

# DRAFT

## *Voluntary Residential Development*

### **Background; Statement of Purpose.**

Session Law 2015- 86 (the “New Legislation”) amends N.C.G.S. 160-381 and provides that “Any zoning and development regulation ordinance relating to building design elements...may not be applied to [residential] structures subject to regulation under the North Carolina Residential Code for One and Two family dwellings.” The New Legislation expressly states that it “clarifies and restates the intent of existing law and applies to ordinances adopted before, on, and after the effective date.” The New Legislation does create some exceptions to the general prohibition of design regulation of residential structures including when the design standards are voluntarily consented to by the owners of the property.

The Town’s Unified Development Ordinance (UDO) includes several sections that include regulation of building design elements of residential structures as an integral and essential part thereof. These ordinances that include regulation of building design elements of residential structures as an integral and essential part thereof are:

- *Section 7.12 Special Requirements for One-Family Dwellings with Zero Lot Line*
- *Section 7.3.3. Special Requirements for Conservation Subdivisions.*
- *Section 7.4 DO-A and DO-B Overlay Districts (Downtown Overlay Code)*
- *ZC13-4 Mint Hill Commons*

(collectively the “Existing Design-Dependent Provisions”; each an “Existing Design-Dependent Provision”).

All of the Existing Design-Dependent Provisions were initially adopted and approved by the Town Board based on the understanding that it was legally permissible to regulate building design elements of residential structures. Moreover, those sections of the Existing Design-Dependent Provisions regulating building design elements are of such import that implementing the other sections of the Existing Design-Dependent Provisions without the building design elements would cause results not contemplated or desired by the Town when such ordinances were adopted and are not contemplated or desired by the Town now.

There are existing sections of the UDO that permit residential development that do not include regulation of building design elements of residential structures as an integral and essential part thereof (i.e. are not the Existing Design Dependent Provisions) and which accordingly are not affected by the New Legislation (the “Permitted Residential Standards”).

The purpose of this ordinance is to comply with the New Legislation by providing that the Existing Design-Dependent Provisions shall no longer be applied to any residential development in Mint Hill without the voluntary consent of the owner(s). The Permitted Residential Standards remain unchanged by the New Legislation and residential development is permitted pursuant to and in accordance with the Permitted Residential Standards.

**A. Existing Design-Dependent Provisions No Longer Applicable to Residential Development Unless Voluntarily Consented to by the Owners; Permitted Residential Standards Remain Applicable.** All Existing Design-Dependent Provisions shall no longer be applied to any residential development without the voluntary consent of the owner(s). Owners that desire to voluntarily comply with Existing Design-Dependent Provisions and develop pursuant to and in accordance with the Existing Design-Development Provisions may do so as set forth herein. The Permitted Residential Standards remain applicable and Owners that do not desire to voluntarily comply with Existing Design-Dependent Provisions may develop pursuant to and in accordance with the Permitted Residential Standards.

**B. Development Previously Approved Pursuant to Existing Design-Dependent Provisions; Previous Voluntary Compliance; Vested to Continue in Accordance with the Applicable Existing Design-Dependent Provision.**

- i. Any completed residential structures developed pursuant to any of the Existing Design-Dependent Provisions shall be considered to be structures for which owners have voluntarily complied with the Existing Design-Dependent Provisions and accordingly shall be vested and allowed to continue in accordance with the applicable Existing Design-Dependent Provisions.
- ii. Residential structures under construction in developments approved pursuant to an Existing Design-Dependent Provision shall also be considered to be structures for which owners have voluntarily complied with the Existing Design-Dependent Provisions and accordingly shall be vested and allowed to continue in accordance with the applicable Existing Design-Dependent Provisions.
- iii. Proposed residential development for which there has been a Site Plan approval pursuant to an Existing Design-Dependent Provision shall also be considered to be development for which owners have voluntarily complied

with the Existing Design-Dependent Provisions and accordingly shall be vested and allowed to continue in accordance with the applicable Existing Design-Dependent Provisions.

- C. **New Development; Simple Process to Confirm Voluntary Compliance.** For any new development, an owner may elect to voluntarily comply with an Existing Design-Dependent Provision. Any owner that desires to develop in accordance with an Existing Design-Dependent Provision and accordingly desires to voluntarily comply therewith, shall provide written statement to that effect to the Administrator confirming and then shall be permitted to develop pursuant to and in accordance with the applicable Existing Design Dependent Provisions. Any approved Site Plans shall include written confirmation of the same. Additionally, the conditional district zoning process remains available for owners that desire to voluntarily propose residential development plans not contemplated by the Permitted Residential Standards.

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