



**Town of Clayton**  
**Town of Clayton Planning Board Agenda**  
**Monday, March 27, 2023 @ 6:00 PM**  
**Town Council Chambers**

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The Planning Board meeting location will be in the Wooten Room on the 3rd floor of Town Hall. There will not be a video of the meeting due to the location.

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ADJUSTMENT OF THE AGENDA**

**4. APPROVAL OF MINUTES**

- a. [Clayton Planning Board - Feb 27 2023 - Minutes - Pdf](#)

**5. ADJOURN**

- a. \*\* Following Adjournment, Planning Board will meet as the Codify Clayton Steering Committee to review and discuss the first module of draft Chapters of the new Unified Development Ordinance, attached to the agenda.\*\*  
[Codify Clayton UDO Public Review Draft Ch 1 3-17-23 Clean](#)  
[Codify Clayton UDO Public Review Draft Ch 2 3-17-23 Clean](#)  
[Codify Clayton UDO Public Review Draft Ch 7 3-17-23 Clean](#)



**Town of Clayton  
Clayton Planning Board Minutes  
Monday, February 27, 2023 at 6:00 PM  
Town Council Chambers**

**Board Members Present:**

James Moore  
Stephen Powers  
Jodie Dupree  
James Lipscomb  
Lisa Begley  
Kevin Lee  
Ronald Williams  
Derrick Applewhite

**Board Members Absent:**

Jeffery Spence

**Staff Present:**

Ben Howell, Planning Director  
Bruce Venable, Planner I  
Love Ott, Land Development Specialist

**1 CALL TO ORDER**

- a) Chair Moore called the meeting to order at 6:02pm

**2 PLEDGE OF ALLEGIANCE**

**3 ADJUSTMENT OF THE AGENDA**

- a) Board Member Lipscomb company is the applicant for 5b so he will be exempt from voting

**4 APPROVAL OF MINUTES**

- a) Motion: Board Member Lee  
Second: Board Member Powers  
Result: Approved, Unanimous

**5 PUBLIC COMMENT SESSION**

- a) 2022-146-CZM Academy Pointe Phase 10  
*Presenter:* Ben Howell, Planning Director

Rezoning property from B-2 to Conditional Zoning-Residential District

Proposed Use: Apartments/Multifamily

2045 Growth Plan calls for area to be High Density Residential

Staff believes it to be a continuation of existing development on either side and consistent with the area

No adverse effect on adjoining property owners

Staff believes that the applicant has met criteria of the Master Plan and Master Plan Narrative

Staff recommends approval subject to the 16 recommend conditions of approval

**•Board Comments**

Board Member Powers asked how did the trip generate 5 additional daily trips, 9 additional in the peak AM, and 12 in the peak PM if there will be 33 apartments added?

Planning Director Howell stated that the trip generation re-calculated based on the newest trip generation manual

Board Member Applewhite asked if one of the conditions that the applicant proposed was a buffer?

Planning Director Howell stated that the applicant did not have add a buffer as a condition.

Chair Moore asked if the lack of parking requirements can be changed in the Code of Ordinance since there is not enough parking already at Academy Pointe?

Planning Director Howell stated that looking at the parking ratio while in the process of the rewrite of the Code of Ordinance can be done.

**•Applicant Comments**

Board Member Dupree asked if cars could make a left out of Rosemary St.?

Applicant stated NCDOT will not allow it

Chair Moore asked how will the development accommodate all the additional cars that the development will bring?

Applicant stated that removing buildings allowed for additional parking and it will be more parking than any phase.

**•Public Comments**

Carrie Lee, 221 E Second St. asked if the rezoning would then be considered high density based on the 2045 Growth Plan?

Planning Director Howell stated with the rezoning it would be considered high density.

Ms. Lee stated that buses already have a difficult time getting around parked cars and with more development the traffic will increase mostly in the morning when trying to get to school. Ms. Lee also stated concern with turning left onto Rosemary because it is already difficult.

Motion: Board Member Begley

Second: Board Member Applewhite

Result: Approved, Unanimous

- b) 2022-163-CZM Highland Park Conditional Zoning District  
*Presenter:* Ben Howell, Planning Director

Board Member Lipscomb has abstained from voting on item due to company being applicant

Rezone property from Residential-Estate (R-E) to Conditional Zoning-Residential District

Proposed Use: Townhomes and Apartments

2045 Growth Plan calls for area to be Medium Density Residential

Staff has determined that it is generally consistent with the 2045 Growth Plan and could provide a transition

No adverse effect on adjoining property owners

Staff believes the applicant has met the criteria of the Master Plan and Master Plan Narrative

Staff recommends approval subject to the 21 recommended conditions of approval

**•Board Comments**

Chair Moore asked why does the Town give the applicant an option for the roads to be privately owned and maintained by HOA or be constructed to Town Standards?

Planning Director Howell stated that the condition was agreed upon by the Town and applicant through the Technical Review Committee.

Board Member Begley asked if the townhomes and apartments will be owned?

Planning Director Howell stated the townhomes will likely be, however the Town cannot regulate ownership.

Board Member Dupree asked If there is any concern that the only entrance is on a hill and a curve on a very busy road?

Planning Director Howell stated there will always be a concern when there is limited access however, the Town must allow development to occur.

Board Member Dupree asked land around the development will get developed in the future, if the applicant is different does the town have authority to require the development to connect to the stub streets?

Planning Director Howell stated depending on the how the other property is developed, yes and no. It is something that is being address in the new UDO to require connection to street stubs. Staff pushes very hard to ensure the design is made to connect.

Board Member Dupree suggested that the County Commissioners, School Board, and the Town form a committee and talk about the school's being capped and development continuing to come.

**•Applicant Comments**

Emily Beddingfield, Planning and Entitlement Manager at Lipscomb Development at 328 E. Main St.

Proposing 130 units, at just over 4 units per acre which is less density than was anticipated by the Future Land Use Map.

Natural resources and large vacant land to the West leaves the applicant with one entrance, with a 350-500 feet entrance.

Board Member Powers asked if there would be four or two street stubs?

Ms. Beddingfield stated that there are two on the South side to provide cross access streets that would provide future access to properties that is not part of the project. The two stub streets within the project boundary will connect to the overall development.

Ms. Beddingfield stated that all roads are proposed as private roads.

Board Member Applewhite asked if the limitation on the number of single-family homes that can be developed for one entrance into a site the reason apartments and townhomes were chosen?

Ms. Beddingfield stated it was the driving reason.

**•Public Comments**

Carrie Lee, 221 E. Second St. concerned about traffic on O'Neil St and wants the board to uphold the 2045 Growth Plan

Motion: Board Member Dupree  
Second: Board Member Williams  
Result: 7 Members Approved

- c) 2022-215-RZ Bobby H. Hardee Rezoning

**Public Comments**

*Presenter:* Bruce Venable, Planner I

Rezone property from Residential-Estate (R-E) to Industrial Heavy (I-2)

Consistent and Compatible to the Future Land Use Map

Staff recommends approval

**•Applicant Comments**

Drew Hardee speaking for Bobby Hardee

**•Public Comments**

Gary Rush, adjacent property owner

Concerned about what is going to happen with the property and how the rezoning will affect his property

Applicant stated that they have no plans on going to the back side of the property, only utilizing the front 3-4 acres.

Motion: Board Member Lipscomb

Second: Board Member Williams

Result: Approved, Unanimous

**6 NEW BUSINESS**

**7 INFORMAL DISCUSSION AND PUBLIC COMMENT**

**8 ADJOURN**

- a) Motion: Board Member Powers  
Second: Board Member Williams  
Result:

Chair Moore adjourned the meeting at 8:20pm

# UNIFIED DEVELOPMENT ORDINANCE



 C O D I F Y  
CLAYTON

**Public draft  
(Ch 1, 2, 7)**

3-17-23



## ACKNOWLEDGEMENTS



### Town Council

Jody McLeod, Mayor  
Jason Thompson, Mayor Pro Tem  
Avery Everett, Councilmember  
Andria Archer, Councilmember  
Porter Casey, Councilmember  
Michael Sims, Councilmember

### Planning Board

James Moore, Chair  
Steven Powers, Vice-Chair  
Jeffrey Spence  
Lisa Begley  
Ronald Williams  
Kevin Lee  
Ethan Bennett  
James Lipscomb  
Jodie Dupree

### Codify Clayton Steering Committee

Town of Clayton Planning Board  
Marty Bizzell, Chair, Board of Adjustment  
Thomas Antoine, Vice-Chair, Board of Adjustment  
Rebecca Berry, Member, Board of Adjustment  
Jim Perricone, Member, Board of Adjustment

### Town Staff

Rich Cappola, Town Manager  
Lee Barbee, Interim Deputy Town Manager/Fire Chief  
Robert Yarborough, Senior Building Codes Official  
Anthony Atkinson, Deputy Fire Chief/Fire Marshal  
Joshua Baird, Engineering Director  
Jonathan Jacobs, Assistant Engineering Director  
Byron Poelman, Water Resources Director  
Allen Turnage, Electric Director  
Ethan Poppe, Energy Services Technician  
Benjamin Howell, Planning Director  
Dede Bumgarner, Development Services Manager & Zoning Administrator  
Bruce Venable, Planner I

### Consultant

CodeWright Planners, LLC  
Angela S. Manning, Inc  
Timmons Group



## UDO AMENDMENTS

| UDO AMENDMENTS <sup>1</sup> |                   |                                                                                                                                                                                                         |
|-----------------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ORDINANCE<br>NUMBER         | ORDINANCE<br>DATE | DESCRIPTION                                                                                                                                                                                             |
| UDOTA-1-23                  | 13.32.23          | A short description listing the main sections modified and an abbreviated summary of the changes<br>Section 1.1: added language<br>Section 3.5: section deleted<br>Section 4.2: Some other change, etc. |
| UDOTA-2-23                  | 13.32.23          | Another description and summary from a subsequent round of text amendments                                                                                                                              |
|                             |                   |                                                                                                                                                                                                         |
|                             |                   |                                                                                                                                                                                                         |

<sup>1</sup> This is a sample table showing a possible method for the Town to record edits to the UDO text following adoption. The table lists amending ordinance numbers and adoption dates. It also provides a short description of each amendment. This table would be updated as part of any proposed UDO text amendment. In addition to this table, amended sections of the UDO text should be appended with an editor's note indicating the date the section was amended and the applicable ordinance number. The Town should make historical text amendment ordinances available for public review so readers can easily see how the UDO language has evolved over time. One other important aspect is the date in the lower right hand corner of each page. This is the control method the Town and applicants can use to ensure they are using the latest version of the UDO.

## ABOUT THIS UDO

This document is the Town of Clayton's County Unified Development Ordinance (or "UDO"). It contains the rules that govern:

- How land can be used in the Town and the Town's extraterritorial jurisdiction;
- What kinds of land uses may be located in particular locations (based on the zoning map); and
- How new development must be configured.

The following paragraphs explain some of the attributes of this document.

Clayton's zoning map is the graphical depiction of the location of the zoning districts and is adopted by reference into this UDO.

This UDO includes a text formatting system comprised of numbered section and sub-section headings that are designed to help code users understand how the text is organized. Section headings include different color backgrounds and sub-section headings use underlining to help them be more visible.

This UDO has 9 articles, which are ordered alphabetically, including an appendix. Most sections within each chapter are also ordered alphabetically. Some chapters also include an introductory section that explains how the regulations in the chapter are structured and how to use them effectively.

The top of almost every page in the UDO includes the chapter's number and name, as well as the number and name of the section addressed on that page. This is done so users may use the tops of pages to quickly navigate the document (since articles and main sections are ordered alphabetically). Page numbers are included at the bottom of each page.

To ensure that a user is reviewing the most recent version of the document, the bottom of the page also includes the date the UDO was last updated. The most recent version of the document is maintained on the Town's webpage and is also available in the Town's Planning Department office.

**Highlighted** text in this UDO is a dynamic cross reference that, when selected with a mouse, will automatically advance to the location of the cross-referenced text in this UDO. Individual table of contents entries and index entries are also dynamic cross references that when selected, will automatically advance to the selected location.

There is an index of key terms and concepts at the end of the document. Code users may use this index to quickly locate a particular section or set of regulations.

Questions about this UDO, or any part of the Codify Clayton project may be posted on the project website ([www.codifyclayton.com](http://www.codifyclayton.com)), or applicants may contact the Planning Department at 919-553-5002. <sup>2</sup>

<sup>2</sup> NOTE TO STAFF: This kind of section is becoming a common way of introducing a code user to the basic operational features of a digital development code. It typically includes details on the dynamic links in tables of contents, cross references, and the index. It explains what dynamic cross references look like along with other attributes of the text. One possible addition to this part of the document could be the addition of frequently asked questions (and answers). This provides a uniform foundation of knowledge about the UDO and how it operates for Town staff, code users, and Town officials. It is specifically identified as supplementary and illustrative in nature and is not part of the adopted UDO text.

## FREQUENTLY ASKED QUESTIONS

The following is a list of frequently asked questions about the UDO and the development review process. UDO users who are not sure what they are looking for should consult these questions and answers before reviewing the UDO or contacting Town staff. In the event of conflict between an answer listed in this frequently asked questions section and the adopted UDO text, the UDO text will control.<sup>3</sup>

| FREQUENTLY ASKED QUESTIONS AND ANSWERS                    |        |
|-----------------------------------------------------------|--------|
| QUESTION                                                  | ANSWER |
| WHAT IS THE UNIFIED DEVELOPMENT ORDINANCE                 |        |
| WHAT IS THE OFFICIAL ZONING MAP?                          |        |
| WHAT IS THE COMPREHENSIVE PLAN?                           |        |
| WHAT CAN I DO OR PLACE ON MY LAND?                        |        |
| WHAT PERMITS DO I NEED TO BUILD A HOUSE?                  |        |
| DO I NEED A PERMIT TO BUILD A DECK?                       |        |
| DO I NEED A PERMIT TO BUILD A FENCE?                      |        |
| DO I NEED A PERMIT FOR A SIGN?                            |        |
| DO I NEED A PERMIT TO HAVE OPERATE A BUSINESS IN MY HOME? |        |
| HOW DO I CREATE AN ADDITIONAL LOT FOR A FAMILY MEMBER?    |        |
| WHAT IS THE PROCESS FOR REZONING MY LAND?                 |        |
| WHO MAKES DECISIONS ON APPLICATIONS?                      |        |

<sup>3</sup> NOTE: This is a table of FAQ that is provided as a means to log and answer the most frequently asked questions about the UDO or development process. The cells will be filled in or substituted with other questions from Town staff as the project progresses.

## FREQUENTLY ASKED QUESTIONS

| FREQUENTLY ASKED QUESTIONS AND ANSWERS               |        |
|------------------------------------------------------|--------|
| QUESTION                                             | ANSWER |
| HOW CAN I APPEAL A DECISION?                         |        |
| WHO SHOULD I CALL ABOUT FLOODING OR OTHER NUISANCES? |        |
| HOW CAN I LEARN MORE?                                |        |
|                                                      |        |
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# CHAPTER 1

## ADMINISTRATION

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## KEY CHANGES FROM CURRENT UDC

Chapter 1, Administration, consolidates the standards in Article 1, General Provisions, in the current UDC, along with the material for review bodies in Section 155.700, and the provisions pertaining to vested rights in Section 155.718. In addition, there are several other key changes, including:

1. Consolidation of all the introductory and administrative material into a single chapter.
2. Identification of the full run of statutory authority to adopt the UDO.
3. Clarification that the standards apply to various units of government, including the Town, the County, and the State.
4. Clarification that the standards in the UDO are minimum requirements.
5. Identification of the range of development and activity that is exempted from this Ordinance.
6. Establishment of a new comprehensive set of conflict provisions that address situations where ordinances conflict with one another, or how to interpret the most restrictive standard when relief is granted or incentives are deployed.
7. Identification of the adopted policy guidance documents that serve as the foundation for the UDO.
8. Recognition of a procedures manual (if the Town chooses to prepare one).
9. Inclusion of a new more detailed set of purpose and intent statements that address Town goals like character protection, increased housing options, and more employment opportunities.
10. Includes a new set of general requirements for all review authorities addressing aspects as rules of procedure, oath of office, conflict of interest, and meeting records.
11. A wider array of review responsibilities, including delegation of the Board of Adjustment as the body to consider all quasi-judicial applications.
12. Identification of the Floodplain and Stormwater Administrator functions.
13. New severability provisions that protect LMO language from summary removal via legal action.
14. A new comprehensive vested rights section that identifies the different forms of vesting above and beyond site-specific vesting plans.



### 1.1 APPLICABILITY<sup>4</sup>

#### 1.1.1 GENERALLY

The provisions of this Ordinance shall apply to the development of all land within the corporate limits and the Extraterritorial Jurisdiction (ETJ) of the Town of Clayton, as shown on the adopted Official Zoning Map, unless the development is located outside the corporate limits or ETJ and subject to a development agreement where these standards are applied.

#### 1.1.2 APPLICATION TO GOVERNMENTAL UNITS

Except when stated elsewhere in applicable law, this Ordinance applies to the following units of government:

##### A. THE TOWN OF CLAYTON

Development by the Town or its agencies or departments.

##### B. COUNTY AND STATE GOVERNMENT

Development of buildings by State or County agencies or departments, public colleges or universities, or other political subdivisions of the State, in accordance with the standards in NCGS§160D-913.

##### C. THE FEDERAL GOVERNMENT

Development owned or held in tenancy by the government of the United States, its agencies, departments, or corporate services, to the full extent permitted by federal law. For those activities of the federal government exempted from these regulations, compliance is strongly encouraged.

#### 1.1.3 JURISDICTION

##### A. GENERALLY

1. The standards in this Ordinance shall apply to all development where these standards are applicable unless the development is expressly exempted by a specific section of this Ordinance, other Town requirement, or by State law.
2. or on land taxed under the present use value system shall be exempted from all requirements of this Ordinance except the following:
  - a.
3. shall be exempted

##### B. EXEMPTIONS FROM ZONING REQUIREMENTS

1. The following forms of development and activities are exempted from the zoning-related requirements of this Ordinance:
  - a. Agricultural and agri-tourism related activities taking place on a bona fide farm in accordance with NCGS§160D-903;
  - b. Agricultural and agri-tourism related activities taking place on land taxed under the present use value standard;;
  - c. Forestry activities taking place on a bona fide farm or on land taxed under the present use value standard; or
  - d. Forestry activities subject to a forestry management plan approved in accordance with NCGS§160D-921.

<sup>4</sup> This section replaces current Sections 155.106 and 155.104 with additional details.



2. In no instance shall the forms of development and activities listed under sub-section (1) above be exempted from the following standards in this Ordinance:
  - a. Standards associated with the subdivision of land;
  - b. The flood damage prevention standards in Section <>, FPOD Flood Protection Overlay District;
  - c. The water supply watershed protection standards in Section <>, Watershed Protection Overlay District;
  - d. The standards in Section <>, Stormwater; and
  - e. The standards in Section <>, Erosion and Sedimentation Control.

#### **C. ANNEXATION**

Land annexed to the Town of Clayton in accordance with NCGS §§ 160A-31 or 160A-58 shall become subject to the standards of this Ordinance upon the effective date of the annexation approval by the Town.

#### **D. EXTRATERRITORIAL JURISDICTION**

In cases where the Town is seeking approval of ETJ extension from a county government, the Town may review development applications from the area and provide a recommendation to the county government considering the ETJ request in accordance with NCGS § 160D-204.

### **1.1.4 MINIMUM REQUIREMENTS**

In the application of this Ordinance, all provisions shall be considered as minimum requirements and shall not be deemed to limit or repeal any other powers or authority granted under the North Carolina General Statutes.

### **1.1.5 NO DEVELOPMENT UNTIL COMPLIANCE WITH ALL APPLICABLE LAWS**

No structure, land, or use thereof, shall hereafter be established, located, subdivided, extended, converted, altered, developed, or disturbed in any way without full compliance with the terms of this Ordinance and other applicable law.

#### **A. NO LAND DEVELOPED**

Unless exempted, no land shall be developed without compliance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **B. NO GRADING OR EXCAVATION**

Unless exempted, no land shall be subjected to clearing, grading, filling, or excavated without compliance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **C. NO REMOVAL OF TREES**

Unless exempted, no existing trees of four inches or greater in caliper or in a location regulated by this Ordinance shall be removed without compliance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **D. NO USE OR OCCUPANCY**

No person shall use, occupy, or divide any land or a building or authorize or permit the use, occupancy, or division of land or a building under their control, except in accordance with this Ordinance and all other applicable Town, State, and federal regulations.

#### **E. NO BUILDING CONSTRUCTED**

No building or structure, or portion thereof, shall be erected, used, occupied, maintained, moved, or altered except in conformity with the applicable regulations in this Ordinance and all other applicable Town, State, and federal regulations.



#### **F. NO SALE OR TRANSFER**

No lots in a subdivision may be sold or titles to land transferred until all the requirements of this Ordinance have been met, except as authorized by NCGS§160D-807.

#### **G. NO DOUBLE COUNTING OF REQUIRED AREAS**

No land area or other required space counted as part of a required yard, setback, lot area, parking area, or similar feature of one lot may be counted towards the requirements of another lot.

#### **H. NO EXEMPTION FROM SUBDIVISION REQUIREMENTS**

Unless exempted in accordance with NCGS§§ 152.105 or 160D-802, the standards and requirements in this Ordinance applicable to subdivisions of land shall apply to the subdivision or re-subdivision of land within a bona fide farm or on land occupied by agricultural activities.

### **1.2 AUTHORITY<sup>5</sup>**

This Ordinance consolidates the Town's zoning and subdivision regulations, as authorized by the North Carolina General Statutes. It is adopted in accordance with:

- A.** The North Carolina General Statutes, including, but not limited to:
  - 1. Chapter 160A, Article 8 (Police Powers);
  - 2. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
  - 3. Chapter 160D (Local Planning and Development Regulation);
  - 4. Chapter 143, Article 21 (Water and Air Resources);
- B.** The Charter of the Town of Clayton, North Carolina; and
- C.** Other relevant laws, including but not limited to:
  - 1. All other relevant laws of the State of North Carolina; and
  - 2. Any special legislation enacted for the Town of Clayton and its planning jurisdiction by the General Assembly.

### **1.3 CONFLICT<sup>6</sup>**

#### **1.3.1 CONFLICT BETWEEN STANDARDS IN THIS ORDINANCE**

##### **A. GENERALLY**

Unless subject to the standards in [Section <>, Alternatives](#), or where otherwise stated in writing in this Ordinance, in cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control.

##### **B. ALTERNATIVES**

###### **1. AUTHORIZED DEVIATIONS**

Deviations from Ordinance requirements, such as an approved Administrative Adjustment, Conditional Rezoning, Variance, or alternative form of compliance that are authorized by and established in accordance with this Ordinance shall control and shall not be considered to conflict with other more restrictive standards in this Ordinance.

<sup>5</sup> Carries forward Section 101 from the current UDC with additional clarity regarding special legislation.

<sup>6</sup> This is a new section that includes portions of Section 105 from the UDC and covers the variety of potential conflicts between UDO provision, conflicts with other Town laws, and conflicts with other laws or private agreements.

## 2. INCENTIVES

Incentives, like density incentives for voluntary compliance with single-family residential design guidelines, incentives provided in response to other forms of preferred development like a Conservation Subdivisions, or incentives like those associated with voluntary use of sustainable development features, shall control and are not considered to conflict with other more restrictive standards in this Ordinance.

## 3. DEVELOPMENT STANDARDS AND DISTRICT STANDARDS

In cases where a development standard from Chapter 6, Standards, conflicts with a zoning district standard in Chapter 3, Districts, the zoning district standard in Chapter 3 shall control.

## 4. DEVELOPMENT STANDARDS AND USE STANDARDS

In cases where a development standard from Chapter 6, Standards, or a zoning district standard from Chapter 3, Districts, conflicts with a standard in Chapter 4, Land Uses, the standards in Chapter 4, Land Uses, shall control.

## 5. OVERLAY DISTRICT STANDARDS

- a. In the event of a conflict between an overlay zoning district standard in **Section <>, Overlay Zoning Districts**, and another standard in this Ordinance, the overlay zoning district standard shall control even in cases where the overlay zoning district standard is less restrictive.
- b. In cases where land is located in two or more different overlay zoning districts and the standards between the overlay districts conflict, the more restrictive requirements shall control.

## 6. TEXT AND ILLUSTRATIONS

- a. In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- b. Graphics and other illustrations are provided for informational purposes only and should not be relied upon as a complete and accurate description of all applicable regulations or requirements.

## 7. TEXT AND MAPS

- a. In the event of a conflict or inconsistency between the text of this Ordinance and the Official Zoning Map, the text shall control.
- b. In cases where requirements are based upon a map provided by the State or the federal government, and there is a conflict between the map and the text of this Ordinance, the State or federal map shall control.

### 1.3.2 CONFLICT WITH A CONDITION OF APPROVAL

In cases where the standards in this Ordinance conflict with an authorized and legally established condition of approval that has not expired, the condition of approval shall control.

### 1.3.3 CONFLICT WITH PRIVATE AGREEMENTS & COVENANTS

- A. In cases where a standard in this Ordinance conflicts with a private agreement, covenant, or deed restriction established after **(insert the effective date of this Ordinance)**, and the standards in this Ordinance are more restrictive, the standards in this Ordinance shall control.
- B. In cases where a private agreement, covenant, or deed restriction conflicts with State or federal law, the private agreement, covenant, or deed restriction shall be void.

### 1.3.4 CONFLICT WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.



### 1.3.5 CONFLICT WITH TOWN CODE OR POLICY

If a provision of this Ordinance is inconsistent with another provision found in other adopted ordinances of the Town, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise. Town policy is advisory only.

### 1.3.6 DETERMINATION OF MOST RESTRICTIVE STANDARD

The more restrictive provision is the one that imposes greater restrictions, burdens, or more stringent controls.

## 1.4 CONSISTENCY WITH ADOPTED POLICY GUIDANCE<sup>7</sup>

### 1.4.1 ADVISORY IN NATURE

Adopted policy guidance is advisory in nature and does not carry the effect of law. Consistency with adopted policy guidance is not a requirement for the continuing validity of any provision of this Ordinance, except as provided in NCGS §§ 160D-604 and 160D-605.

### 1.4.2 CONFORMANCE

This Ordinance is intended to ensure that all development within the Town is in conformance with the goals, objectives, policies, strategies, and actions expressed in the Town's adopted policy guidance. While conformance with adopted policy guidance is desired, it is not legally required.

### 1.4.3 CONSISTENCY

- A. To the extent this Ordinance or the Official Zoning Map is or becomes inconsistent with the Town's adopted policy guidance, it should be amended to remain consistent.
- B. Consistency with adopted policy guidance is not a prerequisite for approval of a rezoning or planned development application, and the future land use map portion of the Comprehensive Plan shall be deemed amended when the Town Council approves a rezoning or planned development application that is inconsistent with the future land use map in accordance with NCGS § 160D-605.

### 1.4.4 POLICY DOCUMENTS IDENTIFIED

The Town's adopted policy guidance shall include, but is not limited to the following:

- A. The Comprehensive Growth Plan;
- B. The Town of Clayton Comprehensive Transportation Plan, as amended;
- C. The Downtown Master Plan;
- D. The Parks and Recreation Comprehensive Plan, as amended;
- E. The Clayton Pedestrian Plan;
- F. The Comprehensive Bicycle Plan; and
- G. Any other policy document adopted by the Town of Clayton in accordance with State law.

## 1.5 DOCUMENT TITLE<sup>8</sup>

### 1.5.1 ORDINANCE TEXT

This Ordinance shall be officially known as the "Unified Development Ordinance of the Town of Clayton, North Carolina" and may be referred to "this Ordinance" and several abbreviated references, including "the UDO" or "this UDO."

<sup>7</sup> This section replaces the standards in Section 155.108 of the UDC. It clarifies that policy is advisory and that the Town Council may take action that differs from the adopted policy guidance without legal repercussion.

<sup>8</sup> This section carries forward Section 155.100 of the UDC but also names the Official Zoning Map.

### 1.5.2 ZONING MAP

The zoning map referenced in this Ordinance is officially titled as the "Zoning Map, Town of Clayton, North Carolina" and may be referred to as "the Official Zoning Map" or the "Zoning Map."

### 1.6 EFFECTIVE DATE<sup>9</sup>

- A. This Ordinance shall be adopted on (insert the date of adoption).
- B. This Ordinance shall be in full force and effect on (insert the effective date of this Ordinance), and repeals and replaces the Unified Development Code of the Town of Clayton, North Carolina, as originally adopted on February 15, 2021.
- C. Development applications filed between (insert the adoption date) and (insert the effective date) shall be processed in accordance with Section <>, Permit Choice and NCGS§160D-108.
- D. Nothing shall limit an applicant from voluntary compliance with this Ordinance prior to its effective date.

### 1.7 PROCEDURES MANUAL

- A. The Procedures Manual is a separate document that supplements the procedures and requirements in this Ordinance with application forms, submittal requirements, the schedule of review, and other resource information for applicants.
- B. The Planning Director shall maintain the Procedures Manual.
- C. Material in the Procedures Manual is supplemental and is not intended to replace any of the standards or requirements of this Ordinance.
- D. Revisions to the Procedures Manual may be made at the Town's discretion and are not subject to requirements for public notification or public hearing.

### 1.8 PURPOSE AND INTENT OF ORDINANCE<sup>10</sup>

Town residents, business owners, and government officials recognize that unfettered growth or growth that is inconsistent with Clayton's small-town character would forever alter the identity of the Town. It is now and has been the policy of the Town Council to promote the health, safety, and general welfare of the residents of and visitors to the Town, and to provide for the continued orderly development of the Town of Clayton. This Ordinance has been made with reasonable consideration for the unique setting and small-town character of the community and the long-range goal of enhancing the value of existing property and encouraging the most appropriate use of the land throughout the Town, thereby promoting the general welfare of all citizens. In support of these purposes, this Ordinance contains regulations designed to:

- A. Maintain a small-town appeal and an attractive appearance of the community while continuing to encourage managed growth;
- B. Foster a more diverse tax base and range of employment to ensure the Town's fiscal solvency and avoid undue burdens on residential property owners;
- C. Support mixed-use development within the downtown, along key commercial corridors and in designated activity centers throughout the Town's planning jurisdiction;
- D. Ensure Town residents have a wide range of housing options that allow for varying income levels and diverse housing preferences;
- E. Motivate growth that pays for itself in support of sustainable fiscal management of municipal services;

<sup>9</sup> Replaces Section 155.103.

<sup>10</sup> This section replaces Section 155.102 of the current UDC with a more comprehensive set of purpose and intent statements inclusive of those in the General Statutes as well as language from the Comprehensive Plan.

- F.** Ensure that growth and the natural environment exist in harmony;
- G.** Preserve valuable open space throughout the Town and stimulate the expansion of the community's parks and greenways;
- H.** Advance further development of walking trails and bicycle paths throughout the community with connections to other multi-use trails in the area;
- I.** Facilitate a well-planned infrastructure with sufficient provision for transportation, water and wastewater services, and other public requirements in an environmentally responsible and timely manner;
- J.** Increase community involvement by providing a means of meaningful cooperation between the community and Town government thus facilitating community pride;
- K.** Help secure safety from fire, crime, and other dangers;
- L.** Protect Clayton's tree canopy which provides clean air, minimizes increases in temperature levels, helps to maintain moisture levels, and provides physical and visual buffers;
- M.** Help prevent the overcrowding of land and undue concentration of population;
- N.** Regulate the size of yards, courts, and other spaces;
- O.** Regulate the density and distribution of boundaries thereof;
- P.** Provide penalties for violations; and
- Q.** For other purposes described herein.

## 1.9 REVIEW AUTHORITIES<sup>11</sup>

### 1.9.1 AUTHORITIES ESTABLISHED

The following review authorities have powers and responsibilities for administering this Ordinance, especially with regard to procedures related to development application review and decision:

- A.** The Town Council;
- B.** The Planning Board;
- C.** The Board of Adjustment;
- D.** The Technical Review Committee;
- E.** The Planning Director;
- F.** The Engineering Director;
- G.** The Building Inspector;
- H.** The Floodplain Administrator; and
- I.** The Stormwater Administrator;

### 1.9.2 GENERAL REQUIREMENTS FOR ALL AUTHORITIES

#### A. OATH OF OFFICE

All review authority members (including Town staff) who review and decide applications under this Ordinance shall be administered the oath of office prior to commencing their duties in accordance with Article 6, Section 7 of the North Carolina Constitution by a person authorized to administer the oath. The Town Clerk shall maintain a record of the oath's administration.

<sup>11</sup> This section is proposed to replace Section 155.700 from the current UDC with a new set of general requirements applicable to all review authorities. This section goes into greater detail on composition and voting rules for most of the review authorities. The section also identifies and establishes the powers and duties for some staff positions like the Stormwater Administrator.

## **B. CONFLICT OF INTEREST**

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### **1. LEGISLATIVE DECISIONS**

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- a.** A review authority member shall not vote on an application where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member in accordance with NCGS§160D-109.
- b.** A review authority member shall not vote on an application where the landowner or applicant is a person with whom the member has a close familial, business, or other associational relationship.

### **2. QUASI-JUDICIAL DECISIONS**

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- a.** A review authority member shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected persons' constitutional rights to an impartial decision maker in accordance with NCGS§160D-109.
- b.** Impermissible violations of due process include but are not limited to:
  - i.** A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  - ii.** An undisclosed ex parte communication;
  - iii.** A close familial, business, or other associational relationship with an affected person; or
  - iv.** A direct, substantial, and readily identifiable financial impact on the member.

### **3. RECUSAL**

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- a.** If a conflict of interest exists, then a review authority member shall recuse themselves from participating in and voting on an application.
- b.** If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall, by majority vote, rule on the objection.
- c.** In the event a Town staff member deciding an application has a conflict of interest, the decision shall instead be assigned to a supervisor or to the Town Manager.

### **4. ADMINISTRATIVE DECISIONS**

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In cases where an administrative decision or action to be performed by Town staff has an outcome reasonably likely to have a direct, substantial, and readily identifiable financial impact as identified in NCGS§160D-109, or the designated Town staff member has a close familial, business, or other associational relationship with the applicant or a responsible entity, the Town Manager shall make the decision, take the specified action, or delegate the responsibility for the decision or action to a different member of Town staff.

## **C. MEETINGS**

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The provisions of this section apply to the Town Council, Planning Board, and Board of Adjustment.

### **1. ADVERTISED**

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Notice of all meetings of the elected or appointed bodies under this Ordinance shall be provided to the public in accordance with NCGS§143-318 (Meetings of Public Bodies), and shall be conducted in accordance with the procedures set forth in these regulations, the Town Code of Ordinances, Adopted Policy Guidance, and rules of procedure adopted by the respective review authorities.

### **2. MINUTES AND RECORDS**

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- a.** Accurate minutes of each meeting shall be maintained by each review authority showing the vote of each member on each question, or if absent or failing to vote, indicating such fact.



- b. Each review authority shall keep records of its examinations and official actions.
- c. All minutes and records shall be filed and maintained in the offices of the Planning Department, and shall be made available for inspection by members of the general public during normal business hours.

### 3. OPEN TO PUBLIC

All meetings of elected or appointed bodies under this Ordinance shall be open to the public in accordance with NCGS§143-318 (Meetings of Public Bodies), and shall be conducted in accordance with the procedures set forth in these regulations, the Town Code of Ordinances, Adopted Policy Guidance, and rules of procedure adopted by the respective review authorities.

## D. RULES OF PROCEDURE

All review authorities shall adopt formal rules of procedure consistent with the level of decision-making delegated to that authority. Adopted rules of procedure shall be kept on file, made available on the Town's webpage, are available for public inspection, and shall be maintained by the designated staff to the review authority.

### 1.9.3 TOWN COUNCIL

- A. The Town Council is the elected body of the Town of Clayton, North Carolina, and shall have the power to initiate, review, and decide applications in accordance with [Section <>, Application Types Table](#).
- B. The Town Council shall also have all the powers and duties ascribed to it by State law, the Town's Charter, Chapter 30 of the Town Code of Ordinances, and any special legislation.
- C. Meetings of the Town Council shall be conducted in accordance with Chapter 30 of the Town Code of Ordinances.

### 1.9.4 PLANNING BOARD (PB)<sup>12</sup>

The Planning Board is hereby established in accordance with NCGS§160D-301, Chapter 32 of the Town Code of Ordinances, and the following.

#### A. COMPOSITION

1. The Planning Board shall consist of nine members.
2. The Planning Board shall be comprised of residents from both the corporate limits and the extraterritorial jurisdiction (ETJ) at a ratio proportional to the population found in either area, but in no instance shall there be less than at least one member of the Planning Board who resides within the ETJ.
3. The Town Council shall appoint the members from within the Clayton corporate limits from a list of qualified applicants who have submitted a Planning Board application.
4. The Johnston County Board of Commissioners shall appoint the members from within the ETJ following receipt of a recommendation from the Town Council.
5. Each member from the ETJ shall have equal rights, privileges, and duties as the members from within the corporate limits.

#### B. POWERS AND DUTIES

##### 1. UNIFIED DEVELOPMENT ORDINANCE

The Planning Board shall have the power to review and provide a recommendation on applications in accordance with [Section <>, Application Types Table](#).

<sup>12</sup> NOTE: This section is proposed to replace the provisions in Section 32.075 through 32.078 in the Town Code. The Town should remove these sub-sections from the Town Code upon UDO adoption.

## 2. OTHER POWERS AND DUTIES

The Planning Board shall have the following powers and duties, to be carried out in accordance with the terms of this Ordinance.

- a. To perform studies and surveys of the present conditions and probable future development of the Town and its environs, including but not limited to, studies and surveys of land uses, population, economic conditions, housing, traffic, parking, annexation, urban renewal, and expansions of the extraterritorial jurisdiction.
- b. To formulate and recommend to the Town Council the adoption and amendment of the Town of Clayton Comprehensive Plan and other plans as necessary.
- c. To initiate proposals for text amendments to the Unified Development Ordinance based upon the findings and recommendations delivered in such studies and adopted plans.
- d. To determine whether specific proposed developments conform to the principles and requirements of the adopted comprehensive plan for growth and improvement of the Town.
- e. To execute other related duties as assigned by the Town Council, in accordance with State law.

## C. RULES OF PROCEDURE

The Planning Board shall adopt rules of procedure, which shall be available for inspection by members of the general public on the Town's website and in the offices of the Planning Department. The rules of procedure shall describe the Planning Board's operating procedures, terms, leadership provisions, and other relevant information not already included in this Ordinance.

## D. QUORUM AND RECOMMENDATIONS

1. A quorum of five members shall be necessary to transact official business of the Planning Board.
2. A simple majority of the members present and voting shall be required to adopt a recommendation on an application reviewed under this Ordinance.
3. The Planning Board shall not make a recommendation to the Town Council unless the applicant or a designated agent is present at the meeting and answers the Board's and Town staff's questions about the application. This requirement may be waived by a unanimous vote of the Planning Board members present and voting.

## 1.9.5 BOARD OF ADJUSTMENT (BOA)<sup>13</sup>

The Board of Adjustment is hereby established in accordance with NCGS§160D-302, Chapter 32 of the Town Code of Ordinances, and the following:

## A. COMPOSITION

1. The Board of Adjustment shall consist of five regular members and two alternate members.
2. Four members shall reside within the corporate limits of Clayton and three members shall reside in the extraterritorial planning jurisdiction (ETJ).
3. The Town Council shall appoint the members from within the Clayton corporate limits from a list of qualified applicants who have submitted a Board of Adjustment application.
4. The Johnston County Board of Commissioners shall appoint the members from within the ETJ following receipt of a recommendation from the Town Council.

<sup>13</sup> NOTE: This section is proposed to replace the provisions in Sections 32.010 through 32.011 of the Town Code of Ordinances. The Town should remove these sub-sections from the Town Code upon UDO adoption.



5. Each member from the ETJ shall have equal rights, privileges, and duties as the members from within the corporate limits.

#### **B. POWERS AND DUTIES**

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The Board of Adjustment shall have the power to review and decide applications in accordance with [Section <>](#), Application Types Table.

#### **C. RULES OF PROCEDURE**

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The Board of Adjustment shall adopt rules of procedure, which shall be available for inspection by members of the general public on the Town's website and in the offices of the Planning Department. The rules of procedure shall describe the Board of Adjustment's operating procedures, terms, leadership provisions, and other relevant information not already included in this Ordinance.

#### **D. QUORUM AND VOTING**

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1. A quorum of three members shall be necessary to transact official business.
2. The concurring vote of four-fifths of the members voting on a case shall be necessary to grant a variance.
3. A simple majority of the members present and voting on a case shall be required to decide an appeal of a Town staff decision or determination.
4. A simple majority of the members present and voting on a case shall be required to decide on the issuance of a special use permit.
5. Vacant positions on the Board and members who are disqualified from voting due to a conflict of interest shall be filled by qualified alternate members. Vacant positions on the Board and members who are disqualified from voting due to a conflict of interest and who are not replaced by a qualified alternate member shall not be considered members of the Board for calculation of the required majority.
6. In accordance with NCGS§160D-406(i), simple majority calculations shall be based on the total number of board member positions, regardless of whether a member is absent. Positions may only be excluded from the simple majority calculation when the position is vacant and there is no qualified alternate or when a board member has been recused from voting based upon a conflict of interest and there is no qualified alternate.

#### **E. ORDERS**

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Each decision of the Board of Adjustment on an application or petition filed under this Ordinance shall be reduced to writing, indicate the findings of fact and conclusions of law associated with the Board's decision, be signed by the Chair or presiding officer, and shall include the applicant's written consent to any conditions of approval.

### **1.9.6 TECHNICAL REVIEW COMMITTEE (TRC)**

The Technical Review Committee (TRC) is hereby established in accordance with NCGS§160D-306 and the following:

#### **A. COMPOSITION**

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The Technical Review Committee's composition shall be established in its rules of procedure. Attendance at meetings by some or all of the TRC members shall be at the discretion of the Chair.

#### **B. POWERS AND DUTIES**

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The Technical Review Committee shall have the power to review and provide a recommendation or comments on applications in accordance with [Section <>](#), Application Types Table.



## **C. RULES OF PROCEDURE**

The Technical Review Committee shall adopt rules of procedure, which shall be available for inspection by members of the general public on the Town's website and in the offices of the Planning Department. The rules of procedure shall describe the Committee's operating procedures, composition, leadership provisions, and other relevant information not already included in this Ordinance.

## **D. APPEAL OF TRC DECISIONS TO BOARD OF ADJUSTMENT**

Appeal of a decision or action by the Technical Review Committee shall be in accordance with NCGS§160D-405, and [Section <>, Appeal](#).

## **1.9.7 TOWN STAFF**

### **A. PLANNING DIRECTOR**

The Planning Director shall have the responsibilities for decision making, recommendations, and comments on applications in accordance with [Section <>, Application Types Table](#), as well as the following other powers and duties:

1. To preside over the Technical Review Committee;
2. To conduct pre-application conferences;
3. To enforce the provisions of this Ordinance, including entering any building, structure, or premises, as provided by law, to perform any duty imposed by this Ordinance;
4. To apply remedies for violations of this Ordinance;
5. To maintain the Official Zoning Map and related materials;
6. To process development applications and prepare staff reports as indicated in this Ordinance;
7. To maintain public records pertaining to this Ordinance and to make those records available to members of the public upon request;
8. To maintain rules of procedures for each review authority in this Ordinance;
9. To provide technical assistance to review authorities, upon request; and
10. To carry out any other powers and duties delegated by the Town Council that are consistent with this Ordinance and State law.

### **B. BUILDING INSPECTOR**

The Building Inspector shall have the responsibilities for decision making, in accordance with [Section <>, Application Types Table](#):

### **C. ENGINEERING DIRECTOR**

The Engineering Director shall have the responsibilities for decision making, recommendations, and comments, on applications in accordance with [Section <>, Application Types Table](#), as well as the following:

1. The Engineering Director shall provide comments on Development Agreements.
2. The Engineering Director shall perform the duties of the Floodplain Administrator and Stormwater Administrator.

### **D. FLOODPLAIN ADMINISTRATOR**

The Floodplain Administrator shall have the following powers and duties, to be carried out in accordance with the terms of this Ordinance:

#### **1. POWERS AND DUTIES**

The Floodplain Administrator shall have the following powers and duties:



- a. Review all floodplain development applications and issue permits for all proposed development within the special flood hazard areas to assure that the requirements of this Ordinance have been satisfied;
- b. Advise an applicant when additional federal or State permits (wetlands, endangered species, erosion and sedimentation control, riparian buffer, mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit;
- c. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA;
- d. Assure that maintenance is provided within the altered or relocated portion of a watercourse so that the flood-carrying capacity is not diminished;
- e. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of this Ordinance are met
- f. Obtain the actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures;
- g. Obtain the actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed;
- h. Obtain the actual elevation (in relation to mean sea level) of all public utilities;
- i. When floodproofing is utilized for a particular structure, obtain certifications from a professional engineer or architect licensed by the State of North Carolina;
- j. Interpret the exact location of boundaries of the special flood hazard areas or some component of the special flood hazard area;
- k. Obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, State, or other source in order to administer the provisions of this Ordinance;
- l. Obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, State, or other source when no floodway or non-encroachment area data has been provided;
- m. Advise property owners of the option to apply for a Letter of Map Amendment (LOMA) from FEMA when the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation;
- n. Maintain copies of Letters of Map Amendment (LOMA) issued by FEMA;
- o. Permanently maintain all records that pertain to the FHO, floodplain development permits, and elevation certificates, and make these records available for public inspection;
- p. Make on-site inspections of work in progress. The Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the Town's jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action;
- q. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;



- r. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for:
  - i. Any substantial departure from the approved application, plans, or specifications;
  - ii. Refusal or failure to comply with the requirements of State or local laws;
  - iii. Making false statements or misrepresentations in securing the permit; or
  - iv. Mistaken issuance in violation of an applicable State or local law;
- s. Make periodic inspections throughout all lands within the special flood hazard areas;
- t. Follow through with corrective procedures in Chapter 7, Violations;
- u. Review, provide input, and make recommendations for water-related variance requests;
- v. Maintain a repository to include, but not limited to, the FIS Reports, FIRM and other official flood maps and studies adopted in accordance with the standards in [Section <>](#), Flood Hazard Overlay (FHO) District, including any revisions thereto including letters of map change, issued by FEMA;
- w. Notify the State and FEMA of any mapping needs; and
- x. Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

## **E. STORMWATER ADMINISTRATOR**

The Stormwater Administrator shall have the following powers and duties, to be carried out in accordance with the terms of this Ordinance:

### **1. POWERS AND DUTIES**

- a. The Stormwater Administrator shall render final decisions regarding applications for stormwater permits.
- b. The Stormwater Administrator shall have the following powers and duties under this UDO:
  - i. To review and approve, approve with conditions or disapprove applications for approval of plans pursuant to stormwater management;
  - ii. To make determinations about the stormwater management-related provisions of this Ordinance;
  - iii. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for development or redevelopment approvals;
  - iv. To enforce the stormwater management provisions of this Ordinance in accordance with its enforcement provisions;
  - v. To maintain records, maps, and official materials as related to the adoption, amendment, enforcement or administration of the stormwater management-related aspects of this Ordinance;
  - vi. To provide expertise and technical assistance to the Town Council and the Planning Board, upon request;
  - vii. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator; and
  - viii. To take any other action necessary to administer the stormwater management provisions of this Ordinance.

## **F. DELEGATION OF AUTHORITY**

- 1. Whenever a provision of this Ordinance requires or authorizes a Town staff or designated official to take some action or perform some duty, the Town staff or designated official may designate, delegate, or authorize professional-level subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise.
- 2. For the purposes of this section, "professional-level subordinate" shall mean another person employed by the Town who meets the Town's minimum qualifications for the



position, and has the minimum amount of experience or professional authority reasonably necessary to execute or undertake the designated action, in the sole opinion of the delegating Town staff member or official.

#### **G. APPEAL OF TOWN STAFF DECISIONS TO THE BOARD OF ADJUSTMENT**

1. Except for the Building Inspector, appeals of decisions or actions by a Town staff member shall be to the Board of Adjustment in accordance with Section <>, Appeal.
2. Appeals of decisions or actions of the Building Inspector shall be to the North Carolina Commissioner of Insurance in accordance with applicable State law.

### **1.10 SEVERABILITY<sup>15</sup>**

#### **1.10.1 INVALIDATION**

Should any section, sentence, clause, phrase, or word of this Ordinance be held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect, impair, or invalidate the validity of the remaining parts of this Ordinance which can be given effect without the invalid provision.

#### **1.10.2 PREJUDICIAL APPLICATION**

Should any section, sentence, clause, phrase, or word of this Ordinance be held invalid or unconstitutional in its application to a particular case, such decision shall not affect or prejudice its application to other cases.

#### **1.10.3 LAWFUL PRESUMPTION**

There shall be a conclusive presumption when a review authority authorizes regulatory action, that the review authority would not have authorized the action except in the belief that such action was lawful.

### **1.11 TRANSITIONAL PROVISIONS<sup>16</sup>**

The standards in this subsection address existing violations, nonconformities, and applications in process at the time this Ordinance is made effective.

#### **1.11.1 PRIOR AND PENDING APPLICATIONS**

##### **A. PRIOR APPROVAL**

1. Any development approvals granted before [insert the effective date of this Ordinance] shall remain valid until their expiration date.
2. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of their approval and the development standards in effect at the time of approval, provided the permit or approval is valid and has not expired.
3. If an approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development of the site shall be applied for in accordance with the procedures and standards of this Ordinance.
4. An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required Town, State, or federal permits or approvals.
5. Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.

<sup>15</sup> Replaces the severability provisions from Section 155.105 of the current UDC. Also clarifies that this UDO repeals the prior UDC.

<sup>16</sup> This section carries forward and builds upon Section 155.109 of the UDC with additional clarity.



6. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of in Chapter 5, Nonconformities.

## **B. PENDING APPROVAL**

### **1. COMPLETE APPLICATIONS**

Applications accepted as complete prior to [insert the effective date of this Ordinance] may be decided in accordance with either the regulations in affect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant in accordance with Section <>, Permit Choice.

### **2. IF APPROVED**

To the extent such a complete application is approved and proposes development that does not comply with this Ordinance, the development, although permitted, shall be nonconforming and subject to the provisions of in Chapter 5, Nonconformities.

### **3. FILED, BUT NOT COMPLETE APPLICATIONS**

Applications that have been filed prior to [insert the effective date of this Ordinance] but not determined to be complete by the Planning Director as of that date shall be reviewed and decided in accordance with this Ordinance.

## **1.11.2 EXISTING NONCONFORMITIES**

If any use, structure, lot, or sign, legally existed on [insert the effective date of this Ordinance] but does not fully comply with the standards of this Ordinance, the use, structure, lot, or sign, is considered nonconforming under this Ordinance and shall comply with the requirements in Chapter 5, Nonconformities.

## **1.11.3 PRE-EXISTING PERMITS**

### **A. PRE-EXISTING CONDITIONAL USE PERMITS**

Existing conditional use permits approved prior to [insert the effective date of this Ordinance] are hereby converted to special use permits and shall continue to apply as approved. In the event an applicant seeks to revise development subject to a conditional use permit, all changes shall be considered in accordance with Section <>, Special Use Permit.

### **B. PRE-EXISTING SPECIAL USE ZONING DISTRICTS**

Special use zoning districts existing as of [insert the effective date of this Ordinance] is automatically converted to the closest corresponding conventional zoning district upon adoption of this Ordinance.

### **C. PRE-EXISTING PLANNED DEVELOPMENT DISTRICTS**

Land designated as a planned development prior to [insert the effective date of this Ordinance] is automatically converted to the closest corresponding conditional zoning district upon adoption of this Ordinance. Revisions to a prior planned development zoning district shall only be permitted subject to compliance with Section <>, Conditional Rezoning.

## **1.11.4 USES**

- A. If a use was a lawfully established permitted use before [insert the effective date of this Ordinance] and is subsequently made a special use in Table <>, Listing of Common Principal Uses, the use shall be considered by the Town as a lawfully established nonconforming use.
- B. Any modifications to the use or the site after [insert the effective date of this Ordinance], shall require approval of a special use permit in accordance with Section <>, Special Use Permit.



### 1.11.5 VIOLATIONS

- A. Violations of the previous ordinance shall continue to be violations under this Ordinance, unless the development complies with this Ordinance and is no longer considered to be in violation, or the ability to address the violation has lapsed in accordance with Section <>, Statute of Limitations.
- B. Violations of this Ordinance shall be subject to the penalties and enforcement provisions in Chapter 7, Violations.

## 1.12 VESTED RIGHTS<sup>17</sup>

### 1.12.1 PURPOSE AND INTENT

This section is intended to implement NCGS§160D-108 with respect to the establishment of zoning vested rights for landowners or applicants who have received a development approval from the Town.

### 1.12.2 VESTED RIGHTS DEFINED

As used in this Ordinance, a zoning vested right is defined as the right to undertake and complete the development and use of land under the terms and conditions of a development approval issued by the Town.

### 1.12.3 EFFECT OF A VESTED RIGHT

- A. Development approvals that have an established vested right in accordance with NCGS§160D-108 and this section shall preclude any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.
- B. Except when subject to sub-section (C) below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:
  - 1. Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
  - 2. Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
  - 3. A site-specific vesting plan approved in accordance with this Ordinance and NCGS§160D-108.1;
  - 4. A multi-phase development approved in accordance with this Ordinance and NCGS§160D-108; and
  - 5. A vested right established by the terms of an approved development agreement in accordance with this Ordinance and Article 10 of Chapter 160D of the North Carolina General Statutes.
- C. Amendments to this Ordinance shall apply to vested development approvals if:
  - 1. A change to State or federal law occurs and has a retroactive effect on the development or use;
  - 2. There is written consent to be subject to the amendment by the landowner;
  - 3. The development approval expires; or
  - 4. The development is not undertaken or completed in accordance with the approval.

<sup>17</sup> **NOTE TO STAFF:** This section replaces Section 155.718 of the current UDC (though there is also a process for the establishment of a vested Rights Certificate in new Chapter 2 that allows an applicant to establish or extend a vesting term associated with a site-specific vesting plan. Additional discussion is needed regarding vesting of pre-existing impervious surfaces from stormwater management rules when such surfaces are proposed for removal and replacement.



## 1.12.4 ESTABLISHMENT OF A VESTED RIGHT

A vested right may only be established following an approval of a development application in accordance with this section and the applicable requirements in the North Carolina General Statutes. The following sub-sections detail the ways in which a vested right may be established.

### A. COMMON LAW VESTED RIGHTS

#### 1. DEFINED

A common law vested right establishes the right to undertake and complete the development and use of property on substantial expenditures in good faith reliance on a valid governmental approval. Such approvals include, but are not limited to:

- a. Zoning Compliance Permits;
- b. Sign Permits;
- c. Building Permits;
- d. Special Use Permits; and
- e. Subdivision Preliminary Plats.

#### 2. ESTABLISHMENT

A request for a determination of a common law vested right will be reviewed and acted upon by the Planning Director in accordance with [Section <>, Determination](#).

#### 3. APPLICATION

The applicant shall provide satisfactory proof that each of the following standards are met in order to establish a common law vested right:

- a. The applicant has, prior to the adoption or amendment of an ordinance, made expenditures or incurred contractual obligations amounting to 25 percent or more of the total project cost not including any land costs; and
- b. The obligations and/or expenditures were incurred in good faith; and
- c. The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required provided however, a mistakenly-issued governmental permit shall not give rise to a common law vested right; and
- d. The amended or newly adopted ordinance is a substantial detriment to the applicant.

### B. ISSUANCE OF A BUILDING PERMIT

Issuance of a building permit by the Town in accordance with the applicable standards in this Ordinance and applicable State law shall entitle the building permit holder to vested rights to develop the proposal as identified in the approved building permit, subject to the following standards:

- 1. The applicant shall not be required to file for a determination to establish common law vested rights or maintain vested status during the time period for which the building permit remains valid.
- 2. The owner has a vested right only as long as the building permit remains valid and only for the work approved by the building permit.
- 3. The building permit shall expire six months after issuance if work has not substantially commenced.
- 4. The building permit shall expire after work commences if there is a 12-month discontinuance of work.
- 5. The building permit may be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or State law (not just the building code and UDO), and any misrepresentations made in securing the permit.



6. Building permits mistakenly issued may be revoked.
7. If the building permit expires or is revoked, the vested right based on it is also lost.

### **C. STATUTORY VESTED RIGHTS**

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Development permits for a building, use of a building, use of land, or subdivision of land establishes statutory vested rights, which shall entitle the permit holder to vested rights to develop the proposal as identified in the approved permit, subject to the following standards:

1. Issuance of a building permit is not considered a development permit, and the vesting term shall only continue in accordance with [Section <>, Issuance of a Building Permit](#).
2. A development permit is valid for one year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity.
3. If the applicant fails to substantially commence authorized work within one year, then the development permit and vesting expire.
4. Vesting shall continue provided there is a substantial commencement of authorized work under a valid development permit.
5. The development permit and vesting shall expire after substantial work commences if there is a two-year period of intentional and voluntary discontinuance of work unless otherwise specified by statute.

### **D. SITE-SPECIFIC VESTING PLAN**

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#### **1. DEFINED**

- a. For the purposes of this section, a site-specific vesting plan is defined as a plan of land development submitted to the Town for purposes of obtaining approval.
- b. A site-specific vesting plan must provide, with reasonable certainty, all of the following:
  - i. The boundaries of the development;
  - ii. Topographic and natural features affecting the site;
  - iii. The approximate location of proposed buildings, structures, and other improvements;
  - iv. The approximate dimensions, including height, of proposed buildings and other structures;
  - v. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;
  - vi. The type or types of proposed land uses; and
  - vii. The density or intensity of development.
- c. A Variance, Sketch Plan, Concept Plan, or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a Site-Specific Vesting Plan.
- d. The following development approvals constitute a Site-Specific Vesting Plan:
  - i. A Concept Plan associated with a Conditional Rezoning application;
  - ii. A Preliminary Plat for a Major Subdivision;
  - iii. Site Plans; and
  - iv. A Concept Plan associated with a Special Use Permit.

#### **2. ESTABLISHMENT**

- a. Development approvals identified by this Ordinance as Site-Specific Vesting Plans shall be granted a vested right to develop for a maximum period of two years from the date of the approval, provided the applicant has requested, in writing, that a vested right is sought, and provided the development subject to the approval complies with all applicable terms and conditions.
- b. In cases where a Concept Plan is associated with an approved conditional rezoning, the conditional zoning designation shall run with the land but the vesting status of the associated Concept Plan shall be in accordance with the standards for any other Site-Specific Vesting Plan.



### 3. EXTENSION

- a. The two-year vesting duration of a Site-Specific Vesting Plan may be extended up to five years from the date of the approval only in accordance with Section <>, Vested Rights Certificate.
- b. Site-Specific Vesting Plans meeting the definition of a Multi-Phase Development shall be vested in accordance with Section <>, Multi-Phase Development Plan.

### E. MULTI-PHASE DEVELOPMENT PLAN

1. A Multi-Phase Development Plan that occupies at least 25 acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval and includes more than one phase shall be considered as a Multi-Phase Development Plan that is granted a vested right to develop for a period of seven years from the date of approval of the first site plan associated with the development.
2. Vesting shall commence upon approval of the Site Plan for the first phase of the development.
3. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

### F. DEVELOPMENT AGREEMENT

A Development Agreement shall be vested in accordance with the vesting term identified in the Development Agreement.

### G. VOLUNTARY ANNEXATION

1. Any petition for Annexation filed with the Town in accordance with Section <>, Annexation, shall contain a signed statement from the applicant indicating if vested rights on the properties subject to the petition have been established in accordance with NCGS§160D-108.
2. A statement that declares that no zoning vested right has been established or the failure to provide a statement declaring whether or not vested rights have been established, shall result in a termination of any vested rights established prior to Annexation.

## 1.12.5 TERMINATION OF A VESTED RIGHT

### A. GENERALLY

1. Vested rights established in accordance with this Ordinance shall run with the land.
2. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval.
3. In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.
4. In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.
5. In no instance shall vested rights continue if the Town Council finds, after a duly noticed public hearing, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.
6. In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within 24 months of the discontinuance of work. This 24 month period shall not include the time associated with work stoppage resulting from an appeal or litigation.



## **B. LIMITATIONS**

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- 1.** The establishment of a vested right does not preclude the Town's application of overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity.
- 2.** A vested right shall not preclude the application of changes to building, fire, plumbing, electrical, or mechanical codes made after the development approval where a vested right was established.



# UNIFIED DEVELOPMENT ORDINANCE



 C O D I F Y  
CLAYTON

**Public draft  
(Ch 1, 2, 7)**

3-17-23



# CHAPTER 2

# APPLICATIONS

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## KEY CHANGES FROM CURRENT UDC

Chapter 2, Applications, consolidates the procedural provisions in Article 7, Administration, though the provisions for review authorities and vested rights are relocated to new Chapter 1 and the enforcement provisions are relocated to new Chapter 7. In addition, there are several other key changes, including:

1. Fourteen new or newly-codified application types (Administrative Adjustment, Annexation, Building Permit, Certificate of Occupancy, Conservation Subdivision, Determination, Development Agreement, Erosion Control Permit, Exempt Subdivision, Fee-in-Lieu, Floodplain Permit, Performance Guarantee, Stormwater Permit, and Street Renaming/Closure).
2. A summary table identifying the types of subdivision procedures.
3. A set of four process type diagrams (that apply to the application types).
4. A new uniform structure for application types that sets out applicability, application requirements, sequencing, effect, amendment, expiration, vesting, and appeals provisions for each application type.
5. Increased use of dynamic cross referencing to permit faster movement through the digital document (will become active as part of the Adoption version).
6. Review criteria for each application type.
7. An Administrative Adjustment procedure that allows minor administrative deviations or variances from some numeric requirements (as a flexibility mechanism).
8. A detailed Appeal process, including how to appeal some decisions to Superior Court.
9. A three-tiered Conditional Rezoning process that recognizes varying levels of deviation from applicable standards.
10. Revision of the subdivision procedures into Major, Minor, Limited, Conservation, and Exempt Subdivisions.
11. Recognition of the differing phases associated with review of construction drawings for public infrastructure associated with a Site Plan or Major Subdivision.
12. A new Development Agreement procedure.
13. Relocation of several development-related procedures from other parts of the Town Code or other ordinances (Driveway, Erosion Control, Floodplain, Stormwater Permits, etc.).
14. Inclusion of uniform Performance Guarantee and Fee-in-Lieu procedures which can be joined with another application or processed as stand-alone applications.
15. New pre-application conference and neighborhood meeting requirements for some applications.
16. New application completeness requirements to address State permit choice provisions.
17. Additional details on the conduct of public meetings versus public hearings (legislative and evidentiary).
18. New sections clarifying conditions of approval.
19. New standards regarding simultaneous or concurrent application reviews and rules for phased development.
20. New clarity about continuance, withdrawal, and abandonment of applications.
21. Uniform approved application amendment provisions for Administrative Adjustments, Conditional Rezoning Concept Plans, Conservation Subdivisions, Construction Drawings, Final Plats, and Site Plans.



## 2.1 CHAPTER INTRODUCTION<sup>18</sup>

### 2.1.1 CHAPTER ORGANIZATION

- A. This chapter includes all the development application review provisions, and is comprised of the following three sections:
  1. A section setting out the summary tables of application types (Section <>, Application Summary Tables);
  2. A section with the application procedures (Section <>, Application Types); and
  3. A section containing a set of common or standard review procedures used by the Town regardless of the type of application being reviewed (Section <>, Review Procedures).
- B. The summary tables in Section <>, Application Summary Tables, identifies all the development application types in this Ordinance and the review authorities who decide them as well as a summary of the different kinds of subdivision procedures in this Ordinance.
- C. Section <>, Application Types, describes each application type in detail, including:
  1. Applicability and the types of development exempted from the procedure;
  2. The review standards;
  3. How the approved application may be amended (if applicable);
  4. If and how the approval may expire; and
  5. How decisions on a particular application are appealed.
- D. Section <>, Review Procedures, describes the steps in the application review process that are identical for each type application, including pre-application conferences, application filing, staff review, notification of decision, and others. In cases where a particular application type follows a procedure that differs from that in Section <>, Review Procedures, those distinctions are noted in Section <>, Application Types.

## 2.2 APPLICATION SUMMARY TABLES<sup>19</sup>

### 2.2.1 DEVELOPMENT APPLICATIONS

- A. The Application Types Table below lists each of the specific application types in this Ordinance and the review authority (ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in alphabetical order in rows down the table's side. Cells in the middle of the table show actions taken by a particular review authority as part of the review process.
- B. Generally speaking, comments ("C") are provided prior to recommendations ("R"). Both comments and recommendations are provided prior to decisions ("D"). Appeals ("A") take place after decisions are made.
- C. Blank cells ("") in the table indicate that a particular review authority has no role in the particular procedure.
- D. The "UDO Section" Column identifies the section in this Ordinance where the procedural language is located.
- E. The "Pre-App Conference" Column includes an "M", "O", or "N/A", to indicate if a pre-application conference is mandatory, optional, or not applicable to a particular kind of application.

<sup>18</sup> This is a new section provided to help make the UDO more user-friendly.

<sup>19</sup> **NOTE TO STAFF:** This section carries forward and builds on Section 155.701 of the UDC with several notable changes, including a listing of all review authorities (including the Superior Court as an appellate body), 14 new (or more formalized) application types (for a total of 31 application types), inclusion of details regarding appeals, details on pre-application conference requirements, and dynamic hyperlinks (in digital version) to other relevant UDO sections. The current urban archery permit is not carried forward.



## Chapter 2 Applications

### Section 2.2 Application Summary Tables

#### Sub-section 2.2.1 Development Applications

- F.** Some decision and appeal actions in the table include lines or brackets around them. These lines signify if that particular stage of the review process includes a legislative public hearing, or an evidentiary public hearing.
- G.** Numbers in brackets signify table notes, which are found at the bottom of the table (the table bottom may be on a subsequent page).

**TABLE <>: APPLICATION TYPES TABLE**

Process Type: see [Section <>, Process Diagrams](#)

Pre-Application Conference: M = Mandatory; O = Optional; N/A = Not Applicable

Type of Action: C = Comment; R = Recommendation; D = Decision; A = Appeal

Type of Public Hearing: ( ) = Legislative; | | = Evidentiary

[#] = Table Note (see end of table)

| APPLICATION TYPE             | UDO SECTION | PROCESS TYPE | PRE-APP. CONF. | TECH. REVIEW COMMITTEE | TOWN STAFF [1]     |                      |                   | PLANNING BOARD | TOWN COUNCIL | BOARD OF ADJUSTMENT | SUPERIOR COURT |
|------------------------------|-------------|--------------|----------------|------------------------|--------------------|----------------------|-------------------|----------------|--------------|---------------------|----------------|
|                              |             |              |                |                        | BUILDING INSPECTOR | ENGINEERING DIRECTOR | PLANNING DIRECTOR |                |              |                     |                |
| Administrative Adjustment    | <>          | II           | O              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Appeal                       | <>          | III          | O              | •                      | •                  | •                    | •                 | •              | •            | D                   | A              |
| Annexation                   | <>          | IV           | O              | C                      | •                  | •                    | R                 | •              | (D)          | •                   | A              |
| Building Permit              | <>          | I            | N/A            | •                      | D                  | •                    | •                 | •              | •            | [2]                 | •              |
| Certificate of Occupancy     | <>          | I            | N/A            | •                      | D                  | •                    | •                 | •              | •            | [2]                 | •              |
| Conditional Rezoning         | <>          | IV           | M              | [3]                    | •                  | •                    | •                 | R              | (D)          | •                   | A              |
| Conservation Subdivision [4] | <>          | II           | M              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Conventional Rezoning        | <>          | IV           | M              | C                      | •                  | •                    | •                 | R              | (D)          | •                   | A              |
| Determination [5]            | <>          | I            | O              | •                      | •                  | D                    | D                 | •              | •            | A                   | •              |
| Development Agreement        | <>          | IV           | O              | C                      | •                  | C                    | C                 | •              | (D)          | •                   | A              |
| Driveway Permit              | <>          | I            | O              | •                      | •                  | D                    | •                 | •              | •            | A                   | •              |
| Erosion Control Permit       | <>          | I            | O              | •                      | •                  | D                    | •                 | •              | •            | A                   | •              |
| Exempt Subdivision           | <>          | I            | N/A            | •                      | •                  | •                    | D                 | •              | •            | A                   | •              |



## Chapter 2 Applications

### Section 2.2 Application Summary Tables

#### Sub-section 2.2.1 Development Applications

**TABLE <>: APPLICATION TYPES TABLE**

Process Type: see [Section <>, Process Diagrams](#)

Pre-Application Conference: M = Mandatory; O = Optional; N/A = Not Applicable

Type of Action: C = Comment; R = Recommendation; D = Decision; A = Appeal

Type of Public Hearing: ( ) = Legislative; | | = Evidentiary

[#] = Table Note (see end of table)

| APPLICATION TYPE               | UDO SECTION | PROCESS TYPE | PRE-APP. CONF. | TECH. REVIEW COMMITTEE | TOWN STAFF [1]     |                      |                   | PLANNING BOARD | TOWN COUNCIL | BOARD OF ADJUSTMENT | SUPERIOR COURT |
|--------------------------------|-------------|--------------|----------------|------------------------|--------------------|----------------------|-------------------|----------------|--------------|---------------------|----------------|
|                                |             |              |                |                        | BUILDING INSPECTOR | ENGINEERING DIRECTOR | PLANNING DIRECTOR |                |              |                     |                |
| Fee-in-Lieu [6]                | <>          | IV           | O              | C                      | •                  | D                    | D                 | •              | D            | •                   | A              |
| Floodplain Permit              | <>          | I            | O              | •                      | •                  | D                    | •                 | •              | •            | A                   | •              |
| Limited Subdivision            | <>          | I            | O              | •                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Major Subdivision              | <>          | II           | M              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Minor Subdivision              | <>          | II           | O              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Performance Guarantee [7]      | <>          | II           | O              | C                      | •                  | D                    | D                 | •              | D            | D                   | A              |
| Sign Permit [8]                | <>          | I            | O              | •                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Site Plan                      | <>          | II           | M              | C                      | •                  | [9]                  | D                 | •              | •            | A                   | •              |
| Special Use Permit             | <>          | III          | M              | [10]                   | •                  | •                    | •                 | •              | •            | D                   | A              |
| Stormwater Permit              | <>          | I            | O              | •                      | •                  | D                    | •                 | •              | •            | A                   | •              |
| Street Renaming/Closure        | <>          | IV           | M              | C                      | •                  | •                    | •                 | R              | (D)          | •                   | A              |
| Temporary Permit               | <>          | II           | O              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Text Amendment                 | <>          | IV           | O              | •                      | •                  | •                    | C                 | R              | (D)          | •                   | A              |
| Transportation Impact Analysis | <>          | I            | M              | •                      | •                  | D                    | C                 | •              | •            | A                   | •              |
| Tree Clearing Certificate      | <>          | II           | O              | C                      | •                  | •                    | D                 | •              | •            | A                   | •              |
| Variance [11]                  | <>          | III          | M              | •                      | •                  | •                    | •                 | •              | •            | D                   | A              |



## Chapter 2 Applications

### Section 2.2 Application Summary Tables

#### Sub-section 2.2.2 Subdivision Types

**TABLE <>: APPLICATION TYPES TABLE**

Process Type: see [Section <>, Process Diagrams](#)

Pre-Application Conference: M = Mandatory; O = Optional; N/A = Not Applicable

Type of Action: C = Comment; R = Recommendation; D = Decision; A = Appeal

Type of Public Hearing: ( ) = Legislative; || = Evidentiary

[#] = Table Note (see end of table)

| APPLICATION TYPE          | UDO SECTION | PROCESS TYPE | PRE-APP. CONF. | TECH. REVIEW COMMITTEE | TOWN STAFF [1]     |                      |                   | PLANNING BOARD | TOWN COUNCIL | BOARD OF ADJUSTMENT | SUPERIOR COURT |
|---------------------------|-------------|--------------|----------------|------------------------|--------------------|----------------------|-------------------|----------------|--------------|---------------------|----------------|
|                           |             |              |                |                        | BUILDING INSPECTOR | ENGINEERING DIRECTOR | PLANNING DIRECTOR |                |              |                     |                |
| Vested Rights Certificate | <>          | III          | O              | •                      | •                  | •                    | R                 | •              | •            | D                   | A              |
| Zoning Compliance Permit  | <>          | I            | O              | •                      | •                  | •                    | D                 | •              | •            | A                   | •              |

#### NOTES:

[1] Decision-making authority may be delegated in accordance with [Section <>, Delegation of Authority](#).

[2] Appeals are filed with the North Carolina Commissioner of Insurance.

[3] In cases where a Conditional Rezoning application includes a Concept Plan, the TRC shall review the plan prior to consideration by the Planning Board.

[4] Approval of a Conservation Subdivision also requires approval of a Major Preliminary Plat.

[5] The Engineering Director shall make determinations on matters pertaining to stormwater, erosion control, and infrastructure requirements.

[6] The review authority responsible for making the decision on the associated development application shall also be responsible for making the decision on a Town-mandated Fee-In-Lieu request. Town Council shall decide applicant-requested Fee-In-Lieu applications.

[7] The review authority responsible for making the decision on the associated development application shall also be responsible for making the decision on a Performance Guarantee request. Requests for Performance Guarantees filed after an associated application approval shall be decided by the Planning Director.

[8] Alternative Sign Plan requests shall be reviewed and decided by the Board of Adjustment.

[9] Site Plans that include changes to or extension of public infrastructure shall include construction drawings, which shall be decided by the Engineering Director.

[10] The TRC shall review the Concept Plan prior to consideration by the Board of Adjustment.

[11] The Environmental Management Commission shall decide Major Water Supply Watershed and Riparian Buffer Variance applications.

### 2.2.2 SUBDIVISION TYPES

The Subdivision Types Table below identifies the range of subdivision types addressed by this Ordinance, including details on the maximum number of lots that may be created, minimum tract size before division, whether or not the subdivision involves the extension of public infrastructure, and whether or not the lots in the subdivision must comply with the zoning district dimensional standards. Each subdivision process is described in more detail in [Section <>, Application Types](#).



## Chapter 2 Applications

### Section 2.2 Application Summary Tables

#### Sub-section 2.2.2 Subdivision Types

**TABLE <>: SUBDIVISION TYPES TABLE**

| COMMON<br>SUBDIVISION OR<br>DEVELOPMENT<br>NAME | NUMBER<br>OF LOTS<br>INVOLVED<br>(#) | INITIAL<br>TRACT<br>SIZE<br>(ACRES) | INVOLVES<br>EXTENSION<br>OF PUBLIC<br>INFRA.<br>(YES/NO) | COMPLIANCE<br>WITH<br>DISTRICT<br>DIMENSIONAL<br>STANDARDS | SUBDIVISION<br>PROCESS TYPE [1] | UDO<br>SEC. |
|-------------------------------------------------|--------------------------------------|-------------------------------------|----------------------------------------------------------|------------------------------------------------------------|---------------------------------|-------------|
| Combination/<br>Recombination                   | N/A                                  | N/A                                 | No                                                       | No                                                         | Exempt Subdivision<br>[2]       | <>          |
| Court-ordered<br>Subdivision [3]                | N/A                                  | N/A                                 | No                                                       | No                                                         | Exempt Subdivision              | <>          |
| 10+-Acre Estate<br>Lot Subdivision              | [4]                                  | N/A                                 | No                                                       | Yes                                                        | Exempt Subdivision              | <>          |
| Family<br>Subdivision [5]                       | Up to 2                              | N/A                                 | No                                                       | Yes                                                        | Minor Subdivision<br>[6]        | <>          |
| Governmental<br>Acquisition                     | N/A                                  | N/A                                 | No                                                       | No                                                         | N/A                             | <>          |
| Limited<br>Subdivision                          | Max. of 3                            | 5 or<br>more                        | No                                                       | Yes                                                        | Limited Subdivision             | <>          |
| Major<br>Subdivision                            | 2 or<br>more                         | N/A                                 | Yes [7]                                                  | Yes                                                        | Major Subdivision               | <>          |
| Minor<br>Subdivision                            | Up to 5                              | N/A                                 | No                                                       | Yes [8]                                                    | Minor Subdivision               | <>          |
| Special Purpose<br>Lot / Easement<br>Plat       | N/A                                  | N/A                                 | No                                                       | No                                                         | N/A [9]                         | <>          |
| Two Acres into<br>Three Lots                    | Max. of 3                            | 2 or less                           | No                                                       | Yes                                                        | Exempt Subdivision              | <>          |

#### NOTES:

[1] Regardless of the subdivision process type noted in this table, subdivisions that include the extension of public infrastructure shall be reviewed as a Major Subdivision.

[2] Combinations / Recombinations that result in lots that do not meet the minimum dimensional standards for the zoning district where located shall be reviewed as a Minor Subdivision.

[3] Lots within a Court-ordered Subdivision are not required to comply with the dimensional requirements for the zoning district where located.

[4] All lots created shall be at least 10 acres in area or larger, otherwise the subdivision shall be reviewed as a Minor or Major Subdivision, based on the number of lots created.

[5] Family subdivisions are subdivisions created for conveyance between husbands, wives, mothers, fathers, brothers, sisters, children (biological, adopted, or step), grandmothers, grandfathers, grandchildren (biological, adopted, or step), aunts, uncles, nieces, and nephews and shall be reviewed as an exempt subdivision, a limited subdivision, or a minor subdivision, as appropriate.

[6] May be reviewed as an Exempt Subdivision or a Limited Subdivision, based on the number of lots created.

[7] Minor subdivisions of 6 or more shall be reviewed as a Major Subdivision even if the subdivision does not include the extension of public infrastructure.

[8] Lots must comply with district dimensional standards except for combinations or recombinations of existing lots.

[9] May be accomplished as part of a subdivision establishing new development or as its own Exempt Subdivision.



#### 2.2.3 PROCESS DIAGRAMS

- A. Development applications in this Ordinance shall be reviewed and decided in accordance with the process type indicated in Table <>, Application Types Table, Section <>, Review Procedures, and this sub-section.
- B. The process types used in this Ordinance are illustrated in process flowcharts below (see Figure <>, Process Types). The process flowcharts depict the general procedural steps for each application type. In cases where the actual application review process differs from the corresponding flowchart, details on differences are identified in Section <>, Application Types.
- C. The procedural flowcharts use a text box to denote each step in the process. Details on each individual step are located in Section <>, Review Procedures.
- D. The procedural flowchart is color coded to depict differing responsibilities. White boxes indicate actions or responsibilities of the applicant. Light grey boxes indicate actions of Town staff. Dark grey boxes show the stage of the process where a decision is made (as appropriate).

FIGURE <>: PROCESS DIAGRAMS

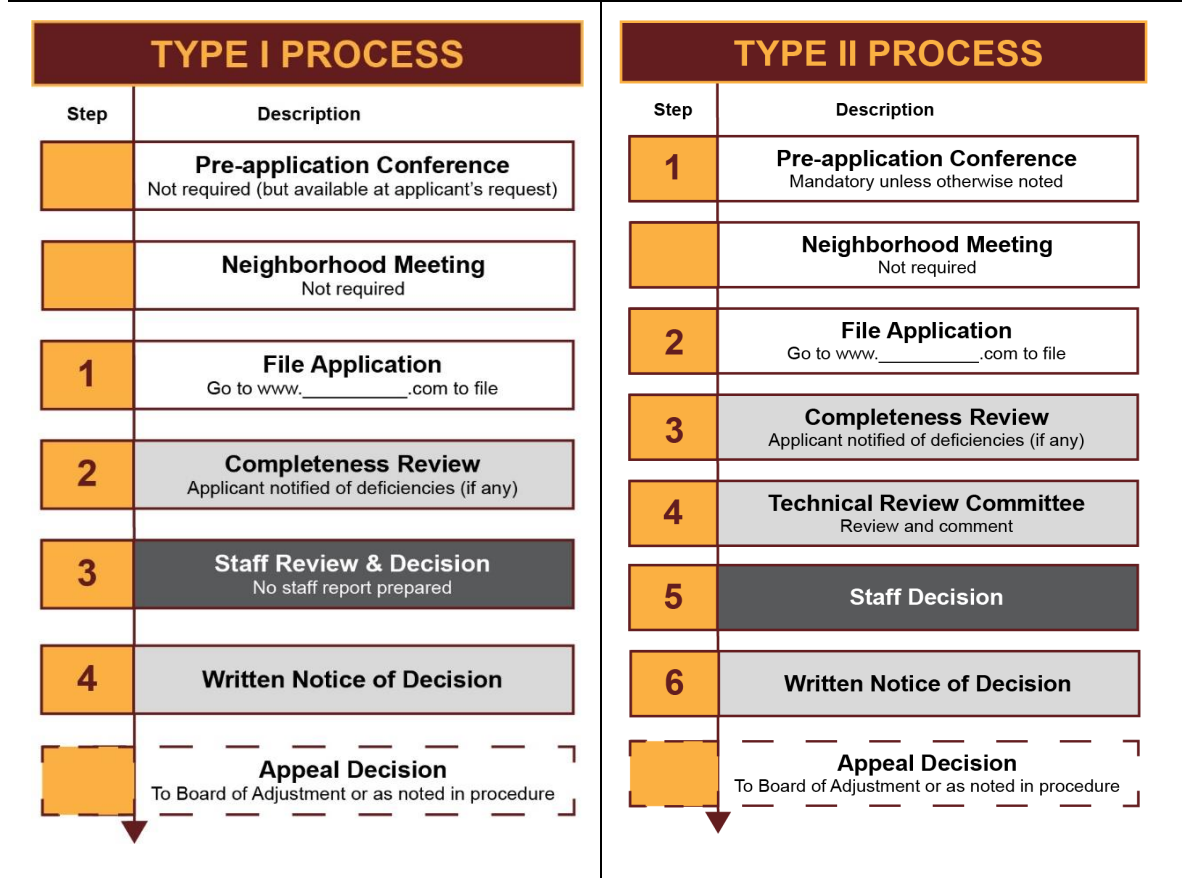
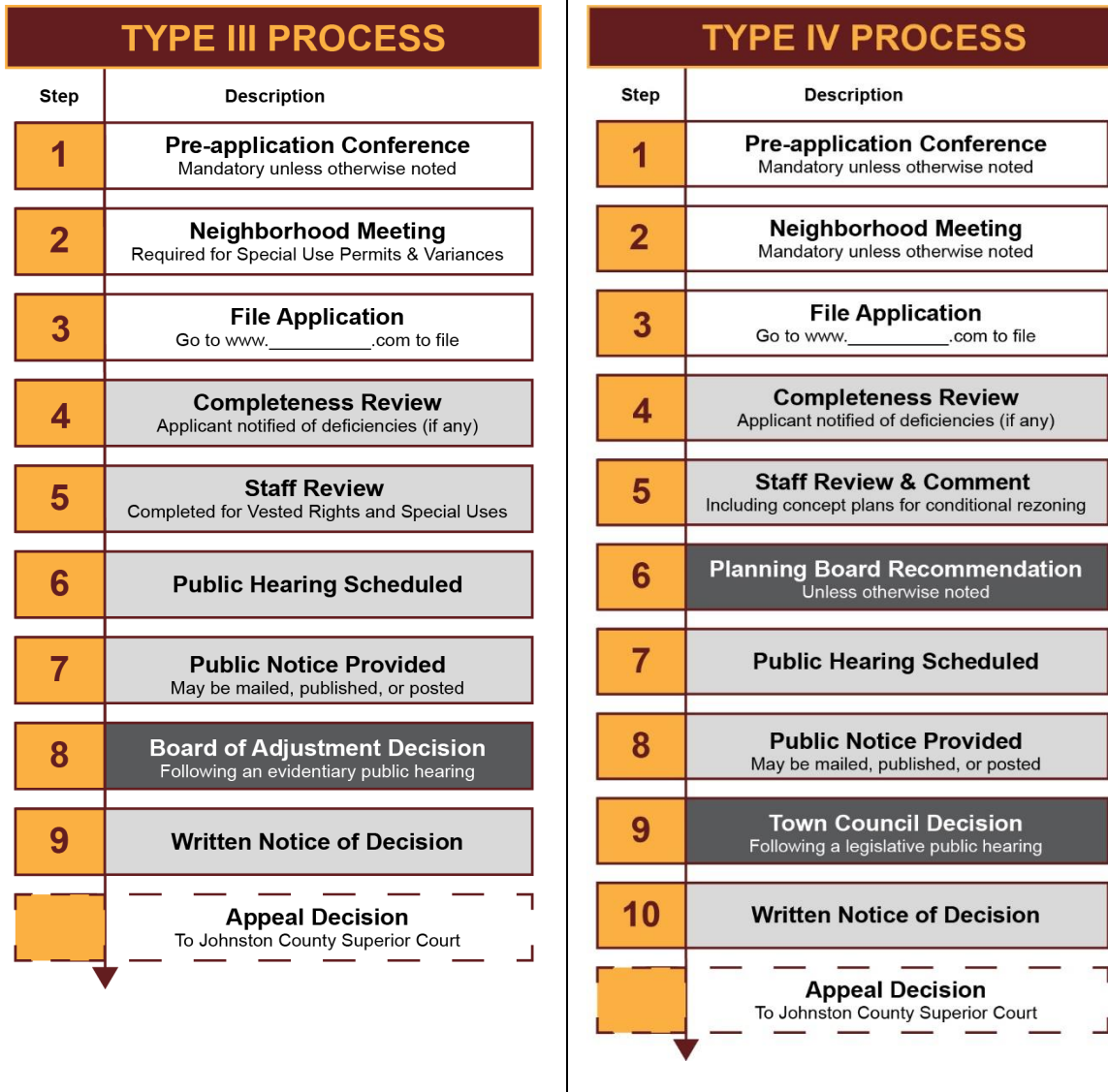


FIGURE <>: PROCESS DIAGRAMS



## 2.3 APPLICATION TYPES<sup>20</sup>

### 2.3.1 ADMINISTRATIVE ADJUSTMENT<sup>21</sup>

#### A. APPLICABILITY

1. Except where otherwise prohibited, an Administrative Adjustment may be requested for a modification or deviation to any of the following:
  - a. A zoning district dimensional standard in Chapter 3, Districts.
  - b. A numeric use-specific standard in Chapter 4, Land Uses.
  - c. A numeric requirement in Chapter 5, Standards.
2. In no instance shall an Administrative Adjustment application seek to reduce any of the following:
  - a. The required minimum lot area in a zoning district;
  - b. Increases in the maximum allowable residential density on a lot;
  - c. Reduce the minimum required separation distance between two use types;
  - d. The requirements specified in a transportation impact analysis;
  - e. Reductions to the standards pertaining to flood damage prevention, water supply watershed protection, or riparian buffer protection; or
  - f. Reductions to required infrastructure standards, including streets, potable water, or wastewater system requirements.
3. Development subject to a Variance shall not also be subject to an Administrative Adjustment.

#### B. AMOUNT OF ADJUSTMENT

An Administrative Adjustment may allow a deviation from a numeric standard in this Ordinance in accordance with the amount specified in Table <>, Maximum Adjustment Amount.

| TABLE <>: MAXIMUM ADJUSTMENT AMOUNT                                         |                                        |
|-----------------------------------------------------------------------------|----------------------------------------|
| LOCATION OR TYPE OF DEVELOPMENT                                             | MAXIMUM PERMITTED AMOUNT OF ADJUSTMENT |
| Establishment of a new principal building on a non-conforming lot of record | 50% (setbacks only)                    |
| New development or redevelopment within the Downtown zoning district        | 15%                                    |
| Redevelopment within all zoning districts except Downtown                   | 10%                                    |
| New development within all zoning districts except Downtown                 | 5%                                     |

<sup>20</sup> This section includes each of the 34 application types under the UDO, and is proposed to replace Sections 155.704 through 718 and 721 in the UDC. Each application has a standardized structure with specified review criteria.

<sup>21</sup> This is a new procedure that permits small deviations in compliance with numeric standards in specific instances. This procedure is drafted in a way that will allow easy expansion to items available for adjustment as the UDO evolves.

#### C. PROCESS TYPE

Type II (see Section <>, Process Diagrams), including comment by the Technical Review Committee.

#### D. REVIEW CRITERIA

An application for an Administrative Adjustment shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and all of the following:

1. The Administrative Adjustment is consistent with the type and maximum thresholds for an Administrative Adjustment established in this section; and
2. The Administrative Adjustment:
  - a. Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general, including size or shape of the lot; or
  - b. Is necessary to allow for proper functioning of public or private infrastructure; or
  - c. Saves healthy existing trees; or
  - d. Helps limit the need for site grading or revision to existing drainage patterns; and
3. Approval of the Administrative Adjustment is not expected to pose a danger to the public health or safety; and
4. The Administrative Adjustment will not negatively impact the function or performance of on-site wastewater or stormwater management devices; and
5. Adverse impacts resulting from the Administrative Adjustment will be fully mitigated; and
6. The development requirement being adjusted is not the subject of a previously approved Administrative Adjustment, condition of approval, or Variance on the same site.

#### E. SEQUENCE

1. An Administrative Adjustment may be requested either as a stand-alone application, or in combination with another application for development review.
2. In cases when submitted with another application, the Administrative Adjustment application shall be decided prior to the other associated applications.
3. Applications for Conditional and Conventional Rezoning or Variances shall not include requests for Administrative Adjustments.

#### F. AMENDMENT

Amendment of a Administrative Adjustment approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### G. EXPIRATION

1. If an Administrative Adjustment is submitted with another development application, the expiration of the Administrative Adjustment shall be the same as the associated development application.
2. See Section <>, Expiration, in cases where an Administrative Adjustment is submitted as a stand-alone application.

#### H. VESTING

1. If an Administrative Adjustment is submitted with another development application, the vesting term of the Administrative Adjustment shall be the same as the associated development application.
2. In cases where an Administrative Adjustment is submitted as a stand-alone application, see Section <>, Statutory Vested Rights.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.1 Administrative Adjustment

#### I. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



### 2.3.2 APPEAL<sup>22</sup>

#### A. APPLICABILITY

Appeals of decisions or determinations by the Technical Review Committee, Planning Director, or Engineering Director made pursuant to this Ordinance shall be reviewed and decided in accordance with NCGS§§160D-405 and 160D-1403 and this procedure, as appropriate.

#### B. APPEALS NOT REGULATED BY THIS ORDINANCE

The following appeals and challenges shall be governed by the following:

##### 1. DECISIONS BY BOARD OF ADJUSTMENT

- a. Persons with standing as defined in NCGS§160D-1402(c) may appeal a decision by the Board of Adjustment to the Superior Court for the county where located in accordance with NCGS§160D-1402.
- b. Appeal of a quasi-judicial decision shall be in the nature of certiorari and in accordance with NCGS §§160D-406, 160D-1402, and 160D-1405, as appropriate.
- c. A landowner or applicant with standing shall file a petition for review with the Clerk of Court within 30 days of the date the decision is filed in the office of the Board of Adjustment and delivered by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective.
- d. Any other person with standing to appeal shall file a petition for review with the Clerk of Court within 30 days from receipt, by any source, actual or constructive notice of the decision being appealed.
- e. Receipt of written notice provided via first class mail in accordance with NCGS§160D-403(b) shall be deemed to be received on the third business day following deposit of the notice for mailing with the United States Postal Service.

##### 2. DECISIONS BY TOWN COUNCIL

Persons with standing as defined in NCGS§160D-1403(b) may challenge legislative decisions by the Town Council, whose challenge shall be heard by the Superior Court for the county where located in accordance with NCGS§§160D-1401 and 160D-1405.

##### a. CHALLENGES TO OFFICIAL ZONING MAP ADOPTION OR AMENDMENT; DEVELOPMENT AGREEMENT

- i. Legislative decisions made by the Town Council pursuant to the adoption of the Official Zoning Map, amendment to the Official Zoning Map, or with respect to a Development Agreement shall be subject to review at the request of any aggrieved party by the Superior Court for the county where located as detailed in NCGS§§160D-1401 and 160D-1405.
- ii. The challenge to the legislative decision must be filed with the Clerk of Court for the Superior Court of the county where located within 60 days from the receipt of written notice or receipt from any source of constructive notice of the determination.

##### b. CHALLENGES TO UNIFIED DEVELOPMENT ORDINANCE TEXT ADOPTION OR AMENDMENT

<sup>22</sup> This section replaces Section 155.717 of the current UDC. While this appeal procedure is solely for consideration of appeals of decisions or determinations by Town staff members, the procedure provides additional details regarding how to apply decisions by the Board of Adjustment or the Town Council (as well as the process for original civil actions). The procedure also defines standing and provides sample review criteria.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.2 Appeal

Legislative decisions made by the Town Council pursuant to the adoption of this Ordinance or other development regulation shall be subject to review at the request of any aggrieved party by the Superior Court for the county where located as detailed in NCGS§§160D-1401 and 160D-1405. The challenge to the Superior Court must be filed within the following timeframes:

**i. VALIDITY OF ACTION**

Challenges to the validity of ordinance language shall be filed within one year of the date that the ordinance or amendment becomes effective or when the party bringing the challenge has standing to file the challenge, whichever is later.

**ii. PROCEDURAL FLAW**

Challenges to an ordinance or amendment based upon the process of adoption shall be filed within three years of the adoption date of the ordinance or amendment.

### 3. ORIGINAL CIVIL ACTIONS

Persons with standing, as defined in NCGS§160D-1403.1 may bring an original civil action in Superior Court in the county where located without first being heard by the Board of Adjustment for some administrative decisions, determinations of vested rights, and notices of violation in cases where the applicant claims the decision or a provision in this Ordinance is:

- i. Unconstitutional;
- ii. Beyond statutory authority;
- iii. Pre-empted by State law; or
- iv. A taking of all property value.

### C. STANDING TO APPEAL A DECISION BY A TOWN STAFF MEMBER

Only those parties possessing any of the following criteria shall have standing to appeal a decision, Determination, or a notice of violation by a Town staff member to the Board of Adjustment:

- 1. An ownership interest, a leasehold interest, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision or Determination being appealed; or
- 2. An option or contract to purchase the property that is the subject of the decision or Determination being appealed; or
- 3. An applicant before the review authority whose decision is being appealed; or
- 4. Any other person who will suffer special damages as the result of the decision or Determination being appealed; or
- 5. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision or determination being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal; or
- 6. The appellant is the Town Council of Clayton.

### D. INITIATION

- 1. An applicant, property owner, or other person with standing shall initiate an Appeal by filing a notice of appeal with the Planning Director within 30 days of the date they receive the written notice of decision being appealed.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.2 Appeal

2. Receipt of written notice of decision provided via first class mail in accordance with NCGS§160D-403(b) shall be deemed to be received on the third business day following deposit of the notice for mailing with the United States Postal Service.

#### E. APPLICATION

1. Petitions for Appeal shall specify the grounds for the Appeal.
2. The Planning Director shall transmit to the Board of Adjustment all the papers constituting the record upon which the action being appealed was taken.

#### F. PROCESS TYPE

Type III (see Section <>, Process Diagrams).

#### G. DECISION

1. The decision shall be based on the competent, material, and substantial evidence in the record of the Appeal, as supplemented by arguments presented at the evidentiary hearing, and the standards in Section <>, Review Criteria.
2. The decision shall be one of the following:
  - a. Affirmation of the decision or determination (in whole or in part);
  - b. Modification of the decision or determination (in whole or in part); or
  - c. Reversal of the decision or determination (in whole or in part).
3. Voting shall be in accordance with Section <>, Voting.
4. If a motion to reverse or modify is not made, or a motion fails to receive a majority vote from Board of Adjustment members eligible to vote, then the Appeal shall be denied.
5. Each decision shall be made in writing and reflect the Board of Adjustment's determination of contested facts and their application to the standards in this Ordinance.
6. The written decision shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
7. The decision of the Board of Adjustment shall be effective upon the filing of the written decision in the offices of the Planning Department.

#### H. REVIEW CRITERIA

1. The Board of Adjustment is limited to the following decisions in considering the appeal:
  - a. Whether the review authority erred in the determination of this Ordinance; or
  - b. Whether the review authority erred in determining whether a standard of this Ordinance was met.
2. The Board of Adjustment shall not hear any evidence or make any decision based on hardships or special conditions, except as part of an application for a Variance.

#### I. EFFECT

1. The filling of an appeal shall stay all of the following:
  - a. Any further proceedings or actions conducted by the applicant except in such cases where such stoppage would cause imminent peril to life or property as determined by the Planning Director;
  - b. The application of any further remedies for violation of this Ordinance by the Town; and
  - c. The accumulation of any further fees or fines associated with violation of this Ordinance.
2. In cases where the Town official from whose decision an appeal is taken certifies to the Board of Adjustment that a stay would cause imminent peril to life or property or would seriously interfere with enforcement of this Ordinance; administrative proceedings shall



not be stayed except through issuance of a restraining order by a court of competent jurisdiction.

3. In the event enforcement proceedings are not stayed by an Appeal, the appellant may file a request for an expedited hearing of the appeal in accordance with NCGS§160D-405(f), and the Board of Adjustment shall conduct a meeting to hear the Appeal within 15 days of the date the request for an expedited hearing is filed.
4. Nothing shall prevent the Board of Adjustment from staying the issuance of any final approval of development applications, including Building Permits, affected by the issue being appealed in accordance with NCGS§160D-405(f).

#### J. AMENDMENT

Not applicable.

#### K. EXPIRATION

Not applicable.

#### L. VESTING

Not applicable.

#### M. APPEAL

In accordance with Section <>, Decisions by Board of Adjustment.



### 2.3.3 ANNEXATION<sup>23</sup>

#### A. APPLICABILITY

1. The Town may review and decide voluntary Annexation petitions from:
  - a. The owners of land that is contiguous with the Town's primary corporate limits; and
  - b. The owners of land that is not contiguous to the primary corporate limits when the proposed satellite annexation complies with the following standards:
    - i. The area must be so situated that the Town will be able to provide the same services as it provides within its primary corporate limits; and
    - ii. The nearest point on the proposed satellite annexation is not more than three miles from the primary corporate limits of the Town; and
    - iii. No portion of the land proposed for annexation is closer to the contiguous corporate limits of another municipality unless the land is subject to an approved annexation agreement; and
    - iv. If the land proposed for annexation is part of a recorded subdivision as defined in NCGS§160D-802, all lots in the recorded subdivision are part of the annexation petition; and
    - v. The area within the proposed satellite annexation, when added to the area within all other satellite annexations by the Town of Clayton, may not exceed ten percent of the area within the primary corporate limits of the Town.
2. The Town may accept voluntary Annexation petitions from landowners that do not meet the criteria in sub-section (1) above, but may not decide them until the application is consistent with sub-section (1) above.

#### B. APPLICATION

1. The Annexation petition shall be signed by all the owners of land proposed for annexation.
2. An Annexation petition shall include a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under NCGS§160D-108.
3. The application shall identify the volunteer fire district where the land subject to the petition is located.

#### C. PROCESS TYPE

Type IV (see Section <>, Process Diagrams), except for the following:

1. Following receipt of an Annexation petition the Town Council shall direct the Town Clerk to investigate the sufficiency of the petition.
2. The Town Clerk shall investigate and certify whether the petition is legally sufficient. Only legally sufficient petitions shall be considered by the Town.
3. The Planning Director shall review the petition and comment on the Town's ability to provide municipal services prior to consideration of the petition's legal sufficiency by the Town Council.
4. The Town shall notify the applicable fire district where the land is located.
5. Following investigation by the Town Clerk and the Planning Director, the Town Council shall determine if the petition is legally sufficient. If the petition is determined to be legally sufficient, the Town Council shall schedule a public hearing to consider the petition.
6. The Planning Board shall not review the application.
7. If the annexation petition is approved, the applicant shall be responsible for preparation of a plat suitable for recording with the Register of Deeds to document the annexation.

<sup>23</sup> This is a new procedure not included in the current UDC.



#### D. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in [Section <>, Review Criteria](#).
2. The decision shall be one of the following:
  - a. Approval of the Annexation petition;
  - b. Denial of the Annexation petition; or
  - c. Remand of the Annexation petition to Town staff for further consideration.

#### E. REVIEW CRITERIA

Approval of an Annexation is a matter committed to the legislative discretion of the Town Council. The voluntary Annexation petition may be approved upon a finding the petition complies with all the standards in NCGS §§160A-31 or 160A-58.1, as appropriate, and:

1. The Annexation petition bears the signatures of all landowners within the area to be annexed;
2. The area to be annexed can be adequately served by the same municipal services provided within the Town's primary corporate limits;
3. The debt obligations from serving the subject lands do not exceed the anticipated revenues to the Town;
4. If any of the land that is the subject of an annexation petition is also proposed for a subdivision, the entire land area occupied by the subdivision is included in the annexation petition; and
5. The public health, safety, and welfare of Town residents and the residents of the lands proposed for annexation will be best served by the Annexation.

#### F. EFFECTIVE DATE

##### 1. CONTIGUOUS ANNEXATIONS

In accordance with NCGS §160A-31(d), the Town Council shall make the Annexation ordinance effective:

- a. Immediately; or
- b. Within 24 months of the date the Annexation ordinance was adopted.

##### 2. NONCONTIGUOUS OR SATELLITE ANNEXATIONS

The Town Council shall make the Annexation ordinance effective date immediately or on any specified date within six months from the date the annexation ordinance was passed.

#### G. RECORDATION

1. An ordinance approving a voluntary Annexation adopted by the Town, together with a plat of the annexed area, shall be promptly recorded in the office of the Register of Deeds for the county where located following adoption of the Annexation.
2. The applicant shall be responsible for preparing a plat meeting the State's minimum requirements.
3. The ordinance approving a voluntary Annexation adopted by the Town, together with a plat of the annexed area, shall be filed in the office of the Secretary of State within 30 days following the effective date of the annexation ordinance.



#### H. SEQUENCE

1. In cases where land proposed for Annexation is subject to any additional development applications, the Annexation application shall be reviewed and decided prior to the decision on any other applications.
2. The Town Council may consider the initial zoning of newly annexed land immediately or at any other time following approval of an Annexation application.
3. Nothing shall limit the Town Council from adopting a Development Agreement that involves land that is not annexed to the Town.

#### I. EFFECT

1. Upon the effective date of Annexation, the land shall be subject to the debts, laws, ordinances and regulations of the Town, and shall be entitled to the same privileges and benefits as other parts of the Town.
2. In cases where land to be annexed is located outside the Claytex Volunteer Fire District, the applicant for annexation shall submit payment to the Town corresponding to the land's proportional share of all debt obligations owed by the Town. The Town shall notify the applicant of the applicable amount of the payment.
3. In cases where the applicant does not make payment upon annexation, the Town may require execution of a development agreement, the imposition of conditions of approval on the annexation petition, or other Town-accepted process for securing the land's pro rata share of applicable debt obligation from the applicant as part of annexation.

#### J. AMENDMENT

Not applicable.

#### K. EXPIRATION

Not applicable. Land may be de-annexed only by an act of the North Carolina General Assembly.

#### L. VESTING

Not applicable.

#### M. APPEAL

In accordance with Section <>, Decisions by Town Council.



#### 2.3.4 BUILDING PERMIT<sup>24</sup>

##### A. APPLICABILITY

Unless exempted in accordance with the North Carolina General Statutes or the State Building Code(s), no construction, reconstruction, addition, alteration, repair, movement to another site, removal, demolition of any building or structure, or changes in use of an existing development triggering the need for application of a different set of building code requirements shall occur until a Building Permit is approved in accordance with the procedures and standards of this section and Chapter 150 of the Clayton Town Code of Ordinances.

##### B. EXEMPTIONS

The following forms of development are exempted from the requirement to obtain a Building Permit, but shall be subject to the standards in [Section <>, Zoning Compliance Permit](#):

1. Storage and accessory buildings that serve a residential principal use, of 12 linear feet or less in length on any dimension, and do not include electrical service or running water;
2. Patios and at-grade walkways;
3. Playground equipment and play structures provided as accessory uses to an individual residential dwelling;
4. Ornamental or other pools with depths of less than 24 inches (any pools with water depths exceeding 24 inches are required to obtain a Building Permit);
5. Fences or privacy walls of six feet in height or less, except that all retaining walls shall require a Building Permit; or
6. Other development exempted from building permit requirements by the Town of by State law.

##### C. PROCESS TYPE

Type I (see [Section <>, Process Diagrams](#)).

##### D. REVIEW CRITERIA

An application for a Building Permit shall be decided by the Building Inspector in accordance with [Section <>, Staff Review and Action](#), and all of the following:

1. The applicable sections of the State Building Code(s);
2. The standards in NCGS§160D-1110;
3. Any applicable requirements of the Johnston County Health Department;
4. The Site Plan, if applicable;
5. The Zoning Compliance Permit;
6. All other standards or conditions of any prior, applicable permits, and development approvals; and
7. All other applicable requirements of this Ordinance, Town policy, State law, and federal law.
8. In cases where commencement or completion of development proposed in a Building Permit application requires infrastructure to be in place and such infrastructure is not in place when required, then a life/safety plan for protecting life/safety shall be filed with an application for a Building Permit.

<sup>24</sup> This is a permit procedure not codified in the current UDC.



#### **E. SEQUENCE**

A Building Permit application may be submitted simultaneously with another application but shall be processed in accordance with Section <>, Simultaneous Processing.

#### **F. EFFECT**

Approval of a Building Permit authorizes the commencement of on-site or off-site construction activities.

#### **G. AMENDMENT**

A Building Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **H. EXPIRATION**

1. A building permit shall expire and become null and void if the development it authorizes is not substantially commenced within six months of the permit issuance.
2. A building permit shall expire if work is discontinued for a period of 12 months after work has commenced.

#### **I. VESTING**

1. See Section <>, Issuance of a Building Permit.
2. In cases when a Building Permit is associated with a site-specific vesting plan, the vesting period of the Building Permit shall be the same as the development in the associated site-specific vesting plan.

#### **J. APPEAL**

An appeal of a decision on a Building Permit may be filed with the North Carolina Commissioner of Insurance, in accordance with NCGS§160D-1127.



#### 2.3.5 CERTIFICATE OF OCCUPANCY<sup>25</sup>

##### A. APPLICABILITY

Except where exempted by Section <>, Exemptions, no land, newly erected building or structure, or existing building or structure that has been moved or enlarged or changed in use shall be occupied or used until a Certificate of Occupancy certifying that the land, building, or structure, and its use complies with this Ordinance and the applicable standards of the State Building Code(s) is issued in accordance with this section and Chapter 150 of the Clayton Town Code of Ordinances.

##### B. EXEMPTIONS

Development exempted from a Building Permit in accordance with Section <>, Exemptions, shall also be exempted from this section.

##### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

##### D. REVIEW CRITERIA

An application for a Certificate of Occupancy shall be decided by the Building Inspector in accordance with Section <>, Staff Review and Action, and the degree to which the land, building, structure, or proposed use complies with:

1. All relevant standards of this Ordinance;
2. Any other applicable Town requirements;
3. All applicable conditions of approval;
4. The Building Permit;
5. The applicable State Building Code(s) requirements; and
6. All applicable State and federal requirements.

##### E. TEMPORARY CERTIFICATE OF OCCUPANCY

1. A Temporary Certificate of Occupancy may be issued permitting occupancy for a stated period of time of either the entire building or property or of specified portions of the building if the Inspections Director finds that the building or property may safely be occupied prior to the completion of development activity.
2. A temporary Certificate of Occupancy may be issued in cases where the Town has mandated or the applicant has requested and the Town has approved payment of a fee-in-lieu. In no instance shall a final Certificate of Occupancy be issued by the Town in cases where payment of fee-in-lieu is required, but has not taken place.
3. The Planning Director may require the applicant to submit a Performance Guarantee (see Section <>, Performance Guarantees), in an amount necessary to ensure that any work not completed as specified in the development approval will be completed within the specified timeframe for a Certificate of Occupancy. A Performance Guarantee, submitted in accordance with Section <>, Performance Guarantees, shall be required for any incomplete infrastructure or other required site features.

##### F. SEQUENCE

1. Applications for a Certificate of Occupancy may not be filed until work authorized by other approvals has been completed, or an application for a Performance Guarantee has been approved.

<sup>25</sup> This is a permit procedure not codified in the current UDC.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.5 Certificate of Occupancy

2. An application for a Performance Guarantee may be filed with an application for a Temporary Certificate of Occupancy, but in these cases, the Performance Guarantee application shall be decided first.

#### **G. EFFECT**

Approval of a Certificate of Occupancy authorizes the occupancy of a building or the commencement of activity.

#### **H. AMENDMENT**

A Certificate of Occupancy application may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **I. EXPIRATION**

A Certificate of Occupancy shall not expire. A Temporary Certificate of Occupancy shall expire in accordance with its designated timeframe. In no instance shall a Temporary Certificate of Occupancy remain valid for a period of longer than six months.

#### **J. VESTING**

Not applicable.

#### **K. APPEAL**

An appeal of a decision on a Certificate of Occupancy may be filed with the North Carolina Commissioner of Insurance, in accordance with NCGS§160D-1127.



## 2.3.6 CONDITIONAL REZONING<sup>26</sup>

### A. PURPOSE AND INTENT

The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a conditional zoning district in cases where the standards of a conventional zoning district are inadequate to appropriately address the anticipated impacts generated by development. The conditional zoning district, if approved, establishes a unique zoning district that is tailored to the specific proposal and subject to unique conditions of approval. It is the intent of these standards to provide a process where an applicant may voluntarily place additional limitations on the development potential of their land. It is also intended to allow an applicant to request greater flexibility in the application of some development requirements in pursuit of a higher quality of development.

### B. APPLICABILITY

1. This procedure is solely for the establishment of a conditional zoning district designation on land within the Town's planning jurisdiction.
2. In no instance shall a Conventional Rezoning application be converted to a Conditional Rezoning application nor shall a Conditional Rezoning application be converted to a Conventional Rezoning application.
3. In no instance shall any lot or tract that is the subject of a Conditional Rezoning application also be the subject of any other rezoning application at the same time.
4. Special use zoning districts established prior to (insert the effective date of this Ordinance) shall be subject to the standards in Section <>, Pre-Existing Special Use Zoning Districts.
5. Planned development zoning districts established prior to (insert the effective date of this Ordinance) shall be subject to the standards in Section <>, Pre-Existing Planned Development Districts.

### C. CONDITIONAL REZONING APPLICATIONS DISTINGUISHED

All Conditional Rezoning applications shall take one of the following three forms:

1. Type 1 Conditional Rezoning or "limited use" applications, which include an applicant-sponsored reduction in the range of allowable use types but no other deviations from required standards; or
2. Type 2 Conditional Rezoning or "limited standard" applications, which include applicant-sponsored modifications that exceed minimum requirements applied to other forms of development (e.g., deeper setbacks, larger lot areas, more restrictive use-standards, or limits on the range of allowable use types); or
3. Type 3 Conditional Rezoning or "unlimited" applications, which include a Concept Plan and applicant-sponsored conditions that may be more or less restrictive than other applicable Ordinance standards, subject to Section <>, Standards that May Not be Reduced, and Section <>, Conditions of Approval. Unlimited applications may include deviations or reductions from otherwise applicable standards.

### D. APPLICATION

1. All Conditional Rezoning applications shall:

<sup>26</sup> This section is proposed to replace Section 155.705 of the current UDC. The draft procedure identified here removes the current 5-acre/1 city block minimum area requirement. In addition, this procedure establishes three types of conditional rezoning application: a limited use application type that does not permit a concept plan and allows an applicant to reduce the range of allowable use types; a limited standards option that allows an applicant to propose additional limitations or restrictions that exceed the current standards; and an unlimited option that permits reductions from standards to be requested. These standards clarify that failure to substantially commence the approved development may result in the Town initiating an application to revert the conditional rezoning district designation, and that concept plans are considered site-specific vesting plans (and that vesting does not run with the land).



- a. Be initiated only by all the landowner(s) of the land subject to the application, or their authorized agents;
  - b. Include all applicant-proposed conditions of approval;
  - c. Include a detailed written description of the range of potential principal and accessory use types, which shall be treated as a condition;
  - d. Not include a Concept Plan in cases where the application is a Type 1 or Type 2 Conditional Rezoning application (see Section <>, Conditional Rezoning Applications Distinguished);
  - e. Include a Concept Plan prepared in accordance with Section <>, Concept Plans, if a Type 3 Conditional Rezoning application, seeking to enhance, reduce, or otherwise deviate from an applicable dimensional, development, or use-specific standard in this Ordinance;
  - f. Include a Transportation Impact Analysis when required by Section <>, Transportation Impact Analysis;
  - g. Include a wastewater allocation request prepared in accordance with all Town requirements if proposing to utilize public sewer;
  - h. Identify requests for reductions from applicable standards in this Ordinance when requested and why such requests are necessary; and
  - i. Provide evidence indicating the ways in which a Conditional Rezoning seeking a reduction from standards in this Ordinance will result in development that is in closer alignment with Section <>, Purpose and Intent, and the Town's adopted policy guidance.
2. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
  3. Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.

#### E. PROCESS TYPE

Type IV (see Section <>, Process Diagrams), except that the Technical Review Committee shall review and comment on all Concept Plans filed with a Conditional Rezoning application prior to consideration of the application by the Planning Board.

#### F. RECOMMENDATION

1. After conclusion of a public meeting, the Planning Board shall make a recommendation on the application based on its consistency with Section <>, Review Criteria.
2. In making its recommendation, the Planning Board shall prepare a written statement regarding the application's consistency with the Town's adopted policy guidance.
3. During its review, the Planning Board may suggest revisions to the application, consistent with Section <>, Conditions of Approval. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.

#### G. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in Section <>, Review Criteria.
2. The decision shall be one of the following:
  - a. Approval of the application;
  - b. Denial of the application;
  - c. Approval of a revised application; or



- d. Remand of the application to Planning Board or the Technical Review Committee for further consideration.
3. The decision shall be based on the legislative discretion of the Town Council, taking into consideration the recommendation of the Planning Board, citizen comments, if provided, and the standards in Section <>, Review Criteria.
4. In making its decision, the Town Council shall adopt a written statement of reasonableness and consistency with the Town's adopted policy guidance in accordance with NCGS§160D-605.

#### H. CITIZEN COMMENT

In cases where a resident or landowner submits written comments to the Town at least two business days prior to the date a decision is being made on the application, the Town staff member processing the application shall deliver the statement(s) to the Town Council.

#### I. APPLICATION REVISION

The applicant may make changes to a Conditional Rezoning application, including changes recommended by the Planning Board or the Town Council at any time prior to the Town Council's decision. The applicant may only propose changes provided that:

1. Changes shall be made in writing to the Planning Director; and
2. Changes shall be signed by all landowners or their agents.

#### J. REVIEW CRITERIA

The advisability of approving a Conditional Rezoning application is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny a proposed Conditional Rezoning, the Town Council may weigh the relevance of and consider the following:

1. If the application is consistent with the applicable standards in Section <>, Conditional Zoning Districts;
2. Whether the proposed Conditional Rezoning advances the public health, safety, or welfare;
3. Whether and the extent to which the proposed Conditional Rezoning is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of the Town's adopted policy guidance;
4. Whether an approval of the Conditional Rezoning is reasonable and in the public interest;
5. Whether and the extent to which the Concept Plan associated with the Conditional Rezoning is consistent with this Ordinance; and
6. Any other factors as the Town Council may determine to be relevant.

#### K. CONDITIONS

1. Only conditions mutually agreed to by the applicant and the Town Council may be approved as part of a Conditional Rezoning.
2. Conditions shall be limited to those that address conformance of development and use on the site with Town regulations and adopted policy guidance and that address the impacts reasonably expected to be generated by the development or use of the site.
3. All conditions shall be in compliance with Section <>, Conditions of Approval.
4. Conditions shall be in writing and may be supplemented with text, plans, or maps as permitted by this Ordinance.



#### **L. DESIGNATION**

1. The Planning Director shall cause to make changes to the Official Zoning Map promptly after approval of a Conditional Rezoning application by the Town Council.
2. In cases when a Conditional Rezoning application is deemed inconsistent with adopted policy guidance, but is approved by the Town Council, the future land map shall be amended with a note referencing the application approval.

#### **M. SEQUENCE**

1. Applications for Subdivisions, Site Plans, and Zoning Compliance Permits may be submitted with a Conditional Rezoning application, but the Conditional Rezoning application establishing the conditional zoning district shall be decided first.
2. A Concept Plan shall not substitute for a required Site Plan or Subdivision Plat, and all applications for required Site Plans or Subdivision Plats shall be reviewed separately from the Conditional Rezoning application.

#### **N. EFFECT**

1. In cases where the Town Council approves a Conditional Rezoning application deemed to be inconsistent with the Town's adopted policy guidance, the Conditional Rezoning approval shall also have the effect of amending any applicable future land use map included in the Town's adopted policy guidance, and no additional request or application for a comprehensive plan amendment shall be required.
2. Lands subject to an approved Conditional Rezoning shall be subject to all the standards, conditions, and plans approved as part of that application. These standards, plans, and approved conditions are perpetually binding on the land as an amendment to this Ordinance and the Official Zoning Map. In cases where a Concept Plan is approved as part of a Conditional Rezoning application, the vesting term of the Concept Plan shall be in accordance with the applicable standards in [Section <>, Vested Rights](#).
3. Development located outside the Clayton corporate limits shall comply with Town policies and standards related to annexation and the extension of utilities.
4. Regardless of the type of Conditional Rezoning application, the development shall be subject to subsequent review and approval of a Site Plan or Subdivision Plat, as required under this Ordinance.

#### **O. AMENDMENT**

Concept Plans shall only be amended in accordance with the standards in this section. Amendments to a Concept Plan approval shall be considered as minor modifications or major modifications, and must be considered in accordance with the following:

##### **1. MINOR MODIFICATIONS**

- a. Subsequent plans and permits for development may include minor modifications provided the development continues to meet the minimum requirements of this section. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the application approval.
- b. Minor modifications shall be reviewed and decided by the Planning Director, in consultation with other appropriate Town staff.
- c. Minor modifications shall be limited to the following:
  - i. Changes in internal land use or phase boundaries provided the perimeter location of the development is unaffected;



- ii. Revisions to phase boundaries provided each phase is adequately served by necessary infrastructure, stormwater control measures, and open space;
  - iii. Realignment of internal transportation infrastructure provided the overall connectivity index score of the development or the phase is not reduced;
  - iv. Changes to the location of entrances or driveways;
  - v. Changes to the configuration of parking areas, but not the number of parking spaces and provided the parking area continues to meet Ordinance requirements for access and circulation;
  - vi. Changes to the configuration of landscape yards, including types of landscaping or screening materials, provided minimum width and planting requirements continue to be met;
  - vii. Changes to the proposed building elevation or facade, including materials, provided that the change retains the same general architectural character and remains consistent with the design parameters established in the original approval; and
  - viii. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.
- d. In no instance shall a minor modification include any changes to:
- i. The range of permitted uses;
  - ii. The overall density of the development; or
  - iii. Site features that require the application of professional judgement or discretion by a licensed landscape architect, architect, or professional engineer.

## 2. MAJOR MODIFICATIONS

- a. Changes that materially affect the basic configuration of the development, a condition of approval, or that exceed the scope of a minor change modification are considered major modifications.
- b. Major modifications include, but are not limited to:
  - i. Increases in building height;
  - ii. Changes in uses;
  - iii. Changes in density or intensity;
  - iv. Decreases in open space;
  - v. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected);
  - vi. Change in the location of any public easement; and
  - vii. Changes to site features that require the application of professional judgement or discretion by a licensed landscape architect, architect, or professional engineer.
- c. Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

## P. EXPIRATION

1. Not applicable.
2. In the event the development contemplated in a Conditional Rezoning application is not substantially commenced within three years from the date of the approval, the Town Council may initiate a rezoning application to return the land to its prior or to some other appropriate zoning district designation.

## Q. VESTING

1. The establishment of a conditional zoning district shall run with the land, but a Concept Plan associated with a Conditional Rezoning application shall be subject to [Section <>](#), [Site-Specific Vesting Plan](#).



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.6 Conditional Rezoning

2. Applicants seeking a longer vesting term may file an application in accordance with Section <>, Vested Rights Certificate.

#### R. APPEAL

In accordance with Section <>, Decisions by Town Council.



## 2.3.7 CONSERVATION SUBDIVISION<sup>27</sup>

### A. PURPOSE AND INTENT

The purpose and intent of this section is to provide landowners in certain portions of the Town's planning jurisdiction a development option that provides additional development flexibility to build on smaller lots when additional open space set-asides are provided, and the development is designed and located in a way that protects surrounding community character, agricultural activities, or sensitive environmental features on the site. This is done in order to:

1. Conserve open land, including those areas containing prime agricultural soils, areas of steep slopes, unique and sensitive natural features such as floodplains, wetlands, river and stream corridors, areas with mature hardwood trees, and watersheds;
2. Promote established community character particularly in areas visible from major roadways in the Town;
3. Retain and protect existing wildlife habitat and environmental, natural, and cultural resources;
4. Create a linked network of open lands; and
5. Provide reasonable economic use of the land.

### B. APPLICABILITY

#### 1. TYPE OF DEVELOPMENT

This Conservation Subdivision option shall be limited to development of single-family detached residential dwellings (including manufactured homes) on individual lots in subdivisions of more than five lots. The Conservation Subdivision option shall not be available for any other form of development or use type.

#### 2. WHERE PERMITTED

Single-family detached residential subdivisions of more than five lots on lands served by a public wastewater system may be developed as a Conservation Subdivision, in accordance with the standards in this section.

#### 3. RELATIONSHIP TO WATERSHED PROTECTION OVERLAY DISTRICT

- a. Land located within a Watershed Protection Overlay District may be configured in accordance with the cluster development option in Section <>, Cluster Development, but a cluster development may not be configured as a conservation subdivision.
- b. In the event a conservation subdivision is proposed on land within a Watershed Protection Overlay District, the density shall not exceed that permitted under the cluster development option in Section <>, Cluster Development.

### C. PROCESS TYPE

1. Type II (see Section <>, Process Diagrams).
2. Establishment of a Conservation Subdivision also requires review of a Major Subdivision.

### D. CONSERVATION AND DEVELOPMENT PLAN

Prior to review of a Major Subdivision, an applicant shall have a conservation and development plan for the land reviewed and approved, or approved with conditions by the Planning Director in accordance with the following steps and the standards in Section <>, Review Criteria.

<sup>27</sup> NOTE: This procedure is included here from the Annotated Outline. It is new procedure that allows smaller lots and reduced setbacks in recognition of set-aside of at least 50% of the development area. The only way this will work is if sewer is available.



#### 1. STEP 1: SITE ANALYSIS MAP

The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development and land within 500 feet of the site, and submit the site analysis map to the Technical Review Committee. It is the intent of this section that the information required in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

#### 2. STEP 2: SITE INSPECTION

After receipt of the site analysis map, a representative from the Technical Review Committee shall schedule a site inspection of the land with the applicant. The applicant or the applicant's representative shall attend the site inspection with a Town staff member. The purpose of this site visit is to:

- a. Familiarize the staff with the existing site conditions and features of the site;
- b. Identify potential site development issues, including the best location for the development to minimize its visibility from existing neighborhoods and adjacent major roadways; and
- c. Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by the staff during the site inspection shall be interpreted as being only suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

#### 3. STEP 3: CONSERVATION AND DEVELOPMENT PLAN

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

- a. A site analysis map;
- b. A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and
- c. A preliminary site improvements plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area.

#### 4. STEP 4: REVIEW

The Planning Director shall review and decide the conservation and development plan based on the standards in [Section <>, Review Criteria](#).

### E. REVIEW CRITERIA

A Conservation Subdivision shall comply with the following standards:

#### 1. LOCATION

Conservation Subdivisions shall be configured to minimize the visibility of new dwellings from adjacent developed lands and roadways located outside the proposed Conservation Subdivision. Techniques to achieve this location criteria include placement of lots, retention of existing vegetation, or installation of berms or new landscaping material.

#### 2. MINIMUM PROJECT SIZE

Conservation Subdivisions shall be at least five acres in land area.



### 3. REQUIRED CONSERVATION AREA

The required conservation area shall occupy at least 50 percent of the total acreage of the Conservation Subdivision site, but nothing shall limit it from occupying more than 50 percent of a Conservation Subdivision site.

### 4. MAXIMUM RESIDENTIAL DENSITY

A Conservation Subdivision may establish a maximum residential density that exceeds the maximum residential density for lots in the zoning district where located by up to 50 percent, but in no instance shall the density of a Conservation Subdivision exceed the maximum allowable if located within a Watershed Protection Overlay District.

### 5. DIMENSIONAL REQUIREMENTS

Lots in a Conservation Subdivision may deviate from the minimum dimensional requirements for lots in the zoning district where located, provided:

- a. No lot frontage is less than 20 feet wide;
- b. Building separation between structures on different lots meets or exceeds the minimum applicable Fire Code provisions; and
- c. All structures shall comply with required setbacks from streets, wetlands/surface waters, or other protected natural areas.

### 6. LAND USED FOR AGRICULTURE OR FORESTRY

Nothing shall limit the ability of an owners' association to lease conservation area for the purposes of agriculture or forestry.

### F. OWNERSHIP OF CONSERVATION AREAS

A conservation area shall be owned jointly by a recognized homeowners' or property owners' association, which shall be established in accordance with [Section <>, Owners' Associations](#).

### G. SEQUENCE

A Conservation Subdivision shall be approved prior to the associated Major Subdivision Preliminary Plat.

### H. AMENDMENT

Amendment of a Conservation Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

### I. EXPIRATION

1. An approved Conservation Subdivision shall be valid for two years from the date of approval.
2. Once a Preliminary Plat application has been filed, the associated Conservation Subdivision approval shall be subject to the expiration provisions associated with the Preliminary Plat.

### J. VESTING

See [Section <>, Site Specific Vesting Plan](#).

### K. APPEAL

In accordance with NCGS§160D-405, and [Section <>, Appeal](#).



## 2.3.8 CONVENTIONAL REZONING<sup>28</sup>

### A. PURPOSE AND INTENT

This section provides a uniform means for reviewing and deciding proposed amendments to the Official Zoning Map to establish or revise a conventional zoning district or overlay zoning district boundary whenever the public necessity, general welfare, the Town's adopted policy guidance, or appropriate land use practices justify or require doing so.

### B. APPLICABILITY

This procedure is solely for the establishment of a conventional zoning district or overlay zoning district designation on land within the Town's planning jurisdiction.

### C. APPLICATION

1. Applications may be initiated by the Town Council, the Planning Board, the Planning Director, a landowner(s), or a contract purchaser(s) of the land in the proposed application.
2. In no instance shall the Town accept third-party rezoning applications submitted by persons who are not owners or agents authorized to act on behalf of landowners.
3. Applications for a Conventional Rezoning shall not include a Concept Plan or any applicant-sponsored conditions.
4. In cases where a Conventional Rezoning application seeks to rezone only a portion of a lot or tract, the remainder of the lot or tract shall be of a size and location that make it possible to subdivide or develop that portion of the property in accordance with the requirements in this Ordinance.
5. Applications subject to a required neighborhood meeting shall include required information in accordance with [Section <>, Neighborhood Meeting](#).

### D. PROCESS TYPE

Type IV (see [Section <>, Process Diagrams](#)).

### E. RECOMMENDATION

1. After conclusion of a public meeting, the Planning Board shall make a recommendation on the application based on its consistency with [Section <>, Review Criteria](#).
2. In making its recommendation, the Planning Board shall prepare a written statement regarding the application's consistency with the Town's adopted policy guidance.

### F. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in [Section <>, Review Criteria](#).
2. The decision shall be one of the following:
  - a. Approval of the application;
  - b. Denial of the application;
  - c. Approval of a revised application; or
  - d. Remand of the application to Town staff for further consideration.
3. The decision shall be based on the legislative discretion of the Town Council, taking into consideration the recommendation of the Planning Board, citizen comments, if provided, and the standards in [Section <>, Review Criteria](#).

<sup>28</sup> This section is proposed to replace Section 155.704 of the current UDC. These standards prohibit an applicant from modifying an application for a Conditional Rezoning (though it may be modified by the Town Council).



4. In making its decision, the Town Council shall adopt a written statement of reasonableness and consistency with the Town's adopted policy guidance in accordance with NCGS§160D-605.

#### **G. CITIZEN COMMENT**

In cases where a resident or landowner submits written comments to the Town at least two business days prior to the date a decision is being made on the application, the Town staff member processing the application shall deliver the statement(s) to the Town Council.

#### **H. APPLICATION REVISION**

1. In no instance shall a Conventional Rezoning application be converted into a Conditional Rezoning application.
2. Nothing shall limit the Town Council from approving a more restrictive or less intense zoning district than requested by the applicant. In cases where the Town Council decides to approve a more restricted or less intense zoning district than requested, the application shall not require remand back to the Planning Board or any additional public notification.

#### **I. REVIEW CRITERIA**

The advisability of approval of a Conventional Rezoning application is a matter committed to the legislative discretion of the Town Council, and is not controlled by any one factor. In determining whether to adopt or deny a rezoning application, the Town Council may weigh the relevance of and consider the following:

1. Whether the proposed rezoning advances the public health, safety, or welfare;
2. Whether and the extent to which the proposed rezoning is appropriate for its proposed location, and is consistent with the purposes, goals, objectives, and policies of the Town's adopted policy guidance;
3. Whether an approval of the rezoning is reasonable and in the public interest; and
4. Other factors as the Town Council may determine to be relevant.

#### **J. DESIGNATION**

1. The Planning Director shall cause to make changes to the Official Zoning Map promptly after approval of a Conventional Rezoning application by the Town Council.
2. In cases when a rezoning application is deemed inconsistent with adopted policy guidance, but is approved by the Town Council, the future land use map shall be amended with a note referencing the rezoning application approval.

#### **K. SEQUENCE**

A Conventional Rezoning application may be filed with an Annexation petition in accordance with NCGS§§160A-31 or 160A-58.1, but no other application types shall be submitted with a rezoning application.

#### **L. EFFECT**

1. Lands subject to an approved Conventional Rezoning application shall be subject to all the applicable standards in this Ordinance, which shall be binding and shall run with the land.
2. Development located outside the Town's corporate limits shall comply with all Town policies related to annexation and the extension of utilities.
3. In cases where the Town Council approves a Conventional Rezoning application they deem to be inconsistent with the Town's adopted policy guidance, the rezoning approval shall also have the effect of amending any applicable future land use map included in the



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.8 Conventional Rezoning

Town's adopted policy guidance, and no additional request or application for a comprehensive plan amendment shall be required.

#### **M. AMENDMENT**

Not applicable.

#### **N. EXPIRATION**

Not applicable.

#### **O. VESTING**

Not applicable.

#### **P. APPEAL**

In accordance with Section <>, Decisions by Town Council.



### 2.3.9 DETERMINATION<sup>29</sup>

#### A. APPLICABILITY

##### 1. ENGINEERING DIRECTOR

The Engineer Director shall provide determinations on the portions of this Ordinance pertaining to infrastructure (water lines, sewer lines, etc.); construction-related aspects associated with streets, sidewalks, and driveways; erosion control; special flood hazard area standards; stormwater requirements; and watershed-related provisions.

##### 2. PLANNING DIRECTOR

The Planning Director shall determine all other aspects of this Ordinance, including boundaries on the Official Zoning Map, undefined terms, unlisted use types, prior conditions of approval, the vesting status of development.

#### B. DETERMINATIONS DISTINGUISHED

##### 1. FORMAL DETERMINATIONS

- a. Formal determinations shall be in writing and prepared in accordance with this section.
- b. Only formal determinations are subject to appeal as an administrative decision.

##### 2. ADVISORY OPINIONS

- a. Any written or oral opinions that do not meet the strict requirements of this section are advisory opinions.
- b. Advisory opinions have no binding effect and are not considered formal determinations subject to appeal.

#### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

#### D. DECISION

1. The Planning Director or Engineering Director, as appropriate, shall provide determinations of this Ordinance or the Official Zoning Map in accordance with Section <>, Review Criteria.
2. Prior to rendering a determination, a Town staff member may consult with the Town Attorney or other Town officials.

#### E. REVIEW CRITERIA

##### 1. OFFICIAL ZONING MAP BOUNDARIES

Interpretation of district boundaries on the Official Zoning Map shall be in accordance with the standards in Section <>, Interpretation of Map Boundaries, and consistent with the Town's adopted policy guidance.

##### 2. TEXT PROVISIONS AND PRIOR APPROVALS

Interpretation of this text and approved applications shall be based on the standards in Section <>, Rules of Language Construction, Section <>, Transitional Provisions, and the following considerations:

<sup>29</sup> This section replaces Section 155.715 of the current UDC with a much more explicit procedure covering several different kinds of common questions, recognizing the role of the Engineering Director, and distinguishing between formal determination (written) and advisory opinions (informal or verbal).



- a. The legislative intent of the provision, as indicated by purpose statements, its context and consistency with surrounding and related provisions, and any legislative history related to its adoption;
- b. When the legislative intent of a provision is unclear, the Planning Director shall consider the clear and plain meaning of the provision's wording, as defined by the meaning and significance given specific terms used in the provision, as established in [Section <> Terms Defined](#), and by the common and accepted usage of the term;
- c. The general purposes served by this Ordinance, as set forth in [Section <>, Purpose and Intent of Ordinance](#); and
- d. Consistency with the Town's adopted policy guidance.

### 3. UNLISTED USE TYPES

Determination of whether an unlisted use is similar to a use identified in [Table <>, Listing of Common Principal Uses](#), shall be based on consistency with [Section <>, Use Category Descriptions](#), the Town's adopted policy guidance, and the following standards:

- a. The function, product, or physical characteristics of the use;
- b. The impact on adjacent lands created by the use;
- c. The type, size, and nature of buildings and structures associated with the use;
- d. The type of sales (retail, wholesale), and the size and type of items sold and displayed on the premises;
- e. The types of items stored (such as vehicles, inventory, merchandise, chemicals, construction materials, scrap and junk, and raw materials including liquids and powders);
- f. The volume and type of vehicle traffic generated by the use, and the parking demands of the use;
- g. Any processing associated with the use, including assembly, manufacturing, warehousing, shipping, distribution, and whether it occurs inside or outside a building;
- h. Any dangerous, hazardous, toxic, or explosive materials associated with the use;
- i. The amount and nature of any nuisances generated on the premises, including noise, smoke, odor, glare, vibration, radiation, and fumes; and
- j. Any prior applicable determinations made by the Planning Director or decisions made by the Board of Adjustment.

### 4. UNDEFINED TERMS

If a term in this Ordinance is undefined or the meaning is unclear, the Planning Director may determine the term's meaning based upon appropriate definitions in any of the following sources:

- a. The North Carolina General Statutes;
- b. The North Carolina Administrative Code;
- c. The State Building Code(s);
- d. Planning-related definitions in publications prepared or offered by the American Planning Association or the Urban Land Institute;
- e. The Oxford Dictionary of Construction, Surveying, and Civil Engineering;
- f. Black's Law Dictionary; or
- g. Other professionally accepted source.



#### 5. VESTING STATUS

The determination of whether or not certain development activity or a development application approval is vested from changes in this Ordinance and the duration of the vesting shall be based on the following:

- a. The standards in Section <>, Vested Rights;
- b. The standards in NCGS§160D-108; and
- c. Prior judicial determination from comparable cases, as determined in the sole discretion of the Planning Director.

#### F. EFFECT

A written Determination shall be binding on subsequent decisions by the Planning Director or other administrative officials in applying the same provision of this Ordinance or the Official Zoning Map in the same circumstance, unless the Determination is modified in accordance with this section, the Determination is later determined to have been made in error, or the text of this Ordinance is amended.

#### G. AMENDMENT

Not applicable.

#### H. EXPIRATION

Not applicable.

#### I. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.10 DEVELOPMENT AGREEMENT<sup>30</sup>

##### A. PURPOSE AND INTENT

The Development Agreement procedure is a flexible, voluntary process for the establishment and review of large-scale development projects likely to build out over several years, projects that include over-sizing of public utilities, or projects outside the Town's planning jurisdiction.

##### B. APPLICABILITY

The Town Council may enter into a Development Agreement with a developer for a development of any size and for any reasonable duration, provided the duration is specified in the agreement. All Development Agreements shall be subject to NCGS §§ 160D-1001 through 160D-1012.

##### C. PROCESS TYPE

Type IV (see Section <>, Process Diagrams) except that the Planning Board shall not review the application.

##### D. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in Section <>, Review Criteria.
2. The decision shall be one of the following:
  - a. Enter into the Development Agreement, as submitted;
  - b. Enter into the Development Agreement, subject to changes agreed to in writing by the developer; or
  - c. Not enter into the Development Agreement.
3. The decision shall be based on the legislative discretion of the Town Council, taking into consideration the recommendation of the Planning Board and the standards in Section <>, Review Criteria.

##### E. REVIEW CRITERIA

1. The Development Agreement shall comply with the applicable standards in NCGS § 160D-1006;
2. The development shall demonstrate the impact on existing and future provisions of capital improvements by the Town, including all of the following: transportation, potable water, sanitary sewer, solid waste, stormwater management, educational, parks and recreation, and health systems and facilities.
3. The Development Agreement shall not require the Town to exercise any authority or make any commitment that is unauthorized by general or local act, or impose any unauthorized tax or fee.

##### F. SEQUENCE

A Development Agreement shall be approved prior to any subsequent development subject to the agreement's provisions.

##### G. ANNUAL REVIEW

During any period of time in which a permit or development approval subject to a Development Agreement is active, the Planning Director shall review the development at least once every year for compliance with the agreement and file a report with the Town Council.

<sup>30</sup> This is a new procedure.



#### H. AMENDMENT

1. A Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.
2. Consideration of a proposed amendment of a Development Agreement shall be reviewed and considered in accordance with NCGS§160D-1003 and the procedures and standards established for its original approval.

#### I. EXPIRATION

A Development Agreement shall run for the duration of its term unless the agreement is terminated.

#### J. VESTING

The Development Agreement shall specify the terms and duration of vesting.

#### K. APPEAL

In accordance with Section <>, Decisions by Town Council.



#### 2.3.11 DRIVEWAY PERMIT

##### A. APPLICABILITY

1. All lots seeking to gain vehicular access to a Town-maintained or North Carolina Department of Transportation (NCDOT)-maintained street via a driveway shall obtain a driveway permit in accordance with this section. Lots seeking to obtain vehicular driveway access to an NCDOT-maintained street shall also obtain NCDOT approval prior to issuance of a Driveway Permit. Town staff will inform applicants of the need to contact the NCDOT for a prior NCDOT approval.
2. Lots seeking to gain vehicular access to a private street are not required to obtain a Driveway Permit from the Town, though permission from the owner of the street may be required.

##### B. APPLICATION

An application for a Driveway Permit shall be accompanied by plans or drawings prepared by a professional engineer. Plans or drawings shall demonstrate compliance with all applicable requirements of this Ordinance, other Town documents, and NCDOT's Policy on Street and Driveway Access to North Carolina Highways, if applicable.

##### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

##### D. REVIEW CRITERIA

An application for a Driveway Permit shall be decided by the Engineering Director, in accordance with Section <>, Staff Review and Action, and the following:

1. The applicable requirements of the Town's Manual of Standards, Specifications, and Design;
2. The Town Code of Ordinances or other policy documents;
3. Any applicable requirements of this Ordinance, including but not limited to Section <>, Access and Circulation;
4. NCDOT's Policy on Street and Driveway Access to North Carolina Highways, if applicable; and
5. All other standards or conditions of any prior, applicable permits, and development approvals.

##### E. SEQUENCE

Applications for a Driveway Permit may be submitted with a Site Plan, Subdivision, or Zoning Compliance Permit, but the Driveway Permit shall be approved after these permit types.

##### F. INSPECTION

Inspections of the proposed driveway or driveway apron if the driveway is unpaved shall be conducted by the Engineering Director or a designee after the forms demarking the driveway are in place and again after driveway construction is complete but before the approval is finalized.

##### G. AMENDMENT

A Driveway Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval.



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.11 Driveway Permit

#### H. EXPIRATION

A Driveway Permit shall expire if substantial commencement has not taken place within six months of the approval.

#### I. VESTING

See Section <>, Statutory Vested Rights.

#### J. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.12 EROSION CONTROL PERMIT<sup>33</sup>

##### A. APPLICABILITY

1. Land-disturbing activities occupying one acre or more in area (regardless of the number of different lots or ownership patterns) shall be subject to an Erosion Control Permit issued in accordance with this section.
2. Land-disturbing activities occupying less than one acre are exempted from the requirement to obtain an Erosion Control Permit, but shall still be subject to the standards in Section <>, Soil Erosion and Sedimentation.

##### B. APPLICATION

1. An application for an erosion control plan shall include an erosion control plan prepared in accordance with Section <>, Soil Erosion and Sedimentation.
2. The permit application shall identify the person financially responsible for the land disturbing activity and shall be signed by the landowner, and the person financially responsible for the land-disturbing activity, or their agent, who shall be licensed to do business in the State of North Carolina.
3. Land-disturbing activity subject to NCGS§113A(1) shall include all necessary environmental documentation.

##### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams) except that a pre-application conference is required.

##### D. PHASES DISTINGUISHED

1. Applications for and approval of an Erosion Control Permit shall take place within two distinct phases. Phase One, or "early grading" shall consist solely of the following:
  - a. Installation of temporary sedimentation control measures;
  - b. Construction of basins, ditches, and outlet devices; and
  - c. Construction entrances.
2. Phase Two, or "land disturbance" shall take place following completion of the activity required under Phase One, and shall include clearing, grubbing, excavation, deposition, and transport of fill material.
3. The Phase One portion of an Erosion Control Permit may be approved following completion of the Stage One portion of a Site Plan or a Preliminary Plat for Major Subdivision.
4. The Phase Two portion of an Erosion Control Permit may be approved following completion of the Stage Two portion of a Site Plan or a Preliminary Plat for Major Subdivision.

##### E. REVIEW CRITERIA

An application for an Erosion Control Permit, whether Phase One or Phase Two, as appropriate, shall be decided by the Engineering Director in accordance with Section <>, Staff Review and Action, and the following:

<sup>33</sup> NOTE: This is a newly-codified procedure. The Town's current sedimentation and erosion control provisions are found in Chapter 156 of the Town Code. These standards are being relocated to the UDO. The Town's current standards include provisions for review of an erosion control plan, which are carried forward here with two notable revisions: 1) removal of the automatic approval if the Town staff fail to approve the plan within 30 days of filing, and requirements for appeals of the Engineering Director's decision on a permit being filed with the BOA instead of Town Council. Additional discussion is necessary regarding the need to carry forward the section on transfer of an erosion control plan from one owner to another.



1. All relevant standards in NCGS Art. 4 of Chapter 113A;
2. All relevant standards in Section <>, Soil Erosion and Sedimentation;
3. All State rules pertaining to protection of riparian buffers along surface waters;
4. All other applicable State and federal requirements in place at the time of application acceptance;
5. All other applicable requirements of this Ordinance;
6. Provided the site where land disturbance is proposed is not already in violation of the soil erosion and sedimentation control standards of this Ordinance; and
7. Provided the applicant for the Erosion Control Permit is in compliance with the requirements of this Ordinance with respect to soil erosion and sedimentation and provided there are no outstanding civil penalties related to erosion control requirements.

#### **F. PERFORMANCE GUARANTEE**

All required erosion control measures depicted in an erosion control plan shall be installed and inspected by the Town, and final stabilization shall be subject to a Performance Guarantee in accordance with Section <>, Performance Guarantees.

#### **G. SEQUENCE**

1. See Section <>, Phases Distinguished.
2. Erosion Control Permits shall only be issued after approval of a Tree Clearing Certificate, Site Plan, Construction Drawings associated with a Preliminary Plat, or a Zoning Compliance Permit.

#### **H. EFFECT**

1. Approval of an Erosion Control Permit shall permit the applicant to commence with land-disturbing activity.
2. The approved Erosion Control Permit shall be displayed on site in a location easily accessible to members of the public.

#### **I. AMENDMENT**

An Erosion Control Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **J. REVOCATION**

An Erosion Control Permit may be revoked by the Engineering Director, following written notice to the violator and in accordance with this process, for any of the following reasons:

1. Failure or refusal to comply with all applicable State laws or soil erosion and sedimentation control requirements of this Ordinance;
2. Conduct of land-disturbing activities that represent a substantial departure from an approved permit, plan, or specification; and
3. False or misrepresented information providing as part of the application.

#### **K. EXPIRATION**

See Section <>, Expiration.

#### **L. VESTING**

See Section <>, Statutory Vested Rights.

#### **M. APPEAL**

In accordance with NCGS§160D-405, and Section <>, Appeal.



### 2.3.13 EXEMPT SUBDIVISION<sup>34</sup>

#### A. EXEMPT SUBDIVISIONS, GENERALLY

1. Subdivisions exempted from this Ordinance are identified in Table <>, Subdivision Types Table.
2. The Town may not require a plat for an Exempt Subdivision, but the Register of Deeds may require a plat to record the division of land.
3. Land divided as an Exempt Subdivision is subject to other requirements in this Ordinance, including but not limited to water supply watershed standards, stormwater, and flood damage protection.

#### B. APPLICATION

Applications for review of an Exempt Subdivision are strictly voluntary and at the discretion of the landowner or subdivider.

#### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

#### D. REVIEW CRITERIA

An application for an Exempt Subdivision shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

##### 1. GENERALLY

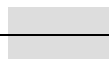
Except for combinations or recombinations, an Exempt Subdivision shall be approved provided it complies with the following:

- a. The plat includes a title block identifying the subdivision as an Exempt Subdivision, and describes what makes the subdivision exempt;
- b. The plat complies with the standards in NCGS§47-30;
- c. The plat is prepared, signed, and sealed by a registered surveyor; and
- d. The plat includes all applicable statements and declarations identified in Chapter 9 of this Ordinance.

##### 2. COMBINATIONS OR RECOMBINATIONS

- a. An Exempt Subdivision consisting of a combination or recombination of lots shall be approved provided it complies with the following:
  - i. The resultant lots comply with the minimum dimensional requirements of the zoning district where located;
  - ii. The total number of lots is not increased;
  - iii. All the metes and bounds boundaries of the affected lots are shown;
  - iv. All lot boundaries changed or eliminated by requested combination are indicated by dashed lines;
  - v. The plat complies with the standards in NCGS§47-30;
  - vi. The title block contains the word "Recombination;"
  - vii. The plat is signed by all property owners if either the number of lots is reduced or different owners for different lots are involved in the recombination;
  - viii. The plat is prepared, signed, and sealed by a registered surveyor; and

<sup>34</sup> This is a new procedure mandated under NCGS§160D-802. It provides for a voluntary review process at the discretion of the landowner or subdivider, but the Town may not require a plat (or exactions) for an Exempt Subdivision. It is important to note that the Statutes recognize combinations and recombinations where all resultant lots meet the minimum Ordinance requirements (like district dimensional standards) as exempt. Recombinations that result in lots that do not meet minimum Ordinance requirements are considered as minor preliminary plats.



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.13 Exempt Subdivision

- ix. The plat includes all applicable statements and declarations identified in Chapter 9 of this Ordinance.
- b. A combination or recombination of lots where one or more of the newly-established lots does not meet the minimum dimensional requirements of the zoning district where located shall not be considered an Exempt Subdivision, and shall be reviewed in accordance with Section <>, Minor Subdivision.

#### E. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



### 2.3.14 FEE-IN-LIEU<sup>35</sup>

#### A. PURPOSE AND INTENT

This fee-in-lieu procedure creates a uniform process for consideration of Town-mandated or applicant-requested payment of a fee instead of providing required land or infrastructure. The fee-in-lieu process is intended to create flexibility in the provision of required aspects of development when payment of a fee is appropriate and in closer alignment with the Town's adopted policy guidance than the alternative.

#### B. APPLICABILITY

Payment of a fee-in-lieu may be approved by the Town only for the following forms of development:

##### 1. LAND DEDICATION OR EASEMENT

Payment of a fee-in-lieu of dedication of the land or granting an easement to the Town for the following features:

- a. Public street right-of-way land, including land needed for sidewalks, bike lanes, on-street parking, turn lanes, and ingress or egress into a site;
- b. Park land; and
- c. Greenway, sidewalk, or trail right-of-way.

##### 2. PUBLIC INFRASTRUCTURE

Payment of a fee-in-lieu of construction of the following public infrastructure features:

- a. Streets, including on-street parking;
- b. Curb and gutter;
- c. Bicycle facilities; and
- d. Sidewalks, trails, or greenways.

##### 3. PRIVATE SITE FEATURES

Payment of a fee-in-lieu of inclusion of required open space set-aside.

#### C. REQUESTS DISTINGUISHED

##### 1. APPLICANT-REQUESTED

In cases where an applicant or developer desires to provide a fee-in-lieu, the process for considering such requests shall be in accordance with this section.

##### 2. TOWN-MANDATED

- a. Town-mandated fee-in-lieu payments are decided by Town staff as part of a Site Plan, Subdivision, or Zoning Compliance Permit application review in accordance with the applicable standards in [Section <>, Review Criteria](#).
- b. Notification of the requirement for provision of a fee-in-lieu shall be in writing, and shall be delivered to the applicant or developer prior to the notice of decision on the associated application.
- c. Upon receipt of notification, an applicant shall provide the required fee-in-lieu in accordance with [Section <>, Acceptance of Fee-in-Lieu](#), or the applicant may appeal the decision in accordance with [Section <>, Appeal](#).

<sup>35</sup> This is a newly codified procedure that consolidates the current provisions related to fee-in-lieu. It makes a distinction between applicant-requested and Town-mandated fee-in-lieu. Additional revision to this material is anticipated during the UDO draft review process.



### D. APPLICATION

Applicant-requested fee-in-lieu proposals shall be made in writing and shall identify the following:

1. The purpose(s) for the fee-in-lieu;
2. The rationale for why a fee-in-lieu is in closer alignment with the purpose and intent of this Ordinance;
3. The items or site features being replaced by the proposed fee-in-lieu;
4. The amount of the proposed fee-in-lieu; and
5. How the fee amount was determined.

### E. PROCESS TYPE

Type IV (see Section <>, Process Diagrams) for applicant-requested fee-in-lieu. Town-mandated fee-in-lieu shall be decided by the Town staff member responsible for deciding the associated application as part of a Type II process.

### F. DECISION

1. After the conclusion of a public meeting, the Town Council shall decide applicant-requested fee-in-lieu proposals in accordance with Section <>, Review Criteria, and Section <>, Determination of Fee Amount.
2. The decision shall be one of the following:
  - a. Approval of the fee-in-lieu request;
  - b. Denial of the fee-in-lieu request; or
  - c. Remand of the application to Town staff for further consideration.

### G. REVIEW CRITERIA

Approval of a fee-in-lieu proposal is a matter committed to the legislative discretion of the Town Council. The proposal may be approved upon a finding it complies with all the following:

#### 1. GENERALLY

- a. Approval of the fee-in-lieu proposal will not negatively impact public health or safety; and
- b. Approval of the fee-in-lieu proposal does not interfere with Town's ability to serve landowners and residents; and
- c. The proposal is consistent with necessary amount of funding; and
- d. The proposal meets any specialized criteria listed below, as appropriate.

#### 2. PARK LAND

- a. There is sufficient public park land in proximity to the proposed development based on a review of the Town's adopted policy guidance and information from Town staff;
- b. Private common open space resources provided on the subject site will be available for public use and will mitigate park land needs created by the proposed development;
- c. Collected funds could be utilized to further improve an existing park facility in a proximate location;
- d. The topography or other natural conditions of the site do not provide adequate opportunities for on-site recreation and park areas;
- e. The amount of park land to be dedicated is too small to provide adequate recreation and park opportunities or to be efficiently maintained;



- f. The intended location of the park land is too far from existing recreation and park areas to be efficiently maintained; or
- g. Adequate access is not available to the proposed park land.

### 3. GREENWAYS OR TRAILS

- a. The conditions on the land make installation or operation of a greenway or trail segment impossible or cost prohibitive for the Town;
- b. The potential for the connection of a proposed greenway segment to the Town's greenway or trail network is unlikely within the foreseeable future, in the opinion of Town staff; or
- c. There are suitable alternatives to in close proximity to the proposed site.

### 4. STREETS OR BICYCLE FACILITIES

- a. The proposed street alignment creates a unacceptable environmental impact; or
- b. The proposed street or bicycle facility is impossible or impractical to build based on topography, slope, soil conditions, or development patterns on adjacent lands.

### 5. SIDEWALKS AND SIDEPATHS

- a. The potential for the connection of a proposed sidewalk or sidepath segment to the Town's sidewalk network is unlikely within the foreseeable future, in the opinion of Town staff; or
- b. There are suitable alternatives to a sidewalk, such as a greenway or trail, in close proximity to the proposed site.

### 6. OTHER PUBLIC INFRASTRUCTURE

- a. Construction of the proposed infrastructure would create maintenance or service delivery problems, in the opinion of the Engineering Director; or
- b. Proposed development may be better served by an alternative configuration.

### 7. OPEN SPACE SET-ASIDE

- a. Other open space and recreation resources are in close proximity to the proposed site; or
- b. The amount of open space set-aside required is unfeasible to provide.

### 8. OTHER CRITERIA

- a. When, in the sole opinion of the Planning Director, the decision on a fee-in-lieu requires consideration of additional or different criteria, the Planning Director shall identify those criteria and describe how the proposal does or not address them.
- b. The applicant has sufficient opportunity to describe how the proposal meets those criteria prior to a decision by the Town Council.

## H. DETERMINATION OF FEE

### 1. LAND

- a. The fee-in-lieu shall be calculated based upon the total acreage of land required for dedication or reservation.
- b. The land's current assessed value (as determined by the county Tax Assessor) or an approved appraisal by a certified North Carolina appraiser.

### 2. INFRASTRUCTURE

- a. The amount of fee-in-lieu for streets shall be based on the required improvements for the development.



- b. The amount of fee-in-lieu shall be based on an itemized estimate by a professional engineer.
- c. The estimate shall include 125 percent of the cost of all materials and labor based on current unit prices.
- d. Nothing shall prevent the Engineering or Planning Director, as appropriate, from acquiring an additional estimate for the same infrastructure from another licensed professional.
- e. The Engineering or Planning Director, as appropriate, in their discretion, may select the estimate that will form the basis for the fee-in-lieu payment.

#### I. ACCEPTANCE OF FEE-IN-LIEU

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1. All fees collected by the Town pursuant to this section shall be deposited in Town's revolving fund for purchase of recreation land, installation of vegetation, provision of parking facilities, or installation of required infrastructure.
2. Use of funds collected in accordance with this section shall only take place in the general vicinity of where funds are collected and may only be used for the purchase of in-kind lands or the same type of infrastructure in accordance with all applicable State and federal law.
3. The Planning Director or other designated Town official shall maintain records of the amounts collected, the timing, and the location, which shall be used by the Town as part of its capital facilities program.

#### J. SEQUENCE

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1. Applications for payment of fee-in-lieu may be submitted with the associated development application or at any time prior to issuance of a Certificate of Occupancy or other final approval.
2. In cases where a fee-in-lieu is requested by the applicant and approved by the Town, the payment shall take place prior to recordation of a Final Plat or approval of the Construction Drawing phase of a Site Plan.
3. In cases where a fee-in-lieu is mandated by the Town, the payment shall take place prior to the approval of a final Certificate of Occupancy or other final approval. A temporary Certificate of Occupancy may be issued pending receipt of required or approved payment of fee-in-lieu.

#### K. EFFECT

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Approval of fee-in-lieu for a private site feature shall not render the site nonconforming.

#### L. AMENDMENT

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Not applicable.

#### M. EXPIRATION

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Not applicable.

#### N. VESTING

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Not applicable.

#### O. APPEAL

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1. Appeals of decision by Town staff shall be in accordance with NCGS§160D-405, and Section <>, Appeal.
2. Appeals of decisions by the Town Council shall be in accordance with Section <>, Decisions by Town Council.





#### 2.3.15 FLOODPLAIN PERMIT<sup>39</sup>

##### A. APPLICABILITY

The following forms of development shall obtain a Floodplain Permit in accordance with this section prior to or concurrent with an application for a Site Plan or Building Permit, as appropriate:

1. Development proposed on land in the Flood Hazard Overlay Districts defined by the National Flood Insurance Program (NFIP); and
2. Development that is proximate to and may be impacted by unmapped streams or where regulatory flood elevations are not delineated in the NFIP, in accordance with Section <>, Standards for Floodplains Without Established Base Flood Elevations.

##### B. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

##### C. REVIEW CRITERIA

An application for a Floodplain Permit shall be decided by the Floodplain Administrator in accordance with Section <>, Staff Review and Action, and the following:

1. The permit is issued prior to the commencement of development; and
2. The development complies with all applicable standards in Section <>, Flood Hazard Overlay (FHO) District.

##### D. SEQUENCE

Applications for Floodplain Permits may be submitted with any other application for development in a special flood hazard area, but a Floodplain Permit shall be reviewed and approved prior to any other application type.

##### E. EFFECT

Approval of a Floodplain Permit authorizes an applicant to obtain all required elevation certificates or other required certificates and proceed with development following issuance of a Building Permit.

##### F. CERTIFICATES REQUIRED

1. Unless exempted in accordance with Section <>, Flood Protection Overlay District, development subject to this section shall also file elevation or floodproofing certificates in accordance with Section <>, Development Application, Permit and Certification Requirements, no more than 21 days after completing the lowest habitable floor.
2. The Floodplain Administrator shall review the certificate and advise the applicant of any errors or deficiencies, which shall be corrected prior to any further work progressing. Failure to correct errors or deficiencies on an elevation or floodproofing certificate shall be a violation of this Ordinance subject to the provisions in Section <>, Stop Work Orders.

##### G. AMENDMENT

A Floodplain Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

<sup>39</sup> This permit is proposed to replace portions of Section 151.21 of the Town Code of Ordinances related to a floodplain development application.



#### H. REVOCATION

A Floodplain Permit may be revoked by the Floodplain Administrator, following written notice to the violator, for any of the following reasons:

1. Failure or refusal to comply with all applicable State laws or flood damage prevention requirements of this Ordinance;
2. Conduct of development activities that represent a substantial departure from an approved permit, plan, or specification; and
3. False or misrepresented information providing as part of the application.

#### I. EXPIRATION

A Floodplain Permit shall expire and become null and void if the development it authorizes is not substantially commenced within six months of permit issuance or if activity associated with the permit becomes inactive for a period of one year or longer.

#### J. VESTING

See Section <>, Statutory Vested Rights.

#### K. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.16 LIMITED SUBDIVISION<sup>40</sup>

##### A. APPLICABILITY

1. The standards in this section shall apply to divisions of land meeting all the following criteria:
  - a. The proposed division of land is not exempted from the subdivision standards of this Ordinance in accordance with NCGS§160D-802;
  - b. The proposed division will not result in more than three lots (including any residual or "parent" parcel), with each lot meeting the applicable dimensional requirements of the zoning district where located;
  - c. The area of land subject to the division shall be comprised of at least five acres under common ownership;
  - d. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding ten years;
  - e. No extension of public infrastructure (streets, water, or sewer) is proposed; and
  - f. A proposed permanent means of ingress and egress to each lot is recorded.
2. Divisions of land not meeting all these standards shall be reviewed as a Major or Minor Subdivision, as appropriate.

##### B. APPLICATION

1. Applications for a Limited Subdivision shall include a plat prepared by a registered land surveyor or professional engineer licensed to practice in North Carolina.
2. Applications for a Limited Subdivision served by on-site wastewater systems shall include an evaluation from the appropriate county health department indicating that an on-site wastewater system may be used on each lot included in the subdivision.

##### C. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

##### D. REVIEW CRITERIA

An application for a Limited Subdivision shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

1. The Limited Subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in the county where the subdivision is located;
2. The Limited Subdivision plat is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
3. The Limited Subdivision plat complies with all applicable standards in this Ordinance and NCGS§47-30;
4. The Limited Subdivision plat includes all required certifications and declarations;
5. The applicant has secured all required State and federal permit approvals;
6. All lots have been certified by the appropriate county Health Department as capable of accommodating the wastewater generated from the proposed use, if served by an on-site wastewater system;
7. All lots in the Limited Subdivision comply with the applicable dimensional requirements for the zoning district where located;

<sup>40</sup> This is a newly codified procedure that builds on a portion of Section 155.706 in the current UDC. This section distinguishes between a limited subdivision and other forms of subdivision as the Town may require a plat, but can require nothing else (such as dedication, easement reservation, or other exactions).



8. No drainage or utility easements will be required to serve any interior lots;
9. The lot is served by a permanent means of ingress and egress that is depicted on the plat;
10. No land included in a Limited Subdivision application shall have been the subject of a Limited Subdivision application approval within the preceding ten years; and
11. The development complies with all applicable overlay zoning district standards.

#### **E. RECORDATION**

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1. Once a Limited Subdivision plat is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The plat may not be recorded without this and all other required certifications.
2. Following certification, the subdivider shall record the plat and any associated protective covenants and deed restrictions in the office of the Register of Deeds in the county where the development is located. Failure to record the plat in accordance with Section <>, Expiration, shall render the plat null and void.
3. Land may not be conveyed or construction started until the Limited Subdivision is recorded.

#### **F. SEQUENCE**

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An application for Site Plan, Special Use Permit, or Zoning Compliance Permit may be filed with a Limited Subdivision application, but the Limited Subdivision application shall be approved first.

#### **G. EFFECT**

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1. Approval of the Limited Subdivision plat allows the sale or conveyance of lots within the subdivision.
2. Building permits may be issued following recordation of the Limited Subdivision plat.
3. Land subject to a Limited Subdivision approval shall not be further subdivided as a Limited Subdivision within ten years of the date of the prior subdivision recordation.

#### **H. AMENDMENT**

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Amendment of a Limited Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **I. EXPIRATION**

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A Limited Subdivision plat shall be null and void unless it is recorded in the office of the Register of Deeds of the county where it is located within 10 days of approval.

#### **J. VESTING**

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See Section <>, Statutory Vested Rights.

#### **K. APPEAL**

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In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.17 MAJOR SUBDIVISION<sup>41</sup>

##### A. PURPOSE AND INTENT

The purpose for this Major Subdivision procedure is to establish a fair, consistent, and predictable process for the division of land into a series of lots for development or sale in ways that promote the public's health, safety, and welfare. The intent of these standards is to ensure:

1. Orderly growth and development;
2. Coordination of transportation and utility networks;
3. Preservation of open space for purposes of recreation or natural resource protection;
4. Protection from flooding, damaging sedimentation, and decreased surface water quality; and
5. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

##### B. APPLICABILITY

Unless exempted by NCGS§160D-802(a), all divisions of land involving the following shall be considered Major Subdivisions subject to the standards of this section:

1. Two or more lots along with the provision of or changes to streets or other public infrastructure (e.g., water lines, sewer lines, storm sewer, etc.); or
2. Six or more lots with no changes to or extension of public infrastructure.

##### C. STAGES OF REVIEW

The review of a Major Subdivision application is organized into the following three stages:

1. Stage One, review of a Preliminary Plat;
2. Stage Two, review of Construction Drawings, in cases where changes to or extension of public infrastructure is included as part of the development; and
3. Stage Three, review of a Final Plat.
4. Nothing shall prevent the review of application materials associated with Stages One and Two concurrently.

##### D. PROCESS TYPE

1. Type II (see Section <>, Process Diagrams) for each of the three stages of review.
2. The Technical Review Committee shall comment on plats and plans prepared as part of each stage.

##### E. STAGE 1, PRELIMINARY PLAT

A Preliminary Plat is the initial design stage of a proposed Major Subdivision, and shall be reviewed and configured in accordance with the following:

###### 1. APPLICATION

- a. A Preliminary Plat shall be prepared by a licensed professional surveyor, registered professional landscape architect, or licensed professional engineer.

<sup>41</sup> This section includes the Major Subdivision procedure set out in Section 155.706 of the current UDC with several notable changes. The current UDC consolidates all forms of subdivision approval into a single procedure while this UDO recognizes five different kinds of subdivision. The Major Subdivision is distinguished from the Minor Subdivision based on lot count and extension of public infrastructure. This proposed procedure differs slightly from the UDO Annotated Outline in that the Preliminary Plat, Construction Drawings, and Final Plat phases are all included in one single procedure (rather than 3 different procedures). This proposed procedure adds new detail on approval criteria for Preliminary Plats and Construction Drawings. The current UDC imparts the same perpetual vested rights to a Preliminary Plat as the rezoning approval - this UDO establishes Preliminary Plats (and Conditional Rezoning concept plans) as site-specific vesting plans.



- b. When a Major Subdivision is to be developed in phases, a master plan shall be submitted for the entire development and a Preliminary Plat shall be submitted for each phase, though there is no limitation on the number of phases that may be included in a Preliminary Plat.
- c. The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.
- d. In cases where lots in the subdivision will utilize on-site wastewater, the subdivider shall provide a report from a licensed soil scientist in the form of a letter, signed and dated, that describes the possibilities of lot sizes the site can support and their general locations within the subdivision.
- e. Subdivisions seeking to utilize public sewer shall include a wastewater allocation request completed in accordance with all Town requirements.
- f. All Major Subdivisions shall submit a stormwater management plan prepared in accordance with Section <>, Stormwater, and the most current edition of the North Carolina Department of Environmental Quality, Division of Water Quality's Stormwater Best Management Practices Manual.
- g. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
- h. In cases where a Major Subdivision is seeking to take advantage of sustainability incentives, allowable density bonuses, or allowable alternative forms of compliance, the application shall include supplemental details and justification for the use of these provisions.

## 2. REVIEW CRITERIA

An application for a Preliminary Plat shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

- a. The Preliminary Plat is prepared and sealed by a professional land surveyor, professional landscape architect, or professional engineer;
- b. The Preliminary Plat includes all applicable certifications and declarations;
- c. All lots are served by a Town-maintained, NCDOT-maintained, or private street configured in accordance with NCDOT or Town standards, as appropriate;
- d. All lots have been certified by a county Health Department as capable of accommodating the wastewater generated from the proposed use, in cases when the lot(s) are served by on-site wastewater systems;
- e. The Preliminary Plat includes a stormwater management plan configured in accordance with applicable requirements;
- f. The Preliminary Plat complies with all applicable overlay districts standards in Section <>, Overlay Districts;
- g. The lots shown on the Preliminary Plat are in conformance with all applicable requirements in the zoning district where located;
- h. The Preliminary Plat complies with all standards and conditions of any applicable master plans, permits and development approvals from outside agencies, utilities, volunteer fire departments, and any other applicable agency or service provider;
- i. The name of the subdivision does not duplicate or is not phonetically similar to the name of an existing subdivision in the Town's Planning jurisdiction or Johnston County;
- j. Street names comply with all applicable Town and County requirements; and



- k. The Preliminary Plat complies with all other applicable requirements in this Ordinance and Town policy.

### 3. EFFECT

- a. Approval of a Preliminary Plat does not constitute the approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots, but nothing shall prohibit the landowner or the subdivider, as appropriate, from entering into contracts to sell or lease land by reference to an approved Preliminary Plat in accordance with NCGS§160D-807(c). However, conveyance of ownership may not take place until after recordation of a final plat in accordance with Section <>, Final Plat.
- b. In cases where Stages One and Two of the Major Subdivision review are conducted separately, approval of a Preliminary Plat authorizes the subdivider to submit Construction Drawings for the installation of public infrastructure in accordance with Section <>, Construction Drawings.
- c. In cases where Stages One and Two of the Major Subdivision review are conducted separately, an approved Preliminary Plat authorizes the submittal of soil erosion and sedimentation control plans and the issuance of an erosion control permit in accordance with Section <>, Erosion Control Permit (as applicable).
- d. In cases where Stages One and Two of the Major Subdivision review are conducted separately, an approved Preliminary Plat authorizes the submittal of stormwater management plans and the issuance of a stormwater permit in accordance with Section <>, Stormwater Permit (as applicable).

### 4. DEVELOPMENT PHASING

- a. Phased development shall comply with Section <>, Phased Development.
- b. The initial Preliminary Plat may depict one or more phases of the development.
- c. Construction Drawings and Final Plats may be prepared by phase and there is no limitation on including two or more phases on the same set of Construction Drawings or Final Plat.

### 5. AMENDMENT

Amendment of a Preliminary Plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

### 6. EXPIRATION

- a. An approved Preliminary Plat shall be valid for two years from the date of its approval.
- b. Failure to submit an application for Construction Drawings or a Final Plat for the phase of the land subject to the Preliminary Plat shall render the Preliminary Plat void.
- c. A master plan for a phased Major Subdivision shall not expire.

### 7. VESTING

- a. See Section <>, Site-Specific Vesting Plan. Applicants seeking a longer vesting term may file an application in accordance with Section <>, Vested Rights Certificate.
- b. In cases where the proposed subdivision has multiple phases, vesting shall be in accordance with Section <>, Multi-Phase Development Plan.

### 8. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### F. STAGE 2, CONSTRUCTION DRAWINGS

Construction Drawings are the middle stage of a proposed Major Subdivision and include the installation of public infrastructure<sup>43</sup> as indicated in the associated Preliminary Plat. Major Subdivisions that do not include any public infrastructure are exempted from the Construction Drawing stage. Construction Drawings shall be reviewed and configured in accordance with the following:

##### 1. APPLICATION

Following approval of a Preliminary Plat for a division of land that include changes to or extension of public infrastructure, an application for approval of Construction Drawings shall be submitted in accordance with the following:

- a. Construction Drawings shall be prepared for changes to or extensions of public infrastructure;
- b. Construction Drawings shall be prepared by, signed, and stamped by a licensed professional engineer;
- c. Construction Drawings shall show both the horizontal or "plan" view of infrastructure as well as the vertical or "profile" view of infrastructure; and
- d. When a subdivision is to be developed in phases, Construction Drawings shall be submitted for each individual phase and public infrastructure shall be provided so that each lot is adequately served by public infrastructure at the time of conveyance regardless of the phase of development.

##### 2. REVIEW CRITERIA

Applications for approval of Construction Drawings shall be decided by the Engineering Director in accordance with Section <>, Staff Review and Action, and the following:

- a. Construction Drawings shall be prepared by a professional engineer licensed by the State of North Carolina;
- b. The location and configuration of public infrastructure shall be substantially consistent with the Preliminary Plat;
- c. Public infrastructure elements depicted in the Construction Drawings are configured in accordance with all applicable Town and State requirements;
- d. The Construction Drawings include all design sheets necessary to determine compliance; and
- e. Copies of all required third-party agreements, permits, and approvals necessary to begin construction are included.

##### 3. EFFECT

- a. Approval of Construction Drawings permits a subdivider to commence with construction of public infrastructure following issuance of an Erosion Control Permit and conducting a pre-construction meeting on-site with Town staff.
- b. A subdivider may file an application for a Final Plat before work associated with Construction Drawings is completed, but in no instance shall a Final Plat be approved or Certificate of Occupancy be issued until all public infrastructure associated with approved Construction Drawings is complete, inspected, and accepted, or subject to a Performance Guarantee (see Section <>, Performance Guarantee).

<sup>43</sup> Public infrastructure is defined as: Development features consisting of streets and public alleys, bicycle infrastructure within a public right-of-way, curb and gutter, potable water lines, sanitary sewer lines, electrical service (where applicable), street drainage facilities, public stormwater control measures, and sidewalks or trails located within public rights-of-way.



#### 4. AMENDMENT

Amendment of Construction Drawings may only be reviewed and considered in accordance with the procedures and standards established for their original approval.

#### 5. INSPECTION

A passing inspection by Town staff or certification from a third-party utility service provider shall be obtained prior to issuance of a Final Plat or Certificate of Occupancy.

#### 6. AS-BUILT PLANS

As-built plans shall be required prior to issuance of a Final Plat or Certificate of Occupancy in accordance with [Section <>, As-built Plans Required](#).

#### 7. EXPIRATION

See [Section <>, Expiration](#).

#### 8. VESTING

See [Section <>, Statutory Vested Rights](#).

#### 9. APPEAL

In accordance with NCGS§160D-405, and [Section <>, Appeal](#).

### G. STAGE 3, FINAL PLAT

Submittal of a Final Plat application is the last stage of a proposed Major Subdivision. The Final Plat ensures that the subdivision and associated public infrastructure is configured in substantial conformity with the Preliminary Plat and all applicable regulations. It also helps ensure the Town or another landowner may readily determine and accurately reproduce the location, bearing, radius (as applicable) and length of the elements of a Major Subdivision.

#### 1. APPLICATION

- a. A Final Plat shall be submitted for every Preliminary Plat.
- b. In cases where a Major Subdivision has multiple phases, each phase must be depicted on its own Final Plat though there is no limitation on including two or more different phases on the same Final Plat.
- c. A Final Plat shall be prepared by a licensed professional surveyor.

#### 2. REVIEW CRITERIA

Applications for a Final Plat shall be decided by the Planning Director in accordance with [Section <>, Staff Review and Action](#), and the following:

- a. The Final Plat is on a sheet or sheets suitable for recording with the county Register of Deeds;
- b. The Final Plat is prepared and sealed by a licensed professional land surveyor;
- c. The Final plat complies with the standards in NCGS§47-30;
- d. The Final Plat includes all required certifications and declarations;
- e. All lots shown on the plat have an assigned street address in accordance with Town and County requirements;
- f. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the Construction Drawings are installed, inspected, and accepted by the Town, or are subject to a Performance Guarantee (see [Section <>, Performance Guarantees](#));
- g. All required easements and rights-of-way are properly depicted on the Final Plat;



- h.** If no public wastewater service is associated with the Major Subdivision, all lots have been certified by the county Health Department (as appropriate) as capable of accommodating the wastewater generated from the proposed use;
- i.** The Final Plat is in substantial conformance with the associated Preliminary Plat(s);
- j.** The applicant has secured all required State, federal, and other applicable County permit approvals;
- k.** The Final Plat complies with all standards and conditions of any applicable permits and development approvals; and
- l.** The Final Plat complies with all other applicable requirements in this Ordinance and Town policy.

### 3. RECORDATION

- a.** Once a Final Plat is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The Final Plat may not be recorded without this and all other required certifications.
- b.** Following certification, the applicant shall record the Final Plat and all associated protective covenants and deed restrictions in the office of the Register of Deeds in the county where the development is located. Failure to record the final plat in accordance with Section <>, Expiration, shall render the plat null and void.
- c.** The applicant shall be responsible for delivering a digital copy of the recorded Final Plat to the Planning Department. Failure to deliver the digital copy in accordance with Section <>, Expiration, shall render the plat null and void.

### 4. ACCEPTANCE OF PUBLIC INFRASTRUCTURE

- a.** Approval and recordation of a Final Plat constitutes an offer of dedication by the owner of the right-of-way of each public street and any other public infrastructure shown on the Plat.
- b.** Approval of the Final Plat does not constitute acceptance for maintenance responsibility of any improvements within a right-of-way or easement and the Town assumes no responsibility to open, operate, repair, or maintain any improvements until it is in the public interest to do so.
- c.** Improvements within rights-of-way or easements, such as streets, drainage facilities, or sidewalks may be accepted for maintenance by the Town, when deemed appropriate, in the Town's sole discretion.
- d.** The Town Council may, by resolution, accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within the extraterritorial jurisdiction.
- e.** Acceptance of dedication of lands or facilities located within the extraterritorial jurisdiction but outside the corporate limits of the Town shall not place on the Town any duty to open, operate, repair or maintain any street, utility line, or other land or facility, and the Town shall not be held responsible in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

### 5. EFFECT

- a.** Approval of a Final Plat allows the sale or conveyance of lots within the subdivision following recordation in the office of the Register of Deeds.
- b.** Building Permits may be issued following recordation of the Final Plat.



#### 6. AMENDMENT

Amendment of a Final Plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### 7. EXPIRATION

- a. A Final Plat shall be null and void unless it is recorded in the office of the Register of Deeds for the county where the development is located within 60 days of approval.
- b. If a Final Plat is not recorded within two years of the associated Preliminary Plat approval, or if there is a lapse of more than four years between the recording of different sections or phases, then the Preliminary Plat shall expire. In such cases, the Town may record a notice of expiration in the office of the Register of Deeds for the county where the development is located.
- c. An expired Preliminary Plat may be resubmitted in accordance with Section <>, Preliminary Plat.

#### 8. VESTING

See Section <>, Site-Specific Vesting Plan.

#### 9. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal



#### 2.3.18 MINOR SUBDIVISION<sup>44</sup>

##### A. APPLICABILITY

1. Divisions of land that include up to five lots (including the parent parcel) with no extension of or changes to public infrastructure (streets, sewer, water, etc.) shall be reviewed in accordance with the standards in this section.
2. No lot within a Minor Subdivision (including the parent parcel) shall be the subject of another Minor Subdivision application for a period of three years from the date the initial Minor Subdivision is recorded.

##### B. APPLICATION

1. Applications for a Minor Subdivision shall include a plat prepared by a registered land surveyor or professional engineer licensed to practice in North Carolina.
2. The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.
3. Applications for a Minor Subdivision served by on-site wastewater systems shall include an evaluation from the appropriate county health department indicating that an on-site wastewater system may be used on each lot included in the subdivision.
4. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
5. In cases where a Minor Subdivision is seeking to take advantage of sustainability incentives, allowable density bonuses, or allowable alternative forms of compliance, the application shall include supplemental details and justification for the use of these provisions.

##### C. PROCESS TYPE

Type II (see Section <>, Process Diagrams) except that a pre-application conference is optional and the Technical Review Committee shall comment on the proposed plat.

##### D. REVIEW CRITERIA<sup>46</sup>

An application for a Minor Subdivision shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

###### 1. GENERALLY

- a. The Minor Subdivision plat is on a sheet or sheets suitable for recording with the Register of Deeds in the county where the subdivision is located;
- b. The Minor Subdivision plat is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
- c. The Minor Subdivision plat complies with all applicable standards in this Ordinance and NCGS§47-30;
- d. The Minor Subdivision plat includes all required certifications and declarations;
- e. The applicant has secured all required State and federal permit approvals;

<sup>44</sup> This section is proposed to replace Section 155.706(H) of the current UDC. This Minor Subdivision procedure further clarifies that Minor Subdivisions are not subject to a Preliminary Plat. This section removes the three-year delay between successive Minor Subdivisions and permits the Planning Director to determine if a subsequent Minor Subdivision on land already subject to a Minor Subdivision plat approval should be reviewed as a Major Subdivision. It carries forward the treatment of Family Subdivisions as Minor Subdivisions and poses some questions about whether or not recombinations of existing lots of record that do not meet district requirements should be reviewed as a Minor Subdivision.

<sup>46</sup> NOTE: One suggestion in this draft UDO is the idea that a Minor Subdivision process can be used as the review procedure for combinations or recombinations of existing lots of record that do not conform to zoning district dimensional standards (with similar standards to those in 155.706(O) from the current UDC.



- f. All lots have been certified by the appropriate county Health Department as capable of accommodating the wastewater generated from the proposed use, if served by an on-site wastewater system;
- g. No drainage or utility easements will be required to serve any interior lots;
- h. All lots will have frontage on existing approved streets or qualify for ingress and egress via a shared driveway (see Section <>, Shared Driveway);
- i. Except in cases of a combination or recombination involving existing lots of record, all lots in the Minor Subdivision comply with the applicable dimensional requirements for the zoning district where located; and
- j. The development complies with all applicable overlay zoning district standards.

### 2. FAMILY SUBDIVISION

In cases where the Minor Subdivision is also a Family Subdivision, the following criteria shall also apply in addition to the criteria in sub-section (1) above:

- a. The owner and grantee certify, in writing, that the grantee of each lot is the husband, wife, mother, father, brother, sister, child (biological, adopted, or step), grandmother, grandfather, grandchild (biological, adopted, or step), aunt, uncle, niece, or nephew of the owner;
- b. The owner and grantee certify, in writing, that no consideration shall be paid for any of the lots;
- c. The owner and grantee certify that the purpose of the Minor Subdivision is not to circumvent the provisions of this Ordinance, and that none of the lots shall be conveyed to third parties for a period of not less than three years, and that the plat shall indicate this three-year limitation.
- d. Family subdivisions shall not be subject to the limit on successive minor subdivisions in Section <>, Limit on Successive Minor Subdivisions.

### E. RECORDATION

- 1. Once a Minor Subdivision plat is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The plat may not be recorded without this and all other required certifications.
- 2. Following certification, the subdivider shall record the plat, any certifications associated with a Family Subdivision, and any associated protective covenants and deed restrictions in the office of the Register of Deeds in the county where the development is located.
- 3. Failure to record the plat in accordance with Section <>, Expiration, shall render the plat null and void.
- 4. Land may not be conveyed or construction started until the Minor Subdivision is recorded.

### F. LIMIT ON SUCCESSIVE MINOR SUBDIVISIONS

The Planning Director may, in their sole discretion, determine that an application for a Minor Subdivision shall be processed as a Major Subdivision in cases where the land that is the subject of a Minor Subdivision application has already part of a Minor Subdivision approved after (insert the effective date of this Ordinance).

### G. SEQUENCE

An application for Site Plan, Special Use Permit, or Zoning Compliance Permit may be filed with a Minor Subdivision application, but the Minor Subdivision application shall be approved first.



#### H. EFFECT

1. Approval of the Minor Subdivision plat allows the sale or conveyance of lots within the subdivision.
2. Building permits may be issued following recordation of the Minor Subdivision plat.

#### I. AMENDMENT

Amendment of a Minor Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### J. EXPIRATION

A Minor Subdivision plat shall be null and void unless the signed or certified plat is recorded in the office of the Register of Deeds of the county where it is located within 30 days of approval.

#### K. VESTING

See Section <>, Statutory Vested Rights.

#### L. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.19 PERFORMANCE GUARANTEE<sup>47</sup>

##### A. PURPOSE AND INTENT

1. These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a Building Permit to commence with development prior to completion of all required infrastructure or site improvements, subject to the prior approval of the Town, and provided funds have been reserved for completion of these features.
2. These provisions ensure that funds are available for the Town's use to complete required public infrastructure or private site features in the event an applicant is unable to do so.

##### B. ELIGIBLE FEATURES

1. Performance Guarantees shall be configured and managed in accordance with the standards in this section. Acceptance of a Performance Guarantee is in the sole discretion of the Town, which is under no obligation to accept a request for or approve a Performance Guarantee for any feature or under any circumstance.
2. Requests for submittal of a Performance Guarantee instead of completion in advance of subdivision approval or Building Permit issuance may be filed with the Town for any of the following public infrastructure elements or private site features:
  - a. Sidewalks, sidepaths, trails, and greenways;
  - b. The final lift of asphalt on a Town-maintained public street;
  - c. Street lights and on-site exterior lighting;
  - d. Active and passive recreation features located within open space set-aside;
  - e. Private stormwater control measures and erosion control facilities; and
  - f. Placement or replacement of required vegetation, except when required as part of erosion control measures.

##### C. INELIGIBLE FEATURES

The following forms of public infrastructure may not be subject to a Performance Guarantee, and shall be completed, dedicated to the Town, and inspected prior to conveyance of lots or issuance of a Certificate of Occupancy:

1. Public potable water;
2. Public sanitary sewer;
3. Functional fire protection infrastructure;
4. The base and initial courses of asphalt on a street;
5. Drainage facilities associated with a street right-of-way;
6. Public stormwater control measures;
7. Curb and gutter; and
8. Street signs and traffic control signals.

##### D. STORMWATER AND EROSION CONTROL FACILITIES

Stormwater control measures and erosion control facilities shall comply with the specific provisions for Performance Guarantees associated with these features in accordance with NCGS§160D-804 rather than the standards in this section.

<sup>47</sup> This section replaces Section 155.607 of the current UDC. It has been extended to apply to private site features in addition to public infrastructure, and can be applied to site plans and other forms of development in addition to subdivisions. Additional clarity about ineligible features, amounts, extensions, renewal, as-builts, forfeiture, and release have been added. The current requirements for surety bonds are no longer permissible for anything but SCMs and erosion control features.



#### E. FORM

1. The form of a Performance Guarantee shall take one of the following forms, at the sole discretion of the applicant:
  - a. A surety bond issued by a firm licensed to operate in the State of North Carolina;
  - b. A letter of credit issued by a financial institution licensed to operate in the State of North Carolina; or
  - c. Cash or certified check; or
  - d. Other form of guarantee that provides equivalent security to the forms listed above, as determined by the Town.
2. In cases where more than one facility or site feature is requested to be subject to a Performance Guarantee, the applicant may provide a single, consolidated Performance Guarantee for all facilities or site features. In no instance shall Performance Guarantees associated with private stormwater control mechanisms or sedimentation control be consolidated with any other Performance Guarantee.
3. If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the Town guaranteeing the following:
  - a. That the escrow account shall be held in trust until released by the Town and may not be used or pledged by the developer for any other matter during the term of the escrow; and
  - b. That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the Town, immediately pay the funds deemed necessary by the Town to complete or repair the improvements up to the full balance of the escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town; and
  - c. The financial institution holding the cash or other instrument shall indicate to the Town its notification requirements for release or payment of funds.

#### F. PROCESS TYPE

1. Requests for provision of a Performance Guarantee shall be decided in the same manner as is used by the review authority for deciding the related application type based on the standards in Section <>, Review Criteria.
2. In cases where a request for a Performance Guarantee is filed after approval of a development application, or there is a request for renewal or extension, the Planning Director shall decide the Performance Guarantee request in accordance with Section <>, Staff Review and Action, and Section <>, Review Criteria.

#### G. REVIEW CRITERIA

1. An application for a Performance Guarantee shall be approved if the application complies with the following:
  - a. The request is for an eligible facility or site feature;
  - b. The request is in the form and the amount required;
  - c. The term of the guarantee is for the minimum period of time necessary; and
  - d. The application complies with this section, Section <>, Purpose and Intent of this Ordinance, and the Town's applicable Adopted Policy Guidance.
2. The Performance Guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the guarantee.



#### H. AMOUNT

##### 1. GENERALLY

- a. The amount of the performance guarantee shall not exceed 125% of the reasonably estimated cost of completion at the time the Performance Guarantee is issued.
- b. The Town may determine the amount of the Performance Guarantee or use a cost estimate determined by the applicant.
- c. The reasonably estimated cost of completion shall include 100% of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing.
- d. The additional 25% includes inflation and all costs of administration regardless of how such fees or charges are denominated.

##### 2. ESTIMATED COSTS

Estimated costs of completing installation of required public infrastructure or private site features shall be itemized by improvement type and certified by the developer's licensed professional.

##### 3. EXTENSION

The amount of any extension of any Performance Guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed 125% of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

##### 4. RENEWAL

If a Performance Guarantee is renewed, the Planning Director may require the amount of the Performance Guarantee be updated to reflect changes in cost over time.

#### I. SEQUENCE

1. Performance Guarantee applications may be filed along with or subsequent to any application for a Subdivision, Site Plan, Special Use Permit, Building Permit, or Zoning Compliance Permit, as appropriate.
2. Development subject to a Performance Guarantee shall not receive a Certificate of Occupancy or other final approval until all public infrastructure and private site features subject to a Performance Guarantee have been installed, inspected, and accepted by the Town or other appropriate agency.

#### J. AS-BUILT PLANS REQUIRED

##### 1. PUBLIC IMPROVEMENTS

Upon completion of public improvements, a professional engineer shall certify, in writing, that the completed public improvements have been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed.

##### 2. STORMWATER CONTROL MEASURES

Upon completion of a private stormwater control mechanism, the developer shall certify to the Engineering Director that the completed project is in accordance with all applicable requirements in this Ordinance and State law.



### 3. INSPECTION REQUIRED

A final inspection and approval by appropriate Town staff shall occur before the release of the Performance Guarantee.

## K. MAINTENANCE WARRANTY

### 1. WARRANTY FOR STORMWATER CONTROL MEASURES

- a. Upon completion of construction of public or private stormwater control measures, the developer shall request a warranty inspection. Once all the improvements are deemed acceptable by the Engineering Director and pass the warranty inspection, the developer shall submit the following to the Town:
  - i. A set of acceptable as-built drawings;
  - ii. A written warranty against defects which shall guarantee the material and workmanship of required improvements for a period of not less than one year from the date of such acceptance.
- b. A maintenance warranty payable to the Town equal to at least 25% of the cost of the installation of such improvements.

### 2. MAINTENANCE OF STREETS UNTIL ACCEPTANCE

Following completion, the developer of any development containing streets to be maintained by NCDOT or by an owners' association shall sign a street maintenance disclosure statement to guarantee that the streets will be properly maintained until the offer of dedication is accepted by the NCDOT, or until maintenance responsibility is transferred to an owners' association if streets are private.

## L. MAXIMUM TERM

Performance Guarantees shall have a maximum term of one year, unless the developer determines a longer term is necessary to complete the public infrastructure or private site features. Acceptance of a proposed guarantee remains at the discretion of the Town.

## M. EXPIRATION

1. The applicant shall demonstrate good faith towards the completion of public infrastructure or private site features subject to a Performance Guarantee. In the event the aspects subject to a guarantee are not completed prior to the expiration of the guarantee, the applicant shall request a renewal of the Performance Guarantee in accordance with these standards.
2. In the event an application for renewal of a Performance Guarantee has been filed with the Town prior to expiration of an existing guarantee, the Town shall delay the provision of notice of failure to install or complete improvements in accordance with [Section <>](#), [Forfeiture](#).

## N. FORFEITURE

### 1. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS

If the owner or developer fails to complete installation of the guaranteed improvements within the term of the Performance Guarantee (as may be extended), the Town shall give the owner or developer 30 day's written notice of the scope and degree of the default, by certified mail.



## 2. TOWN COMPLETION OF IMPROVEMENTS

- a. After the 30-day notice period expires, the Town may draw on the guarantee and use the funds to perform the work necessary to complete installation of the guaranteed improvements.
- b. After completing such work, the Town shall provide a complete accounting of the expenditures to the owner or developer.
- c. In the event of a default triggering the use of the performance guarantee, the Town shall return any of the unused deposited cash funds or other security.

## O. RELEASE OR REDUCTION

### 1. RELEASE OR REDUCTION REQUESTED

The Town shall release or reduce a Performance Guarantee only after:

- a. The owner or developer has submitted a written request to the Town for a release or reduction of the Performance Guarantee that includes certification by a professional engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);
- b. Town staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and
- c. No release or reduction in Performance Guarantee amounts will be considered until more than 25% of the work is in place and approved.

### 2. ACCEPTANCE SHALL BE DOCUMENTED

The Planning Director or Engineering Director, as appropriate, shall provide written notice of the Town's final acceptance of the improvements subject to a Performance Guarantee.

### 3. IMPROPER RELEASE OF PERFORMANCE GUARANTEE

If the Town releases a Performance Guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements in accordance with this Ordinance.

## P. APPEAL

1. Decisions by a Town Staff member may be appealed in accordance with NCGS§160D-405, and Section <>, Appeal.
2. Decisions by the Board of Adjustment or Town Council may be appealed in accordance with In accordance with Section <>, Decisions by Board of Adjustment, or in accordance with Section <>, Decisions by Town Council, as appropriate.



## 2.3.20 SIGN PERMIT<sup>48</sup>

### A. APPLICABILITY

1. All signs except those exempted from the sign regulations in Section <>, Exclusions, shall obtain a Sign Permit in accordance with this section before being erected, replaced, relocated, or altered.
2. Alterations limited to sign copy on a lawfully-established and conforming sign shall not require approval of a Sign Permit.
3. Temporary signage shall be reviewed in accordance with Section <> Temporary Permit.
4. Establishment of new outdoor advertising after (insert the effective date of this Ordinance) shall be prohibited. Changes to existing outdoor advertising shall be considered in accordance with Section <>, Special Use Permit.
5. Establishment of new development comprised of two or more principal buildings on one or more lots are encouraged to configure signage in accordance with a Uniform Sign Plan as a part of a Sign Permit application.
6. Applicants seeking to deviate from otherwise applicable signage provisions may request consideration of deviations in accordance with Section <>, Alternative Sign Plan.

### B. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

### C. REVIEW CRITERIA

Applications for a Sign Permit shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

#### 1. GENERALLY

- a. The standards in Section <>, Signage;
- b. The sign is located on the same lot or site as the business, product, or service being advertised;
- c. The North Carolina State Building Code, including requirements for electrical service, if applicable;
- d. All standards or conditions of any prior applicable permits and developments approvals; and
- e. All other applicable requirements of this Ordinance.

#### 2. UNIFORM SIGN PLANS

Uniform Sign Plans, if submitted, shall indicate each of the following:

- a. A Uniform Sign Plan shall include measured drawings and details about the parameters of signage permitted by the Plan;
- b. If the total amount of allowable signage in the development will be apportioned in a manner that deviates from the standards in Section <>, Signage, and if so how the signage will be apportioned;
- c. The maximum sign sizes by sign type, and by building type, if different;
- d. The rules for signage placement on multi-tenant buildings;

<sup>48</sup> NOTE: This procedure is proposed to replace Section 155.713 of the current UDC. This draft procedure seeks to ban new outdoor advertising and off-premise signage, treat temporary signage as a temporary use, and require uniform sign plans for multi-building developments. The current Alternative Sign Plan process is proposed for retention, but review is delegated to the Board of Adjustment rather than the Town Council.



- e. The range of proposed unifying elements for signage in the development, including but not limited to style, illumination, color, material; and
- f. Any additional information identified by the Planning Director as necessary to determine compliance with this Ordinance.

#### D. INSPECTION REQUIRED

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Applicants for a Sign Permit shall request inspection of signage by the Town following completion. Operating a use type with signage subject to these Sign Permit requirements but without a passing sign inspection shall be a violation of this Ordinance.

#### E. SEQUENCE

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1. A Sign Permit application may be filed with an application for a Site Plan, Subdivision, or Zoning Compliance Permit, but shall only be approved after these prior applications.
2. An application for a Sign Permit must be submitted with a request for consideration of an Alternative Sign Plan, but the alternative sign plan request shall be decided prior to the Sign Permit.

#### F. EFFECT

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##### 1. SIGN PERMIT

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Approval of a Sign Permit shall entitle a landowner to erect or modify signage on a development site.

##### 2. UNIFORM SIGN PLAN

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- a. Development subject to a Uniform Sign Plan shall require all owners, tenants, sub-tenants, and individual use types within the development to comply with the approved Uniform Sign Plan.
- b. No permanent signage shall be erected, altered, or maintained except in accordance with the approved Uniform Sign Plan.
- c. In cases where a Uniform Sign Plan is more restrictive than the standards in [Section <>](#), [Signage](#), the standards in the Uniform Sign Plan shall control.

##### 3. ALTERNATIVE SIGN PLAN

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Approval of an Alternative Sign Plan request shall permit consideration of the associated application for a Sign Permit.

#### G. AMENDMENT

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Amendment of a Sign Permit, Uniform Sign Plan, or Alternative Sign Plan may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### H. EXPIRATION

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If the work authorized by a Sign Permit is not substantially commenced within six months from the date of issuance, the Sign Permit shall become null and void.

#### I. VESTING

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In accordance with [Section <>](#), Statutory Vested Rights.

#### J. APPEAL

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In accordance with NCGS§160D-405, and [Section <>](#), Appeal.



### K. ALTERNATIVE SIGN PLAN

Development proposing to construct or modify existing signage in ways that do not comply with the standards in [Section <>, Signage](#), shall be subject to the requirements for an alternative sign plan in accordance with this section.

#### 1. PURPOSE

The alternative sign plan process is included to allow for creativity of sign design and configuration in ways that do not otherwise comply with the applicable standards of this Ordinance, but that are found to be in closer alignment with the Town's Adopted Policy Guidance or the provisions in [Section <>, Purpose and Intent of Ordinance](#) than would result from the strict application of the signage provisions of this Ordinance.

#### 2. APPLICABILITY

Any application for a Sign Permit may incorporate a request for an alternative sign plan configured in accordance with this section, but in no instance shall an alternative sign plan include prohibited signage identified in [Section <>, Prohibited Signage](#).

#### 3. CONTENTS

Requests for an Alternative Sign Plan shall be part of an application for a Sign Permit, and shall include all of the following:

- a. A written statement detailing the project information, the proposed alternatives being requested, and an explanation of how the proposed alternative meets the standards in [Section <>, Review Criteria](#);
- b. The location of land subject to the Alternative Sign Plan;
- c. The proposed allocation of permitted sign area among tenants and any other proposed signs;
- d. The total allowable sign face area for the project;
- e. Sketches of generic sign design and appearance for each sign type provided in Pantone Matching System (PMS) colors, vinyl manufacturer and numbers, or comparable industry standard of color identification;
- f. Color specifications for each sign component shall be specified, including but not limited to sign face backgrounds, lettering, and the sign structure;
- g. A plan or other graphical depiction showing where each particular sign type is proposed;
- h. A justification for the Alternative Sign Plan request, including how the proposed signage will result in a development that is in closer alignment with the Town's Adopted Policy Guidance or the standards in [Section <>, Purpose and Intent of Ordinance](#); and
- i. Any additional information requested by the Planning Director considered necessary to allow the Board of Adjustment to measure the application's conformance with the applicable review criteria.

#### 4. PROCEDURE

Type III (see [Section <>, Process Diagrams](#)), except that applications for an Alternative Sign Plan shall also include an application for Sign Permit, which shall be reviewed in by Town staff following consideration of the Alternative Sign Plan request by the Board of Adjustment

#### 5. DECISION

- a. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by arguments presented at the evidentiary hearing, and the standards in [Section <>, Review Criteria](#).



- b. The decision shall be one of the following:
  - i. Approval of the Alternative Sign Plan as proposed;
  - ii. Approval of the Alternative Sign Plan with revisions; or
  - iii. Denial of the Alternative Sign Plan as proposed.
- c. Voting shall be in accordance with Section <>, Voting.
- d. Each decision shall be made in writing and reflect the Board of Adjustment's determination of facts and their application to the standards in this Ordinance.
- e. The written decision shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
- f. The decision of the Board of Adjustment shall be effective upon the filing of the written decision in the offices of the Planning Department.

#### 6. REVIEW CRITERIA

An Alternative Sign Plan application shall be only approved provided on a finding the applicant demonstrates:

- a. The contents of the Alternative Sign Plan request are consistent with the applicable requirements of this section;
- b. The proposed sign design, size, color, illumination, and placement are compatible in style and character with any building to which the sign is to be attached, any surrounding structures, any adjoining signage on the site, and/or the district character or architectural character of the area in which it is located;
- c. The Alternative Sign Plan proposes innovative, but appropriate, use of materials and design techniques in response to unique characteristics of the specific site, if applicable;
- d. The signage envisioned by the Alternative Sign Plan application will be consistent with approved neighborhood plans, studies, or area plans;
- e. The Alternative Sign Plan improves the safety and welfare of the general public by minimizing distractions, hazards, and obstructions from sign design or placement; and
- f. The signage anticipated by the Alternative Sign Plan signage will result in a development that is in closer alignment with the Town's Adopted Policy Guidance or the standards in Section <>, Purpose and Intent of Ordinance.

#### 7. CONDITIONS OF APPROVAL

The Board of Adjustment may apply conditions to any approval of an Alternative Sign Plan in accordance with Section <>, Conditions of Approval. Conditions may include, but are not limited to, any of the following:

- a. Specification of color(s);
- b. The number of signs;
- c. The total amount of sign face area;
- d. The location of signs;
- e. The maximum height of signs;
- f. Sign illumination; and
- g. The types of signs allowed.

#### 8. AMENDMENT

Amendment of an Alternative Sign Plan approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.



#### 2.3.21 SITE PLAN<sup>49</sup>

##### A. APPLICABILITY

Except for development exempted from Site Plan review in accordance with Section <>, Exemptions, all of the following forms of development shall be subject to Site Plan review in accordance with this section:

1. Any development involving construction, moving, or significant alteration of a building or habitable structure;
2. Any development that results in the increase in the amount of impervious surface on a lot;
3. Any development that changes the vehicular access to or internal circulation on a lot; or
4. Any development subject to a Concept Plan.

##### B. EXEMPTIONS

1. The following forms of development are exempted from Site Plan review, but remain subject to the applicable standards in this Ordinance:
  - a. Construction of one single-family detached dwelling on an individual lot that does not include changes to or extension of public infrastructure;
  - b. Placement of one manufactured or mobile home on its own lot in a zoning district permitting such uses that does not include changes to or extension of public infrastructure;
  - c. Establishment of an accessory use in an existing structure, or a new accessory structure(s) of 1,000 square feet in floor area or less than the total floor area that existed on a lot on (insert the effective date of this Ordinance);
  - d. Interior fit-ups or changes to a lawfully-established non-residential structure or use type that do not result in the need for additional off-street parking spaces, additional screening or landscaping, any changes to existing impervious surface coverage, or changes to or extension of public infrastructure;
  - e. The construction or alteration of a sign, subject to the requirements and procedures in Section <>, Sign Permit;
  - f. The establishment of a temporary use or structure, subject to the requirements and procedures in Section <>, Temporary Permit;
  - g. The construction or alteration of a fence or wall, subject to the requirements of Section <>, Zoning Compliance Permit;
2. Development exempted from Site Plan review is still required to obtain a Building Permit in accordance with the North Carolina State Building Code and a Zoning Compliance Permit in accordance with this Ordinance.

##### C. LIMITATIONS

A Site Plan application may be filed concurrently with an application for a Conditional Rezoning or a Special Use Permit, but a Site Plan shall not be a part of a Conditional Rezoning or Special Use Permit application. Conditional Rezoning and Special Use Permit applications shall include a Concept Plan, not a Site Plan. Site Plans shall be reviewed for consistency with an approved Special Use Permit or Conditional Rezoning Concept Plan, if applicable.

<sup>49</sup> This section replaces Section 155.707 in the current UDC. Site Plan exemptions for zero lot line developments and duplexes are not carried forward. This procedure places greater reliance on cross referencing amendment, dedication, performance guarantees, and others. The new UDO uses a somewhat more generic set of amendment guidelines and does not carry forward the current tiered approach to minor amendments based on distance shifts relative to development size. Nor does it carry forward the administrative amendment procedure mentioned in the current UDC - major modifications to a Site Plan must undergo the same process as is used to establish the Site Plan (in accordance with State law). The review criteria are also simplified in this proposed procedure. Site Plans that propose changes to or extensions of public infrastructure are required to comply with the Construction Drawing requirements found in the Major Subdivision procedure.



#### D. STAGES OF REVIEW

The review of a Site Plan application that includes changes to or the extension of public infrastructure is organized into the following two stages:

1. Stage One, review of the Site Plan;
2. Stage Two, review of Construction Drawings for associated public infrastructure.
3. Site Plans that do not include changes to or the extension of public infrastructure shall not require review of Construction Drawings.
4. Nothing shall prevent the review of application materials associated with Stages One and Two concurrently.

#### E. PROCESS TYPE

1. Type II (see Section <>, Process Diagrams) for each of the two stages of review.
2. The Technical Review Committee shall comment on plats and plans prepared as part of each stage.

#### F. APPLICATION

1. Site Plan applications shall be prepared by a North Carolina licensed professional qualified to prepare such documents. Site Plans shall be prepared to scale and shall include the basic information for Site Plans identified in the Procedures Manual or other Town requirements.
2. When a development includes phases, the Site Plan shall depict the entire development and shall indicate all phasing boundaries.
3. The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.
4. The Site Plan application shall include a wastewater allocation request prepared in accordance with all Town requirements if proposing to utilize public sewer.
5. Applications that involve changes to or extension of public infrastructure shall include construction drawings prepared in accordance with Section <>, Construction Drawings.
6. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
7. In cases where development is seeking to take advantage of sustainability incentives, allowable density bonuses, or allowable alternative forms of compliance, the application shall include supplemental details and justification for the use of these provisions.
8. Applications proposing to disturb one acre of land or more shall include details on compliance with Section <>, Erosion Control Plan.

#### G. REVIEW CRITERIA

Applications for a Site Plan shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

1. All standards or conditions of any prior applicable permits and development approvals;
2. Any applicable Concept Plans, master plans, or plats;
3. All applicable requirements of this Ordinance and Town policy; and
4. All applicable County, State, and federal requirements.



## H. CONSTRUCTION DRAWINGS

### 1. DRAWING REQUIREMENTS

Site Plan applications that include changes to or extensions of public infrastructure shall include construction drawings configured in accordance with the following:

- a. Construction drawings shall be prepared by, signed, and stamped by a licensed professional engineer;
- b. Construction drawings shall show both the horizontal or "plan" view of infrastructure as well as the vertical or "profile" view of infrastructure; and
- c. When a Site Plan is to be developed in phases, construction drawings shall be submitted for each individual phase and public infrastructure shall be provided so that each lot is adequately served by public infrastructure at the time of conveyance regardless of the phase of development.

### 2. CONSTRUCTION DRAWING REVIEW CRITERIA

The portion of a Site Plan application including construction drawings shall be decided by the Engineering Director in accordance with [Section <>, Staff Review and Action](#), and the following:

- a. Construction Drawings shall be prepared by a professional engineer licensed by the State of North Carolina;
- b. The location and configuration of public infrastructure shall be substantially consistent with the Site Plan;
- c. Public infrastructure elements depicted in the construction drawings are configured in accordance with all applicable Town and State requirements;
- d. The construction drawings include all design sheets necessary to determine compliance; and
- e. Copies of all required third-party agreements, permits, and approvals necessary to begin construction are included.

## I. SEQUENCE

1. Site Plan applications may be submitted or reviewed concurrently with construction drawings or any other development application, but Site Plans shall not receive final approval until after an associated Annexation, Development Agreement, Rezoning, or Subdivision application.
2. Developments subject to a Site Plan shall also be required to obtain a Zoning Compliance Permit, a Building Permit, and may be required to obtain other approvals, such as a Tree Clearing Certificate. Permits associated with site features depicted on a Site Plan may be filed with a Site Plan application, but shall not be issued until after the Site Plan is approved.

## J. EFFECT

### 1. ZONING COMPLIANCE PERMIT

A Site Plan approval authorizes the submittal of or review of an application for a Zoning Compliance Permit in accordance with [Section <>, Zoning Compliance Permit](#). In cases where the Planning Director determines that a Zoning Compliance Permit is not required, then an applicant may file an application for a Building Permit in accordance with [Section <>, Building Permit](#).



## 2. CONSTRUCTION DRAWINGS

- a. Construction drawings for all public infrastructure included with the Site Plan application shall be approved prior to street and utility construction in accordance with the applicable Town standards.
- b. In the case of a multi-phase Site Plan, any street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

## 3. AS-BUILT PLANS

As-built plans for all public infrastructure shall be submitted in accordance with Section <>, As-Built Plans Required prior to issuance of a Certificate of Occupancy or other final approval.

## 4. PERFORMANCE GUARANTEES

All public infrastructure and private site features that have not been installed by the developer, inspected, and accepted by the Town shall comply with the requirements in Section <>, Performance Guarantees, prior to the issuance of a Certificate of Occupancy or other final approval.

## 5. EROSION CONTROL PERMIT

A Site Plan approval authorizes the submittal of soil erosion and sedimentation control plans and the issuance of an Erosion Control Permit in accordance with Section <>, Erosion Control Permit, if applicable.

## 6. STORMWATER PERMIT

A Site Plan approval authorizes the submittal of stormwater management plans and the issuance of a Stormwater Permit in accordance with Section <>, Stormwater Permit, if applicable.

## 7. FEE-IN-LIEU

A Site Plan approval authorizes the filing of an applicant-requested payment of Fee-in-Lieu, or payment of Town-mandated Fee-in-Lieu in accordance with Section <>, Fee-in-Lieu.

## K. AMENDMENT

Amendment of a Site Plan approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

## L. EXPIRATION

1. Approval of a Site Plan application shall expire and become null and void if substantial commencement<sup>51</sup> is not undertaken within one year for the date of approval.

<sup>51</sup> Substantial commencement is defined as follows: The initiation of development or development-related activity subject to the requirements of this Ordinance. Each of the following activities must have taken place in order to achieve substantial commencement:

- All required authorizations to begin the development (including a Building Permit) are secured; and
- All application fees and applicable fines have been paid in full; and
- Any required notice of commencement to all governmental entities or other identified parties has taken place; and
- Performance of some form of site-related activity that requires prior approval from the Town has taken place.

Initiation of site-related activity that does not require some form of approval from the Town, such as surveying, site investigation, plan or study preparation, minor clearing or grubbing of the site, full or partial demolition, or agricultural related activity associated with a bona fide farm, shall not be considered as substantial commencement.

Substantial commencement does not require the start of construction on a principal structure or commencement of the anticipated operation of the approved use.



2. Approval of a Site Plan application shall expire and become null and void if work is voluntarily stopped by the developer and the development fails to maintain substantial progress<sup>52</sup> for a period of one year or longer.
3. Where more than one principal building is included with an approved Site Plan, the applicant may submit a series of Building Permit applications. The first application shall be submitted within one year from the date the Site Plan is approved. Each subsequent Building Permit application shall be submitted within 180 days from the date of issuance of a Certificate of Occupancy or other final approval for the previous building.
4. An applicant may file a request, prior to the expiration of the Site Plan, for a one-time one-year extension to the approval of a Site Plan for good cause shown. The determination of good cause shall be at the sole discretion of the Planning Director.

#### M. VESTING

1. See Section <>, Site-Specific Vesting Plan, or Section <>, Multi-Phase Development Plan, as appropriate.
2. Applicants seeking a longer vesting term may file an application in accordance with Section <>, Vested Rights Certificate.

#### N. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.

<sup>52</sup> Substantial progress is defined as follows: condition where an applicant has commenced an activity, achieved a minimum threshold of completion, and maintained regular, continuous progress towards completion of the activity. Regular or frequent intermittent interruptions or discontinuance of activities shall not be considered as substantial progress. Examples of substantial progress include completion of required inspections before permit applications expire, meeting deadlines for affirmative acts such as recordation, payment of funds, or applying for subsequent, but required approvals.



#### 2.3.22 SPECIAL USE PERMIT<sup>53</sup>

##### A. PURPOSE AND INTENT

This Special Use Permit procedure defines the process for consideration of a proposed use type that may be allowable in a zoning district, but because of its nature or potential deleterious effects, it requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings.

##### B. APPLICABILITY

1. Uses identified as requiring a Special Use Permit in Table <>, Listing of Common Principal Uses, or in Table <>, Listing of Common Secondary Uses, shall be approved in accordance with the procedures and standards of this section.
2. Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.
3. In cases where a single use type located within a larger multi-building or multi-use development requires a Special Use Permit, only that particular use type and the lot it is located upon shall be subject to the Special Use Permit, not the entire development.

##### C. APPLICATION

1. An application for a Special Use Permit shall include a Concept Plan depicting the proposed use and site configuration. The Technical Review Committee shall review and comment on the Concept Plan prior to consideration of the application by the Board of Adjustment.
2. The application shall include a Transportation Impact Analysis for review, when required by Section <>, Transportation Impact Analysis.
3. Applications that involve changes to or extension of public infrastructure shall identify these features on the Concept Plan.
4. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information identified in Section <>, Fee-in-Lieu.
5. In cases where development is seeking to take advantage of sustainability incentives, allowable density bonuses, or allowable alternative forms of compliance, the application shall include supplemental details and justification for the use of these provisions.
6. Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.

##### D. PROCESS TYPE

Type III (see Section <>, Process Diagrams) except that Special Use Permits are required to conduct a neighborhood meeting.

##### E. DECISION

1. A decision by the Board of Adjustment on a Special Use Permit shall be based on the competent, material, and substantial evidence in the record, as supplemented by

<sup>53</sup> This procedure replaces Section 155.711 in the current UDC. One key change is that review of Special Use Permits has been delegated to the Board of Adjustment rather than the Town Council. The draft procedure requires a Concept Plan, not a Site Plan, though a Site Plan must be reviewed after SUP approval in order to establish the development. The current amendment language has been replaced with a simple requirement that any amendments follow the same process as the original approval. The current 4/5 voting requirement for revocation is not in accordance with State law and has been removed.



arguments presented at the evidentiary hearing, and the standards in [Section <>, Review Criteria](#).

2. The decision shall be one of the following:
  - a. Approval of the Special Use Permit, as submitted;
  - b. Approval of a revised Special Use Permit; or
  - c. Denial of the Special Use Permit.
3. In making its decision on a Special Use Permit, the Board of Adjustment shall not waive or reduce any applicable standard of this Ordinance. It is permissible for the Board of Adjustment to apply conditions of approval that exceed the standards in this Ordinance, as necessary, to mitigate any potentially negative impacts of the use on its surroundings.

#### F. REVIEW CRITERIA

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A Special Use Permit shall be approved upon a finding of fact by the Board of Adjustment that the proposed special use:

1. Is subject to a Concept Plan that accurately depicts the proposed use's configuration and addresses public infrastructure if changes to or extension of public infrastructure are required as part of the application;
2. Complies with all required standards, conditions, and specifications of this Ordinance, including all zoning district dimensional requirements and use-specific standards;
3. Will not materially endanger the public health or safety;
4. Will not substantially injure the value of the abutting land, or the special use is a public necessity;
5. The proposed development will not cause traffic congestion or create a traffic hazard; and
6. Will be in harmony with the intensity, scale, and character of existing or planned development in the area in which it is to be located.

#### G. CONDITIONS

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1. The Board of Adjustment may apply conditions of approval that are reasonable and appropriate in accordance with NCGS§160D-705(c) and [Section <>, Conditions of Approval](#).
2. Conditions may be proposed to:
  - a. Assure that the use will be harmonious with the intensity, scale, and character of the area where proposed;
  - b. Ensure the use is consistent with the purpose and intent of this Ordinance;
  - c. Limit the permit to a specified duration;
  - d. Place limits on the availability for occupancy of proposed residential dwelling units to coincide with the provision or maintenance of adequate public facilities; or
  - e. Address other considerations necessary, in the sole discretion of the Board of Adjustment.
3. All conditions shall be identified in the approval, the notice of decision, and on any associated Concept Plans.
4. The notice of decision shall not be prepared until the applicant has consented to all applicable conditions of approval in writing.

#### H. SEQUENCE

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1. Special Use Permit applications may include an application for a Site Plan, Zoning Compliance Permit, and Building Permit, but the Special Use Permit shall be decided first.



2. A Concept Plan shall not substitute for a required Site Plan or subdivision plat. Site Plans and subdivision plats are reviewed after approval of the Special Use Permit.
3. Special Use Permit applications may be filed with a rezoning application, but the rezoning application shall be decided first.
4. Special Use Permit applications may be filed with an application for a Variance, but the Variance application shall be approved first.

#### I. EFFECT

1. Approval of a Special Use Permit allows an applicant to file an application for a Site Plan.
2. A Special Use Permit approval is perpetually binding and shall run with the land, unless amended or limited in duration by the Board of Adjustment.
3. An action invalidating a special use condition of approval (such as an intensity or hours of operation limitation) shall render the Special Use Permit and associated Concept Plan null and void.
4. Special uses shall meet all applicable State and federal requirements for location and operation. Failure to maintain compliance with those requirements may result in the revocation of the Special Use Permit and associated Concept Plan.

#### J. AMENDMENT

Concept Plans shall only be amended in accordance with the standards in this section. Amendments to a Concept Plan approval shall be considered as minor modifications or major modifications, and must be considered in accordance with the following:

##### 1. MINOR MODIFICATIONS

- a. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the application approval.
- b. Minor modifications shall be reviewed and decided by the Planning Director, in consultation with other appropriate Town staff.
- c. Minor modifications may include any changes not identified as a major modification in Section <>, Major Modifications.

##### 2. MAJOR MODIFICATIONS

- a. Changes that materially affect the basic configuration of the development, a condition of approval, or that require additional evidentiary support beyond that presented at the public hearing shall be considered major modifications.
- b. Major modifications include, but are not limited to:
  - i. A change in the boundaries of a site;
  - ii. A change in the approved use type;
  - iii. An increase in the amount of floor area by five percent or more beyond that approved under the initial Special Use Permit;
  - iv. An increase in the total number of provided off-street parking spaces by ten percent or more beyond that approved under the initial Special Use Permit;
  - v. A change in the location of a principal or accessory structure by more than 10 feet in any direction;
  - vi. Structural alterations increasing the structure height;
  - vii. Alterations affecting the form, ornamentation, or appearance of a principal or accessory structure as shown in the Concept Plan;
  - viii. Changes in density or intensity;
  - ix. Decreases in open space;



- x. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected) or pedestrian access or circulation;
  - xi. A change in the amount or location of proposed landscaping or required screening; or
  - xii. Changes to site features that require the application of professional judgement or discretion by a licensed landscape architect, architect, or professional engineer.
- c. Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

## K. EXPIRATION

### 1. REPLACEMENT

If a special use is replaced by a use type permitted by right in the zoning district, the Special Use Permit approval is deemed abandoned and the Special Use Permit approval is null and void.

### 2. FAILURE TO START OR COMPLETE CONSTRUCTION

Unless otherwise stated in the Special Use Permit approval, a Special Use Permit shall expire and become null and void two years after the date of issuance if:

- a. An application for a Site Plan or subdivision plat has not been filed;
- b. Substantial commencement<sup>54</sup> of construction has not taken place; or
- c. Construction activities have started, but the owner has voluntarily stopped construction and substantial progress has not been maintained.

### 3. MULTIPLE BUILDING PERMITS

Where more than one principal building is included with an approved Special Use Permit, the applicant may submit a series of Building Permit applications. The first application shall be submitted within one year from the date the Special Use Permit is approved. Each subsequent Building Permit application shall be submitted within 180 days from the date of issuance of a Certificate of Occupancy or other final approval for the previous building.

## L. REVOCATION

1. In the event of failure to comply with the plans or any other conditions imposed upon the Special Use Permit approval, the Planning Director shall give the permit holder 10 days written notice of intent to revoke the permit and request the permit holder to contact staff to set a reasonable time for the violation to be corrected.
2. A Special Use Permit may only be revoked in accordance with the procedure used to grant its approval.
3. If the permit is revoked and the special use has not ceased, the use is considered a violation of this Ordinance and subject to enforcement and penalties in Chapter 7, Violations.

## M. VESTING

1. See Section <>, Site-Specific Vesting Plan.
2. Applicants seeking a longer vesting term may file an application in accordance with Section <>, Vested Rights Certificate.

## N. APPEAL

In accordance with Section <>, Decisions by Board of Adjustment.

<sup>54</sup> Substantial commencement is defined in Site Plan procedure.





#### 2.3.23 STORMWATER PERMIT<sup>55</sup>

##### A. PURPOSE AND INTENT

This Stormwater Permit procedure governs the design, installation, and construction of proposed post-construction structural stormwater control measures or other design features intended to prevent or mitigate any adverse effects of increased post-construction stormwater runoff into receiving surface waters in accordance with Section <>, Stormwater, and NCGS§160D-925.

##### B. APPLICABILITY

1. The standards in this section shall apply to all forms of residential development that cumulatively disturbs an acre of land or more, including Exempt or Limited Subdivisions.
2. The standards in this section shall apply to all forms of mixed-use or non-residential development that cumulatively disturbs one-half-acre of land or more, including Exempt or Limited Subdivisions.
3. These standards shall also apply to development disturbing less than the specified amount of land area when it is a part of a larger development that will disturb more than the designated minimum threshold in aggregate even though multiple, separate, or distinct activities take place at different times on different schedules.

##### C. EXEMPTIONS

The following forms of development shall be exempted from these standards:

1. Development or redevelopment that cumulatively disturbs less than one acre and is not part of a larger master plan, subdivision plat, or common plan of development is exempt from these standards;
2. Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (e.g., ongoing farming and forestry activities); and
3. A project owned or operated by a governmental agency that is already subject to a NPDES stormwater permit.

##### D. APPLICATION

1. An application for a Stormwater Permit shall describe how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this Ordinance.
2. All applications shall include a stormwater management plan configured in accordance with the following:
  - a. The stormwater management plan shall be prepared by a qualified licensed North Carolina professional engineer, surveyor, soil scientist, or landscape architect. The engineer, surveyor, soil scientist, or landscape architect shall perform services only within their area of competence.
  - b. The stormwater management plan shall detail how post-development runoff will be controlled and managed and how the proposed project will meet the requirements of this Ordinance, including Section <>, Stormwater.

<sup>55</sup> This section carries forward the Stormwater Permit procedure found in Section 58.026 in the Town Code of Ordinances. This draft relies on the more generic procedures set out in draft Section 2.4 instead of repeating them in each procedure. In addition, this draft procedure removes the 15- and 30-day review time periods. Based on review of the Town's current standards, the pre-application conference was changed from optional to mandatory.



- c. The stormwater management plan shall contain a signed and sealed statement certifying that the design of all stormwater management facilities and practices will comply with the standards of this Ordinance and all other applicable requirements.

#### E. PROCESS TYPE

Type I (see Section <>, Process Diagrams).

#### F. REVIEW CRITERIA

The Stormwater Administrator shall decide an application for a Stormwater Permit in accordance with Section <>, Staff Review and Action, and the following:

1. All relevant standards in Section <>, Stormwater;
2. The approved stormwater management plan and associated stormwater maintenance plan;
3. All standards or conditions of any prior applicable permits or development approvals;
4. All other applicable requirements of this Ordinance and Town policy; and
5. All applicable State and federal requirements in place at the time the application is accepted as complete.

#### G. FINAL APPROVAL

##### 1. COMPLETENESS PRIOR TO RECORDATION

The construction of all structural stormwater management improvements shown on an approved and permitted Stormwater Management Plan shall be substantially complete or subject to a performance guarantee prior to Final Plat recordation or issuance of a Certificate of Occupancy.

##### 2. CERTIFICATION

Upon completion of a project and its associated structural stormwater management improvements, and before a Certificate of Occupancy shall be granted, the professional responsible for its design shall certify, under seal, that the completed project is in accordance with the approved Stormwater Management Plan and the requirements of this Ordinance.

##### 3. AS-BUILTS

- a. The professional responsible for the stormwater management improvements shall also submit as-built plans in accordance with this section.
- b. As-built plans shall be certified by a licensed North Carolina professional engineer, and shall show the final design specifications for all stormwater management improvements and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.
- c. The professional responsible for the stormwater management plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this Ordinance.

#### H. SEQUENCE

1. A Stormwater Permit may be filed along with a Site Plan or Preliminary Plat, but shall only be approved in conjunction with or after the Construction Drawing portion of a Site Plan or Preliminary Plat for Major Subdivision.
2. A Stormwater Permit shall be approved prior to a Building Permit or a Final Plat.



#### **I. EFFECT**

Approval of a Stormwater Permit allows for applicants to convert temporary erosion control measures associated with Phase One of an Erosion Control Plan to permanent stormwater control measures associated with the approved Stormwater Permit.

#### **J. AMENDMENT**

Amendment of a Stormwater Permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **K. EXPIRATION**

1. A Stormwater Permit shall expire and become null and void if an applicant fails to make substantial progress on the site within one year after the date of approval.
2. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

#### **L. VESTING**

In accordance with Section <>, Statutory Vested Rights.

#### **M. APPEAL**

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.24 STREET RENAMING/ CLOSURE<sup>56</sup>

##### A. APPLICABILITY

This process for the renaming or closure of streets is applied to publicly-owned or maintained streets operated by the NCDOT or the Town.

##### B. APPLICATION

1. In cases where the Town initiates an application to abandon an existing or platted street, it shall first file a Resolution of Intent to Abandon the street in accordance with NCGS§160A-299.
2. In cases where an application to rename an existing street is filed by landowners (not the Town) the application shall be supplemented with a petition signed by at least 75 percent of the landowners that are affected by the renaming. The application shall also include the desired street name.
3. Applications for Street Renaming filed by landowners for reasons other than public safety or emergency service delivery shall require a determination of merit by Town staff prior to review by the Planning Board.

##### C. PROCESS TYPE

Type IV (see Section <>, Process Diagrams).

##### D. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in Section <>, Review Criteria.
2. The decision shall be one of the following:
  - a. Approve the Street Renaming/ Closure of all or a portion of the street right-of-way;
  - b. Denial of the Street Renaming/ Closure; or
  - c. Remand of the application to the Planning Board for further consideration.
3. In no instance shall the Town Council approve a different street name or extent than requested without new public notification and another public hearing.

##### E. REVIEW CRITERIA

An application for a Street Renaming/ Closure shall be approved, provided:

###### 1. STREET CLOSURE

- a. Closing of the street is in the best interest of the public; and
- b. A landowner in the vicinity of the street would not be deprived of reasonable ingress or egress to their land.

###### 2. STREET RENAMING

- a. The street renaming is in accordance with all applicable street name requirements;
- b. The street renaming will serve the public interest by enhancing public safety or will do no harm;
- c. The street renaming will not adversely affect land values or cause excessive economic impact to landowners or the Town; and
- d. The street renaming will result in an overall public good that generally cannot be measured in monetary terms but is found to outweigh known or perceived economic interests and costs.

<sup>56</sup> This is a new procedure.



#### **F. RECORDATION**

The Town Clerk shall file a certified copy of a Street Closure approval in the office of the Register of Deeds in the county where located within a reasonable period of time after the approval.

#### **G. SEQUENCE**

Not Applicable.

#### **H. EFFECT**

##### **1. STREET CLOSURE**

Where a platted or existing street is abandoned in accordance with this section, the regulations applicable to a lot shall apply to the portion of the lot formerly occupied by the abandoned street.

##### **2. STREET RENAMING**

- a.** All approved street renaming applications shall have an effective date at least 45 days from the date of approval but may be further delayed for a set period of time not to exceed one year, to assist businesses and other affected landowners in preparing for the name change.
- b.** Street renaming initiated by the Town due to public safety or emergency service delivery issues may take effect immediately upon approval.

#### **I. AMENDMENT**

An application for a Street Renaming with the same name for the same street or portion of the same street shall not be filed within two years from the date of final action on the previous request, unless the Town Council determines a substantial change has occurred in the nature of the application that merits reconsideration.

#### **J. EXPIRATION**

Not Applicable.

#### **K. VESTING**

Not Applicable.

#### **L. APPEAL**

In accordance with Section <>, Decisions by Town Council.



#### 2.3.25 TEMPORARY PERMIT<sup>57</sup>

##### A. APPLICABILITY

1. The standards in this section apply to non-permanent uses and structures, including temporary signage, that take place on a temporary basis whether on the same site or in different locations in the Town's planning jurisdiction.
2. Temporary uses occurring within the public right-of-way require approval by the Town Council or NCDOT, as appropriate, and are not subject to a Temporary Permit.

##### B. EXEMPTIONS

Temporary uses or structures operated by the Town or the County for public safety or as part of a sanctioned governmental event shall be exempted from these requirements.

##### C. PROCESS TYPE

Type II (see Section <>, Process Diagrams).

##### D. REVIEW CRITERIA

The Planning Director shall decide applications for a Temporary Permit in accordance with Section <>, Staff Review and Action, and the following:

1. The applicant has written permission from the landowner, or is otherwise authorized to make use of the land;
2. The applicant has obtained the appropriate permits and approvals from the Town and other agencies;
3. The temporary use meets public utility and Town requirements for proper connection to water, sewer, electrical, and other utility service connections, as applicable;
4. Inclusion of any lighting or electrical service shall be subject to an approved electrical permit;
5. Any habitable structures shall require approval of a Building Permit;
6. The temporary use or activity complies with all applicable provisions in Section <>, Temporary Uses.
7. The temporary use does not violate the applicable conditions of approval that apply to a site or use on the site;
8. The proposed site contains sufficient land area for the temporary use and for the parking and traffic movement associated with the temporary use, without impacting the site's ability to comply with other applicable requirements of this Ordinance;
9. The temporary use is located outside a special flood hazard area;
10. The temporary use provides adequate on-site restroom facilities, if necessary;
11. Adequate provisions for crowd control shall be provided, if necessary in the sole opinion of the Planning Director;
12. Any signage associated with a Temporary Permit shall comply with the applicable standards in Section <>, Signage; and
13. The site of the temporary use shall be cleared of all debris at the end of the temporary use and all temporary structures shall be cleared from the site within five days after the use is terminated.

<sup>57</sup> NOTE: This procedure carries forward the current Temporary Use Permit in Section 155.712 of the current UDC. Temporary signage is addressed via a Temporary Permit rather than a Sign Permit. The blanket 30-day maximum duration in the current provisions is removed in favor of the variable duration provisions set down for temporary uses in new Chapter 4.



#### **E. SEQUENCE**

Temporary Permits shall be issued prior to issuance for Building Permit for a temporary structure.

#### **F. EFFECT**

Approval of a Temporary Permit shall authorize the establishment of a temporary use, structure, or activity for the duration identified in the approval.

#### **G. AMENDMENT**

Amendment of a Temporary Permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **H. EXPIRATION**

1. If the work authorized by a Temporary Permit is not substantially commenced within six months from the date of issuance, the Temporary Permit shall become null and void.
2. An approval of a Temporary Permit is only valid for the term included in the approval. In cases where the activity associated with a Temporary Permit approval cannot be undertaken within the allowable duration, the applicant may withdraw the application and reapply.
3. Failure to achieve substantial commencement or complete the temporary use or activity within the permitted duration shall render the Temporary Permit approval null and void.

#### **I. VESTING**

The vesting terms shall be in accordance with Section <>, Issuance of a Building Permit.

#### **J. APPEAL**

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.26 TEXT AMENDMENT<sup>58</sup>

##### A. APPLICABILITY

The standards and requirements of this section shall apply to applications to revise the text of this Ordinance.

##### B. APPLICATION

Applications to amend the text of this Ordinance may be initiated only by the Town Council, the Planning Board, or Town staff. Owners of land within the Town's planning jurisdiction, and residents of the Town of Clayton or its extraterritorial jurisdiction, may request that the Town consider a text amendment, but the decision to pursue a text amendment shall be within the sole discretion of the Town Staff, Planning Board, or Town Council, as appropriate.

##### C. PROCESS TYPE

Type IV (see Section <>, Process Diagrams).

##### D. RECOMMENDATION

1. After conclusion of a public meeting, the Planning Board shall make a recommendation on the application in accordance with Section <>, Review Criteria.
2. In making its recommendation, the Planning Board shall prepare a written statement regarding the application's consistency with the Town's Adopted Policy Guidance.

##### E. DECISION

1. The decision shall be based on the legislative discretion of the Town Council, taking into consideration any recommendation received from the Planning Director, prepared in consultation with other Town staff, the recommendation of the Planning Board, citizen comments, and the standards in Section <>, Review Criteria.
2. In making its decision, the Town Council shall adopt a written statement of reasonableness and consistency with the Town's Adopted Policy Guidance in accordance with NCGS§160D-605.

##### F. CITIZEN COMMENT

In cases where a resident or landowner submits written comments to the Town at least two business days prior to the date a decision is being made on the application, the Town staff member processing the application shall deliver the statement(s) to the Town Council.

##### G. REVIEW CRITERIA

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Town Council may, but is not required to, consider whether and the extent to which the proposed text amendment:

1. Enhances the public's health, safety, and welfare;
2. Is consistent with the Town's Adopted Policy Guidance;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Addresses an unforeseen matter not present when the Ordinance was adopted;
6. Addresses other factors determined to be relevant by the Town Council; and

<sup>58</sup> This section carries forward Section 155.703 of the current UDC with only minor adjustments and no substantive changes.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.26 Text Amendment

7. Would not result in significantly adverse impacts on the natural environment, including water, air, noise, stormwater management, wildlife, vegetation, and the natural functioning of the environment.

#### H. SEQUENCE

A Text Amendment application shall not be submitted with another application.

#### I. EFFECT

The Planning Director shall make changes to the text of this Ordinance promptly after approval of a text amendment application by the Town Council.

#### J. AMENDMENT

Not Applicable.

#### K. EXPIRATION

Not Applicable.

#### L. VESTING

Not Applicable.

#### M. APPEAL

In accordance with Section <>, Decisions by Town Council.



#### 2.3.27 TRANSPORTATION IMPACT ANALYSIS<sup>59</sup>

##### A. PURPOSE AND INTENT

This Transportation Impact Analysis (TIA) procedure allows an assessment of a proposed development's impact on the Town's transportation system. It identifies recommended transportation system improvements to be included by a proposed development as necessary to mitigate any negative impacts created by the proposed development.

##### B. APPLICABILITY

A Transportation Impact Analysis, prepared in accordance with this section shall be required for any of the following:

1. A new development anticipated to generate 100 or more vehicle trips during any peak hour, or 1,000 or more vehicle trips per day, based on the most recent edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual; or
2. A new development that is part of a larger development that, when considered cumulatively, will generate 100 or more vehicle trips during the AM or PM peak hour, or 1,000 or more vehicle trips per day, based on the most recent edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.
3. The proposed development is located on a roadway that has a demonstrated transportation capacity issue, as determined by the Engineering Director; or
4. There are likely to be significant changes to adjacent development traffic patterns, as determined by the Engineering Director, as a result of the proposed development.

##### C. TRAFFIC ASSESSMENT OPTION

1. In cases where the number of vehicle trips is not known (such as in the case of a Conventional Rezoning application), or in cases where the proposed uses will not result in 100 or more vehicle trips during any peak hour nor more than 1,000 vehicle trips per day, the Engineering Director shall require a traffic assessment instead of a Transportation Impact Analysis.
2. A traffic assessment is a general investigation of anticipated traffic on adjacent roadway capacity and function as opposed to detailed estimates of the number of trips and steps necessary to maintain a minimum operating level of service.
3. The procedures and requirements associated with a traffic assessment shall be as described in the Procedures Manual.

##### D. APPLICATION

1. The type, scope, and contents of a Transportation Impact Analysis shall be determined during the mandatory pre-application conference (see [Section <>](#), Pre-Application Conference).
2. A Traffic Impact Analysis shall be prepared by a professional engineer licensed in the State of North Carolina, and shall include all of the following:
  - a. The impact area examined, including the points of access and key streets and intersections to be affected by development;
  - b. Existing traffic volumes;
  - c. Planned and pending street improvements;

<sup>59</sup> This section carries forward the procedure and standards in Section 155.708 of the current UDC with the following changes. The Engineering Director is identified as the Town staff member to decide Transportation Impact Analysis applications. The procedure has been supplemented with a section on applicability (this is a must). There are also additional review criteria added.



## Chapter 2 Applications

### Section 2.3 Application Types

#### Sub-section 2.3.27 Transportation Impact Analysis

- d. The analysis methodology;
      - e. An inventory of the data used;
      - f. The findings of the analysis; and
      - g. Recommendations based on the results.
  3. The Engineering Director shall determine the geographic area to be included in a traffic impact analysis, which shall extend to a point the farther of:
    - a. One-half mile from the edges of the development site; or
    - b. Where the project traffic at build-out is less than 10% of the capacity of the roadway or intersection.
  4. Traffic recorder and turning movement assessment locations may also have to be determined.

#### E. PROCESS TYPE

Type I (see Section <>, Process Diagrams) except that a pre-application conference is mandatory and the Town may require third-party review of a proposed Transportation Impact Analysis prior to deciding an application.

#### F. THIRD-PARTY REVIEW

1. Transportation impact analyses that include State roads shall require review by the NCDOT.
2. The Engineering Director may require that an independent third party be hired by the Town to perform a required Transportation Impact Analysis, or to review a Transportation Impact Analysis filed by an applicant. The third party shall be a professional engineer licensed in the State of North Carolina to prepare such analyses, and the third party's contract shall be administered solely by the Town.
3. The Town shall determine the scope of services to be performed by third party and receive a cost estimate for such services.
4. The applicant shall provide funds to the Town in accordance with the Town's fee schedule.

#### G. REVIEW CRITERIA

The Engineering Director shall decide an application for a Transportation Impact Analysis based on Section <>, Staff Review and Action, the findings of the third-party review (if conducted), and the following:

1. The analysis is prepared and sealed by a licensed professional engineer with expertise in traffic engineering;
2. The analysis includes a summary of findings and recommendations for mitigation based on the Town's Adopted Policy Guidance and applicable State regulations;
3. The analysis conforms with the requirements of this section and the Town's Engineering Design Manual;
4. Full payment for all third party review costs has been provided;
5. The analysis identifies the post-development roadway lane configurations and levels of service for signalized and unsignalized intersections within the study area;
6. The projected traffic generated by the project, combined with existing traffic, either does not exceed the desirable operating level established in the impact area as identified in Section <>, Streets, or the impacts of the project traffic are properly mitigated by on-site and off-site improvements recommended in the analysis.
7. The analysis identifies the parties responsible for any recommended improvements; and



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.27 Transportation Impact Analysis

8. The applicant is willing and able to successfully mitigate the proportional impact that the proposed development will have on the public transportation network as identified in the Transportation Impact Analysis.

#### H. SEQUENCE

A Transportation Impact Analysis may be filed with an application for a rezoning, subdivision, Site Plan, Special Use Permit, Zoning Compliance Permit, or Building Permit, but the Transportation Impact Analysis shall be decided before these other application types.

#### I. EFFECT

1. Approval of a Transportation Impact Analysis permits an applicant to file for the next kind of development approval in the sequence.
2. In some cases, the results of a Transportation Impact Analysis may result in an applicant amending other applications in one or more of the following ways:
  - a. Changes in use type or scope to reduce the projected vehicle trips per day;
  - b. The dedication of additional right-of-way;
  - c. The rerouting of traffic or modifications or additions of the internal street network or proposed access and egress points;
  - d. Participation in the funding of a traffic signal, intersection improvement, or other off-site transportation improvement; and
  - e. Other modification determined to be necessary.

#### J. AMENDMENT

Amendment to an approved Transportation Impact Analysis may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### K. EXPIRATION

A Traffic Impact Analysis approval shall expire in accordance with the Concept Plan, Site Plan, subdivision plat, or other approval it is associated with.

#### L. VESTING

In accordance with Section <>, Statutory Vested Rights.

#### M. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



#### 2.3.28 TREE CLEARING CERTIFICATE<sup>61</sup>

##### A. PURPOSE AND INTENT

This Tree Clearing Certificate implements the enabling legislation granted to the Town by the North Carolina General Assembly. The purposes of this procedure is to establish some basic requirements for preserving existing vegetation around the perimeter of lots, or tracts for use towards meeting landscaping requirements of this Ordinance in the event the lot or tract is subsequently developed in accordance with this Ordinance. The intent of this procedure is to:

1. Protect existing trees and shrubs located upon undeveloped sites for use as future buffers and streetscapes to meet future development requirements;
2. Preserve existing tree and vegetative cover to protect the health safety and welfare of the public by:
  - a. Preserving the visual and aesthetic qualities of the Town;
  - b. Maintaining property values;
  - c. Controlling erosion; and
  - d. Reducing sediment and other pollutant run-off into streams and waterways to protect water quality.

##### B. APPLICABILITY<sup>62</sup>

Unless exempted in accordance with sub-section (C) below, a Tree Clearing Certificate shall be required for any land disturbing activities proposed on a site, lot or portion of a lot that is not subject to an approved subdivision, Site Plan, Conditional Rezoning, Zoning Compliance Permit, Erosion Control Permit, or similar development approval.

##### C. EXEMPTIONS

1. The following forms of development, land disturbance, or other activities are exempted from this section, but shall be subject to other applicable Town, County, State, or federal requirements.
  - a. Removal of existing trees on lots or tracts subject to an approved subdivision, Site Plan, Conditional Rezoning, Zoning Compliance Permit, Erosion Control Permit, or similar development approval, which shall comply with the tree protection requirements included in the approval.
  - b. The removal of existing trees on a single lot located within an approved single-family residential subdivision that is zoned for single-family use, and provided such trees are not included as required landscaping.
  - c. Forestry activities on property taxed on its present-use value as agricultural, horticultural, or forestland in accordance with NCGS Ch. 105, Article 12, or forestry activity that is conducted in accordance with a forestry management plan prepared or approved by a forester registered pursuant to NCGS Ch. 89B, and provided such activities are accomplished in compliance with this section.
  - d. The removal of vegetation by public or private agencies within the lines of any public street rights-of-way, utility easements, or other Town property, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform

<sup>61</sup> This section carries forward Section 155.721 of the current UDC with additional clarity regarding the applicability of the requirements and minor reorganization for clarity. Use of the term "vegetation" has been replaced with the term "trees." The provisions related to violation have been relocated to new Chapter 7 and are cross referenced here.

<sup>62</sup> **NOTE TO STAFF:** This sub-section has been revised for clarity. Tree protection standards should be applied as part of review of a development application. Additional discussion is needed about how to improve the standards and change the procedure - for example, allowing more narrow save areas along interior lot lines in favor of wider save areas along streets. In addition, more discussion is needed about how these standards can be applied to Site Plans or subdivisions.



authorized field survey work, or to preserve or enhance the symmetry and beauty of such Town property.

- e. Town-initiated or -approved removal of any vegetation which is in an unsafe condition, constitutes a nuisance or noxious weed, or which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, stream or conveyance channels, or other public improvements, or vegetation which is infected with any injurious fungus, insect, or other pest.
2. In cases where exemption is claimed based on forestry use, the applicant shall include proof that the property is taxed under the present-use value standard or a copy of the valid forestry management plan prepared or approved by a North Carolina registered forester.

#### D. APPLICATION

Prior to the commencement of any vegetation clearing or removal on any undeveloped property, the owner or the owner's agent shall demonstrate exemption from the requirements of this section, or submit a Tree Clearing Certificate application in accordance with the following:

1. Applications for a Tree Clearing Certificate shall be filed only by all the owners of the property or by such owners' authorized agent.
2. The application shall be accompanied by a Vegetation Protection Plan on a sheet no larger than 24 inches by 36 inches, at a scale of one inch equals 50 feet, that includes all of the following information:
  - a. A vicinity map showing the location of the tract at a readable scale;
  - b. A map of the entire tract, including the property boundary of the entire tract by courses and distances with references to true meridian and the location and dimension of all on-site and adjacent off-site easements (such as drainage, utility, public access, aerial utility, conservation, permanent and temporary construction easements);
  - c. General information about the tract, including but not limited to the owner of the tract; the current zoning of the tract, the area of the tract, and any conditional zoning conditions, if applicable;
  - d. The location and use(s) of all existing building(s) on the tract;
  - e. The owner, current zoning, and present use of all contiguous properties (including property on opposite side of adjoining streets);
  - f. The general classification of all existing and proposed adjacent roadways (as depicted in the Adopted Policy Guidance) and the ultimate right-of-way boundaries associated with these roadways.
  - g. The location and width of all future required landscaping areas, including riparian buffers, perimeter landscaping buffers, and streetscapes; and
  - h. The proposed limits of tree removal or land disturbance activities;
  - i. The location and width of all required tree protection areas.
3. Requirements for a Vegetation Protection Plan may be waived only in situations where the applicant can demonstrate, to the satisfaction of the Planning Director, that all existing tree removal will take place outside of and away from areas that would be configured as required landscaping areas.

#### E. PROCESS TYPE

Type II (see Section <>, Process Diagrams).



#### F. REVIEW CRITERIA

The Planning Director shall decide an application for a Tree Clearing Certificate in accordance with Section <>, Staff Review and Action, and the following:

1. Other than that necessary to gain reasonable access to the property, clearing and/or removal of trees shall be prohibited in the following areas (see Figure <>, Tree Save Areas):
  - a. A tree save area with a width of 50 feet as measured from all ultimate property boundaries that adjoin existing public street rights-of-way. For the purposes of this section, "ultimate property boundary" means the final demarcation line around the perimeter of a lot or tract excluding all areas that must be dedicated to the Town for use as rights-of-way; and
  - b. A tree save area with a width of 50 feet as measured from all property boundaries that adjoin developed property or vacant property with an approved Site Plan and/or subdivision plat; and
  - c. A tree save area with a width of 25 feet as measured from all property boundaries that adjoin undeveloped property or vacant property without an approved Site Plan and/or subdivision plat; and
  - d. Any other areas necessary for the protection of existing vegetation within riparian buffers, jurisdictional wetlands, and resource conservation areas.
2. In situations where one or more tree save areas overlap on the same site, then the area with the wider required width shall apply.
3. The total area of required tree save areas for any tract shall not exceed 20% of the area of the tract, after subtracting required public street rights-of-way and any required conservation easements.

#### G. NON-COMPLIANCE

1. Failure to retain existing trees in areas subject to tree protection in accordance with this section shall be a violation of this Ordinance.
2. In cases where all trees or substantially all trees are removed from required tree save areas subject to these standards, the Town shall not grant Site Plan, Building Permit, or subdivision plat approval for the lot or tract for a period of three years following tree removal. For the purposes of this section, "all or substantially all" means 75% or more of the existing trees with a caliper of four inches or greater.
3. The three-year waiting period may be waived if the Town Council by a 3/4 majority vote.

#### H. INSPECTION

1. Approval of a Tree Clearing Certificate shall permit an applicant to install any and all barriers necessary to protect existing trees within required tree save areas from damage during tree removal or land disturbing activities. Failure to protect required tree save areas is a violation of this Ordinance and shall be subject to the standards in Section <>, Non-compliance.
2. Once all barriers for the protection of existing trees have been installed, the applicant or their agent shall request inspection of such barriers for compliance with the requirements of this Ordinance.
3. Upon a passing inspection of vegetation protection barriers, the Planning Director shall issue the Tree Clearing Certificate, and authorized vegetation clearing may commence.

#### I. SEQUENCE

Not Applicable.



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.28 Tree Clearing Certificate

#### J. AMENDMENT

Amendment of a Tree Clearing Certificate may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### K. EXPIRATION

An approved Tree Clearing Certificate shall be valid for a period of not more than one year from the date of issuance.

#### L. VESTING

In accordance with Section <>, Statutory Vested Rights.

#### M. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



## 2.3.29 VARIANCE<sup>63</sup>

### A. PURPOSE AND INTENT

The purpose of this Variance procedure is to allow deviations from certain standards of this Ordinance when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. This section also includes provisions for reasonable accommodation of persons with physical disabilities and variances pertaining to the Town's special flood hazard area requirements, water supply watershed protection standards, riparian buffer protection provisions, and stormwater provisions.

### B. APPLICABILITY

#### 1. VARIANCE

- a. Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.
- b. No Variance may be sought for uses not allowed in a zoning district.
- c. No Variance may be sought that increases development density (e.g., units per acre) beyond that allowed in the zoning district where located.

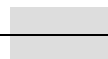
#### 2. REASONABLE ACCOMMODATION

- a. In cases where the strict application of the standards of this Ordinance would deprive an eligible person of their right to equal opportunity to use a dwelling under the federal Fair Housing Act, the person may apply for a Reasonable Accommodation in accordance with this section.
- b. For the purposes of this section, an "eligible person" is a person who meets the definition of a disabled or handicapped person under federal law.
- c. A person recovering from substance abuse is considered a person with a disability or handicap provided they are not currently engaging in the illegal use of controlled substances.

### C. VARIANCES DISTINGUISHED

1. In addition to applications for a Reasonable Accommodation, this procedure recognizes the following different forms of Variance, each of which may have unique review processes and criteria:
  - a. Zoning or Subdivision Variances;
  - b. Flood Hazard Overlay Variances;
  - c. Stormwater Variances;
  - d. Riparian Buffer Variances; and
  - e. Water Supply Watershed Variances.
2. Riparian Buffer Variances shall take the form of a Minor Variance or a Major Variance. A Minor Variance shall be one pertaining to or impacting only Zone Two of the riparian

<sup>63</sup> This section is proposed to replace the Variance procedure in Section 155.716 of the current UDC with several notable changes. All variances types, including variances from the Town's flood protection, stormwater, riparian buffer, and water supply watershed standards are also included here. Reasonable Accommodation requests made under the federal Fair Housing Act are also included. This draft procedure includes an additional review criteria for Zoning or Subdivision Variances. The neighborhood meeting requirement has been removed since notice is provided and Variances are considered subject to the legally-limited evidentiary hearing procedure.



buffer. Major Variances shall pertain to or impact Zone One of the riparian buffer (see Section <>, Riparian Buffers, for riparian buffer zone boundaries).

3. Water Supply Watershed Variances shall take the form of a Minor Variance or a Major Variance. Minor Variances pertain to a relaxation, by a factor of up to 10% of any buffer, density, or built-upon area requirement under the low-density option. Major Variances pertain to any of the following:
  - a. The relaxation, by a factor greater than 10%, of any management requirement under the low-density option;
  - b. The relaxation, by a factor greater than five percent, of any buffer, density, or built upon area requirement under the high-density option; or
  - c. Any variation in the design, maintenance, or operation requirements of an approved stormwater control measure.

#### D. APPLICATION

1. Applications for Zoning or Subdivision Variances and Reasonable Accommodations shall be processed by the Planning Director or a designee.
2. Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.
3. Applications for Flood Hazard Overlay, Riparian Buffer, Water Supply Watershed, and Stormwater Variances shall be processed by the Floodplain Administrator or Stormwater Administrator, as appropriate.
4. An application for Reasonable Accommodation may be made by a person with a disability or handicap, or their legal representative, or by a provider of housing for persons with disabilities or handicaps. An application for Reasonable Accommodation shall also include the following:
  - a. The basis for the claim that the applicant or persons receiving services from the applicant is considered disabled or handicapped under federal law;
  - b. The Ordinance provision from which the Reasonable Accommodation is being requested; and
  - c. An explanation of why the Reasonable Accommodation is necessary to make specific land or development available for the applicant.

#### E. PROCESS TYPE

Type III (see Section <>, Process Diagrams) except that Major Water Supply Watershed and Major Riparian Buffer Variances shall be decided by the North Carolina Environmental Management Commission following review and recommendation by the Board of Adjustment.

#### F. DECISION

##### 1. GENERALLY

- a. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by arguments presented at the evidentiary hearing, and the standards in Section <>, Review Criteria.
- b. The decision shall be one of the following:
  - i. Approval of the Variance or Reasonable Accommodation as proposed;
  - ii. Approval of the Variance or Reasonable Accommodation with revisions; or
  - iii. Denial of the Variance or Reasonable Accommodation as proposed.
- c. Voting shall be in accordance with Section <>, Voting.
- d. Each decision shall be made in writing and reflect the Board of Adjustment's determination of facts and their application to the standards in this Ordinance.



- e. The written decision shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
- f. The decision of the Board of Adjustment shall be effective upon the filing of the written decision in the offices of the Planning Department.

## 2. MAJOR RIPARIAN BUFFER OR WATER SUPPLY WATERSHED VARIANCE

- a. In the case of a recommendation of approval for a Major Riparian Buffer or Water Supply Watershed Variance by the Board of Adjustment, the application materials, along with the recommendation of the Board of Adjustment established in accordance with sub-section (1) above, shall be forwarded to the North Carolina Division of Water Resources for consideration by the North Carolina Environmental Management Commission.
- b. Denials of a Major Riparian Buffer or Water Supply Watershed Variance application by the Board of Adjustment shall result in the application not being forwarded to the EMC for a final decision.
- c. The final decision regarding a Major Riparian Buffer or Water Supply Watershed Variance shall be made within 90 days of receipt by the North Carolina Environmental Management Commission (EMC) in accordance with all applicable State law. The decision by the EMC shall be one of the following:
  - i. Approval of the Variance application;
  - ii. Approval of the Variance application with additional conditions; or
  - iii. Denial of the Variance application.
- d. Any final decision by the EMC on a Major Riparian Buffer or Water Supply Watershed Variance may be appealed to the Superior Court of the county where located.

## G. REVIEW CRITERIA

### 1. ZONING OR SUBDIVISION VARIANCE

#### a. REQUIRED FINDINGS

A Zoning or Subdivision Variance application shall be approved subject to a finding the applicant demonstrates all of the following:

- i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.
- iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the Variance shall not be regarded as a self-created hardship.
- iv. The requested Variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The Variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

#### b. NOT AVAILABLE AS A BASIS FOR DECISION

None of the following may be used as the basis for approving a Zoning or Subdivision Variance:

- i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- ii. Personal circumstances;



- iii. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- iv. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- v. The citing of other conforming or nonconforming uses of land or structures in the same or other zoning districts;
- vi. The fact that land or a structure may be utilized more profitably or be more marketable with a Variance; or
- vii. Financial hardship.

## 2. FLOOD HAZARD OVERLAY VARIANCE

### a. REQUIRED FINDINGS

A Flood Hazard Overlay Variance shall be approved on a finding the applicant demonstrates all the following standards are met:

- i. There is a good and sufficient cause to grant the Variance;
- ii. Failure to grant the Variance would result in exceptional hardship to the landowner; and
- iii. Granting the Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with this Ordinance.

### b. OTHER CONSIDERATIONS

In addition to making the required findings, the Board of Adjustment may also consider any of the following:

- i. The Variance is the minimum necessary, considering the flood hazard, to afford relief.
- ii. Approval of the Variance will not render the building in violation of applicable federal, State, or local requirements.
- iii. Approval of the Variance will not result in any increase in flood levels within any designated floodway or non-encroachment area during the base flood discharge.
- iv. The Variance is issued prior to any other pre-requisite permit or development approvals.

### c. DENIAL

All of the following factors shall be considered by the Board of Adjustment if an application for a Flood Hazard Overlay Variance is denied:

- i. The danger that materials may be swept onto other lands and injure others;
- ii. The danger to life and land due to flooding or erosion damage;
- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual landowner;
- iv. The importance of the services provided by the proposed facility to the community;
- v. The necessity to the facility of a waterfront location as a functionally-dependent facility;
- vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use or activity;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the Town's Adopted Policy Guidance and floodplain management program;
- ix. The safety of access to the use in times of flood for ordinary emergency vehicles;
- x. The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- xi. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

## 3. STORMWATER VARIANCE

A Stormwater Variance shall be approved on a finding the applicant demonstrates all of the following standards are met:



- a. The applicant can secure no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
- b. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
- c. The hardship is due to the physical nature of the applicant's property, such as its location, size, shape, or topography, and compliance with provisions of this Ordinance would not allow reasonable use of the property;
- d. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
- e. The Variance is consistent with the general spirit, purpose, and intent of the State law and this Ordinance; and
- f. In granting the Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

#### 4. RIPARIAN BUFFER VARIANCE

- a. A Riparian Buffer Variance shall be approved on a finding that there are practical difficulties or unnecessary hardships that prevent compliance with this Ordinance, and a finding of practical difficulties or unnecessary hardships requires that all of the following standards are met:
  - i. If the applicant complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, their property. Merely proving that the Variance would permit a greater profit from the property shall not be considered adequate justification for a Variance;
  - ii. Whether the Variance is the minimum possible deviation from the terms of the Ordinance that shall make reasonable use of the property possible;
  - iii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
  - iv. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this Ordinance would not allow reasonable use of the property;
  - v. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
  - vi. The applicant did not purchase the property after the effective date of this Ordinance, and then request a Variance;
  - vii. The hardship is rare or unique to the applicant's property;
  - viii. The Variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and this Ordinance; and
  - ix. In granting the Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- b. The North Carolina Environmental Management Commission shall decide a Major Riparian Buffer Variance based on applicable State law.

#### 5. WATER SUPPLY WATERSHED VARIANCE

- a. A Water Supply Watershed Variance shall be approved on a finding that there are practical difficulties or unnecessary hardships that prevent compliance with this Ordinance, and a finding of practical difficulties or unnecessary hardships requires that all of the following standards are met:
  - i. The applicant can make no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
  - ii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;



- iii. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this Ordinance would not allow reasonable use of the property;
  - iv. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
  - v. The Variance is in harmony with the general purpose and intent of the State's water supply watershed requirements and preserves the spirit of this Ordinance; and
  - vi. In granting the Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- b. The North Carolina Environmental Management Commission shall decide a Major Water Supply Watershed Variance based on applicable State law.

#### 6. REASONABLE ACCOMMODATION

- a. A Reasonable Accommodation application shall be approved on a finding the proposed accommodation:
- i. Will be used by an individual or individuals with a disability or handicap protected under federal law;
  - ii. Is the minimum needed to provide accommodation; and
  - iii. Is reasonable and necessary.
- b. For the purposes of this section, an accommodation is reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other Town standard, and it will not impose significant financial and administrative burden upon the Town.
- c. For the purposes of this section, an accommodation is necessary if it would provide direct or meaningful improvement of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to use housing in the Town's planning jurisdiction.

#### H. CONDITIONS

In granting a variance, the Board of Adjustment may prescribe conditions of approval to assure that the use of the land to which the variance applies will be compatible with surrounding lands and will not alter the essential character of the neighborhood. Conditions of approval shall be in accordance with Section <>, Conditions of Approval, and the following:

1. Conditions of approval must be reasonably related to the application.
2. An application approval granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
3. Violation of a condition of approval shall be deemed a violation of this Ordinance.
4. If a violation or invalidation of a condition of approval occurs, the Planning Director, or Engineering Director, as appropriate, may revoke the authorization for the development subject to the approval.

#### I. SEQUENCE

A Variance application may be filed with any other application except an appeal or rezoning, but the Variance approval shall always be required prior to any other associated application.



## J. EFFECT

### 1. GENERALLY

Approval of a Variance authorizes only the particular regulatory relief approved by the Board of Adjustment. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the Variance is granted should receive other permits or development approvals unless and until the relevant and applicable portions of this Ordinance are met.

### 2. NOTIFICATION REGARDING FLOOD INSURANCE COSTS

- a. An applicant for whom a Flood Hazard Overlay Variance is approved shall be provided written notice by the Engineering Director specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is built. The notice shall inform the applicant about the risks to life and property from construction below the BFE and that issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance.
- b. The notification shall be maintained by the Engineering Director with the record of the Variance action.

### 3. RECORDS OF FLOOD HAZARD OVERLAY VARIANCES

Upon request, the Engineering Director shall report all Flood Hazard Overlay Variances approved in accordance with this section to the Federal Emergency Management Agency and the State of North Carolina.

### 4. REASONABLE ACCOMMODATIONS

A Reasonable Accommodation shall not affect an applicant's obligation to comply with other applicable standards in this Ordinance that are not the subject of the reasonable accommodation application.

## K. AMENDMENT

Not Applicable.

## L. EXPIRATION

Not Applicable.

## M. VESTING

Not Applicable.

## N. APPEAL

In accordance with Section <>, Decisions by Board of Adjustment. Applications decided by the North Carolina Environmental Management Commission shall be taken to the Superior Court for the country where located in accordance with applicable State law.



#### 2.3.30 VESTED RIGHTS CERTIFICATE<sup>65</sup>

##### A. PURPOSE AND INTENT

The purpose for this Vested Rights Certificate procedure is to permit an applicant to request vesting, or an extended vesting period, from changes in this Ordinance that take place after approval of a development application but prior to completion of an approved site-specific vesting plan associated with the application.

##### B. APPLICABILITY

An application for a Vested Rights Certificate shall be limited to applications with an approved site-specific vesting plan in accordance with [Section <>, Site-Specific Vesting Plan](#).

##### C. PROCESS TYPE

Type IV (see [Section <>, Process Diagrams](#)) except that the Planning Board shall not provide a recommendation and a neighborhood meeting is not required.

##### D. DECISION

1. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in [Section <>, Review Criteria](#).
2. The decision shall be one of the following:
  - a. Approval of the Vested Rights Certificate as proposed;
  - b. Approval of a revised Vested Rights Certificate; or
  - c. Denial of the Vested Rights Certificate.
3. If approved, the Vested Rights Certificate is deemed established upon the date of approval of a qualifying site-specific vesting plan to which the application for a Vested Rights Certificate was attached.

##### E. REVIEW CRITERIA

An application for a Vested Rights Certificate shall be approved if:

1. The Vested Rights Certificate is for an approved site-specific vesting plan;
2. The development is valid and unexpired;
3. Any required Variances have been obtained; and
4. The request is in accordance with NCGS§160D-108, and [Section <>, Vested Rights](#).

##### F. SEQUENCE

1. An application for a Vested Rights Certificate may be submitted concurrently with or following the application qualifying as a site-specific vesting plan, but consideration of a Vested Rights Certificate shall only take place following approval of the site-specific vesting plan.
2. A Vested Rights Certificate shall be approved prior to issuance of a Building Permit.

##### G. EFFECT

1. Each document used to establish a site-specific vesting plan shall bear the following notation:

<sup>65</sup> This is a new section that builds on the standards in Section 155.718 of the current UDC (in concert with the section on Vested Rights in new Chapter 1). This procedure is used solely for the establishment of a two-year or longer vested rights term associated with a Site Plan or Subdivision plat (since vesting of a site-specific vesting plan requires a public hearing - without a public hearing the plan that could be a site-specific vesting plan with a two year term only gets a one year term associated with a typical development approval). In addition to establishing the two-year term for Site Plans and Preliminary Plats, the process also allows an applicant with an approved site-specific vesting plan to request a vesting term of up to five years (note that so-called multi-phase plans automatically receive a seven-year vesting term).



"Approval of this application establishes a zoning vested right under Section 160D-108 of the North Carolina General Statutes, as amended. Unless terminated at an earlier date, the vested right shall be valid until \_\_\_\_\_(date)."

2. The establishment of a vested right shall not preclude the application of overlay zoning district provisions that impose additional requirements but do not affect the allowable type and intensity of use, or through ordinances that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to: building, fire, plumbing, electrical, and mechanical codes.

#### H. AMENDMENT

Amendment of Vested Rights Certificate may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### I. DURATION

1. In no instance shall a Vested Right Certificate provide a vested right for a period of longer than five years from the date of approval of the site-specific vesting plan.
2. A Vested Right Certificate shall expire and become null and void:
  - a. At the end of the approved vesting period; or
  - b. If a Building Permit application for the development subject to the certificate is not submitted within two years of the approval of the Vested Rights Certificate associated with a Special Use Permit Concept Plan, Major Subdivision Preliminary Plat, or Site Plan, or five years of the approval of a Vested Rights Certificate associated with a Conditional Rezoning Concept Plan; or
  - c. Upon a finding by the Town Council after public notice and a public hearing, that:
    - i. Natural or man-made hazards on or in the immediate vicinity of the land, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated;
    - ii. The landowner or landowner's representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site-specific vesting plan;
    - iii. The landowner failed to comply with any condition imposed upon the establishment of the site-specific development plan or Vested Rights Certificate; or
  - d. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval of the certificate by the Town, together with interest at the legal rate until paid. Compensation shall not include any diminution in the value of the land which is caused by such action; or
  - e. With the written consent of the affected landowner.
3. Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, the Town Council may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the State or federal law have a fundamental effect on the site-specific vesting plan.

#### J. EXPIRATION

Unless terminated in accordance with Section <>, Termination, a Vested Rights Certificate shall expire at the end of the term identified in the approval.

#### K. APPEAL

In accordance with Section <>, Decisions by Town Council.



#### 2.3.31 ZONING COMPLIANCE PERMIT<sup>66</sup>

##### A. PURPOSE AND INTENT

The purpose of a Zoning Compliance Permit is to ensure no development occurs until there is assurance the development complies with the requirements of this Ordinance and all other applicable requirements.

##### B. APPLICABILITY

1. A Zoning Compliance Permit shall be required for development applications that are exempted from requirements to obtain a Building Permit, and the following:
  - a. Erection or modification of a fence or privacy wall over 24 inches in height;
  - b. A change in a non-residential tenant within a building;
  - c. Any change in principal use within an existing non-residential, multi-family, or mixed-use structure; or
  - d. Land disturbing activities; or
2. In cases where a Building Permit is required, review for zoning compliance shall take place as a part of the review for the Building Permit application, and as a result, no Zoning Compliance Permit shall be required for developments subject to a Building Permit.

##### C. APPLICATION

1. Applications for a Zoning Compliance Permit shall include a generalized sketch of the development that identifies the lot lines and the outer extents of all of the following features (if present):
  - a. Principal structure(s);
  - b. Accessory structures (including those there on a temporary basis);
  - c. Open-air uses of land;
  - d. Required setbacks and allowable encroachments, if applicable;
  - e. Existing potable water wells, septic tanks, drain fields, and reserve or back-up drain field locations;
  - f. Required tree save areas;
  - g. Required stormwater control measures;
  - h. Any other features identified by the Planning Director as necessary for determining compliance with the requirements of this Ordinance; and
  - i. Proposed uses, structures, or development activity associated with the Zoning Compliance Permit.
2. Sketches may not be professionally prepared, but must be drawn to scale.
3. Development activity associated with signage shall comply with the standards in [Section <>, Sign Permit](#).
4. Establishment of a temporary use, structure, or activity shall comply with the standards in [Section <>, Temporary Permit](#).
5. Applications for new development seeking to connect to public sewer shall include a wastewater allocation request completed in accordance with all Town requirements.

##### D. PROCESS TYPE

Type I (see [Section <>, Process Diagrams](#)).

<sup>66</sup> This section is proposed to carry forward Section 155.709 from the current UDC.



## Chapter 2 Applications

### Section 2.3 Application Types

Sub-section 2.3.31 Zoning Compliance Permit

#### E. REVIEW CRITERIA

A Zoning Compliance Permit shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, and the following:

1. All standards or conditions of any prior applicable permits and developments approvals;
2. Any applicable County, State, and federal requirements;
3. All applicable requirements of this Ordinance, the Town Code of Ordinances, and any applicable Town manuals or associated regulatory documents; and
4. Approval of the Zoning Compliance Permit does not require any reduction, deviation, or waiver not already approved by the Town.

#### F. SEQUENCE

A Zoning Compliance Permit application may be filed with or after any other application type except for a Building Permit or Certificate of Occupancy. Development subject to a Building Permit shall not require a Zoning Compliance Permit application.

#### G. AMENDMENT

Amendment of a Zoning Compliance Permit may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### H. EXPIRATION

1. A Zoning Compliance Permit shall expire and become null and void if the development it authorizes is not substantially commenced within six months of the permit issuance.
2. A Zoning Compliance Permit shall expire if work is discontinued for a period of 12 months after work has commenced.

#### I. VESTING

See Section <>, Statutory Vested Rights.

#### J. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal



## 2.4 REVIEW PROCEDURES<sup>67</sup>

### 2.4.1 OVERVIEW

- A. This section describes the standard procedural steps and rules generally applicable to every development application reviewed under this Ordinance, except where identified in the particular application type in [Section <>, Application Types](#).
- B. Sub-sections are listed in chronological or sequential order as they relate to the application process rather than being listed in alphabetical order.

### 2.4.2 PURPOSE AND INTENT

This section establishes the procedures used by the Town for the processing of applications under this UDO. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, residents, staff, and elected and appointed officials. The standards in this section are not intended as a substitute for the application of judgement or discretion by a review authority when necessary.

### 2.4.3 PRE-APPLICATION CONFERENCE<sup>68</sup>

#### A. PURPOSE

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular development application. A pre-application conference is also an opportunity for Town staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

#### B. APPLICABILITY

##### 1. REQUIRED, OPTIONAL, OR NOT APPLICABLE

- a. A pre-application conference is required before submittal of some applications, in accordance with [Table <>, Application Type Table](#).
- b. Pre-application conferences are optional while others do not have a pre-application conference associated with them, in accordance with [Table <>, Application Types Table](#).
- c. When a pre-application conference is not required, applicants may contact Town staff with questions about any development application procedure.
- d. There are no limits on the number of pre-application conferences that may be conducted, though the Town may charge a pre-application fee for the third or any subsequent pre-application conference regarding the same project or development site.

#### C. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the Town and do not constitute filing or review of an application.

<sup>67</sup> This section is proposed to replace Section 155.702 of the UDC. It includes the basic steps that the Town will use to process all application types under the UDO, including more details about permit choice, staff review, legislative and evidentiary hearing procedures, simultaneous processing, rules about processing phased applications, reconsideration of denied applications, approval amendments, and blanket expiration provisions.

<sup>68</sup> NOTE: This section replaces Sec 155.702(A) in the current UDC, which requires every applicant to conduct a pre-application conference (unless waived by the Planning Director). The approach set out here makes pre-application conferences mandatory for 11 of the 35 application types, and voluntary or not applicable for the remainder of the other application types. This section provides considerably more detail on these conferences in response to concerns about the process expressed by some stakeholders.



#### D. SCHEDULING

Applicants for a pre-application conference may schedule the conference on the Town's webpage in accordance with Town policy.

#### E. SUBMITTAL REQUIREMENTS

1. Pre-application conferences for development applications that include a Site Plan, subdivision, or Concept Plan shall require the applicant to provide a generalized sketch of the development as part of the request to schedule a pre-application conference. Generalized site sketches do not need to be professionally prepared, and are not required to be to scale.
2. For other types of development applications, the applicant may submit supplemental information regarding their application, as appropriate, with their request for a pre-application conference, though there is no requirement to submit any material in advance of the conference.
3. Material submitted during a pre-application conference is a matter of public record but shall not be binding on the Town or an applicant.

#### F. PROCEDURE

1. Based upon the scope and complexity of the proposal, a pre-application conference may take the form of a telephone call, video conference call, or in-person meeting at Town Hall, as determined by the Planning Director.
2. The pre-application conference shall include a presentation of the proposal by the potential applicant, including overview of any submitted materials.
3. Town staff will identify the relevant Town standards and applicable policy guidance, and will provide an overview of the appropriate application submittal and review process.
4. Pre-application conferences are conducted with some or all members of the Technical Review Committee, as determined by the Planning Director.

#### G. EXPIRATION

Applications subject to a mandatory pre-application conference shall be filed with the Town within six months of the conclusion of the pre-application conference or an additional pre-application conference shall be conducted.

#### H. EFFECT

1. When required, completion of a pre-application conference entitles an applicant to take the next step in the application process.
2. In cases where multi-part applications require more than one pre-application conference, an applicant may choose to conduct a single pre-application conference for all portions of a multi-part application or may choose to conduct individual pre-application conferences prior to filing of individual portions of the multi-part application.
3. Applications subject to a mandatory pre-application conference may not be filed until after the pre-application conference has been conducted.



#### 2.4.4 NEIGHBORHOOD MEETING<sup>69</sup>

##### A. PURPOSE

The purpose of the neighborhood meeting is to inform landowners and occupants of nearby lands about a development application that is going to be reviewed under this Ordinance, and to provide the applicant an opportunity to hear comments and concerns about the proposed development from landowners and occupants of nearby lands. It is not the intent of these standards to unreasonably delay or prevent an applicant from filing their development application.

##### B. APPLICABILITY

1. Neighborhood meetings are mandatory and shall be conducted by the applicant prior to filing any of the following types of applications:
  - a. Rezoning, conditional and conventional, which would establish a more dense or intense zoning district or when the Town is annexing land located outside its extraterritorial jurisdiction;
  - b. Street Renaming/Closures;
  - c. Special Use Permits; or
  - d. Variances.
2. Neighborhood meetings for any other kind of application identified in Table <>, Application Type Table, are optional. However, the Town Council may, by simple majority vote on a motion during a public hearing, require a neighborhood meeting to be conducted before rendering a decision on an application they are deciding.
3. In cases of a multi-part application that includes two or more portions each requiring a neighborhood meeting, only one neighborhood meeting shall be required prior to the filing of the initial portion of the application.

##### C. PROCEDURE

In cases when a neighborhood meeting is conducted, it shall comply with the following procedures:

###### 1. TIMING

- a. The meeting shall start between the hours of 6PM and 8PM on a weekday.
- b. The meeting shall take place no less than ten days before the application is to be initially filed with the Town.

###### 2. LOCATION

- a. The neighborhood meeting shall take place in a location open to the general public that is as close as possible to the site where development is proposed.
- b. In the event no suitable location open to the general public is available, the meeting may take place at a Town-owned or -operated site, subject to any Town requirements for its use.
- c. Virtual neighborhood meetings may be conducted when conducted in a manner consistent with the Town's policies for virtual meetings.

<sup>69</sup> This section replaces current Section 155.702.B. The current standards require neighborhood meetings for any zoning, any major subdivision, SUP, variance, or major site plan review. These proposed standards seek to require meetings only for rezonings where intensity is being increased, large subdivisions or in cases where new lots are significantly smaller than surrounding lots, significant site plans, and special use permits. The new procedure provides greater clarity regarding location, notice information, and Town staff attendance.



### 3. NOTIFICATION

- a. The applicant shall provide notification of the neighborhood meeting via first class mail to all landowners within 300 linear feet of the parcel(s) where development is proposed.
- b. Mailed notice shall be provided no less than ten days prior to the date of the neighborhood meeting.
- c. Landowners are advised that any required public notice of a subsequent development application will be provided in accordance with Section <>, Public Notice, which may be less than 300 feet from the parcel where development is proposed.
- d. Multiple meetings may take place, but advance notification for each meeting shall be provided in accordance with this subsection.

### 4. INFORMATION PROVIDED

The applicant shall provide the following in the neighborhood meeting invitation:

- a. The purpose of the meeting;
- b. A description of the proposed development;
- c. The time, date, and location of the meeting;
- d. Telephone and email contact information for the applicant or applicant's representative; and
- e. Any additional information that would promote understanding of the development proposal.

### 5. CONDUCT OF MEETING

At the meeting, the applicant shall explain the development proposal and the proposed application, respond to questions and concerns attendees raise about the application, and propose ways to resolve conflicts and concerns.

### 6. STAFF ATTENDANCE

Town staff shall not attend a neighborhood meeting in a professional capacity. Nothing shall limit a Town staff member from attending a neighborhood meeting as an interested citizen.

### 7. WRITTEN SUMMARY

The applicant shall submit a written summary of each neighborhood meeting, accompanied by copies of what was presented. At a minimum, the written summary shall include all of the following:

- a. A list of all parties and mailing addresses who were mailed a meeting notice;
- b. Written proof of mailing provided in accordance with Section <>, Notification;
- c. A copy of the meeting notice;
- d. A sign-in sheet of meeting attendees; and
- e. A list of the items discussed, including any questions posed by attendees and the answers provided.



#### 2.4.5 APPLICATION FILING<sup>70</sup>

##### A. AUTHORITY TO FILE APPLICATIONS

1. Unless expressly stated otherwise in this Ordinance, development applications reviewed under this Ordinance shall be filed by the landowner, a contract purchaser with the owner's consent, or other person having a recognized property interest in the land on which development is proposed with the owner's consent.
2. Some applications (e.g., conditional rezoning) must be filed by all landowners, as required in Section <>, Application Types.
3. Third-party applications to downzone land shall be prohibited.

##### B. APPLICATION FORMS

The Town shall establish development application forms, which shall be maintained by the Planning Director. Applications may only be completed on the forms provided by the Town.

##### C. APPLICATION FEES

1. The Town Council shall establish application fees in its Comprehensive List of Fees and Charges which may be updated at the sole discretion of the Town Council.
2. Full payment of required application fees shall take place concurrent with filing the application.

##### D. FILING AND REVIEW SCHEDULE

The Procedures Manual or other Town policy document shall contain the filing and review schedules for applications reviewed under this Ordinance. Copies of the application filing and review schedule shall be on file in the Planning Department.

##### E. APPLICATION FILING

1. An application shall not be considered submitted until it is determined to be complete in accordance with Section <>, Determination of Application Completeness.
2. No application shall be reviewed or decided until after it is determined to be complete.
3. The provisions in Section <>, Permit Choice, shall only apply to applications that are complete.
4. Multiple concurrent applications may be filed and reviewed in accordance with Section <>, Simultaneous Processing.

##### F. BURDEN OF PRESENTING COMPLETE APPLICATION

The burden of presenting and maintaining a complete application shall be solely upon the applicant.

##### G. DETERMINATION OF APPLICATION COMPLETENESS

The Planning Director shall determine, within a reasonable period of time, whether an application is complete or incomplete. A complete application is one that:

1. Contains all information and materials identified in this Ordinance and all supporting documentation, as required for submittal of the particular type of application;
2. Is in the form and number of copies required by the Town;
3. Is legible and to scale, if including a plan or plat;

<sup>70</sup> This section replaces current Section 155.702(C) with more details on who may file applications, what constitutes a complete application, and how incomplete applications are handled (including impacts on permit choice). These proposed standards suggest removal of application fee refunds for withdrawn applications since completeness review must take place.



4. Is signed by the person(s) with the authority to file the application;
5. Includes information in sufficient detail to evaluate whether the application complies with the applicable review standards in this Ordinance;
6. Is accompanied by the required fee(s);
7. Occurs only after conduct of a pre-application conference, if one is required;
8. Occurs only after conduct of a neighborhood information meeting, if one is required; and
9. Is not subject to the limitations described in [Section <>, Reconsideration of Denied Application](#).

#### H. APPLICATION INCOMPLETE

1. If the application is incomplete, the Planning Director shall notify the applicant of the deficiencies in writing. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with [Section <>, Application Filing](#).
2. Following receipt of a notice of application deficiency by the Planning Director, an applicant may revise and resubmit the application
3. Failure of an applicant to submit missing or deficient portions of an application or file a written request to process the incomplete application within 60 days of delivery of a written notice of application deficiency shall render the application abandoned.
4. In no instance shall an application that is abandoned be considered a complete application subject to the protections described in [Section <>, Permit Choice](#).

#### I. APPLICATION COMPLETE

1. On determining that the application is complete, it shall be considered as submitted, and the Town shall notify the applicant and commence review in accordance with the procedures and standards of this Ordinance.
2. Nothing shall preclude the Planning Director or a review authority from re-evaluating an application for completeness in the event application inadequacies are revealed at a date subsequent to an application being declared complete. Such re-review shall not invalidate options or protections to a complete application extended under [Section <>, Permit Choice](#).

### 2.4.6 PERMIT CHOICE<sup>71</sup>

- A. In cases where the applicable provisions of this Ordinance are amended between the time that an application is declared complete (see [Section <>, Determination of Application Completeness](#)) and when it is decided, the applicant may choose which version of this Ordinance shall apply to their application, in accordance with NCGS§143-755.
- B. The applicant's decision shall be final, and review under a different set of requirements may only be accomplished through a withdrawal and re-submittal of the application.
- C. The application shall be processed in accordance with the newest regulations unless the applicant requests, in writing, to have the application processed in accordance with the rules in place at the time of the application.
- D. In cases where an applicant has had an opportunity to exercise permit choice under this section, and subsequently places their application on hold, review of the application shall be discontinued, and the requirements in effect at the time application review recommences shall apply.

<sup>71</sup> This is a new section added based on statutory changes taking place in 2019.



### 2.4.7 STAFF REVIEW AND ACTION<sup>72</sup>

#### A. STAFF REVIEW

1. Applications shall be reviewed during the review cycle in place when the application is determined to be complete. Application review cycles are set down on the Procedures Manual or other Town policy document.
2. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and submitted for preparation of a staff report, in accordance with Town policy.
3. If deficiencies in complying with applicable standards of this Ordinance are identified, the designated Town staff member responsible for processing the application shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

#### B. STAFF REPORT AND RECOMMENDATION

1. The designated Town staff member responsible for reviewing the application shall prepare a written staff report on any application to be reviewed or decided by the Town Council or the Board of Adjustment.
2. A staff report is not required for applications decided by a member of Town staff or the Technical Review Committee, though one may be prepared.
3. The staff report shall conclude whether the application complies with all applicable review standards of this Ordinance and adopted policy guidance, and recommend one of the decisions authorized for the particular type of application, based on the applicable review standards, in accordance with Section <>, Applications Subject to Decision by Town Staff.
4. The staff report shall not include a recommendation from Town staff on Variance, Special Use Permit, or Appeal applications.
5. In cases where the staff finds an application does not comply with the provisions of this Ordinance, the staff report shall cite the specific code section(s) in question and the reasons why the application fails to comply.
6. The staff report may identify and recommend modifications to the development proposal that specify how compliance deficiencies might be corrected and how adverse effects of the development application (if any) might be mitigated.
7. Staff reports prepared for Conditional Rezoning, Special Use Permits, Variances, and Vested Rights Certificates may suggest conditions of approval for consideration by the review authority making the decision on the application.

#### C. DISTRIBUTION OF APPLICATION AND STAFF REPORT

The designated Town staff member responsible for processing the application shall take the following actions within a reasonable period of time before the application is scheduled for review:

1. Schedule and ensure any required public notice of the application is prepared in accordance with Section <>, Public Notice;
2. Transmit the application, related materials, and staff report to the appropriate review authority(ies);
3. Transmit a copy of the staff report and any related materials to the applicant and the landowner, if different from the applicant; and

<sup>72</sup> This is a new section.



4. Make the application, related materials, and staff report available for examination by the public.

#### **D. APPLICATIONS SUBJECT TO DECISION BY TOWN STAFF**

1. In cases where a development application is decided by the Technical Review Committee, the Planning Director, or another designated Town staff member, the appropriate Town staff member shall make one of the following decisions in writing, based on the review standards set forth in Section <>, Application Types:
  - a. Approve the application;
  - b. Disapprove the application; or
  - c. Delay decision making for a specified time to allow the applicant to revise the application for compliance with the requirements in this Ordinance.
2. In some instances, Town staff may decide an application contingent upon further revision by the applicant in accordance with the direction provided in the decision.

#### **E. CONFLICT OF INTEREST**

Town staff shall comply with all applicable provisions in Section <>, Conflict of Interest.

### **2.4.8 PUBLIC NOTICE<sup>73</sup>**

#### **A. PUBLIC MEETINGS DISTINGUISHED FROM PUBLIC HEARINGS**

Applications subject to public hearings by the North Carolina General Statutes are required to provide public notice about the pending application to adjacent landowners in accordance with this section. Public meetings are not public hearings, and do not require the provision of individual public notice to adjacent landowners about a pending application in accordance with this section but must provide general notification about the meeting in accordance with NCGS§143-318.12 (the "open meetings" law).

#### **B. PUBLIC HEARING SCHEDULING**

When a development application is subject to a public hearing, the Planning Director, or a designee, shall ensure that the public hearing is scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.

#### **C. PUBLIC NOTIFICATION REQUIREMENTS**

1. All development applications subject to public notification shall comply with the appropriate standards in NCGS§§160D-406, 160D-601, 160D-602, 160D-1005, and other applicable sections of the North Carolina General Statutes.
2. Table <>, Public Notification Requirements, summarizes the requirements for public notice, but in the event of a conflict with State law, State law shall prevail.
3. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

<sup>73</sup> NOTE: This section replaces Section 155.702.D of the current UDC but adds annexations and development agreement notice to the five existing types of applications that are subject to public notice. The proposed standards rely solely on State law with respect to who receives mailed notice (instead of notifying landowners within 100 feet of the proposed development). The Town may provide as much mailed notice as it likes, but that should be done as a matter of policy, not codified in the Ordinance. The optimal legal strategy here is to follow State law with respect to Ordinance specifications and make decisions about increased mailed notice based on policy.



**TABLE <>: PUBLIC NOTIFICATION REQUIREMENTS**

| TYPE OF DEVELOPMENT APPLICATION | TYPE OF PUBLIC NOTIFICATION REQUIRED<br>(R=REQUIRED) |            |            |
|---------------------------------|------------------------------------------------------|------------|------------|
|                                 | PUBLISHED [1]                                        | MAILED [2] | POSTED [3] |
| Annexation                      | R                                                    | R          | R          |
| Appeal                          | ·                                                    | R [4]      | R          |
| Development Agreement           | R                                                    | R          | R          |
| Rezoning                        | R [5]                                                | R          | R          |
| Special Use Permit              | ·                                                    | R          | R          |
| Street Renaming / Closure       | R [6]                                                | R [7]      | R [8]      |
| Text Amendment                  | R                                                    | ·          | ·          |
| Variance                        | ·                                                    | R          | R          |

**NOTES:**

- [1] Notice shall be published once a week for two successive calendar weeks with the first notice published no more than 25 day nor less than 10 days before the public hearing.
- [2] Notice shall be mailed to the applicant, affected property owners, and property owners of abutting land between 10 and 25 days before the public hearing.
- [3] Notice shall be posted between 10 and 25 days before the public hearing.
- [4] Mailed notice shall only be required in cases where the appeal pertains to a particular property.
- [5] In the case of large-scale rezonings of 50 or more different landowners, mailed notice only provided to landowners residing outside the area of published notice circulation in accordance with NCGS§160D-602(b).
- [6] Published notice for street abandonment shall be provided once per week for 4 weeks before the hearing.
- [7] Mailed notice shall be provided between 10 and 25 days before the first public meeting to all landowners with land abutting the street and the NCDOT.
- [8] Posted notice shall be provided in at least two locations along the street no less than 10 days before the hearing.

#### D. PUBLISHED NOTICE REQUIREMENTS

When the North Carolina General Statutes require that public notice be published, the Town staff member responsible shall publish a notice in a newspaper that is regularly published at least one time per week for two successive weeks in a newspaper that has general circulation in the Town.

#### E. MAILED NOTICE REQUIREMENTS

When the North Carolina General Statutes require that public notice be mailed, mailed notice shall be provided in accordance with the following:

1. The Town shall prepare required mailed notice.
2. Mailed notice shall be provided to the last known address (as listed in County tax records) for each of the following:
  - a. The landowner;





2. Failure of a party to receive written notice shall not invalidate subsequent action. A posted notice that becomes no longer visible due to weather, theft, or other unintended circumstances shall not invalidate proceedings if a bona fide attempt is made to comply with applicable posted notice requirements. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.

#### 2.4.9 PUBLIC HEARINGS AND MEETINGS<sup>74</sup>

##### A. HEARINGS DISTINGUISHED

Public hearings identified in this Ordinance shall be either legislative or evidentiary (quasi-judicial) in nature.

##### B. LEGISLATIVE PUBLIC HEARINGS

Table <>, Application Type Table, identifies the kinds of development applications decided following completion of a legislative public hearing, which shall be conducted in accordance with the following requirements:

###### 1. PROCEDURE

- a. Legislative public hearings shall not be conducted until after provision of required public notice in accordance with Section <>, Public Notice.
- b. The legislative public hearing shall be open to the public and shall be conducted in accordance with the review authority's adopted rules of procedure for public hearings.
- c. Attendees shall be afforded the opportunity to comment during a public hearing, as authorized in the adopted rules of procedure.

###### 2. VOTING

- a. The review authority shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section <>, Application Types.
- b. A review authority member shall not vote on an application if there is a conflict of interest in accordance with Section <>, Conflict of Interest.
- c. A decision of the review authority on an application considered during a legislative public hearing shall be decided by a simple majority of the review authority members, excluding any members who are recused from voting due to a conflict of interest.

###### 3. APPLICATION REVISION

- a. Except in cases where an applicant has compelled the Town staff to process an incomplete application, an applicant may revise an application during a legislative public hearing in response to recommendations or suggestions of the public, the Town staff, or a review authority.
- b. In cases where a substantial change to an application is proposed following review by a prior review authority, the review authority deciding the application shall determine if the prior review authority needs to re-review the application before a decision can be made.

<sup>74</sup> This is a new section that sets down the basic procedures for legislative and evidentiary public hearings in accordance with 160D requirements. The section also makes a distinction between public hearings and public meetings.



- c. The Town may provide additional public notice related to revision of an application on a case-by-case basis but is under no legal requirement to provide additional notice in cases where applications are revised in accordance with this section.
- d. The review authority deciding the application may approve an application modified during a legislative public hearing provided that all changes are properly identified in the motion of approval and that any conditions of approval are consented to, in writing, by the applicant.
- e. In cases where an application has been modified during a legislative public hearing, the applicant shall submit any necessary plans or other documents depicting the modification to the appropriate Town staff before a notice of decision is provided.

#### 4. REMAND

A review authority may remand the application to a prior review authority or Town staff for further consideration of new information or specified issues or concerns, if appropriate.

#### 5. RECORD

- a. A recording may be made of all public hearings and if made, the recordings shall be maintained in accordance with Town policy.
- b. Accurate minutes shall be kept of all proceedings, but a transcript need not be made.

### C. EVIDENTIARY PUBLIC HEARINGS

Table <>, Application Type Table, identifies the kinds of development applications decided following an evidentiary public hearing, which shall be conducted in accordance with State law, the review authority's rules of procedure, and the following requirements:

#### 1. NOTICE REQUIRED

Evidentiary public hearings shall not be conducted until after provision of required public notice in accordance with Section <>, Public Notice.

#### 2. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

- a. The applicant, the Town, and any party with standing shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of or cross examine the applicant, the applicant's representatives, anyone providing testimony during the hearing, Town staff, and the Town staff's representatives.
- b. Determinations of standing shall be in accordance with NCGS §§160D-406(d) and 160D-1402(c).

#### 3. LIMITATION ON EVIDENCE

- a. The Chair or other presiding officer may limit or exclude incompetent evidence, immaterial evidence, repetitive evidence, and personal attacks.
- b. Decisions shall not be based upon hearsay evidence though such evidence may be entered into the record.
- c. Only evidence presented during the public hearing may be relied upon in making a decision on the application.

#### 4. EX PARTE COMMUNICATION

Ex parte communications between an applicant or an affected party and a member of the review authority are prohibited. If it occurs, it shall be disclosed during the evidentiary public hearing.



#### 5. VOTING

##### a. GENERALLY

The review authority shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in [Section <>, Application Types](#).

##### b. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall reflect the review authority's determination of any contested facts and their application to the applicable standards.

##### c. CONFLICTS OF INTEREST

A review authority member shall not vote on an application if there is a conflict of interest in accordance with [Section <>, Conflict of Interest](#).

#### 6. APPLICATION REVISION

- a. An applicant may revise an application during an evidentiary public hearing in response to recommendations or suggestions of the review authority, Town staff, or the public.
- b. The review authority may approve an application modified during an evidentiary public hearing provided all changes are properly identified in the motion of approval by the review authority and that any conditions of approval are consented to, in writing, by the applicant.
- c. In cases where an application has been modified during an evidentiary public hearing, the applicant shall submit any necessary plans or other documents depicting the modification to the appropriate Town staff before a notice of decision is provided.

#### 7. DELAY OF DECISION

The review authority may delay a decision on the application if additional information is requested of the applicant.

#### 8. RECORD

- a. A recording may be made of all public hearings and if made, the recordings shall be maintained in accordance with Town policy.
- b. Accurate minutes shall be kept of all proceedings, but a transcript need not be made.

#### D. PUBLIC MEETINGS

Review of applications by the Technical Review Committee, Planning Board, and Town Council where public notice is not required shall be considered during public meetings not public hearings. Public meetings shall be conducted in accordance with the review authority's rules of procedure and the following requirements:

##### 1. PROCEDURE

- a. Public meetings shall require public notification of the meeting in accordance with NCGS§143-318.12 but shall not require public notice of individual applications to adjacent landowners.
- b. The Town may choose, on a case-by-case basis, and in the sole discretion of the Town, to provide public notice of a public meeting to adjacent landowners in accordance with Town policy. The Town shall be under no legal requirement to provide public notice of a public meeting to adjacent landowners, and failure to do so shall not invalidate the proceedings.



- c. The public meeting shall be open to the public and shall be conducted in accordance with the review authority's adopted rules of procedure for public meetings.
- d. There is no requirement to allow public comment or testimony during a public meeting, though it may be provided at the Chair or other presiding officer's discretion.

## 2. VOTING

- a. A decision of a review authority during a public meeting shall be decided by a simple majority of the members present and voting.
- b. A review authority member shall recuse themselves from voting on an application when there is a conflict of interest in accordance with [Section <>, Conflict of Interest](#).

### 2.4.10 CONDITIONS OF APPROVAL<sup>75</sup>

- A. Conditions shall be limited to those that address conformance of development and use of the site with Town regulations and adopted plans and that address the impacts reasonably expected to be generated by the development or use of the site.
- B. Conditions shall be in writing and may be supplemented with text or plans and maps.
- C. No condition shall be made part of the application which:
  - 1. Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;
  - 2. Establishes a minimum size of a dwelling unit;
  - 3. Establishes a minimum value of buildings or improvements;
  - 4. Excludes residents based upon race, religion, or income; or
  - 5. Obligates the Town to perform in any manner relative to the approval of the application or the development of the land.
- D. In no instance shall any of the following standards in this Ordinance be waived, reduced, or made less restrictive as part of an application:
  - 1. Any of the applicable overlay district standards in [Section <>, Overlay Districts](#);
  - 2. The maximum allowable residential density, unless subject to an authorized incentive permitted under this Ordinance;
  - 3. The signage standards in [Section <>, Signage](#), unless part of Alternative Sign Plan; and
  - 4. Technical requirements associated with public infrastructure.
- E. All conditions of approval shall be consented to, in writing, by all owners of land or applicants subject to the conditions prior to delivery of a notice of decision (see [Section <>, Written Notice of Decision](#)).
- F. All conditions of approval shall be identified in the approval, the notice of decision, and on any associated plans or plats.
- G. Any condition of approval approved by the Town and the applicant shall become a part of the application approval and the applicant, landowner, or subsequent assign shall remain subject to its terms and requirements.

### 2.4.11 WRITTEN NOTICE OF DECISION

#### A. CONTENT

The notification of a decision on a development application shall be issued in the name of the applicant or applicant's agent, as appropriate, directed to the address(es) identified in the application materials, and shall identify the following:

- 1. The land or matter subject to the application;

<sup>75</sup> This is a new section.



2. A reference to any approved plans, as appropriate;
3. The approved use(s), if any; and
4. Any conditions of approval or other applicable requirements.

#### B. TIMING

The Planning Director shall provide the applicant written notification of a decision or action within a reasonable time after a final decision on a development application has been made.

#### C. COPY OF DECISION

1. In addition to providing the notification of a decision on an application to an applicant, the Planning Director shall make a copy of the decision available to anyone who submits a written request prior to the issuance of the decision.
2. The Planning Director shall also make a copy of the notice of decision available to the public in the Town offices during normal business hours.

### 2.4.12 SIMULTANEOUS PROCESSING<sup>77</sup>

- A. Whenever possible, the Town shall process related development applications (e.g., a site plan, a zoning compliance permit, and a building permit) simultaneously or concurrently.
- B. Generally speaking, establishment of an appropriate zoning designation is a prerequisite to other related application types. A request for a variation, deviation, reduction, or adjustment from required standards is a prerequisite to development plan approval. Development plan approval is a prerequisite to Building Permit approval.
- C. In the event a permit or development approval is a prerequisite to another permit or development approval (e.g., Administrative Adjustment or Variance approval prior to a Site Plan approval), a decision on the dependent application may not take place until all prerequisite approvals are obtained.
- D. Approval of one development application does not guarantee approval of any subsequent required development application.

### 2.4.13 PHASED DEVELOPMENT<sup>78</sup>

Nothing shall prohibit the construction of development in phases, sections, or portions, provided the development complies with the following:

- A. Applications associated with phased development shall include plans that clearly identify each phase, the location and extent of each phase boundary, and the anticipated schedule of development (e.g., first phase, second phase, third phase, etc.).
- B. Phased development may provide only the required public infrastructure or other required site features concurrently with the active phase(s) of the development.
- C. Nothing shall limit the Town from requiring the establishment of public infrastructure or required site features in a physical location outside of the active phase(s) of development if such provision is necessary, in the sole discretion of the review authority, for the development to function as required.
- D. Provision of a performance guarantee (see Section <>, Performance Guarantee) shall not be sufficient in cases where a review authority determines that required public infrastructure or required site features outside an active phase must be provided to ensure development functionality.
- E. Each new phase shall be developed contiguous or adjacent to an earlier phase, to the maximum extent practicable.

<sup>77</sup> This is a new section.

<sup>78</sup> This is a new section.



#### 2.4.14 CONTINUANCE, WITHDRAWAL, AND ABANDONMENT<sup>79</sup>

An applicant may request that a review authority's consideration of a development application be continued or withdrawn by submitting a written request to the appropriate review authority.

##### A. PROCEDURE FOR CONTINUANCE OF APPLICATIONS SUBJECT TO A PUBLIC HEARING

1. In cases where an applicant seeks a continuance of an application subject to a public hearing, but public notification of the hearing has not yet been provided, the Planning Director shall consider and decide the request.
2. If public notification of the pending public hearing has been provided in accordance with this Ordinance, the request for continuance shall be placed on the public hearing agenda and be considered by the review authority. Additional public notification may be required for a continued application.
3. A request for continuance may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the Town's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

##### B. WITHDRAWAL

1. An applicant may withdraw an application at any time following submittal of a signed request to withdraw the application.
2. If an applicant withdraws an application for the same land after public notification two times within a single calendar year, the same application may not be resubmitted for a period of one year from the date of the second withdrawal.
3. Application fees for withdrawn applications shall not be refunded.

##### C. ABANDONMENT

1. In cases where Town staff has notified the applicant in writing of a deficiency or a need for additional information in order to review or process an application and 60 days has lapsed with no response from the applicant, the application shall be considered abandoned and the review process shall be halted.
2. Abandoned applications are considered withdrawn and shall be subject to the standards in Section <>, Withdrawal.
3. Abandoned applications are returned to the applicant and application fees shall not be refunded.

#### 2.4.15 RECONSIDERATION OF DENIED APPLICATIONS

##### A. LEGISLATIVE DECISIONS

If a development application requiring a legislative public hearing is denied, no application proposing the same or similar development on all or part of the same site shall be submitted within one year after the date of denial unless the review authority approves a reduction in this time limit. For the purposes of this section, "the same or similar development" shall mean:

1. The same use type(s) in the same approximate location(s) as the denied application; or
2. The same use type(s) in the same approximate building configuration (e.g., building height, floor area, massing) as the denied application.

<sup>79</sup> This section builds on current Section 155. 702.G with additional details for continuance and a reduction in the time period of abandonment from 90 days to 60 days.



#### B. QUASI-JUDICIAL DECISIONS

There is no time limit on resubmitting an application that is denied during an evidentiary public hearing provided that any subsequent application may not be similar or substantially similar to the application that was denied, in the sole discretion of the review authority responsible for the decision.

#### C. REDUCTION IN TIME LIMIT

The owner of land subject to this subsection, or the owner's authorized agent, may submit a written request for reduction of the time limit, along with a fee to defray the cost of processing the request, to the Planning Director, who shall transmit the request to the review authority. The review authority may grant the request only on a finding by two-thirds of its membership that the owner or agent has demonstrated that:

1. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the review authority's application of the relevant review standards to the development proposed in the new application; or
2. New or additional information is available that was not available at the time of review of the prior application and that might reasonably affect the review authority's application of the relevant review standards to the development proposed in the new application; or
3. The new application proposed to be submitted is materially different from the prior application; or
4. The final decision on the prior application was based on a material mistake of fact.

### 2.4.16 AMENDMENT OF APPROVED APPLICATION<sup>80</sup>

Applications identified as available for amendment in Section <>, Application Types, shall only be amended in accordance with the standards in this section. Amendments to a development application approval shall be considered as minor modifications or major modifications, and must be considered in accordance with the following:

#### A. MINOR MODIFICATIONS

1. Subsequent plans and permits for development may include minor modifications provided the development continues to meet the minimum requirements of this section. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the application approval.
2. The following minor modifications may be approved by the Planning Director, in consultation with other appropriate Town staff:
  - a. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions;
  - b. Changes to the configuration of parking areas, but not the number of parking spaces;
  - c. Changes to the configuration or location of open space or placement of required amenities, provided the amount of open space (whether passive or active) is unchanged;

<sup>80</sup> NOTE TO STAFF: This is a new section designed to consolidate the application amendment provisions for Administrative Adjustments, Conditional Rezoning Concept Plans, Conservation Subdivisions, Construction Drawings, Final Plats, and Site Plans. As a result, this section needs more refinement - however, before that takes place, additional discussion is necessary regarding the Town's desire to allow modifications to such a broad range of application approvals.



- d. Changes to the configuration of landscape yards, including types of materials, provided minimum width and planting requirements are met;
  - e. Changes to the proposed building elevation or facade, including materials, provided that the change retains the same general architectural character and remains consistent with the design parameters established in the original approval; and,
  - f. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.
3. In no instance shall a minor modification include any changes to the range of permitted uses or the overall density of the development.

#### B. MAJOR MODIFICATIONS

- 1. Changes that materially affect the basic configuration of the development, a condition of approval, or that exceed the scope of a minor change modification are considered major modifications.
- 2. Major modifications include, but are not limited to:
  - a. Increases in building height;
  - b. Changes in uses;
  - c. Changes in density or intensity;
  - d. Decreases in open space;
  - e. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected); and
  - f. Change in the location of any public easement.
- 3. Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

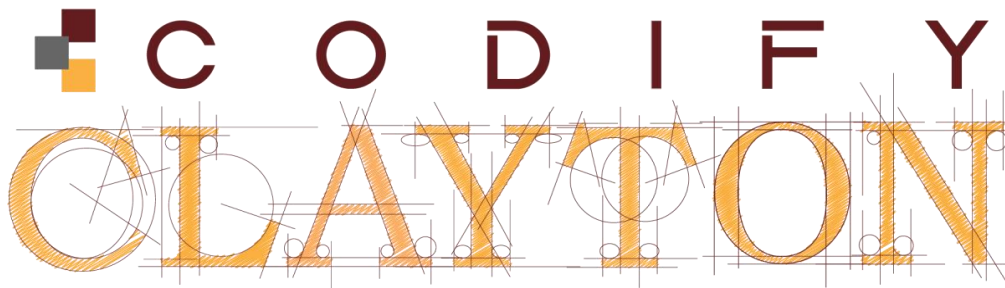
#### 2.4.17 EXPIRATION<sup>81</sup>

- A. Unless otherwise specified in Section <>, Application Types, application approvals issued under this Ordinance shall expire within one year of the written notice of decision if the work authorized has not been substantially commenced.
- B. In the event the work authorized by an approval has substantially commenced, but has subsequently been delayed or failed to maintain substantial progress for a period of one year or more, the application approval shall expire in accordance with NCGS§160D-403(c).
- C. The one-year period identified in this sub-section shall not include the period of time associated with litigation or appeal of an approval.
- D. The duration of vested rights associated with an application approval shall be in accordance with Section <>, Vested Rights, unless otherwise stated in this Ordinance.

<sup>81</sup> NOTE TO STAFF: This is a new section. Additional discussion is necessary about additional nuance or necessary clarification.



# UNIFIED DEVELOPMENT ORDINANCE



**Public draft  
(Ch 1, 2, 7)**

3-17-23



# CHAPTER 7

## VIOLATIONS

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## KEY CHANGES FROM CURRENT UDC

Chapter 7, Violations, sets out the provisions pertaining to enforcement of violations from the standards in the UDO. It replaces the somewhat abbreviated standards in Section 155,720 of the current UDC. In addition, there are several other key changes, including:

1. Recognition that the goal of the Violations chapter is to achieve compliance, not assess fines.
2. A comprehensive list of the generic violations of the Ordinance (for use in preparation of notices of violation).
3. An enumeration of the range of entities who may be held responsible for a violation, not just the owner or tenant.
4. A detailed description of the enforcement procedure, including receipt of complaints and investigation.
5. Details related to the filing of a written notice of violation.
6. Enumeration of the range of remedies available to the Town for correcting violations.
7. Increased clarity on the process for assessment and collection of civil penalties.
8. Inclusion of special enforcement provisions related to erosion control and flood protection.
9. Recognition that willful violation of stormwater, riparian buffer protection, and watersupply watershed protection standards may subject a responsible entity to criminal penalties.
10. Inclusion of the statute of limitations on enforcement under State law.



## 7.1 PURPOSE AND INTENT<sup>92</sup>

This chapter identifies the range of activities commonly considered as violations of this Ordinance and sets out the process used by the Town to investigate and remedy identified violations. These provisions are intended to encourage the voluntary correction of violations where possible, rather than to simply punish violators.

## 7.2 COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and provisions of this Ordinance, as well as with conditions of approval applied under this Ordinance, is required by all persons owning, developing, managing, using, or occupying land or structures in the Town.

## 7.3 DESCRIPTION OF VIOLATIONS<sup>93</sup>

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

### 7.3.1 DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in the development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plan approvals, permits, certificates, or other forms of authorization as set forth in this Ordinance.

### 7.3.2 DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

Engaging in any development, use, construction, land disturbance, or related activity of any nature in any way inconsistent with any approved plan, plat, permit, certificate, or other form of authorization granted for such activity.

### 7.3.3 VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, modification, adjustment, condition, requirement, or qualification placed upon any required plan, plat, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon.

### 7.3.4 USE IN VIOLATION

Erecting, constructing, altering, repairing, maintaining, or using any building or structure, or use of any land in violation of this Ordinance or any regulation made under the authority conferred thereby.

### 7.3.5 SUBDIVIDE LAND IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Register of Deeds in the county where the subdivision is located.

### 7.3.6 VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Section <>, Stormwater, Section <>, Riparian Buffer Protection, Section <>, Flood Protection Overlay (FPOD) District, and Section <>, Soil Erosion and Sedimentation Control.

<sup>92</sup> This chapter replaces current Section 155.720, which is somewhat abbreviated. The current standards fail to identify the wide range of potential violations, identify the range of responsible parties, describe the violation investigation and correction process (a 160D requirement), and list the range of remedies available to the Town (which is important for code users to understand). In addition, the current standards include a reference to criminal penalties for violations of standards established under NCGS§160D, which was changed by the General Assembly in 2022. One of the important changes in these draft standards is the recognition that these violation provisions are focused on achieving compliance, not assessing penalties or applying punitive actions.

<sup>93</sup> This is a new section that identifies the violations of this Ordinance in a general way. These provisions are available for use by Town officials in preparing notices of violation.

### 7.3.7 REMOVAL OF EXISTING TREES SUBJECT TO PROTECTION

Removal of all or substantially all existing trees at or above four inches in caliper from a lot, tract, or development site, including lots designated for use by single-family detached residential dwellings, prior to receipt of all required approvals in accordance with Section <>, Application Types.

### 7.3.8 CONTINUING OR REPEATING A PRIOR VIOLATION

Where a violation of the same nature has been issued to the same violator at the same property within two years and the violation continues or is repeated, the violation shall be treated as an on-going violation.

## 7.4 ENTITY RESPONSIBLE FOR VIOLATION<sup>94</sup>

### 7.4.1 GENERALLY

Any of the following parties associated with or participating in a situation that is contrary to the requirements of this Ordinance may be jointly or separately held responsible for a violation and subject to the penalties and remedies provided in this Ordinance:

- A. A property owner(s);
- B. A tenant or occupant of any land, building, structure, sign, use of land, or part thereof;
- C. A permit or approval holder;
- D. A contractor or designated agent;
- E. An architect, engineer, or builder; or
- F. Any person conducting the violating activity.

### 7.4.2 FAILURE BY TOWN DOES NOT RELIEVE INDIVIDUAL

Except as authorized under Section <>, Statute of Limitations, failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate this Ordinance, or to deny the issuance of a development permit, shall not relieve the applicant or landowner from responsibility for the condition or damages that may result and shall not result in the Town, its officers, or agents being responsible for conditions or damages.

## 7.5 ENFORCEMENT PROCEDURE<sup>95</sup>

When a Town official identifies or is made aware of a potential violation of this Ordinance, the enforcement procedure shall take place in accordance with this section.

### 7.5.1 COMPLAINTS

- A. Whenever the Planning Director or other designated Town official receives a complaint in a manner consistent with Town policy that alleges a violation of this Ordinance, the Planning Director or other designated Town official shall investigate the violation allegation in accordance with the standards in this section.
- B. The Planning Director, or other designated Town official, shall inform the complainant, if complainant has identified themselves, as to whether a violation of this Ordinance was discovered upon investigation, and if a violation is found to exist, the actions that will be taken by the Town to address the violation.
- C. Nothing shall limit the Planning Director or other designated Town official from investigating possible violations of this Ordinance without receipt of a written complaint.

<sup>94</sup> This is an important new section that clarifies that an entity responsible for a violation is not just the owner - it could be a wide variety of persons, and the Town has the ability (and duty) to enforce the UDO in ways that hold the listed entities accountable.

<sup>95</sup> 160D requires development regulations to specify the parameters and steps in the enforcement process, which is what this section does.

## 7.5.2 INSPECTIONS AND INVESTIGATIONS

- A. The Planning Director or other designated Town official, as appropriate, shall have the power to conduct any lawful inspection and investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.
- B. In exercising these powers, the Planning Director or other designated Town official may enter any premises open to the general public and located within the Town's planning jurisdiction at all reasonable hours for the purposes of inspection or other enforcement action.
- C. The Planning Director or other designated Town official shall, upon presentation of proper credentials, and receipt of permission from a responsible entity, have the right to enter any premises within the Town's planning jurisdiction not open to the general public at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
- D. If the Planning Director or other designated Town official charged with enforcing this Ordinance seeks to enter a premises not open to the general public but cannot obtain permission to enter from a responsible entity, the Town shall obtain an administrative search or inspection warrant prior to entering the property.
- E. The Planning Director or other designated Town official shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, evidence, or reports relating to complaints or alleged violations of this Ordinance.

## 7.5.3 WRITTEN NOTICE OF VIOLATION

### A. CONTENTS OF WRITTEN NOTICE OF VIOLATION

When the Planning Director or other designated Town official finds that a violation of this Ordinance exists, a written notice of violation shall be delivered to the responsible entity(ies). The notice of violation shall include all of following:

#### 1. VIOLATION EXISTS

That the land, building, structure, sign, or use is in violation of this Ordinance;

#### 2. NATURE OF THE VIOLATION

The nature of the violation, and citation of the section(s) of this Ordinance violated;

#### 3. REMEDY

The measures necessary to remedy the violation;

#### 4. TIME PERIOD FOR CORRECTION

The time period in which the violation must be corrected;

#### 5. PENALTIES THAT MAY BE ASSESSED

That penalties or remedies may be assessed if the violation is not addressed within the time period for correction; and

#### 6. APPEAL

That the responsible entity has the right to appeal the notice in accordance with Section <>, Appeal.

### B. DELIVERY OF WRITTEN NOTICE

- 1. The notice of violation shall be delivered to the responsible entity and the landowner if the landowner is not the responsible entity, 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.
- 2. The notice of violation may be posted on the property.



3. The Town official providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

#### **C. INITIAL NOTICE SHALL CONSTITUTE FINAL NOTICE**

The initial written notice of a violation shall constitute final notice regarding a violation, though additional written notice may be provided, in the sole discretion of the Planning Director or other designated Town official.

#### **7.5.4 REMEDY UPON NOTICE**

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the time period for correction stated in the notice of violation.

#### **7.5.5 FAILURE TO COMPLY WITH ORDER**

If the landowner or responsible entity fails to comply with a notice of violation from which no appeal has been taken, or fails to comply following a final decision by the Board of Adjustment on an appeal, the landowner or responsible entity shall be subject to such remedies and penalties as may be provided for by State law or [Section <>, Remedies](#).

#### **7.5.6 EACH DAY A SEPARATE VIOLATION**

Each day a violation continues following notice or failure to comply is considered a separate and distinct offense.

### **7.6 REMEDIES<sup>%</sup>**

Upon failure to address a notice of violation in accordance with this Ordinance, the Town may pursue any of the following remedies to correct the violation. Each of these remedies is cumulative and continuous to the maximum extent provided by State law. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

#### **7.6.1 CIVIL PENALTIES, GENERALLY**

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of the minimum amount per day specified in the Town's adopted schedule of fees in accordance with [Section <>, Assessment of Civil Penalties](#), and any other applicable enforcement provisions in this Ordinance and the Town Code of Ordinances.

#### **7.6.2 CONDITIONED PERMIT OR AUTHORIZATION**

- A. The Planning Director or other designated Town official may condition a permit, authorization, or other approval for land, subdivision, building, structure, sign, use, or development activity on the correction of the violation, payment of civil penalties, and/or the posting of a compliance guarantee approved by the appropriate governmental authority.
- B. In no instance shall the authorization of any permit, certificate, or approval for one property with a violation or outstanding enforcement action be conditioned with the correction of a violation, payment of civil penalties within a specified time, or the posting of a compliance guarantee for a different property.

#### **7.6.3 CRIMINAL PENALTIES**

##### **A. CRIMINAL VIOLATION OF EROSION AND SEDIMENTATION CONTROL PROVISIONS**

1. Any responsible entity who knowingly or willfully violates any provision of [Section <>, Erosion Control Permit](#), or [Section <>, Soil Erosion and Sedimentation Control](#), shall be subject to criminal penalties in accordance with [Section <>, Criminal Penalties](#).

<sup>%</sup> This new section sets down the wide range of responses or remedies to violations of this Ordinance. The section does include criminal penalties, which may be applied to violations of environmental aspects like erosion control, flood damage prevention, and others.

2. Accidental violation of the erosion and sedimental control standards shall be subject to the standards in Section <>, Violations of Soil Erosion and Sedimental Control Standards.

#### **B. CRIMINAL VIOLATION OF FLOOD DAMAGE PROTECTION PROVISIONS**

Any violation of the flood damage protection standards in Section <>, Floodplain Permit, or Section <>, FPOD Flood Protection Overlay District, including violation of conditions and safeguards established in connection with Section <>, Variance, shall constitute a Class 1 misdemeanor pursuant to NCGS§143-215.58. Any responsible entity who violates these standards or fails to comply with these standards shall, upon conviction thereof, be fined not more than \$100 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Clayton from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **C. CRIMINAL VIOLATIONS OF STORMWATER, RIPARIAN BUFFER, OR WATERSHED PROTECTION STANDARDS**

1. Any willful violation of the stormwater, riparian buffer protection, or water supply watershed protection standards in this Ordinance may be enforced as a Class 3 misdemeanor as provided for by NCGS§ 14-4 and all other applicable law, subject to a maximum fine of \$500 or a maximum of 30 days imprisonment.
2. Accidental violation of the stormwater, riparian buffer protection, or water supply watershed protection standards shall be subject to the standards applicable to a civil penalty.
3. In addition to the remedies available in Section <>, Remedies, and the standards related to the assessment of civil penalties in this section, the North Carolina Environmental Management Commission may also assess civil penalties for violation of the Watershed Protection Overlay District standards in accordance with NCGS§ 143-215.6(A).

#### **7.6.4 DENIAL OF PERMIT OR AUTHORIZATION**

The Planning Director or other designated Town official may withhold or deny a permit or other authorization for the same land, subdivision, building, structure, sign, use, or development activity 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.

#### **7.6.5 EQUITABLE REMEDY**

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by the responsible party as a defense to the Town's application for equitable relief.

#### **7.6.6 INJUNCTIVE RELIEF**

##### **A. ACTION BY TOWN COUNCIL**

Whenever the Town Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

## **B. SUPERIOR COURT**

The action shall be brought in the Superior Court of the appropriate county. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

## **C. NO RELIEF FROM CRIMINAL PENALTIES**

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

### **7.6.7 ORDER OF ABATEMENT**

In addition to an injunction, the Towny may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- A.** That buildings or other structures on the property be closed, demolished, or removed;
- B.** That fixtures, furniture, or other moveable property be moved or removed entirely;
- C.** That improvements, alterations, modifications, or repairs be made; or
- D.** That any other action be taken as necessary to bring the property into compliance with this Ordinance.

### **7.6.8 REVOCATION OF PERMITS**

- A.** The Planning Director or other designated Town official may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
- B.** Building permits may be revoked, in accordance with NCGS§ 160D-1115, for any of the following:
  - 1.** Any substantial departure from the approved application, plans, or specifications;
  - 2.** Refusal or failure to comply with the requirements of State or local laws; or
  - 3.** For making false statements or misrepresentations in securing the permit, certificate, or approval.
- C.** Any permit or certificate mistakenly issued in violation of an applicable State or Town law may also be revoked.

### **7.6.9 STOP WORK ORDERS**

#### **A. GENERAL**

Whenever the Planning Director or other designated Town official determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, that Town official may order all or the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.

#### **B. ORDER IN WRITING**

- 1.** The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work.
- 2.** The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.
- 3.** A copy of the order shall be delivered to the responsible party and to the owner of the property involved (if that person is not the responsible party) by personal delivery, electronic delivery, or first-class mail.
- 4.** The Town official delivering the notice shall certify that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud.

### **C. APPEAL**

Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment in accordance with [Section <>, Appeal](#). No further work or activity shall take place in violation of a stop work order until the ruling on the appeal has been made.

### **D. COMPLIANCE REQUIRED**

Neither the responsible entity nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with applicable State law.

## **7.7 ASSESSMENT OF CIVIL PENALTIES**

The following procedure shall be applied by the Town in the assessment and collection of civil penalties.

### **7.7.1 NOTICE**

#### **A. NOTIFICATION REQUIRED**

Civil penalties may not be assessed until the responsible entity in violation has been notified in accordance with [Section <>, Enforcement Procedure](#).

#### **B. CIVIL PENALTY IMPOSED**

If after receiving a written notice of violation under [Section <>, Enforcement Procedure](#), the responsible party fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this section.

#### **C. NOTICE OF PENALTY ASSESSMENT**

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

#### **D. ASSESSMENT CONTENTS**

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the responsible party, and shall direct the responsible party to pay the civil penalty within 30 days of the date of the notice.

#### **E. SEPARATE NOTICES**

Separate notices must be provided for the first or second violations. The Town may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

#### **F. ASSESSMENT UNTIL COMPLIANCE**

Civil penalties may be assessed until compliance is achieved.

### **7.7.2 CONTINUING VIOLATION**

For each day the violation is not corrected, the responsible party shall be guilty of an additional and separate offense and subject to additional civil penalty.

### **7.7.3 DEMAND FOR PAYMENT**

- A.** If compliance is not achieved, then the Town shall make written demand for payment of penalties that have accrued while the property has been in violation.
- B.** The demand for payment shall be sent to the responsible party in violation and must include a description of the violation for which the civil penalties have been imposed.
- C.** Payment of the penalty shall not constitute a remedy for the violation.



#### 7.7.4 NONPAYMENT

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Town may recover any unpaid civil penalty by filing a civil action in the nature of debt.

#### 7.7.5 PENALTIES

Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

### 7.8 VIOLATIONS OF SOIL EROSION AND SEDIMENTATION CONTROL STANDARDS<sup>97</sup>

Violations of the Town's erosion control and sedimentation standards shall be subject to the provisions of this Chapter as well as the following:

#### A. CIVIL PENALTIES

##### 1. GENERALLY

Any responsible entity who accidentally or inadvertently violates any of the provisions of Section <>, Erosion Control Permit, or Section <>, Soil Erosion and Sedimentation Control, or who initiates or continues a land-disturbing activity for which an erosion control or sedimentation plan is required, or fails to comply with the provisions of an approved erosion control and sedimentation plan, shall be subject to a civil penalty in accordance with the following:

- a. The maximum civil penalty amount the Town may assess per violation is \$5,000.
- b. A civil penalty may be assessed from the date of the violation, and each day of a continuing violation shall constitute a separate violation.
- c. When the responsible entity has not been assessed any civil penalty under this section for any previous violation, and that responsible entity has abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.

##### 2. ENVIRONMENTAL IMPACTS

- a. In addition to the civil penalties provided with the Town's fee schedule, the Town may also assess a one-time civil penalty of \$5,000 on the day of the violation for off-site sedimentation damage especially in the case of damage to a body of water, wetlands, or riparian buffer.
- b. Any malicious or intentional destruction of silt fencing or other sedimentation and erosion control device will result in a one-time civil penalty of up to \$1,000.

##### 3. REPEAT OFFENSES

- a. An additional civil penalty of \$1,000 per day shall be charged to any responsible entity assessed a civil penalty for any violation of these standards within the prior two years.
- b. A responsible may be assessed a civil penalty from the date the violation is detected if the deadline stated is not met.
- c. Each day of a continuing violation shall constitute a separate violation.

<sup>97</sup> Carries forward Section 156.999 of the Town Code of Ordinances except that appeals of civil penalties are heard by the Board of Adjustment and that petitions for remission are filed with the NC Sedimentation Control Commission, not the Town Council.



#### 4. CIVIL PENALTY ASSESSMENT FACTORS

The Engineering Director shall determine the amount of the civil penalty based upon the following factors:

- a. The degree and extent of harm caused by the violation;
- b. The cost of rectifying the damage;
- c. The amount of money the responsible entity saved by noncompliance;
- d. Whether the violation was committed willfully, and therefore subject to Section <>, Criminal Penalties; and
- e. The prior record of the responsible entity in complying or failing to comply with the Town's standards for erosion and sedimentation control.

#### 5. NOTICE OF PENALTY ASSESSMENT

- a. The Engineering Director shall provide notice of the civil penalty amount and basis for assessment to the responsible entity in accordance with NCGS§ 1A-1, Rule 4.
- b. A notice of assessment shall direct the responsible entity to either pay the assessment, contest the assessment within 30 days by filing an appeal (see Section <>, Appeal), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice of assessment.
- c. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS Chapter 150B and a stipulation of the facts on which the assessment was based.

#### 6. REMISSION OF CIVIL PENALTY ASSESSMENT

A request for remission of a civil penalty imposed under NCGS§ 113A-64 may be filed with the North Carolina Sedimentation Control Commission within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to NCGS § 150B-31 and a stipulation of the facts on which the assessment was based.

#### 7. COLLECTION

- a. If payment is not received within 60 days after it is due, the Town may institute a civil action to recover the amount of the assessment.
- b. The civil action may be brought in the Johnston County Superior Court, or the County Superior Court of the responsible entity's residence or principal place of business.
- c. Such civil actions must be filed within three years of the date the assessment was due.
- d. An assessment that is not contested and a remission that is not requested is due when the responsible entity is served with a notice of assessment.
- e. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.

#### B. CRIMINAL PENALTIES

Any person who knowingly or willfully violates any provision of Section <>, Erosion Control Permit, or Section <>, Soil Erosion and Sedimentation Control, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control and sedimentation plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor pursuant to NCGS§ 113A-64. Any responsible entity who engages in this conduct, shall, upon conviction thereof, be fined not more \$5,000.

## 7.9 STATUTE OF LIMITATIONS

Enforcement of violations of this Ordinance shall be in accordance with NCGS§ 1-49(3) and NCGS§1-51(5) of the North Carolina General Statutes.