

**TOWN OF ZEBULON  
PLANNING BOARD AGENDA  
Zebulon Municipal Complex  
February 25, 2019  
7:00pm**

**I. CALL TO ORDER**

**II. APPROVAL OF AGENDA**

**III. ADOPTION OF MINUTES**

A. November 13, 2018

**IV. NEW BUSINESS**

A. Review of Unified Development Ordinance – Module 1

**V. ADJOURNMENT**



STAFF REPORT  
UNIFIED DEVELOPMENT ORDINANCE - MODULE 1  
February 25, 2019

**Topic: Unified Development Ordinance - Module 1**

**Executive Summary:**

The Planning Board will be presented information on the first module of the Unified Development Ordinance (UDO).

**Background:**

On December 5, 2016, the Board adopted a contract with CodeWright Planners, LLC ("CodeWright") for the purposes of developing the UDO.

**Discussion:**

The Planning Board will hear information on the UDO project and discuss next steps.

**Policy Analysis:**

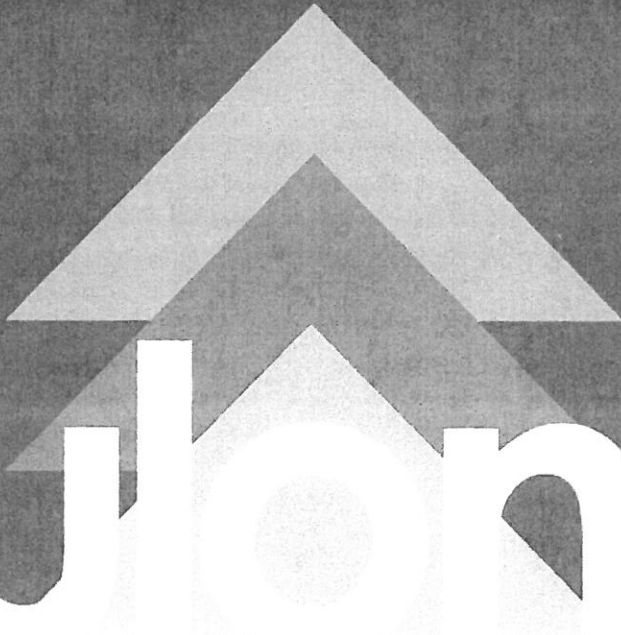
The UDO is aimed at updating the policies and regulations that guide growth and development in town. Once complete, the UDO will establish minimum standards and clarify or add language which will implement numerous goals, policies and action items recommended within the Multimodal Transportation Plan, Comprehensive Plan, and Greenway, Bicycle and Pedestrian Master Plan.

**Staff Recommendation:**

This is an informational staff report to provide the Planning Board with updates on the UDO project, scheduled meetings and to receive feedback on content. The following meeting dates will be dedicated to the review of the UDO modules with the consultant and/or staff.

<u>Governing Board (Focus Group) - 2:00 pm</u>	<u>Planning Board - 7:00 pm</u>
Planning Board Welcomed To Attend - <b>Optional</b>	Regularly Scheduled Planning Board Meeting
January 23	
February 13	February 25
February 27	March 25
March 13	April 22
March 27	May 28 (Tues.)
April 10	
April 24	
May 8	
May 22	





# •Grow Zebulon

## UNIFIED DEVELOPMENT ORDINANCE

PUBLIC REVIEW DRAFT

November, 2018

# ACKNOWLEDGEMENTS



## TOWN BOARD OF COMMISSIONERS

---

Robert S. Matheny, Mayor

R. Dale Beck

Don Bumgarner

Beverly Wall Clark

Curtis Strickland

Annie Moore

## PLANNING BOARD

---

Kenny Waldroup,

Larry Ray,

Gene Blount,

Laura Johnson,

David Covington,

Shannon Baxter

## TOWN STAFF

---

Joe Moore, Town Manager

Mark Hetrick, Planning Director

Chris Ray, Public Works Director

## CONSULTANT

---

CodeWright Planners, LLC

9 Blue Bottle Lane

Durham, NC 27705

[www.codewright.info](http://www.codewright.info)



# TABLE OF AMENDMENTS

## TABLE OF AMENDMENTS

Amendments made since UDO adoption

ORDINANCE #	DATE ADOPTED	TITLE	AFFECTED UDO SECTION(S)	DESCRIPTION
TA-2019-1	1.15.19	Hypothetical Text Amendment	1.1, 2.1.3	This is a placeholder to show how text in this table will appear
TA-2020-4	4.5.20	Subsequent Text Amendment	3.3, 3.4, 3.5	Another placeholder <sup>1</sup>

---

<sup>1</sup> This is table proposed for the Town's consideration. It creates a place where text amendments may be logged as they are adopted. By using the "Cross-reference" button under the "References" tab in the Microsoft Word ribbon, the affected UDO section numbers may be inserted as dynamic text links that will automatically take the reader the selected section.

# TABLE OF CONTENTS

<b>1: GENERAL PROVISIONS .....</b>	<b>1-1</b>
1.1. Title .....	1-1
1.2. Effective Date .....	1-1
1.3. Authority .....	1-1
1.3.1. General Assembly .....	1-1
1.3.2. North Carolina General Statutes .....	1-1
1.3.3. Town Charter .....	1-1
1.3.4. Other Relevant Laws .....	1-1
1.4. Purpose and Intent .....	1-2
1.4.1. Keep Town Residents and Visitors Safe .....	1-2
1.4.2. Foster a Convenient, Compatible Arrangement of Land Uses .....	1-2
1.4.3. Protect the Natural Environment .....	1-2
1.4.4. Ensure Properly Functioning Infrastructure .....	1-2
1.4.5. Establish a Unique Sense of Place .....	1-2
1.4.6. Promote a Strong and Diverse Economy .....	1-2
1.4.7. Provide Adequate and Desirable Housing .....	1-3
1.5. Applicability .....	1-3
1.5.1. Territorial Jurisdiction .....	1-3
1.5.2. Development Subject to this Ordinance .....	1-3
1.5.3. Activities Exempted from this Ordinance .....	1-4
1.5.4. Application to Governmental Units .....	1-4
1.5.5. Emergency Exemptions .....	1-4
1.5.6. Minimum Requirements .....	1-4
1.6. Adopted Policy Guidance .....	1-5
1.6.1. Policy Guidance Identified .....	1-5
1.6.2. Conformance .....	1-5
1.7. Procedures Manual .....	1-5
1.8. Relationship to Other Laws and Agreements .....	1-5
1.8.1. Review of Private Agreements .....	1-5
1.8.2. Existing Agreements or Vested Rights .....	1-6
1.9. Conflict .....	1-6
1.9.1. Conflicts with State or Federal Law .....	1-6
1.9.2. Conflicts with Other City Codes or Laws .....	1-6
1.9.3. Conflicts between the Standards in this Ordinance .....	1-6
1.9.4. Conflicts with Private Agreements .....	1-6
1.9.5. Determination of the More Restrictive Standard .....	1-6
1.10. Transitional Provisions .....	1-6
1.10.1. Prior Violations Continue .....	1-7
1.10.2. Existing Nonconformities .....	1-7
1.10.3. Pending Applications .....	1-7
1.10.4. Approved Applications .....	1-7
1.10.5. Existing Development .....	1-7
1.11. Zoning District Translation .....	1-8
1.12. Severability .....	1-9

## 2: PROCEDURES ..... 2-1

### 2.1. How to Use this Article ..... 2-1

- 2.1.1. Purpose and Intent ..... 2-1
- 2.1.2. Article Contents ..... 2-1
- 2.1.3. Steps in the Development Review Process ..... 2-1
- 2.1.4. For Additional Information ..... 2-1

### 2.2. Application Review Procedures ..... 2-2

- 2.2.1. Administrative Adjustment ..... 2-4
- 2.2.2. Annexation ..... 2-6
- 2.2.3. Appeal ..... 2-8
- 2.2.4. Building Permit ..... 2-10
- 2.2.5. Certificate of Occupancy ..... 2-12
- 2.2.6. Conditional Rezoning ..... 2-14
- 2.2.7. Development Agreement ..... 2-18
- 2.2.8. Exempt Subdivision ..... 2-20
- 2.2.9. Expedited Subdivision ..... 2-22
- 2.2.10. Final Plat ..... 2-24
- 2.2.11. Floodplain Development Permit ..... 2-26
- 2.2.12. Interpretation ..... 2-28
- 2.2.13. Planned Development ..... 2-31
- 2.2.14. Preliminary Plat ..... 2-35
- 2.2.15. Sign Permit ..... 2-37
- 2.2.16. Site Plan ..... 2-38
- 2.2.17. Special Use Permit ..... 2-40
- 2.2.18. Temporary Use Permit ..... 2-42
- 2.2.19. UDO Text Amendment ..... 2-44
- 2.2.20. Variance ..... 2-46
- 2.2.21. Vested Rights Determination ..... 2-50
- 2.2.22. Zoning Compliance Permit ..... 2-52
- 2.2.23. Zoning Map Amendment ..... 2-53

### 2.3. Application Processing ..... 2-56

- 2.3.1. Purpose and Intent ..... 2-56
- 2.3.2. Pre-application Conference ..... 2-56
- 2.3.3. Application Filing ..... 2-56
- 2.3.4. Staff Review and Action ..... 2-58
- 2.3.5. Public Notice ..... 2-58
- 2.3.6. Public Hearings and Meetings ..... 2-61
- 2.3.7. Conditions of Approval ..... 2-63
- 2.3.8. Notification of Decision ..... 2-64
- 2.3.9. Effect ..... 2-64
- 2.3.10. Continuance, Postponement, and Withdrawal ..... 2-64
- 2.3.11. Limitation on Subsequent Similar Applications ..... 2-65

## 3: DISTRICTS ..... 3-1

- 3.1. General Provisions ..... 3-1
- 3.2. Official Zoning Map ..... 3-1
- 3.3. Dimensional Requirements Applied to All Development ..... 3-1
- 3.4. Districts Established ..... 3-1
- 3.5. Business Zoning Districts ..... 3-1
- 3.6. Mixed-Use Zoning Districts ..... 3-1
- 3.7. Planned Development Districts ..... 3-1
- 3.8. Residential Zoning Districts ..... 3-1

3.9.	Conditional Districts.....	3-1
3.10.	Overlay Zoning Districts .....	3-2
<b>4:</b>	<b>USES.....</b>	<b>4-1</b>
4.1.	How to Use this Chapter.....	4-1
4.2.	Principal Uses.....	4-1
4.2.1.	Use Classification System .....	4-1
4.2.2.	Uses Permitted By-Right.....	4-1
4.2.3.	Uses Permitted by Special Permit.....	4-1
4.2.4.	Prohibited Uses .....	4-1
4.2.5.	Principal Use Table.....	4-1
4.3.	Use-Specific Standards .....	4-1
4.4.	Accessory uses.....	4-1
4.5.	Temporary Uses.....	4-1
4.6.	Unlisted Uses .....	4-1
<b>5:</b>	<b>DEVELOPMENT STANDARDS.....</b>	<b>5-1</b>
5.1.	Access and Circulation .....	5-1
5.2.	Design Guidelines .....	5-1
5.3.	Design Standards.....	5-1
5.4.	Exterior Lighting .....	5-1
5.5.	Fences and Walls.....	5-1
5.6.	Landscaping .....	5-1
5.7.	Open Space.....	5-1
5.8.	Parking and Loading .....	5-1
5.9.	Riparian Buffers .....	5-1
5.10.	Screening .....	5-1
5.11.	Signage.....	5-1
5.12.	Tree Protection .....	5-1
<b>6:</b>	<b>SUBDIVISIONS .....</b>	<b>6-1</b>
6.1.	Homeowners' or Property Owners' Association .....	6-1
6.2.	Performance Guarantees.....	6-1
6.3.	Reservation of Public Land .....	6-1
6.4.	Sidewalks.....	6-1
6.5.	Soil Erosion & Sedimentation.....	6-1
6.6.	Stormwater .....	6-1
6.7.	Streets .....	6-1

6.8. Subdivision Standards .....	6-1
6.9. Transportation Impact Analysis .....	6-1

## **7: NONCONFORMITIES..... 7-1**

7.1. General Applicability .....	7-1
7.2. Nonconforming Lots of Record .....	7-1
7.3. Nonconforming Signs .....	7-1
7.4. Nonconforming Sites .....	7-1
7.5. Nonconforming Structures .....	7-1
7.6. Nonconforming Uses .....	7-1

## **8: ENFORCEMENT ..... 8-1**

8.1. Purpose .....	8-1
8.2. Compliance Required .....	8-1
8.3. Violations.....	8-1
8.4. Responsible Persons .....	8-1
8.5. Enforcement Generally .....	8-1
8.6. Remedies .....	8-1

## **9: MEASUREMENT AND DEFINITIONS ..... 9-1**

9.1. Rules of Language Construction.....	9-1
9.1.1. Meanings and Intent.....	9-1
9.1.2. Headings, Illustrations, and Text .....	9-1
9.1.3. Lists And Examples .....	9-1
9.1.4. Computation of Time.....	9-1
9.1.5. Time-Related Language .....	9-1
9.1.6. References to This Ordinance .....	9-2
9.1.7. References to Other Regulations or Publications.....	9-2
9.1.8. References to North Carolina General Statutes .....	9-2
9.1.9. Delegation of Authority .....	9-2
9.1.10. Joint Authority .....	9-2
9.1.11. Technical and Non-Technical Terms .....	9-2
9.1.12. Public Officials and Agencies .....	9-2
9.1.13. Mandatory and Discretionary Terms.....	9-2
9.1.14. Conjunctions.....	9-2
9.1.15. Tenses, Plurals, and Gender of Words .....	9-2
9.1.16. Oath .....	9-3
9.1.17. Term Not Defined.....	9-3
9.2. Table of Abbreviations.....	9-4
9.3. Rules of Measurement .....	9-4
9.4. Definitions.....	9-6

## **10: REVIEWING AGENCIES..... 10-1**

10.1. Overview .....	10-1
----------------------	------



10.2.	Board of Adjustment (BOA) .....	10-1
10.2.1.	Powers and Duties .....	10-1
10.2.2.	Composition .....	10-1
10.2.3.	Rules of Procedure .....	10-2
10.3.	Board of Commissioners .....	10-4
10.3.1.	Powers and Duties .....	10-4
10.4.	Planning Board .....	10-5
10.4.1.	Powers and Duties .....	10-5
10.4.2.	Composition .....	10-5
10.4.3.	Rules of Procedure .....	10-6
10.5.	Technical Review Committee (TRC) .....	10-8
10.5.1.	Powers and Duties .....	10-8
10.5.2.	Composition .....	10-8
10.5.3.	Rules of Procedure .....	10-8
10.6.	Building Inspector .....	10-9
10.6.1.	Powers and Duties .....	10-9
10.7.	Planning Director .....	10-10
10.7.1.	Powers and Duties .....	10-10
10.8.	Town Attorney .....	10-11
10.8.1.	Powers and Duties .....	10-11
10.9.	Town Manager .....	10-12
10.9.1.	Powers and Duties .....	10-12



## USING THIS ORDINANCE

This document is a draft version of the Town of Zebulon's Unified Development Ordinance (or "UDO"). It contains the rules that control how land can be used in the Town, what kinds of uses may be located in particular locations, and how new development must be configured. The following paragraphs explain some of the attributes of this document.

The draft UDO is prepared in accordance with prior discussions with Town Staff, the Town Board of Commissioners, UDO Focus Groups, and national best practices. It is intended to replace Chapter 152 of the current Town Code of Ordinances (the Land Use Ordinance), upon adoption by the Town Board of Commissioners. While this document implements the Town's adopted policy guidance, like the Comprehensive Plan, it is regulatory (not advisory) in nature, and is a legal document that carries the force of law.

The Town's zoning map is the graphical depiction of the location of the zoning districts, and is adopted by reference in this document. The new UDO adds a few new zoning districts and changes the names to other existing zoning districts, but the UDO does not anticipate wide-scale rezoning of land in the Town. There are zoning district translation provisions that describe how the current zoning districts are translated to corresponding zoning districts with new names.

This draft document contains 10 articles that consolidate similar kinds of provisions, like procedures, zoning districts, use standards, or development standards into individual articles. The first page of each article describes the key changes between the current regulations and the draft regulations proposed here.

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

The top of almost every page includes a listing of the particular article number and name, as well as the appropriate section number and name of the text on that particular page. This allows users to quickly navigate through the document using the tops of the pages. Page numbers are included at the bottom of each page. Page numbers include the article number so that a user may quickly see what article a particular page is located in (which is helpful for navigating or referencing the document). Some articles, like Article 2: Procedures, also include an introductory section that explains how the regulations in the article are structured and how to use them effectively. Where possible, provisions in a particular article are listed in alphabetical order to allow users to quickly locate the desired text.

Throughout this draft document, users will see yellow highlighted text. Highlighted text shows cross references to other sections or subsections in the document, or to the date the draft document is made effective (which may be the adoption date, or a subsequent date, as decided by the Town Board of Commissioners). As with the table of contents entries, users of the digital version of this document will be able to click on a cross reference, and the digital document will automatically scroll to the location in the document being cross referenced. This dynamic cross referencing function will be integrated following adoption, and the yellow highlighting will be removed.

Most pages of the draft version of the document include footnotes at the bottom of the page. Each footnote has a unique number that shows up in the field of text on the page, as well as at the bottom of the page. Some footnotes may continue to the next page, depending upon their length. These footnotes are used to show the origin of draft text, to call attention to new provisions, or to pose questions for the Town's consideration during the drafting process. Footnotes including the word "NOTE" at the beginning indicate important notes for consideration. All the footnotes will be removed from the document after it is adopted.

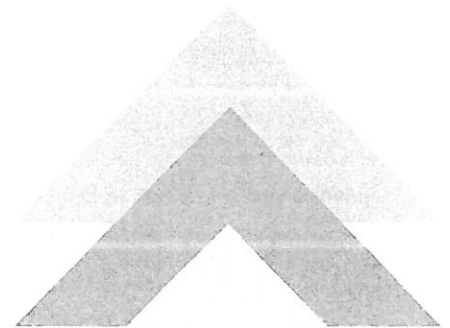
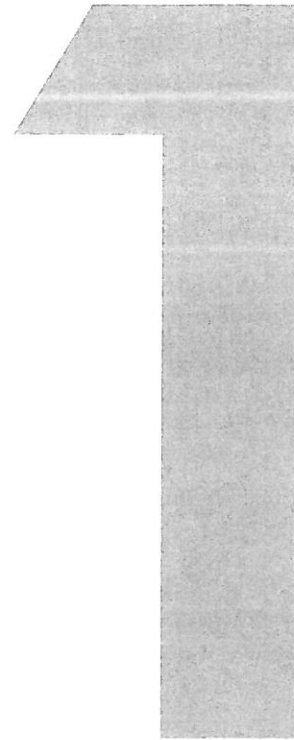
In addition to the text layout and formatting improvements, this new UDO will be supplemented with graphics and illustrations. Graphics are not prepared and inserted until the later stages of the project after the draft text has been completed, but prior to the adoption process. This delay helps ensure funds are not expended for graphics that support text not included in the adoption version of the UDO. This draft document includes individual table cells in various locations in the text that depict the approximate placement of a graphic or illustrations. Each of these tables is shown in yellow highlight and start with the words Graphics Placeholder. Additional text in the table cell describes the type of illustration anticipated for that particular location.

Prior to completion of the adoption version of the document, an index of key terms will be prepared so that users may quickly find the portion of the desired regulations. In addition to the index, the digital version of this document is fully searchable. The document also includes a number of other helpful features such as procedural flowcharts, a glossary of abbreviations, and tables that summarize information.

# ARTICLE 1: GENERAL PROVISIONS

## Key Changes from Chapter 152 Article 1, General Provisions:

- This article includes the new page layout and format. The numbering system starts with "1" and does not identify a chapter of the Town Code of Ordinances. The new UDO may be configured as an appendix to the Town Code.
- This UDO repeals and replaces all current development regulations in Chapter 152.
- Article 1 includes more detailed statements of purpose and intent that describe what the UDO is intended to do.
- The article recognizes all forms of adopted policy guidance, not just the comprehensive plan.
- The article includes references the proposed Procedures Manual; a separate document that contains submittal requirements, application forms, the review schedule, fee schedule, and other resources for applicants. The Procedures Manual will be prepared while the UDO is in the adoption process.
- There is a detailed section on how conflict between the provisions in this Ordinance and other laws are addressed. The section also addresses allowable deviations and incentives.
- There is a detailed set of transitional provisions that addresses development in process at the time this Ordinance is addressed.
- The article includes a zoning district transition table that sets out how the current zoning districts are proposed for translation into the districts in this UDO.
- This list of key changes is provided for the sake of convenience during the review process and will not be included in the adopted UDO.
- 



# 1: GENERAL PROVISIONS ..... 1-1

1.1. Title .....	1-1
1.1.1. Unified Development Ordinance Text.....	Error! Bookmark not defined.
1.1.2. Official Zoning Map.....	Error! Bookmark not defined.
1.2. Effective Date .....	1-1
1.3. Authority.....	1-1
1.3.1. General Assembly .....	1-1
1.3.2. North Carolina General Statutes .....	1-1
1.3.3. Town Charter.....	1-1
1.3.4. Other Relevant Laws.....	1-1
1.4. Purpose and Intent.....	1-2
1.5. Applicability.....	1-3
1.5.1. Territorial Jurisdiction.....	1-3
1.5.2. Development Subject to this Ordinance.....	1-3
1.5.3. No Development Until Compliance with This Ordinance .....	Error! Bookmark not defined.
1.5.4. Activities Exempted from this Ordinance .....	1-4
1.5.5. Application to Governmental Units .....	1-4
1.5.6. Emergency Exemptions .....	1-4
1.5.7. Minimum Requirements .....	1-4
1.6. Adopted Policy Guidance .....	1-5
1.6.1. Policy Guidance Identified.....	1-5
1.6.2. Conformance.....	1-5
1.7. Procedures Manual.....	1-5
1.8. Relationship to Other Laws and Agreements .....	1-5
1.8.1. Review of Private Agreements .....	1-5
1.8.2. Existing Agreements or Vested Rights.....	1-6
1.9. Conflict.....	1-6
1.9.1. Conflicts with State or Federal Law.....	1-6
1.9.2. Conflicts with Other City Codes or Laws.....	1-6
1.9.3. Conflicts between the Standards in this Ordinance .....	1-6
1.9.4. Conflicts with Private Agreements.....	1-6
1.9.5. Determination of the More Restrictive Standard .....	1-6
1.10. Transitional Provisions.....	1-6
1.10.1. Prior Violations Continue .....	1-7
1.10.2. Existing Nonconformities .....	1-7
1.10.3. Pending Applications .....	1-7
1.10.4. Approved Applications .....	1-7
1.10.5. Existing Development.....	1-7
1.11. Zoning District Translation.....	1-8
1.12. Severability .....	1-9

# 1: GENERAL PROVISIONS

## 1.1. TITLE<sup>2</sup>

This Ordinance is officially titled as the "Town of Zebulon, North Carolina Unified Development Ordinance," and may be referred to as "the Unified Development Ordinance," "this Ordinance," or by one or more other abbreviated references ("the UDO," "this UDO," or "UDO").

## 1.2. EFFECTIVE DATE<sup>3</sup>

This Ordinance shall be in full force and effect on *[insert the effective date of this Ordinance]*, and it repeals and replaces the Town of Zebulon Land Use Ordinance, as originally adopted on September 8, 1992, and as subsequently amended.

## 1.3. AUTHORITY<sup>4</sup>

The authority to enact, administer, and enforce this UDO is derived from the following sources:

### 1.3.1. GENERAL ASSEMBLY

The authority granted to the Town of Zebulon by the General Assembly of the State of North Carolina.

### 1.3.2. NORTH CAROLINA GENERAL STATUTES

The North Carolina General Statutes, including:

- A. Chapter 160A, Article 8 (Police Powers);
- B. Chapter 160A, Article 15 (Streets, Traffic, and Parking);
- C. Chapter 160A, Article 19 (Planning and Regulation of Development);
- D. Chapter 143, Article 21 (Water and Air Resources); and
- E. Chapter 113A, Article 4 (Sedimentation and Pollution Control).

### 1.3.3. TOWN CHARTER

The Zebulon Town Charter.

### 1.3.4. OTHER RELEVANT LAWS

- A. All other relevant laws of the State of North Carolina; and
- B. Any special legislation for the Town of Zebulon enacted by the North Carolina General Assembly.

<sup>2</sup> This section replaces Section 152.001, Short Title, and establishes the document as a unified development ordinance instead of a land use ordinance.

<sup>3</sup> This section replaces Section 152.004, Effective Date.

<sup>4</sup> This section replaces Section 152.002, Authority, and goes into greater detail about other relevant enabling legislation. The language in Section 152.005, Relationship to Existing Code and Subdivision Regulations, is not carried forward because this is intended as a new regulatory document that repeals and replaces all of Chapter 152.

## ARTICLE 1: GENERAL PROVISIONS

### 1.4. Purpose and Intent<sup>4</sup>

### 1.4.1. Keep Town Residents and Visitors Safe

### 1.4. PURPOSE AND INTENT<sup>5</sup>

The purpose of this Ordinance is to promote the public health, safety, morals, and general welfare of the community, and to ensure that all development within the town's planning jurisdiction is generally consistent with the town's adopted policy guidance pertaining to growth and development. More specifically, this Ordinance is intended to pursue the following:

#### 1.4.1. KEEP TOWN RESIDENTS AND VISITORS SAFE

- A. The UDO is intended to protect the health and safety of all town residents and visitors by ensuring the provision of adequate open space between uses for light, air, and fire safety.
- B. The UDO seeks to require appropriate setbacks for buildings and other structures to facilitate the safe movement of vehicular and pedestrian traffic, ensure the provision of adequate fire lanes, and maintenance of an adequate distance between residential uses and the dust, noise, and fumes created by vehicular traffic.
- C. The UDO also seeks to secure the safety of landowners and residents from flooding, fire, seismic activity, and dangers presented from extreme weather events, to the extent possible.

#### 1.4.2. FOSTER A CONVENIENT, COMPATIBLE ARRANGEMENT OF LAND USES

- A. The UDO is intended to establish a compact and convenient arrangement of land uses across the landscape in ways that promote orderly growth and compatibility between different kinds of land uses like residential, commercial, and agriculture.
- B. The UDO strives to produce a sustainable balance of land uses (residential, commercial, industrial, etc.) in order to assist with the fiscal wellbeing of the town and to ensure a diverse tax base.
- C. The UDO seeks to promote redevelopment of underutilized sites served by public infrastructure as catalyst sites for investment while at the same time protecting existing established development and neighborhoods from incompatible infill and redevelopment.

#### 1.4.3. PROTECT THE NATURAL ENVIRONMENT

- A. The UDO intends to protect air and water quality, preserve open space, protect natural resource areas (like wetlands and riparian areas), and preserve a sufficient amount of wildlife habitat.
- B. The UDO promotes sustainable development practices, like energy conservation, low-impact development, and alternative modes of transportation that do not contribute to the formation of greenhouse gases.

#### 1.4.4. ENSURE PROPERLY FUNCTIONING INFRASTRUCTURE

- A. The UDO seeks to ensure sufficient and adequately functioning infrastructure, including transportation, potable water, wastewater, recreation, stormwater management, and communications through standards requiring dedication of sufficient land for such facilities, and requirements to construct or make payment in-lieu of constructing required infrastructure.
- B. The UDO seeks improve town-wide and regional connectivity for vehicles, pedestrians and bicyclists through new extension and connection provisions for greenways, trails, bicycle lanes, sidewalks, and streets.
- C. The UDO seeks to coordinate the development of streets with other public facilities so as to better manage and lessen congestion in the streets as well as provisions that ensure the construction of necessary community service facilities.

#### 1.4.5. ESTABLISH A UNIQUE SENSE OF PLACE

The UDO promotes the town's unique "sense of place" in eastern Wake County by promoting revitalization of the downtown and surrounding areas, encouraging the establishment of new greenways, and establishing new requirements for open space set-asides.

#### 1.4.6. PROMOTE A STRONG AND DIVERSE ECONOMY

<sup>5</sup> This is a new section that establishes the general purpose and intent statements for the UDO based on statutory language, the comprehensive plan, and best practice.

## ARTICLE 1: GENERAL PROVISIONS

### 1.5. Applicability<sup>5F</sup>

### 1.4.7. Provide Adequate and Desirable Housing

The UDO emphasizes place-making strategies as a means of attracting and retaining talent and promoting economic competitiveness.

#### 1.4.7. PROVIDE ADEQUATE AND DESIRABLE HOUSING

- A.** The UDO encourages urban densities in appropriate locations such as downtown while also providing for a wider variety of housing types, sizes, and contexts to meet changing housing preferences and housing affordability challenges facing town residents.
- B.** The UDO also intends to preserve established neighborhood character and ensure that infill development and redevelopment maintain compatibility with established residential surroundings.

### 1.5. APPLICABILITY<sup>6</sup>

#### 1.5.1. TERRITORIAL JURISDICTION

This Ordinance shall apply to any development that occurs within the corporate limits and extraterritorial jurisdiction (ETJ) of the Town of Zebulon, unless expressly provided otherwise by the terms of this Ordinance.

#### 1.5.2. DEVELOPMENT SUBJECT TO THIS ORDINANCE

Except as otherwise provided in writing elsewhere in this Ordinance (e.g., Section <>, Activities Exempted from this Ordinance), any of the following activities shall be subject to the requirements in this Ordinance:

**A. ANY CONSTRUCTION**

Any construction, reconstruction, erection, installation, placement, relocation, renovation, remodeling, demolition, or alteration in the size or external appearance of a building or other structure on land.

**B. NEW USES OR CHANGES IN USE**

The establishment of a new use of land or structure, a new open-air use of land, or any change in such use.

**C. CHANGES IN INTENSITY**

Any change in the intensity of the use of land or a structure, such as:

1. An increase in the number of businesses, establishments, offices, dwelling units, or lodging units comprising the use;
2. An increase in the number of products or services provided by the use;
3. An increase in the volume or characteristics of vehicular traffic generated by the use;
4. An increase in noise levels, thermal conditions, or emissions of waste materials associated with the use;
5. An increase in the number of signs, sign face area, or sign height; or
6. An increase in the duration of a temporary or seasonal use.

**D. CHANGES IN IMPERVIOUS SURFACE**

Any land-disturbing activity that increases or changes the amount of impervious or partially impervious cover or that otherwise decreases the infiltration of precipitation or surface water runoff into the soil.

**E. ALTERATION OF TOPOGRAPHY**

An alteration of the natural topography of land, such as mining, grading, ditching, extracting earth materials, dredging, excavation, filling, or deposition of soil.

**F. REMOVAL OF REQUIRED VEGETATION**

A removal of required vegetative cover, such as site clearing or the removal of protected existing trees.

**G. ALTERATION OF WATERCOURSE**

<sup>6</sup> This section replaces Section 152.003, Jurisdiction, Section 152.007, No Use or Sale of Land Except in Conformity with Chapter Provisions, Section 152.031 Permit Required, and Section 152.032, No Occupancy, Use or Sale of Lots until Requirements Fulfilled. It goes into greater detail regarding activities that are or are not subject to the ordinance. The section also includes proposed provisions regarding emergencies.



## ARTICLE 1: GENERAL PROVISIONS

### 1.6. Adopted Policy Guidance6F

Any alteration of the channel, bank, shore, floodway, or floodplain of a watercourse, body of water, or wetland.

#### H. DIVISION OF LAND

Any division of a parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) except where exempted by law, and any division of land involving dedication of a new street or a change in existing streets.

### 1.5.3. ACTIVITIES EXEMPTED FROM THIS ORDINANCE

The following activities do not constitute development subject to this Ordinance, but may be subject to other provisions in the Town Code of Ordinances:

#### A. INSPECTION

The inspection, maintenance, or repair of an existing transportation facility (e.g., roadway, walkway, trail, railroad tracks, traffic control device, etc.) or an existing utility, stormwater management device, or public service facility (pipe, cable, valve, catch basin, outlet, ditch, basin, bulk refuse container pad, etc.), if no substantial engineering redesign is involved;

#### B. MAINTENANCE

The ordinary maintenance and repair of existing structures, where no activities identified in Section <>, Development Subject to this Ordinance, or subject to State Building Code requirements are involved;

#### C. PLANTING

The ordinary planting or maintenance of vegetative landscaping or gardens;

#### D. CHANGE IN OWNERSHIP

A change in the ownership or form of ownership of any parcel or structure;

#### E. CHANGES IN TITLE

The creation or termination of easements, covenants, condominium titles, or other rights in land or development, where no street right-of-way dedication is involved; or

#### F. EXEMPT DIVISION OF LAND

Any division of land proposed as one of the activities specially listed as excluded from the definition of "subdivision" in Section <>, Definitions.

### 1.5.4. APPLICATION TO GOVERNMENTAL UNITS

To the extent allowed by law, this Ordinance shall apply to any development by town, county, state, or federal agencies within the town's territorial jurisdiction, and any land, buildings, and structures—including uses thereof—owned or otherwise controlled by such agencies. Where this Ordinance does not control such development, land, buildings, and structures, such agencies are encouraged to meet the provisions of this Ordinance.

### 1.5.5. EMERGENCY EXEMPTIONS

The Town Manager may, without any otherwise required prior notice or public hearing, authorize town agencies to deviate from the provisions of this Ordinance during and after an emergency (such as a hurricane or other storm, flooding, chemical spill or leak) when the need to act quickly to secure the public health, safety, or welfare makes it impossible to submit to the normal procedures and requirements of this Ordinance.

### 1.5.6. 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 to the town under the North Carolina General Statutes.

## ARTICLE 1: GENERAL PROVISIONS

1.6. Adopted Policy Guidance<sup>6F</sup>

1.6.1. Policy Guidance Identified

### 1.6. ADOPTED POLICY GUIDANCE<sup>7</sup>

#### 1.6.1. POLICY GUIDANCE IDENTIFIED

The administration, enforcement, and amendment of this Ordinance shall be accomplished in accordance with the town's adopted policy guidance. This includes the Comprehensive Plan and all other town-adopted policy guidance pertaining to land use and development.

#### 1.6.2. CONFORMANCE

##### A. ADVISORY

Adopted policy guidance is advisory in nature and does not carry the effect of law. Except as provided in Section 160A-382 and Section 160A-383 of the North Carolina General Statutes, consistency with adopted policy guidance shall not be a requirement for the continuing validity of any provision of this Ordinance.

##### B. CONSISTENCY

This Ordinance is intended to ensure that all development within the town is consistent with the goals, objectives, policies, strategies, and actions contained in the town's adopted policy guidance.

##### C. AMENDMENT UPON INCONSISTENCY

1. To the extent this Ordinance is or becomes inconsistent with the town's adopted policy guidance, either this Ordinance or the adopted policy guidance, as appropriate, should be amended to retain consistency.
2. All amendments to this Ordinance's text or to the Official Zoning Map should maintain and enhance consistency between this Ordinance and adopted policy guidance.
3. The Board of Commissioners may, as part of the approval of an amendment to the text of this Ordinance or the Official Zoning Map, declare that the town's adopted policy guidance is also amended for consistency with the approved amendment.

### 1.7. PROCEDURES MANUAL<sup>8</sup>

- 1.7.1. The Procedures Manual is a separate document that supplements the procedures and requirements in this Ordinance with application forms, submittal requirements, certification statements for inclusion on plans or plats, the timing of review, and other resource information for applicants.
- 1.7.2. The Planning Director, with assistance from the Public Works Director, shall maintain the Procedures Manual.
- 1.7.3. Material in the Procedures Manual is supplemental and is not intended to replace any of the standards or requirements of this Ordinance or other regulatory document.

### 1.8. RELATIONSHIP TO OTHER LAWS AND AGREEMENTS<sup>9</sup>

#### 1.8.1. REVIEW OF PRIVATE AGREEMENTS

- A. The town may review and comment on private agreements, when necessary, such as those related to the establishment and operation of a homeowners' or property owners' association; maintenance and

<sup>7</sup> This section replaces Section 152.006, Relationship to Land Use Plan, and recognizes the instant plan amendment provisions set down in Section Law 2017-10 by the General Assembly.

<sup>8</sup> This is a new section that identifies the proposed Procedures Manual, the document that will contain submittal requirements, required certification statements, applications forms, and other resources for applicants. The manual will be prepared at the close of the adoption process. Submittal requirements included in the current land use ordinance will be relocated to the Procedures Manual.

<sup>9</sup> This is a new section to clarify that the Town does not enforce private agreements, but may review private agreements dealing with maintenance, access, or how the standards in this Ordinance are to be met.



## ARTICLE 1: GENERAL PROVISIONS

### 1.9. Conflict<sup>9F</sup>

### 1.8.2. Existing Agreements or Vested Rights

operation of shared parking or cross-access agreement; drainage easements in favor of the town; or access easement between landowners in favor of the general public.

- B.** The town is not responsible for monitoring or enforcing private agreements, covenants, or deed restrictions.

### 1.8.2. EXISTING AGREEMENTS OR VESTED RIGHTS

Nothing in this Ordinance is intended to repeal, supersede, annul, impair, or interfere with any existing private agreements or vested rights, provided such agreements or vested rights are lawfully established and remain in effect.

## 1.9. CONFLICT<sup>10</sup>

### 1.9.1. CONFLICTS 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.

### 1.9.2. CONFLICTS WITH OTHER CITY CODES OR LAWS

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 specifies otherwise.

### 1.9.3. CONFLICTS BETWEEN THE STANDARDS IN THIS ORDINANCE

#### **A. GENERALLY**

In cases where two or more standards in this Ordinance conflict with one another, the more restrictive standard shall control.

#### **B. DEVELOPMENT REVIEW PROCEDURES**

In cases where the standards in Section <>, Application Processing, or information in the Procedures Manual conflict with the standards in Section <>, Application Review Procedures, the standards in Section <>, Application Review Procedures shall control.

#### **C. OVERLAY DISTRICTS**

In cases where applicable overlay zoning district standards are in conflict with applicable base zoning district standards, the overlay district standards shall control.

#### **D. AUTHORIZED DEVIATIONS OR INCENTIVES**

Development configured in accordance with an allowable deviation (e.g., administrative adjustment) or incentive (e.g., sustainable development incentives) authorized by this Ordinance shall not be considered to conflict with otherwise applicable more restrictive standards in this Ordinance.

### 1.9.4. CONFLICTS WITH PRIVATE AGREEMENTS

In cases where the standards in this Ordinance conflict with private agreements, covenants, or deed restrictions and the standards in this Ordinance are more restrictive, the standards in this Ordinance shall control.

### 1.9.5. DETERMINATION OF THE MORE RESTRICTIVE STANDARD

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

## 1.10. TRANSITIONAL PROVISIONS<sup>11</sup>

<sup>10</sup> This is a new section that describes how conflicts are addressed. It includes recognition that some of the anticipated flexibility mechanisms and incentives will modify or relax otherwise applicable provisions.

<sup>11</sup> This is a new section that addresses development applications in process at the time of adoption of this Ordinance. It also recognizes already approved-development that is still underway.

## ARTICLE 1: GENERAL PROVISIONS

### 1.10. Transitional Provisions10F

### 1.10.1. Prior Violations Continue

The standards in this section address existing violations, nonconformities, and applications in process at the time this Ordinance is adopted.

#### 1.10.1. PRIOR VIOLATIONS CONTINUE

- A.** Any violation of the previous UDO shall continue to be a violation under this Ordinance, unless the development complies with the express terms of this Ordinance or the statute of limitations on enforcement has expired in accordance with Section <>, Statute of Limitations.
- B.** Any violation of the previous UDO that is no longer a violation under this Ordinance shall not be considered a violation.
- C.** Violations of this Ordinance shall be subject to the penalties set forth in Article 8: Enforcement, unless the development complies with the express terms of this Ordinance or other applicable ordinances, laws, or statutes.

#### 1.10.2. EXISTING NONCONFORMITIES

If any use, building, structure, lot, sign, or site feature legally existed on *[insert the effective date of this Ordinance]*, but does not fully comply with the standards of this Ordinance, the use, building, structure, lot, sign, or site feature is considered nonconforming under this Ordinance and shall be subject to the requirements in Article 7: Nonconformities.

#### 1.10.3. PENDING APPLICATIONS

##### **A. FINAL ACTION PENDING**

- 1.** Any development application filed and accepted as complete before *[insert the effective date of this Ordinance]*, but still pending final action as of that date, may be decided in accordance with either the regulations in effect at the time the application was determined complete or the regulations in this Ordinance, as requested by the applicant.
- 2.** To the extent an application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Article 7: Nonconformities.
- 3.** If the development subject to an application approved under the prior UDO fails to comply with the required time frames, it shall expire and future development shall be subject to the requirements of this Ordinance.

##### **B. 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 shall be reviewed and decided in accordance with this Ordinance.

#### 1.10.4. APPROVED APPLICATIONS

- A.** Any development approvals granted before *[insert the effective date of this Ordinance]* shall remain valid until their expiration date.
- B.** 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.
- C.** Portions of developments, including subdivisions, reserved as future development sites where no lot lines are shown on a preliminary plat, site plan, or other approved plan of development shall comply with the provisions of this Ordinance.
- D.** 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.
- E.** An applicant shall be deemed to have initiated an approved development upon the subsequent application for and diligent pursuit of other required county, state, or federal permits or approvals.
- F.** Timelines for the commencement or expiration of development in accordance with an approved application shall be suspended in the event of legal challenge.

#### 1.10.5. EXISTING DEVELOPMENT

## ARTICLE 1: GENERAL PROVISIONS

### 1.11. Zoning District Translation<sup>11F</sup>

### 1.10.5. Existing Development

#### A. PRIOR APPROVED PLANNED DEVELOPMENT

1. A planned residential development subject to a special use permit approved prior to [insert the effective date of this Ordinance] shall continue to subject to its master plan, special use permit, and all associated conditions of approval.
2. Amendments to a planned residential development established prior to [insert the effective date of this Ordinance] shall only be in accordance with Section <>, Planned Development.

#### B. PRE-EXISTING CONDITIONAL OR SPECIAL USE PERMIT

1. Development subject to a conditional or special use permit issued prior to [insert the effective date of this Ordinance] shall continue to be subject to the permit requirements and all conditions of approval.
2. Amendments to a conditional or special use permit established prior to [insert the effective date of this Ordinance] shall only be in accordance with the standards in Section <>, Special Use Permit.

#### C. ESTABLISHED USES WITHOUT A SPECIAL USE PERMIT

1. If a use was a lawfully established permitted use before [insert effective date of this Ordinance] and that use is subsequently made a special use in Table <>, Principal Use Table, the pre-existing use shall be considered a lawfully-established special use.
2. Any changes to a pre-existing lawfully-established special use after [insert effective date of this Ordinance] shall be in accordance with the standards of this Ordinance.

### 1.11. ZONING DISTRICT TRANSLATION<sup>12</sup>

On [insert the effective date of this Ordinance], land zoned with a zoning district classification from the previous Land Use Ordinance shall be translated or reclassified to one of the zoning district classifications in this Ordinance as set forth in Section <> Zoning Districts Established. Table <>, Zoning District Translation, summarizes the translation or reclassification of the zoning districts used in the previous ordinance to the zoning districts used in this Ordinance. (For example, the table shows that all lands classified as Residential-30 (R-30) in the previous ordinance (under the column titled "Districts in the Former Land Use Ordinance") are now classified Residential Suburban (R2) in this Ordinance (under the column titled "Districts in this UDO").

TABLE <>: ZONING DISTRICT TRANSLATION			
DISTRICTS IN THE FORMER LAND USE ORDINANCE		DISTRICTS IN THIS UDO	
	[NEW]	PARC	Parks, Recreation, and Conservation
R-80W	Residential – 80 Watershed	WCA	Watershed Critical Area
R-40W	Residential – 40 Watershed	WBA	Watershed Balance
RESIDENTIAL DISTRICTS			
R-30	Residential – 30	R2	Residential Suburban
R-20	Residential – 20		
R-13	Residential – 13	R4	Residential Neighborhood
R-10	Residential - 10		
R-8	Residential – 8	R6	Residential Urban
RMF	Residential Multi-Family		
RMH	Residential Mobile Home (30, 20, 13, 10, 8)		[DELETE]
COMMERCIAL DISTRICTS			

<sup>12</sup> This table shows the translation from the current zoning districts to those proposed in this UDO. There are three new districts, including a park/conservation district (PARC), industrial campus district (IC), and planned development (PD) district. There are also four consolidations: R2, R4, R6, and OI. The central business district is proposed for separation into a core and periphery. The mobile home district is proposed for conversion into a manufactured housing overlay district. More information on zoning district composition is included in Article 3: Districts.

## ARTICLE 1: GENERAL PROVISIONS

1.12. Severability<sup>12F</sup>

1.10.5. Existing Development

TABLE <>: ZONING DISTRICT TRANSLATION			
DISTRICTS IN THE FORMER LAND USE ORDINANCE		DISTRICTS IN THIS UDO	
	[NEW]	CN	Commercial Neighborhood
GB	General Business	CG	Commercial General
HB	Heavy Business	CI	Commercial Intense
IL	Light Industrial	IL	Industrial Light
	[NEW]	IC	Industrial Campus
IH	Heavy Industrial	IH	Industrial Heavy
MIXED USE DISTRICTS			
TR	Transitional Residential	OI	Office Institutional
MA	Medical Arts		
CB	Central Business	DTC	Downtown Core
		DTP	Downtown Periphery
	[NEW]	PD	Planned Development

### 1.12. SEVERABILITY<sup>13</sup>

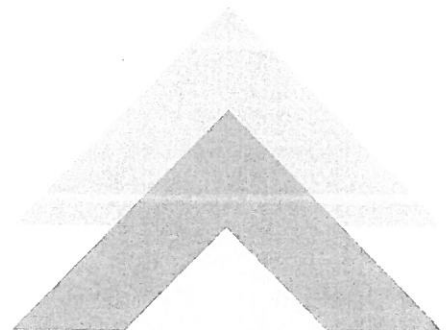
If any section, subsection, illustration, sentence, boundary, clause, or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, the BOC hereby declares that it would have passed this Ordinance and any section, subsection, illustration, sentence, boundary, clause, and phrase thereof, irrespective of the fact that some portion of this Ordinance may be declared invalid.

<sup>13</sup> This section replaces Section 152. 009, Severability.

## ARTICLE 2: PROCEDURES

### Key Changes from the current Land Use Ordinance:

- This article consolidates all the development review procedural material into a single location, and includes a new section on how to use these standards.
- It includes a new summary table of development review procedures.
- There are several new applications, including: administrative adjustments, annexations, development agreements, exempt subdivisions, expedited subdivisions, planned developments, and temporary use permits.
- There are several procedures that are newly codified, including building permits, certificates of occupancy, and sign permits.
- Each specific review procedure is organized to follow a standardized format and includes a procedural flow chart showing the steps in the approval process.
- The procedures have been updated overall to address changes in the North Carolina Statutes made up to and including 2018.
- References to conditional use permits have been removed and the Planning Board's involvement in special use permits is revised to focus on the concept plan.
- The Planning Director is authorized to review final plats and interpret zoning map boundaries.
- The TRC is authorized to review and decide site plans and preliminary plats.
- There is a new consolidated set of standard review procedures that are used in the review of every application. The standards are listed once instead of repeated in different sections, but appear after the specific review procedures so that they may be referenced where needed.
- There are new clarifications regarding public meetings, legislative public hearings, and quasi-judicial public hearings.



## 2: PROCEDURES ..... 2-1

### 2.1. How to Use this Article..... 2-1

2.1.1. Purpose and Intent .....	2-1
2.1.2. Article Contents.....	2-1
2.1.3. Steps in the Development Review Process .....	2-1
2.1.4. For Additional Information .....	2-1

### 2.2. Application Review Procedures..... 2-2

2.2.1. Administrative Adjustment .....	2-4
2.2.2. Appeal .....	2-6
2.2.3. Building Permit.....	2-10
2.2.4. Certificate of Occupancy .....	2-12
2.2.5. Comprehensive Plan Amendment .....	Error! Bookmark not defined.
2.2.6. Development Agreement.....	2-18
2.2.7. Exempt Subdivision.....	2-20
2.2.8. Final Plat .....	2-22
2.2.9. Floodplain Development Permit .....	2-26
2.2.10. Interpretation .....	2-28
2.2.11. Planned Development.....	2-31
2.2.12. Preliminary Plat .....	2-35
2.2.13. Sign Permit .....	2-37
2.2.14. Site Plan .....	2-38
2.2.15. Special Use Permit.....	2-40
2.2.16. Temporary Use Permit.....	2-42
2.2.17. UDO Text Amendment.....	2-44
2.2.18. Variance .....	2-46
2.2.19. Vested Rights Determination .....	2-50
2.2.20. Zoning Compliance Permit.....	2-52
2.2.21. Zoning Map Amendment .....	2-53

### 2.3. Application Processing..... 2-56

2.3.1. Purpose and Intent .....	2-56
2.3.2. Pre-application Conference.....	2-56
2.3.3. Neighborhood Meeting .....	Error! Bookmark not defined.
2.3.4. Application Filing .....	2-56
2.3.5. Staff Review and Action.....	2-58
2.3.6. Public Notice .....	2-58
2.3.7. Public Meetings and Hearings .....	2-61
2.3.8. Conditions of Approval .....	2-63
2.3.9. Notification of Decision .....	2-64
2.3.10. Effect.....	2-64
2.3.11. Continuance, Postponement, and Withdrawal .....	2-64
2.3.12. Limitation on Subsequent Similar Applications.....	2-65



# 2: PROCEDURES

## 2.1. HOW TO USE THIS ARTICLE

Article 2: Procedures, includes the information for how to submit an application for development, how it will be reviewed, and what happens after a decision on an application is made by the town.

### 2.1.1. PURPOSE AND INTENT

This article sets out the review procedure used by the town for each of the development application types subject to this Ordinance. The intent of these provisions is to:

- A. Identify the steps in the review process for each type of application;
- B. Increase predictability for applicants by standardizing the text describing the different development application review procedures;
- C. Establish measurable review criteria for decision-makers to use in making a decision on an application; and
- D. Comply with all applicable state and federal laws.

### 2.1.2. ARTICLE CONTENTS

- A. Article 2 is comprised of three main sections: how to use the article (Section <>, How to Use this Article), a section that describes the application review procedures (in alphabetical order) for each type of development application (Section <>, Application Review Procedures), and a section that explains the standardized process used by the town in the review of an application (Section <>, Application Processing).
- B. Each application review procedure includes a procedural flowchart that depicts the steps in the review process (See Figure <>: Flowchart Example). Each step is sequentially numbered from the top (the beginning) to the bottom (the end). White boxes indicate actions of the applicant. Boxes with dashed lines show optional steps that may be undertaken by the applicant. Green boxes indicate actions of town staff. Grey boxes show public meetings or legislative public hearings (as appropriate), and black boxes show quasi-judicial public hearings.

#### FIGURE <>: FLOWCHART EXAMPLE

### 2.1.3. STEPS IN THE DEVELOPMENT REVIEW PROCESS

- A. The first step in submitting an application for development is to determine the specific type(s) of development application to be submitted. Table <>, Application Review Procedures, describes all the specific application review procedures in this Ordinance and the review authorities who decide them.
- B. The second step is to find the particular type(s) of application procedure required for the type of proposed development in Section <>, Application Review Procedures, and review that information to better understand the steps and the criteria used in the decision-making process.
- C. The third step is to review the application processing information in Section <>, Application Processing, to understand how the town will accept and process an application.
- D. Step four is to review the Procedures Manual for application forms, submittal requirements, application fees, and application review schedules (See Figure <>: Development Review Process Diagram).

#### FIGURE <>: DEVELOPMENT REVIEW PROCESS DIAGRAM

- E. Applications that are not prepared and filed in accordance with these sections and the Procedures Manual will not be processed by the town.

### 2.1.4. FOR ADDITIONAL INFORMATION

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.1.4. For Additional Information

Applicants who need additional information on how to file an application should schedule a pre-application conference with town staff (see Section <>, Pre-application Conference) to better understand the review requirements and relevant procedural steps associated with their particular application.

## 2.2. APPLICATION REVIEW PROCEDURES

Table <>, Application Review Procedures, lists the specific development application procedures (in alphabetical order), identifies the section of this Ordinance where the information may be found, whether or not a pre-application conference is required or is optional, and the review authority(ies) who review and decide the application type.

**TABLE <>: APPLICATION REVIEW PROCEDURES**

Pre-application Conference: "M" = Mandatory "O" = Optional "." = not applicable

Type of Action: "R"=Recommendation "D"=Decision "A"=Appeal

Table symbols: | =Public Meeting < >=Legislative Public Hearing / \ =Quasi-Judicial Hearing "." =not applicable [] =see Notes

REVIEW PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	REVIEW AUTHORITIES				
			PLANNING DIRECTOR [1]	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD [2]	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
Administrative Adjustment	<>	M	D	.	.	.	/A\
Annexation [3]	<>	O	.	.	.	<D>	.
Appeal	<>	O	.	.	.	.	/D\
Building Permit	<>	O	D	.	.	.	.
Certificate of Occupancy	<>	O	D	.	.	.	/A\
Conditional Rezoning [2]	<>	M	.	.	R	D	.
Development Agreement	<>	M	.	.	.	<D>	.
Exempt Subdivision	<>	O	D	.	.	.	/A\
Expedited Subdivision	<>	M	D	.	.	.	/A\
Final Plat	<>	O	D	...	.	.	/A\
Floodplain Development Permit	<>	O	D	.	.	.	/A\
Interpretation	<>	O	D	.	.	.	/A\
Planned Development [2]	<>	M	.	.	R	D	.
Preliminary Plat	<>	M	D	..D	.	.	/A\
Sign Permit	<>	O	D	.	.	.	/A\
Site Plan	<>	M	.	D	.	.	/A\
Special Use Permit	<>	M	.	.	.	/D\	.
Temporary Use Permit	<>	O	D	.	.	.	/A\
UDO Text Amendment [2]	<>	M	.	.	R	D	.
Variance	<>	M	.	.	.	.	/D\
Vested Rights Determination	<>	M	.	.	.	<D>	.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.1.4. For Additional Information

**TABLE <>: APPLICATION REVIEW PROCEDURES**

Pre-application Conference: "M" = Mandatory "O" = Optional "." = not applicable

Type of Action: "R"=Recommendation "D"=Decision "A"=Appeal

Table symbols: | |=Public Meeting < >=Legislative Public Hearing /\=Quasi-Judicial Hearing "."=not applicable [] =see Notes

REVIEW PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	REVIEW AUTHORITIES				
			PLANNING DIRECTOR [1]	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD [2]	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
Zoning Compliance Permit	<>	O	D	.	.	.	/A\
Zoning Map Amendment [2]	<>	M	.	.	R	D	.

**NOTES:**

[1] The Planning Director may delegate review authority in accordance with Section [ ], Delegation of Authority

[2] Applications subject to a recommendation by the Planning Board shall first be heard by the Board of Commissioners and the Planning Board in a joint legislative public hearing noticed in accordance with Section [ ], Public Notice. Following the joint public hearing, the application is considered by the Planning Board during a public meeting and then by the Board of Commissioners in a second public meeting. Public meetings are not subject to public notification requirements in Section [ ], Public Notice.

[3] In the event land being annexed is also subject to another application (such as a zoning map amendment), the annexation shall be reviewed and decided prior to any subsequent application.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.1. Administrative Adjustment<sup>13F</sup>

#### 2.2.1. ADMINISTRATIVE ADJUSTMENT<sup>14</sup>

##### A. PURPOSE AND INTENT

The purpose for this section is to establish a clear procedure and measurable review criteria for the administrative consideration of requests for minor deviations to certain numeric standards in this Ordinance (like zoning district dimensional standards). The intent of the procedure is to provide relief from practical difficulties in complying with the standards of this Ordinance. Administrative adjustments should only be granted when the proposed development advances the purposes of this Ordinance, and the proposed development can maintain compatibility with its surroundings.

##### B. APPLICABILITY

1. An administrative adjustment may be requested for a modification or deviation of up to 10 percent of any zoning district dimensional standard in Article 3: Districts, a numeric standard in Article 4: Uses, a numeric standard in Article 5: Development Standards, a numeric requirement in Article 6: Subdivisions, or a numeric requirement in Section <>, Rules of Measurement.
2. In no instance shall an administrative adjustment application seek to reduce the required minimum lot area, exceed the maximum residential density on a lot, reduce the minimum required separation distance, reduce the minimum required distance between two use types, or reduce the standards pertaining to flood protection or stormwater.

##### C. TIMING

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 portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

##### D. ADMINISTRATIVE ADJUSTMENT PROCEDURE

The Administrative Adjustment procedure is described in Figure <>, Administrative Adjustment Procedure, as supplemented by Section <>, Application Processing, and the Procedures Manual.

##### E. DECISION BY PLANNING DIRECTOR

The decision on an administrative adjustment shall be made by the Planning Director in accordance with the standards in Section <>, Administrative Adjustment Review Standards.

##### F. ADMINISTRATIVE ADJUSTMENT REVIEW STANDARDS

An administrative adjustment shall be approved if the applicant demonstrates all of the following:

1. The administrative adjustment does not exceed the maximum allowable threshold;
2. The administrative adjustment will result in development that is consistent with the character of development on surrounding land, and is compatible with surrounding land uses;
3. 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; or

**FIGURE <>: ADMINISTRATIVE ADJUSTMENT PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Pre-Application Conference
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision

<sup>14</sup> This is a new procedure that allows some basic administrative flexibility to consider and approve very minor deviations (up to 10%) from numerical standards in the draft Ordinance, based on clear criteria and in very specific instances. This is similar to the flexibility in administration provisions found in Sections like 152.235(l) of the current ordinance, but provides greater specificity in terms of the amount that may be deviated, under what circumstances, and subject to which criteria. This kind of provision has been recognized by the NC Court of Appeals in the Butterworth v. Asheville case in 2016.

2.2. Application Review Procedures	2.2.1. Administrative Adjustment13F
------------------------------------	-------------------------------------

## 2.2.1. Administrative Adjustment 13F

- ## G. AMENDMENT

## H. EXPIRATION

## I. APPEAL

Appeal of a decision on an administrative adjustment shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.2. Annexation 14F

#### 2.2.2. ANNEXATION<sup>15</sup>

##### A. PURPOSE AND INTENT

The purpose of this section is to establish a procedure for the consideration of voluntary annexation petitions from landowners seeking to add additional lands to the corporate limits of the town.

##### B. APPLICABILITY

The Board of Commissioners may consider voluntary annexation petitions from:

1. The owners of land that are contiguous with the town's corporate limits; and
2. The owners of land that are not contiguous to the corporate limits when the proposed voluntary annexation complies with the following standards:
  - a. The land proposed for annexation is no more than three miles from the contiguous corporate limits; and
  - b. 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 that includes the land within the town's ultimate planning jurisdiction; and
  - c. If the land proposed for annexation is part of a recorded subdivision, all lots in the recorded subdivision are part of the annexation petition; and
  - d. The combined total land area associated with the annexation, when added to all other noncontiguous land areas annexed by the town does not exceed 10 percent of the land area located within the town's contiguous corporate limits.

##### C. TIMING

In cases where land proposed for annexation is subject to any additional development applications reviewed in accordance with this Ordinance, the annexation application shall be reviewed and decided prior to the decision on any other applications.

##### D. APPLICATION SUBMITTAL

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 Section 160A-385.1 or 153A-344.1 of the North Carolina General Statutes.

##### E. ANNEXATION PROCEDURE

1. The annexation procedure is described in Figure <>, Annexation Procedure, as supplemented by Section <>, Application Processing, and the Procedures Manual.
2. Following receipt of an annexation petition 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.

##### F. BOARD OF COMMISSIONERS REVIEW AND DECISION

**FIGURE <>: ANNEXATION PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Pre-Application Conference
2	File Petition See Section <>, Application Filing
3	Certification of Sufficiency
4	Planning Director Review See Section <>, Staff Review and Action
5	Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
8	Notification of Decision See Section <>, Notification of Decision
9	Recordation

<sup>15</sup> This is a new procedure.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.2. Annexation14F

1. The Board of Commissioners, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section <>, Annexation Review Standards.
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.

#### **G. ANNEXATION REVIEW STANDARDS**

Approval of an annexation is a matter committed to the legislative discretion of the City Council. The voluntary annexation petition may be approved upon a finding the petition complies with all the standards in Section 160A-31 or Section 160A-58 in the North Carolina General Statutes, 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; and
4. 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.

#### **H. RECORDING**

An ordinance approving a voluntary annexation adopted by the town, together with a map of the annexed area, shall be recorded in the office of the Wake County Register of Deeds within a reasonable period of time after adoption of the annexation.

#### **I. EFFECT**

1. Within 60 days of annexation, the BOC shall adopt a zoning district classification for the land involved. The BOC may consider a town-initiated or landowner-initiated zoning map amendment immediately following approval of the annexation.
2. 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.

#### **J. AMENDMENT**

A decision on an annexation shall not be amended.

#### **K. EXPIRATION**

1. A decision on an annexation shall not expire.
2. Land may be de-annexed only by act of the North Carolina General Assembly.

#### **L. APPEAL**

1. Any decision by the Board of Commissioners shall be subject to review by the Superior Court of Wake County.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.3. Appeal<sup>16</sup>

#### 2.2.3. APPEAL<sup>16</sup>

##### A. PURPOSE AND INTENT

This appeal procedure is proposed to establish a clear and predictable procedure for persons with standing to appeal a decision or interpretation of this Ordinance or a condition of approval by a review authority.

##### B. APPLICABILITY

1. Appeals of decisions or interpretations by a town official made pursuant to this Ordinance shall be reviewed and decided by the Board of Adjustment (BOA) in accordance with this section.
2. Appeals of decisions made by the Planning Board, Board of Commissioners, or BOA shall be to the Superior Court for Wake County, in accordance with state law.
3. In the event an applicant wishes to appeal a standard outside this Ordinance, or a decision by a staff member not addressed by this Ordinance, the appeal shall be made to the Town Manager in accordance with town policy.

##### C. INITIATION

An appeal shall be initiated by filing a written notice of appeal with the Planning Director within 30 days of the date the written determination or decision being appealed is received by the applicant (except where otherwise specified in this Ordinance).

##### D. APPEAL PROCEDURE

The Appeal procedure is described in Figure <>, Appeal Procedure, as supplemented by Section <>, Application Processing, and the Procedures Manual.

##### E. REVIEW AND DECISION BY THE BOARD OF ADJUSTMENT

1. The BOA, at the conclusion of a quasi-judicial public hearing, shall decide the application for the appeal.
2. 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 quasi-judicial hearing, and the standards in Section <>, Appeal Review Standards.
3. The decision shall be one of the following:
  - a. Affirmation of the decision or interpretation (in whole or in part);
  - b. Modification of the decision or interpretation (in whole or in part); or
  - c. Reversal of the decision or interpretation (in whole or in part).
4. A vote to reverse or modify a decision or determination shall require approval of a majority of a quorum present at the hearing.
5. Each decision shall be made in writing and reflect the BOA'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 BOA.

**FIGURE <>: APPEAL PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Notice of Appeal See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Record Assembly & Transmittal Provided to the BOA and the applicant
5	Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Board of Adjustment Review and Decision See Section <>, Public Meetings and Hearings
8	Notification of Decision See Section <>, Notification of Decision

<sup>16</sup> NOTE: This section replaces the appeal procedure in Section 152.072, Appeals. The current procedure allows "any aggrieved person" to file an appeal. Typically, an aggrieved party is narrowly defined as someone with a legally recognized interest (such as an owner in fee simple) and standing to appeal a decision. The current procedure seems to use a broader definition.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.3. Appeal15F

7. The decision of the BOA shall be effective upon the filing of the written decision.

#### F. APPEAL REVIEW STANDARDS

1. The BOA is limited to the following determinations in considering the appeal, which shall be based on:
  - a. Whether the decision-maker erred in the interpretation of this Ordinance; and
  - b. Whether the decision-maker erred in determining whether a standard of this Ordinance was met.
2. The BOA shall not hear any evidence or make any decision based on hardships or special conditions except as part of an application for a variance.

#### G. EFFECT

1. An appeal stops all proceedings and actions by the applicant.
2. A town official may file a certification requiring the applicant to continue with some portion of the development activity only in cases where a stop of development activity would cause imminent peril to life or property.
3. If certification by a town official is filed, development activity specified in the certification shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.
4. The appellant may file for an expedited hearing of the appeal, and the BOA shall meet to consider the appeal with 15 days of the date the request is filed.
5. The filing of an appeal prevents the filing of an application for a zoning map amendment, special use permit, zoning compliance permit, or building permit for the same land subject to an appeal application, as well as the filing of a text amendment application by the same party filing the appeal until the appeal application is decided or appealed to the courts.

#### H. AMENDMENT

A decision on an appeal shall not be amended, but may be appealed to the Superior Court for Wake County.

#### I. EXPIRATION

A decision on an appeal shall not expire.

#### J. APPEAL

1. Any decision by the BOA shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.4. Building Permit<sup>17</sup>

#### 2.2.4. BUILDING PERMIT<sup>17</sup>

##### A. PURPOSE AND INTENT

The purpose for the building permit procedure is to establish a consistent process for the review and approval of construction activities for consistency with all applicable building codes to give reasonable assurance that new development is safe from structural failure, fire hazards, electrical shock, or any other applicable health risks, as well as to establish a permanent record of work performed and inspections conducted.

##### B. APPLICABILITY

Unless exempted in accordance with this Ordinance or the State Building Code, no construction, reconstruction, addition, alteration, repair, movement to another site, removal, demolition of any building or structure, or changes in use 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.

##### C. 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 serving a residential use of 144 square feet in area, or less, and not served by electrical service or running water;
2. Patios and at-grade walkways;
3. Playground equipment and play structures provided as accessory uses to a single family residential dwelling; or
4. Fences or privacy walls of 6 feet in height or less, except that all retaining walls require a building permit.

##### D. BUILDING PERMIT PROCEDURE

The building permit procedure is described in Figure <>, Building Permit Procedure, as supplemented by Section <>, Application Processing, and the Procedures Manual.

##### E. DECISION BY PLANNING DIRECTOR

The decision on a building permit shall be made by the Planning Director in accordance with the standards in Section <>, Building Permit Review Standards.

##### F. BUILDING PERMIT REVIEW STANDARDS

A building permit shall be issued if the application complies with:

1. The State Building Code;
2. The standards in Section 160A-417 of the North Carolina General Statutes;
3. Any applicable requirements of the Wake County Environmental Services 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, the Town Code of Ordinances, state law, and federal law.

**FIGURE <>: BUILDING PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application (with plot plan if development is exempt from site plan requirements) See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	Obtain Approved Permit and Schedule Required Inspections As needed
7	Obtain Certificate of Occupancy See Section <>, Certificate of Occupancy

<sup>17</sup>This procedure is newly codified, and is not found in the Town's current ordinance.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.4. Building Permit16F

#### **G. AMENDMENT**

Amendment of a building permit 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 commenced within six months of the permit issuance.
2. If development authorized by a building permit commences but fails to achieve at least one passing inspection (foundation, footing, framing, mechanical, etc.) for a continuous period of 12 months, the permit shall expire and become null and void.
3. In cases where the development has obtained a vested right in accordance with Section <>, Vested Rights Determination, the building permit shall only expire in accordance with the vested rights determination.

#### **I. APPEAL**

1. An appeal of a decision on a building permit may be filed with the North Carolina Commissioner of Insurance, in accordance with Section 160A-434 of the North Carolina General Statutes.
2. Appeal of decisions on building inspections shall be made to the Wake County Permits and Inspections Department in accordance with their procedures and requirements.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.5. Certificate of Occupancy<sup>17F</sup>

#### 2.2.5. CERTIFICATE OF OCCUPANCY<sup>18</sup>

##### A. PURPOSE AND INTENT

The purpose for the certificate of occupancy procedure is to establish a consistent and standardized method to document a development's compliance (or pending compliance) with all applicable building codes and Town requirements prior to occupancy or initiation.

##### B. 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 is issued in accordance with this section, certifying that the land, building, or structure, and its use complies with this Ordinance and the applicable standards of the State Building Code.

##### C. EXEMPTIONS

Development exempted from Section <>, Building Permit, shall be exempted from this section.

##### D. CERTIFICATE OF OCCUPANCY PROCEDURE

The certificate of occupancy procedure is described in Figure <>, Certificate of Occupancy Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### E. DECISION BY PLANNING DIRECTOR

The decision on a certificate of occupancy shall be made by the Planning Director in accordance with the standards in Section <>, Certificate of Occupancy Review Standards.

##### F. CERTIFICATE OF OCCUPANCY REVIEW STANDARDS

A certificate of occupancy shall be approved if 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 applicable State Building Code requirements; and
5. All applicable state and federal requirements.

##### G. PERFORMANCE GUARANTEE

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 permit or approval will be completed within the specified timeframe for a certificate of occupancy.

##### H. TEMPORARY CERTIFICATE OF OCCUPANCY<sup>19</sup>

1. In cases where it would be unreasonable to require the applicant to comply with all the requirements of this procedure prior to commencement of the proposed use, transfer of lots in a subdivision, or occupancy of any buildings (due to weather conditions or other issues beyond the applicant's control, but not including financial hardship), the Planning Director may issue a temporary certificate of occupancy, provided:

- a. The Wake County Building Inspector approves of the temporary certificate;

**FIGURE <>: CERTIFICATE OF OCCUPANCY PROCEDURE**

Step	Action
1	Pre-application Conference
	See Section <>, Application Filing
2	File Application
	See Section <>, Application Filing
3	Completeness Determination
	See Section <>, Completeness Determination
4	Planning Director Review and Decision
	See Section <>, Staff Review and Action
5	Notification of Decision
	See Section <>, Notification of Decision

<sup>18</sup> NOTE TO STAFF: Staff comments called for the inclusion of a certificate of compliance. What is this certificate used for? Is it possible to use the CO procedure instead?

<sup>19</sup> This section is proposed to replace Section 152.037, Authorizing Use or Occupancy before Completion of Development Under General Use Permit.

2.2. Application Review Procedures	2.2.5. Certificate of Occupancy17F
------------------------------------	------------------------------------

## 2.2.5. Certificate of Occupancy17F

- ## I. AMENDMENT

## J. EXPIRATION

## K. APPEAL

- ## Unified Development Ordinance

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

#### 2.2.6. CONDITIONAL REZONING

##### 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 general use zoning district are inadequate to ensure that development allowed by the district will conform to the town's adopted plans or to appropriately address the impacts expected to be generated by development, a landowner may apply for a conditional rezoning. The conditional rezoning, if approved, establishes a parallel conditional zoning district that is equivalent to a corresponding general use zoning district, but is subject to additional conditions or restrictions that the applicant and town mutually agree are necessary to ensure conformance with adopted plans and to adequately address expected development impacts.

##### B. APPLICABILITY

This procedure sets out the requirements for amendments to the zoning district designation of land within the town's planning jurisdiction as well as for land coming into the town's planning jurisdiction via annexation in accordance with the standards in Sections 160A-382 through 160A-385 of the North Carolina General Statutes.

##### C. PROCEDURES DISTINGUISHED

Applications filed as a conditional rezoning application may not be converted to a map amendment application to establish a general use zoning district during the review process, and shall instead be withdrawn and resubmitted as a zoning map amendment application (see Section <>, Zoning Map Amendment).

##### D. APPLIED TO ENTIRE SITE

1. Applications for a conditional rezoning submitted after *[insert effective date of this Ordinance]* shall include all the land area within a recorded lot or site that is the subject of the application.
2. Conditional rezoning applications may not establish bi-furcated zoning classifications where only a portion of a lot or site is subject to a conditional zoning classification.

##### E. CONDITIONAL REZONING PROCEDURE

The conditional rezoning procedure is described in Figure <>, Conditional Rezoning Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### F. APPLICATION SUBMITTAL

1. Conditional rezoning applications may only be initiated by the landowner(s) of the land subject to the application, or their authorized agents.
2. All conditions of approval proposed by the applicant must be included with the conditional zoning application.
3. Conditional rezoning applications shall include a concept plan depicting the proposed development configuration.
4. The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.

**FIGURE <>:  
CONDITIONAL REZONING  
PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Joint Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Planning Board Review and Recommendation See Section <>, Public Meetings and Hearings
8	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
9	Notification of Decision See Section <>, Notification of Decision

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

#### **G. JOINT PUBLIC HEARING**

Following provision of public notice for a public hearing in accordance with Section <>, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint public hearing on the conditional rezoning application.

#### **H. REVIEW BY PLANNING BOARD**

1. The Planning Board, following the close of the joint public hearing, shall review the application and the information presented during the joint public hearing during a follow-up public meeting, and shall make a recommendation on the conditional rezoning application in accordance with Section <>, Conditional Rezoning Review Standards.
2. The Planning Board shall comment on whether or not the conditional rezoning is consistent with the town's adopted policy guidance and whether or not approval of the conditional rezoning application is or is not reasonable, and whether or not approval of the conditional rezoning is consistent with the public interest.
3. During its review of a conditional rezoning application, the Planning Board may suggest revisions to the proposed conditions (including the concept plan), consistent with the provisions of Section <>, Conditions of Approval. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.

#### **I. BOARD OF COMMISSIONERS REVIEW AND DECISION**

1. The Board of Commissioners, after the conclusion of the joint public hearing conducted with the Planning Board, and receipt of a recommendation on the conditional rezoning application by the Planning Board, shall decide the application in accordance with Section <>, Conditional Rezoning Review Standards.
2. The decision shall be one of the following:
  - a. Adoption of the conditional rezoning application as proposed;
  - b. Adoption of a revised conditional rezoning application;
  - c. Denial of the conditional rezoning application; or
  - d. Remand of the conditional rezoning application to the Planning Board for further consideration.
3. In making its decision, the Board of Commissioners shall adopt a written statement including each of the following:
  - a. Whether the conditional rezoning application is approved, denied, or remanded; and
  - b. The degree to which the conditional rezoning is or is not consistent with the town's adopted policy guidance; and
  - c. The ways in which the conditional rezoning is or is not consistent with the town's adopted policy guidance; and
  - d. Whether approval of the conditional rezoning amends or does not amend the town's adopted policy guidance; and
  - e. If the adopted policy guidance is amended as part of the application approval, a description of the change in conditions to meet the development needs of the town that were taken into account as part of the approval; and
  - f. An explanation of why the action taken by the Board of Commissioners is reasonable; and
  - g. An explanation of why the action taken by the Board of Commissioners is in the public interest.

#### **J. DESIGNATION ON OFFICIAL ZONING MAP**

The Planning Director shall make changes to the Official Zoning Map promptly after approval of a conditional rezoning application by the Board of Commissioners.

#### **K. CONDITIONAL REZONING REVIEW STANDARDS**

The advisability of an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed conditional rezoning, the Board of Commissioners may weigh the relevance of and consider the following:

1. Whether the proposed conditional rezoning advances the public health, safety, or welfare;

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

2. 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;
3. Whether an approval of the conditional rezoning is reasonable and in the public interest;
4. Whether and the extent to which the concept plan associated with the conditional rezoning is consistent with this Ordinance; and
5. Any other factors as the Board of Commissioners may determine to be relevant.

#### L. CONDITIONS OF APPROVAL

1. Only conditions mutually agreed to by the owner(s) of the property that is the subject of a conditional zoning district designation and the Board of Commissioners may be approved as part of a conditional rezoning application establishing a conditional zoning district.
2. 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.
3. Conditions shall be in writing and may be supplemented with text or plans and maps.
4. No condition shall be made part of the application which:
  - a. Is less restrictive than the standards of the parallel general use zoning district, any applicable overlay zoning district standard, or other applicable requirements in this Ordinance;
  - b. Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;
  - c. Establishes a minimum size of a dwelling unit;
  - d. Establishes a minimum value of buildings or improvements;
  - e. Excludes residents based upon race, religion, or income; or
  - f. Obligates the town to perform in any manner relative to the approval of the conditional rezoning or development of the land.

#### M. EFFECT

1. Lands subject to an 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, and may only be changed in accordance with the procedures established in this Ordinance.
2. Development located outside the Town of Zebulon's corporate limits shall comply with all town policies related to annexation and the extension of utilities.

#### N. AMENDMENT

Amendments to an approved conditional rezoning application may only be considered in accordance with the following:

##### 1. MINOR CHANGES

- a. Subsequent plans and permits for development within a conditional rezoning district may include minor changes. Minor changes are limited to changes that have no material effect on the character of the proposed development or changes that address technical considerations that could not reasonably be anticipated at the time of the conditional rezoning approval.
- b. The following minor changes may be approved by the Planning Director, in consultation with other appropriate town staff:
  - i. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions;
  - ii. Changes to the configuration of parking areas, but not the number of parking spaces;
  - iii. 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;
  - iv. Changes to the configuration of landscape yards, including types of materials, provided minimum width and planting requirements are met;
  - v. Changes to proposed building elevations or facades, including materials, provided that the change retains the same general architectural character; and



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

- vi. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.

#### 2. SIGNIFICANT CHANGES CONSIDERED AMENDMENTS

- a. Changes that materially affect the basic character or configuration of the proposed development or that exceed the scope of a minor change are considered amendments. Amendments include, but are not limited to:
  - i. Changes in use designations;
  - ii. Density/intensity increases;
  - iii. Decreases in open space;
  - iv. 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
  - v. Change in the location of any public easement.
- b. Amendments shall be reviewed and considered in accordance with the procedures and standards established for the original approval of a conditional rezoning application.

#### O. APPEAL

- 1. Any decision by the Board of Commissioners shall be subject to review by the Superior Court of Wake County.
- 2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.7. Development Agreement<sup>19F</sup>

#### 2.2.7. DEVELOPMENT AGREEMENT<sup>20</sup>

##### A. PURPOSE AND INTENT

The purpose for the development agreement procedure is to establish a flexible process for the establishment and review of large-scale development projects likely to build out over several years. This procedure is intended to:

1. Provide more regulatory certainty for applicants;
2. Establish a schedule for development to allow the town to plan accordingly;
3. Coordinate the provision of public facilities; and
4. Improve management of environmentally sensitive lands.

##### B. APPLICABILITY

1. At the request of an applicant, the Board of Commissioners may enter into a development agreement with a developer for a development of any size and for any duration, provided the duration is specified in the agreement.
2. All development agreements shall be subject to Sections 160A-400.22 through 400.32 of the North Carolina General Statutes, and the provisions of this section.

##### C. DEVELOPMENT AGREEMENT PROCEDURE

The development agreement procedure is described in Figure <>, Development Agreement Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. REVIEW AND DECISION BY BOARD OF COMMISSIONERS

1. The Board of Commissioners, after the conclusion of a legislative public hearing, shall review and decide the application in accordance with Section <>, Development Agreement Review Standards. The decision shall be the 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.
2. Approval of a development agreement shall be by ordinance.

##### E. DEVELOPMENT AGREEMENT REVIEW STANDARDS

For consideration of the town to participate in a development agreement, a development subject to the agreement must:

1. Comply with the requirements in Section 160A-400.22 through Section 160A-400.32 of the North Carolina General Statutes;
2. Indicate the proposed phasing; and
3. Demonstrate the impact on existing and future provisions of capital improvements by the town, including at least one of the following: transportation, potable water, sanitary sewer, solid waste, stormwater management, educational, parks and recreation, and health systems and facilities.

##### F. RECORDATION

**FIGURE <>: DEVELOPMENT AGREEMENT PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Pre-Application Conference
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
8	Notification of Decision See Section <>, Notification of Decision
9	Recordation
10	Annual Review

<sup>20</sup> This is a new section that details the development agreement provisions in the NCGS. It is intended for large-scale or multi-year developments.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.7. Development Agreement19F

Within 14 days after entering into a development agreement, the applicant shall record the agreement in the office of the Wake County Register of Deeds.

#### **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 Board of Commissioners.

#### **H. AMENDMENT**

##### **1. MUTUAL CONSENT**

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

##### **2. MATERIAL CHANGES ARE AMENDMENTS**

Consideration of a proposed material change of a development agreement beyond the scope of a minor change shall be reviewed and considered in accordance with the procedures and standards established for the original approval of a development agreement.

#### **I. EXPIRATION**

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

#### **J. APPEAL**

1. A decision by the Board of Commissioners on a development agreement shall be subject to review by the Wake County Superior Court.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.8. Exempt Subdivision<sup>20F</sup>

#### 2.2.8. EXEMPT SUBDIVISION<sup>21</sup>

##### A. PURPOSE AND INTENT

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for the town to determine and document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section 160A-376 of the North Carolina General Statutes.

##### B. APPLICABILITY

1. The following forms of land division are exempt subdivisions that are exempted from the subdivision requirements of this Ordinance (but remain subject to the provisions in this section):
  - a. A combination or recombination of portions of previously subdivided and recorded lots that does not increase the total number of lots, and the resultant lots are equal to or exceed the standards of this Ordinance;
  - b. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
  - c. Public acquisition involving the purchase of strips of land for the widening or opening of streets;
  - d. Division of a tract of land in single ownership, where the total area of all land in the land division is no greater than two acres, the division creates no more than three lots, where no street right-of-way dedication is involved, and the resultant lots are equal to or exceed the standards of this Ordinance; or
  - e. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with Chapter 29 of the North Carolina General Statutes.
2. Divisions of land that are not consistent with these criteria shall not be considered exempt subdivisions, and shall be subject to the applicable review procedure and subdivision requirements of this Ordinance.

FIGURE <>: EXEMPT SUBDIVISION PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Pre-Application Conference
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Certification See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	Recordation, if applicable

##### C. EXEMPT SUBDIVISION REVIEW PROCEDURE

The exempt subdivision procedure is described in Figure <>, Exempt Subdivision Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. DECISION BY PLANNING DIRECTOR

The decision on a exempt subdivision shall be made by the Planning Director in accordance with the standards in Section <>, Exempt Subdivision Review Standards.

##### E. EXEMPT SUBDIVISION REVIEW STANDARDS

A division of land shall be certified as an exempt subdivision if it:

1. Is excluded from the definition of a subdivision in accordance with Section 160A-376 of the North Carolina General Statutes;
2. Complies with all applicable standards in Article 3: Districts;
3. Complies with all standards or conditions of any applicable permits and development approvals; and
4. Complies with all other applicable requirements in the Town Code of Ordinances.

##### F. RECORDATION

<sup>21</sup> This is a procedure not included in the current ordinance. It is used to identify subdivisions that are exempted from town review based on the General Statutes.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.8. Exempt Subdivision

If an exempt subdivision plat or other document is prepared by the applicant, it shall be certified by the Planning Director. An exempt subdivision plat may be recorded in the office of the Wake County Register of Deeds, as

#### **G. EFFECT**

1. A division of land determined to be an exempt subdivision shall be exempted from the subdivision standards of this Ordinance, but development of land within an exempt subdivision shall remain subject to the requirements of the Wake County Environmental Services Department.
2. In the event a division of land does not qualify as an exempt subdivision, it shall be reviewed in accordance with the applicable subdivision procedure and shall be subject to all applicable subdivision standards in this Ordinance.
3. Divisions of land determined to be exempt subdivisions shall not be further divided into more than one additional lot (plus the residual parcel) within five years from the date of the exempt subdivision determination.

#### **H. AMENDMENT**

An exempt subdivision certification shall not be amended.

#### **I. EXPIRATION**

An exempt subdivision certification shall not expire.

#### **J. APPEAL**

Appeal of exempt subdivision certification shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.9. Expedited Subdivision<sup>21F</sup>

#### 2.2.9. EXPEDITED SUBDIVISION<sup>22</sup>

##### A. PURPOSE AND INTENT

The purpose for this expedited subdivision review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their small size and limited likelihood to create significant impacts on surrounding lands.

##### B. 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 Section <>, Exempt Subdivision;
  - b. The proposed division will not result in more than three lots (including any residual or "parent" parcel);
  - 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; and
  - e. No extension of public streets, public water, public sewer, or other public utility is proposed.<sup>23</sup>
2. Divisions of land that are not consistent with these criteria shall not be considered expedited subdivisions, and shall be subject to the applicable review procedure and subdivision requirements of this Ordinance.
3. Expedited subdivisions are not exempted from applicable zoning district dimensional requirements.

##### C. EXPEDITED SUBDIVISION REVIEW PROCEDURE

The expedited subdivision procedure is described in Figure <>, Expedited Subdivision Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. APPLICATION SUBMITTAL

Applications for an expedited subdivision shall be prepared by a registered land surveyor or professional engineer licensed to practice in North Carolina.

##### E. DECISION BY PLANNING DIRECTOR

The decision on an expedited subdivision shall be made by the Planning Director in accordance with the standards in Section <>, Expedited Subdivision Review Standards.

##### F. EXPEDITED SUBDIVISION REVIEW STANDARDS

1. An expedited subdivision shall be approved if the application complies with the following:
  - a. The expedited subdivision plat is on a sheet or sheets suitable for recording with the Wake County Register of Deeds;

**FIGURE <>: EXPEDITED  
SUBDIVISION PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Pre-Application Conference
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	Recordation

<sup>22</sup> This is a new type of subdivision procedure required by Session Law 2017-10 from the General Assembly. It allows certain types of subdivisions to be reviewed administratively, be exempted from in-lieu fee requirements, and similar subdivision standards. The standards specify a minimum tract size before subdivision of at least five acres, and cap the total number of lots to be created to a maximum of three. It also imposes a minimum ten-year period between an initial expedited subdivision and any subsequent applications for an expedited subdivision of lots involving the same land.

<sup>23</sup> NOTE: Session Law 2017-10 is silent on whether or not subdivisions proposing extension of public utilities may or may not be treated as expedited subdivisions. Given the language in the bill regarding access to lots, we believe expedited subdivisions do not include infrastructure extension, but this issue remains murky.



2.2. Application Review Procedures	2.2.9. Expedited Subdivision21F
------------------------------------	---------------------------------

### 2.2.9. Expedited Subdivision21F

- ## G. RECORDATION

- ## H. EFFECT

- ## I. AMENDMENT

## J. EXPIRATION

- ## K. APPEAL

## Unified Development Ordinance

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.10. Final Plat<sup>24</sup>

#### 2.2.10. FINAL PLAT<sup>24</sup>

##### A. PURPOSE AND INTENT

1. The purpose for this final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a preliminary plat (as applicable) as well as the applicable regulations of this Ordinance prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a map (plat) of sufficient detail and data to readily determine and accurately reproduce the location, bearing, radius (as applicable) and length of each of the following elements of a subdivision:

- a. Every street or private accessway;
- b. Lot lines;
- c. Easement boundaries;
- d. Lands or resources dedicated or reserved for use by the general public;
- e. Land or resources owned in common by residents of the subdivision;
- f. Unbuildable resource or conservation lands;
- g. Addresses;
- h. Street names;
- i. Stormwater management infrastructure; and
- j. Sidewalks.

##### B. APPLICABILITY

1. A final plat shall be required for any development subject to a preliminary plat (see Section <>, Preliminary Plat).
2. An applicant with an approved preliminary plat shall not file an application for final plat review until all required improvements serving the subdivision are installed and inspected by the town, or the developer provides a performance guarantee for those required improvements in accordance with Section <>, Financial Guarantees.

##### C. FINAL PLAT REVIEW PROCEDURE

The final plat procedure is described in Figure <>, Final Plat Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. FINAL PLAT REVIEW STANDARDS

A final plat shall be approved on a decision that the application complies with the following:

1. The final plat is on a sheet or sheets suitable for recording with the Wake County Register of Deeds;
2. The final plat is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
3. The final plat complies with the standards in Section 47-30 of the North Carolina General Statutes;
4. The final plat includes applicable certifications identified in the Procedures Manual;
5. All lots have been certified by Wake County Environmental Resources as capable of accommodating the wastewater generated from the proposed use, in cases when the lot(s) is not served by a centralized wastewater system;
6. The applicant has secured all required state, federal, and other applicable permit approvals;
7. The final plat is in substantial conformance with the preliminary plat;

FIGURE <>: FINAL PLAT PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	Recordation

<sup>24</sup> This section reorganizes the provisions in Section 152.056, Major Subdivision Approval Process.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.10. Final Plat23F

8. All required improvements depicted on the preliminary plat and final plat are installed, inspected, and accepted by the town, or are subject to a performance guarantee (see Section <>, Performance Guarantees);
9. The final plat complies with all standards and conditions of any applicable permits and development approvals; and
10. The final plat complies with all other applicable requirements in this Ordinance and the Town Code of Ordinances.
11. Final plats of land located within the special flood hazard area shall comply with the standards in Section <>, Special Flood Hazard Area Overlay (SFO), and include the following statement:  
*"Use of land within a floodplain or a special flood hazard area is substantially restricted by the Town of Zebulon."*

#### E. RECORDATION

1. Once a final plat is approved, a signed statement of the approval shall be entered on the face of the plat by the Planning Director. The final plat may not be recorded without this certification.
2. Failure to record the final plat in accordance with Section <>, Expiration, shall render the final plat null and void.

#### F. EFFECT

##### 1. GENERAL

- a. Approval of a final plat allows the sale or conveyance of lots within the subdivision.
- b. Building permits may be issued following recordation of the final plat.
- c. There is no requirement that all land subject to a preliminary plat be included within a single final plat.

##### 2. ACCEPTANCE OF PUBLIC INFRASTRUCTURE

- a. Approval and recordation of a final plat constitutes dedication by the owner of the public of the right-of-way of each public street, or alley, 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. Improvements within right-of-ways 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.
- c. The subdivider shall retain responsibility for public improvements until maintenance responsibility is accepted by the town, NCDOT, or a public utility provider, as appropriate.

#### G. AMENDMENT

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

#### H. EXPIRATION

1. A final plat shall be null and void unless it is recorded in the office of the Wake County Register of Deeds within 60 days of approval.
2. If a final plat is not recorded within two years of an associated preliminary plat approval then the preliminary plat shall expire.
3. An expired preliminary plat may be resubmitted in accordance with Section <>, Preliminary Plat, and shall be reviewed in accordance with the standards of this Ordinance.
4. A recorded final plat shall not expire.

#### I. APPEAL

Appeal of a decision on a final plat shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.11. Floodplain Development Permit<sup>24F</sup>

#### 2.2.11. FLOODPLAIN DEVELOPMENT PERMIT<sup>25</sup>

##### A. PURPOSE AND INTENT

The purpose for this floodplain development permit procedure is to establish a development review procedure for development within a special flood hazard area in order to reduce the potential for damage to land, development, and loss of life from flooding or floodwaters in areas subject to periodic inundation.

##### B. APPLICABILITY

- a. Development proposed on land in a special flood hazard area as defined by the National Flood Insurance Program (NFIP) shall obtain a floodplain development permit in accordance with this section prior to or concurrent with an application for a site plan or building permit, as appropriate.
- b. 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 with Established Floodways, Flood Elevations, or Non-Encroachment Areas.

##### C. FLOODPLAIN DEVELOPMENT PERMIT PROCEDURE

The floodplain development permit procedure is described in Figure <>, Floodplain Development Permit Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. DECISION BY PLANNING DIRECTOR

The decision on a floodplain development permit shall be made by the Planning Director based on the standards in Section <>, Floodplain Development Permit Review Standards.

##### E. FLOODPLAIN DEVELOPMENT REVIEW STANDARDS

A floodplain development permit shall be approved if it complies with the following:

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

##### F. EFFECT

Approval of a floodplain development permit authorizes an applicant to obtain all required elevation certificates or other required certificates and proceed with development following issuance of a building permit.

##### G. ELEVATION CERTIFICATES

1. Unless exempted in accordance with Section <>, Special Flood Hazard Area Overlay District, development subject to this section shall also file elevation or floodproofing certificates in accordance with Section <>, Elevation or Floodproofing Certificates, no more than 21 days after completing the lowest habitable floor.
2. The Planning Director 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

**FIGURE <>: FLOODPLAIN DEVELOPMENT PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	File Elevation/ Floodproofing Certificate See Section <>, Elevation or Floodproofing Certificates

<sup>25</sup> This section replaces the procedural provisions in Section 152.149(B), Development, Application, and Certification Requirements.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.11. Floodplain Development Permit24F

on an elevation or floodproofing certificate shall be a violation of this Ordinance subject to the provisions in Section <>, Stop Work Order.

#### H. **AMENDMENT**

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

#### I. **REVOCATION**

A floodplain development permit may be revoked by the Planning Director, 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.

#### J. **EXPIRATION**

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

#### K. **APPEAL**

Appeal of a decision on a floodplain development permit shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.12. Interpretation<sup>26</sup>

#### 2.2.12. INTERPRETATION<sup>26</sup>

##### A. PURPOSE AND INTENT

The purpose for this interpretation procedure is to provide a process where an applicant may request documentation from Planning Director regarding the meaning of language in this Ordinance, unlisted use types, boundaries on the Official Zoning Map, or conditions of an approval.

##### B. APPLICABILITY

The Planning Director is responsible for written interpretations of the following:

1. The meaning of the text in this Ordinance;
2. The location and extent of zoning district boundaries on the Official Zoning Map, including boundaries associated with the Special Flood Hazard Area Overlay district;
3. Interpretations of whether an unlisted use is comparable to a use listed in Table <>, Principal Use Table;
4. Definitions of undefined terms;
5. Compliance with conditions of approval; and
6. Other aspects of this Ordinance.

##### C. INTERPRETATIONS DISTINGUISHED

1. Only formal interpretations issued in accordance with this procedure are subject to appeal as an administrative decision.
2. Any written or oral interpretations that do not meet the strict requirements of this section are advisory interpretations.
3. Advisory interpretations have no binding effect and are not considered administrative decisions subject to appeal.

##### D. INTERPRETATION PROCEDURE

The Interpretation procedure is described in Figure <>, Interpretation Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### E. INTERPRETATION REVIEW STANDARDS

###### 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 Official Map Boundaries, and consistent with the town's adopted policy guidance.

###### 2. UNLISTED USES

Interpretation of whether an unlisted use is similar to a use identified in Table <>, Principal Use Table, shall be based on consistency with 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;

**FIGURE <>: INTERPRETATION PROCEDURE**

Step	Action
1	Pre-Application Conference See Section <>, Application Filing
2	File Formal Request See Section <>, Application Filing
3	Planning Director Review and Interpretation See Section <>, Staff Review and Action
4	Notification of Interpretation See Section <>, Notification of Decision

<sup>26</sup> This section is proposed to replace the standards in Section 152.074, Interpretations. This proposed procedure goes beyond interpretation of the Official Zoning Map, and also deals with interpretations of the UDO text as well as unlisted uses and conditions of approval. In addition these changes, this procedure delegates the Planning Director as the review authority responsible for interpreting the Official Zoning Map as is already done for floodplain boundaries.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.12. Interpretation 25F

- 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 interpretations made by the Planning Director or decisions made by the BOA.

### 3. UNDEFINED TERM

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

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

### 4. TEXT PROVISIONS AND PRIOR APPROVALS

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

- a. 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 <>, Definitions, and by the common and accepted usage of the term;
- b. The intended purpose 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;
- c. The general purposes served by this Ordinance, as set forth in Section <>, Purpose and Intent; and
- d. Consistency with the town's adopted policy guidance.

### 5. EFFECT

#### a. GENERAL

- i. A written interpretation 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 interpretation is modified in accordance with this section, the interpretation is later determined to have been made in error, or the text of this Ordinance is amended.
- ii. The Planning Director shall maintain a record of written interpretations that shall be available in the Planning Department for public inspection, on reasonable request, during normal business hours.

#### b. APPROVAL OF UNLISTED USE

- i. After the Planning Director determines the use category or use type in which the unlisted use is best classified, then the unlisted use shall be subject to all applicable requirements of that use category or use type.
- ii. After making an interpretation of an unlisted use, the Planning Director shall determine whether the unlisted use is likely to be common or recur frequently, and whether its omission

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.12. Interpretation25F

is likely to lead to uncertainty and confusion. On determining that the unlisted use is likely to be common and would lead to confusion if unlisted, the Planning Director shall initiate an application for an amendment to the text of this Ordinance. Until final action is taken on the text amendment, the Planning Director's decision shall be binding.

- iii. If after making an interpretation of an unlisted use, the Planning Director determines that the unlisted use is of an unusual or transitory nature, and unlikely to recur frequently, the determination shall be binding without further action or amendment of this Ordinance.

### 6. APPEAL

Appeal of an interpretation by the Planning Director shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.13. Planned Development<sup>27</sup>

#### 2.2.13. PLANNED DEVELOPMENT<sup>27</sup>

##### A. PURPOSE AND INTENT

The purpose for this planned development procedure is to provide a uniform means for amending the Official Zoning Map to establish a Planned Development (PD) zoning district. The planned development district creates opportunities for master planned development that is developed under unified control in accordance with more flexible standards and procedures that are conducive to creating mixed-use, pedestrian-oriented development that makes efficient use of land while protecting natural resources. It is the intent of these standards to allow an applicant to propose a wide variety of allowable uses and the flexible application of some of the development standards in Article 5: Development Standards, in return for a higher quality of development with more amenities than might otherwise result from a strict application of the standards in this Ordinance.

##### B. APPLICABILITY

The standards in this section may be applied to any land of one acre in area or more and under unified control.

##### C. PLANNED DEVELOPMENT PROCEDURE

The planned development procedure is described in Figure <>, Planned Development Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. APPLICATION

The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.

##### E. JOINT PUBLIC HEARING

Following provision of public notice for a public hearing in accordance with Section <>, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint public hearing on the planned development application.

##### F. REVIEW BY PLANNING BOARD

1. The Planning Board, following the close of the joint public hearing, shall review the application and the information presented during the joint public hearing during a follow-up public meeting, shall make a recommendation on the planned development application in accordance with Section <>, Planned Development Review Standards.
2. The Planning Board shall comment on whether or not the planned development is consistent with the town's adopted policy guidance and whether or not approval of the planned development application

**FIGURE <>:  
PLANNED DEVELOPMENT  
PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Joint Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Planning Board Review and Recommendation See Section <>, Public Meetings and Hearings
8	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
9	Notification of Decision See Section <>, Notification of Decision

<sup>27</sup> The planned development procedure is new and is proposed to replace the standards in Sections 152.137, Planned Unit Development, 152.138, Planned Residential Developments, and 152.141, Planned Commercial Development. The current code establishes planned development as a use type and requires approval of a quasi-judicial special use permit. This draft Ordinance relies instead on the legislative rezoning process to establish a planned development, and requires submittal of a master plan and terms and conditions statement (much like a conditional rezoning). In addition, the planned development procedure allows an applicant to propose the range of allowable uses instead of relying on uses allowed in underlying base zoning districts – this creates more flexibility and helps to encourage the establishment of functional, mixed-use developments.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.13. Planned Development

is or is not reasonable, and whether or not approval of the planned development is consistent with the public interest.

3. During its review of a planned development application, the Planning Board may suggest revisions to the master plan or terms and conditions statement, consistent with the provisions of Section <>, Conditions of Approval. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.

#### G. REVIEW AND DECISION BY BOARD OF COMMISSIONERS

1. The Board of Commissioners, after the conclusion of the joint public hearing conducted with the Planning Board, and receipt of a recommendation on the planned development application by the Planning Board, shall decide the application in accordance with Section <>, Planned Development Review Standards.
2. The decision shall be one of the following:
  - a. Approval of the planned development subject to the PD master plan and PD terms and conditions in the application;
  - b. Approval of the planned development subject to additional or revised conditions related to the PD master plan or PD terms and conditions;
  - c. Denial of the planned development; or
  - d. Remand of the planned development application back to the Planning Board for further consideration.
3. In making its decision, the Board of Commissioners shall adopt a written statement including each of the following:
  - a. Whether the planned development application (and associated zoning map amendment) is approved, denied, or remanded; and
  - b. The degree to which the planned development application (and associated zoning map amendment) is or is not consistent with the town's adopted policy guidance; and
  - c. The ways in which the planned development application (and associated zoning map amendment) is or is not consistent with the town's adopted policy guidance; and
  - d. Whether approval of the planned development application also amends or does not amend the town's adopted policy guidance; and
  - e. If the adopted policy guidance is amended as part of the application approval, a description of the change in conditions to meet the development needs of the town that were taken into account as part of the approval; and
  - f. An explanation of why the action taken by the Board of Commissioners is reasonable; and
  - g. An explanation of why the action taken by the Board of Commissioners is in the public interest.

#### H. PLANNED DEVELOPMENT REVIEW STANDARDS

The advisability of amending the Official Zoning Map to establish a planned development district is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a planned development application, the Board of Commissioners may consider the standards in Section <>, Zoning Map Amendment Standards, and the standards for the district in Section <>, Planned Development District.

#### I. CONDITIONS OF APPROVAL

1. Only conditions mutually agreed to by the owner(s) of the property that is the subject of a planned development application and the Board of Commissioners may be approved as part of a planned development application establishing a planned development district.
2. 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.
3. Conditions shall be in writing and may be supplemented with text or plans and maps.
4. No condition shall be made part of the application which:
  - a. Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.13. Planned Development

- b. Establishes a minimum size of a dwelling unit;
- c. Establishes a minimum value of buildings or improvements;
- d. Excludes residents based upon race, religion, or income; or
- e. Obligates the town to perform in any manner relative to the approval of the planned development district or development of the land.

#### J. DESIGNATION ON THE OFFICIAL ZONING MAP

Designation of a PD zoning district on the Official Zoning Map shall note the ordinance number approving the PD zoning classification.

#### K. EFFECT

1. Lands rezoned to a PD district shall be subject to the approved PD master plan and the approved PD terms and conditions.
2. The master plan and terms and conditions are binding on the land as an amendment to the Official Zoning Map.
3. The applicant may apply for and obtain subsequent development permits and approvals necessary to implement the PD master plan in accordance with the appropriate procedures and standards set forth in this Ordinance.
4. Any permits or approvals shall comply with the PD master plan and the PD terms and conditions.
5. Only those portions of the development subject to an approved PD master plan and PD terms and conditions shall be included in development activities.

#### L. AMENDMENT

##### 1. MINOR CHANGES

- a. Subsequent plans and permits for development within a planned development district may include minor changes to the approved master plan map or statement of terms and conditions, provided the development continues to meet the minimum requirements of this Ordinance. Minor changes are limited to changes that have no material effect on the character of the planned development or changes that address technical considerations that could not reasonably be anticipated at the time of the planned development approval.
- b. The following minor changes may be approved by the Planning Director, in consultation with other appropriate town staff:
  - i. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions;
  - ii. Changes to the configuration of parking areas, but not the number of parking spaces;
  - iii. 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;
  - iv. Changes to the configuration of landscape yards, including types of materials, provided minimum width and planting requirements are met;
  - v. Changes to the proposed building elevation or facade, including materials, provided that the change retains the same general architectural character; and
  - vi. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.

##### 2. SIGNIFICANT CHANGES CONSIDERED AMENDMENTS

- a. Changes that materially affect the basic concept of the planned development master plan map or basic parameters establishing the terms and conditions or that exceed the scope of a minor change are considered amendments. Amendments include, but are not limited to:
  - i. Changes in use designations;
  - ii. Density/intensity increases;
  - iii. Decreases in open space;
  - iv. 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

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.13. Planned Development26F

- v. Change in the location of any public easement.
- b. Amendments shall be reviewed and considered in accordance with the procedures and standards established for the original approval of a planned development application.

#### M. EXPIRATION

1. If no application for approval of a preliminary plat or site plan for any part of the approved PD master plan is submitted within two years after approval of the planned development, the Planning Director may initiate a zoning map amendment application to rezone the land back to its prior zoning classification or any other base zoning classification determined to be appropriate. Such time period shall not be extended with transfer of ownership.
2. Upon written request submitted at least 30 days before expiration of the two-year period provided in subsection (1) above, and upon a showing of good cause, the Planning Director may grant one extension not to exceed one year for the applicant to submit required development applications.

#### N. APPEAL

1. Appeal of a decision by the Board of Commissioners on a planned development shall be subject to review by the Superior Court of Wake County.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.14. Preliminary Plat<sup>28</sup>

#### 2.2.14. PRELIMINARY PLAT<sup>28</sup>

##### A. PURPOSE AND INTENT

The purpose for this preliminary plat procedure is to establish a fair, consistent, and predictable procedure for the review of requests to divide land into a series of lots for development or sale in ways that promote the health, safety, and welfare of the citizens of the Town of Zebulon. 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

Divisions of land that do not qualify as an exempt subdivision (see Section <>, Exempt Subdivisions), or an expedited subdivision (see Section <>, Expedited Subdivisions), shall be reviewed and decided as a preliminary plat in accordance with these standards.

##### C. PRELIMINARY PLAT REVIEW PROCEDURE

The preliminary plat procedure is described in Figure <>, Preliminary Plat Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. APPLICATION

The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.

##### E. REVIEW AND DECISION BY THE PLANNING DIRECTOR

The Planning Director shall review and decide the application in accordance with Section <>, Preliminary Plat Review Standards.

##### F. PRELIMINARY PLAT REVIEW STANDARDS

1. An application for a preliminary plat shall be approved, provided:
  - a. The preliminary plat is prepared and sealed by a licensed professional land surveyor, registered professional landscape architect, or licensed professional engineer;
  - b. The preliminary plat complies with the applicable standards in Section 47-30 of the North Carolina General Statutes;
  - c. The preliminary plat includes applicable certifications identified in the Procedures Manual;
  - d. All lots have been certified by Wake County Environmental Resources as capable of accommodating the wastewater generated from the proposed use, in cases when the lot(s) is not served by a centralized wastewater system;
  - e. The preliminary plat is in substantial conformance with all applicable requirements in Article 3: Districts;
  - f. The preliminary plat complies with all standards and conditions of any applicable permits and development approvals;

FIGURE <>: PRELIMINARY PLAT PROCEDURE	
Step	Action
1	Pre-application Conference
	See Section <>, Application Filing
2	File Application
	See Section <>, Application Filing
3	Completeness Determination
	See Section <>, Completeness Determination
4	Planning Director Review and Decision
	See Section <>, Staff Review and Action
5	Notice of Decision
	See Section <>, Notification of Decision
6	File Construction Drawings or Final Plat, as appropriate

<sup>28</sup> This section reorganizes the provisions in Section 152.056, Major Subdivision Approval Process, into two steps: preliminary plat and final plat. Submittal requirements and certifications are intended for relocation to the Procedures Manual. The Technical Review Committee has been identified as the review authority responsible for deciding preliminary plats.

2.2. Application Review Procedures
2.2.14. Preliminary Plat27F

- g. The name of the subdivision shall not duplicate or be similar to the name of an existing subdivision in Wake County or the town; and
  - h. The preliminary plat complies with all other applicable requirements in this Ordinance and the County Code of Ordinances.
2. Preliminary plats of land located within the special flood hazard area shall comply with the standards in Section <>, Special Flood Hazard Area Overlay, and include the following statement:  
 "Use of land within a floodplain or a special flood hazard area is substantially restricted by the Town of Zebulon."

**G. EFFECT**

1. Approval of a preliminary plat authorizes the submittal of construction drawings, and/or a final plat. Construction drawings shall be required in cases where public infrastructure (e.g., streets, water lines, sanitary sewer, etc.) is being extended to serve lots in the development.
2. Approval of a preliminary plat shall not constitute the approval for recording a subdivision with the Wake County Register of Deeds, or approval for the conveyance of lots.

**H. 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.

**1. EXPIRATION**

An approved preliminary plat shall be valid for two years from the date of approval.

**2. EXTENSION**

- a. An applicant may request an extension of a preliminary plat approval in writing to the Planning Director at least 30 days prior to expiration.
- b. Extension requests shall be reviewed and decided by the Technical Review Committee.
- c. A preliminary plat may be extended once for a maximum duration of one year.

**I. APPEAL**

Appeal of a decision on a preliminary plat shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.15. Sign Permit<sup>29</sup>

#### 2.2.15. SIGN PERMIT<sup>29</sup>

##### A. PURPOSE AND INTENT

The purpose of this section is to provide a uniform mechanism for reviewing applications for sign permits to ensure all signs comply with the standards of Section <>, Signage.

##### B. APPLICABILITY

All signs, including temporary signs, but excluding signs exempted from obtaining sign permits in Section <>, Signage, shall obtain a sign permit in accordance with this section before being erected, replaced, relocated, or altered.

##### C. SIGN PERMIT PROCEDURE

The sign permit procedure is described in Figure <>, Sign Permit Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. DECISION BY PLANNING DIRECTOR

The decision on a sign permit shall be made by the Planning Director in accordance with the standards in Section <>, Sign Permit Review Standards.

##### E. SIGN PERMIT REVIEW STANDARDS

A sign permit shall be approved on a decision the application complies with:

1. The standards in Section <>, Signage;
2. The State Building Code;
3. All standards or conditions of any prior applicable permits and developments approvals; and
4. All other applicable requirements of this Ordinance and in the Town Code of Ordinances.

##### F. AMENDMENT

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

##### G. EXPIRATION

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

##### H. APPEAL

Appeal of the decision on a sign permit shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

FIGURE <>: SIGN PERMIT PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision
6	Schedule Required Inspections, as needed

<sup>29</sup> This is a new section intended to replace Section 152.257, [Sign] Permit Required. The current section indicates that it follows the "zoning permit" process identified in Article 3. However, Article 3 describes a "general use" permit or a "special use" permit. Since the criteria for approval of a sign are different from a general use permit, this draft Ordinance calls for establishment of a unique sign permit procedure.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.16. Site Plan<sup>30</sup>

#### 2.2.16. SITE PLAN<sup>30</sup>

##### A. PURPOSE AND INTENT

The purpose for the site plan procedure is to establish a consistent and predictable process for the review of proposed development, through a graphical representation of the proposal. Site plan review is an analysis to ensure that allowable development is configured in accordance with the standards in this Ordinance, not a consideration of whether or not a proposed development is allowed.

##### B. APPLICABILITY

1. Except for development exempted from site plan review in accordance with Section <>, Exemptions, all forms of development that involve construction, moving, or significant alteration of a building or habitable structure, that result in the increase in the amount of impervious surface on a lot, or that involve the provision of landscaping, off-street parking, stormwater management devices, or similar site features shall be subject to site plan review in accordance with this section.
2. Changes in use that trigger requirements for sidewalk provision or changes to roadway configuration shall require site plan approval.

##### C. EXEMPTIONS

The following forms of development are exempted from site plan review, but shall require a plot plan and shall be subject to the standards in Section <>, Building Permit, or Section <>, Zoning Compliance Permit, as appropriate:

1. Construction of a single-family detached dwelling on an individual lot;
2. Establishment of an accessory use or structure; and
3. Changes of use that do not result in the need for additional off-street parking spaces, additional screening, differing stormwater practices, or additional landscaping.

##### D. SITE PLAN PROCEDURE

The site plan procedure is described in Figure <>, Site Plan Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### E. APPLICATION

The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.

##### F. DECISION BY TECHNICAL REVIEW COMMITTEE

The Technical Review Committee, shall review and decide the application in accordance with Section <>, Site Plan Review Standards.

##### G. SITE PLAN REVIEW STANDARDS

A site plan shall be approved on a decision the application complies with:

1. All standards or conditions of any prior applicable permits and development approvals;
2. All applicable requirements of this Ordinance and the Town Code of Ordinances; and
3. All applicable county, state, and federal requirements.

FIGURE <>: SITE PLAN PROCEDURE	
Step	Action
1	Pre-application Conference
	See Section <>, Application Filing
2	File Application
	See Section <>, Application Filing
3	Completeness Determination
	See Section <>, Completeness Determination
4	Technical Review Committee Review and Decision
	See Section <>, Staff Review and Action
5	Notification of Decision
	See Section <>, Notification of Decision

<sup>30</sup> This section is proposed to replace and expand on Section 152.291, Development Site Plans. The current ordinance includes little or no information about the process of site plan review or the criteria to be used in making a decision. This section addresses those deficiencies. Additional standards in Article 14, Development Procedures are comprised of site plan submittal requirements, which are proposed for relocation to the Procedures Manual. The TRC has been designated as the body to consider site plans.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.16. Site Plan29F

#### H. EFFECT

##### 1. CONSTRUCTION PLANS

- a. Construction plans for all public improvements included with or filed subsequent to the site plan 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, 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.

##### 2. FINANCIAL GUARANTEES

All public improvements that have not been installed by the developer, and inspected and accepted by the town shall comply with the requirements in Section <>, Financial Guarantees, prior to the issuance of a certificate of occupancy.

##### 3. AS-BUILT PLANS

As-built plans for all public improvements shall be submitted in accordance with Section <>, As-Built Plans Required.

#### I. AMENDMENT

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

#### J. EXPIRATION

If the work authorized by a site plan approval is not commenced within one year from the date of issuance, the approval shall become null and void.

#### K. APPEAL

Appeal of the decision on a site plan shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.17. Special Use Permit<sup>31</sup>

#### 2.2.17. SPECIAL USE PERMIT<sup>31</sup>

##### A. PURPOSE AND INTENT

This section sets out the procedure for consideration of an application for a special use permit. A special use is a use that may be appropriate in a zoning district, but because of its nature, extent, and external effects, 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

Applications for uses identified as requiring a special use in Table <>, Principal Use Table, shall be reviewed in accordance with the procedures and standards of this section.

##### C. SPECIAL USE PERMIT PROCEDURE

The Special Use Permit procedure is described in Figure <>, Special Use Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. APPLICATION

The application shall include a transportation impact analysis for review, when required by Section <>, Transportation Impact Analysis.

##### E. REVIEW AND DECISION BY BOARD OF COMMISSIONERS

Following the conclusion of a quasi-judicial public hearing, the Board of Commissioners shall review and decide the application in accordance with Section <>, Special Use Review Standards. The decision shall be the one of the following:

1. Approval of the special use and concept plan as proposed;
2. Approval of a revised special use or concept plan;
3. Denial of the special use and concept plan; or
4. Remand of the special use application for further consideration.

##### F. SPECIAL USE PERMIT REVIEW STANDARDS

A special use shall be approved upon a determination that the special use:

1. Will not materially endanger the public health or safety if located where proposed;
2. Complies with all required standards, conditions, and specifications of this Ordinance, including Article 4: Uses;
3. Will not substantially injure the value of the abutting land, or the special use is a public necessity;
4. Will be in harmony with the area in which it is to be located;
5. Is in general conformity with the town's adopted policy guidance; and
6. Includes a concept plan that accurately depicts the proposed use's configuration.

##### G. CONDITIONS OF APPROVAL

**FIGURE <>: SPECIAL USE PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Public Hearing Scheduled
5	Public Notice See Section <>, Public Notice
6	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
7	Notification of Decision See Section <>, Notification of Decision

<sup>31</sup> This section is proposed to replace the standards in Sections 152.038 through 152.042 dealing with special use permits. Conditional use permits are not proposed for inclusion in this new Ordinance. This procedure revises the Planning Board's role from participation in a joint public hearing and preparation of a recommendation on the special use to conduct of a public meeting to review the concept plan associated with the special use.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.17. Special Use Permit30F

1. The Board of Commissioners may apply conditions of approval to assure that the use will be harmonious with the area where proposed and consistent with the purpose and intent of this Ordinance.
2. The Board of Commissioners may apply conditions limiting the permit to a specified duration or may place limits on the availability of proposed residential dwelling units to coincide with the provision or maintenance of adequate public facilities.
3. All conditions shall be identified in the approval, the notice of decision, and on the associated major site plans.

#### H. EFFECT

1. A special use and the associated concept plan approval are perpetually binding and run with the land, unless amended.
2. An action invalidating a special use condition of approval (such as an intensity or hours of operation limitation) shall render the special use permit null and void.
3. 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.

#### I. AMENDMENT

Amendments of a special use permit or an associated concept plan may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### J. EXPIRATION

##### 1. REPLACEMENT

If a special use is replaced by a use otherwise 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 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. The authorized use has not commenced;
- b. No substantial construction activity has taken place; or
- c. Construction activities have started, but the value of all construction activity is less than five percent of the estimated total cost of construction.

##### 3. EXTENSION

- a. An applicant may request an extension of a special use permit approval in writing to the Planning Director at least 60 days prior to expiration.
- b. Extension requests shall be reviewed and decided by the Board of Commissioners.
- c. Up to one extension for a maximum period of one year may be granted if:
  - i. The applicant has proceeded towards completion of construction in good faith and with due diligence; and
  - ii. Conditions have not changed to the extent that a new application is warranted in the sole discretion of the Board of Commissioners.

#### K. APPEAL

1. A decision by the BOC on a special use permit shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.18. Temporary Use Permit<sup>31F</sup>

#### 2.2.18. TEMPORARY USE PERMIT<sup>32</sup>

##### A. PURPOSE AND INTENT

The purpose of this section is to establish a uniform mechanism for reviewing temporary uses, structures, and special events to ensure they comply with the standards in Section <>, Temporary Use Standards. Temporary uses include temporary structures and activities that are proposed on an individual lot or site for a limited duration and that have a clear commencement and cessation.

##### B. APPLICABILITY

The provisions of this section shall apply to all proposed temporary uses, temporary structures, and special events set forth in Section <>, Temporary Use Standards, but shall not be applied to applications for temporary signage, which are subject to the standards in Section <>, Sign Permit.

##### C. TEMPORARY USE PERMIT PROCEDURE

The Temporary Use Permit procedure is described in Figure <>, Temporary Use Permit Procedure, as supplemented by Section <>, Standard Review Procedures.

##### D. DECISION BY PLANNING DIRECTOR

The decision on a temporary use permit shall be made by the Planning Director in accordance with the standards in Section <>, Temporary Use Permit Review Standards.

##### E. TEMPORARY USE PERMIT REVIEW STANDARDS

An application for a temporary use permit shall be approved provided it complies with the following:

1. The temporary use permit complies with all applicable requirements in Section <>, Temporary Uses;
2. The applicant has written permission from the landowner, or is otherwise authorized to make use of the land;
3. The applicant has obtained the appropriate permits and licenses from the town and other agencies;
4. The temporary use meets public utility and town requirements for proper connection to water, sewer, electrical and other utility service connections, as applicable;
5. The temporary use does not violate the applicable conditions of approval that apply to a site or use on the site;
6. 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 environmentally sensitive lands;
7. The temporary use is located outside a special flood hazard area;
8. The temporary use provides adequate on-site restroom facilities; and
9. Includes a concept plan or plot plan that accurately depicts the proposed use's configuration.

##### F. AMENDMENT

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

##### G. EXPIRATION

Approval of a temporary use permit shall be effective beginning on the date of approval and shall remain effective for the period indicated in the permit.

**FIGURE <>:  
TEMPORARY USE PERMIT  
PROCEDURE**

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision

<sup>32</sup> This is a new procedure proposed for the Town's consideration. The Zoning Compliance Permit could serve as an alternative procedure.

## ARTICLE 2: PROCEDURES

2.2. Application Review Procedures

2.2.18. Temporary Use Permit31F

### H. APPEAL

Appeal of the Planning Director's decision on a temporary use permit shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.19. UDO Text Amendment<sup>32F</sup>

#### 2.2.19. UDO TEXT AMENDMENT<sup>33</sup>

##### A. PURPOSE AND INTENT

This section provides a uniform means for amending the text of this Ordinance whenever public necessity, changed conditions, convenience, general welfare, or appropriate land use practices justify or require doing so.

##### B. APPLICABILITY

The standards and requirements of this section shall apply to applications to revise the text of this Ordinance.

##### C. TEXT AMENDMENT PROCEDURE

The text amendment procedure is described in Figure <>, UDO Text Amendment Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. JOINT PUBLIC HEARING

Following provision of public notice for a public hearing in accordance with Section <>, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint public hearing on the UDO text amendment application.

##### E. REVIEW BY PLANNING BOARD

1. The Planning Board, following the close of the joint public hearing, shall review the application and the information presented during the joint public hearing during a follow-up public meeting, and shall make a recommendation on an application in accordance with Section <>, UDO Text Amendment Review Standards.
2. The Planning Board shall comment on whether or not the text amendment is consistent with the town's adopted policy guidance.

##### F. REVIEW AND DECISION BY BOARD OF COMMISSIONERS

1. The Board of Commissioners, after the conclusion of the joint public hearing conducted with the Planning Board, a legislative public hearing, and receipt of a recommendation on the UDO text amendment by the Planning Board, shall decide the application and in accordance with Section <>, UDO Text Amendment Review Standards.
2. Nothing shall require the BOC to wait for or consider the recommendation of the Planning Board on the text amendment application.
3. The decision shall be one of the following:
  - a. Adoption of the text amendment as proposed;
  - b. Adoption of a revised text amendment;
  - c. Denial of the text amendment; or
  - d. Remand of the text amendment application to the Planning Board for further consideration.
4. In making its decision, the Board of Commissioners shall adopt a written statement including each of the following:

FIGURE <>: UDO TEXT AMENDMENT PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Town Attorney Legal Sufficiency Review
6	Public Hearing Scheduled
7	Public Notice See Section <>, Public Notice
8	Planning Board Review and Recommendation See Section <>, Public Meetings and Hearings
9	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
10	Notification of Decision See Section <>, Notification of Decision

<sup>33</sup> This section is proposed to replace the provisions in Article 13, Amendments. This section breaks apart the procedures for text amendments versus map amendments in recognition of the differing nature of these procedures and to account for the conditional rezoning process.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.19. UDO Text Amendment32F

- a. Whether the text amendment application is approved, denied, or remanded; and
- b. The degree to which the text amendment application is or is not consistent with the town's adopted policy guidance; and
- c. The ways in which the text amendment application is or is not consistent with the town's adopted policy guidance; and
- d. Whether approval of the text amendment application also amends or does not amend the town's adopted policy guidance; and
- e. If the adopted policy guidance is amended as part of the application approval, a description of the change in conditions to meet the development needs of the town that were taken into account as part of the approval; and
- f. An explanation of why the action taken by the Board of Commissioners is reasonable; and
- g. An explanation of why the action taken by the Board of Commissioners is in the public interest.

#### **G. UDO TEXT AMENDMENT REVIEW STANDARDS**

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners 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 not in conflict with any provision of this Ordinance or the Town Code of Ordinances;
4. Is required by changed conditions;
5. Addresses a demonstrated community need;
6. Addresses an unforeseen matter not present when the Ordinance was adopted;
7. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the town;
8. Would result in a logical and orderly development pattern;
9. Addresses other factors determined to be relevant by the Board of Commissioners; and
10. 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. AMENDMENT**

Amendment of the decision on a UDO text amendment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### **I. EXPIRATION**

UDO text amendments shall not expire.

#### **J. APPEAL**

1. A decision by the BOC shall be subject to review by the Wake County Superior Court.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.20. Variance<sup>34</sup>

#### 2.2.20. VARIANCE<sup>34</sup>

##### A. PURPOSE AND INTENT

The purpose of this section is to allow certain deviations from the dimensional standards of this Ordinance (such as height, yard setback, lot coverage, or similar numerical standards) 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 standards for variance from the town's special flood hazard area standards in Section <>, Special Flood Hazard Area Overlay.

##### B. APPLICABILITY

1. 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.
2. No variance may be sought that increases development density (e.g., units per acre) beyond that allowed in a base zoning district, or that would permit a use not allowed in a zoning district.

##### C. VARIANCE PROCEDURE

The variance procedure is described in Figure <>, Variance Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. BOARD OF ADJUSTMENT REVIEW AND DECISION

1. The BOA, after the conclusion of a quasi-judicial public hearing, shall decide the application for a variance.
2. The decision shall be based on the evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the standards in Section <>, Variance Review Standards.
3. The decision shall be one of the following:
  - a. Approval of the variance as proposed;
  - b. Approval of the variance with revisions; or
  - c. Denial of the variance.
4. The concurring vote of four-fifths of the BOA shall be necessary to grant a variance.
5. Each decision shall be made in writing and reflect the BOA's determination of 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 BOA.
7. The decision of the BOA shall be effective upon the filing of the written decision.

##### E. NOTIFICATION OF DECISION

The decision of the BOA shall be delivered by personal service, electronic mail, or by first-class mail to the applicant, the landowner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The

FIGURE <>: VARIANCE PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Board of Adjustment Review and Decision See Section <>, Public Meetings and Hearings
8	Notification of Decision See Section <>, Notification of Decision
9	Recordation

<sup>34</sup> This section incorporates the standards in Section 152.073, Variances, but also incorporates the flood variance provisions in Section 152.149(E), Variance Procedures.



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.20. Variance33F

person providing notification of decision shall certify that proper notification has been made.

#### **F. RECORDATION**

1. If a variance application is approved, the notice of decision shall be recorded by the applicant in the office of the Wake County Register of Deeds.
2. Failure to record the variance within 60 days of the notice of decision being received shall render the variance null and void.

#### **G. VARIANCE REVIEW STANDARDS**

##### **1. ZONING VARIANCE STANDARDS**

###### **a. REQUIRED FINDINGS**

A zoning variance shall be approved on 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 property owner. 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.

###### **b. OTHER CONSIDERATIONS**

In addition to the making the required findings in subsection (a) above, the BOA may also consider the following:

- i. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.
- ii. All property taxes on the land subject to the variance application have been paid in full.
- iii. None of the following may be used as the basis for approving a variance:
  1. Neither the nonconforming use of lands, buildings, or structures in the same zoning district, or the permitted use of lands, buildings, or structures in other zoning districts, or personal circumstances;
  2. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
  3. Hardships resulting from factors other than application of the relevant standards of this ordinance;
  4. The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
  5. The citing of other conforming or nonconforming uses of land or structures in the same or other zoning districts; or
  6. Financial hardship.

##### **2. SPECIAL FLOOD HAZARD AREA VARIANCE STANDARDS**

In addition to the standards for a zoning variance, variances from the special flood hazard area standards in this Ordinance shall be reviewed and decided in accordance with the standards in Section <>, Special Flood Hazard Area Overlay, and the following:

###### **a. REQUIRED FINDINGS**

A variance from the special flood hazard area standards shall be approved on a finding the applicant demonstrates all of the following standards are met:

- i. There is a good and sufficient cause to grant the variance;

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.20. Variance33F

- ii. The variance is the minimum necessary to provide relief;
- iii. Failure to grant the variance would result in exceptional hardship to the landowner; and
- iv. 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 in subsection (a) above, the BOA may also consider the following:

- i. Approval of the variance will not render the building in violation of applicable federal, State, or local requirements;
- ii. 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;
- iii. The variance is issued prior to any other prerequisite permit or development approvals;

#### c. HISTORIC SITES OR STRUCTURES

Reconstruction or rehabilitation of structures listed on the National Register of Historic Places or the State Inventory of Historic Places may occur in a special flood hazard area without need for obtaining a variance in accordance with this subsection.

#### d. REQUIRED FINDINGS FOR DENIAL

All of the following factors shall be considered by the BOA if an application for a variance to the special flood hazard area standards is denied:

- 1. The danger that materials may be swept onto other lands and injure others;
- 2. The danger to life and land due to flooding or erosion damage;
- 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual landowner;
- 4. The importance of the services provided by the proposed facility to the community;
- 5. The necessity to the facility of a waterfront location as a functionally-dependent facility;
- 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- 7. The compatibility of the proposed use with existing and anticipated development;
- 8. The relationship of the proposed use to the town's adopted policy guidance and the town's floodplain management program;
- 9. The safety of access to the use in times of flood for ordinary emergency vehicles;
- 10. 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
- 11. 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.

#### H. INSUFFICIENT GROUNDS FOR APPROVING VARIANCES

The following factors shall not constitute sufficient grounds for approval of any variance:

- 1. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- 2. Hardships resulting from factors other than application of requirements of this Ordinance;
- 3. The fact that land or a structure may be utilized more profitably or be more marketable with a variance; or
- 4. The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts.

#### I. CONDITIONS OF APPROVAL

In granting a variance, the BOA may prescribe conditions of approval to ensure compliance with the standards of this section, and 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.20. Variance33F

1. A variance granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
2. Violation of a condition of approval shall be deemed a violation of this Ordinance.
3. If a violation or invalidation of a condition of approval occurs, the Planning Director may revoke the certificate of occupancy for the development subject to the variance.

#### J. EFFECT

##### 1. GENERAL

Approval of a variance authorizes only the particular regulatory relief approved by the BOA. 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 under this Ordinance unless the relevant and applicable portions of this Ordinance are met.

##### 2. NOTIFICATION REGARDING FLOOD INSURANCE COSTS

- a. An applicant for whom a special flood hazard area variance is approved shall be provided written notice by the Planning 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 Planning Director with the record of the flood special flood hazard area variance action.

##### 3. RECORDS

Upon request, the Planning Director shall report all flood damage prevention variances approved in accordance with this section to the Federal Emergency Management Agency and the State of North Carolina.

#### K. AMENDMENT

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

#### L. EXPIRATION

1. If the BOA does not include a time period by which development subject to a zoning variance or a flood damage prevention variance expires, development shall commence within 12 months of the date of issuance of the variance or the variance shall expire and become null and void.
2. A variance shall expire and become invalid if the property owner changes development on the site such that the extraordinary and exceptional conditions that warranted the hardship and variance no longer do so.

#### M. APPEAL

1. Any decision by the BOA shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari and in accordance with Section 160A-393 of the North Carolina General Statutes.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.21. Vested Rights Determination<sup>34F</sup>

#### 2.2.21. VESTED RIGHTS DETERMINATION<sup>35</sup>

##### A. PURPOSE AND INTENT

The purpose for this section is to establish a clear procedure for an applicant to request vesting or protection from changes in this Ordinance that take place after approval of the application but prior to completion of an approved site-specific development plan.

##### B. APPLICABILITY

1. A vested right may be established, in accordance with Section 160A-385.1 of the North Carolina General Statutes, and this section.
2. A vested rights determination shall be limited to development included in a site specific development plan. For the purposes of this section, a site specific development plan shall be limited to any one of the following development approvals:
  - a. Special use permits;
  - b. Preliminary plats;
  - c. Planned developments; or
  - d. Site plans.
3. An application for a vested rights determination shall be processed concurrently or after the approval of a special use permit, preliminary plat, planned development, or site plan.

##### C. VESTED RIGHTS DETERMINATION PROCEDURE

The Vested Rights procedure is described in Figure <>, Vested Rights Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. BOARD OF COMMISSIONERS REVIEW AND DECISION

1. The Board of Commissioners, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section <>, Vested Rights Determination Review Standards.
2. The decision shall be one of the following:
  - a. Approval of the vested rights determination as proposed;
  - b. Approval of a revised vested rights determination; or
  - c. Denial of vested rights determination.

##### E. VESTED RIGHTS DETERMINATION REVIEW STANDARDS

A vested rights determination shall be approved if:

1. The vested rights determination is for an approved site-specific development plan;
2. The development is valid and unexpired; and
3. Any required variances have been obtained.

##### F. EFFECT

1. A vested rights certificate shall be approved prior to issuance of a building permit.
2. Each document used to establish a site specific development plan shall bear the following notation:  
*"Approval of this plan establishes a zoning vested right under Section 160A-385.1 of the North Carolina General Statutes. Unless terminated at an earlier date, the vested right shall be valid until \_\_\_\_\_(date)."*

#### FIGURE <>: VESTED RIGHTS DETERMINATION PROCEDURE

Step	Action
1	Pre-application Conference See Section <>, Application Filing
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review See Section <>, Staff Review and Action
5	Public Hearing Scheduled
6	Public Notice See Section <>, Public Notice
7	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
8	Notification of Decision See Section <>, Notification of Decision

<sup>35</sup> This incorporates Article 152.060 – 152.064.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.21. Vested Rights Determination<sup>34F</sup>

3. 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 building, fire, plumbing, electrical, and mechanical codes.

#### G. AMENDMENT

Amendment of vested rights determination may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### H. EXPIRATION

1. In no instance shall a vested right determination provide a vested right for a period of longer than five years from the date of approval.
2. A vested right determination shall expire and become null and void:
  - a. At the end of the applicable vesting period; or
  - b. If a building permit application for the development subject to the determination is not submitted within two years of the approval of the vested rights determination associated with a special use permit, preliminary plat, or major site plan, or five years of the approval of a vested rights determination associated with a planned development; or
  - c. Upon a finding by the Board of Commissioners after 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 development plan;
    - iii. The landowner failed to comply with any condition imposed upon the establishment of the site specific development plan or vested rights determination; 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 determination 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 development plan, the Board of Commissioners may modify the affected provisions of the determination 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 development plan.

#### I. APPEAL

1. A decision by the Board of Commissioners of a vested rights determination shall be subject to review by the Superior Court of Wake County.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.22. Zoning Compliance Permit<sup>36</sup>

#### 2.2.22. ZONING COMPLIANCE PERMIT<sup>36</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

A zoning compliance permit is required for issuance of a building permit, any change in use, or commencement of activity that does not require issuance of a building permit. Nothing shall prevent a zoning compliance permit from being issued concurrently with a building permit.

##### C. ZONING COMPLIANCE PERMIT PROCEDURE

The zoning compliance permit procedure is described in Figure <>, Zoning Compliance Permit Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### D. DECISION BY PLANNING DIRECTOR

The decision on a zoning compliance permit shall be made by the Planning Director in accordance with the standards in Section <>, Zoning Compliance Permit Review Standards.

##### E. ZONING COMPLIANCE PERMIT REVIEW STANDARDS

A zoning compliance permit shall be approved on a decision the application complies with:

1. All standards or conditions of any prior applicable permits and developments approvals;
2. Any applicable requirements of the Wake County Environmental Resources; and
3. All applicable requirements of this Ordinance and in the Town Code of Ordinances.

##### F. EFFECT

1. Approval of a zoning compliance permit authorizes an applicant to apply for a building permit, commence construction, or proceed with the approved development in cases where a building permit is not required.
2. If the zoning compliance permit application is filed concurrently with a building permit application, approval of the zoning compliance permit authorizes the town to complete its review of the building 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

A zoning compliance permit shall expire and become null and void one year after the date of issuance if the authorized use has not commenced.

##### I. APPEAL

Appeal of the Planning Director's decision on a zoning compliance permit shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section <>, Appeal.

FIGURE <>: ZONING COMPLIANCE PERMIT PROCEDURE	
Step	Action
1	Pre-application Conference
2	File Application See Section <>, Application Filing
3	Completeness Determination See Section <>, Completeness Determination
4	Planning Director Review and Decision See Section <>, Staff Review and Action
5	Notification of Decision See Section <>, Notification of Decision

<sup>36</sup> This procedure is proposed to replace the general use permit in Section 152.036, General Use Permit, and is expanded to include review of development not requiring a building permit (like a fence or a garden shed).



## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.23. Zoning Map Amendment<sup>36F</sup>

#### 2.2.23. ZONING MAP AMENDMENT<sup>37</sup>

##### A. PURPOSE AND INTENT

This section provides a uniform means for reviewing and deciding proposed amendments to the Official Zoning Map 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 sets out the requirements for amendments to the zoning district designation of land within the town's planning jurisdiction as well as for land coming into the town's planning jurisdiction via annexation in accordance with the standards in Sections 160A-382 through 160A-385 of the North Carolina General Statutes.

##### C. PROCEDURES DISTINGUISHED

1. This zoning map amendment procedure shall be used in the consideration of traditional map amendment.
2. Conditional rezoning (see Section <>, Conditional Rezoning) applications are applications that include conditions agreed to by the applicant and the town that seek to either further limit development beyond that allowed within a specific base zoning district, or that would otherwise apply.
3. Applications filed as either a traditional zoning map amendment or conditional rezoning application may not be converted to the other form of map amendment application during the review process, and shall instead be withdrawn and resubmitted as a new application.

##### D. ZONING MAP AMENDMENT PROCEDURE

The zoning map amendment procedure is described in Figure <>, Zoning Map Amendment Procedure, as supplemented by Section <>, Application Procedures, and the Procedures Manual.

##### E. APPLICATION SUBMITTAL

Applications may be initiated by the Board of Commissioners, the Planning Board, the Planning Director, all landowner(s) or contract purchasers of the land in the proposed application.

##### F. JOINT PUBLIC HEARING

Following provision of public notice for a public hearing in accordance with Section <>, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint public hearing on the zoning map amendment application.

##### G. REVIEW BY PLANNING BOARD

1. The Planning Board, following the close of the joint public hearing, shall review the application and the information presented during the joint public hearing during a follow-up public meeting, and shall make a recommendation on a the zoning map amendment application in accordance with Section <>, Zoning Map Amendment Review Standards.

FIGURE <>: ZONING MAP AMENDMENT PROCEDURE	
Step	Action
1	Pre-application Conference See Section <>, Application Filing
3	File Application See Section <>, Application Filing
4	Completeness Determination See Section <>, Completeness Determination
5	Planning Director Review See Section <>, Staff Review and Action
6	Planning Board Review and Recommendation See Section <>, Public Meetings and Hearings
7	Public Hearing Scheduled
8	Public Notice See Section <>, Public Notice
9	Board of Commissioners Review and Decision See Section <>, Public Meetings and Hearings
10	Notification of Decision See Section <>, Notification of Decision

<sup>37</sup> This section is proposed to replace the provisions in Article 13, Amendments. This section breaks apart the procedures for text amendments versus map amendments in recognition of the differing nature of these procedures and to account for the conditional rezoning process. This procedure removes the distinction in Section 152.280, Amendments in General, between major and minor map amendments. It also establishes a more clear distinction between traditional and conditional map amendment applications.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.23. Zoning Map Amendment<sup>36F</sup>

2. The Planning Board shall comment on whether or not the map amendment is consistent with the town's adopted policy guidance.

#### H. BOARD OF COMMISSIONERS REVIEW AND DECISION

1. The Board of Commissioners, after the conclusion of the joint public hearing conducted with the Planning Board, and receipt of a recommendation on the zoning map amendment by the Planning Board, shall decide the application in accordance with Section <>, Zoning Map Amendment Review Standards.
2. The decision shall be one of the following:
  - a. Adoption of the zoning map amendment as proposed;
  - b. Adoption of the zoning map amendment to a zoning district designation of lesser intensity;
  - c. Denial of the zoning map amendment; or
  - d. Remand of the zoning map amendment application to the Planning Board for further consideration.
3. The Board of Commissioners shall not rely upon any representations made by the applicant that if the application is granted, the subject land will be used for only one use or type of uses permitted in the requested zoning district. Rather the Board of Commissioners shall consider the full range of use types allowable in the proposed zoning district designation.
4. In making its decision, the Board of Commissioners shall adopt a written statement including each of the following:
  - a. Whether the zoning map amendment application is approved, denied, or remanded; and
  - b. The degree to which the zoning map amendment is or is not consistent with the town's adopted policy guidance; and
  - c. The ways in which the zoning map amendment is or is not consistent with the town's adopted policy guidance; and
  - d. Whether approval of the zoning map amendment amends or does not amend the town's adopted policy guidance; and
  - e. If the adopted policy guidance is amended as part of the application approval, a description of the change in conditions to meet the development needs of the town that were taken into account as part of the approval; and
  - f. An explanation of why the action taken by the Board of Commissioners is reasonable; and
  - g. An explanation of why the action taken by the Board of Commissioners is in the public interest.

#### I. DESIGNATION ON OFFICIAL ZONING MAP

The Planning Director shall make changes to the Official Zoning Map promptly after approval of a zoning map amendment application by the Board of Commissioners.

#### J. ZONING MAP AMENDMENT REVIEW STANDARDS

The advisability of an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed zoning map amendment, the Board of Commissioners may weigh the relevance of and consider the following:

1. Whether the proposed zoning map amendment 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.
4. Other factors as the Board of Commissioners may determine to be relevant.

#### K. CONDITIONS OF APPROVAL

1. Only conditions mutually agreed to by the owner(s) of the property that is the subject of a conditional zoning district and the Board of Commissioners may be approved as part of a zoning map amendment establishing a conditional zoning district.
2. 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.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.23. Zoning Map Amendment36F

3. Conditions shall be in writing and may be supplemented with text or plans and maps.
4. No condition shall be made part of the application which:
  - a. Is less restrictive than the standards of the parallel general use zoning district, any applicable overlay zoning district standard, or other applicable requirements in this Ordinance;
  - b. Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;
  - c. Establishes a minimum size of a dwelling unit;
  - d. Establishes a minimum value of buildings or improvements;
  - e. Excludes residents based upon race, religion, or income; or
  - f. Obligates the town to perform in any manner relative to the approval of the conditional rezoning or development of the land;

#### L. EFFECT

1. Lands subject to an approved map amendment 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, and may only be changed in accordance with the procedure established in Section <>, Zoning Map Amendment.
2. Development located outside the Zebulon corporate limits shall comply with all town policies related annexation and the extension of utilities.

#### M. AMENDMENT

Amendment of a decision on a zoning map amendment may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### N. APPEAL

1. Any decision by the Board of Commissioners shall be subject to review by the Superior Court of Wake County.
2. Petitions for review must be filed with the Clerk of Court within 30 days of the date the decision is filed in the office of the appropriate review authority 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.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing<sup>37F</sup>

#### 2.3.1. Purpose and Intent

### 2.3. APPLICATION PROCESSING<sup>38</sup>

#### 2.3.1. PURPOSE AND INTENT

- A. This section describes the standard (or common) procedural steps and rules generally applicable to all development applications reviewed under this Ordinance, unless otherwise specified in Section <>, Application Review Procedures. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, adjacent landowners, elected officials, and town staff.
- B. The subsections in this section are listed sequentially and are intended to describe the procedures that take place through the application submittal, review, and notification process.

#### 2.3.2. PRE-APPLICATION CONFERENCE<sup>39</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. PRE-APPLICATION CONFERENCE REQUIRED

A pre-application conference between the applicant and town staff is required before submittal of some applications, in accordance with Table <>, Application Review Procedures.

###### 2. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the town and do not constitute submittal or review of an application.

##### C. SCHEDULING

Applicants shall contact the Planning Director to schedule a pre-application conference.

##### D. PROCEDURE

1. Following receipt of a request for a pre-application conference, the Planning Director shall schedule the conference and notify the applicant of the time and location. During the conference, town staff members will explain the application review process and any special issues or concerns regarding the subject proposal.
2. The applicant is encouraged to submit a sketch or conceptual plan, if appropriate, to town staff during the pre-application conference.

##### E. EFFECT

When required, a completed pre-application conference entitles an applicant to take the next step in the application process. Application types requiring a pre-application conference will not be accepted until after the mandatory pre-application conference has been completed.

#### 2.3.3. APPLICATION FILING<sup>40</sup>

##### A. AUTHORITY TO FILE APPLICATIONS

<sup>38</sup> This is a new consolidated Section that incorporates portions of and updates Article II Administrative Mechanism, Article III Permits and Plats, Article IV Appeals and Article V Procedures for Public Hearing. It standardizes the staff review process. It also standardizes the public hearing and public notice process.

<sup>39</sup> This section is proposed to replace the standards in Section 152.035, Staff Consultation.

<sup>40</sup> This section is proposed to replace Section 152.033, Who May Submit Permit Applications, Section 152.034, Applications to be Complete, and Section 152.008 Fees.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing37F

### 2.3.4. Staff Review and Action

Unless expressly stated otherwise in this Ordinance, development applications associated with a particular lot or site reviewed under this Ordinance shall be submitted by the landowner, contract purchaser, or other person having a recognized property interest in the land on which development is proposed.

#### **B. APPLICATION CONTENT**

The Town of Zebulon shall establish application content and forms, which shall be contained in the Procedures Manual, and maintained by the Planning Director.

#### **C. APPLICATION FEES**

1. The Board of Commissioners shall establish application fees, and may amend and update those fees as necessary. Fees shall cover the costs of review, including public notification, as required.
2. No action shall be taken on an application and no application approval shall be issued until all required application fees are paid in full.

#### **D. SUBMITTAL AND REVIEW SCHEDULE**

The Procedures Manual contains specific rules for submittal and review schedules (including time frames for review) for the various types of development applications.

#### **E. APPLICATION FILING**

1. Applications shall be submitted to the town in the form established in the Procedures Manual, along with the appropriate application fee.
2. An application shall not be considered to be submitted until determined to be complete in accordance with Section <>, Determination of Application Completeness.
3. No application shall be reviewed or decided until after it is determined to be complete.
4. No application shall be accepted for development proposed on a lot or site until property taxes are paid in full, as determined by the Wake County Tax Assessor.

#### **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**

On receiving a development application, the Planning Director shall determine, within a reasonable period of time, whether the application is complete or incomplete. A complete application is one that:

1. Contains all information and materials identified in the Procedures Manual as required for submittal of the particular type of application;
2. Is in the form and number of copies required by the Procedures Manual;
3. Is legible and printed to scale (where appropriate);
4. Is signed by the person with the authority to file the application;
5. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
6. Is accompanied by the fee established for the particular type of application;
7. Includes material associated with a pre-application conference, if one is required;
8. Includes the written summary of a neighborhood meeting, if one was conducted prior to application submittal; and
9. Is not subject to the limitations described in Section <>, Limitation on Subsequent Similar Applications, and may be resubmitted in accordance with Section <>, Authority to File Applications.

#### **H. APPLICATION INCOMPLETE**

If the application is incomplete, the Planning Director shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Section <>, Submittal and Review Schedule.

#### **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.



## ARTICLE 2: PROCEDURES

### 2.3. Application Processing<sup>37F</sup>

### 2.3.4. Staff Review and Action

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.

### 2.3.4. STAFF REVIEW AND ACTION

#### A. INITIAL STAFF REVIEW

1. Following application completeness determination, it shall be distributed by the Planning Director to all appropriate staff and review agencies for review and comment.
2. Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
3. In considering the application, the Planning Director or other town staff (as appropriate), shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
4. If deficiencies in complying with applicable standards of this Ordinance are identified, the Planning Director 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 Planning Director shall prepare a written staff report on any application to be reviewed or decided by the Planning Board, Board of Commissioners, or Board of Adjustment.
2. The staff report shall conclude whether the application complies with all applicable review standards of this Ordinance, and recommend one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, in accordance with Section <>, Application Review Procedures.
3. 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.
4. 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.
5. A staff report is not required for applications decided by the Planning Director, Building Inspector, or other designated town staff, though one may be prepared.

#### C. DISTRIBUTION AND AVAILABILITY OF APPLICATION AND STAFF REPORT

In cases where a staff report is prepared, the Planning Director shall take the following actions within a reasonable time period before the application is scheduled for review:

1. Schedule and ensure any required public notice of the application (if appropriate) 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
4. Make the application, related materials, and staff report available for examination by the public.

#### D. APPLICATIONS SUBJECT TO DECISION BY STAFF

In cases where a development application is decided by the Planning Director, Building Inspector, or other designated town staff member, the appropriate town staff member shall make one of the following decisions, based on the review standards set forth in Section <>, Application Review Procedures:

1. Approve the application;
2. Disapprove the application; or
3. Delay decision making for a specified time to allow the applicant to revise the application for compliance with the requirements in this Ordinance.

### 2.3.5. PUBLIC NOTICE<sup>41</sup>

<sup>41</sup> This section is proposed to replace Section 152.083, Notice of Hearing.



## ARTICLE 2: PROCEDURES

### 2.3. Application Processing<sup>37F</sup>

### 2.3.5. Public Notice<sup>40F</sup>

#### A. PUBLIC MEETING DISTINGUISHED

Public meetings conducted in accordance with this Ordinance are not public hearings, and do not require the provision of public notification in accordance with this section.

#### B. PUBLIC HEARING SCHEDULING

When a development application is subject to a public hearing, the Planning Director 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

All development applications subject to public notification shall comply with the standards in Section 160A-364 for published notice, 160A-384(a) for mailed notice, and 160A-384(c) for posted notice in the North Carolina General Statutes. Table <>, Public Notification Requirements, summarizes the provisions related to public notice. 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.

TABLE <>: PUBLIC NOTIFICATION REQUIREMENTS			
APPLICATION TYPE	TYPE OF PUBLIC NOTIFICATION "X"=REQUIRED		
	PUBLISHED NOTICE <sup>42</sup>	MAILED NOTICE <sup>43</sup>	POSTED NOTICE <sup>44</sup>
Appeal	X	X <sup>45</sup>	.
Comprehensive Plan Amendment	X	.	.
Development Agreement	X	X	X
Planned Development	X	X	X
Special Use Permit	X	X	X
UDO Text Amendment	X	.	.
Variance	X	X	X
Vested Rights Determination	X	X	.
Zoning Map Amendment	X	X	X

#### D. PUBLISHED NOTICE REQUIREMENTS

1. When the provisions of Section 160A-364 of the North Carolina General Statutes require that public notice be published, the designated review authority shall publish a notice in a newspaper that is regularly published at least one time per week and that has general circulation in the town.
2. The content and form of the notice shall comply with the applicable requirements in the North Carolina General Statutes.

#### E. MAILED NOTICE REQUIREMENTS

When the provisions of Section 160A-384(a) of the North Carolina General Statutes require that public notice be mailed, the designated review authority shall provide the required mailed public notice in accordance with the following:

1. Mailed notice specified in Table <>, Public Notification Requirements, shall be mailed to:
  - a. The applicant, if different from the landowner; and

<sup>42</sup> Published notice shall be provided once a week for two successive calendar weeks, with the first notice published between 10 and 25 days before the public hearing.

<sup>43</sup> Mailed notice shall be provided to the applicant, affected landowners, and landowners of abutting land between 10 and 25 days before the public hearing.

<sup>44</sup> Posted notice shall be provided between 10 and 25 days before the public hearing.

<sup>45</sup> Mailed notice shall only be required in cases where an appeal pertains to a particular lot or site.

ARTICLE 2: PROCEDURES	
2.3. Application Processing37F	2.3.5. Public Notice40F

### 2.3.5. Public Notice<sup>40F</sup>

- #### F. POSTED NOTICE REQUIREMENTS

1. A sign (or signs) shall be placed on the subject property in a conspicuous location so as to be clearly visible to the traveled portion(s) of the respective street(s). Where the land subject to the notice does not have frontage on a public street, the sign shall be erected on the nearest street right-of-way.
2. The content and form of the notice shall comply with Section <>, Notice Content, and Section 160A-384(c) of the North Carolina General Statutes.

Unless expressly indicated otherwise, all notices by mail or publication shall:

1. Identify the date, time, and place of the public hearing;
2. Describe the land involved by county parcel identification number (PIN), street address, or by its relationship to a fronting street and the nearest cross street (if applicable);
3. Describe the nature and scope of the proposed development or action; and
4. Identify the means to contact a town official for further information.

1. Minor defects in any notice shall not impair the notice or invalidate proceedings if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
  - a. Errors such as landowner name, title, or address existing in the county tax listing; or
  - b. Typographical or grammatical errors that do not impede communication of the notice to affected parties.
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.

## ARTICLE 2: PROCEDURES

2.3. Application Processing<sup>37F</sup>

2.3.6. Public Hearings and Meetings<sup>45F</sup>

### 2.3.6. PUBLIC HEARINGS AND MEETINGS<sup>46</sup>

#### A. JOINT PUBLIC HEARINGS

Table <>, Application Review Procedures, identifies the kinds of development applications subject to a joint public hearing by the Board of Commissioners and the Planning Board, which shall be conducted in accordance with the following requirements:

##### 1. PROCEDURE

- a. Joint public hearings shall not be conducted until after provision of required public notification in accordance with Section <>, Public Notice.
- b. The joint 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 joint public hearing, as authorized in the adopted rules of procedure.

##### 2. RECORD

- a. A recording may be made of all joint public hearings and the recordings shall be maintained in accordance with town policy.
- b. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

#### B. LEGISLATIVE PUBLIC HEARINGS

Table <>, Application Review Procedures, identifies the kinds of development applications decided following completion of a legislative, 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 notification 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 Board of Commissioners 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 Review Procedures.
- b. A Board of Commissioners 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 Section 160A-381(d) of the North Carolina General Statutes.
- c. A decision of the Board of Commissioners on an application shall be decided by a simple majority of the Board of Commissioners, excluding any members who are recused from voting due to a conflict of interest.

##### 3. APPLICATION REVISION

- a. An applicant may revise an application during a public hearing in response to recommendations or suggestions of the Board of Commissioners.
- b. The Board of Commissioners may approve an application modified during a public hearing provided that all changes are properly identified in the motion of approval by the Board of Commissioners.

<sup>46</sup> This section is proposed to replace Section 152.082, Hearing Required on Appeals, Applications, and Amendments. It makes a distinction between public meetings (not noticed), legislative public hearings, and quasi-judicial public hearings.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing 37F

### 2.3.6. Public Hearings and Meetings 45F

- c. In cases where an application has been modified during a public hearing, the applicant shall submit any necessary site plans, plats, or other construction documents depicting the modification to the appropriate town staff for consideration and approval prior to issuance of any development permit approvals.

#### 4. REMAND

- a. The Board of Commissioners may delay a decision on the application if additional information is requested of the applicant.
- b. The Board of Commissioners may remand the application to the Planning Board and/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 the recordings shall be maintained in accordance with town policy.
- b. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

### C. QUASI-JUDICIAL PUBLIC HEARINGS

Table <>, Application Review Procedures, identifies the kinds of development applications decided following a quasi-judicial 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

Quasi-judicial public hearings shall not be conducted until after provision of required public notification in accordance with Section <>, Public Notice.

#### 2. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

Any party in attendance 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, town staff, and the town staff's representatives.

#### 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.

#### 4. EX PARTE COMMUNICATION

Ex parte communications between an applicant or an affected party and a member of the decision-making body are prohibited. If it occurs, it shall be disclosed during the quasi-judicial 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 Review Procedures.

##### b. CLEARLY STATE FACTORS FOR DECISION

Unless stated otherwise in this Ordinance, the decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

##### c. CONFLICTS OF INTEREST

A review authority member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing37F

### 2.3.7. Conditions of Approval

person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse themselves, the remaining members shall, by majority vote, rule on the objection.

#### 6. APPLICATION REVISION

- a. An applicant may revise an application during a public hearing in response to recommendations or suggestions of the review authority.
- b. The review authority may approve an application modified during a public hearing provided all changes are properly identified in the motion of approval by the review authority.
- c. In cases where an application has been modified during a public hearing, the applicant shall submit any necessary site plans, plats, or other construction documents depicting the modification to the appropriate Town staff prior to issuance of any development permit approvals.

#### 7. REMAND

- a. The review authority may delay a decision on the application if additional information is requested of the applicant."
- b. The review authority may remand the application to town staff or the appropriate body for further consideration of new information or specified issues or concerns, if appropriate.

#### 8. RECORD

- a. A recording may be made of all public hearings and the recordings shall be maintained in accordance with town policy.
- b. Accurate minutes shall also be kept of all proceedings, but a transcript need not be made.

#### D. PUBLIC MEETINGS

Table <>, Application Review Procedures, identifies the kinds of development applications subject to a required public meeting, which shall be conducted in accordance with the review authority's rules of procedure and the following requirements:

##### 1. PROCEDURE

- a. Applications subject to a recommendation by the Planning Board, as depicted in Table <>, Application Review Procedures, shall be heard by the Planning Board.
- b. The public meeting shall be open to the public and shall be conducted in accordance with the Planning Board's adopted rules of procedure for public meetings.
- c. 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 to recommend approval 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 where the outcome of the matter being considered is reasonably likely to have a direct, substantial, or readily identifiable financial impact on them or a member of their immediate family.

### 2.3.7. CONDITIONS OF APPROVAL

- A. Unless expressly authorized in Section <>, Application Review Procedures, conditions of approval for conditional zoning map amendments and for other applications reviewed through the quasi-judicial process shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application, or to prevent or minimize adverse effects from the proposed development on surrounding lands.
- B. All conditions of approval shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding development.
- C. All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.
- D. Conditions of approval associated with a conditional zoning map amendment may be proposed by the applicant, town staff, the Planning Board, or the Board of Commissioners, but only those conditions

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing<sup>37F</sup>

### 2.3.8. Notification of Decision<sup>46F</sup>

mutually approved by the Board of Commissioners and the applicant may be included as part of the application approval.

#### 2.3.8. NOTIFICATION OF DECISION<sup>47</sup>

Except for building permits, certificates of occupancy, and zoning compliance permits, all decisions on applications filed under this Ordinance shall be in writing, and configured in accordance with the following:

##### A. CONTENT

The notification of decision on an application shall be issued in the name of the applicant or applicant's agent, as appropriate, and shall identify the following:

1. The land or matter subject to the application;
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

Except where otherwise stated in this Ordinance, the Planning Director shall provide the applicant written notification of a decision or action within 30 days after a final decision on a development application.

##### C. COPY OF DECISION

In addition to providing notification of a decision on an application to an applicant, the Planning Director shall make a copy of the decision available to the public in the offices of the Planning Department during normal business hours.

#### 2.3.9. EFFECT<sup>48</sup>

##### A. EFFECT

Approval of a development application in accordance with this Ordinance authorizes only the particular use, plan for development, or other specific activity approved.

##### B. PERMIT PREREQUISITE

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), development may not take place until all prerequisite approvals are obtained. Approval of one development application does not guarantee approval of any subsequent development application.

##### C. TRANSFER

1. Except when otherwise specified, development approvals may be transferred from one owner to another, provided the land, structure, or use type continues to be used for the same purpose for which the approval was granted.
2. The terms, requirements, and conditions of the approval shall continue to apply to all subsequent owners or interests.

#### 2.3.10. CONTINUANCE, POSTPONEMENT, AND WITHDRAWAL

An applicant may request that a review authority's consideration of a development application be continued, postponed, or withdrawn by submitting a written request to the appropriate review authority.

##### A. PROCEDURE FOR APPLICATIONS SUBJECT TO A PUBLIC HEARING

1. In cases where an applicant seeks a continuance or postponement 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.

<sup>47</sup> This section replaces Section 152.086, Written Decision.

<sup>48</sup> This section replaces Section, 152.046, Effect on Successors.



## ARTICLE 2: PROCEDURES

### 2.3. Application Processing<sup>37F</sup>

### 2.3.11. Limitation on Subsequent Similar Applications<sup>48F</sup>

2. If public notification of the pending public hearing has been provided in accordance with this Ordinance, the request for continuance or postponement shall be placed on the public hearing agenda and be considered by the review authority. Additional public notification may be required.
3. A request for continuance or postponement may be approved in cases where the applicant needs additional time to conduct a neighborhood information meeting, 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.
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.

### 2.3.11. LIMITATION ON SUBSEQUENT SIMILAR APPLICATIONS<sup>49</sup>

#### A. APPLICATION DENIED

If a development application requiring a 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 in accordance with subsection (B) below. 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.

#### B. 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:

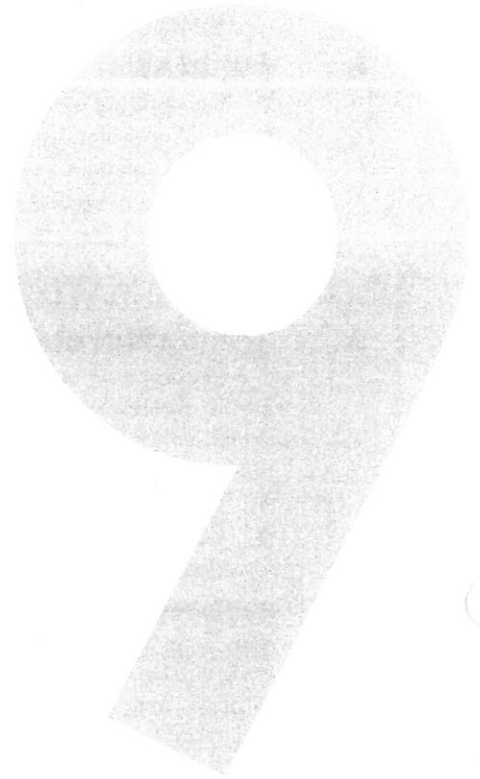
1. There is a substantial change in circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the review authority's application of the relevant review standards to the development proposed in the new application; or
2. New or additional 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.

<sup>49</sup> This section replaces Section 152.048, Reconsideration of Board Action, and it increases the wait time for reconsideration from 6 months to 1 year. It clarifies how an applicant qualifies for reconsideration of a decision.

## CHAPTER 9: MEASUREMENT AND DEFINITIONS

### Key Changes from the Land Use Ordinance:

- This article includes a new comprehensive set of rules governing language construction and defines how terms like shall and may are used.
- It includes a new summary table of abbreviations.
- There is a consolidated set of defined terms included that have been revised to remove any standards. This section will be amended with each module to address terms added in subsequent modules.



## 9: MEASUREMENT AND DEFINITIONS ..... 9-1

9.1. Rules of Language Construction.....	9-1
9.1.1. Meanings and Intent.....	9-1
9.1.2. Headings, Illustrations, and Text .....	9-1
9.1.3. Lists And Examples .....	9-1
9.1.4. Computation of Time.....	9-1
9.1.5. Time-Related Language .....	9-1
9.1.6. References to This Ordinance.....	9-2
9.1.7. References to Other Regulations or Publications.....	9-2
9.1.8. References to North Carolina General Statutes .....	9-2
9.1.9. Delegation of Authority .....	9-2
9.1.10. Joint Authority .....	9-2
9.1.11. Technical and Non-Technical Terms .....	9-2
9.1.12. Public Officials and Agencies .....	9-2
9.1.13. Mandatory and Discretionary Terms.....	9-2
9.1.14. Conjunctions.....	9-2
9.1.15. Tenses, Plurals, and Gender of Words .....	9-2
9.1.16. Oath .....	9-3
9.1.17. Term Not Defined.....	9-3
9.2. Table of Abbreviations.....	9-4
9.3. Rules of Measurement .....	9-4
9.4. Definitions.....	9-6

# 9: MEASUREMENT AND DEFINITIONS

## 9.1. RULES OF LANGUAGE CONSTRUCTION<sup>50</sup>

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

### 9.1.1. MEANINGS AND INTENT

- A. All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Section <>, Purpose and Intent, and the specific purpose statements set forth throughout this Ordinance.
- B. When a specific section of these regulations gives a different meaning than the general definition provided in Section <>, Definitions, the specific section's meaning and application of the term shall control.
- C. Terms that are not defined are subject to their common or customary meaning.

### 9.1.2. HEADINGS, ILLUSTRATIONS, AND TEXT

- 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.

### 9.1.3. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items, or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

### 9.1.4. COMPUTATION OF TIME

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the town.

### 9.1.5. TIME-RELATED LANGUAGE

- A. **TIME STANDARD**  
Whenever certain hours are named, they shall mean standard time or daylight savings time as may be in current use by the town.
- B. **DAY**  
The term "day" means a calendar day, or any day during a week, including business days and weekend days.
- C. **HOLIDAY**  
The term "holiday" means a legal holiday recognized by the town.
- D. **WEEK**  
The term "week" means five business days and two weekend days. Weeks commence on a Monday.
- E. **MONTH**  
The term "month" means a calendar month.
- F. **YEAR**

<sup>50</sup> This section builds on the standards in Section 152.010, Miscellaneous.

## ARTICLE 9: MEASUREMENT AND DEFINITIONS

### 9.1. Rules of Language Construction<sup>49F</sup>

### 9.1.6. References to This Ordinance

The term "year" means a calendar year.

#### G. TEMPORARY

The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

#### H. FISCAL YEAR

The term "fiscal year" shall mean 12 consecutive months ending on the last day of any month except December.

### 9.1.6. REFERENCES TO THIS ORDINANCE

A reference to an article, section, subsection, or paragraph means an article, section, subsection, or paragraph of this Ordinance, unless otherwise specified.

### 9.1.7. REFERENCES TO OTHER REGULATIONS OR PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

### 9.1.8. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

### 9.1.9. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the town to do some act or perform some duty, the officer or employee may designate, delegate, and authorize subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise.

### 9.1.10. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

### 9.1.11. TECHNICAL AND NON-TECHNICAL TERMS

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

### 9.1.12. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made are those of the Town of Zebulon, unless otherwise indicated.

### 9.1.13. MANDATORY AND DISCRETIONARY TERMS

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.

### 9.1.14. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

1. "And" indicates that all connected items, conditions, provisions or events apply.
2. "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

### 9.1.15. TENSES, PLURALS, AND GENDER OF WORDS

#### A. TENSE

Words used in the past or present tense include the future tense as well as the past and present.

#### B. NUMBER

Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.1. Rules of Language Construction49F

9.1.16. Oath

### 9.1.16. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

### 9.1.17. TERM NOT DEFINED

If a term used in any article of this Ordinance is not defined, the Planning Director is authorized to interpret the term in accordance with Section <>, Interpretation, based upon the definitions used in professionally accepted sources.



## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.2. Table of Abbreviations

9.1.17. Term Not Defined

### 9.2. TABLE OF ABBREVIATIONS

Table <>, Abbreviations, is a summary table of abbreviations used in this Ordinance.

TABLE <>: ABBREVIATIONS	
ABBREVIATION	TERM
BFE	Base Flood Elevation
BMP	Best Management Practice
BOA	Board of Adjustment
CG	Commercial General
CI	Commercial Intense
CN	Commercial Neighborhood
CO	Certificate of Occupancy
DTC	Downtown Core
DTP	Downtown Periphery
ETJ	Extra Territorial Jurisdiction
FIRM	Flood Insurance Rate Map
FIS	Flood Insurance Study
IL	Industrial Light
IC	Industrial Campus
IH	Industrial Heavy
NC	North Carolina
NCAC	North Carolina Administrative Code
NCDEQ	North Carolina Department of Environmental Quality
NCDOT	North Carolina Department of Transportation
NCGS	North Carolina General Statutes
NFIP	National Flood Insurance Program
OI	Office Institutional
PARC	Parks, Recreation, and Conservation
PD	Planned Development
PIN	Parcel Identification Number
R2	Residential Suburban
R4	Residential Neighborhood
R6	Residential Urban
ROW	Right-of-Way
TIA	Transportation Impact Analysis
TRC	Technical Review Committee
UDO	Unified Development Ordinance
WBA	Watershed Balance
WCA	Watershed Critical Area
WSW	Water Supply Watershed

### 9.3. RULES OF MEASUREMENT

## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.3. Rules of Measurement

9.1.17. Term Not Defined

[Placeholder for completion in Module 2]

## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.4. Definitions<sup>50F</sup>

Abandonment

### 9.4. DEFINITIONS<sup>51</sup>

This section includes definitions of terms used throughout this Ordinance. Use classifications and use categories are defined in Section <>, Use Classifications, and use types are defined in Table <> Principal Use Table.

#### DEFINITIONS

##### A

<b>ABANDONMENT</b>	The relinquishment of property or a cessation of the use of the property for a continuous period.
<b>ABUTTING</b>	The condition of two parcels of land having a common property line or boundary, including cases where two or more parcels of land adjoin at a corner, but not including cases where parcels of land are separated by a street, water body, or right-of-way.
<b>ACCESSORY STRUCTURE</b>	A detached subordinate or incidental structure, the use of which is incidental to the principal structure and which is located on the same lot as the principal structure.
<b>ACCESSORY USE</b>	A use that is incidental and subordinate to the principal use of land or buildings and located on the same lot.
<b>ADDITION (TO AN EXISTING BUILDING)</b>	An extension or increase in the floor area or height of a building or structure.
<b>ADJACENT</b>	A parcel of land or development that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street, waterbody, or right-of-way divides the parcels.
<b>ADMINISTRATIVE ADJUSTMENT</b>	A request by an applicant to deviate from a specified numerical standard of this UDO by a specified percentage, subject to consistency with applicable review criteria.
<b>ADOPTED POLICY GUIDANCE</b>	The combined future land-use policy guidance provided by the adopted comprehensive plan, area or corridor plans prepared for specific parts of the Town, system plans related to the town's infrastructure systems, and other plans.
<b>AFFECTED PARTY</b>	Owners of land adjoining the land subject to an application and any other person who could suffer an adverse effect to a property interest from a proposed development.
<b>ALTERATION</b>	Any change because of construction, repair, maintenance or otherwise to buildings located within a historic district or designated as a historic property.
<b>APPEAL</b>	A request for a review of an interpretation, decision, or the application of any provision of this Ordinance.
<b>APPLICANT</b>	A person who has submitted a development application for review under applicable provisions of this Ordinance.
<b>APPLICATION</b>	The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by the appropriate town department or board as part of the development review processes.
<b>ACQUISITION</b>	Act or process of acquiring fee title of real property (including the acquisition of development rights or remainder interest).
<b>AS-BUILT PLANS</b>	A set of engineering or site drawings that delineate the specific permitted development as actually constructed.
<b>AUTHORIZED AGENT</b>	A person with express written legal consent to act upon another's behalf.

<sup>51</sup> This section consolidates all the definitions in the UDO into a single section. It is proposed to replace Section 152.016, Definitions, as well as the numerous other sections in the current standards that include definitions. Definitions are restructured to ensure they do not include standards. This definitions section will evolve with each module as more defined terms are added.

**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Base flood

**DEFINITIONS****B**

<b>BASE FLOOD</b>	The flood having a one percent (1%) chance of being equaled or exceeded in any given year.
<b>BASE FLOOD ELEVATION</b>	A determination of the water surface elevations of the base flood as published in the flood insurance study.
<b>BOARD OF ADJUSTMENT</b>	A quasi-judicial decision-making body responsible for hearing appeals and variance requests in Zebulon, North Carolina.
<b>BOARD OF COMMISSIONERS</b>	The Board of Commissioners of Zebulon, North Carolina.
<b>BUILDING</b>	A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or chattels.
<b>BUILDING PERMIT</b>	Authorization granted by the town for an applicant to begin construction of a building or structure.
<b>BUSINESS DAY</b>	Any day in which normal business is conducted. A business day does not include a holiday or a weekend day.

**C**

<b>CALENDAR DAY</b>	Any day of the week.
<b>CERTIFICATE OF OCCUPANCY</b>	Authorization granted by the town for the occupancy of a building reviewed and approved under this Ordinance.
<b>CHANGE OF USE</b>	The change in the use of a building, structure, or land. "Change of use" includes a change from one use type to another use type or the addition of a separate use type.
<b>COMMON PROCEDURE</b>	Actions undertaken by town staff or requirements of applicants that are uniformly applied to all types of development applications reviewed and decided under this UDO.
<b>COMPLETION OF CONSTRUCTION OR DEVELOPMENT</b>	Means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
<b>COMPREHENSIVE PLAN</b>	A document, adopted by the Board of Commissioners, which dictates the town's policy in terms of transportation, utilities, land use, recreation, and housing.
<b>COMPREHENSIVE PLAN AMENDMENT</b>	An amendment to the adopted comprehensive plan, including the future land use map.
<b>CONDITION OF APPROVAL</b>	A limitation or stipulation on the range of allowable uses, density, intensity, configuration, or operational parameters of new development or redevelopment. A condition may be proposed by an applicant, a staff member, or a review authority that must be accepted by an applicant and the town to become binding.
<b>CONDITIONAL ZONING DISTRICT</b>	A type of zoning district subject to one or more conditions included as part of the legislative approval by the Board of Commissioners that establishes the conditional zoning district.
<b>CONSTRUCTION</b>	The erection of any building, structure, on-site improvement, or any preparations (including land disturbing activities) for the same, regardless whether the site is presently improved, unimproved or hereafter becomes unimproved by "demolition," destruction of the improvements located thereon by fire, windstorm or other casualty.
<b>CONSTRUCTION DRAWINGS</b>	Technical diagrams, drawn to scale, depicting the placement and configuration of buildings, structures, site features, and infrastructure.
<b>CONTIGUOUS</b>	See "Abutting."
<b>CONTINUANCE</b>	The adjournment or postponement of review or a decision on an application for development approval to a specified future date.

**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Contract Purchaser

**DEFINITIONS**

<b>CONTRACT PURCHASER</b>	A person who has entered into a contract with another party to purchase real property, but who has not yet settled on the purchase.
<b>CORPORATE LIMITS</b>	The legal name that refers to the boundaries of a municipal corporation.
<b>COUNTY</b>	Wake County, North Carolina.
<b>COVENANT</b>	A binding written agreement between two or more private parties regarding the use, occupancy, or configuration of development that runs with the land.

**D**

<b>DEED RESTRICTION</b>	A written private agreement that restricts the use, occupancy, or configuration placed upon the title of real estate often by the developer.
<b>DEMOLITION</b>	Complete or constructive removal of a building or portion of a building on any site.
<b>DESIGNEE</b>	A person selected or designated to carry out a duty or role.
<b>DEVELOPER</b>	A person engaging in land, site, or building development.
<b>DEVELOPMENT</b>	Any man-made change to improved or unimproved real estate, including: buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; or storage of equipment or materials. "Development" also includes any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or that otherwise decreases the infiltration of precipitation into the soil.
<b>DEVELOPMENT AGREEMENT</b>	A written agreement between the town and a developer or applicant that sets down the rights and responsibilities of each party as pertaining to a single development.

**E**

<b>EASEMENT</b>	The right to use or occupy the real property of another owner for a specifically identified purpose. An easement is a recognized interest in real property, but legal title to the underlying land is retained by the owner granting the easement.
<b>ELEVATION/ FLOODPROOFING CERTIFICATE</b>	A document identifying the base flood elevation in feet above mean sea level of the lowest habitable floor of a building located within a special flood hazard area.
<b>EROSION</b>	The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
<b>EROSION CONTROL MEASURE</b>	A device which controls the soil material within the land area under responsible control of the person conducting a land-disturbing activity.
<b>EXEMPTION</b>	A use, site feature, or development condition that is exempted authorized to deviate from otherwise applicable requirements
<b>EXISTING DEVELOPMENT</b>	Means development, other than that associated with agricultural or forest management activities that meets one of the following criteria: 1. It either is built or has established a vested right based on statutory or common law, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or 2. It occurs after the compliance date set out in Sub-Item (4) (d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase in built-upon area.
<b>EXPANSION</b>	An increase in the floor area of an existing structure or building, or the increase of area of a use.



**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Ex-Parte Communication

**DEFINITIONS**

<b>EX-PARTE COMMUNICATION</b>	Any communication between a member of a decision-making body involved in a development application and another person involved in a development application that is made without the presence or knowledge of the other members of the same decision-making body.
<b>EXTERIOR ARCHITECTURAL FEATURES</b>	Includes the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind, and texture of the building material; the size and scale of the building; and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" shall include historic signs, color, and significant landscape, archaeological and natural features of the area.
<b>EXTRA TERRITORIAL JURISDICTION</b>	The land area located outside the corporate limits of a municipality, but still subject to the planning and zoning laws associated with Zebulon, North Carolina.

**F**

<b>FAMILY</b>	One or more persons related by blood, adoption or marriage living and cooking together as a single housekeeping unit exclusive of household servants. The number of persons, but not exceeding two living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage, shall be deemed to constitute a family.
<b>FEE</b>	An amount charged in accordance with the regularly adopted fee schedule of the town.
<b>FEE IN-LIEU</b>	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
<b>FINAL PLAT</b>	A plan or drawing recorded in the office of the register of deeds that identifies the metes and bounds as well as all applicable conditions applied to a lot or group of lots that have been subdivided.
<b>FINANCIAL GUARANTEE</b>	Cash or other guarantee provided by an applicant in-lieu of completion of public infrastructure or required public site feature prior to issuance of a building permit or other development approval.
<b>FINE</b>	A sum of money imposed on a violator as punishment for violation of law.
<b>FLOOD OR FLOODING</b>	A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of runoff of surface waters from any source.
<b>FLOOD ZONE</b>	A geographical area on the Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
<b>FLOODPLAIN</b>	Any land area susceptible to being inundated by water from any source.
<b>FLOODPLAIN ADMINISTRATOR</b>	The individual appointed to administer and enforce the floodplain management regulations.
<b>FLOODPLAIN DEVELOPMENT PERMIT</b>	A permit that is required, in conformance with the provisions of this Ordinance, prior to the commencement of any development activity in a floodplain.
<b>FLOODWAY</b>	The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**G**

<b>GENERAL ASSEMBLY</b>	The General Assembly for the State of North Carolina. Also referred to as the Legislature.
<b>GENERAL STATUTES</b>	A general statute is a written law passed the General Assembly that sets forth general propositions of law that courts apply to specific situations.



## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.4. Definitions50F

Good Cause

### DEFINITIONS

<b>GOOD CAUSE</b>	Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.
<b>GRADING</b>	Excavating, filling (including hydraulic fill) or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

### H

<b>HARDSHIP</b>	Special or specified circumstances that place an unreasonable or disproportionate burden on one applicant or landowner over another.
<b>HOME OCCUPATION</b>	Any activity carried out for gain by a resident and conducted in the resident's dwelling unit or accessory structures.
<b>HOME OWNERS' ASSOCIATION</b>	An organization of homeowners or property owners of lots or land in a particular subdivision, condominium, or planned development. The owners' association is responsible for maintaining and enhancing the shared private infrastructure (e.g., stormwater, streets, and sidewalks) and common elements such as recreation areas.

### I

<b>IMPROVEMENT</b>	The construction of buildings and the establishment of basic services and amenities associated with development, including, but not limited to streets and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, swimming pools, tennis courts, golf courses, riding stables, club houses, cabanas, marinas, docks and the like) and other similar construction or establishment.
<b>INFILL</b>	The process of developing vacant or under-used parcels within existing developed areas that are already largely developed.
<b>IN-LIEU FEE</b>	Monetary compensation offered by a landowner or applicant as an alternative to provision of some other required site or development feature.
<b>INTERNATIONAL BUILDING CODE</b>	The model building code developed by the International Building Code Council.
<b>INTERPRETATION</b>	A determination, made in writing, by the Planning Director regarding the proper application of provisions in the UDO, the boundaries on the Official Zoning Map, a prior-approved condition of approval, or any other planning document.

### J

<b>JURISDICTION</b>	The official power to make legal decisions and judgments. The term can also be used to describe the geographic boundaries of a municipal corporation or the extent over which a particular agency has control.
<b>JURISDICTIONAL STREAM</b>	A stream or other waterbody that meets the definition of "waters of the United States" or "waters of the state," and is thus subject to the jurisdiction of the US Army Corps of Engineers or the NC Department of Environmental Quality.
<b>JUST CAUSE</b>	Legitimate cause; legal or lawful ground for action.

### K

### L

<b>LAND-DISTURBING ACTIVITY</b>	Any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
---------------------------------	---

**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Landowner

**DEFINITIONS****LANDOWNER**

As applied to the standards related to vested rights, an owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of the owner.

**LOT OF RECORD  
(EXISTING LOT)**

A lot that has been recorded in the office of the Wake County Register of Deeds and which was in conformance with the development regulations in effect at the time of recording.

**M****MAP AMENDMENT**

See "Zoning Map Amendment."

**MASTER PLAN**

A conceptual plan associated with an application to establish a planned development district that sets out the general location, type, and configuration of proposed development within the district.

**MAXIMUM EXTENT  
PRACTICABLE**

No feasible or practical alternative exists, as determined by the town, and all possible efforts to comply with the standards or regulation to minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."

**MATERIAL CHANGE**

A change in the meaning or language of a legal document, such as a contract, agreement, or approval that is made by one party to the document without the consent of the other after it has been signed or completed.

**MAJOR CHANGE**

A significant deviation in an application, proposed development, or portion of a development that impacts the operation, appearance, function, value, or compatibility of proposed development with its surroundings.

**MINOR CHANGE**

An insignificant deviation in an application, proposed development, or portion of a development that does not impact the operation, appearance, function, value, or compatibility of proposed development.

**N****NATIONAL FLOOD  
INSURANCE PROGRAM**

A program operated by the Federal Emergency Management Agency that provides flood insurance for development within areas that are susceptible to flooding and establishes a set of standards for development as a condition of participation in the program.

**NEIGHBORHOOD  
MEETING**

A meeting conducted by the applicant of a proposed development with those in the area around the proposed development.

**NONCONFORMITY**

Any land use, development, structure, or site, including any lot of record, that was legally established, but that is not presently in full compliance with the provisions of this Ordinance.

**NOTICE OF PUBLIC  
HEARING**

The formal legal notification of a public hearing on a proposed development application. A "published notice" is one required to be printed in a newspaper of general circulation. A "mailed notice" is one delivered to specified individuals by US Mail. A "posted notice" is a sign posted on or near the property subject to the application.

**NOTICE OF VIOLATION**

A notice indicating a violation of this Ordinance.

**O****OATH**

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."

**OCCUPANCY**

The act, state, or condition of holding, possessing, residing, or otherwise using a premises, lot, site, building, or dwelling.

**OFFICIAL ZONING MAP**

The Official Zoning Map upon which the boundaries of various zoning districts are drawn and which is an integral part of this Ordinance.

**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Ordinance

**DEFINITIONS**

<b>ORDINANCE</b>	A legislative enactment of the Town of Zebulon, North Carolina.
<b>ORDINARY REPAIRS AND MAINTENANCE</b>	Work done on a sign or structure to prevent deterioration or to replace any part thereof in order to correct any deterioration, decay, or damage to any part thereof in order to restore same as nearly as practical to its condition prior to such deterioration, decay or damage.
<b>OWNER</b>	The legal or beneficial owner of land, including a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property.
<b>P</b>	
<b>PENALTY</b>	Punishment for violation of a law or rule.
<b>PERSON</b>	Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
<b>PERSON CONDUCTING LAND-DISTURBING ACTIVITY</b>	Any person who may be held responsible for violation of any regulations governing land-disturbing activity, unless expressly provided otherwise.
<b>PERSONAL PROPERTY</b>	All forms of property, except real property.
<b>PHASE</b>	The discrete portion of a proposed development.
<b>PLANNED DEVELOPMENT</b>	An area of land under unified ownership or control to be developed and improved as a single entity under a planned development master plan in accordance with this Ordinance.
<b>PLANNING BOARD</b>	An advisory body responsible for making recommendations on certain applications for development approval to the Board of Commissioners. The Planning Board also makes special studies of land use and assists in the preparation and revision of the comprehensive plan.
<b>PLAT</b>	A surveyed map or plan for a parcel of land.
<b>PRE-APPLICATION CONFERENCE</b>	A meeting or conference conducted by a potential applicant for a permit or development approval and town staff for the purposes of discussing a potential application or town rules regarding development.
<b>PRELIMINARY PLAT</b>	A drawing or plan showing the proposed organization of lot boundaries, streets, public infrastructure, open space, and other site configuration features associated with a proposed development.
<b>PRINCIPAL STRUCTURE</b>	A structure in which is conducted the principal use(s) of the lot on which it is located.
<b>PRINCIPAL USE</b>	A primary or predominate use of a lot or parcel.
<b>PUBLIC HEARING, LEGISLATIVE</b>	A public hearing held for the purpose of soliciting public comments on a proposed development application. Reasonable time limits on speakers may be imposed and responsible decorum maintained. However, unlike quasi-judicial hearings, there is no requirement for oaths, no limits on expression of personal opinions, and no limit on discussing the matter outside the context of the hearing.
<b>PUBLIC HEARING, QUASI-JUDICIAL</b>	A public hearing involving the legal rights of specific parties conducted by the Board of Commissioners, the Board of Adjustment, or the Planning Board based on evidence and sworn testimony presented during the public hearing. Decisions made during such hearings are based upon and supported by the record developed at the hearing, and involve findings of fact and conclusions of law made by the review authority.
<b>PUBLIC INFRASTRUCTURE</b>	Infrastructure or facilities (such as water lines, streets, storm drainage, sidewalks, trails, etc.) owned by the public and intended for use by the public.

## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.4. Definitions50F

Public Meeting

### DEFINITIONS

#### PUBLIC MEETING

A gathering of town officials and interested members of the public to discuss an action of the town or consider a development application. Unlike a public hearing, no prior public notification is required for a public meeting, and the acceptance of testimony from meeting attendees is at the discretion of the review authority conducting the public meeting.

### Q

#### QUASI-JUDICIAL

See "Public Hearing, Quasi-Judicial."

#### QUORUM

The minimum number of council, board, or commission members that must be present in order to conduct official business or take official action.

### R

#### REAL PROPERTY

All land, all buildings, all structures, and other fixtures firmly attached thereto.

#### RECORD DRAWING

See "As-Built Plans."

#### REDEVELOPMENT

Any development on previously developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

#### REGISTER OF DEEDS

A public officer designated by Wake County to register documents, mainly related to real estate. The register of deeds verifies mortgage ownership and property ownership in official record books.

#### REMEDY

The manner in which a right or law is enforced or satisfied when a violation of the UDO or related law has occurred.

#### RESIDENTIAL DEVELOPMENT

Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses and cottages and their associated outbuildings such as garages, storage buildings and gazebos and customary home occupations.

#### RESOLUTION

The official written expression of the opinion or the will of the Board of Commissioners, Board of Adjustment, or Planning Board.

#### REZONING

See "Zoning Map Amendment."

#### RIGHT-OF-WAY

Shall mean that property located within and adjoining the streets, roads and highways within the town, which rights-of-way are owned by the town or the state or are otherwise maintained by the town or the state.

#### RIPARIAN BUFFER

A vegetated area proximate to and parallel with a stream that helps shade and partially protect the stream and water quality from the impact of adjacent land uses.

#### ROOM

Any floor space exceeding 40 square feet enclosed by partitions or walls having cased openings or doors but excluding areas devoted exclusively to kitchen and bath facilities.

### S

#### SEDIMENT

Solid particulate matter, both mineral and organic, that is transported by water, air, gravity, or ice from its site of origin.

#### SEDIMENTATION

The process by which sediment resulting from accelerated erosion is transported off-site by land-disturbing activity.

#### SIGN

Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names or trademarks by which any message is made known, including any surface, fabric or other material or structure designed to carry such devices that are used to designate or attract attention to an individual, firm, event, association, corporation, profession, business, or commodity or product that are exposed to public view. The definition of a sign does not include flags, badges, or insignias of any governmental unit.



**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Sign Permit

**DEFINITIONS**

<b>SIGN PERMIT</b>	A development approval associated with the erection, alteration, continuation, or removal of signage or ancillary features associated with a sign.
<b>SITE PLAN</b>	A graphical depiction of proposed development that may or may not be accompanied by a textual description, material samples, models, photographs, or other materials intended to demonstrate the appearance or function of the development.
<b>SPECIAL FLOOD HAZARD AREA</b>	The land area anticipated to be covered by the floodwaters associated with a base flood event.
<b>SPECIAL USE PERMIT</b>	An authorization to establish a particular use in a particular area subject to extra scrutiny by a review authority to ensure the proposed use can maintain compatibility with its surroundings while also minimizing all potential negative impacts of the development on its surroundings.
<b>STATE BUILDING CODE</b>	The North Carolina State Building Code.
<b>STOP WORK ORDER</b>	An order issued by the town to a landowner or developer to cease and desist all land-disturbing or development activity on a site pending resolution of a problem or conflict.
<b>STORMWATER RUNOFF</b>	The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
<b>STREET</b>	A publicly dedicated and maintained thoroughfare more than 20 feet in width.
<b>STRUCTURE</b>	An object, including a mobile object, constructed or installed by man, including but without limitation to buildings, towers, cranes, smokestacks, earth formations and overhead transmission lines.
<b>SUBDIVISION</b>	<p>As used in this ordinance means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition provided, however, that any subdivision document or plat to be recorded pursuant to such exclusions shall have the notation of "No Approval Required" and the signature of the Planning Director or their designated agent before filing in the office of the Wake County Register of Deeds.</p> <p>A "Subdivision" shall not include the following:</p> <ol style="list-style-type: none"> <li>1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in this Ordinance.</li> <li>2. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.</li> <li>3. The public acquisition by purchase of strips of land for the widening or opening of streets.</li> <li>4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way or easement dedication is involved and where the resultant lots equal or exceed the standards set forth in this Ordinance.</li> <li>5. The trading or exchanging of portions of previously platted and recorded properties that are contiguous and that necessitate the creation of parcels not conforming to the requirements of this Ordinance provided that a statement is placed on the plat to be recorded to the effect that such parcels are not created as individual building lots and are not approved as such and that no building permit shall be issued for construction on such parcels.</li> </ol>
<b>SUPERIOR COURT</b>	The Superior Court for Wake County, North Carolina.

**T**

**ARTICLE 9: MEASUREMENT AND DEFINITIONS**

9.4. Definitions50F

Technical Review Committee

**DEFINITIONS**

<b>TECHNICAL REVIEW COMMITTEE</b>	A group of town staff members and others associated with development review in the town.
<b>TEMPORARY USE PERMIT</b>	A permit authorizing the operation of a temporary use, structure, or special event.
<b>TEXT AMENDMENT</b>	See "UDO Text Amendment."
<b>TOWN</b>	The Town of Zebulon, North Carolina and its extraterritorial planning jurisdiction.
<b>TRANSPORTATION IMPACT ANALYSIS</b>	A study conducted to evaluate the capacity and safety impacts on the transportation system from a proposed development and identify necessary improvements or management strategies to mitigate negative impacts. Such studies shall be performed by a licensed professional engineer in accordance with the Procedures Manual and this Ordinance.

**U**

<b>UDO TEXT AMENDMENT</b>	A change to the language of this Ordinance.
<b>USE</b>	The purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented, or leased.

**V**

<b>VARIANCE</b>	A grant of relief from the requirements of this Ordinance. A variance may grant relief from special flood hazard area standards or other zoning or subdivision standards in this Ordinance.
<b>VESTED RIGHT</b>	A right pursuant to North Carolina General Statutes Section 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.
<b>VESTED RIGHT CERTIFICATE</b>	An authorization granted by Board of Commissioners to an approved site-specific development plan that protects the development from the need to comply with some (but not all) regulatory changes that are adopted by the town during the period which the development is vested.
<b>VIOLATION</b>	A breach, infringement, or transgression of a law or requirement in this Ordinance or a permit or other development approval.

**W**

<b>WATER SUPPLY WATERSHED</b>	The entire land area contributing surface drainage to a designated water supply reservoir.
<b>WATERSHED</b>	The entire land area contributing surface drainage to a specific point.
<b>WEEKEND DAY</b>	Saturday or Sunday.
<b>WRIT OF CERTIORARI</b>	A writ of superior court to call up the records of an inferior court or a body acting in a quasi-judicial capacity.

**X****Y**

<b>YARD</b>	An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is occupied and unobstructed from the ground upward by buildings or structures except by permitted accessory buildings or uses.
-------------	---

**Z**



## ARTICLE 9: MEASUREMENT AND DEFINITIONS

9.4. Definitions50F

Zoning Compliance Permit

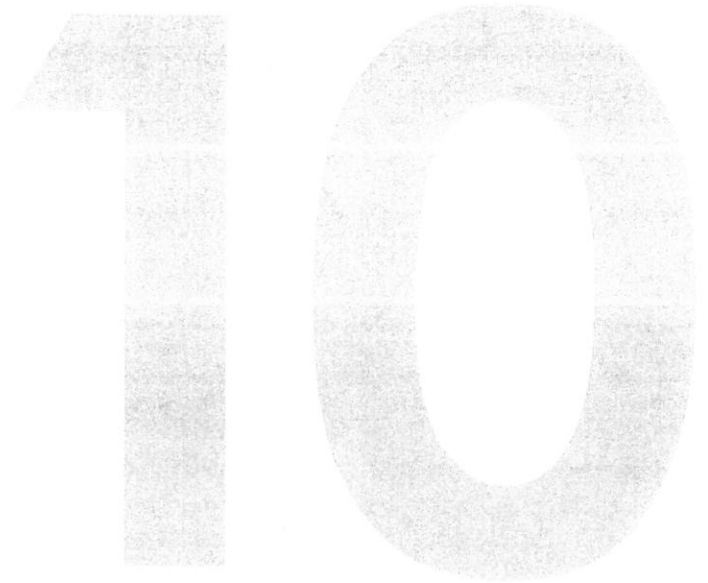
### DEFINITIONS

<b>ZONING COMPLIANCE PERMIT</b>	A permit used to ensure proposed development is consistent with all requirements of this Ordinance as well as any conditions of approval.
<b>ZONING MAP AMENDMENT</b>	An application for an amendment to the Official Zoning Map. It includes applications for establishing an initial zoning designation following annexation.

## ARTICLE 10: REVIEWING AGENCIES

### Key Changes from the Land Use Ordinance:

- This article consolidates all the information related to reviewing agencies and individuals responsible for review and decision of the procedures described in Article 2: Procedures.
- New sections have been added for the Planning Director and Building Inspector.
- Each reviewing agency's information has been formatted into a summary table that follows a standard format and order of information for easy reference.
- BOA voting rules have been updated per recent changes in state law.
- Information on the Planning Board's composition and rules of procedure is suggested to be relocated to this article from other parts of the town code for the sake of consistency.



## 10: REVIEWING AGENCIES..... 10-1

10.1. Overview .....	10-1
10.1.1. Board of Adjustment (BOA); .....	10-1
10.1.2. Board of Commissioners (BOC); .....	10-1
10.1.3. Planning Board; .....	10-1
10.1.4. Technical Review Committee (TRC); and .....	10-1
10.1.5. Town staff, comprised of the Building Inspector, Planning Director, Town Attorney, and Town Manager. ....	10-1
10.2. Board of Adjustment (BOA) .....	10-1
10.2.1. Powers and Duties .....	10-1
10.2.2. Composition .....	10-1
10.2.3. Rules of Procedure.....	10-2
10.3. Board of Commissioners.....	10-4
10.3.1. Powers and Duties .....	10-4
10.4. Planning Board .....	10-5
10.4.1. Powers and Duties .....	10-5
10.4.2. Composition .....	10-5
10.4.3. Rules of Procedure.....	10-6
10.5. Technical Review Committee (TRC) .....	10-8
10.5.1. Powers and Duties .....	10-8
10.5.2. Composition .....	10-8
10.5.3. Rules of Procedure.....	10-8
10.6. Building Inspector.....	10-9
10.6.1. Powers and Duties .....	10-9
10.7. Planning Director.....	10-10
10.7.1. Powers and Duties .....	10-10

# 10: REVIEWING AGENCIES

## 10.1. OVERVIEW

As identified in Article 2: Procedures, the following review authorities have powers and responsibilities for administering this Ordinance, especially with regard to procedures related to development applications.

- 10.1.1. Board of Adjustment (BOA);
- 10.1.2. Board of Commissioners (BOC);
- 10.1.3. Planning Board;
- 10.1.4. Technical Review Committee (TRC); and
- 10.1.5. Town staff, comprised of the Building Inspector, Planning Director, Town Attorney, and Town Manager.

## 10.2. BOARD OF ADJUSTMENT (BOA)<sup>52</sup>

The Board of Adjustment is hereby established in accordance with Section 160A-388 of the North Carolina General Statutes. The BOA shall have the following powers and duties, composition, and rules of procedure under this Ordinance:

### 10.2.1. POWERS AND DUTIES

#### A. APPLICATION REVIEW AND DECISION

To review and decide applications for:

- 1. Appeals of decisions by town staff members deciding applications under this Ordinance; and
- 2. Variances.

#### B. OTHER POWERS AND DUTIES

To exercise other powers and authority provided to it by the Board of Commissioners, this Ordinance, or state law.

### 10.2.2. COMPOSITION

#### A. MEMBERSHIP

The BOA shall consist of five regular members.

#### B. RESIDENCE LOCATION AND APPOINTMENT

- 1. Four members shall be citizens and residents of the town and shall be appointed by the Town of Zebulon Board of Commissioners;
- 2. One member shall be a citizen of Wake County and reside outside the town but within the extraterritorial jurisdiction boundaries of the town and shall be appointed by the Board of Commissioners of Wake County.
  - a. If despite good faith efforts, enough residents of the extra territorial planning area cannot be found to fill the seats reserved for residents of the area, then the Wake County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats.
  - b. If the county Board of Commissioners fails to make these appointments within 90 days after receiving a resolution from the town Board of Commissioners requesting that they be made, the town Board of Commissioners may make them.
- 3. If a regular or alternate in-town member moves outside the town, or if an extra-territorial area regular or alternate moves outside the planning jurisdiction, that shall constitute a resignation from the BOA, effective upon the date a replacement is appointed.

<sup>52</sup> This section includes the standards in Sections 152.019 through 152.024, with revisions to the BOA voting rules per state law change and reorganization and formatting for user-friendliness.

## ARTICLE 10: REVIEWING AGENCIES

### 10.2. Board of Adjustment (BOA)51F

#### C. ALTERNATE MEMBERS

1. In addition to regular members, the BOA shall have two alternate members.
2. One alternate member shall be a citizen and resident of the town and shall be appointed by the town Board of Commissioners.
3. One member shall be a citizen of Wake County and reside outside the town but within the extraterritorial jurisdiction boundaries of the town and shall be appointed by the Board of Commissioners of Wake County.
4. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members.
5. Each alternate member, while attending any regular or special meeting of the BOA and serving in the absence of any regular member, shall exercise all the powers and duties of a regular member.
6. Town alternate members shall only replace regular town members and extraterritorial alternate members shall only replace regular extraterritorial members.

#### D. MEMBER TERMS

1. Board of Adjustment members shall be appointed for three-year staggered terms expiring on June 30.
2. Members may continue to serve until their successors have been appointed.
3. There shall be no term limits for those serving on the BOA.

#### E. VACANCIES

Vacancies occurring for reasons other than expired terms shall be filled as they occur for the unexpired remainder of the term either by the town Board of Commissioners or the County Commissioners of Wake County, depending upon the area represented.

#### F. OFFICERS

1. The BOA shall elect a Chair and Vice-Chair and create and fill such other offices as it may determine. The term of the Chair and other officers shall be one year, with eligibility for re-election.
2. Election of officers shall take place at the first meeting of the Board following the beginning of the fiscal year.

### 10.2.3. RULES OF PROCEDURE

#### A. GENERALLY

The BOA shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and its resolutions, discussions, findings and recommendations, which record shall be a public record.

#### B. COMPENSATION

Members of the BOA shall receive no compensation for their services.

#### C. SCHEDULE

1. The BOA shall establish a regular meeting time and place.
2. Unless there is no business to be conducted, the BOA shall hold at least one meeting monthly.
3. The BOA may elect to change and/or delete meeting dates, times and/or locations of its regular meetings.

#### D. OPEN MEETINGS

All meetings and hearings shall be open to the public.

#### E. OFFICIAL RECORD

1. The BOA shall keep minutes of its proceedings showing the vote of each member upon each question and the absence or failure of any member to vote.
2. Unless otherwise provided by law, all records and minutes shall be public record.

#### F. QUORUM

1. No official business of the BOA may be conducted without a quorum present.
2. A quorum shall be defined as the number of members equal to four-fifths of the regular board membership, excluding vacant seats.

## **ARTICLE 10: REVIEWING AGENCIES**

### **10.2. Board of Adjustment (BOA)51F**

#### **G. VOTING**

1. The concurring vote of four-fifths of the BOA members shall be necessary to grant a variance.
2. A simple majority of the BOA members shall be required to decide any other matter.
3. Members who are recused from voting due to a conflict of interest shall not be counted towards a simple or super majority.
4. The members appointed to the BOA by the Board of Wake County Commissioners as representatives of the extraterritorial area outside the town shall have equal rights, privileges and duties with the other members of the BOA regardless of whether the matters at issue arise within the town or within the extraterritorial area.

#### **H. ATTENDANCE**

Faithful attendance at meetings of the BOA is considered a prerequisite to continued membership, and the appointing authority may remove and replace any member continually delinquent in his duty to attend.

1. Regular members of the Board of Adjustment may be removed by the Board of Commissioners at any time for failure to attend three consecutive meetings or for failure to attend 70 percent or more of the meetings within any 12-month period or for any other good cause related to performance of duties.
2. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures.

#### **I. CONFLICT OF INTEREST**

1. A member of the BOA shall not vote, nor participate in any manner that would violate an affected person's constitutional rights to an impartial decision maker; including, but are not limited to:
  - a. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  - b. Undisclosed ex-parte communication;
  - c. A close family, business, or other associational relationship with an affected person; or
  - d. Financial interest in the outcome of the matter.
2. If an objection is raised to a member's participation and that member does not recuse themselves, the remaining members shall by majority vote rule on the objection.



## ARTICLE 10: REVIEWING AGENCIES

### 10.3. Board of Commissioners<sup>53</sup>

#### 10.3. BOARD OF COMMISSIONERS<sup>53</sup>

In order to exercise the authority granted to the Board of Commissioners by state law, the Board of Commissioners shall have the following powers and duties under this Ordinance:

##### 10.3.1. POWERS AND DUTIES

###### A. APPLICATION REVIEW AND DECISION

To initiate, review, and decide applications for:

1. Comprehensive Plan Amendments;
2. Development Agreements;
3. Planned Developments;
4. Special Use Permits;
5. UDO Text Amendments;
6. Vested Rights Determinations; and
7. Zoning Map Amendments.

###### B. OTHER POWERS AND DUTIES

1. To approve, by resolution, a schedule of fees governing:
  - a. Applications for permits and other development approval reviews under this ordinance; and
  - b. Civil penalties for violations of this Ordinance.
2. To take any other action not delegated to the Planning Board, BOA, or town staff, as the Board of Commissioners may deem desirable and necessary to implement the provisions of this Ordinance.

<sup>53</sup> This section replaces Section 152.017, Board of Commissioners as Governing Body.

---

## ARTICLE 10: REVIEWING AGENCIES

### 10.4. Planning Board<sup>54</sup>

---

#### 10.4. PLANNING BOARD<sup>54</sup>

The Planning Board is hereby established in accordance with Section 160A-361 of the North Carolina General Statutes. The Planning Board shall have the following powers and duties, composition, and rules of procedure under this Ordinance:

##### 10.4.1. POWERS AND DUTIES

---

###### A. RECOMMENDATION AUTHORITY

To make recommendations to the Board of Commissioners on the following applications:

1. Comprehensive Plan Amendments;
2. Development Agreements;
3. Planned Developments;
4. Special Use Permit concept plans;
5. UDO Text Amendments; and
6. Zoning Map Amendments.

###### B. OTHER POWERS AND DUTIES

The Planning Board shall have the following other powers and duties:

1. To make studies of the town's planning jurisdiction and surrounding areas;
2. To determine objectives to be sought in the development of the town;
3. To prepare and adopt plans for achieving these objectives;
4. To develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans that the Board of Commissioners may direct;
5. To advise the Board of Commissioners concerning the use and amendment of means for carrying out plans;
6. To exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct;
7. To perform any other related duties that the Board of Commissioners may direct;
8. To conduct such public meetings as may be required to gather information necessary for the drafting, establishment, and maintenance of adopted or proposed plans and before recommending any such plans to the Board of Commissioners; and
9. To promote public interest in and an understanding of its recommendations, and to that end, publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

##### 10.4.2. COMPOSITION

---

###### A. MEMBERSHIP

The Planning Board shall consist of seven members.

###### B. RESIDENCE LOCATION AND APPOINTMENT

1. Four members shall be citizens and residents of the town and shall be appointed by the town of Zebulon Board of Commissioners;
2. Three members shall be citizens of Wake County and reside outside the town but within the extraterritorial jurisdiction boundaries of the town and shall be appointed by the Board of Commissioners of Wake County.
  - a. If despite good faith efforts, enough residents of the extra territorial planning area cannot be found to fill the seats reserved for residents of the area, then the Wake County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats.

---

<sup>54</sup> This section carries forward the information in current code Section 152.018, the Planning Board, and combines it with the information in Sections 31.30 through 31.34, concerning the composition and rules of procedure for the Planning Board. There has been no substantive change, but the sections have been reorganized and formatted into the new code style.

## ARTICLE 10: REVIEWING AGENCIES

### 10.4. Planning Board53F

- b. If the County Board of Commissioners fails to make these appointments within 90 days after receiving a resolution from the Board of Commissioners of the town requesting that they be made, the Board of Commissioners of the town may make them.
3. Members of the Planning Board shall hold no other official municipal government position except on a zoning board, zoning board of adjustment or housing authority board.
4. A member may be removed by the Board which appointed the member for neglect of duty or malfeasance in office.
5. Upon request of the member proposed for removal, the Board of Commissioners may hold a hearing on the removal before it becomes effective.

#### C. MEMBER TERMS

1. Members of the Planning Board shall be appointed for terms of three years with terms expiring on June 30.
2. Members may continue to serve until their successors have been appointed.
3. There shall be no term limits for those serving on the Planning Board.

#### D. VACANCIES

Vacancies occurring for reasons other than expired terms shall be filled as they occur for the unexpired remainder of the term either by the Board of Commissioners of the town or the County Commissioners of Wake County, depending upon the area represented.

#### E. OFFICERS

1. The Planning Board shall elect a Chairperson and may create and fill other offices as it may deem necessary.
2. The term of officers shall be one year or until successors shall have been elected and installed, with eligibility for re-election.

### 10.4.3. . RULES OF PROCEDURE

#### A. GENERALLY

The Planning Board shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and its resolutions, discussions, findings and recommendations, which record shall be a public record.

#### B. COMPENSATION

Members of the Planning Board shall receive no compensation for their services.

#### C. SCHEDULE

1. The Planning Board shall establish a regular meeting time and place.
2. Unless there is no business to be conducted, the Planning Board shall hold at least one meeting monthly.
3. The Planning Board may elect to change and/or delete meeting dates, times and/or locations of its regular meetings.

#### D. OPEN MEETINGS

All meetings and hearings shall be open to the public.

#### E. OFFICIAL RECORD

1. The Planning Board shall keep minutes of its proceedings showing the vote of each member upon each question and the absence or failure of any member to vote.
2. Unless otherwise provided by law, all records and minutes shall be public record.

#### F. QUORUM

1. No official business of the Planning Board may be conducted without a quorum present.
2. A quorum shall consist of a majority of actual membership excluding vacant seats.

#### G. VOTING

1. An affirmative vote of the majority of Planning Board members constituting a quorum is required for all decisions.

## **ARTICLE 10: REVIEWING AGENCIES**

### **10.4. Planning Board53F**

2. The Chairperson shall vote as any other member.
3. The members appointed to the BOA by the Board of Wake County Commissioners as representatives of the extraterritorial area outside the town shall have equal rights, privileges and duties with the other members of the Planning Board regardless of whether the matters at issue arise within the town or within the extraterritorial area.

#### **H. ATTENDANCE**

Faithful attendance at meetings of the Planning Board is considered a prerequisite to continued membership, and the appointing authority may remove and replace any member continually delinquent in his duty to attend. Specifically, members of the Planning Board may be removed by the Board of Commissioners at any time for:

1. Failure to attend three consecutive meetings; or
2. Failure to attend 70% or more of the meetings within any 12-month period;
3. For any other good cause related to performance of duties.

#### **I. CONFLICT OF INTEREST**

1. A member of the Planning Board shall not vote, nor participate in any manner that would violate an affected person's constitutional rights to an impartial decision maker; including, but are not limited to:
  - a. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  - b. Undisclosed ex-parte communication;
  - c. A close family, business, or other associational relationship with an affected person; or
  - d. Financial interest in the outcome of the matter.
2. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

## ARTICLE 10: REVIEWING AGENCIES

### 10.5. Technical Review Committee (TRC)<sup>54F</sup>

#### 10.5. TECHNICAL REVIEW COMMITTEE (TRC)<sup>55</sup>

The Technical Review Committee (TRC) is hereby established in accordance with Section 160A- 361 and Section 160A-373 of the North Carolina General Statutes. The TRC shall have the following powers, duties, composition, and rules of procedure under this Ordinance:

##### 10.5.1. POWERS AND DUTIES

###### A. APPLICATION REVIEW AND DECISION

To review and decide the following applications:

1. Preliminary Plats; and
2. Site Plans.

###### B. OTHER POWERS AND DUTIES

To conduct a review of any other issue deemed appropriate by the Board of Commissioners or Town Manager.

##### 10.5.2. COMPOSITION

###### A. MEMBERSHIP

1. The TRC shall consist of the following persons or their appointed representatives:
  - a. Town Manager;
  - b. Planning Director;
  - c. Police Chief;
  - d. Fire Chief;
  - e. Public Works Director;
  - f. Finance Director;
  - g. Parks and Recreation Director;
  - h. Appropriate representatives from any other public utility; and
  - i. Other persons whose attendance would be beneficial to the review process as determined by the Chair.
2. Representatives from other town departments, representatives from other municipalities, NC DOT, railroad representatives, private utility companies, and public or private school systems may also attend.

###### B. OFFICERS

The Planning Director shall serve as Chair of the TRC, and shall schedule committee meetings, coordinate the committee's activities, preside over committee meetings, prepare committee reports, and serve as liaison to the departments and agencies involved for clarification of issues and resolution of conflicts.

##### 10.5.3. RULES OF PROCEDURE

###### A. MEETINGS

1. The TRC shall establish a regular meeting schedule, and shall meet frequently enough to discuss any plats, plans or related issues submitted to it for review.
2. The Planning Director may invite applicants to attend TRC meetings.

<sup>55</sup> This section carried forward current code Section 152.027 with little substantive change but with reformatting to fit the code's updated style.

---

## ARTICLE 10: REVIEWING AGENCIES

### 10.6. Building Inspector<sup>56</sup>

#### 10.6. BUILDING INSPECTOR<sup>56</sup>

With respect to the administration of this Ordinance, the Building Inspector shall have the following powers and duties:

##### 10.6.1. POWERS AND DUTIES

###### A. APPLICATION REVIEW AND DECISION

To review and decide applications for:

1. Building Permits; and
2. Certificates of Occupancy.

###### B. OTHER POWERS AND DUTIES

The Building Inspector shall have the following other powers and duties:

1. Assist with enforcement of this Ordinance in accordance with Article 8: Enforcement;
2. Process applications as designated in the Procedures Manual;
3. Provide expertise and technical assistance to the town's review authorities and administration, upon request;
4. Maintain all records pertaining to the provisions of this Ordinance and make records available for public inspection; and
5. Perform other duties as may be assigned by the Town Manager or the Board of Commissioners.

---

<sup>56</sup> This is a new section that follows the format of other reviewing agencies in this chapter and lays out the powers and duties of the Building Inspector with respect to this Ordinance. This information is not currently stated within Chapter 152, but we recommend updating the cross-references to Building Inspector powers and duties in current Sections 30.02 and 31.20.



## ARTICLE 10: REVIEWING AGENCIES

### 10.7. Planning Director<sup>56F</sup>

#### 10.7. PLANNING DIRECTOR<sup>57</sup>

The Planning Director shall have the following powers and duties:

##### 10.7.1. POWERS AND DUTIES

###### A. APPLICATION REVIEW AND DECISION

To review and decide applications for:

1. Administrative Adjustments;
2. Exempt Subdivisions;
3. Final Plats;
4. Floodplain Development Permits;
5. Interpretations;
6. Sign Permits;
7. Temporary Use Permits; and
8. Zoning Compliance Permit.

###### B. OTHER POWERS AND DUTIES

The Planning Director shall have the following other powers and duties:

1. Assist with enforcement of this Ordinance in accordance with Article 8: Enforcement;
2. Serve as the Floodplain Administrator;
3. Maintain the Procedures Manual;
4. Provide expertise and technical assistance to the town's review authorities and administration, upon request;
5. Maintain all records pertaining to the provisions of this Ordinance and make records available for public inspection; and
6. Perform other duties as may be assigned by the Town Manager or the Board of Commissioners.

---

<sup>57</sup> This is a new section that follows the format of other reviewing agencies in this chapter and lays out the powers and duties of the Planning Director. This information is not included in the current code.

---

## ARTICLE 10: REVIEWING AGENCIES

### 10.8. Town Attorney<sup>57F</sup>

#### 10.8. TOWN ATTORNEY<sup>58</sup>

The Town Attorney shall have the following powers and duties:

##### 10.8.1. POWERS AND DUTIES

###### A. POWERS AND DUTIES

The Town Attorney shall have the following other powers and duties:

1. Assist with enforcement of this Ordinance in accordance with Article 8: Enforcement, and State law;
2. Review petitions for amendments to this Ordinance for legal sufficiency;
3. Participate in public hearings conducted by the Board of Commissioners or the Board of Adjustment;
4. Advise and assist the Board of Adjustment; and
5. Perform other duties as may be assigned by the Town Manager or the Board of Commissioners.

---

<sup>58</sup> This section carries forward the standards in Section 152.026, Duties of the Town Attorney.

## ARTICLE 10: REVIEWING AGENCIES

10.9. Town Manager<sup>59</sup>

### 10.9. TOWN MANAGER<sup>59</sup>

The Town Manager shall have the following powers and duties:

#### 10.9.1. POWERS AND DUTIES

##### A. POWERS AND DUTIES

The Town Attorney shall have the following other powers and duties:

1. Enforce this Ordinance in accordance with Article 8: Enforcement, and State law;
2. Advise applicants on the merits of proposed applications;
3. Facilitate coordinated implementation, enforcement, and periodic review of this Ordinance by keeping the Board of Commissioners informed of matters involving this Ordinance;
4. Hear appeals of development-related aspects not addressed in this Ordinance; and
5. Perform other duties as may be assigned by the Board of Commissioners in accordance with State law.

<sup>59</sup> This section carries forward the standards in Section 152.025, Duties of the Town Manager.