

**LINCOLNTON PLANNING BOARD  
AGENDA  
March 21, 2023  
At 4:00 P.M. in City Council Chambers**

1. Roll Call
2. Call to Order
3. Approval of minutes from the February 21, 2023, meeting
4. ZMA-2-2023 - Application from Carolina Elite Builders requesting the rezoning of 11.844 acres of land from General Manufacturing and Commercial (GMC) to Residential-25 (R-25). The subject property is located at the southwest corner of South Grove Street Ext. and Burriss Blvd. (Parcel ID 52489).
5. ZTA-1-2023 - Zoning Text Amendments to Chapter 153 Unified Development Ordinance
6. Adjournment

Absences(A=absent, C=cancelled)/Not in Good Standing

Member	September 2022	October 2022	November 2022	December 2022	January 2023	February 2023
Greg McBryde	✓	✓	✓	✓	✓	✓
Trent Mason	✓	✓	✓	✓	✓	✓
Monte Tyson	✓	✓	✓	✓	A	✓
Becky Shaw	✓	A	A	✓	✓	✓
Kristin Radebaugh	N/A	N/A	N/A	N/A	✓	✓
John Waters	N/A	N/A	N/A	N/A	✓	✓
Steve Lackey	N/A	N/A	N/A	N/A	✓	✓



**CITY OF LINCOLNTON  
PLANNING BOARD  
PO DRAWER 617, LINCOLNTON, NC 28092  
MINUTES  
[www.LincolntonNC.org](http://www.LincolntonNC.org)**

**BOARD MEMBERS:** Greg McBryde, [Gregory.Mcbryde@gmail.com](mailto:Gregory.Mcbryde@gmail.com); Trent Mason, [trentmason@gmail.com](mailto:trentmason@gmail.com);  
Becky Shaw [beckygreer82@gmail.com](mailto:beckygreer82@gmail.com); Monte Tyson, [monte@cbdeastmain.com](mailto:monte@cbdeastmain.com); Kristin Radebaugh, [kradebaugh6r6@gmail.com](mailto:kradebaugh6r6@gmail.com);  
John Waters, [jh2osk@aol.com](mailto:jh2osk@aol.com); Steve Lackey, [stevelackey88@gmail.com](mailto:stevelackey88@gmail.com)

**Tuesday, February 23, 2023**

**Present:** Greg McBryde, Trent Mason, Becky Shaw, Monte Tyson, Kristin Radebaugh, John Waters, Steve Lackey

**Absent:** N/A

**Call to Order**

Chair Trent Mason called the meeting to order and recognized that all members were present.

**Approval of Minutes**

Chair Trent Mason asked the Board if there were any additions or corrections to the minutes of the January 17, 2023, meeting.

*Motion: Greg McBryde made a motion to approve the minutes with corrections.*

*Members voted 7-0 in favor of the motion.*

**CZ-1-2023-** Application from Morris Long requesting a conditional district zoning map amendment from Central Business Transitional (CBT) to Transitional Infill Development (TID) for Parcel ID 00670.

Jean Derby presented the staff report included in the agenda packet to the Board regarding CZ-1-2023.

After some discussion, Chair Trent Mason asked if there was a motion. The motion is as follows:

*Motion: John Waters made a motion to approve with conditional requirements. Monte Tyson seconded. Members voted 7-0 in favor of the motion.*

**ZMA-1-2023-** Application from JJW Properties, LLC requesting the rezoning Parcel 17871 from Residential-10 (R-10) to Residential-8 (R-8).

Jean Derby presented the staff report included in the agenda packet to the Board regarding ZMA-1-2023.

*Motion: Greg McBryde made a motion for denial. Monte Tyson seconded. Members voted 7-0 in favor of the motion.*

**MJS-2-2023-** Review of Major Subdivision Plat submitted by Century Homes (Carpenter Farms)

Mark Carpenter presented the staff report included in the agenda packet to the Board regarding MJS-2-2023.

*Motion: Monte Tyson made a motion to approve. Gregory McBryde seconded. Members voted 7-0 in favor of the motion.*

Chair Trent Mason asked the Board if there was any other business to be addressed, to which there was none.

### **Adjournment**

*Motion: John Waters made a motion to adjourn. Monte Tyson seconded. Members voted 7-0 in favor of the motion.*

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Ashley Jones

**MEMO TO:** Lincoln Planning Board  
**FROM:** City of Lincoln Planning Department  
**SUBJECT:** ZMA-2-2023 – Application from Carolina Elite Builders  
**DATE:** March 21, 2023

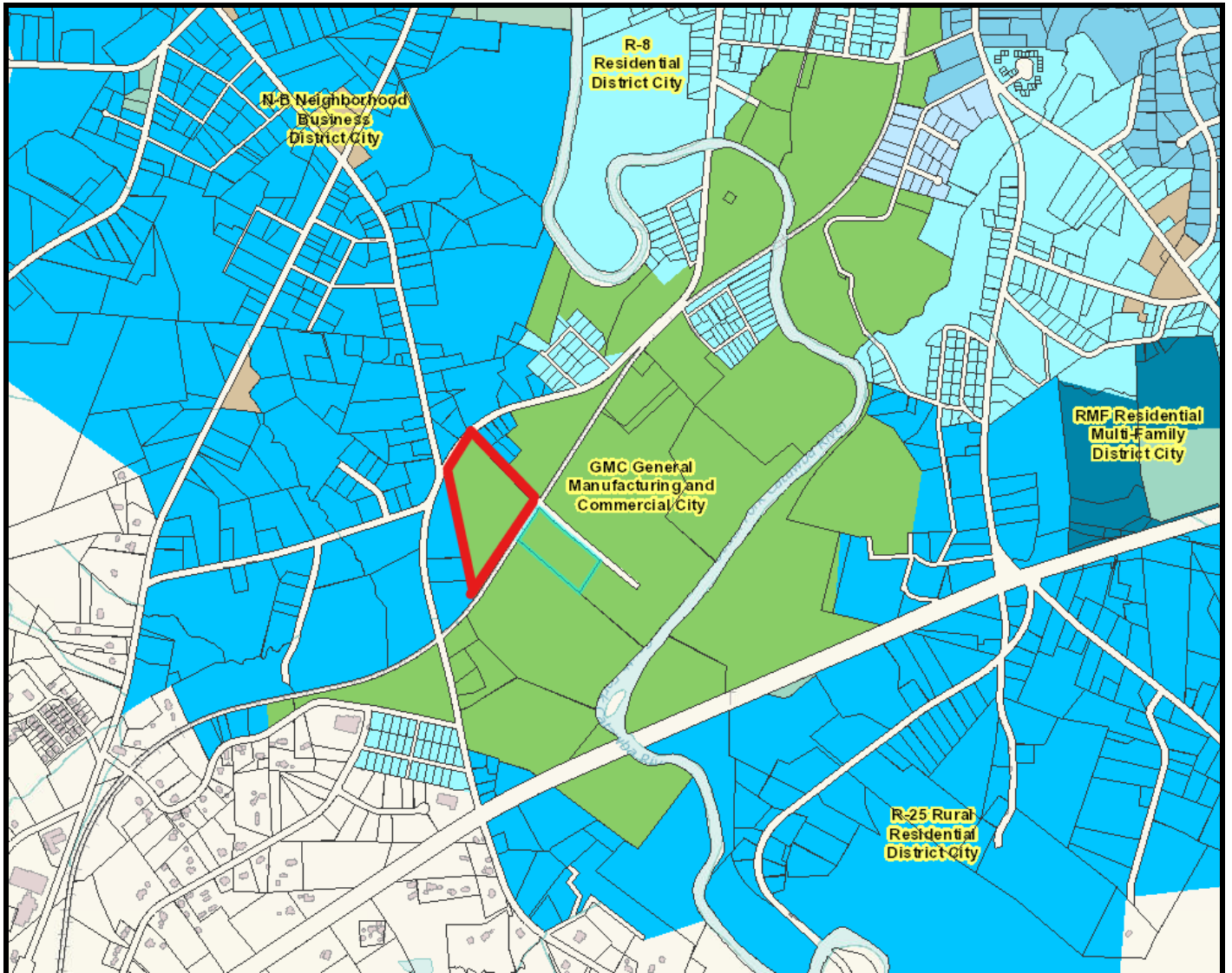
**SITE AND AREA DESCRIPTION**

The applicant is requesting the rezoning of 11.844 acres of land from General Manufacturing Commercial (GMC) District to Residential-25 (R-25) District. The subject property is located at Burriss Boulevard at the intersection of S. Grove Street (Parcel ID 52489).

**AERIAL VIEW:**



## ZONING



The subject property is vacant land. Land uses in the area include a mixture of residential and commercial uses. The property is surrounded by GMC and Residential-25 zoning.

The change to R-25 zoning would allow for any permitted R-25 use to be constructed on the property.

**PERMITTED USES:**

When a use is permitted it **does not** come before City Council for approval, the use would only require site plan approval by staff and a zoning permit.

<b><u>CURRENT ZONING - GMC*</u></b>	<b><u>PROPOSED ZONING - R-25*</u></b>
Manufacturing, refining, processing or assembly of goods or products;	Single-family dwellings
Auction houses, indoors, excluding livestock;	Two-family dwellings
Automobile service stations	Manufactured homes, Class A
Contractors storage and equipment yards	Agriculture uses
Machinery repair	Family care homes
Manufactured home and recreational vehicle sales and service	Day care centers, small group
Product distribution plants	Customary home occupations in accordance with § <a href="#">153.045</a> of this chapter
Recycling terminals and yards or sorting facility	Essential services, Class I
Trucking terminals	Churches with a maximum sanctuary seating capacity of not greater than 500 seats. Customary accessory uses shall also be permitted. Church owned and maintained cemeteries as an accessory use are permitted

***\*These are just some of the permitted uses, complete lists for GMC and R-25 are attached***

**DESCRIPTION OF EACH ZONING DISTRICT:**

***GMC General Manufacturing and Commercial.*** This district is designed primarily for general commercial and industrial land uses, including manufacturing, processing and assembling of parts and products; distribution of products at wholesale outlets, retail outlets; transportation terminals; various public and utility uses; and a broad variety of specialized commercial and industrial operations.

***R-25 Rural Residential District.*** This district is intended to accommodate very low density residential and agricultural uses in fringe areas of the zoning jurisdiction that generally are non-intensely developed. This district is established to accommodate very low-density

development where public utilities are nonexistent or partially existent, and to accommodate greater densities where services are present, therefore, density levels are variable to the existence of the facilities. The continuance of agricultural operations is encouraged within this district.

**STREET VIEW:**



**SURROUNDING PROPERTIES TO THE SOUTH:**



**SURROUNDING PROPERTIES TO THE EAST (DIRECTLY ACROSS BURRIS):**



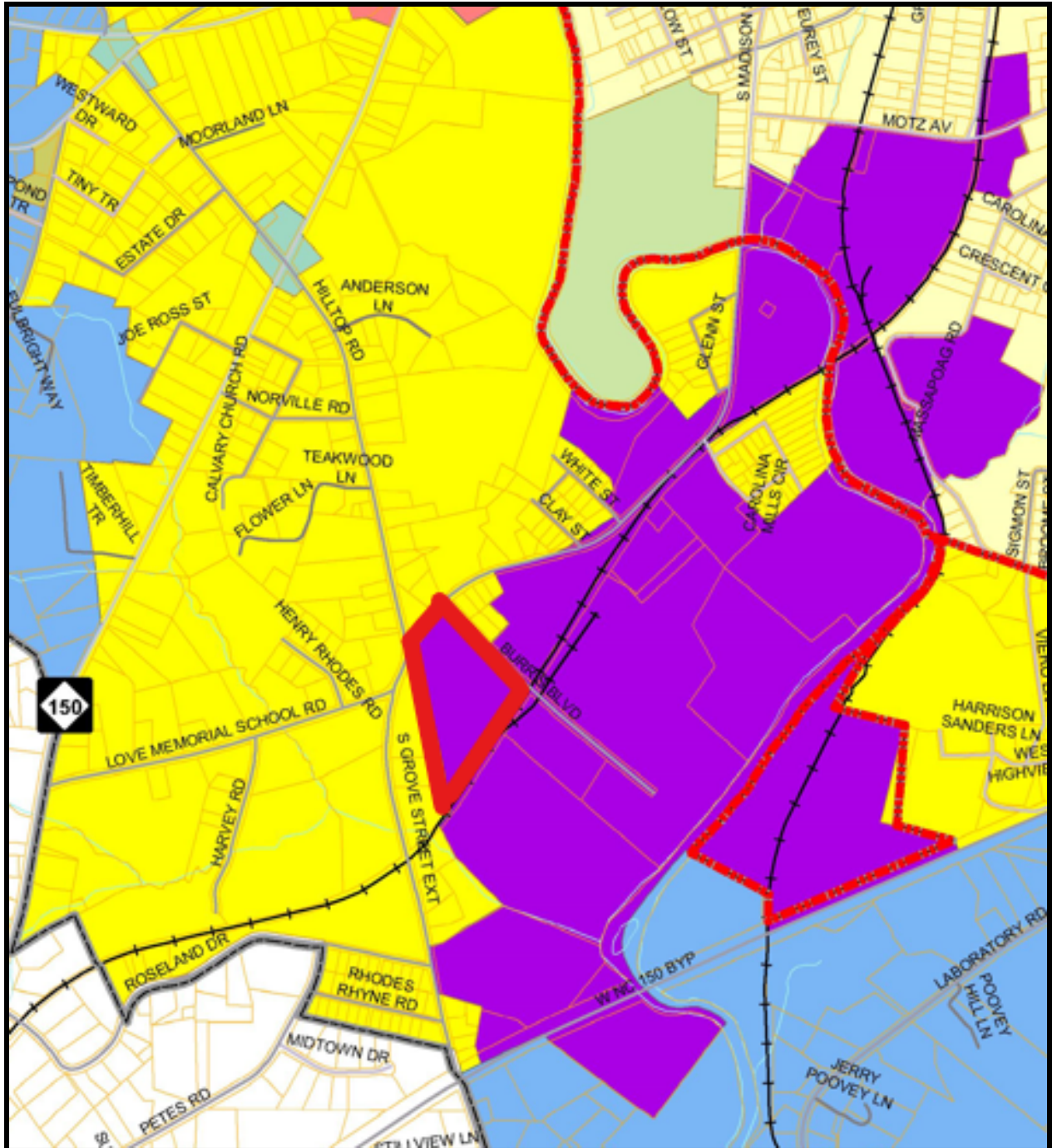
**SURROUNDING PROPERTIES TO THE NORTH (DIRECTLY ACROSS S. GROVE):**







**SURROUNDING PROPERTIES TO THE WEST (ADJACENT TO SITE ON S. GROVE):**



# LAND USE PLAN COMPLIANCE



## Land Use Code and Description

 CB, Central Business	 MURC, Mixed Use Residential/ Commercial	 ROS, Recreation/ Open Space
 CBT, Central Business Transitional	 NB, Neighborhood Business	 RR, Rural Residential
 GB, General Business	 NBC, Neighborhood Business Corridor	 RS, Residential Suburban
 IND, Industrial	 PB, Planned Business	 TSF, Traditional Single-Family
 IO, Institutional Office	 RHD, Residential High Density	

The land use plan shows the property in the **Industrial Planning Area**.

These are areas in use or designated for future industrial/manufacturing use. As industrial uses play a vital role in the local economy, any such planning areas designated on the Future Land Use Map should be reserved for industrial uses and should be protected from encroachment from other uses. Industrial park development is encouraged. Industrial developments located along or in close proximity to the City's major thoroughfares should be developed so as to protect and enhance the viewsheds from these thoroughfares. Adaptive reuse of older manufacturing buildings (for both manufacturing and other compatible non-industrial uses) is also encouraged.

**Residential Suburban** These planning areas are primarily single-family in character and where the primary development pattern should continue to be single-family dwellings. Such areas currently have public water and sewer, or are likely to have such facilities within the next twenty years. Most new single-family residential development within Lincolnton is likely to occur in such areas.

The proposed rezoning request would be inconsistent with the Land Use Plan. However, the area surrounding the property is primarily zoned for residential development and the owner is requesting to use it for residential purposes. Amending the Land Use Plan to Residential Suburban could be considered.

### **STAFF RECOMMENDATION**

Staff recommends the following action:

1. Recommend approval of rezoning of the property from GMC to R-25
2. If the rezoning is approved, the land use plan would need to be amended to show the property in the Residential Suburban Planning Area.

## Zoning Amendment

### Staff's Proposed Statement of Consistency and Reasonableness for **APPROVAL** of Application

**Case No.** ZMA-2-2023

**Applicant:** Carolina Elite Builders

**Parcel ID#:** 52489

**Location:** Burris Boulevard at S. Grove Street

**Request:** Rezone from GMC to R-25

Proposed Consistency and Reasonableness Statement:

The Lincoln Land Use Plan designates this property as part of the Traditional Single Family Planning Area. The proposed rezoning request **is not consistent** with the Lincoln Land Use Plan but is reasonable in the following way:

A large portion of the area surrounding the property is primarily zoned for residential development and the owner is requesting to use it for residential purposes

Therefore, **approval of the proposed amendment is reasonable and in the public interest.**

**Zoning Amendment  
Staff's Proposed Statement of Consistency and Reasonableness  
for DENIAL of Application**

**Case No.** ZMA-2-2023

**Applicant:** Carolina Elite Builders

**Parcel ID#:** 52489

**Location:** Burris Boulevard at S. Grove Street

**Request:** Rezone from GMC to R-25

Proposed Consistency and Reasonableness Statement:

The Lincolnton Land Use Plan designates this property as part of the Traditional Single Family Planning Area. The proposed rezoning request **is not consistent** with the Lincolnton Land Use Plan and **denial of the proposed amendment is reasonable and in the public interest.**

**§ 153.117 GMC GENERAL MANUFACTURING AND COMMERCIAL DISTRICT.**

(A) *Permitted uses.* The following uses are permitted by right.

- (1) Manufacturing, refining, processing or assembly of goods or products;
- (2) Agriculture equipment, sales and service;
- (3) Assembly halls, coliseums, and ballrooms;
- (4) Auction houses, indoors, excluding livestock;
- (5) Automobile parking lots;
- (6) Automobile painting, upholstering, repairs, reconditioning and body work;
- (7) Automobile sales;
- (8) Automobile service stations;
- (9) Automobile wash establishments;
- (10) Bookbinding shops;
- (11) Building materials and lumber sales;
- (12) Cabinet, woodworking and upholstery shops;
- (13) Commercial schools and schools providing training in any of the arts, sciences, trades and professions;
- (14) Contractors storage and equipment yards;
- (15) Convenience stores;
- (16) Domestic violence shelter;
- (17) Dry cleaning and laundry plants;
- (18) Electric, plumbing, heating ventilating and air conditioning and construction supply houses;
- (19) Essential services, Class I and II;
- (20) Farm equipment sales and service;
- (21) Financial institution;
- (22) Florist, wholesale;
- (23) Food catering service and food vending supply;

- (24) Freezer lockers;
- (25) Government facilities not otherwise listed (excluding jails, prisons and similar penal institutions);
- (26) Greenhouses and horticultural nurseries;
- (27) Ice plants;
- (28) Laboratories: dental, medical, optical and research;
- (29) Machinery repair;
- (30) Manufactured home and recreational vehicle sales and service;
- (31) Moving and storage facilities (including mini-warehouses);
- (32) Office-business, medical, optical and professional;
- (33) Passenger bus terminal;
- (34) Photo processing laboratories;
- (35) Postal and parcel service processing facility;
- (36) Post office;
- (37) Product distribution plants;
- (38) Public safety stations;
- (39) Railroad terminals and yards;
- (40) Recycling terminals and yards;
- (41) Recycling sorting facility;
- (42) Restaurants, including fast-food restaurants;
- (43) Roofing manufacturing, repair and installation facilities;
- (44) Sign painting and manufacturing shops;
- (45) Slaughterhouse/abattoir;
- (46) Tin and sheet metal shops;
- (47) Tire recapping shops;
- (48) Towers and antennas 50 feet or less in height;
- (49) Truck sales and repair;

(50) Trucking terminals;

(51) Union halls, fraternal and civic organization meeting facility;

(52) Vehicular and equipment outdoor storage (as a principal use) not for retail sales where:

(a) The items are owned and/or operated by the owner of the lot upon which they are located; and

(b) The items are in operating condition or intended to be operated.

(53) Warehouses, including mini-warehouses;

(54) Wholesaler, jobbers, bulk warehouses; and

(55) Accessory outlet store, provided that parking for the store shall be computed separately from the principal use and reserved for those purposes.

(B) *Uses subject to prescribed standards.* The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ [153.255](#) through [153.259](#) of this chapter and subject to the associated below prescribed standards.

(1) Tavern provided the site is located a minimum of 100 feet from any residential use, vehicular access is not provided by a local residential road and the use is screened from any abutting property located in a residential district in accordance with § [153.046](#).

## **§ 153.105 R-25 RURAL RESIDENTIAL DISTRICT.**

(A) *Permitted uses.* The following uses are permitted by right.

(1) Single-family dwellings;

(2) Two-family dwellings;

(3) Manufactured homes, Class A;

(4) Agriculture uses;

(5) Family care homes;

(6) Day care centers, small group;

(7) Customary home occupations in accordance with § [153.045](#) of this chapter;

(8) Essential services, Class I;

(9) Churches with a maximum sanctuary seating capacity of not greater than 500 seats. Customary accessory uses shall also be permitted. Church owned and maintained cemeteries as an accessory use are permitted;

(10) Publicly owned and operated outdoor recreation facilities which are one acre or less in area. No facility shall contain a swimming pool or indoor community center or meeting facility;

(11) Private recreation facilities constructed pursuant to a permit authorizing the construction of some residential development and intended primarily for the use and enjoyment of the residents thereof;

(12) Public and private elementary and secondary schools and private schools district administrative offices where located on the same parcel as a school;

(13) Stands for the in-season sale of produce out of a home garden located on the premises where the produce is being sold;

(14) Accessory structures in accordance with § [153.057](#) of this chapter;

(15) Signs in accordance with §§ [153.160](#) through [153.172](#) of this chapter;

(16) Off-street parking in accordance with §§ [153.185](#) through [153.188](#) of this chapter; and

(17) Private residential quarters provided there is sufficient off-street parking to accommodate the private residential quarters in addition to the spaces required for the principal dwelling.

(B) *Uses subject to prescribed standards.* The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ [153.255](#) through [153.259](#) of this chapter and subject to the associated below prescribed standards.

(1) Cemeteries as a principal use (setbacks apply to both buildings and graves) provided primary vehicular access is not provided by a local residential road;

(2) Customary home occupations which meet all the criteria as set forth in § [153.045](#) of this chapter except § [153.045](#)(B) of the section; provided however, if an accessory or outside storage building is used in connection with a home occupation it shall not exceed 800 square feet in floor area and not more than one building shall be devoted to the home occupation and the building is located in the rear yard and not less than 50 feet from any property line.

(3) Auto hobbyist (see Definitions, § [153.031](#)) provided the use is screened from any abutting property located in a residential district in accordance with § [153.046](#);

(4) Churches having a sanctuary seating capacity in excess of 500 seats provided that primary vehicular access is not provided by a local residential road and the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(5) Country clubs and privately-owned outdoor recreation facilities provided that go-cart tracks and outdoor vehicular racing facilities shall not be permitted provided that primary vehicular access is not provided by a local residential road and the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(6) Publicly owned and operated outdoor recreation facilities in excess of one acre in area and/or containing a swimming pool, or indoor community center or meeting facility provided that primary vehicular access is not provided by a local residential road and the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(7) Bed and breakfast inns provided the use is screened from any abutting property located in a residential district in accordance with § [153.046](#);

(8) Public safety stations provided that the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(9) Rest homes, nursing care facilities and continuing care communities provided that primary vehicular access is not provided by a local residential road and the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(10) Public schools administrative offices (freestanding) provided that primary vehicular access is not provided by a local residential road and the use is screened from any adjoining property located in a residential district in accordance with § [153.046](#);

(11) Communication towers subject to the following standards.

(a) The height of the communication tower may not exceed 199 feet above ground level;

(b) The tower may only be placed on a property containing a minimum of three acres;

(c) The tower must be set back a distance of at least 200 feet from any public right-of-way and 200 feet from any property line;

(d) The tower must provide technically-suitable space for at least four users;

(e) The tower shall be constructed using a monopole design;

(f) A new communication tower cannot be placed within a one-quarter mile radius of an existing tower that could accommodate an additional user;

(g) No equipment, mobile or immobile, not used in direct support of the transmission or relay facility shall be stored or parked on the site unless repairs to the facility are being made;

(h) Towers shall not be artificially lighted except to insure human safety as required by the Federal Aviation Administration (FAA) regulations;

(i) Screening in accordance with § [153.046](#) shall be planted around the perimeter of the area occupied by the tower, security fencing, and auxiliary uses such as parking. In addition, existing on-site trees and other vegetation shall be preserved to the extent possible;

(j) No more than one communication tower shall be constructed on a single tract of land;

(k) The tower will not result in interference with the safe operation of aircraft in relation to existing or planned airport facilities; and

(l) All obsolete or unused facilities must be removed within 12 months of cessation of operations at the site.

MEMO TO: Planning Board Members

FROM: Planning Staff

SUBJECT: ZTA-1-2023 - Zoning Text Amendments to Chapter 153 Unified Development Ordinance

DATE: March 21, 2023

## **Background**

Amendments to the Unified Development Ordinance are needed from time to time to correct minor errors in text or to respond to changing conditions.

There are several ordinance sections outlined below that need to be changed, updated or added to help make the UDO a better and more enforceable document.

Proposed changes are highlighted in yellow and language to be removed is stricken through.

## **Proposed Amendment Section 153.046 Screening**

### *(4) Open storage and open structures.*

(a) Within any NB, ~~CB, CBT~~, GB, CC, HB, PB, GMC or GI District, screening shall be required for the open storage of any goods other than vending machines, retail goods left outside only during business hours, vehicles, trailers, other equipment capable of being driven on a roadway and any fixtures fastened to a building, ground or impervious surface; or for any unenclosed structure consisting of a roof, but no walls used for storage of materials, products, wastes or equipment, whenever the storage or structure is located within 100 feet of the street right-of-way line.

(b) Open storage of vehicles, trailers and other equipment is not permitted in the CB or CBT Districts.

**Staff Comment:** Open storage is not appropriate for the Central Business and Central Business Transitional Districts.

### **Proposed Amendment Section 153.074 Supplementary Requirements (CB and CBT)**

(a) *Awnings and canopies.* When used, awnings and canopies shall be placed at the top of window openings and shall relate to the shape of the top of the window. **Awnings shall be made of canvas or treated canvas material; or standing seam prefinished metal on open metal framing.** Awnings, where existing conditions are in place and subject to staff review, can be recovered with slate or simulated slate, shingles, or standing seam metal in neutral or earth tone colors. In new construction the above standards may be incorporated when determined by staff that it is appropriate, based on review of other nearby structures, generally within approximately 300 feet of the new building and within the same zoning district. Vinyl or metal awnings are not permitted. No awning shall extend more than two-thirds the width of the sidewalk or nine feet, whichever is less. Awnings and canopies must be self-supporting from the wall; no supports shall rest on or interfere with the use of pedestrian walkways or streets. In no case shall any awning extend beyond the street curb or interfere with street trees or public utilities. The use of metal or other rigid roofing material is not intended to be used as a vertical facade for awnings or canopies. A vertical drop of acceptable scale is permitted. Metal is not permitted as a vertical wall face or screen.

**Staff Comment:** Delete metal awnings from the text. We do allow metal awnings. Good examples of metal awnings are Good Wood and Burton's General Store.

### **Proposed Amendment Section 153.110 Residential Office District**

(6) Family care homes, ~~provided the family care home will not be located within one-half mile radius of another family care home existing at the time the application for zoning permit is made;~~

**Staff Comment:** In 1991, a zoning text amendment was made to remove the distance requirement for Family Care Homes in all zoning districts. The RO district still has the old wording. Make it consistent with all other zoning districts.

### **Proposed Amendment Section 153.115.1 Highway Commercial District**

The following uses are allowed upon the issuance of a zoning permit by the Zoning Administrator in accordance with §§ 153.255 through 153.259 of this chapter and subject

to the associated below prescribed standards. (1) Adult establishments subject to § ~~153.238~~ 153.130 (B) of this chapter; (2) Arcade or amusement center or game room subject to § ~~153.238~~ 153.130 of this chapter and approval of a license in accordance with Chapter 111 ; (3) Planned unit developments (mixed uses) in accordance with § 153.216 of this chapter and provided the uses within the development are otherwise listed as permitted uses or uses subject to in the HC District and the use is screened from any abutting property located in a residential district in accordance with § 153.046 ; and (4) Accessory apartments in commercial structures provided all building and fire codes are met, living quarters do not exceed 30% of the total square footage of the structure and occupancy is limited to employees of the business located in the commercial structure on the premises. (5) Indoor shooting range subject to § ~~153.238~~ 153.130 (D); and (6) Outdoor shooting range subject to § ~~153.238~~ 153.130(E).

**Staff Comment:** When the Ordinance was amended, section number 153.238 changed to 153.130. These numbers just need to be corrected.

### **Proposed Amendment Section 153.117.1 General Industrial District**

The following uses are permitted by right. (1) All uses as permitted in 153.117 (A) of this chapter. (2) Airports and air strips/airplane sales, services and fuel and rentals; (3) Auctions, outdoors and/or livestock; (4) Churches; (5) Day care centers; (6) Essential services; (7) Express fuel/mini-marts; (8) Farmers' markets; (9) Fish hatcheries; (10) Flea markets; (11) Fuel oil distribution facilities; (12) Haunted attractions (indoor/outdoor); (13) Indoor shooting range subject to § ~~153.238~~ 153.130 (D) of this chapter; (14) Junkyards, automobile graveyards and scrap salvage yards; (15) Kennels (indoor and outdoor); (16) Military reserve center/national guard armory; (17) Mines and quarries; (18) Outdoor storage of vehicles and/or equipment (19) Paintball gaming facility subject to § ~~153.238~~ 153.130 (C) of this chapter; (20) Penal institutions; (21) Race tracks; (22) Septic tank cleaning service; (23) Outdoor shooting range subject to § ~~153.238~~ 153.130 (E) of this chapter; (24) Recycling station - construction and demolition material- subject to § ~~153.238~~ 153.130 (F) of this chapter; (25) Restaurant; and (26) Tavern.

**Staff Comment:** When the Ordinance was amended, section number 153.238 changed to 153.130. These numbers just need to be corrected.

## **Proposed Amendment Section 153.130 Supplementary Requirements for Certain Uses**

### **(7) Tattoo studio**

**(a) The use shall not be located within 1000 feet from another tattoo studio.**

**Staff Comment:** Planning Board recommended the following from the November, 2020 meeting:

1. Allow tattoo studios in the General Business District as a permitted use.
2. Allow tattoo studios in the Central Business District as a conditional use and subject to a 1000 foot separation from any other tattoo studio.

At the December 2020 City Council meeting, City Council voted 4-0 to approve tattoo studios as a conditional use in Planned Business. When the UDO was amended for 160D regulations, we did away with conditional uses and went with a conditional zoning process. Tattoo studios now are listed in Planned Business as a permitted use with prescribed standards. However, there are no prescribed standards attached to the use. Staff recommends using the Planning Board recommendation of 1000 foot separation from any other tattoo studio as the prescribed standard.

## **Proposed Amendment Section 153.258 Site Plan Review**

*(C) Procedure for preparation.*

(7) Five **paper** copies **and one digital copy** of the site plan shall be submitted to the Administrator for review. The Administrator may request additional copies for outside agency review.

**Staff Comment:** The ordinance doesn't currently require a digital copy of the site plan.

## **Proposed Amendment Section 153.382 Procedure for Minor Subdivisions**

*(A) Sketch plan for minor subdivisions.*

(1) This section shall apply to minor subdivisions only. For all minor subdivisions, a preliminary plat shall not be required. All subdivisions, however, shall require the submittal, approval and recordation in the Deeds Office of a final plat. Prior to submission of a final plat, the subdivider may submit to the Administrator two **paper** copies **and a**

digital copy of a sketch plan of the proposed subdivision. The purpose of the sketch plan is to familiarize the Administrator with the proposed development and to ensure that it is in compliance with all applicable regulations. While the submittal of a sketch plan is optional, it is suggested that the subdivider submit a plan in order to familiarize the Administrator of the proposed development and, upon review, notify the subdivider of any likely problems with the proposed development.

**Staff Comment:** The ordinance doesn't currently require a digital copy of the site plan.

### **Proposed Amendment Section 153.384 Preliminary Major Subdivision Plat Submission and Review**

(E) At least eight complete paper copies and one digital copy of the preliminary plat shall be submitted to the Administrator with one of these copies being on reproducible material. The remaining copies shall be considered complete if they contain all of the information required by § 153.387 of these regulations and if the required submittal fee has been paid.

**Staff Comment:** The ordinance doesn't currently require a digital copy of the site plan.

### **Proposed Amendment Sections 153.259 Right of Appeal, 153.260 Remedies and 153.262 Enforcement**

#### **§ 153.259 RIGHT OF APPEAL.**

~~—If a request for a zoning permit is disapproved or if a ruling of the Administrator is questioned, the aggrieved party may appeal the ruling to the Board of Adjustment in accordance with § 153.276 of this chapter.~~

~~(Prior UDO, § 14.5)~~

#### **§ 153.260 REMEDIES.**

~~—(A) In case any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building structure or land is used or developed in violation of this chapter, the Administrator, or any other appropriate city official, or any person who would be damaged by the violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.~~

~~—(B) In addition to initiation of enforcement actions under G.S. § 160D-404 and § 153.262 of this chapter, development approvals may be revoked by notifying the holder~~

~~in writing stating the reason for the revocation. The city shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. § 160D-405 and § [153.276](#) of this chapter. If an appeal is filed regarding a development regulation pursuant to this Chapter, the provisions of G.S. § 160D-405(e) regarding stays shall be applicable.~~

#### **~~§ 153.262 ENFORCEMENT.~~**

~~—(A) *Notices of violation.* When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this chapter 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. A notice of violation may be appealed to the Board of Adjustment pursuant to G.S. § 160D-405 and § [153.276](#) of this chapter.~~

~~—(B) *Stop work orders.* Whenever any work or activity subject to regulation pursuant to this chapter is undertaken in substantial violation of any state or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. A stop work order may be appealed pursuant to G.S. § 160D-~~

~~405 and § 153.276 of this chapter. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.~~

## **§ 153.262 VIOLATIONS.**

Any of the following shall be a violation of this ordinance and shall be subject to the enforcement remedies and penalties provided by this article and by state law:

(A) *Development without permit.* A "development without a permit" violation means to engage in any development, use, construction, remodeling or other activities of any nature upon the land or improvements thereon subject to the jurisdiction of this ordinance without required permits, certificates or other forms of authorization as set forth in this ordinance. A "development without a permit violation" shall result in the assessment of a fee that is double the normal permit fee.

(B) *Development inconsistent with permit.* A "development inconsistent with a permit" violation means to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

(C) *Violation by act or omission.* A "violation by act or omission" means to violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the city council or its authorized boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.

(D) *Use in violation.* A "use in violation" means to erect, construct, reconstruct, alter, repair, convert, maintain or use any building or structure or to use any land in violation or contravention of this ordinance, or any other regulation made under the authority conferred thereby.

(E) *Subdivide in violation.* A "subdivide in violation" means to subdivide land in violation of this ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this ordinance and recorded in the Lincoln County Office of the Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this ordinance.

(F) *Continue a violation.* Each day's violation of any provision of this ordinance is a separate and distinct offense.

#### **§ 153.263 ENFORCEMENT INTENT.**

It is the intention of this ordinance, unless otherwise provided, that all questions arising in connection with the enforcement of this ordinance shall be presented first to the UDO administrator and that such questions shall be presented to the board of adjustment only on appeal from the UDO administrator's decision. An appeal from the decision of the board of adjustment shall be by proceedings in the nature of certiorari to the superior court as provided by law and must be filed with the city clerk within the 30-day appeal period described in section 153.268 (B). It is further the intention of this ordinance that the duties of the city council in connection with this ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof.

#### **§ 153.264 ENFORCEMENT PROCEDURES.**

When the UDO administrator or his agent finds a violation of this ordinance or receives a complaint alleging a violation of this ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

(A) *Notice of violation.* If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the UDO administrator shall give the owner or occupant written notice, by certified or registered mail, to his last known address or by personal service or by posting notice of the violation conspicuously on the property:

(1) That the land, building, sign, structure, or use is in violation of this ordinance.

(2) The nature of the violation, and citation of the section of this ordinance violated.

(3) The measures necessary to remedy the violation.

(B) *Appeal.* Any owner or occupant who has received a notice of violation may appeal in writing the decision of the UDO administrator to the board of adjustment, in accordance with the provisions of section 153.275, within 30 days following the date of the notice of violation. The board of adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the notice of violation. In the absence of an appeal, the remedies and penalties sought by the UDO administrator in the notice of violation shall be final.

(C) *Order of corrective action.* If upon a hearing held pursuant to an appeal as prescribed above, the board of adjustment shall find that the owner or occupant is in

violation of this ordinance, the board of adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.

(D) *Failure to comply with an order.* If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or an order of corrective action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and section 153.265. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

#### **§ 153.265 PENALTIES AND REMEDIES.**

Any one or all of the following procedures may be used to enforce the provisions of this ordinance:

(A) *Injunction.* Any violation of this ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceedings pursuant to state law.

(B) *Civil penalties.* Any person who violates any provisions of this ordinance shall be subject to the assessment of a civil penalty under the procedures provided in section 153.266.

(C) *Denial of permit or certificate.* The UDO administrator may withhold or deny any permit, certificate, occupancy or other form of authorization on any land, building, sign, structure or use in which there is an uncorrected violation of a provision of this ordinance or of a condition or qualification of a permit, certificate or other authorization previously granted.

(D) *Conditional permit.* The UDO administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by the city attorney.

(E) *Revocation of permits.* In accordance with section 153.267, permits shall be revoked for any substantial departure from the approved applications, plans, or specifications; refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(F) *Criminal penalties.* Any violation of this ordinance shall be a misdemeanor or infraction as provided by N.C.G.S. 14-4.

(G) *State and common law remedies.* In addition to other enforcement provisions contained in this article, the city council may exercise any and all enforcement powers granted to it by state law or common law.

#### **§ 153.266 CIVIL PENALTIES—ASSESSMENT AND PROCEDURES.**

(A) *Penalties.* Any person who violates any provisions of this ordinance shall be subject to assessment of the maximum civil penalty allowed by law.

(B) *Notice.* No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with subsection 153.264(A). If after receiving a notice of violation under subsection 153.264(A), the owner or other violator fails to take corrective action, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the manner of a notice of violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within 15 days of the date of the notice.

(C) *Responsible parties.* The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

(D) *Continuing violation.* For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

(E) *Demand for payment.* The UDO administrator shall make a written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

(F) *Nonpayment.* If payment is not received or equitable settlement reached within 30 days; after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the general courts of justice for recovery of the civil penalty. Provided however, if the civil penalty is not paid within the time prescribed, the UDO administrator may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to N.C.G.S. 14-4.

## § 153.267 PERMIT REVOCATION.

(A) *General.* A zoning or sign permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the approved plans, the requirements of the ordinance, or any additional requirements lawfully imposed by the permit-issuing board. No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, special use, or conditional use permit after such permit has been revoked in accordance with this section.

(B) *Zoning or sign permit revocation.* Before a zoning or sign permit may be revoked, the UDO administrator shall give the permit recipient ten days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the UDO administrator shall provide to the permittee a written statement of the decision and the reasons therefore.

## § 153.268 Judicial review.

(A) *Appeal to superior court.* Every decision of the city council granting or denying a final decision of the board of adjustment shall be subject to review by the superior court of Lincoln County by proceedings in the nature of certiorari.

(B) *Timing of appeal.* The petition for the writ of certiorari must be filed with the Lincoln County Clerk of Court within 30 days after the later of the following occurrences:

(1) A written copy of the city council's or board of adjustment's decision has been filed in the office of the UDO administrator.

(2) A written copy of the city council's or board of adjustment's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

(3) A copy of the writ of certiorari shall be served upon the City of Lincoln.

**Staff Comment:** The current ordinance is lacking when outlining zoning violations, the enforcement process and penalties. This would give us better, clearer enforcement guidelines for zoning violations.

## **Staff Recommendation**

Staff recommends approval of the amendments.

Zoning Amendment  
Staff's Proposed Statement of Consistency and Reasonableness  
for **APPROVAL** of Application

Case No.     ZTA-1-2023

Applicant:   City of Lincolnnton Planning Department

Request:     ZTA-1-2023 - Zoning Text Amendments to Chapter 153 Unified  
Development Ordinance

Proposed Consistency and Reasonableness Statement:

The proposed amendment is **consistent** with the adopted Lincolnnton Land Use Plan in that it is not contrary to the goals and objectives outlined by the Plan and **approval of the amendment is reasonable and in the public interest.**

CONSISTENT: Because it updates text language to match current procedures and best practices and it provides additional direction in order to assist citizens in understanding the regulations.

REASONABLE: The text amendment is reasonable because it makes the ordinance clearer and more easily understood.

Zoning Amendment  
Staff's Proposed Statement of Consistency and Reasonableness  
for **DENIAL** of Application

Case No. ZTA-1-2023

Applicant: City of Lincoln Planning Department

Request: ZTA-1-2023 - Zoning Text Amendments to Chapter 153  
Unified Development Ordinance

Proposed Consistency and Reasonableness Statement:

The proposed amendment is **not consistent** with the adopted Lincoln Land Use Plan in that it is contrary to the goals and objectives outlined by the Plan and **denial of the proposed amendment is reasonable and in the public interest.**