

ORDINANCE NO. 2021-UDO-01

PROPOSED TEXT AMENDMENT TO THE TOWN OF MARSHALL'S UNIFIED  
DEVELOPMENT ORDINANCE TO COMPLY WITH THE STATE OF NORTH  
CAROLINA'S NEW PLANNING REQUIREMENTS AS SPECIFIED IN NCGS 160D.

*(Note: Items in italics and red are instructions and not part of the proposed text. Text is now  
presented  
as it would be placed in specific sections of the Unified Development Ordinance. Changes are  
bolded in black.)*

WHEREAS, the North Carolina General Assembly has incorporated revisions to the Planning Statutes of the State; hereby titled as Chapter 160D, which was made effective upon the adoption of that legislation, June 19, 2020, and

WHEREAS, the effect of these revisions are to;

(1) Consolidate current city and county enabling statutes now in Article 18, Chapter 153A and Article 19, Chapter 160A into a single, unified new Chapter 160D of the General Statutes.

(2) Place these statutes into a more logical, coherent organization, facilitating ease of finding relevant provisions and clarifying how the statutes relate to one another.

(3) Provide uniform authority, definitions and procedures for cities and counties, while retaining broad substantive policy discretion for ordinances adopted by individual jurisdictions, and

WHEREAS, the Town of Marshall has to make necessary changes with their Unified Development Ordinance in order to remain in compliance with state law, and

WHEREAS, the Town of Marshall Planning Board has reviewed the associated text amendments based on NCGS Chapter 160D updates to the Town of Marshall's Unified Development Ordinance and recommends approval, and

WHEREAS, after the necessary Public Hearing, and review and consideration of the proposed amendments associated with the requirements of Chapter 160D, it is the desire of the Board of Aldermen of the Town of Marshall to approve the amendments as recommended.

NOW, therefore be it ordained by the Board of Aldermen of the Town of Marshall, North Carolina, that:

Chapter 1. Purpose and Authority

1.3 The Board of Aldermen of the Town of Marshall, in pursuance of the authority granted by **NCGS 160D-101 and 160D-401** and the authority vested in the Town of Marshall by its charter, does hereby ordain and enact into this Ordinance.

1.6(A) In accordance with the requirement of **NCGS GS 160D-501(a)**.....

1.7(A) Pursuant to **NCGS 160D-108**.....

1.9 These regulations shall become effective on 06/22/2021 .

## Chapter 2. General Provisions

2.4(B) Uses classified as “**Special Uses**” are permitted upon approval of a **Special Use Permit** and development by the Board of Adjustment.

2.4(D) Unless a use is allowed as a "permitted", "use permitted with special requirements", "**special use**", "nonconforming use", or "temporary use" in this Ordinance, then such use is prohibited.

*(Note: The term “Conditional Use” was eliminated in the new and revised statute. The term “Special Use” is to be used exclusively in its place.)*

## Chapter 3. Zoning Districts

### 3.1.2 Zoning District Authority

(A) In accordance with the requirement of **NCGS 160D-703** that zoning regulation be by districts, the Town, as shown on the Zoning Map accompanying this Ordinance, is hereby divided into districts which shall be governed by all of the uniform use and dimensional requirements of this Ordinance.

(B) Zoning divides a town's territorial jurisdiction into districts, or zones, of any number, shape, and area that may be deemed best suited to carry out the purposes of **NCGS 160A-703**.....

### 3.1.4(C) **Special Uses**

Board of Adjustment review and approval of **Special Use Permit** subject to district provisions, other applicable requirements, and conditions of approval. Some **Special Uses** may also be subject to special requirements outlined in Chapter 4.

3.3.2(B) “S” indicates that the use is permitted with a **Special Use Permit** in the zoning district

*(Note: All the "C's" in the Table of Permitted Uses must be changed to "S's")*

#### Chapter 4. Special Requirements

- 4.1 Each use shall be permitted in compliance with all conditions listed for the use in this Chapter. Certain uses are also classified as **Special Uses** and require Board of Adjustment approval.
- 4.2.5 In accordance with NC General Statute Chapters 122C, 131D, ~~160D-907~~, and 168, these uses are deemed residential uses and are permitted in all residential districts subject to the following conditions:
- 4.2.8(M) All manufactured homes placed in the park ~~shall be constructed after July 13, 1994, and~~ shall meet or exceed the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. *(Note: New statute prohibits limitation based on the age of a manufactured home.)*
- 4.6.(3)(2) The application for a Campground shall comply with the **Special Use Permit** application provisions set forth in Chapter 11.
- 4.9.1(A)(1) All communication towers shall be subject to a **Special Use Permit** granted by the Board of Adjustment in accordance with Chapter 11.
- 4.9.1(C)(3) .....Certification must be provided by a professional engineer establishing that the tower will accommodate at least two (2) users, prior to a **Special Use Permit** issuing.
- 4.9.1(C)(10) The Board of Adjustment shall not issue a **Special Use Permit** for the purposes of this Section, unless the following conditions are also made a part of the Permit:
- 4.9.1 (F) Renewal of **Special Use Permit**

#### Chapter 6 Signs

- 6.1.1 *Add the following sentence; Signage is regulated in accordance with NCGS 160D-912.*

#### Chapter 7 Environmental Protection and Open Space

7.5.1 (A) Statutory Authorization

The Legislature of the State of North Carolina has **NCGS 160-D 702 and 160D-923** of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Chapter 8 Landscaping

8.4.3 Landscaping Maintenance

The owner of the property where landscaping is required shall be responsible for the maintenance of all landscaping materials.

*Note: Typo, add the word "be".*

Chapter 10 Infrastructure

10.1.1 Conformance with Comprehensive Transportation Plan (CTP)

The location and design of streets shall be in conformance with Rural Planning Organization's Madison County Comprehensive Transportation Plan. ~~In any case where any part of a development lies within the corridor of a Thoroughfare shown on a roadway corridor official Map adopted pursuant to NCGS Chapter 136, Article 2E, no development approval shall be granted with respect to the property in roadway corridor. Provided, however, no development Plat approval shall be delayed by the provision of the Roadway corridor official map procedure for more than three (3) years from the date of its original submittal.~~ *Note: NCGS Chapter 136, Article 2E was repealed and did away with this requirement.*

10.3.1 (J) Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity in accordance with the North Carolina Sedimentation Pollution Control Act. ~~, G.S. 143-34.12, Chapter 113A, Article 4 and the North Carolina Administrative Code Title 15, Chapter 4.~~ *Note: Code references in NCGS changed. Sufficient to just reference the Sedimentation Pollution Control Act.*

Chapter 11 Development Review Process

11.1.2 (C) The following chart indicates the appropriate approval process for each development type:

Development Type	Administrative Approval	Planning Board	Board of Adjustment Approval	Town Board of Aldermen Approval
Zoning Permit (single-family residential)	X (plot plan, no site plan)			
Zoning Permit (with Site Plan)	X			
Driveway Construction Permit	X (See Section 9.7)			
Exempt Subdivision	X			
Subdivision Sketch Plan		X		
Subdivision Preliminary Plat		Review and Recommend		X
Subdivision Final Plat		X		
<b>Special Use Permit</b>			X	

*Note: Replace the reference to Conditional Use Permit to Special Use Permit throughout the table.*

11.4 **Special Use Permit Provisions**

*Note: All references in Chapter 11.4 to a Conditional Use Permit shall be changed to Special Use Permit.*

11.6.1 (B) If the Administrator determines that a division of land does not meet the definition of a subdivision as set forth by **NCGS 160D-802** (see Appendix A Definitions), then the division shall be considered a subdivision exemption and shall not be subject to the entire development review process.

Chapter 12 – Development Plan Requirements

12.4.2 (O) **Sedimentation Control**: A sedimentation control plan approved by **North Carolina Division of Environmental Quality**.

## Chapter 14 Map and Text Amendments

14.4.2 (B) The Town Board of Aldermen shall conduct a legislative public hearing. Notice of public hearing shall be given as required by **NCGS 160A-601** once a week for two (2) consecutive weeks in a newspaper having general circulation in the area.

14.5.3 (B) (3) The Town shall conspicuously post a notice of public hearing at the site proposed for rezoning at least 10 days **nor more than 25 days** prior to the public hearing.

14.5.3 (B)(5) **No amendment that down-zones property shall be initiated nor is it enforceable without written consent of all property owners whose property is subject of the down-zoning amendment, unless the down-zoning is initiated by the local government.**

14.6.3 (B)(2) A notice of the public hearing shall also be sent by first class mail by the Zoning Administrator or designee to the affected property and to all adjacent property owners, **including those separated by a street, railroad, or other transportation corridor.**

14.7 (B) .....**Citizen Comments** must be valid at the time that the vote is taken and shall meet the requirements of **NCGS 160D-603**.

## Chapter 15 Administration

15.3.2 (C) The concurring vote of 4/5ths of the Board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the Administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, to grant any **Special Use Permit**, or to grant any Variance.

15.3.3 (C) **Special Use Permits**

*Note: All references in Chapter 15.3.3 (C) to a Conditional Use Permit shall be changed to Special Use Permit.*

15.6.1 Violations

**When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Chapter or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the**

development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

*Note: Proposed new language mimics State Statute 160D-404.*

## Appendix 2 Interpretation

J. The term "Town Board of Alderman" shall mean the "Town Board of Alderman of the Town of Marshall, North Carolina."

## Appendix 3 Acronyms

**NCDEQ:** North Carolina Department of Environmental Quality

*Note: Replaces NCDENR: North Carolina Department of Environment and Natural Resources.*

## Appendix 4 Definitions

**Bona Fide Farm & Agricultural Use** - In accordance with **NCGS 160D – 903** for purposes of this Ordinance, the terms, "bona fide farm" "agriculture", "agricultural", and "farming" refer to all of the following:.....

**Special Use** - A use that is permitted in a zoning district subject to the issuance of a **Special Use Permit** by the Board of Adjustment.

**Special Use Permit** - A special authorization for a **special use** which may be subject to any specific restrictions or conditions on its size, location, intent, character of use, etc. as determined by the Board of Adjustment. *Note: All references to a Conditional Use Permit shall be changed to Special Use Permit.*

**Development, Existing** - Those projects that are built or those projects that at a minimum have established a vested right under North Carolina Zoning Law as of the effective date of this Ordinance based on at least one of the following criteria: \*substantial expenditures of resources

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(time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, \*or having an outstanding valid building permit as authorized by the General Statutes (NCGS 160D- 102), \*or having an approved site specific or phased development plan as authorized by the General Statutes (NCGS 160D-108).

Subdivision - For the purposes of this Ordinance in accordance with North Carolina General Statute 160D-802, Subdivision shall mean all divisions of a tract or parcel of land into two or more lots,.....

This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved the 12th day of July, 2021.

Attest:



Forrest Gilliam

Town Clerk



Nancy Allen

Mayor