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# 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

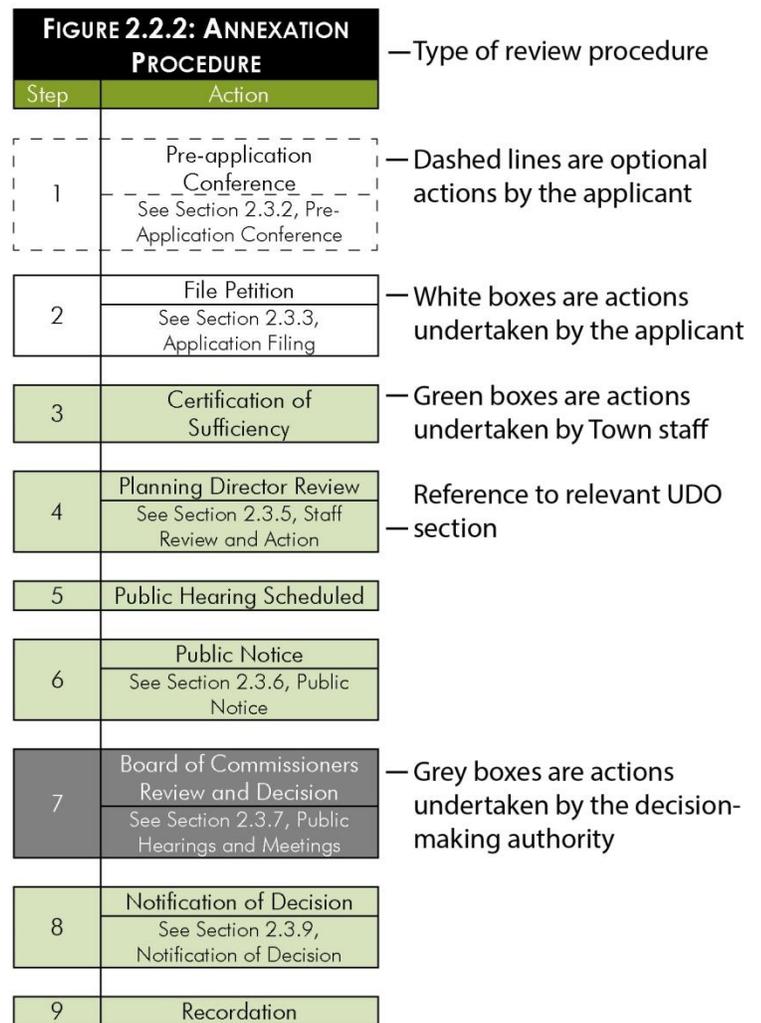
This article sets out the review procedure used by the Town for each of the development application types subject to this Ordinance. The intent of these provisions is to:

- 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 2.1, How to Use this Article), a section called “application review procedures” (Section 2.2, Application Review Procedures) that describes the application review procedures (in alphabetical order) for each type of development application, and an “application processing” (Section 2.3, Application Processing) section that explains the standardized process used by the Town in the review of an application.
- B. Each application review procedure includes a procedural flowchart that depicts the steps in the review process (See Figure 2.1.2.B: Flowchart Example). Each step is sequentially numbered from the top (the beginning) to the bottom (the end). White boxes in the flowchart 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 ARTICLE CONTENTS: FLOWCHART EXAMPLE**



Numbers show the process step

**ARTICLE 2: PROCEDURES**

2.2. Application Review Procedures

2.1.3. Steps in the Development Review Process

**2.1.3. STEPS IN THE DEVELOPMENT REVIEW PROCESS**

- A.** The first step in the development review process is to determine the specific type(s) of development application to be submitted. Table 2.2, Application Review Procedures, describes all the application review procedures in this Ordinance and the review authorities who decide them.
- B.** The second step is to find the relevant application procedure in Section 2.2, 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 2.3, Application Processing, to understand how the Town will process the application.
- D.** Step four is to review the Procedures Manual for application forms, submittal requirements, application fees, and application review schedules.
- E.** Applications that are not prepared, filed, and determined to be complete in accordance with this article and the Procedures Manual will not be processed by the Town.

**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 2.3.2, Pre-application Conference) to better understand the review requirements and relevant procedural steps associated with their particular application.

**2.2. APPLICATION REVIEW PROCEDURES**

Table 2.2, Application Review Procedures, lists the 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 2.2: 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  
 [ ] =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	<u>2.2.1</u>	M	D	.	.	.	/A\
Annexation [3]	<u>2.2.2</u>	O	.	.	.	<D>	.
Appeal	<u>2.2.3</u>	O	.	.	.	.	/D\
Building Permit	<u>2.2.4</u>	O	[4]	.	.	.	.
Certificate of Occupancy	<u>2.2.5</u>	O	[4]	.	.	.	.
Conditional Rezoning [2]	<u>2.2.6</u>	M	.	[6]	R	D	.
Development Agreement	<u>2.2.7</u>	M	.	.	.	<D>	.
Exempt Subdivision [5]	<u>2.2.8</u>	O	D	.	.	.	/A\
Expedited Subdivision	<u>2.2.9</u>	M	D	.	.	.	/A\
Final Plat	<u>2.2.10</u>	O	D	.	.	.	/A\

**ARTICLE 2: PROCEDURES**

**TABLE 2.2: APPLICATION REVIEW PROCEDURES**

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REVIEW PROCEDURE	SECTION REFERENCE	PRE-APPLICATION CONFERENCE	REVIEW AUTHORITIES				
			PLANNING DIRECTOR [1]	TECHNICAL REVIEW COMMITTEE	PLANNING BOARD [2]	BOARD OF COMMISSIONERS	BOARD OF ADJUSTMENT
Floodplain Development Permit	<u>2.2.11</u>	O	D	.	.	.	/A\
Interpretation	<u>2.2.12</u>	O	D	.	.	.	/A\
Planned Development [2]	<u>2.2.13</u>	M	.	[6]	R	D	.
Preliminary Plat	<u>2.2.14</u>	M	.	D	.	.	/A\
Reasonable Accommodation	<u>2.2.15</u>	M					/D\
Sign Permit	<u>2.2.16</u>	O	D	.	.	.	/A\
Site Plan	<u>2.2.17</u>	M	.	D	.	.	/A\
Special Use Permit	<u>2.2.18</u>	M	.	[6]	.	/D\	.
Temporary Use Permit	<u>2.2.19</u>	O	D	.	.	.	/A\
UDO Text Amendment [2]	<u>2.2.20</u>	M	.	.	R	D	.
Variance	<u>2.2.21</u>	M	.	.	.	.	/D\
Vested Rights Determination	<u>2.2.22</u>	M	.	.	.	<D>	.
Zoning Compliance Permit	<u>2.2.23</u>	O	D	.	.	.	/A\
Zoning Map Amendment [2]	<u>2.2.24</u>	M	.	.	R	D	.

**NOTES:**

- [1] The Planning Director may delegate review authority in accordance with Section 9.1.9, 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 2.3.6, 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 2.3.6, 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.
- [4] Building permits and certificates of occupancy are issued in cooperation with the Wake County Building Inspector.
- [5] The exempt subdivision review procedure is provided as a courtesy, and is not mandated.
- [6] The TRC shall conduct a preliminary review of a site or concept plan attached to an application prior to consideration by the Board of Commissioners.

**ARTICLE 2: PROCEDURES**

**2.2.1. ADMINISTRATIVE ADJUSTMENT**

**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 9.3, 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 distance between two use types, or reduce the standards pertaining to flood protection, stormwater management, or erosion control.
3. Applications for planned developments, zoning map amendments, or variances may not include requests for administrative adjustments.

**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 2.2.1, Administrative Adjustment Procedure, as supplemented by Section 2.3, 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 2.2.1.F, 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
  - b. Supports an objective or goal from the purpose and intent statements of the zoning district where it is located; or
  - c. Is necessary to allow for proper functioning of on-site wastewater or stormwater management devices;

<b>FIGURE 2.2.1: ADMINISTRATIVE ADJUSTMENT PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3 Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review and Decision
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>



**ARTICLE 2: PROCEDURES**

**2.2.2. ANNEXATION**

**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**

1. The Board of Commissioners may review and decide voluntary annexation petitions from:
  - a. The owners of land that are contiguous with the Town’s corporate limits; and
  - b. The owners of land that are not contiguous to the corporate limits when the proposed voluntary annexation complies with the following standards:
    - i. The land proposed for annexation is no more than three miles from the contiguous corporate limits; and
    - ii. 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
    - iii. 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
    - iv. 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.
2. The Town may accept voluntary annexation petitions from landowners that do not meet the criteria in subsection (1) above, but may not decide them until the application is consistent with subsection (1) above.
3. In cases where the Town may not voluntarily annex land, it may use a development agreement (see Section 2.2.7, Development Agreement) to extend Town utilities to the land prior to annexation.

**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 160D-108 of the North Carolina General Statutes.

**E. ANNEXATION PROCEDURE**

1. The annexation procedure is described in Figure 2.2.2, Annexation Procedure, as supplemented by Section 2.3, 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.

<b>FIGURE 2.2.2: ANNEXATION PROCEDURE</b>	
Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Petition See <u>Section 2.3.3, Application Filing</u>
3	Certification of Sufficiency
4	Planning Director Review See <u>Section 2.3.5, Staff Review and Action</u>
5	Public Hearing Scheduled
6	Public Notice See <u>Section 2.3.6, Public Notice</u>
7	Board of Commissioners Review and Decision See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>
9	Recordation

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.2. Annexation

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

1. The Board of Commissioners, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.2.2.G, 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 Town Board of Commissioners. 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 14 days of the 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**

**2.2.3. APPEAL**

**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 by a Town official.

**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 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 2.2.3, Appeal Procedure, as supplemented by Section 2.3, 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 2.2.3.F, 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.
7. The decision of the BOA shall be effective upon the filing of the written decision in the offices of the Planning Department.

**F. APPEAL REVIEW STANDARDS**

1. The BOA is limited to the following determinations in considering the appeal:
  - a. Whether the decision-maker erred in the interpretation of this Ordinance; or

<b>FIGURE 2.2.3: APPEAL PROCEDURE</b>	
Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Notice of Appeal See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Record Assembly & Transmittal Provided to the BOA and the applicant
5	Public Hearing Scheduled
6	Public Notice See <u>Section 2.3.6, Public Notice</u>
7	Board of Adjustment Review and Decision See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>



## ARTICLE 2: PROCEDURES

### 2.2.4. BUILDING PERMIT

**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(s), 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 2.2.23, Zoning Compliance Permit:

1. Storage and accessory buildings that serve a residential principal use, are 12 linear feet in length or less on any dimension, and do not include electrical service or running water;
2. Patios and at-grade walkways;
3. Playground equipment and play structures provided as accessory uses to a single-family residential dwelling; or
4. Fences or privacy walls of 6 feet in height or less, except that all retaining walls shall require a building permit.

**D. BUILDING PERMIT PROCEDURE**

The building permit procedure is described in Figure 2.2.4, Building Permit Procedure, as supplemented by Section 2.3, Application Processing, information posted on Wake County’s digital Permit Portal, and the Procedures Manual.

**E. DECISION BY INSPECTIONS DIRECTOR**

The decision on a building permit shall be made by the Wake County Building Inspections Director following approval of the request by the Planning Director. Decisions on building permit applications shall be in accordance with the standards in Section 2.2.4.F, Building Permit Review Standards.

**F. BUILDING PERMIT REVIEW STANDARDS**

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

1. The applicable sections of the State Building Code(s);
2. The standards in Section 160D-403 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

**FIGURE 2.2.4: BUILDING PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application (with plot plan if development is exempt from site plan requirements)
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Inspections Director Review and Decision
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>
6	Obtain Approved Permit and Schedule Required Inspections As needed
7	Obtain Certificate of Occupancy
	See <u>Section 2.2.5, Certificate of Occupancy</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.4. Building Permit

7. All other applicable requirements of this Ordinance, the Town Code of Ordinances, state law, and federal law.

#### **G. 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.

#### **H. 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 160D-1127 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

### 2.2.5. CERTIFICATE OF OCCUPANCY

**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 2.2.5.C, Exemptions, no land, newly erected building or structure, or existing building or structure that has been moved or enlarged or changed in use shall be occupied or used until a certificate of occupancy certifying that the land, building, or structure, and its use complies with this Ordinance and the applicable standards of the State Building Code(s) is issued in accordance with this section.

**C. EXEMPTIONS**

Development exempted from Section 2.2.4, Building Permit, shall also be exempted from this section.

**D. CERTIFICATE OF OCCUPANCY PROCEDURE**

The certificate of occupancy procedure is described in Figure 2.2.5, Certificate of Occupancy Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**E. DECISION BY PLANNING DIRECTOR**

The decision on a certificate of occupancy shall be made by the Planning Director. Decisions on certificates of occupancy applications shall be in accordance with the standards in Section 2.2.5.F, 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 building permit;
5. The applicable State Building Code(s) requirements; and
6. All applicable state and federal requirements.

**G. PERFORMANCE GUARANTEE**

The Planning Director may require the applicant to submit a performance guarantee (see Section 6.6, 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**

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 approve the issuance a temporary certificate of occupancy by the Wake County Inspections Director, provided:
  - a. The Wake County Inspections Director approves of the temporary certificate;
  - b. The commencement or occupancy will not violate any health or safety considerations of any applicable codes;

**FIGURE 2.2.5: CERTIFICATE OF OCCUPANCY PROCEDURE**

Step	Action
1	File Request with Planning Director
2	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
3	Planning Director Review and Decision See <u>Section 2.3.5, Staff Review and Action</u>
4	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>



**ARTICLE 2: PROCEDURES**

**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, except as modified through additional conditions 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 Section 160D-703 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 2.2.24, Zoning Map Amendment).

**D. APPLIED TO ENTIRE SITE**

1. Applications for a conditional rezoning submitted after January 1, 2020 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 bifurcated zoning classifications where only a portion of a lot or site is subject to a particular conditional zoning district classification.

**E. CONDITIONAL REZONING PROCEDURE**

The conditional rezoning procedure is described in Figure 2.2.6, Conditional Rezoning Procedure, as supplemented by Section 2.3, Application Processing, 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 site plan or concept plan depicting the proposed development configuration that shall be reviewed by the TRC prior to the joint public hearing.

**FIGURE 2.2.6:  
CONDITIONAL REZONING  
PROCEDURE**

Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	TRC Review of Site or Concept Plan See <u>Section 2.3.5, Staff Review and Action</u>
5	Joint Public Hearing Scheduled
6	Public Notice See <u>Section 2.3.6, Public Notice</u>
7	Joint Public Hearing by Planning Board & Board of Commissioners See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Review by Planning Board See <u>Section 2.3.7, Public Hearings and Meetings</u>
9	Review and Decision by Board of Commissioners See <u>Section 2.3.7, Public Hearings and Meetings</u>
10	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

4. The application shall include a transportation impact analysis for review, when required by Section 6.13, Transportation Impact Analysis.

#### G. JOINT PUBLIC HEARING

Following provision of public notice for a public hearing in accordance with Section 2.3.6, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint legislative 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 2.2.6.K, Conditional Rezoning Review Standards.
2. In making its recommendation, the Planning Board shall prepare a written consistency statement including each of the following:
  - a. Whether the conditional rezoning application is recommended for approval, denial, or remanded to Town staff; 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 recommendation is reasonable; and
  - g. An explanation of why the recommendation is in 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 2.2.6.L, 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 during a follow-up public meeting in accordance with Section 2.2.6.K, 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 consistency 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

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.6. Conditional Rezoning

- 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;
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. Unless subject to an approved condition, all requirements of a corresponding general zoning district shall apply to a conditional zoning district.
5. No condition shall be made part of the application which:
  - a. Is less restrictive than any applicable overlay zoning district standard;
  - 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 provided the development still complies with the applicable design requirements; 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 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**

**2.2.7. DEVELOPMENT AGREEMENT**

**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;
4. Allow for vesting periods that exceed those in the General Statutes or in Section 2.2.22, Vested Rights Determination; and
5. 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 160D-1001 – 160D-1012 of the North Carolina General Statutes, and the provisions of this section.

**C. DEVELOPMENT AGREEMENT PROCEDURE**

The development agreement procedure is described in Figure 2.2.7, Development Agreement Procedure, as supplemented by Section 2.3, Application Processing, 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 2.2.7.E, 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 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**

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.

**FIGURE 2.2.7: DEVELOPMENT AGREEMENT PROCEDURE**

Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Public Hearing Scheduled
6	Public Notice
	See <u>Section 2.3.6, Public Notice</u>
7	Board of Commissioners Review and Decision
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>
9	Recordation
10	Annual Review

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.7. Development Agreement

#### **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**

**2.2.8. EXEMPT SUBDIVISION**

**A. PURPOSE AND INTENT**

The purpose for this exempt subdivision procedure is to establish a clear and predictable procedure for a landowner to determine and document that a proposed division of land is exempted from the subdivision requirements of this Ordinance in accordance with Section 160D-802 of the North Carolina General Statutes. Exempt subdivision reviews are provided as a courtesy, and may not be mandated by the Town.

**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 other applicable provisions of this Ordinance, such as flood hazard reduction requirements):
  - 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, each greater than ten acres in area, 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.

<b>FIGURE 2.2.8: EXEMPT SUBDIVISION PROCEDURE</b>	
Step	Action
1	File Application
	See <a href="#">Section 2.3.3, Application Filing</a>
2	Completeness Determination
	See <a href="#">Section 2.3.3.G, Determination of Application Completeness</a>
3	Planning Director Review and Certification
	See <a href="#">Section 2.3.5, Staff Review and Action</a>
4	Notification of Decision
	See <a href="#">Section 2.3.9, Notification of Decision</a>
5	Recordation, if applicable

**C. EXEMPT SUBDIVISION COURTESY REVIEW PROCEDURE**

The exempt subdivision courtesy review procedure is described in [Figure 2.2.8, Exempt Subdivision Courtesy Review Procedure](#), as supplemented by [Section 2.3, Application Processing](#), and the Procedures Manual.

**D. CERTIFICATION BY PLANNING DIRECTOR**

The certification of an exempt subdivision shall be made by the Planning Director in accordance with the standards in [Section 2.2.8.E, 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 160D-802 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**

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, by a landowner at the landowner’s discretion.

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.8. Exempt Subdivision

#### **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, or the subdivision shall be processed as a expedited subdivision or preliminary plat, as appropriate.

#### **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 2.2.3, Appeal.

**ARTICLE 2: PROCEDURES**

**2.2.9. EXPEDITED SUBDIVISION**

**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 2.2.8, 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 distribution line, public sewer distribution line, or other public utility is proposed.
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 2.2.9, Expedited Subdivision Review Procedure, as supplemented by Section 2.3, Application Processing, 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 2.2.9.F, 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;
  - b. The expedited subdivision plat is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
  - c. The expedited subdivision plat complies with all applicable standards in this Ordinance and Section 47-30 of the North Carolina General Statutes;
  - d. The expedited subdivision plat includes all required certifications;
  - e. The applicant has secured all required state and federal permit approvals;
  - f. The lots in the subdivision have been approved the by Wake County Environmental Services Department.

**FIGURE 2.2.9: EXPEDITED SUBDIVISION PROCEDURE**

Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review and Decision
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>
6	Recordation



**ARTICLE 2: PROCEDURES**

**2.2.10. FINAL PLAT**

**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 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 land owners of the subdivision;
- f. Unbuildable resource or conservation lands;
- g. Addresses;
- h. Street names;
- i. Stormwater management infrastructure; and
- j. Sidewalks and greenways.

**B. APPLICABILITY**

- 1. A final plat shall be required for any development subject to a preliminary plat (see Section 2.2.14, 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 6.6, Performance Guarantees.

**C. FINAL PLAT REVIEW PROCEDURE**

The final plat procedure is described in Figure 2.2.10, Final Plat Review Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**D. FINAL PLAT REVIEW STANDARDS**

A final plat shall be approved if 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 all 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;
- 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 6.6, Performance Guarantees);

<b>FIGURE 2.2.10: FINAL PLAT PROCEDURE</b>	
Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review and Decision See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>
6	Recordation

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.10. Final Plat

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 a special flood hazard area shall comply with the standards in Section 3.8.2, Flood Hazard Overlay (FHO) District, and any recorded plats shall include the following statement:  
"Use of land within a floodplain or flood hazard overlay 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 2.2.10.H, Expiration, shall render the final plat null and void.
3. A copy of the recorded final plat shall be filed with the Planning Director within five business days of recording or the final plat shall be 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.
- c. 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.
- d. 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 2.2.14, 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 2.2.3, Appeal.

**ARTICLE 2: PROCEDURES**

**2.2.11. FLOODPLAIN DEVELOPMENT PERMIT**

**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 within the Flood Hazard Overlay (FHO) district or 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 3.8.2.D.3, Standards for Floodplains without Established Base Flood Elevations, shall also obtain a floodplain development permit in accordance with these standard.

**C. FLOODPLAIN DEVELOPMENT PERMIT PROCEDURE**

The floodplain development permit procedure is described in Figure 2.2.11, Floodplain Development Permit Procedure, as supplemented by Section 2.3, Application Processing, 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 2.2.11.E, Floodplain Development 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 3.8.2, Flood Hazard Overlay (FHO) 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 3.8.2, Flood Hazard Overlay (FHO) District, development subject to this section shall also file elevation or floodproofing certificates in accordance with Section 3.8.2.C.2, Development Application, Permit and Certification Requirements, 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 2.2.11: FLOODPLAIN DEVELOPMENT PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application See <u>Section 2.3.3 Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review and Decision See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>
6	File Elevation/ Floodproofing Certificate See <u>Section 3.8.2.C.2, Development Application, Permit and Certification Requirements</u>

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### 2.2.11. Floodplain Development Permit

on an elevation or floodproofing certificate shall be a violation of this Ordinance subject to the provisions in Section 8.8.4, Stop Work Orders.

#### **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 2.2.3, Appeal.

**2.2.12. INTERPRETATION**

**A. PURPOSE AND INTENT**

The purpose for this interpretation procedure is to provide a process where an applicant may request documentation from the Planning Director regarding the meaning of language in this Ordinance, unlisted use types, boundaries on the Official Zoning Map, or conditions applied to 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 Flood Hazard Overlay (FHO) district;
3. Interpretations of whether an unlisted use is comparable to a use listed in Table 4.2.3, 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 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 2.2.12, Interpretation Procedure, as supplemented by Section 2.3, Application Processing, 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 3.2.3, Interpretation of Official Zoning 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 4.2.3, 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;
- 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;

<b>FIGURE 2.2.12: INTERPRETATION PROCEDURE</b>	
Step	Action
1	Pre-Application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Formal Request See <u>Section 2.3.3 Application Filing</u>
3	Planning Director Review and Interpretation See <u>Section 2.3.5, Staff Review and Action</u>
4	Notification of Interpretation See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

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### 2.2.12. Interpretation

- 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(s);
- 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 9.1, 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 9.4, 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 1.4, 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 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.

## ARTICLE 2: PROCEDURES

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2.2. Application Review Procedures

2.2.12. Interpretation

### **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 2.2.3, Appeal.

**ARTICLE 2: PROCEDURES**

**2.2.13. PLANNED DEVELOPMENT**

**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 high quality, 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 except land in the Residential Watershed (R1) district.

**C. PLANNED DEVELOPMENT PROCEDURE**

The planned development procedure is described in Figure 2.2.13, Planned Development Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**D. APPLICATION**

1. The application shall include a master plan depicting the general configuration and relationship of the principal elements of the proposed development, including uses, general building types, density/intensity, resource protection, pedestrian and vehicular circulation, open space, public facilities, and phasing. The TRC shall review and comment on the master plan prior to the joint public hearing.
2. The application shall also include a statement of terms and conditions document that identifies how the proposed development will meet or exceed the standards in Section 3.5.5, Planned Development (PD) District, how any required environmental mitigation will take place, and outline how public facilities will be provided to serve the planned development.
3. To ensure unified control, the application shall also include a copy of the title to all land that is part of the proposed planned development zoning district classification.
4. The application shall include a transportation impact analysis for review, when required by Section 6.13, Transportation Impact Analysis.

<b>FIGURE 2.2.13 PLANNED DEVELOPMENT: PLANNED DEVELOPMENT PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	TRC Review of Master Plan
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Joint Public Hearing Scheduled
6	Public Notice
	See <u>Section 2.3.6, Public Notice</u>
7	Joint Public Hearing by Planning Board & Board of Commissioners
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Planning Board Review and Recommendation
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
9	Board of Commissioners Review and Decision
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
10	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.13. Planned Development

#### E. JOINT PUBLIC HEARING

Following provision of public notice for a public hearing in accordance with Section 2.3.6, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint legislative 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 2.2.13.H, Planned Development Review Standards.
2. In making its recommendation, the Planning Board shall prepare a written consistency statement including each of the following:
  - a. Whether the planned development application is recommended for approval, denial, or remanded to Town staff; and
  - b. The degree to which the planned development is or is not consistent with the Town's adopted policy guidance; and
  - c. The ways in which the planned development is or is not consistent with the Town's adopted policy guidance; and
  - d. Whether approval of the planned development 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 recommendation is reasonable; and
  - g. An explanation of why the recommendation is in 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 2.2.13.I, 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 during a follow-up public meeting in accordance with Section 2.2.13.H, Planned Development Review Standards.
2. The decision shall be one of the following:
  - a. Approval of the planned development subject to the master plan and statement of terms and conditions in the application;
  - b. Approval of the planned development subject to additional or revised conditions related to the master plan or statement of 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

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### 2.2. Application Review Procedures

### 2.2.13. Planned Development

- 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 2.2.24.J, and the standards for the district in Section 3.5.5, Planned Development (PD) 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;
  - 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 master plan and the approved statement of 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 master plan in accordance with the appropriate procedures and standards set forth in this Ordinance.
4. Any permits or approvals shall comply with the master plan and the statement of terms and conditions.
5. Only those portions of the development subject to an approved master plan and statement of 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.

## ARTICLE 2: PROCEDURES

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- b.** The following minor changes may be approved by the Planning Director, in consultation with other appropriate own 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 remains consistent with the design parameters established in the PD approval; 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
  - 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 master plan is submitted within two years after approval of the planned development, the Town 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**

**2.2.14. PRELIMINARY PLAT**

**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 2.2.8, Exempt Subdivision](#)), or an expedited subdivision (see [Section 2.2.9, Expedited Subdivision](#)), 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 2.2.14, Preliminary Plat Review Procedure](#), as supplemented by [Section 2.3, Application Processing](#), and the Procedures Manual.

**D. APPLICATION**

The application shall include a transportation impact analysis for review, when required by [Section 6.13, Transportation Impact Analysis](#).

**E. REVIEW AND DECISION BY THE TECHNICAL REVIEW COMMITTEE**

The Technical Review Committee shall review and decide the application in accordance with [Section 2.2.14.F, 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 all 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;

<b>FIGURE 2.2.14: PRELIMINARY PLAT PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <a href="#">Section 2.3.2, Pre-application Conference</a>
2	File Application
	See <a href="#">Section 2.3.3, Application Filing</a>
3	Completeness Determination
	See <a href="#">Section 2.3.3.G, Determination of Application Completeness</a>
4	Technical Review Committee Review and Decision
	See <a href="#">Section 2.3.5, Staff Review and Action</a>
5	Notice of Decision
	See <a href="#">Section 2.3.9, Notification of Decision</a>
6	File Construction Drawings or Final Plat, as appropriate



**ARTICLE 2: PROCEDURES**

**2.2.15. REASONABLE ACCOMMODATION**

**A. PURPOSE**

This section provides a procedure for reasonable accommodation of eligible persons in cases where the strict application of the standards of this Ordinance would deprive them of their right to equal opportunity to use a dwelling under the federal Fair Housing Act.

**B. APPLICABILITY**

1. For the purposes of this section, an eligible person is a person who meets the definition of a disabled or handicapped person under federal law.
2. A person recovering from substance abuse is considered a person with a disability or handicap provided they are not currently engaging in the illegal use of controlled substances.

**C. REASONABLE ACCOMMODATION PROCEDURE**

The reasonable accommodation procedure is described in Figure 2.2.15, Reasonable Accommodation Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**D. APPLICATION**

1. An application for reasonable accommodation may be made by any of the following:
  - a. A person with a disability or handicap, or their legal representative; or
  - b. A provider of housing for persons with disabilities or handicaps.
2. An application for reasonable accommodation shall also include the following:
  - a. The basis for the claim that the applicant or persons receiving services from the applicant is considered disabled or handicapped under federal law;
  - b. The Ordinance provision from which the reasonable accommodation is being requested; and
  - c. An explanation of why the reasonable accommodation is necessary to make specific land or development available for the applicant.

**E. 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 reasonable accommodation.
2. The decision shall be based on the competent, material, and substantial evidence, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in Section 2.2.15F, Reasonable Accommodation.
3. The decision shall be one of the following:
  - a. Approval of the reasonable accommodation application as proposed;
  - b. Approval of the reasonable accommodation application with revisions; or
  - c. Denial of the application.
4. 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.
5. The written decision shall be signed by the Chair or other duly authorized member of the BOA.

**FIGURE 2.2.15: REASONABLE ACCOMMODATION PROCEDURE**

Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Notice of Appeal See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Public Hearing Scheduled
5	Public Notice See <u>Section 2.3.6, Public Notice</u>
6	Board of Adjustment Review and Decision See <u>Section 2.3.7, Public Hearings and Meetings</u>
7	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.15. Reasonable Accommodation

6. The decision of the BOA shall be effective upon the filing of the written decision in the offices of the Planning Department.

#### F. REASONABLE ACCOMMODATION REVIEW STANDARDS

1. A reasonable accommodation application shall be approved on a finding the proposed accommodation:
  - a. Will be used by an individual or individuals with a disability or handicap protected under federal law;
  - b. Is the minimum needed to provide accommodation; and
  - c. Is reasonable and necessary.
2. For the purposes of this section, an accommodation is reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other Town standard, and it will not impose significant financial and administrative burden upon the Town.
3. For the purposes of this section, an accommodation is necessary if it would provide direct or meaningful improvement of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to use housing in the Town.

#### G. EFFECT

A reasonable accommodation shall not affect an applicant's obligation to comply with other applicable standards in this Ordinance that are not the subject of the reasonable accommodation application.

#### H. AMENDMENT

Amendment of an application for reasonable accommodation may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

#### I. EXPIRATION

Approval of a reasonable accommodation shall describe the conditions or events that would terminate the reasonable accommodation or cause it to expire.

#### J. APPEAL

Appeal of a decision on a reasonable accommodation request shall be reviewed and decided by the BOA in the nature of certiorari and in accordance with Section 2.2.3, Appeal.

**2.2.16. SIGN PERMIT**

**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 5.11, Signage.

**B. APPLICABILITY**

All signs, including temporary signs, but excluding signs exempted from obtaining sign permits in Section 5.11, 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 2.2.16, Sign Permit Procedure, as supplemented by Section 2.3, Application Processing, 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 2.2.16.E, 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 5.11, Signage;
2. The State Building Code(s);
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 2.2.3, Appeal.

**FIGURE 2.2.16:  
SIGN PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See Section 2.3.2, Pre-application Conference
2	File Application See Section 2.3.3, Application Filing
3	Completeness Determination See Section 2.3.3.G, Determination of Application Completeness
4	Planning Director Review and Decision See Section 2.3.5, Staff Review and Action
5	Notification of Decision See Section 2.3.9, Notification of Decision
6	Schedule Required Inspections, as needed

**2.2.17. SITE PLAN**

**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 2.2.17.C, 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 also 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 2.2.4, Building Permit, or Section 2.2.23, 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 2.2.17, Site Plan Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**E. APPLICATION**

The application shall include a transportation impact analysis for review, when required by Section 6.13, Transportation Impact Analysis.

**F. DECISION BY TECHNICAL REVIEW COMMITTEE**

The Technical Review Committee, shall review and decide the application in accordance with Section 2.2.17.G, 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.

<b>FIGURE 2.2.17: SITE PLAN PROCEDURE</b>	
Step	Action
1	Pre-application Conference <u>See Section 2.3.2, Pre-application Conference</u>
2	File Application <u>See Section 2.3.3, Application Filing</u>
3	Completeness Determination <u>See Section 2.3.3.G, Determination of Application Completeness</u>
4	Technical Review Committee Review and Decision <u>See Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision <u>See Section 2.3.9, Notification of Decision</u>

**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, any street and utility construction plans shall include all improvements within a phase and all public improvements outside the phase but necessary to serve development within that phase.

**2. PERFORMANCE GUARANTEES**

All public improvements that have not been installed by the developer, inspected, and accepted by the Town shall comply with the requirements in Section 6.6, Performance 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 6.6.11, 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 2.2.3, Appeal.

**ARTICLE 2: PROCEDURES**

**2.2.18. SPECIAL USE PERMIT**

**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 4.2.3, 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 2.2.18, Special Use Permit Procedure](#), as supplemented by [Section 2.3, Application Processing](#), and the Procedures Manual.

**D. APPLICATION**

1. An application for a special use permit shall include a site plan that depicts the proposed use and site configuration. The TRC shall review and comment on the site plan prior to consideration of the application by the Board of Commissioners.
2. The application shall include a transportation impact analysis for review, when required by [Section 6.13, 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 2.2.18.F, Special Use Permit 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.

**FIGURE 2.2.18: SPECIAL USE PERMIT PROCEDURE**

Step	Action
1	Pre-application Conference See <a href="#">Section 2.3.2, Pre-application Conference</a>
2	File Application See <a href="#">Section 2.3.3, Application Filing</a>
3	Completeness Determination See <a href="#">Section 2.3.3.G, Determination of Application Completeness</a>
4	TRC Review of Site Plan See <a href="#">Section 2.3.5, Staff Review and Action</a>
5	Public Hearing Scheduled
6	Public Notice See <a href="#">Section 2.3.6, Public Notice</a>
7	Board of Commissioners Review and Decision See <a href="#">Section 2.3.7, Public Hearings and Meetings</a>
8	Notification of Decision See <a href="#">Section 2.3.9, Notification of Decision</a>
9	TRC Review and Decision on Site Plan (see <a href="#">Section 2.2.17, Site Plan</a> )

## ARTICLE 2: PROCEDURES

### G. CONDITIONS OF APPROVAL

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 site plan.

### H. EFFECT

1. A special use approval is perpetually binding and run with the land, unless amended or limited in duration by the reviewing authority.
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 160D-1402 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**

**2.2.19. TEMPORARY USE PERMIT**

**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 4.5, Temporary Uses. 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 4.5, Temporary Uses, but shall not be applied to applications for temporary signage, which are subject to the standards in Section 2.2.16, Sign Permit.

**C. TEMPORARY USE PERMIT PROCEDURE**

The Temporary Use Permit procedure is described in Figure 2.2.19, Temporary Use Permit Procedure, as supplemented by Section 2.3, Application Processing.

**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 2.2.19.E, 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 4.5, 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 the FHO district or a special flood hazard area; and
8. 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.

**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 2.2.3, Appeal.

<b>FIGURE 2.2.19: TEMPORARY USE PERMIT PROCEDURE</b>	
Step	Action
1	Pre-application Conference  See <u>Section 2.3.2, Pre- application Conference</u>
2	File Application  See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination  See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review and Decision  See <u>Section 2.3.5, Staff Review and Action</u>
5	Notification of Decision  See <u>Section 2.3.9, Notification of Decision</u>

**ARTICLE 2: PROCEDURES**

**2.2.20. UDO TEXT AMENDMENT**

**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 2.2.20, Text Amendment Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

**D. JOINT PUBLIC HEARING**

Following provision of public notice for a public hearing in accordance with Section 2.3.6, Public Notice, the Planning Board and Board of Commissioners shall conduct a legislative 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 2.2.20.G, UDO Text Amendment Review Standards.
2. In making its recommendation, the Planning Board shall prepare a written consistency statement including each of the following:
  - a. Whether the text amendment application is recommended for approval, denial, or remanded to Town staff; and
  - b. The degree to which the text amendment is or is not consistent with the Town’s adopted policy guidance; and
  - c. The ways in which the text amendment is or is not consistent with the Town’s adopted policy guidance; and
  - d. Whether approval of the text amendment 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 recommendation is reasonable; and

<b>FIGURE 2.2.20: UDO TEXT AMENDMENT PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Town Attorney Legal Sufficiency Review
6	Public Hearing Scheduled
7	Public Notice
	See <u>Section 2.3.6, Public Notice</u>
8	Joint Public Hearing
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
9	Planning Board Review and Recommendation
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
10	Board of Commissioners Review and Decision
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
11	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

- g.** An explanation of why the recommendation is in the public interest.

### **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, and receipt of a recommendation on the UDO text amendment by the Planning Board, shall decide the application during a follow-up public meeting in accordance with Section 2.2.20.G, 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:
  - 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.

## ARTICLE 2: PROCEDURES

### 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**

**2.2.21. VARIANCE**

**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 3.8.2, Flood Hazard Overlay (FHO) District, as well as the procedures and standards for variances from the watershed protection standards included in Section 3.3.2, Residential Watershed (R1) District.

**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 2.2.21, Variance Procedure, as supplemented by Section 2.3, Application Processing, 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 2.2.21.G, 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

<b>FIGURE 2.2.21: VARIANCE PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Public Hearing Scheduled
6	Public Notice
	See <u>Section 2.3.6, Public Notice</u>
7	Board of Adjustment Review and Decision
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>
9	Recordation

date the decision becomes effective. The person providing notification of decision shall certify that proper notification has been made.

**F. RECORDATION**

If a variance application is approved, the notice of decision may be recorded by the applicant in the office of the Wake County Register of Deeds.

**G. VARIANCE REVIEW STANDARDS**

The standards in this section are organized into the standards applicable to variances from the zoning-related provisions, the flood hazard overlay provisions, and the watershed protection provisions.

**1. ZONING-RELATED VARIANCE STANDARDS**

**a. REQUIRED FINDINGS OF FACT**

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. FLOOD HAZARD OVERLAY VARIANCE STANDARDS**

In addition to the standards for a zoning variance, variances from the flood hazard overlay standards in this Ordinance shall be reviewed and decided in accordance with the standards in Section 3.8.2, Flood Hazard Overlay (FHO) District, and the following:

**a. REQUIRED FINDINGS OF FACT**

A variance from the 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;
- 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 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 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.

**3. WATERSHED PROTECTION VARIANCE STANDARDS**

**a. VARIANCES DISTINGUISHED**

- i. Variances from the water supply watershed standards in Section 3.3.2, Residential Watershed (R1) District, in the shall take the form of a minor variance or a major variance.
- ii. Major variances pertain to any of the following:
  - 1. i) The relaxation, by a factor greater that 10 percent, of any management requirement under the low density option;
  - 2. ii) The relaxation, by a factor greater than five percent, of any buffer, density or built upon area requirement under the high density option; or
  - 3. iii) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

- iii. Minor variances pertain to a relaxation, by a factor of up to ten percent of any buffer, density, or built-upon area requirement under the low density option.

**b. REQUIRED FINDINGS OF FACT**

Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

- i. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:
  - 1. In complying with the provisions of this Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, their property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the granting of a minor variance. Moreover, the BOA shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that will make possible the reasonable use of the property;
  - 2. The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship;
  - 3. The hardship is due to the physical nature of the applicant's property, such as size, shape or topography, which is different from that of neighboring property;
  - 4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance and then comes to the Board for relief; and
  - 5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be special privilege denied to others, and would not promote equal justice.
- ii. The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.
- iii. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The BOA shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

**c. CONDITIONS OF APPROVAL**

- i. In granting a variance approval, the BOA may attach conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable.
- ii. If a variance for the construction, alteration, or use of property is granted, the construction, alteration or use shall be in accordance with the approved site plan.

**d. PRIOR DENIAL**

The BOA shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

**e. EXPIRATION**

A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within six months from the date of the decision.

**f. ADDITIONAL PROVISIONS FOR MAJOR VARIANCES**

**i. Generally**

If the application calls for the granting of a major variance, and if the BOA decides in favor of granting the variance, the BOA shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include the following:

1. The variance application;
2. The hearing notices;
3. The evidence presented;
4. Motions, offers of proof, objections to evidence and rulings on them;
5. Proposed findings and exceptions; and
6. The proposed decision, including all conditions proposed to be added to the permit.

**ii. Action by the Environmental Management Commission**

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

1. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations.
2. The Commission shall prepare a decision and send it to the BOA. If the Commission approves the variance as proposed, the BOA shall prepare a final decision granting the proposed variance.
3. If the Commission approves the variance with conditions and stipulations, the BOA shall prepare a final decision, including those conditions and stipulations, granting the proposed variance.
4. If the Commission concludes from a preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed.
5. The Commission shall prepare a decision and send it to the BOA.
6. The BOA shall prepare a final decision denying the variance as proposed.

**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.

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 authorization 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 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 variance action.

**3. RECORDS**

Upon request, the Planning Director shall report all flood-related 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 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 160D-1402 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**

**2.2.22. VESTED RIGHTS DETERMINATION**

**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 160D-108 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 2.2.22, Vested Rights Determination Procedure, as supplemented by Section 2.3, Application Processing, and the Procedures Manual.

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

1. The Board of Commissioners, after the conclusion of a legislative public hearing, shall decide the application in accordance with Section 2.2.22.E, 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 160D-108 of the North Carolina General Statutes. Unless terminated at an earlier date, the vested right shall be valid until \_\_\_\_\_(date)."*
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

<b>FIGURE 2.2.22: VESTED RIGHTS DETERMINATION PROCEDURE</b>	
Step	Action
1	Pre-application Conference
	See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application
	See <u>Section 2.3.3 Application Filing</u>
3	Completeness Determination
	See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review
	See <u>Section 2.3.5, Staff Review and Action</u>
5	Public Hearing Scheduled
6	Public Notice
	See <u>Section 2.3.6, Public Notice</u>
7	Board of Commissioners Review and Decision
	See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Notification of Decision
	See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.22. Vested Rights Determination

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 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**

**2.2.23. ZONING COMPLIANCE PERMIT**

**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 2.2.23, Zoning Compliance Permit Procedure](#), as supplemented by [Section 2.3, Application Processing](#), 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 2.2.23.E, 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 2.2.3, Appeal](#).

<b>FIGURE 2.2.23: ZONING COMPLIANCE PERMIT PROCEDURE</b>	
Step	Action
1	Pre-application Conference
2	File Application See <a href="#">Section 2.3.3 Application Filing</a>
3	Completeness Determination See <a href="#">Section 2.3.3.G, Determination of Application Completeness</a>
4	Planning Director Review and Decision See <a href="#">Section 2.3.5, Staff Review and Action</a>
5	Notification of Decision See <a href="#">Section 2.3.9, Notification of Decision</a>

**ARTICLE 2: PROCEDURES**

**2.2.24. ZONING MAP AMENDMENT**

**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 160D-602 through 160D-605 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 2.2.6, 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 otherwise deviate from the minimum standards 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 2.2.24, Zoning Map Amendment Procedure, as supplemented by Section 2.3, Application Processing, 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 2.3.6, Public Notice, the Planning Board and Board of Commissioners shall conduct a joint legislative 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

<b>FIGURE 2.2.24: ZONING MAP AMENDMENT PROCEDURE</b>	
Step	Action
1	Pre-application Conference See <u>Section 2.3.2, Pre-application Conference</u>
2	File Application See <u>Section 2.3.3, Application Filing</u>
3	Completeness Determination See <u>Section 2.3.3.G, Determination of Application Completeness</u>
4	Planning Director Review See <u>Section 2.3.5, Staff Review and Action</u>
5	Public Hearing Scheduled
6	Public Notice See <u>Section 2.3.6, Public Notice</u>
7	Joint Public Hearing See <u>Section 2.3.7, Public Hearings and Meetings</u>
8	Review and Recommendation by Planning Board See <u>Section 2.3.7, Public Hearings and Meetings</u>
9	Board of Commissioners Review and Decision See <u>Section 2.3.7, Public Hearings and Meetings</u>
10	Notification of Decision See <u>Section 2.3.9, Notification of Decision</u>

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.24. Zoning Map Amendment

a recommendation on a the zoning map amendment application in accordance with Section Section 2.2.24.J, Zoning Map Amendment Review Standards.

2. In making its recommendation, the Planning Board shall prepare a written consistency statement including each of the following:
  - a. Whether the zoning map amendment application is recommended for approval, denial, or remanded to Town staff; 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 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 recommendation is reasonable; and
  - g. An explanation of why the recommendation is in the public interest.

#### 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 during a follow-up public meeting in accordance with Section 2.2.24.J 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 limited types 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

## ARTICLE 2: PROCEDURES

### 2.2. Application Review Procedures

### 2.2.24. Zoning Map Amendment

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. EFFECT**

1. Lands subject to an approved map amendment shall be subject to all the applicable standards in this Ordinance, which shall be binding and shall run with the land.
2. Development located outside the Zebulon corporate limits shall comply with all Town policies related annexation and the extension of utilities.

#### **L. 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.

#### **M. 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

### 2.3.1. Purpose and Intent

## 2.3. APPLICATION PROCESSING

### 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 2.2, 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 during the application submittal, review, and decision notification process.

### 2.3.2. PRE-APPLICATION CONFERENCE

#### **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.** A pre-application conference between the applicant and Town staff is required before submittal of some applications, in accordance with Table 2.2, Application Review Procedures.
- b.** Pre-application conferences are optional for other applications.
- c.** There are no limits on the number of pre-application conferences that may be conducted, though the Town may charge an application fee for the third or subsequent pre-application conference on the same project or development site.

##### **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 prior to or during the pre-application conference, but there is no requirement to submit any material in advance of the conference.

#### **E. EFFECT**

When required, a completed pre-application conference entitles an applicant to take the next step in the application process. Applications for development proposals that mandate a pre-application conference will not be accepted until after the mandatory pre-application conference has been completed.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.3. Application Filing

#### 2.3.3. APPLICATION FILING

##### A. AUTHORITY TO FILE APPLICATIONS

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. The Procedures Manual shall be 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 2.3.3.G, 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 2.3.12, Limitation on Subsequent Similar Applications, and may be resubmitted in accordance with Section 2.3.3.A, 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 2.3.3.D, Submittal and Review Schedule.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.4. Neighborhood Meeting

#### I. APPLICATION COMPLETE

1. On determining that the application is complete, it shall be considered as submitted, and the Town shall notify the applicant and commence review in accordance with the procedures and standards of this Ordinance.
2. Nothing shall preclude the Planning Director or a review authority from re-evaluating an application for completeness in the event application inadequacies are revealed at a date subsequent to an application being declared complete.

### 2.3.4. NEIGHBORHOOD MEETING

#### A. PURPOSE

The purpose of the neighborhood meeting is to inform landowners and occupants of nearby lands about a development application that is going to be reviewed under this Ordinance, and to provide the applicant an opportunity to hear comments and concerns about the development proposal prior to the public hearing process. The neighborhood meeting is proposed as a means of resolving potential conflicts and outstanding issues with nearby landowners, where possible, in a more informal context.

#### B. APPLICABILITY

1. Neighborhood meetings shall be conducted prior to filing of an application for the following types of development applications:
  - a. Conditional rezonings;
  - b. Planned developments;
  - c. Site plans in the DTC or DTP districts;
  - d. Special use permits; or
  - e. Zoning map amendments that establish a more dense or intense zoning district.
2. A neighborhood information meeting is optional for any other proposed development application.

#### C. PROCEDURE

In cases when a neighborhood meeting is conducted, it shall comply with the following procedure:

##### 1. TIMING

- a. The meeting should be held at a time of day when the maximum number of neighbors may attend.
- b. The meeting shall take place no less than three days before the application is filed with the Town.

##### 2. FORM

- a. The neighborhood information meeting can take the form of a meeting or gathering between the applicant, or the applicant's representative, and landowners or other interested parties.
- b. Multiple meetings may take place, but notification for each meeting shall be provided.

##### 3. LOCATION

- a. The neighborhood meeting shall take place in a public or community space as close as possible to the site where development is proposed.
- b. In the event no public or community space is suitable, the meeting may take place at another Town-owned site, subject to a prior reservation made by the applicant.

##### 4. NOTIFICATION

- a. The applicant shall provide notification of the neighborhood meeting via first class mail to all landowners and occupants within 300 linear feet of the outer perimeter of the site where development is proposed.
- b. Mailed notice shall be provided no less than ten days prior to the date of the neighborhood meeting.

##### 5. INFORMATION PROVIDED

The applicant shall provide the following information in the neighborhood meeting invitation:

- a. The purpose of the neighborhood meeting;
- b. A description of the proposed development;
- c. The time, date, and location of the meeting;

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- d. Telephone and email contact information for the applicant or applicant's representative; and
- e. Any additional information that would promote understanding of the development proposal.

#### 6. CONDUCT OF MEETING

At the meeting, the applicant shall explain the development proposal and the proposed application, respond to questions and concerns neighbors raise about the application, and propose ways to resolve conflicts and concerns.

#### 7. STAFF ATTENDANCE

Town staff shall not attend a neighborhood meeting in a professional capacity. Nothing shall limit a Town staff member from attending a neighborhood meeting as an interested citizen.

#### 8. WRITTEN SUMMARY

The applicant shall submit a written summary of the neighborhood meeting with the application materials. At a minimum, the written summary shall include all of the following:

- a. An affidavit of mailing listing all parties (including mailing address) who were mailed a meeting invitation;
- b. A copy of the meeting invitation;
- c. A sign-in sheet of meeting attendees; and
- d. A list of the items discussed, including any questions posed by attendees and the answers provided.

### 2.3.5. 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 the 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 2.2, Application Review Procedures.
3. The staff report will not include a recommendation from Town staff on applications decided through the quasi-judicial process.
4. 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.
5. 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.
6. A staff report is not required for applications decided by the Planning Director, or the Technical Review Committee, though one may be prepared.

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**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 2.3.6, 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**

1. In cases where a development application is decided by the Planning Director 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 2.2, Application Review Procedures:
  - a. Approve the application;
  - b. Disapprove the application; or
  - c. Delay decision making for a specified time to allow the applicant to revise the application for compliance with the requirements in this Ordinance.
2. In some instances, Town staff may decide an application contingent upon further revision by the applicant in accordance with the direction provided in the decision.

**2.3.6. PUBLIC NOTICE**

**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**

1. All development applications subject to public notification shall comply with the appropriate standards in the North Carolina General Statutes. More specifically, Section 160D-601(a) for published notice, Section 160D-602(a) for mailed notice, and Section 160A-602(c) for posted notice.
2. Table 2.3.6.C, 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.

<b>TABLE 2.3.6.C: PUBLIC NOTIFICATION REQUIREMENTS</b>			
<b>APPLICATION TYPE</b>	<b>TYPE OF PUBLIC NOTIFICATION</b>		
	<b>"X"=REQUIRED</b>		
	<b>PUBLISHED NOTICE [1]</b>	<b>MAILED NOTICE [2]</b>	<b>POSTED NOTICE [3]</b>
Annexation	X	.	.
Appeal	X	X [4]	.
Conditional Rezoning	X	X	X
Development Agreement	X	X	X
Planned Development	X	X	X
Reasonable Accommodation	X	X [4]	.
Special Use Permit	X	X	X

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<b>TABLE 2.3.6.C: PUBLIC NOTIFICATION REQUIREMENTS</b>			
<b>APPLICATION TYPE</b>	<b>TYPE OF PUBLIC NOTIFICATION "X"=REQUIRED</b>		
	<b>PUBLISHED NOTICE [1]</b>	<b>MAILED NOTICE [2]</b>	<b>POSTED NOTICE [3]</b>
UDO Text Amendment	X	·	·
Variance	X	X	X
Vested Rights Determination	X	X	·
Zoning Map Amendment	X	X	X
<b>NOTES:</b>			
[1] 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.			
[2] Mailed notice shall be provided to the applicant, affected landowners, and landowners of abutting land between 10 and 25 days before the public hearing.			
[3] Posted notice shall be provided between 10 and 25 days before the public hearing.			
[4] Mailed notice shall only be required in cases where an appeal pertains to a particular lot or site.			

**D. PUBLISHED NOTICE REQUIREMENTS**

1. When the provisions of Section 160D-601 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 160D-602(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 2.3.6.C, Public Notification Requirements, shall be mailed to:
  - a. The applicant, if different from the landowner; and
  - b. All landowners entitled to receive notice in accordance with Section 160D-602(a) of the North Carolina General Statutes, as well as Town policy, whose address is known by reference to the latest county tax listing.
2. Notice shall be deemed mailed by its deposit in the United States first class mail, properly addressed, postage paid. The content and form of the notice shall comply with Section 2.3.6.G, Notice Content, and Section 160D-602(a) of the North Carolina General Statutes.
3. A copy of the mailed notice shall be maintained in the offices of the designated review authority for public inspection during normal business hours.
4. Mailed notice shall not be required when a zoning map amendment includes more than 50 lots or tracts owned by at least 50 different landowners, provided the Town publishes a map (occupying at least 1/2 of a newspaper page) showing the boundaries of the affected area in a newspaper of general circulation once a week for two successive calendar weeks between 10 days and 25 days before the public hearing. Affected landowners residing outside the newspaper circulation area shall be notified via first class mail pursuant to Section 2.3.6.E, Mailed Notice Requirements.

**F. POSTED NOTICE REQUIREMENTS**

When the provisions of Section 160D-602(c) of the North Carolina General Statutes require that public notice be posted, the Planning Director shall provide the required posted public notice in accordance with the following:

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.7. Public Hearings and Meetings

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 2.3.6.G, Notice Content, and Section 160D-602(c) of the North Carolina General Statutes.

#### G. NOTICE CONTENT

Unless expressly indicated otherwise by the North Carolina General Statutes, 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.

#### H. CONSTRUCTIVE NOTICE

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.

### 2.3.7. PUBLIC HEARINGS AND MEETINGS

#### A. JOINT PUBLIC HEARINGS

Table 2.2, Application Review Procedures, identifies the kinds of development applications subject to a joint legislative 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 legislative public hearings shall not be conducted until after provision of required public notification in accordance with Section 2.3.6, Public Notice.
- b. The joint legislative public hearing shall be open to the public and shall be conducted in accordance with the Board of Commissioner'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 2.2, Application Review Procedures, identifies the kinds of development applications decided following completion of a legislative public hearing, which shall be conducted in accordance with the following requirements:

##### 1. PROCEDURE

- a. Legislative public hearings shall not be conducted until after provision of required public notification in accordance with Section 2.3.6, Public Notice.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.7. Public Hearings and Meetings

- 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 2.2, 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 160D-109 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.
- 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 2.2, Application Review Procedures, identifies the kinds of development applications decided following a quasi-judicial public hearing, which shall be conducted in accordance with 160D-406, 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 2.3.6, Public Notice.

### 2. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

- a. Parties with standing may participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments;
- b. Non-parties may present competent, material, and substantial evidence that is not repetitive subject to the approval of the chairperson.

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.7. Public Hearings and Meetings

#### 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 2.2, 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

- i. 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:
  1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  2. An undisclosed ex parte communication;
  3. A close family, business, or other associational relationship with an affected person; or
  4. A financial interest in the outcome of the matter.
- ii. 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. DELAY OF DECISION

The review authority may delay a decision on the application if additional information is requested of the applicant."

#### 8. RECORD

- a. A recording may be made of all public hearings and 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 2.2, 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:

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### 2.3.8. Conditions of Approval

#### 1. PROCEDURE

- a. The public meeting shall be open to the public and shall be conducted in accordance with the review authority's adopted rules of procedure for public meetings.
- b. 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 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.

### 2.3.8. CONDITIONS OF APPROVAL

- A. Unless expressly authorized in Section 2.2, Application Review Procedures, conditions of approval for conditional rezonings, planned developments, and other quasi-judicial applications 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 rezoning may be proposed by the applicant, Town staff, the Planning Board, or the Board of Commissioners, but only those conditions mutually approved by the Board of Commissioners and the applicant may be included as part of the application approval.

### 2.3.9. NOTIFICATION OF DECISION

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.

### 2.3.10. EFFECT

#### 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

## ARTICLE 2: PROCEDURES

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2.3.10. Effect

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

## ARTICLE 2: PROCEDURES

### 2.3. Application Processing

### 2.3.11. Continuance, Postponement, and Withdrawal

#### 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.

### 2.3.11. 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.
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 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.

### 2.3.12. LIMITATION ON SUBSEQUENT SIMILAR APPLICATIONS

#### 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.

