Staff, the Town's consultant and/or the UDO Review Committee have not sought public input in this process, or have disregarded public input, is simply not true. This accusation is especially frustrating given the extraordinary amount of effort the Town has put forth to engage the public in this process.

The development that will be allowed under the Conventional District Retrofit tool will destroy the character of the surrounding neighborhoods and decrease quality of life for nearby residents.

Response: Change and development are going to occur in the areas covered by the Conventional District Retrofit tool and throughout the Town of Wake Forest. Land – especially land in a growing metropolitan

region, which has immediate access to utilities and services, and which is adjacent to existing developed areas –will not remain undeveloped forever. A “no development scenario” is simply not an option. The question then becomes, “What type of development will best support the needs and quality of life of Town residents?”

Town Staff, the Town’s consultant and the UDO Review Committee agree that continued commercial strip development, of the character currently allowed in the NB and HB districts, is less compatible with surrounding neighborhoods and does more to impair the quality of life of nearby residents than the development outcomes permitted under the Conventional District Retrofit tool. In fact, the Conventional District Retrofits will increase the quality of life for nearby residents by offering more choices to accomplish daily tasks within a close walkable proximity. Since Wake Forest is not a stagnant municipality, and a “no development scenario” simply isn’t a realistic option, the Conventional District Retrofit tool offers an alternative to typical strip development that provides more value to the community and supports greater quality of life among residents.

Issues such as the scale, lighting, parking requirements and appearance of development allowed under the Conventional District Retrofit tool were largely mischaracterized by comments during the public meeting on 5/7/13. The UDO explicitly deals with each of these issues and includes specific supplemental standards, landscape buffer requirements, and design review processes to thoroughly vet proposed development, allow public input, and ensure compatibility with adjacent neighborhoods.

The Conventional District Retrofit tool is an inappropriate exercise of Town authority and amounts to an unlawful rezoning of property.

Response: *The application of two or more zoning district standards to the same property has long been a common practice in Wake Forest and other communities across North Carolina. Historic districts and other overlay zoning districts are a typical example of this zoning authority, and the Conventional District Retrofit tool applies the provisions of the UDO in essentially the same manner. The Town is well within its zoning authority to implement the Conventional District Retrofit tool to offer dual-zoning flexibility, just as it is within its authority to apply extra standards within a Historic Overlay District.*

The ongoing UDO public hearings are, in fact, the rezoning hearings for all rezonings that would take place as a result of the UDO – this includes the rezoning of some properties to be covered by the Conventional District Retrofits. Not only has the Town fulfilled its legal obligations for public notice of ordinance amendments/rezonings under the North Carolina General Statutes, Town Staff has gone above and beyond those minimum notice obligations in an attempt to engage the public in the code review process.

Other Comments: *Several other comments were received at the public hearing, several of which were clarified through a letter submitted by Ms. Anne Marie Selaya on behalf of herself and her neighbors. Responses to the issues raised through each of these are included below.*

How can rezonings be considered as a part of the UDO without mailed notification to adjacent property owners and posted signs on the parcels under consideration for rezoning? Doesn’t the Town have to hold public hearings to consider rezonings?

Response: *The public hearings process that the Town is currently engaged in is, in fact, the public hearings process for all rezonings that are being considered as part of the UDO adoption. The UDO*

consists of a set of regulations and a zoning district map that applies those regulations. Both of these items are under consideration by the Planning Board and the Board of Commissioners at this time.

Because the UDO is proposing a new set of zoning districts, many rezonings will be taking place throughout the Town if the UDO is adopted. Most of these rezonings are very minor in nature with little substantive change to the rules that are applied to each property, although some rezonings, particularly in those areas where the new "Urban Districts" have been applied, involve more significant changes in order to encourage sustainable, mixed-use, walkable development in accordance with the recommendations of the Wake Forest Community Plan. In almost every rezoning case, Town Staff has used a general zoning district conversion strategy that assigns individual properties the UDO zoning district that is most similar to their existing zoning. As a part of this process however, individual property owners are permitted to request zoning designations that are different from this general conversion strategy. Each of these instances were illustrated on the draft zoning map, noted by Town Staff in the "Map Changes" section at the end of this Memo and presented to the Planning Board and Board of Commissioners at the public hearing on 4/2/13 & 5/7/13.

While it is true that most rezoning requests involve mailed notice to adjacent property owners and sign postings on properties subject to proposed rezonings, the State has specified an option for full-community notification of potential rezonings in instances where more than 50 properties and at least 50 different landowners are affected. (See North Carolina General Statutes Section 160A-384(b).) The full-community notification option requires half-page ads to be published in the local newspaper, instead of individual mailings, to inform the public of rezoning hearings. Since there are many rezonings proposed as a part of the UDO adoption process, the Town has elected to use this community-wide notification option to inform the public of the hearings for the UDO.

The Town has been in full compliance with the North Carolina General Statutes (NCGS) throughout the UDO adoption process, and, in fact, has gone above and beyond the minimum state requirements for public notice in several instances. In addition to the community wide notification method specified by the NCGS, the Town has also included mailed notice of the UDO hearings in utility bills and maintained a blog on the Town website in an effort to be as transparent as possible about the UDO adoption process and its associated rezonings.

Request #1 (Letter from Anne Marie Selaya) – We ask that the Board direct the Planning Staff to work with us, prior to the adoption of the UDO, to clarify and ensure that the functionality and safety of the Hwy 98 Bypass be protected in the provisions of the UDO, specifically in the Special Highway Overlay (SH2-O).

Response: *NCDOT is the primary authority responsible for ensuring the functionality and safety of the Hwy 98 Bypass, not the Town of Wake Forest. Access-management (i.e., the number of permitted driveways, traffic signals and curb cuts) to the Hwy 98 Bypass is the greatest single determinant of the ability of this road to function as a true bypass, and NCDOT has complete control over that issue.*

We certainly recognize that development along the Hwy 98 Bypass will affect these issues, but it's nearly impossible to accurately weigh the potential impacts of a proposed development on the Hwy 98 Bypass when there's no specific development application to consider. The UDO has been written to include a number of specific procedural checks with regard to traffic issues that will continue to be enforced through the development review process. Beyond this, NCDOT will continue to manage access to the Hwy 98 Bypass in order to maintain its safety and functionality in accordance with their protocols.

Request #2 (Letter from Anne Marie Selaya) – We ask that the board include an additional finding of fact in the UDO Section 15.10.3.C requiring that “The proposed Special Use is consistent with the officially adopted plans and policies of the Town.”

Response: Town Staff and the Town’s consultant support this change and have edited the ordinance in accordance with Ms. Selaya’s request.

Request #3 (Letter from Anne Marie Selaya) – We ask the Board to revert to the existing SUP language with respect to traffic impact in SUP approvals or, at a minimum, revise the proposed UDO language to ensure that traffic impacts are effectively dealt with in the SUP approval process.

Response: Town Staff and the Town’s consultant support this change and have edited the ordinance in accordance with Ms. Selaya’s request.

Request #4 (Letter from Anne Marie Selaya) – We ask the Board to ensure that 3 or more townhouses are defined as multifamily regardless of whether they are on individual lots or one shared lot.

Response: Town Staff and the Town’s consultant support this change. In fact it was always the intent of the UDO to classify townhomes as multifamily dwellings. The ordinance has been edited to more clearly reflect that intent in accordance with Ms. Selaya’s request.

Comments Received at Public Hearing on 4/2/13:

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

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?

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?

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.

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 Received at Public 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'.

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.

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.

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)

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.

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.

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 someone else's property!

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).

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 are planted near property lines.

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.

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.

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.

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

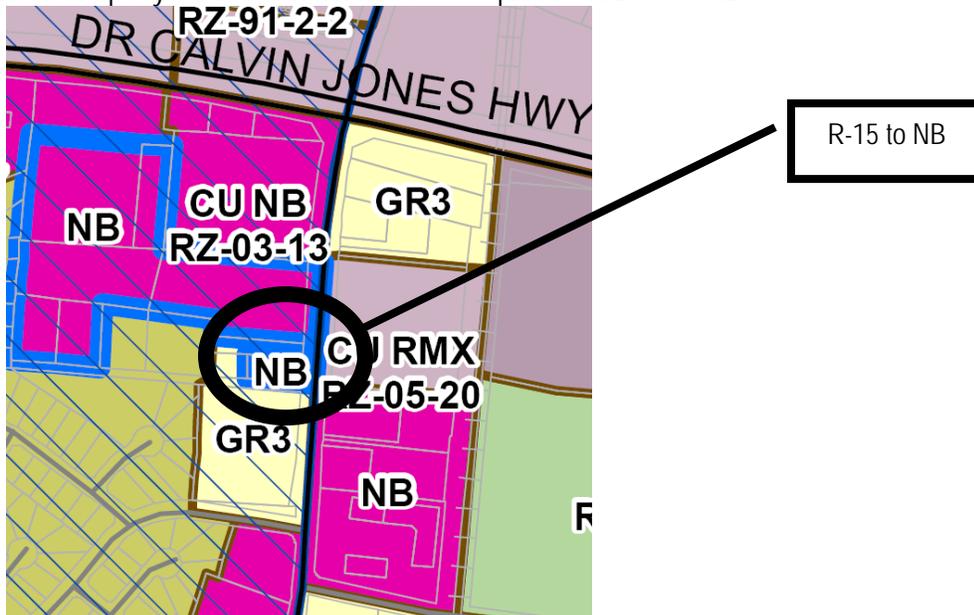
UDO Committee felt that this was an appropriate distance to apply. Any further changes in this regard will require specific direction from the Board of Commissioners.

- 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.

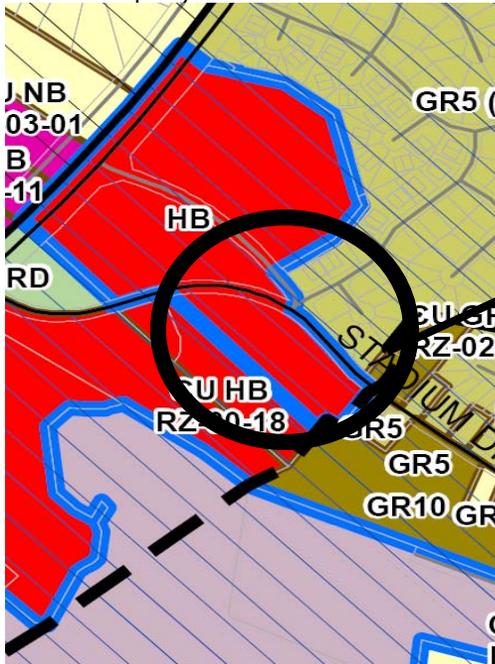
Response: The UDO continues the town's current restrictions on development in the future conditions flood hazard area. Any changes in this regard will require specific direction from the Board of Commissioners.

Map Changes:

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

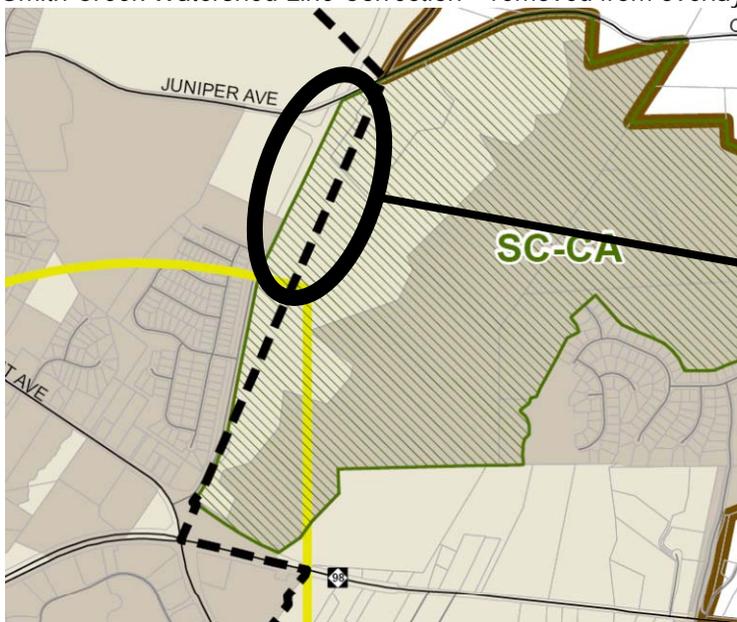


SEBTS Property Correction – Stadium Drive – Request to rezone to HB.



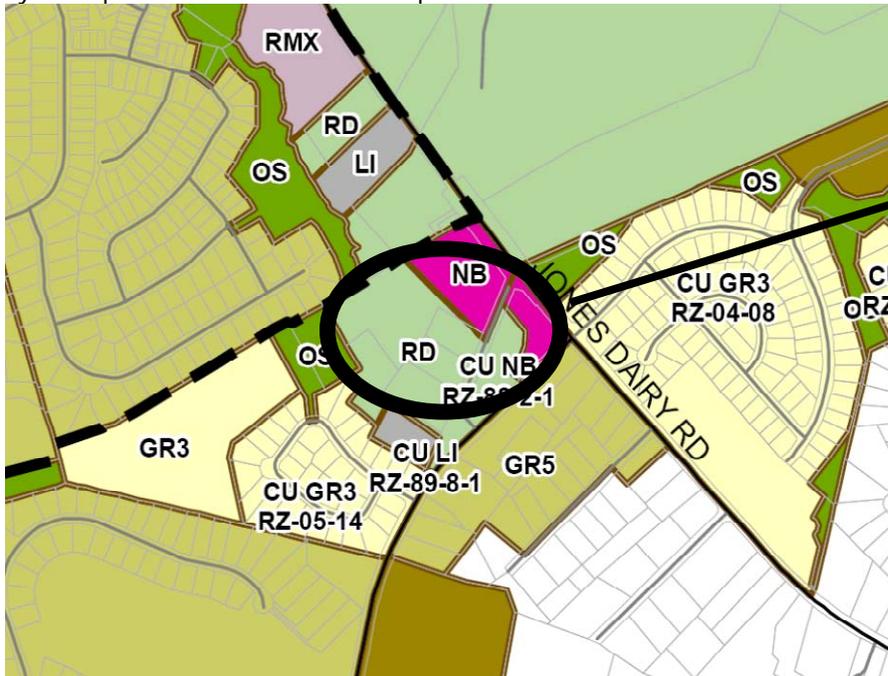
RD to HB

Smith Creek Watershed Line Correction – removed from overlay.



Remove from Watershed

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



RD/NB to NMX