

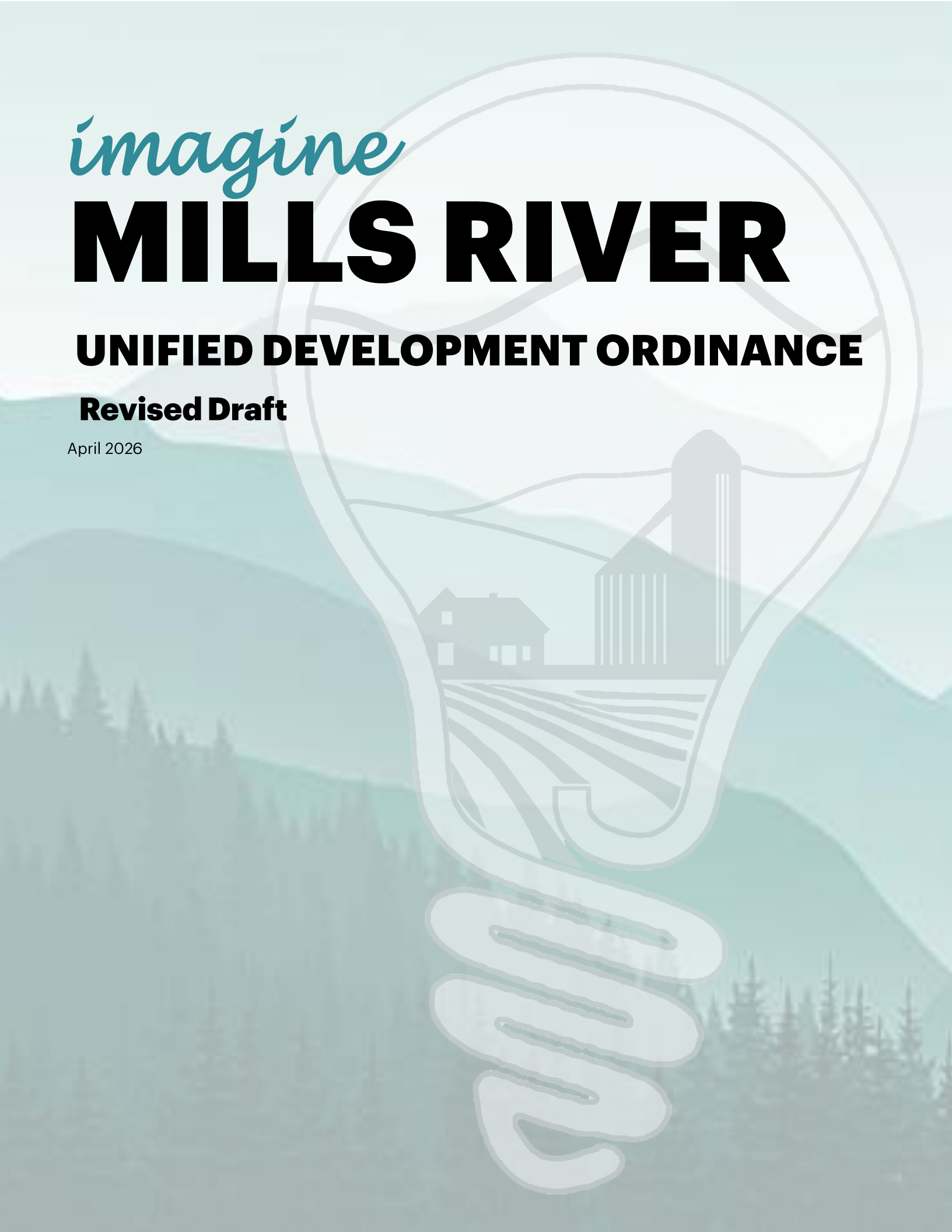
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# MILLS RIVER

## UNIFIED DEVELOPMENT ORDINANCE

**Revised Draft**

April 2026



# CHAPTER 2.

# APPLICATIONS

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## CHAPTER 2. APPLICATIONS - KEY CHANGES IN THE NEW UDO

Chapter 2 consolidates all the procedural provisions in the current zoning and subdivision regulations. It includes the following key changes:

- Twelve new or newly-codified application types, such as the Administrative Adjustment, Annexation, Conservation Subdivisions, Determination, and Vested Rights Certificates.
- New process type diagrams for each application type.
- An Administrative Adjustment procedure that allows minor administrative deviations or variances from some numeric requirements (as a flexibility mechanism).
- A detailed Appeal process, including how to appeal some decisions to Superior Court.
- A two-tiered Conditional Rezoning process that recognizes varying levels of deviation from applicable standards.
- A new Development Agreement procedure.
- Inclusion of uniform Performance Guarantee and Fee-in-Lieu procedures which can be joined with another application or processed as stand-alone applications.
- Recognition of the differing phases associated with review of construction drawings for public infrastructure associated with a Site Plan or subdivision.
- A new uniform structure for application types that sets out purposed and intent, applicability, application requirements, procedure, review criteria, sequencing, effect, amendment, expiration, vesting, and appeals provisions for each application type.
- Review criteria for each application type.
- New standards regarding simultaneous or concurrent application reviews and rules for phased development.
- New pre-application conference and neighborhood meeting requirements for some applications.
- New application completeness requirements to address State permit choice provisions.
- Additional details on the conduct of public meetings versus public hearings (legislative and evidentiary).
- New sections clarifying conditions of approval.
- New clarity about continuance, withdrawal, and abandonment of applications
- Increased use of dynamic cross referencing to permit faster movement through the digital document (will become active as part of the adoption version).



## § 2.1 CHAPTER INTRODUCTION

### 2.1.1. CHAPTER ORGANIZATION

- A.** This chapter includes all the development application review provisions, and is comprised of the following four sections:
  - 01.** A section setting out the summary tables of application types (Section <>, Application Summary Table);
  - 02.** A section outlining the Review Authorities (Section <>, Review Authorities);
  - 03.** A section containing a set of common or standard review procedures used by the Town regardless of the type of application being reviewed (Section <>, Review Processes); and
  - 04.** A section with the application procedures (Section <>, Specific Application Procedures).
- B.** The summary table in Section <> Application Summary Table, identifies all the specific development application procedures in this Ordinance and the review authorities who decide them.
- C.** The Review Authorities in Section <>, Review Authorities, includes a description and role of each of the following:
  - 01.** Town Council;
  - 02.** Board of Adjustment;
  - 03.** Planning Board;
  - 04.** Technical Review Committee; and
  - 05.** Town Staff.
- D.** Section <>, Review Processes, describes the steps in the application review process that are identical for each type application, including application filing, staff review, notification of decision, and others. In cases where a particular application type follows a procedure that differs from that in Section <>, Review Processes, those distinctions are noted in Section <>, Specific Application Procedures.
- E.** Section <>, Review Processes, describes each application type in detail, including:
  - 01.** Applicability and the types of development exempted from the procedure;
  - 02.** The review standards;
  - 03.** How the approved application may be amended (if applicable);
  - 04.** If and how the approval may expire; and
  - 05.** How decisions on a particular application are appealed.

## § 2.2 APPLICATION SUMMARY TABLE

### 2.2.1. GENERALLY

- A.** The Application Summary Table below lists each of the specific application types in this Ordinance and the review authority(ies) involved in the decision-making process. Review authorities are listed in columns across the top of the table and procedures are listed in alphabetical order in rows down the table's side. Cells in the middle of the table show actions taken by a particular review authority as part of the review process.
- B.** The types of actions that may be taken by a particular review authority include comments ("C"), recommendations ("R"), decisions ("D"), and appeals ("A"). The review authority providing comments on an application typically consider the application prior to the review authority who is responsible for making a recommendation. A recommendation by one review authority is made prior to the step in the review process where a decision is made by another review authority. Appeals take place after a decision has been made.
- C.** Blank cells (".") in the table indicate that a particular review authority has no role in a particular specific application procedure.
- D.** The "Pre-App Conference" Column includes an "M", "O", or "N/A", to indicate if a pre-application conference is mandatory, optional, or not applicable to a particular kind of application.



# CHAPTER 2. APPLICATIONS

## § 2.2 Application Summary Table

### Subsection 2.2.1. Generally

- E.** The “Required Public Hearing Type” indicates if a specific application procedure includes a public hearing, and whether the hearing is a legislative “L” or evidentiary “E” (quasi-judicial). More description on the differences between these two types of public hearing are explained in Section <>, Public Hearings and Meetings.
- F.** The “UDO Reference” Column identifies the particular sub-section in this Ordinance where the specific application procedure language is located.
- G.** Numbers in brackets signify table notes, which are additional caveats or unique aspects about a particular procedure and are found at the bottom of the table (the table bottom may be on a subsequent page).

**TABLE <>: APPLICATION TYPES TABLE**

Type of Action: C=Comment; R=Recommendation; D=Decision; •= Not Applicable  
 Pre-Application Conference: M=Mandatory; O=Optional; •= Not Applicable  
 Type of Hearing: L=Legislative; E=Evidentiary; •= Not Applicable  
 Appeal Authority: BOA=Board of Adjustment; SC=Superior Court for Henderson County  
 [#] = Table Note (see end of table)

APPLICATION TYPE	PRE-APPLICATION CONFERENCE	REQUIRED PUBLIC HEARING TYPE	REVIEW AUTHORITY				APPEAL AUTHORITY	UDO REFERENCE	
			TECHNICAL REVIEW COMMITTEE	PLANNING DIRECTOR	PLANNING BOARD	TOWN COUNCIL			BOARD OF ADJUSTMENT
Administrative Adjustment	O	•	•	D	•	•	•	BOA	<>
Alternative Plan	O	•	C	D	•	•	•	BOA	<>
Annexation	M	L	•	C	•	D	•	SC	<>
Appeal	•	E	•	•	•	•	D	SC	<>
Building Permit	Decided by Henderson County Permits and Inspections Department								
Certificate of Compliance [1]	O	•	•	D	•	•	•	BOA	<>
Certificate of Occupancy [2]	Decided by Henderson County Permits and Inspections Department								
Conditional Rezoning [3]	M	L	C	C	R	D	•	SC	<>
Conservation Subdivision [4]	M	•	C	D	•	•	•	BOA	<>
Construction Drawings	O	•	C	D	•	•	•	BOA	<>
Conventional Rezoning	M	L	•	C	R	D	•	SC	<>
Determination	•	•	C	D	•	•	•	BOA	<>
Development Agreement	M	L	C	R	•	D	•	SC	<>
Driveway Permit [5]	•	•	•	D	•	•	•	BOA	<>
Exempt Subdivision	•	•	•	D	•	•	•	BOA	<>
Family Subdivision	O	•	•	D	•	•	•	BOA	<>
Fee-in-Lieu	O	•	C	D	•	D	•	BOA	<>



**TABLE ⇄: APPLICATION TYPES TABLE**

Type of Action: C=Comment; R=Recommendation; D=Decision; •= Not Applicable  
 Pre-Application Conference: M=Mandatory; O=Optional; •= Not Applicable  
 Type of Hearing: L=Legislative; E=Evidentiary; •= Not Applicable  
 Appeal Authority: BOA=Board of Adjustment; SC=Superior Court for Henderson County  
 [#] = Table Note (see end of table)

APPLICATION TYPE	PRE-APPLICATION CONFERENCE	REQUIRED PUBLIC HEARING TYPE	REVIEW AUTHORITY				APPEAL AUTHORITY	UDO REFERENCE	
			TECHNICAL REVIEW COMMITTEE	PLANNING DIRECTOR	PLANNING BOARD	TOWN COUNCIL			BOARD OF ADJUSTMENT
Final Plat (Major Subdivision)	•	•	•	D	•	•	•	BOA	⇄
Limited Subdivision	•	•	•	D	•	•	•	BOA	⇄
Minor Subdivision	O	•	•	D	•	•	•	BOA	⇄
Nonconforming Authorization	M	L	•	C	R	D	•	SC	⇄
Performance Guarantee	O	•	•	D	•	•	•	BOA	⇄
Preliminary Plat (Major Subdivision)	O	•	R	D	•	•	•	BOA	⇄
Sign Permit	O	•	•	D	•	•	•	BOA	⇄
Site Plan	O	•	C	D	•	•	•	BOA	⇄
Special Flood Hazard Permit	M	•	•	D	•	•	•	BOA	⇄
Special Use Permit [3]	M	E	C	•	•	•	D	SC	⇄
Temporary Use Permit	•	•	•	D	•	•	•	BOA	⇄
Text Amendment	M	L	•	C	R	D	•	SC	⇄
Traffic Impact Analysis [6]	M	•	•	D	•	•	•	BOA	⇄
Variance, Water-Related [7]	O	E	•	•	•	•	D	SC	⇄
Variance, Zoning Related	O	E	•	•	•	•	D	SC	⇄
Vested Rights Certificate	O	E	•	•	•	D	•	SC	⇄
Watershed Permit	O	•	•	D	•	•	•	BOA	⇄
Zoning Compliance Permit	•	•	•	D	•	•	•	BOA	⇄



**TABLE ⇄: APPLICATION TYPES TABLE**

Type of Action: C=Comment; R=Recommendation; D=Decision; •= Not Applicable  
 Pre-Application Conference: M=Mandatory; O=Optional; •= Not Applicable  
 Type of Hearing: L=Legislative; E=Evidentiary; •= Not Applicable  
 Appeal Authority: BOA=Board of Adjustment; SC=Superior Court for Henderson County  
 [#] = Table Note (see end of table)

APPLICATION TYPE	PRE-APPLICATION CONFERENCE	REQUIRED PUBLIC HEARING TYPE	REVIEW AUTHORITY					APPEAL AUTHORITY	UDO REFERENCE
			TECHNICAL REVIEW COMMITTEE	PLANNING DIRECTOR	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT		
NOTES:									

[1] This procedure is required by the Town prior to the County’s issuance of a Certificate of Occupancy.  
 [2] This includes temporary Certificates of Occupancy.  
 [3] Required Concept Plans must first be reviewed by TRC prior to consideration by another review authority.  
 [4] Approval of a Conservation Subdivision entitles the applicant to submit a Preliminary Plat application.  
 [5] The Planning Director shall review and decide Town concurrence on Driveway Permits associated with NCDOT streets.  
 [6] The Planning Director either accepts or does not accept a Traffic Impact Analysis.  
 [7] For Water-Related Variances, the BOA serves as the Watershed Review Board or Special Flood Hazard Review Board.

## § 2.3 REVIEW AUTHORITIES

### 2.3.1. AUTHORITIES ESTABLISHED

The following review authorities have powers and responsibilities for administering this Ordinance:

- A.** The Town Council;
- B.** The Planning Board;
- C.** The Board of Adjustment, who shall also serve as the Watershed Review Board and the Special Flood Hazard Review Board;
- D.** The Technical Review Committee; and
- E.** Town Staff.

### 2.3.2. GENERAL REQUIREMENTS FOR ALL AUTHORITIES

#### A. OATH OF OFFICE

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

#### B. CONFLICT OF INTEREST

No review authority shall render a vote or a decision on a specific development application where there is a conflict of interest or where an applicant’s constitutional rights are impacted in accordance with the following.

#### 01. LEGISLATIVE DECISIONS



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

**02. QUASI-JUDICIAL DECISIONS**

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

**03. RECUSAL**

- a. If a conflict of interest exists, then a review authority member shall recuse themselves from participating in and voting on an application.
- b. If an objection is raised to a member's participation and that member does not recuse himself or herself, then the remaining members shall, by majority vote, rule on the objection.

**04. ADMINISTRATIVE DECISIONS**

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

**C. MEETINGS**

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

**01. ADVERTISING**

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

**02. MINUTES AND RECORDS**

- a. Accurate minutes of each meeting shall be maintained by each review authority showing the vote of each member on each question, or if absent or failing to vote, indicating such fact.
- b. Each review authority shall keep records of its examinations and official actions.
- c. All minutes and records shall be filed and maintained in the offices of the Town, and shall be made available for inspection by members of the general public during normal business hours.

**03. OPEN TO PUBLIC**

Except for closed sessions conducted by the Town Council in accordance with NCGS §143-318.11, all review authority meetings shall be open to the public.

**D. RULES OF PROCEDURE**

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

**2.3.3. TOWN COUNCIL**

- A.** The Town Council is the elected body of the Town of Mills River, North Carolina, and shall have the power to initiate, review, and decide applications in accordance with Section <>, Application Summary Table.



- B.** The Town Council shall also have all the powers and duties ascribed to it by State law, the Town's Charter (Article III), and any special legislation approved by the General Assembly.

## **2.3.4. PLANNING BOARD**

### **A. AUTHORITY**

The Planning Board is hereby established in accordance with NCGS§160D-301, and Chapter 30 of the Town Code of Ordinances.

### **B. COMPOSITION**

- 01.** The Mills River Planning Board shall consist of seven members.
- 02.** In the event of a vacancy on the Board, the Town Council shall appoint a new member to fill the unexpired term of the vacated position.
- 03.** All members shall serve without pay but may be reimbursed for any direct and reasonable expenses, following the Town's established procedures concerning reimbursement, incurred while representing the Board.
- 04.** Regular attendance at all Board meetings is a requirement for membership on the Board, and a member may be replaced by the Town Council, within its sole discretion, if the member is absent for two or more consecutive Board meetings.
- 05.** The Chairperson of the Board, or their delegate, may give a member an exception to the attendance requirement for good cause.

### **C. POWERS AND DUTIES**

The Planning Board shall have the following powers and duties:

- 01.** To review and provide a recommendation on specific development applications in accordance with [Section <>](#), [Application Summary Table](#);
- 02.** To, at the direction of Town Council, perform studies and surveys of the present conditions and probable future development of the Town and its environs, including but not limited to, studies and surveys of land uses, population, economic conditions, housing, traffic, parking, and annexation.
- 03.** To formulate and recommend to the Town Council the adoption and amendment of comprehensive plans and other plans, as necessary in the opinion of the Town Council or in accordance with State law; and
- 04.** To execute other related duties as assigned by the Town Council, in accordance with State law.

### **D. RULES OF PROCEDURE**

#### **01. RULES**

The Planning Board shall operate in accordance with the current version of the Planning Board Charter and Rules of Procedure, as amended.

#### **02. OFFICERS**

- a.** The Planning Board shall elect a Chairperson and a Vice Chairperson from its members, who shall serve for one year or until reelected or until their successors are elected.
- b.** The Board shall appoint a Secretary, who may be a Town officer, an employee of the Town, or a member of the Planning Board.

#### **03. QUORUM**

A quorum of four members shall be necessary to transact official business of the Planning Board.

#### **04. MEETINGS**

Meetings of the Planning Board shall be held at the call of the Chairperson and at the other times as the Board may determine.

#### **05. VOTING**

A simple majority of the members present and voting shall be required to adopt a recommendation on an application reviewed under this Ordinance.



**2.3.5. BOARD OF ADJUSTMENT**

**A. AUTHORITY**

The Board of Adjustment is hereby established in accordance with NCGS§160D-302.

**B. COMPOSITION**

- 01. The Board shall consist of five regular members, who shall be citizens of the Town of Mills River and shall be appointed by the Mills River Town Council for overlapping terms of three years.
- 02. The Board shall also consist of as many alternate members as the Town Council deems appropriate, who shall be citizens of the Town of Mills River and who shall also serve overlapping three-year terms.
- 03. Alternate members shall serve in the absence of any regular member and, while serving, shall have and exercise all the powers and duties of a regular member of the Board of Adjustment.
- 04. The Mills River Town Council may, by resolution duly adopted, establish guidelines for appointment of regular and/or alternate members, including, but not limited to, the establishment of representative districts for Board of Adjustment membership.
- 05. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment.

**C. POWERS AND DUTIES**

- 01. The Board of Adjustment shall have the power to review and decide applications in accordance with Section <>, Application Summary Table.
- 02. Unless otherwise designated by the Mills River Town Council, the Board of Adjustment shall also serve as the Watershed Review Board and the Special Flood Hazard Review Board in order to hear and decide applications in accordance with this Ordinance and State law.

**D. RULES OF PROCEDURE**

**01. RULES**

The Board of Adjustment shall adopt rules and bylaws in accordance with this Ordinance, the Town Code of Ordinances, and NCGS§160D-302.

**02. OFFICERS**

- a. The Board of Adjustment shall elect a Chairperson and a Vice Chairperson from its members, who shall serve for one year or until reelected or until their successors are elected.
- b. The Board of Adjustment shall appoint a Secretary, who may be a Town officer or an employee of the Town.

**03. QUORUM**

A quorum of three members shall be necessary to transact official business of the Board of Adjustment.

**04. MEETINGS**

Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at the other times as the Board may determine and as shown on the adopted annual meeting schedule.

**05. VOTING**

**a. SUPER MAJORITY REQUIRED FOR VARIANCE APPLICATIONS**

- i. Decisions on a Zoning-Related or a Water-Related Variance shall require the concurring vote of fourth-fifths of the members of the Board of Adjustment. Because the Board of Adjustment is comprised of five members, this means approval of a Variance requires at least four approving votes.
- ii. In cases where a regular member is absent or is recused from voting on a Variance due to a conflict of interest, an alternate member shall occupy their seat for the required hearing and vote.
- iii. In cases where a Variance can not be heard by at least four members, the case shall be continued until such time as it can be heard by at least four members.

**b. SIMPLE MAJORITY REQUIRED FOR ALL OTHER APPLICATIONS**

- i. The concurring vote of a simple majority of the Board members who are present and voting shall be required to decide an application for an Appeal, Special Use Permit, or Reasonable Accommodation.



- ii. In cases where a regular member is absent or is recused from voting on an Appeal, Special Use Permit, or Reasonable Accommodation due to a conflict of interest, an alternate member shall occupy their seat for the required hearing and vote.
- iii. In cases where an Appeal, Special Use Permit, or Reasonable Accommodation can not be heard by at least three members (the mandatory quorum to conduct business), the case shall be continued until such time as it can be heard by at least three members.

**06. ORDERS**

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

**E. QUASI-JUDICIAL APPEAL TO COURTS**

Persons with standing as defined in NCGS§160D-1402(c) may appeal a decision by the Board of Adjustment to the Superior Court for Hendsen County in accordance with NCGS§160D-1402.

**2.3.6. TECHNICAL REVIEW COMMITTEE**

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

**A. COMPOSITION**

- 01.** The Technical Review Committee is a group of Town staff members, such as the Planning Director and other technical staff or consultants involved in application review; public safety officials such as the Sherrif’s Department representative; Fire Marshal; Fire Chief; representatives from the utility providers; and representatives from external State, County, and Regional agencies like NCDOT or NCDRC.
- 02.** A full description of the Committee’s member composition shall be established in its rules of procedure.
- 03.** The Planning Director shall serve as the Chair of the Technical Review Committee.
- 04.** Attendance at meetings by some or all of the TRC members shall be at the discretion of the TRC Chair. In no instance shall the TRC Chair exclude participation of a TRC member in a TRC meeting.

**B. POWERS AND DUTIES**

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

**C. RULES OF PROCEDURE**

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

**2.3.7. TOWN STAFF**

**A. PLANNING DIRECTOR**

**01. DELEGATION**

The Town’s Planning Director shall serve as the Zoning Administrator, Subdivision Administrator, Special Flood Hazard Administrator, and Watershed Administrator, unless delegated to another staff member.

**02. POWERS AND DUTIES**

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

- a. Preside over the Technical Review Committee;
- b. Conduct pre-application conferences;
- c. Enforce the provisions of this Ordinance, including entering any building, structure, or premises, as provided by law, to perform any duty imposed by this Ordinance;
- d. Review and interpret Zoning Map boundaries;



- e. Apply remedies for violations of this Ordinance;
- f. Maintain the Official Zoning Map, Overlay District Map, and related materials;
- g. Process development applications and prepare staff reports as indicated in this Ordinance;
- h. Maintain public records pertaining to this Ordinance and to make those records available to members of the public upon request;
- i. Maintain rules of procedures for each review authority in this Ordinance;
- j. Provide technical assistance to review authorities, upon request; and
- k. Carry out any other powers and duties delegated by the Town Council that are consistent with this Ordinance and State law.

**B. FLOOD HAZARD ADMINISTRATOR**

**01. DESIGNATION**

The Planning Director shall serve as the Special Flood Hazard Administrator and shall implement the provisions of the Special Flood Hazard Area.

**02. POWERS AND DUTIES**

The Special Flood Hazard Administrator shall have the following powers and duties:

- a. Review and decide all Special Flood Hazard Permit applications in accordance with the applicable standards in this Ordinance;
- b. Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, State, and federal permits have been received;
- c. Prevent unauthorized encroachments into floodways and non-encroachment areas due to the high flood hazards in these areas;
- d. Obtain actual elevation (in relation to NAVD 1988 mean sea level) of the new level of ground elevation after completion of a fill operation, in accordance with the provisions of this Ordinance;
- e. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation;
- f. Obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state, or other allowable source, in order to administer the provisions of this Ordinance;
- g. When BFE data are provided but no floodway or non-encroachment area data have been provided, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other allowable source in order to administer the provisions of this Ordinance;
- h. Review and provide input on Water-Related Variance requests;
- i. Maintain all records that pertain to the administration of the Special Flood Hazard Area provisions, and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended;
- j. Make on-site inspections of work in progress, including the right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town of Mills River at any reasonable hour for the purposes of inspection;
- k. Issue stop-work orders as required in accordance with [Section <>, Violation of SFHA Controls](#), whenever a building, land, or part thereof is being developed, constructed, reconstructed, altered, filled, or repaired in violation of this Ordinance;
- l. Revoke Flood Hazard Permits as required in accordance with [Section <>, Violation of SFHA Controls](#); and
- m. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the Town of Mills River.



## § 2.4 REVIEW PROCESSES

### 2.4.1. OVERVIEW

- A.** This section describes the standard review processes, procedural steps, and rules generally applicable to every development application reviewed under this Ordinance, except where identified in the particular application type in Section <>, Specific Application Procedures.
- B.** Sub-sections are listed in chronological or sequential order as they relate to the application process rather than being listed in alphabetical order.

### 2.4.2. PURPOSE AND INTENT

This section establishes the standard review processes used by the Town for the processing of development applications filed under this UDO. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, residents, staff, and elected and appointed officials. The standards in this section are not intended as a substitute for the application of judgment or discretion by a review authority, when necessary and appropriate.

### 2.4.3. 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

##### 01. REQUIRED, OPTIONAL, OR NOT APPLICABLE

- a.** A pre-application conference is required before submittal of some applications, in accordance with Table <>, Application Types Table.
- b.** Pre-application conferences are optional while others do not have a pre-application conference associated with them, in accordance with Table <>, Application Types Table.
- c.** When a pre-application conference is not required, applicants may contact Town staff with questions about any development application procedure.
- d.** There are no limits on the number of pre-application conferences that may be conducted, though the Town may charge a pre-application fee for the third or any subsequent pre-application conference regarding the same project or development site.

#### C. DISCUSSIONS NON-BINDING

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

#### D. SCHEDULING

Applicants for a pre-application conference may schedule the conference by contacting the Planning Department in person, by email, or by phone.

#### E. SUBMITTAL REQUIREMENTS

- 01.** Pre-application conferences for development applications that include a Conservation Subdivision, Preliminary Plat, Site Plan, or Conditional Rezoning shall require the applicant to provide a generalized sketch of the development as part of the request to schedule a pre-application conference. Generalized site sketches do not need to be professionally prepared, and are not required to be to scale.
- 02.** For other types of development applications, the applicant may submit supplemental information regarding their application, as appropriate, with their request for a pre-application conference, though there is no requirement to submit any material in advance of the conference.



03. Material submitted during a pre-application conference is a matter of public record but is not binding on the Town or the applicant.

**F. PROCEDURE**

01. Based upon the scope and complexity of the proposal, a pre-application conference may take the form of a telephone call, video conference call, or in-person meeting at Town Hall, as determined by the Planning Director.
02. The pre-application conference shall include a presentation of the proposal by the potential applicant, including an overview of any submitted materials.
03. Town staff will identify the relevant Town standards and applicable policy guidance and will provide an overview of the appropriate application submittal and review process.
04. Pre-application conferences are conducted with some or all members of the Technical Review Committee, as determined by the Planning Director.

**G. EXPIRATION**

Applications subject to a mandatory pre-application conference shall be filed and accepted for review with the Town within six months of the conclusion of the pre-application conference or an additional pre-application conference shall be conducted.

**H. EFFECT**

01. When required, completion of a pre-application conference entitles an applicant to take the next step in the application process.
02. In cases where multi-part applications require more than one pre-application conference, an applicant may choose to conduct a single pre-application conference for all portions of a multi-part application or may choose to conduct individual pre-application conferences prior to filing of individual portions of the multi-part application.
03. Applications subject to a mandatory pre-application conference may not be filed until after the pre-application conference has been conducted.

**2.4.4. NEIGHBORHOOD INFORMATION MEETINGS**

**A. PURPOSE**

The purpose of the neighborhood meeting is to inform landowners and occupants of nearby lands about a development application that is going to be reviewed under this Ordinance, and to provide the applicant an opportunity to hear comments and concerns about the proposed development from landowners and occupants of nearby lands. It is not the intent of these standards to unreasonably delay or prevent an applicant from filing their development application.

**B. APPLICABILITY**

01. Neighborhood meetings are mandatory and shall be conducted by the applicant prior to filing an application for an unlimited Conditional Rezoning.
02. Neighborhood meetings for any other kind of application identified in **Table <>**, Application Types Table, are optional. However, the Town Council may, by simple majority vote on a motion during a public hearing, require a neighborhood meeting to be conducted before rendering a decision on an application they are deciding.
03. In cases of a multi-part application that includes two or more portions each requiring a neighborhood meeting, only one neighborhood meeting shall be required prior to the filing of the initial portion of the application.

**C. PROCEDURE**

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

**01. TIMING**

- a. The meeting shall start between the hours of 6PM and 8PM on a weekday.
- b. The meeting shall take place prior to the application being initially filed with the Town but no more than 60 days prior to the filing of the initial application.
- c. Nothing shall limit the Town Council from requiring one or more neighborhood meetings be conducted prior to the application being decided.



**02. LOCATION**

- a. The neighborhood meeting shall take place in a location open to the general public that is as close as possible to the site where development is proposed.
- b. In the event no suitable location open to the general public is available, the meeting may take place at a Town-owned or Town-operated site, subject to any Town requirements for its use.
- c. Virtual neighborhood meetings may be conducted when conducted in a manner consistent with the Town's policies for virtual meetings.

**03. NOTIFICATION**

- a. The applicant shall provide notification of the neighborhood meeting via first class mail to all landowners within 500 linear feet of the parcel(s) where development is proposed.
- b. Mailed notice shall be provided no less than ten days prior to the date of the neighborhood meeting.
- c. Landowners are advised that any required public notice of a subsequent development application will be provided in accordance with Section <>, Public Notice, which may be less than 500 feet from the parcel where development is proposed.
- d. Multiple meetings may take place, but advance notification for each meeting shall be provided in accordance with this subsection.

**04. INFORMATION PROVIDED**

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

- a. The purpose of the meeting;
- b. A description of the proposed development unless the application is for a Conventional Rezoning;
- c. The time, date, and location of the meeting;
- d. Telephone and email contact information for the applicant or applicant's representative; and
- e. Any additional information that would promote understanding of the development proposal.

**05. CONDUCT OF MEETING**

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

**06. STAFF ATTENDANCE**

Town staff may, in the sole discretion of the Planning Director, attend a neighborhood meeting but only in a professional capacity as a source of information about Town policy or requirements. Nothing shall limit a Town staff member from attending a neighborhood meeting as an interested citizen.

**07. WRITTEN SUMMARY**

The applicant shall submit a written summary of each neighborhood meeting, accompanied by copies of what was presented. At a minimum, the written summary shall include all of the following:

- a. A list of all parties and mailing addresses who were mailed a meeting notice;
- b. Written proof of mailing provided in accordance with Section <>, Notification;
- c. A copy of the meeting notice;
- d. A sign-in sheet of meeting attendees; and
- e. A list of the items discussed, including any questions posed by attendees and the answers provided.

**2.4.5. APPLICATION FILING**

**A. AUTHORITY TO FILE APPLICATIONS**

- 01.** Unless expressly stated otherwise in this Ordinance, development applications associated with a particular lot or site reviewed under this Ordinance shall be filed by the landowner, a contract purchaser with the owner's consent, an owner's authorized agent, or other person having a recognized property interest in the land on which development is proposed with the owner's consent.
- 02.** Third-party applications to downzone land shall be prohibited.
- 03.** Applications for a Conditional Rezoning must be signed by all landowners.



04. Applications for development on land owned by a corporate entity must include the signer's title, company name, and evidence of authorization to act on the corporate entity's behalf.
05. Applications for amendments to the text of this Ordinance shall only be initiated in accordance with Section <>, Text Amendment.
06. Nothing shall limit the ability to digitally complete and sign any development application provided in a digital format by the Town.

**B. APPLICATION CONTENT**

The Town shall establish development application content and forms, which shall be maintained by the Planning Director. Applications may only be completed on the forms provided by the Town.

**C. APPLICATION FEES**

01. Review of development applications in accordance with this section, including appeals (see Section <>, Appeal), shall require the payment of reasonable application fees upon submittal of an application.
02. The Town Council shall establish application fees and may amend and update those fees as necessary.
03. Application fees shall be published by the Town in a fee schedule.
04. Fees shall cover the costs of review, including public notification, as required.
05. No action shall be taken on an application and no application approval shall be issued until all required application fees are paid in full.
06. Application fees are not refunded for withdrawn or abandoned applications.

**D. APPLICATION FILING**

01. An application shall not be considered to be submitted until determined to be complete in accordance with Section <>, Determination of Application Completeness.
02. No application shall be reviewed or decided until after it is determined to be complete.
03. The provisions in Section <>, Permit Choice, shall only apply to applications that are complete.
04. Multiple concurrent applications may be filed and reviewed in accordance with Section <>, Simultaneous Processing.

**E. BURDEN OF PRESENTING COMPLETE APPLICATION**

The burden of presenting and maintaining a complete application shall be solely upon the applicant.

**F. DETERMINATION OF APPLICATION COMPLETENESS**

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

01. Contains all information and materials identified in this Ordinance and all supporting documentation, as required for submittal of the particular type of application;
02. Clarifies if the application is for multi-phased development, and if multi-phased, identifies the anticipated number of total phases;
03. Is in the form and number of copies required by the Town;
04. Is legible and printed to scale, where appropriate;
05. Is signed by the person(s) with the authority to file the application;
06. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
07. Is accompanied by the fee established for the particular type of application, when applicable;
08. Includes material associated with a pre-application conference, if one is required; and
09. Occurs only after conducting a neighborhood information meeting, if one is required.

**G. APPLICATION INCOMPLETE**

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



02. Following receipt of a notice of application deficiency by the Planning Director, an applicant may revise and resubmit the application or the applicant may file a written request to process the incomplete application.
03. Failure of an applicant to submit missing or deficient portions of an application or file a written request to process the incomplete application within 60 days of delivery of a written notice of application deficiency shall render the application abandoned.
04. In no instance shall an application that is abandoned or subject to a written request to process an incomplete application be considered a complete application subject to the protections described in [Section <>, Permit Choice](#).

#### **H. APPLICATION COMPLETE**

01. 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.
02. Nothing shall preclude the Planning Director or a review authority from re-evaluating an application for completeness in the event application inadequacies are revealed at a date subsequent to an application being declared complete. Such re-review shall not invalidate options or protections to a complete application extended under [Section <>, Permit Choice](#).

#### **I. TIMING**

Applications indicated for review by the Planning Board, Board of Adjustment, or Town Council must be deemed complete in accordance with the Town's adopted application review schedule.

#### **2.4.6. PERMIT CHOICE**

01. In cases where the applicable provisions of this Ordinance are amended between the time that an application is declared complete (see [Section <>, Determination of Application Completeness](#)) and when it is decided, the applicant may choose which version of this Ordinance shall apply to their application, in accordance with NCGS §§143-755 and 160D-108.
02. The applicant's decision shall be final, and review under a different set of requirements may only be accomplished through a withdrawal and re-submittal of the application.
03. The application shall be processed in accordance with the newest regulations unless the applicant requests, in writing, to have the application processed in accordance with the rules in place at the time of the application.
04. In cases where an applicant has had an opportunity to exercise permit choice under this section, and subsequently places their application on hold for a period of six consecutive months or more, the application shall be reviewed in accordance with the requirements in effect at the time the applicant requests recommencement of review.
05. In cases where an applicant has had an opportunity to exercise permit choice under this section, receives comments on the application or a request from the Town to provide additional information and fails to respond for a period of six consecutive months or more, the application shall be considered abandoned in accordance with [Section <>, Abandonment](#).
06. The right to permit choice is forfeited when an application is abandoned.

#### **2.4.7. STAFF REVIEW AND ACTION**

##### **A. STAFF REVIEW**

01. Applications shall be reviewed during the review cycle in place when the application is determined to be complete. Application review cycles are described in Town policy documents.
02. When an application is determined complete, it shall be distributed to all appropriate staff and review agencies for review and comment, and submitted for preparation of a staff report, in accordance with Town policy.
03. If deficiencies in complying with applicable standards of this Ordinance are identified, the Planning Director shall notify the applicant of the deficiencies during staff review.
04. Failure of the applicant to correct an application following the notification of compliance deficiency within six months shall render the application abandoned in accordance with [Section <>, Abandonment](#).



**B. STAFF REPORT AND RECOMMENDATION**

01. The Planning Director shall prepare a written staff report on any application to be reviewed or decided by the Town Council or the Board of Adjustment.
02. A staff report is not required for applications decided by a member of Town staff or the Technical Review Committee, though one may be prepared.
03. Except for applications for Variances, Appeals, or Special Use Permits, the staff report shall conclude whether the application complies with all applicable review standards of this Ordinance and adopted policy guidance, and recommend one of the decisions authorized for the particular type of application, based on the applicable review standards, in accordance with Section <>, Applications Subject to Decision by Town Staff.
04. The staff report shall not include a recommendation from Town staff on Variance, Special Use Permit, or Appeal applications.
05. 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.
06. 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.
07. Staff reports prepared for Conditional Rezonings, Special Use Permits, Variances, and Vested Rights Certificates may suggest conditions of approval for consideration by the review authority making the decision on the application.

**C. DISTRIBUTION OF APPLICATION AND STAFF REPORT**

The Planning Director shall take the following actions within a reasonable period of time before the application is scheduled for review:

01. Schedule and ensure any required public notice of the application is prepared in accordance with Section <>, Public Notice;
02. Transmit the application, related materials, and staff report to the appropriate review authority(ies);
03. Transmit a copy of the staff report and any related materials to the applicant and the landowner, if different from the applicant; and
04. Make the application, related materials, and staff report available for examination by the public.

**D. APPLICATIONS SUBJECT TO DECISION BY TOWN STAFF**

01. In cases where a development application is decided by the Technical Review Committee, the Planning Director, or another designated Town staff member, the appropriate review authority shall make one of the following decisions in writing, based on the review standards set forth in Section <>, Specific Application 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.
02. In some instances, Town staff may decide an application contingent upon further revision by the applicant in accordance with the direction provided in the decision.

**E. CONFLICT OF INTEREST**

Town staff shall comply with all applicable provisions in Section <>, Conflict of Interest.

**2.4.8. PUBLIC NOTICE**

**A. PUBLIC MEETINGS DISTINGUISHED FROM PUBLIC HEARINGS**

Applications subject to public hearings by the North Carolina General Statutes are required to provide public notice about the pending application to designated landowners in accordance with this section. Public meetings are not public hearings, and do not require the provision of individual public notice to designated landowners about a pending application in accordance with this section but must provide general public notification about the meeting in accordance with NCGS§143-318.12 (the “open meetings” law).



**B. PUBLIC HEARING SCHEDULING**

When a development application is subject to a public hearing, the Planning Director, or a designee, shall ensure that the public hearing is scheduled for a regular meeting, or a meeting specially called for that purpose by the review authority.

**C. PUBLIC NOTIFICATION REQUIREMENTS**

- 01.** All development applications subject to public notification shall comply with the appropriate standards in NCGS §§160A-31, 160A-58, 160D-406, 160D-601, 160D-602, 160D-1005, and other applicable sections of the North Carolina General Statutes.
- 02.** Table <>, Public Notification Requirements, summarizes the requirements for public notice, but in the event of a conflict with State law, State law shall prevail, even in cases where State law requires a reduced level of public notice.
- 03.** 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 &lt;&gt;: PUBLIC NOTIFICATION REQUIREMENTS</b>			
<b>TYPE OF DEVELOPMENT APPLICATION</b>	<b>TYPE OF PUBLIC NOTIFICATION REQUIRED (R= REQUIRED)</b>		
	<b>PUBLISHED [1]</b>	<b>MAILED [2]</b>	<b>POSTED [3]</b>
Annexation	R [4]	[5]	•
Appeal	•	R [6]	R
Development Agreement	R	R	R
Rezoning (Conditional and Conventional)	R [7]	R	R
Special Use Permit	•	R	R
Text Amendment	R	•	•
Variance (Water-Related and Zoning-Related)	•	R	R

**NOTES:**

[1] Notice shall be published once a week for two successive calendar weeks with the first notice published no more than 25 days nor less than 10 days before the public hearing.

[2] Notice shall be mailed to the applicant, affected property owners, and property owners of abutting land between 10 and 25 days before the public hearing.

[3] Notice shall be posted between 10 and 25 days before the public hearing.

[4] For annexations, notice shall only be required to be published once with the notice being published at least 10 days prior to the public hearing.

[5] In cases where the area being annexed is contiguous to the corporate limits but not served by a newspaper of general circulation, the Town shall provide posted notice in at least 3 locations within the area being annexed and 3 additional areas within the Town (a total of 6 locations).

[6] Mailed notice shall only be required in cases where the appeal pertains to a particular property.

[7] In the case of large-scale rezonings of 50 or more different landowners, mailed notice only provided to landowners residing outside the area of published notice circulation in accordance with NCGS §160D-602(b).

**D. PUBLISHED NOTICE REQUIREMENTS**

When the North Carolina General Statutes require that public notice be published, the Town staff member responsible shall publish a notice in a newspaper that is regularly published at least one time per week for two successive weeks in a newspaper that has general circulation in the Town.

**E. MAILED NOTICE REQUIREMENTS**

When the North Carolina General Statutes require that public notice be mailed, mailed notice shall be provided in accordance with the following:



01. The Town shall prepare the required mailed notice.
02. Mailed notice shall be provided to the last known address (as listed in Henderson County tax records) for each of the following:
  - a. The landowner;
  - b. The applicant, if different from the landowner;
  - c. Landowners of properties adjacent to the land that is the subject of the application, but also located across a street, railroad, or other transportation corridor; and
  - d. Any others who are entitled to receive mailed notice in accordance with NCGS§160D-602.
03. 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 <>, Notice Content.
04. The Town may, on a case-by-case basis, and in the sole discretion of the Town, provide additional mailed notice above and beyond the minimum statutory requirements. The Town is under no obligation to provide any additional notice beyond that specified by the General Statutes, and failure of the Town to provide mailed notice beyond that required by State law shall not impair the notice provided or invalidate the proceedings.
05. A copy of the mailed notice, the list of landowners receiving notice, and a certification of mailing by the Town staff member responsible shall be maintained in the offices of the Planning Department for public inspection during normal business hours.
06. Mailed notice shall not be required when a rezoning includes more than 50 lots or tracts owned by at least 50 different landowners, provided the Town publishes a map (occupying at least ½ 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 <>, Mailed Notice Requirements.

## F. POSTED NOTICE REQUIREMENTS

When the North Carolina General Statutes require that public notice be posted, the Planning Director or a designee shall provide the required posted public notice in accordance with the following:

01. 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).
02. 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.

## G. NOTICE CONTENT

Unless expressly indicated otherwise by the North Carolina General Statutes, all notices by mail, posting, or publication shall:

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

## H. CONSTRUCTIVE NOTICE

01. 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.
02. Failure of a party to receive written notice shall not invalidate subsequent action. A posted notice that becomes no longer visible due to weather, theft, or other unintended circumstances shall not invalidate proceedings if a bona fide attempt is made to comply with applicable posted notice requirements. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing and the location of the subject property shall be strictly adhered to.



**2.4.9. PUBLIC HEARINGS AND MEETINGS**

**A. HEARINGS DISTINGUISHED**

- 01.** Public hearings identified in this Ordinance shall be either legislative or evidentiary (quasi-judicial) in nature.
- 02.** A public meeting is not a public hearing.

**B. LEGISLATIVE PUBLIC HEARINGS**

Table <> Application Types Table, identifies the kinds of development applications decided following completion of a legislative public hearing, which shall be conducted in accordance with the following requirements:

**01. PROCEDURE**

- a.** Legislative public hearings shall not be conducted until after provision of required public notice in accordance with Section <>, Public Notice.
- b.** The legislative public hearing shall be open to the public and shall be conducted in accordance with the review authority's adopted rules of procedure for public hearings.
- c.** Attendees shall be afforded the opportunity to comment during a public hearing, as authorized in the adopted rules of procedure.

**02. VOTING**

- a.** The review authority shall consider the application, relevant support materials, staff report, any recommendations, and public comments. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section <>, Specific Application Procedures.
- b.** A review authority member shall not vote on an application if there is a conflict of interest in accordance with Section <>, Conflict of Interest.
- c.** A decision of the review authority on an application considered during a legislative public hearing shall be decided by a simple majority of the review authority members, excluding any members who are recused from voting due to a conflict of interest.

**03. APPLICATION REVISION**

- a.** Except in cases where an applicant has compelled the Town staff to process an incomplete application, an applicant may revise an application during a legislative public hearing in response to recommendations or suggestions of the public, the Town staff, or a review authority.
- b.** In cases where a substantial change to an application is proposed following review by a prior review authority, the review authority deciding the application shall determine if the prior review authority needs to re-review the application before a decision can be made.
- c.** The Town may provide additional public notice related to revision of an application on a case-by-case basis but is under no legal requirement to provide additional notice in cases where applications are revised in accordance with this section.
- d.** The review authority deciding the application may approve an application modified during a legislative public hearing provided that all changes are properly identified in the motion of approval and that any conditions of approval are consented to, in writing, by the applicant.
- e.** In cases where an application has been modified during a legislative public hearing, the applicant shall submit any necessary plans or other documents depicting the modification to the appropriate Town staff before notice of decision is provided.

**04. REMAND**

A review authority may remand the application to a prior review authority or Town staff for further consideration of new information or specified issues or concerns, if appropriate.

**05. RECORD**

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

**C. EVIDENTIARY PUBLIC HEARINGS**

Table <>, Application Types Table, identifies the kinds of development applications decided following an evidentiary public hearing, which shall be conducted in accordance with State law, the review authority's rules of procedure, and the following requirements:



**01. NOTICE REQUIRED**

Evidentiary public hearings shall not be conducted until after the provision of required public notice in accordance with Section <>, Public Notice.

**02. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE**

- a. The applicant, the Town, and any party with standing shall be afforded a reasonable opportunity to present testimony and evidence in support of or in opposition to the application, and to ask questions of or cross examine the applicant, the applicant's representatives, anyone providing testimony during the hearing, Town staff, and the Town staff's representatives.
- b. Determinations of standing shall be in accordance with NCGS§§160D-406(d) and 160D-1402(c).

**03. LIMITATION ON EVIDENCE**

- a. The Chair or other presiding officer may limit or exclude incompetent evidence, immaterial evidence, repetitive evidence, and personal attacks.
- b. Decisions shall not be based upon hearsay evidence though such evidence may be entered into the record.
- c. Only evidence presented during the public hearing may be relied upon in deciding the application.

**04. EX PARTE COMMUNICATION**

Ex parte communications between an applicant or an affected party and a member of the review authority are prohibited. If it occurs, it shall be disclosed during the evidentiary public hearing.

**05. VOTING**

**a. GENERALLY**

The review authority shall consider the application, relevant supporting materials, staff report, any recommendations, and testimony. After the conclusion of the public hearing, it shall make one of the decisions authorized for the particular type of application based on the review standards applicable to the application type, as set forth in Section <>, Application Types.

**b. CLEARLY STATE FACTORS FOR DECISION**

Unless stated otherwise in this Ordinance, the decision shall reflect the review authority's determination of any contested facts and their application to the applicable standards.

**c. CONFLICTS OF INTEREST**

A review authority member shall not vote on an application if there is a conflict of interest in accordance with Section <>, Conflict of Interest.

**06. APPLICATION REVISION**

- a. An applicant may revise an application during an evidentiary public hearing in response to recommendations or suggestions of the review authority, Town staff, or the parties with standing.
- b. The review authority may approve an application modified during an evidentiary public hearing provided all changes are properly identified in the motion of approval by the review authority and that any conditions of approval are consented to, in writing, by the applicant.
- c. In cases where an application has been modified during an evidentiary public hearing, the applicant shall submit any necessary plans or other documents depicting the modification to the appropriate Town staff before notice of decision is provided.

**07. DELAY OF DECISION**

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

**08. RECORD**

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

**D. PUBLIC MEETINGS**

Review of applications by the Technical Review Committee, Planning Board, and Town Council where public notice is not required shall be considered during public meetings not public hearings. Public meetings shall be conducted in accordance with the review authority's rules of procedure and the following requirements:

**01. PROCEDURE**

- a. Public meetings shall require public notification of the meeting in accordance with NCGS§143-318.12 but shall not require public notice of individual applications to adjacent landowners.



- b. The Town may choose, on a case-by-case basis, and in the sole discretion of the Town, to provide public notice of a public meeting to adjacent landowners in accordance with Town policy. The Town shall be under no legal requirement to provide public notice of a public meeting to adjacent landowners, and failure to do so shall not invalidate the proceedings.
- c. The public meeting shall be open to the public and shall be conducted in accordance with the review authority's adopted rules of procedure for public meetings.
- d. There is no requirement to allow public comment or testimony during a public meeting, though it may be provided at the Chair or other presiding officer's discretion.

**02. VOTING**

- a. A decision of a review authority during a public meeting shall be decided by a simple majority of the members present and voting.
- b. A review authority member shall recuse themselves from voting on an application when there is a conflict of interest in accordance with Section <>, Conflict of Interest.

**2.4.10. CONDITIONS OF APPROVAL**

- A.** Conditions of approval may be applied to Conditional Rezoning, Variances (Water- and Zoning-Related), Reasonable Accommodations, Special Use Permits, and Vested Rights Certificates, but may not be applied to administrative decisions. Administrative decisions may be decided subject to subsequent compliance with additional comments, but comments may not be discretionary or subjective.
- B.** 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.
- C.** Conditions shall be in writing and may be supplemented with text or plans and maps.
- D.** No condition shall be made part of the application which:
  - 01.** Specifies the ownership status, race, religion, or other characteristics of the occupants of housing units;
  - 02.** Establishes a minimum size of a dwelling unit;
  - 03.** Establishes a minimum value of buildings or improvements;
  - 04.** Excludes residents based upon race, religion, or income; or
  - 05.** Obligates the Town to perform in any manner relative to the approval of the application or the development of the land.
- E.** In no instance shall any of the following standards in this Ordinance be waived, reduced, or made less restrictive as part of an application:
  - 01.** Any of the applicable overlay district standards in Section <> Overlay Zoning Districts;
  - 02.** The maximum allowable residential density;
  - 03.** Applicable use-specific standards in Section <>, Standards for Specific Principal Uses;
  - 04.** The signage standards in Section <>, Signage, unless part of Alternative Plan; and
  - 05.** Technical requirements associated with public infrastructure.
- F.** All conditions of approval shall be consented to, in writing, by all owners of land or applicants subject to the conditions prior to delivery of a notice of decision (see Section <>, Written Notice of Decision).
- G.** All conditions of approval shall be identified in the approval, the notice of decision, and on any associated plans or plats.
- H.** Any condition of approval approved by the Town and the applicant shall become a part of the application approval and the applicant, landowner, or subsequent assign shall remain subject to its terms and requirements.

**2.4.11. WRITTEN NOTICE OF DECISION**

**A. CONTENT**

The notification of a decision on a development application shall be issued in the name of the applicant or applicant's agent, as appropriate, directed to the address(es) identified in the application materials, and shall identify the following:

- 01.** The land or matter subject to the application;
- 02.** A reference to any approved plans, as appropriate;



- 03. The approved use(s), if any; and
- 04. Any conditions of approval or other applicable requirements.

**B. TIMING**

The Planning Director shall provide the applicant written notification of a decision or action within a reasonable time after a final decision on a development application has been made.

**C. COPY OF DECISION**

- 01. In addition to providing the notification of a decision on an application to an applicant, the Planning Director shall make a copy of the decision available to anyone who submits a written request prior to the issuance of the decision.
- 02. The Planning Director shall also make a copy of the notice of decision available to the public in the Town offices during normal business hours.

**2.4.12. SIMULTANEOUS PROCESSING**

- A. Whenever possible, the Town shall process related development applications (e.g., a Site Plan and a Zoning Compliance Permit) simultaneously or concurrently where possible, subject to applicable sequency provisions in [Section <>](#), [Application Types](#).
- B. Generally speaking, establishment of an appropriate zoning designation is a prerequisite to other related application types. A request for variation, deviation, reduction, or adjustment from required standards is a prerequisite to development plan approval. Plan approval is a prerequisite to Building Permit approval.
- C. In the event a permit or development approval is a prerequisite to another permit or development approval (e.g., Administrative Adjustment or Variance approval prior to a Site Plan approval), applications may not be filed until all prerequisite approvals are obtained.
- D. Approval of one development application does not guarantee approval of any subsequent required development application.

**2.4.13. PHASED DEVELOPMENT**

Nothing shall prohibit the construction of development in phases, sections, or portions, provided the development complies with the following:

- A. Applications associated with phased development shall include plans that clearly identify each phase or stage, the location and extent of each phase or stage boundary, and the anticipated schedule of development (e.g., first stage, second stage, third stage, etc.).
- B. Phased development may provide only the required public infrastructure or other required site features concurrently with the active phase(s) of the development.
- C. Nothing shall limit the Town from requiring the establishment of public infrastructure or required site features in a physical location outside of the active phase(s) of development if such provision is necessary, in the sole discretion of the review authority, for the development to function as required.
- D. Provision of a Performance Guarantee (see [Section <>](#), [Performance Guarantee](#)) shall not be sufficient in cases where a review authority determines that required public infrastructure or required site features outside an active phase must be provided to ensure development functionality and/or public safety.
- E. Each new phase shall be developed contiguous or adjacent to an earlier phase, to the maximum extent practicable.

**2.4.14. ABANDONMENT, CONTINUANCE, OR WITHDRAWAL**

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

**A. PROCEDURE FOR CONTINUANCE OF APPLICATIONS SUBJECT TO A PUBLIC HEARING**

- 01. In cases where an applicant seeks a continuance of an application subject to a public hearing, but public notification of the hearing has not yet been provided, the Planning Director shall consider and decide the request.



02. If public notification of the pending public hearing has been provided in accordance with this Ordinance, the request for continuance shall be placed on the public hearing agenda and be considered by the review authority. Additional public notification may be required for a continued application.
03. A request for continuance may be approved in cases where the applicant needs additional time to prepare evidence, secure approval from outside agencies, bring the application into closer alignment with the Town's adopted policy guidance or the requirements of this Ordinance, or for good cause, as determined by the review authority.

### **B. WITHDRAWAL**

01. An applicant may withdraw an application at any time following submittal of a signed request to withdraw the application.
02. Application fees for withdrawn applications shall not be refunded.

### **C. ABANDONMENT**

01. In cases where Town staff has notified the applicant in writing of a deficiency or a need for additional information in order to review or process an application and six consecutive months have lapsed without the applicant correcting the deficiencies, the application shall be considered abandoned, and the review process shall be halted.
02. Abandoned applications are considered withdrawn and shall be subject to the standards in [Section <>](#) [Reconsideration of Denied Applications](#).
03. In accordance with NCGS§143-755, permit choice rights are extinguished following a determination of application abandonment, and any subsequent re-applications shall be reviewed for compliance with the standards in effect at the time of application filing.
04. Abandoned applications are returned to the applicant and application fees shall not be refunded.

## **2.4.15. RECONSIDERATION**

There is no time limit on resubmitting a withdrawn, denied, or abandoned application.

## **2.4.16. APPROVED APPLICATION AMENDMENT**

Except for Conditional Rezoning and Special Use Permits, application approvals identified as available for amendment in [Section <>](#), [Specific Application Procedures](#), shall only be amended in accordance with the standards in this section. Amendments to a development application approval shall be considered as minor modifications or major modifications, and must be considered in accordance with the following:

### **A. MINOR MODIFICATIONS**

01. Subsequent plans and permits for development may include minor modifications provided the development continues to meet the minimum requirements of this section. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the application approval.
02. The following minor modifications may be approved by the Planning Director, in consultation with other appropriate Town staff:
  - a. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions;
  - b. Changes to the configuration of parking areas, or an increase or decrease in the provided number of parking spaces by ten percent or less provided the use complies with the applicable off-street parking requirements;
  - c. Changes to the configuration or location of open space or placement of required amenities, provided the amount of open space (whether passive or active) is unchanged;
  - d. Changes to the configuration of landscape yards, including types of materials, provided minimum width and planting requirements are met;
  - e. Changes to the proposed building elevation or facade, including materials, provided that the change retains the same general architectural character and remains consistent with the design parameters established in the original approval; and



- f. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.
- 03.** In no instance shall a minor modification include any changes to the range of permitted uses or the overall density of the development.

**B. MAJOR MODIFICATIONS**

- 01.** Changes that materially affect the basic configuration of the development, a condition of approval, or that exceed the scope of a minor change modification are considered major modifications.
- 02.** Major modifications include, but are not limited to:
  - a. Increases in building height;
  - b. Changes in uses;
  - c. Changes in density or intensity;
  - d. Decreases in open space;
  - e. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected); and
  - f. Change in the location of any public easement.
- 03.** Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

**2.4.17. AS-BUILTS**

- A.** In cases where a development includes installation of new, or extension of existing public infrastructure (including public streets, public potable water lines, public sanitary sewer lines, public sidewalks, trails, greenways, or stormwater control devices) the applicant shall certify that public infrastructure is installed in accordance with all applicable requirements. Certification shall be prepared and signed by a professional engineer.
- B.** In addition to the required certification, the applicant shall also provide actual as-built plans for all public infrastructure to the Town prior to issuance of a Certificate of Compliance or a Certificate of Occupancy.
- C.** As-builts plans shall be prepared by and sealed by a professional engineer, and shall include:
  - 01.** A final grading plan with actual spot elevations, slopes, key contours;
  - 02.** Roadway/driveway geometry as built (widths, radii, tie-ins);
  - 03.** Sidewalks/paths/curb and gutter locations;
  - 04.** Associated retaining walls (length, height, top/bottom elevations);
  - 05.** Location and sizes of water lines, valves, hydrants, meters, backflow assemblies;
  - 06.** Location and sizes of sewer lines, manholes, cleanouts, service laterals;
  - 07.** Profiles of water lines and sewer lines;
  - 08.** Location and configuration of street-related storm drainage facilities, including pipes, structures, inlets, outfalls;
  - 09.** Rim and invert elevations, pipe sizes/materials, slopes; and
  - 10.** Separation distances (where required).
- D.** As-built plans associated with stormwater control measures, when required, shall include the following:
  - 01.** As-built layout of ponds, bioretention, and infiltration areas;
  - 02.** Key elevations (forebay, orifice, riser, emergency spillway, etc.);
  - 03.** Actual storage volumes (if required by permit);
  - 04.** Outlet structure details and device sizing;
  - 05.** Underdrains, cleanouts, observation wells;
  - 06.** Impervious area served (final calculated BUA);
  - 07.** Permanent stabilization methods;
  - 08.** Permanent groundcover areas;
  - 09.** Location of access, maintenance, and other easements; and
  - 10.** Final drainage patterns, if changed.



**2.4.18. EXPIRATION OF APPROVAL**

- A.** Unless otherwise specified in Section <>, Specific Application Procedures, application approvals issued under this Ordinance shall expire within one year of the written notice of decision if the work authorized has not been substantially commenced.
- B.** In the event the work authorized by an approval has substantially commenced, but has subsequently been delayed or failed to maintain substantial progress for a period of one year or more, the application approval shall expire in accordance with NCGS§160D-403(c).
- C.** The one-year period identified in this sub-section shall not include the period of time associated with enforcement actions, appeal, or litigation of an approval.
- D.** The duration of vested rights associated with an application approval shall be in accordance with Section <>, Vested Rights, unless otherwise stated in this Ordinance.

**§ 2.5 SPECIFIC APPLICATION PROCEDURES**

Each specific application herein, includes a procedural flowchart figure that depicts the specific steps in the application review process. The procedural flowcharts use a box for each step in the process with text inside the box describing the step in greater detail. Some boxes may include cross references to other parts of the Ordinance. Details on each individual step are described in greater detail in Section <>, Review Processes. Each procedural flowchart is color coded to depict differing responsibilities. White boxes indicate actions or responsibilities of the applicant. Light grey boxes indicate actions of Town staff. Dark grey boxes show the stage of the process where a recommendation or a decision is made (as appropriate). Applicants seeking greater detail on the steps in the application review process should consult Town staff.



**2.5.1. 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, but not density). The intent of the procedure is to provide relief from practical difficulties in complying with the standards of this Ordinance. Administrative Adjustments shall only be granted when the proposed development complies with all applicable requirements, including advancement of the purposes of this Ordinance as described in Section <>, Purpose and Intent of Ordinance.

**B. APPLICABILITY**

- 01.** Except where otherwise prohibited, an Administrative Adjustment may be requested for a modification or deviation to any of the following:
  - a. A zoning district dimensional standard in Chapter 3, Districts.
  - b. A numeric use-specific standard in Chapter 4, Land Uses.
  - c. A numeric requirement in Chapter 6, Standards.
- 02.** In no instance shall an Administrative Adjustment application seek to increase or reduce any of the following:
  - a. Increase the maximum allowable residential density on a lot;
  - b. Reduce the minimum required separation distance between two use types;
  - c. Reduce the requirements specified in a traffic impact analysis;
  - d. Reductions to the standards pertaining to the WSPO or the SFHA; or
  - e. Reductions to required infrastructure standards, including streets, potable water, or wastewater system requirements.
- 03.** Applications seeking a Variance shall not also be subject to a simultaneous Administrative Adjustment application.

**FIGURE <>: ADMINISTRATIVE ADJUSTMENT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director if submitted with another application, decision on Administrative Adjustment is rendered first
6	Written Notice of Decision
7	Review of Associated Applications (if applicable)

**C. AMOUNT OF ADJUSTMENT**

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

**TABLE <>: MAXIMUM ADJUSTMENT AMOUNT**

LOCATION AND/OR TYPE OF DEVELOPMENT	MAXIMUM AMOUNT OF ADJUSTMENT
Any proposed development in the Town Center (TNC) District	15%
Any proposed development within any other zoning district	10%

**D. APPLICATION FILING**

See Section <>, Application Filing.

**E. PROCEDURE**

The review procedure for an administrative adjustment shall be in accordance with Section <>, Application Summary Table, and Figure<>, Administrative Adjustment Procedure.

**F. DECISION**

The Planning Director shall decide an application for an Administrative Adjustment in accordance with the standards in Section <>, Review Criteria, and Section <>, Review Processes.



**G. REVIEW CRITERIA**

- 01.** The Administrative Adjustment is consistent with the type and maximum thresholds for an Administrative Adjustment established in this section;
- 02.** 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. Is necessary to allow for proper functioning of public or private infrastructure; or
  - c. Saves healthy existing trees; or
  - d. Helps limit the need for site grading or revision to existing drainage patterns;
- 03.** Approval of the Administrative Adjustment is not expected to pose a danger to the public health or safety;
- 04.** The Administrative Adjustment will not negatively impact the function or performance of on-site wastewater or stormwater management devices;
- 05.** Adverse impacts resulting from the Administrative Adjustment will be fully mitigated;
- 06.** The development requirement being adjusted is not the subject of a previously approved Administrative Adjustment, condition of approval, or Variance on the same site.

**H. EFFECTIVE DATE**

The Administrative Adjustment is effective on the date that the adjustment is granted.

**I. SEQUENCE**

- 01.** An Administrative Adjustment may be requested either as a stand-alone application, or in combination with another application for development review.
- 02.** In cases when submitted with another application, the Administrative Adjustment application shall be decided prior to the other associated application(s).
- 03.** Applications for Conditional Rezoning or Variances shall not include requests for Administrative Adjustments.

**J. EFFECT**

Approval of an Administrative Adjustment allows the approved form of modification, deviation, reduction, or adjustment, the approval of which shall not be considered to be in conflict with the applicable provisions of this Ordinance.

**K. AMENDMENT**

Amendment of an Administrative Adjustment approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**L. EXPIRATION**

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

**M. VESTING**

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

**N. APPEAL**

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



**2.5.2. ALTERNATIVE PLAN**

**A. PURPOSE AND INTENT**

- 01.** The Alternative Plan procedure allows for creativity of site design and configuration as part of a Site Plan or subdivision application review process. The Alternative Plan procedure is intended to allow a development configuration that does not fully comply with all applicable standards of Chapter 6, Standards, but that are found to be in closer alignment with the Town’s Adopted Policy Guidance or the provisions in Section <>, Purpose and Intent of Ordinance.
- 02.** The procedure is also included to help address difficult or challenging sites or instances when strict compliance with the applicable ordinance requirements is impractical or impossible.

<b>FIGURE &lt;&gt;: ALTERNATIVE PLAN PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	Consideration of Site Plan or Other Associated Permits

**B. APPLICABILITY**

- 01.** Review of an Alternative Plan may be proposed as part of any application for development that deviates from any of the following sections:
  - a. Section <>, Architectural Standards and Guidelines;
  - b. Section <>, Exterior Lighting;
  - c. Section <>, Landscaping and Screening;
  - d. Section <>, Parking and Loading; and
  - e. Section <>, Signage.
- 02.** Applications for deviations from or other section in Chapter 6, Standards, shall be reviewed in accordance with Section <>, Approved Application Amendment.

**C. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** Requests for an Alternative Plan shall be filed prior to or as part of an application for a Site Plan, subdivision plat, and/or Sign Permit.

**D. PROCEDURE**

The review procedure for an Alternative Plan shall be in accordance with Section <>, Application Summary Table, and Figure <>, Alternative Plan Procedure.

**E. DECISION**

The Planning Director shall decide an application for an Alternative Plan in accordance with the standards in Section <>, Review Criteria, the applicable provisions in Chapter 6, Standards, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

- 01.** The Alternative Plan request is permitted by this Ordinance, and does not seek to modify an already-approved Site Plan or subdivision, which may be modified in accordance with Section <>, Approved Application Amendment;
- 02.** The Alternative Plan is proposed in response to an allowable site condition or challenge;
- 03.** The type of modification or deviation is among those permitted by this Ordinance;
- 04.** The application provides sufficient detail to evaluate the request in light of applicable standards;
- 05.** The applicant can adequately demonstrate the development anticipated by the Alternative Plan is in closer alignment with the Town’s Adopted Policy Guidance or the standards in Section <>, Purpose and Intent of Ordinance, than a strict application of the applicable standards; and
- 06.** In the case of an Alternative Plan for architectural standards:
  - a. The proposed deviations or alternatives maintain compatibility of design and character with other development in the immediate vicinity and avoid creating undue visual prominence of the development seeking alternative compliance;
  - b. The Alternative Plan proposes innovative, but appropriate, use of materials and design techniques in response to unique characteristics of the specific site, if applicable;



- c. The proposal is in response to legitimate site constraints, building reuse efforts, sustainability goals, topography, lot configuration, or other practical design conditions; and
  - d. The Alternative Plan provides a demonstrable benefit such as adaptive reuse, environmental performance, housing affordability, or site preservation.
- 07.** In the case of an Alternative Plan for signage:
- a. The proposed design, size, color, illumination, and placement of signage is compatible in style and character with the site, any surrounding structures, and/or the district character or architectural character of the area in which it is located;
  - b. The Alternative Plan proposes innovative, but appropriate, use of materials and design techniques in response to unique characteristics of the specific site, if applicable; and
  - c. The anticipated signage will be consistent with approved neighborhood plans, studies, or area plans.

**G. SEQUENCE**

- 01.** Applications for an Alternative Plan may be filed concurrently with a Site Plan, subdivision, or other application but the Alternative Plan shall be reviewed and decided prior to consideration of a Site Plan, subdivision, or other application.
- 02.** In no instance shall a Sign Permit application be submitted on a lot or site proposed for development requiring Site Plan or subdivision approval until the Site Plan or subdivision approval has been made.

**H. EFFECT**

Approval of an Alternative Plan permits review of the associated Site Plan, subdivision, Sign Permit, or other approval type.

**I. AMENDMENT**

Amendment of an Alternative Plan approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. EXPIRATION**

An Alternative Plan approval shall not expire unless subject to a conditional of approval specifying the timing by which the approved development feature must be established, and the applicant fails to meet the required timing condition. In the event an Alternative Plan expires, it shall be null and void.

**K. VESTING**

Not Applicable.

**L. APPEAL**

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



**2.5.3. ANNEXATION**

**A. PURPOSE AND INTENT**

The purpose of this section is to provide the framework for the addition of lands to the Town's corporate limits based upon landowner request.

**B. APPLICABILITY**

- 01.** The Town may review and decide voluntary Annexation petitions from:
  - a.** The owners of land that is contiguous to the Town's primary corporate limits; and
  - b.** The owners of land that is not contiguous to the primary corporate limits when the proposed satellite annexation complies with the following standards:
    - i.** The area must be so situated that the Town will be able to provide the same services as it provides within its primary corporate limits; and
    - ii.** The nearest point on the proposed satellite annexation is not more than three miles from the primary corporate limits of the Town; and
    - iii.** No portion of the land proposed for annexation is closer to the contiguous corporate limits of another municipality unless the land is subject to an approved annexation agreement between the Town and the other municipality; and
    - iv.** If the land proposed for annexation is part of a recorded subdivision as defined in NCGS§160D-802, all lots in the recorded subdivision are part of the annexation petition; and
    - v.** The area within the proposed satellite annexation, when added to the area within all other satellite annexations by the Town of Mills River, does not exceed ten percent of the area within the primary corporate limits of the Town.
- 02.** The Town may accept voluntary Annexation petitions from landowners of land that does not meet the criteria in sub-section (01) above, but may not decide them until the application is consistent with sub-section (01) above.

**C. APPLICATION FILING**

- 01.** The Annexation petition shall be signed by all the owners of land proposed for annexation.
- 02.** An Annexation petition shall include a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under NCGS§160D-108.
- 03.** The application shall identify the volunteer fire district where the land subject to the Annexation petition is located.
- 04.** An Annexation petition shall not require a neighborhood meeting to be conducted prior to submittal of the petition.

**D. PROCEDURE**

The review procedure for Annexation shall be in accordance with Section <>, Application Summary Table, **Figure <>**, Annexation Procedure, and the following:

- 01.** Following receipt of an Annexation petition the Town Council shall direct the Town Clerk to investigate the sufficiency of the petition.
- 02.** The Town Clerk shall investigate and certify whether the petition is legally sufficient. Only legally sufficient petitions shall be considered by the Town.
- 03.** The Planning Director or Finance Director shall review the petition and comment on the Town's ability to provide municipal services prior to consideration of the petition's legal sufficiency by the Town Council.
- 04.** The Town shall notify the applicable fire district where the land is located.
- 05.** Following investigation by the Town Clerk and the Planning Director, the Town Council shall determine if the petition is legally sufficient. If the petition is determined to be legally sufficient, the Town Council shall schedule a public hearing to consider the petition.
- 06.** The Planning Board shall not review the application.

**FIGURE <>: ANNEXATION PROCEDURE**

STEP	ACTION
1	Pre-Application Conference
2	File Voluntary Annexation Petition
3	Completeness Determination
4	Staff Review
5	Certification of Sufficiency by Town Council
6	Public Notification of Public Hearing
7	Decision by Town Council Including effective date of annexation
8	Notification of Decision
9	Recordation



07. If the Annexation petition is approved, the applicant shall be responsible for preparation of a plat suitable for recording with the Register of Deeds to document the annexation.

### **E. DECISION**

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

### **F. REVIEW CRITERIA**

01. The Annexation petition bears the signatures of all landowners within the area to be annexed;
02. The area to be annexed can be adequately served by the same municipal services provided within the Town's primary corporate limits;
03. The debt obligations from serving the subject lands do not exceed the anticipated revenues to the Town;
04. If any of the land that is the subject of an Annexation petition is also proposed for a subdivision, the entire land area occupied by the subdivision is included in the Annexation petition; and
05. 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.

### **G. DECISION**

01. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with the standards in Section <>, Review Criteria.
02. 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.

### **H. EFFECTIVE DATE**

#### **01. CONTIGUOUS ANNEXATIONS**

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

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

#### **02. NONCONTIGUOUS OR SATELLITE ANNEXATIONS**

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

### **I. RECORDATION**

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

### **J. SEQUENCE**

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



**K. EFFECT**

- 01.** 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.
- 02.** In cases where land to be annexed is located in a volunteer fire district subject to debts, the applicant for annexation shall submit payment to the Town corresponding to the land's proportional share of all debt obligations within the particular volunteer fire district owed by the Town. The Town shall notify the applicant of the applicable amount of the payment.
- 03.** In cases where the applicant does not make payment upon annexation, the Town may require execution of a Development Agreement, or other Town-accepted process for securing the land's pro rata share of applicable debt obligation from the applicant as part of annexation.

**L. EXPIRATION**

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

**M. APPEAL**

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



**2.5.4. APPEAL**

**A. PURPOSE AND INTENT**

The purpose for this section is to establish a clear procedure for appealing decisions made by Town Staff or the TRC. It clarifies that some appeals of administrative decisions are heard by the BOA while others are heard by the courts (like appeals decisions related to subdivisions – see NCGS§1403) or other bodies (like the North Carolina Residential Building Code Council). The section clarifies that decisions by the BOA and the Town Council are appealed to the Superior Court for Henderson County. Original civil actions may also be taken directly to Superior Court. The procedure also identifies review criteria for appeals.

**B. APPLICABILITY**

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

**C. APPEALS NOT REGULATED BY THIS ORDINANCE**

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

**01. DECISIONS BY BOARD OF ADJUSTMENT**

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

**02. DECISIONS BY TOWN COUNCIL**

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

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

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

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

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

**FIGURE <=>: APPEAL PROCEDURE**

STEP	ACTION
1	<b>Pre-Application Conference</b> (optional)
2	<b>File Notice of Appeal</b> -Filed with the Planning Director -Must be filed within 30 days of the date of the decision being appealed
3	<b>Completeness Determination</b> Application must include: - -Error/decision being appealed - Date of decision/error - - Grounds for appeal - All related support material
4	<b>Staff Review</b> Transmittal of record and notice of appeal to the BOA
5	<b>Public Notification</b>
6	<b>Decision by Board of Adjustment</b>
7	<b>Notification of Decision</b>



**i. VALIDITY OF ACTION**

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

**ii. PROCEDURAL FLAW**

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

**03. ORIGINAL CIVIL ACTIONS**

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

- a. Unconstitutional;
- b. Beyond statutory authority;
- c. Pre-empted by State law; or
- d. A taking of all property value.

**D. STANDING TO APPEAL A DECISION BY A TOWN STAFF MEMBER**

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

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

**E. INITIATION**

- 01.** An applicant, property owner, or other person with standing shall initiate an Appeal by filing a notice of appeal with the Planning Director within 30 days of the date they receive the written notice of decision being appealed.
- 02.** Receipt of written notice of decision provided via first class mail in accordance with NCGS§160D-403(b) shall be deemed to be received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- 03.** Petitions for appeal shall specify the grounds for the Appeal.
- 04.** The Planning Director shall transmit to the Board of Adjustment all the papers constituting the record upon which the action being appealed was taken.

**F. PROCEDURE**

The review procedure for an Appeal of a Town staff member decision or action shall be in accordance with Section <>, Application Summary Table, and Figure<>, Appeal Procedure.

**G. DECISION**

The Board of Adjustment shall decide an Appeal of a Town staff decision or action in accordance with the applicable standards in the North Carolina General Statutes, Section <>, Review Criteria, and Section <>, Review Processes.

**H. REVIEW CRITERIA**



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

### **I. DECISION**

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

### **J. EFFECT**

- 01.** The filing of an appeal shall stay all of the following:
  - a. Any further proceedings or actions conducted by the applicant except in such cases where such stoppage would cause imminent peril to life or property as determined by the Planning Director;
  - b. The application of any further remedies for violation of this Ordinance by the Town; and
  - c. The accumulation of any further fees or fines associated with violation of this Ordinance.
- 02.** In cases where the Town official from whose decision an appeal is taken certifies to the Board of Adjustment that a stay would cause imminent peril to life or property or would seriously interfere with enforcement of this Ordinance; administrative proceedings shall not be stayed except through issuance of a restraining order by a court of competent jurisdiction.
- 03.** In the event enforcement proceedings are not stayed by an Appeal, the appellant may file a request for an expedited hearing of the appeal in accordance with NCGS§160D-405(f), and the Board of Adjustment shall conduct a meeting to hear the Appeal within 15 days of the date the request for an expedited hearing is filed.
- 04.** Nothing shall prevent the Board of Adjustment from staying the issuance of any final approval of development applications, including Building Permits, affected by the issue being appealed in accordance with NCGS§160D-405(f).

### **K. EXPIRATION**

Not applicable.

### **L. APPEAL**

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

## **2.5.5. BUILDING PERMIT**

Building Permits shall be submitted, reviewed, and approved in accordance with the applicable requirements and review procedures of the Henderson County Permits and Inspections Department.



**2.5.6. CERTIFICATE OF COMPLIANCE**

**A. PURPOSE AND INTENT**

The purpose of the Certificate of Compliance procedure is to ensure that a proposed development has been constructed in accordance with all applicable requirements of this Ordinance and any applicable conditions of approval prior to issuance of a Certificate of Occupancy by the Henderson County Inspections and Permitting Department.

**B. APPLICABILITY**

- 01.** Any development subject to the requirement to obtain a Certificate of Occupancy shall be subject to the requirement to obtain a Certificate of Compliance from the Town prior to issuance of the Certificate of Occupancy.
- 02.** A Certificate of Compliance shall be required prior to issuance of a Temporary Certificate of Occupancy.

**C. APPLICATION FILING**

See Section <>, Application Filing.

**D. PROCEDURE**

A Certificate of Compliance shall be decided in accordance with Section <>, Application Summary Table, and Figure <>, Certificate of Compliance Procedure.

**E. DECISION**

The Planning Director shall decide an application for an Certificate of Compliance in accordance with the standards in Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

An application for a Certificate of Compliance shall be approved in cases where the land, building, structure, and proposed use complies with:

- 01.** All relevant standards of this Ordinance;
- 02.** Any other applicable Town requirements;
- 03.** All applicable conditions of approval;
- 04.** The Building Permit;
- 05.** All applicable State Building Code or Residential Building Code requirements; and
- 06.** All applicable State and federal requirements.

**G. SEQUENCE**

Applications for a Certificate of Compliance may not be filed until work authorized by a Building Permit or an approved Final Plat has been completed, or an application for a Performance Guarantee has been approved in accordance with Section <>, Performance Guarantee.

**H. EFFECT**

Approval of Certificate of Compliance allows an applicant to proceed with application for Certificate of Occupancy with Henderson County. In no instance shall the County issue a Certificate of Occupancy or Temporary Certificate of Occupancy unless and until a Certificate of Compliance has been issued.

**I. EXPIRATION**

Not applicable.

**J. APPEAL**

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

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

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	File Request for Certificate of Occupancy



**2.5.7. CERTIFICATE OF OCCUPANCY**

Certificates of Occupancy shall be submitted, reviewed, and approved in accordance with the applicable requirements and review procedures of the Henderson County Permits and Inspections Department.

**2.5.8. 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 conventional zoning district are inadequate to appropriately address the anticipated impacts generated by development or the unique features of a development site. The conditional zoning district, if approved, establishes a unique zoning district that is tailored to the specific proposal and subject to unique conditions of approval. It is the intent of these standards to provide a process where an applicant may voluntarily place additional limitations on the development potential of their land. It is also intended to allow an applicant to request greater flexibility in the application of some development requirements in pursuit of a higher quality of development.

**B. APPLICABILITY**

- 01.** This procedure is solely for the establishment of a conditional zoning district designation on land within the Town’s planning jurisdiction.
- 02.** In no instance shall a Conventional Rezoning application be converted to a Conditional Rezoning application, nor shall a Conditional Rezoning application be converted to a Conventional Rezoning application.
- 03.** In no instance shall any lot or tract that is the subject of a Conditional Rezoning application also be the subject of any other rezoning application at the same time.

**C. CONDITIONAL REZONING TYPES DISTINGUISHED**

All Conditional Rezoning applications shall seek to establish one of the following two forms of conditional zoning district:

- 01.** A Type 1, Limited Conditional Rezoning application to establish a “limited” conditional zoning district, which include an applicant-sponsored reduction in the range of allowable use types but no other deviations from any required standards in this Ordinance; or
- 02.** A Type 2, Unlimited Conditional Rezoning application to establish an “unlimited” conditional zoning district, which is subject to a Concept Plan and applicant-sponsored conditions that may be more or less restrictive than other applicable Ordinance standards, subject to the standards in Section <>, Limitations on Reductions, and Section <>, Conditions of Approval.

**D. APPLICATION FILING**

- 01.** All Conditional Rezoning applications shall:
  - a.** Be initiated and signed by all the landowner(s) of the land subject to the application;
  - b.** Include all applicant-proposed conditions of approval;
  - c.** Include a detailed written description of the range of potential principal and secondary use types, which shall be treated as a condition;
  - d.** Not include a Concept Plan in cases where the application is a Type 1 Conditional Rezoning application (see Section <>, Conditional Rezoning Types Distinguished);

**FIGURE <>: CONDITIONAL REZONING PROCEDURE**

STEP	ACTION
1	Pre-Application Conference
2	Neighborhood Meeting required for unlimited applications
3	File Application -Must be signed by all landowners - Must include details from neighborhood meeting, if conducted - Type 2 applications require concept plans - Must include proposed conditions of approval, if any
4	Completeness Determination
5	Staff Review Includes concept plan review by TRC and comments by Town staff
6	Review and Recommendation by Planning Board
7	Public Notification
8	Decision by Town Council Must include written statement of reasonableness and consistency with adopted policy guidance
9	Notification of Decision
10	Amend Official Map
11	Proceed with Subdivision or Site Plan Application(s)



- e. Include a Concept Plan prepared in accordance with Section <>, Concept Plans Associated with a Type 2 Conditional Rezoning, if a Type 2 Conditional Rezoning application seeking to enhance, reduce, or otherwise deviate from an applicable dimensional, or development standard in this Ordinance;
  - f. Include a Traffic Impact Analysis, when required by Section <>, Traffic Impact Analysis;
  - g. Identify requests for reductions from applicable standards in this Ordinance when requested and why such requests are necessary; and
  - h. Provide evidence indicating the ways in which a Type 2 Conditional Rezoning seeking a reduction from standards in this Ordinance will result in development that is in closer alignment with Section <>, Purpose and Intent of Ordinance, and the Town's adopted policy guidance.
- 02.** Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
- 03.** Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.
- 04.** Review of applications for a conditional rezoning on land located within a designated Voluntary Agricultural District or Enhanced Voluntary Agricultural District shall not be commenced until at least 120 days after provision of a recommendation on the proposed rezoning are provided by the Henderson County Agricultural Advisory Board and the Mills River Agricultural Advisory Committee (see Section <>, Rezoning of an Agricultural District).

**E. PROCEDURE**

- 01.** The review procedure for a Conditional Rezoning shall be in accordance with Section <>, Application Summary Table, and Figure <>, Conditional Rezoning Procedure.
- 02.** The Technical Review Committee shall review and comment on all Concept Plans filed with a Conditional Rezoning application prior to consideration of the application by the Planning Board.

**F. RECOMMENDATION**

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

**G. CITIZEN COMMENT**

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

**H. APPLICATION REVISION**

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

- 01.** Changes shall be made in writing to the Planning Director; and
- 02.** Changes shall be signed by all landowners or their agents.

**I. DECISION**

- 01.** After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance the standards in Section <>, Review Criteria.
- 02.** The decision shall be one of the following:
- a. Approval of the application;
  - b. Denial of the application;
  - c. Approval of a revised application; or
  - d. Remand of the application to the Planning Board or the Technical Review Committee for further consideration.



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

**J. REVIEW CRITERIA**

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

01. If the application is consistent with the applicable standards in Section <>, Conditional Zoning Districts;
02. Whether the proposed Conditional Rezoning advances the public health, safety, or welfare;
03. 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;
04. Whether an approval of the Conditional Rezoning is reasonable and in the public interest;
05. Whether the mandatory time period between consideration of the application by the local Agricultural Advisory Board and the Planning Board has taken place for lots located within a Voluntary Agricultural or Enhanced Voluntary Agricultural District;
06. Whether and the extent to which the Concept Plan associated with the Conditional Rezoning is consistent with this Ordinance; and
07. Any other factors the Town Council may determine to be relevant.

**K. CONDITIONS**

01. Only conditions mutually agreed to by the applicant and the Town Council may be approved as part of a Conditional Rezoning.
02. Conditions shall be limited to those that address conformance of development and use on the site with Town regulations and adopted policy guidance and that address the impacts reasonably expected to be generated by the development or use of the site.
03. All conditions shall comply with Section <>, Conditions of Approval.
04. Conditions shall be in writing and may be supplemented with text, plans, or maps as permitted by this Ordinance.
05. The Concept Plan approved as part of a Type 2 Conditional Rezoning shall be considered as a condition of approval and referenced in the Conditions of Approval associated with the application.
06. In the case of disagreement between an applicant and the Town as to whether or not a Concept Plan or narrative includes the necessary degree of specificity or the clear intent that a depicted development configuration feature warrants treatment as a condition of approval, the Planning Director shall decide the issue in accordance with Section <>, Determination.
07. The Town Council may suggest that a condition of approval be attached to a Conditional Rezoning that permits the Town Council to initiate a Town-sponsored rezoning to revert the land that is the subject of a Conditional Rezoning approval to its prior zoning district designation (or the closest approximation thereto) in cases where an applicant has failed to secure a Building Permit for the proposed development within three years of the Conditional Rezoning Approval.
08. All applications for a Conditional Rezoning shall be supplemented with a condition of approval addressing the requirements in Section <>, Reversion.

**L. DESIGNATION**

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

**M. SEQUENCE**



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

**N. EFFECT**

- 01.** In cases where the Town Council approves a Conditional Rezoning application deemed to be inconsistent with the Town’s adopted policy guidance, the Conditional Rezoning approval shall also have the effect of amending any applicable future land use map included in the Town’s adopted policy guidance, and no additional request or application for a comprehensive plan amendment shall be required.
- 02.** Lands subject to an approved Conditional Rezoning shall be subject to all the standards, conditions, and plans approved as part of that application.
- 03.** Regardless of the type of Conditional Rezoning application, the development shall be subject to subsequent review and approval of a Site Plan or Subdivision Plat, as required under this Ordinance.

**O. AMENDMENT FOLLOWING APPROVAL**

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

**01. MINOR MODIFICATIONS**

- a.** Subsequent plans and permits for development may include minor modifications provided the development continues to meet the minimum requirements of this section. Minor modifications are limited to changes that have no material effect on the character of the development or changes that address technical considerations that could not reasonably be anticipated at the time of the application approval.
- b.** Minor modifications shall be reviewed and decided by the Planning Director, in consultation with other appropriate Town staff.
- c.** Minor modifications shall be limited to the following:
  - i.** Changes in phase boundaries provided the perimeter location of the development is unaffected;
  - ii.** Revisions to phase boundaries provided each phase is adequately served by necessary infrastructure, stormwater control measures, and open space;
  - iii.** Realignment of internal transportation infrastructure provided the proposed street continuation configuration of the development, or the phase is not reduced or altered in ways that reduce the degree of street continuation;
  - iv.** Changes to the location of entrances or driveways by 100 feet or less;
  - v.** Changes to the configuration of parking areas, but not the number of parking spaces and provided the parking area continues to meet Ordinance requirements for access and circulation;
  - vi.** Changes to the configuration of landscape yards, including types of landscaping or screening materials, provided minimum width and planting requirements continue to be met;
  - vii.** Changes to the proposed building elevation or facade, including materials, provided that the change retains the same general architectural character, remains consistent with the design parameters established in the original approval, and provided the overall height of the building is not increased; and
  - viii.** Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.
- d.** In no instance shall a minor modification include any changes to:
  - i.** The range of permitted uses;
  - ii.** The overall density of the development; or
  - iii.** Site features that require the application of professional judgment or discretion by a licensed landscape architect, architect, or professional engineer.

**02. MAJOR MODIFICATIONS**

- a.** Changes that materially affect the basic configuration of the development, a condition of approval, or that exceed the scope of a minor change modification are considered major modifications.
- b.** Major modifications include, but are not limited to:
  - i.** Increases in building height;
  - ii.** Changes in uses;



- iii. Changes in density or intensity;
  - iv. Decreases in open space;
  - v. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected);
  - vi. Changes to the location of entrances or driveways by more than 100 feet;
  - vii. Change in the location of any public easement; and
  - viii. Changes to site features that require the application of professional judgment or discretion by a licensed landscape architect, architect, or professional engineer.
- c. Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

**P. EXPIRATION**

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

**Q. REVERSION**

In cases where the Town has proposed, and the applicant has accepted, a condition of approval permitting the Town to initiate a zoning map amendment to revert the land to its prior conventional zoning district classification (or the closest corresponding conventional zoning district) unless an application for a Building permit (or other similar permit for uses which do not involve the construction of a structure) for any part of the associated concept plan is submitted within two years of the initial approval, the Town may initiate such amendment without obtaining landowner consent.

**R. VESTING**

- 01.** The establishment of a conditional zoning district shall run with the land, but a Concept Plan associated with a Conditional Rezoning application shall be subject to Section <>, Site-Specific Vesting Plan, or Section <>, Multi-phase Development Plan, as appropriate.
- 02.** Applicants seeking a longer vesting term longer than that authorized by the approval may file an application in accordance with Section <>, Vested Rights Certificate.

**S. APPEAL**

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



**2.5.9. CONSERVATION SUBDIVISION**

**A. PURPOSE AND INTENT**

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

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

**B. APPLICABILITY**

**01. TYPE OF DEVELOPMENT**

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

**02. WHERE PERMITTED**

Conservation subdivisions, configured as single-family detached residential dwelling subdivisions of more than eight lots may be permitted on land in accordance with the standards in this section and Section <>, Listing of Common Principal Uses.

**03. RELATIONSHIP TO WATERSHED PROTECTION OVERLAY DISTRICT**

Land located within a Watershed Protection Overlay District may be configured in accordance with the cluster development option in Section <>, Cluster Development, provided the development complies with the requirements in this section.

**C. APPLICATION**

See Section <>, Application Filing.

**D. PROCEDURE**

The Planning Director shall decide an application for a Conservation Subdivision after preparation and review of a Conservation and Development Plan, in accordance with Section <>, Application Summary Table, and **Figure <>**, Conservation Subdivision Procedure.

**E. CONSERVATION AND DEVELOPMENT PLAN**

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

**01. STEP 1: SITE ANALYSIS MAP**

**FIGURE <>: CONSERVATION SUBDIVISION PROCEDURE**

STEP	ACTION
1	Pre-Application Conference
2	Neighborhood Meeting (optional)
3	File Application / Site Analysis Map Submitted to the TRC
4	Conduct Site Inspection With TRC or Planning Director
5	Prepare and File Application / Conservation and Development Plan
6	Completeness Determination
7	Staff Review
8	Review and Decision by Planning Director
9	Notification of Decision
10	File Preliminary Plat Application



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

**02. STEP 2: SITE INSPECTION**

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

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

**03. STEP 3: CONSERVATION AND DEVELOPMENT PLAN**

Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a Conservation and Development Plan. The Conservation and Development Plan shall include the following:

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

**04. STEP 4: REVIEW**

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

**F. REVIEW CRITERIA**

**01. LOCATION**

Conservation Subdivisions shall be configured to minimize the visibility of new dwellings from adjacent developed lands and roadways located outside the proposed Conservation Subdivision. Techniques to achieve this location criteria include placement of lots in areas not visible from roadways or adjacent developments, retention of existing vegetation, or installation of berms or new landscaping material.

**02. MINIMUM PROJECT SIZE**

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

**03. REQUIRED CONSERVATION AREA**

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

**04. MAXIMUM RESIDENTIAL DENSITY**

A Conservation Subdivision shall not include a maximum residential density that exceeds the maximum allowable residential density for lots in the applicable base or overlay zoning district.

**05. DIMENSIONAL REQUIREMENTS**

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

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

**06. LAND USED FOR AGRICULTURE OR FORESTRY**



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

**G. OWNERSHIP OF CONSERVATION AREAS**

A conservation area shall be owned jointly by a recognized homeowners' or property owners' association, which shall be established in accordance with Section <>, Owners' Associations, or may be dedicated to a not-for-profit organization that specializes in land conservation and preservation.

**H. SEQUENCE**

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

**I. EFFECT**

- 01.** Approval of a Conservation Subdivision permits preparation and review of the associated Preliminary Plat, but shall not authorize any other kind of development activity.
- 02.** Development contemplated in a Conservation Subdivision shall not be commenced until after approval of a Preliminary Plat and Construction Drawings, if applicable.

**J. AMENDMENT**

Amendment of a Conservation Subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**K. EXPIRATION**

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

**L. VESTING**

See Section <>, Site-Specific Vesting Plan.

**M. APPEAL**

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



**2.5.10. CONSTRUCTION DRAWINGS**

**A. PURPOSE AND INTENT**

The purpose and intent of this section is to establish a process for the review and approval of technical plans pertaining to the installation of new or extension of existing public infrastructure such as streets, sanitary sewer, public potable water, street drainage, or public sidewalks or trails. The provisions are also utilized to consider private stormwater control measures required as a part of water supply watershed requirements.

**B. APPLICABILITY**

Construction Drawings, reviewed and approved in accordance with these standards, are required as part of:

- 01. Any Preliminary Plat or Site Plan application that includes the installation of new or the extension of existing public infrastructure as part of the development;
- 02. The construction or extension of public infrastructure without an associated subdivision or Site Plan; and
- 03. Any development that includes public, community-level, or private stormwater control measures.

**C. APPLICATION**

Construction Drawings shall be configured in accordance with the following:

- 01. Construction Drawings shall be prepared by, signed, and stamped by a professional engineer;
- 02. Construction Drawings shall show both the horizontal or “plan” view of infrastructure as well as the vertical or “profile” view of infrastructure;
- 03. When a Subdivision or a Site Plan is to be developed in phases, Construction Drawings shall indicate the number of phases in the plat or Site Plan, and public infrastructure shall be provided so that each lot is adequately served by public infrastructure at the time of conveyance regardless of the phase of development;
- 04. Phasing shown in Construction Drawings must match the phasing approved as part of the Preliminary Plat (if applicable). In no instance shall only a portion of a development’s phase be submitted for Construction Drawing review; and
- 05. If included as part of a phased development, each phase shall be configured to be inclusive of all land area located within the particular phase(s) under review.

**D. PROCEDURE**

The review procedure for an Construction Drawings shall be in accordance with Section <>, Application Summary Table, and Figure <>, Construction Drawing Review Procedure.

**E. DECISION**

Applications for approval of Construction Drawings shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

- 01. Construction Drawings shall be prepared by a professional engineer licensed by the State of North Carolina;
- 02. The location and configuration of public infrastructure shall be substantially consistent with the Site Plan or the Preliminary Plat, including the number of any boundaries of phases;
- 03. If included as part of a phased development, be configured to be inclusive of all land area located within the particular phase(s) under review;
- 04. Public infrastructure elements depicted in the Construction Drawings are configured in accordance with all applicable Town and State requirements;
- 05. The Construction Drawings include all design sheets necessary to determine compliance; and

**FIGURE <>: CONSTRUCTION DRAWINGS PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with a concurrent Site Plan or Preliminary Plat
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Notification of Decision



06. Copies of all required third-party agreements, permits, and approvals necessary to begin construction are included.

**G. SEQUENCE**

01. In cases where Construction Drawings are required as part of a subdivision, applications for Construction Drawings may be filed concurrently with an application for a Preliminary Plat, but in no instance shall Construction Drawings be approved prior to approval of the Preliminary Plat.
02. In cases where Construction Drawings are required as part of a Site Plan, applications for Construction Drawings may be filed concurrently with an application for a Site Plan, but in no instance shall Construction Drawings be approved prior to approval of the Site Plan.
03. In cases where Construction Drawings are not associated with a subdivision or Site Plan, applications for Construction Drawings should be filed prior to an application for a Building Permit, and in no instance shall a Building Permit be approved prior to approval of Construction Drawings.

**H. EFFECT**

Approval of Construction Drawings permits a subdivider to commence construction of public infrastructure.

**I. AMENDMENT**

Amendment of a Construction Drawing approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. EXPIRATION**

01. Approval of an application for Construction Drawings shall expire and become null and void if substantial commencement is not undertaken within two years of the date of approval.
02. Approval of an application for Construction Drawings shall expire and become null and void after substantial commencement if work is voluntarily stopped by the developer and the development fails to maintain substantial progress for a period of one year or longer.

**K. VESTING**

See Section <>, Statutory Vested Rights.

**L. APPEAL**

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



**2.5.11. CONVENTIONAL REZONING**

**A. PURPOSE AND INTENT**

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

**B. APPLICABILITY**

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

**C. APPLICATION**

- 01.** Applications may be initiated by the Town Council, the Planning Board, the Planning Director, a landowner(s), authorized landowner’s agent, or a contract purchaser(s) of the land in the proposed application.
- 02.** In no instance shall the Town accept third-party rezoning applications submitted by persons who are not owners or agents authorized to act on behalf of landowners.
- 03.** Applications for a Conventional Rezoning shall not include a Concept Plan, any applicant-sponsored conditions, or a Traffic Impact Analysis since the potential use types are unknown.
- 04.** In cases where a Conventional Rezoning application seeks to rezone only a portion of a lot or tract, the remainder of the lot or tract shall be of a size and location that make it possible to subdivide or develop that portion of the property in accordance with the requirements in this Ordinance. Establishment of bifurcated, or “split-zoned” parcels is strongly discouraged.
- 05.** Applications subject to a required neighborhood meeting shall include required information in accordance with Section <>, Neighborhood Meeting.
- 06.** Review of applications for a conventional rezoning on land located within a designated Voluntary Agricultural District or Enhanced Voluntary Agricultural District shall not be commenced until at least 120 days after provision of a recommendation on the proposed rezoning are provided by the Henderson County Agricultural Advisory Board and the Mills River Agricultural Advisory Committee (see Section <>, Rezoning of an Agricultural District).

**D. PROCEDURE**

The review procedure for a Conventional Rezoning shall be in accordance with Section <>, Application Summary Table, and Figure<>, Conventional Rezoning Procedure.

**E. RECOMMENDATION**

- 01.** After conclusion of a public meeting, the Planning Board shall make a recommendation on the application based on its consistency with Section <>, Review Criteria.
- 02.** In making its recommendation, the Planning Board shall prepare a written statement regarding the application’s consistency with the Town’s adopted policy guidance.

**F. CITIZEN COMMENT**

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

**G. APPLICATION REVISION**

- 01.** In no instance shall a Conventional Rezoning application be converted into a Conditional Rezoning application.

<b>FIGURE &lt;&gt;: CONDITIONAL REZONING PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference
2	Neighborhood Meeting Required when increasing density or intensity
3	File Application Must include details from neighborhood meeting, if conducted
4	Completeness Determination
5	Staff Review
6	Review and Recommendation by Planning Board
7	Public Notification
8	Decision by Town Council Must include written statements of reasonableness and consistency with adopted policy guidance
9	Notification of Decision
10	Amend Official Map



02. Nothing shall limit the Town Council from approving a more restrictive or less intense zoning district than requested by the applicant, provided such change does not constitute a downzoning in accordance with NCGS§160D-601(d). In cases where the Town Council decides to approve a more restricted or less intense zoning district than requested, the application shall not require remand back to the Planning Board or any additional public notification.

#### **H. DECISION**

01. After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with Section <>, Review Criteria.
02. The decision shall be one of the following:
  - a. Approval of the application;
  - b. Denial of the application;
  - c. Approval of a revised application; or
  - d. Remand of the application to Town staff or the Planning Board for further consideration.
03. The decision shall be based on the legislative discretion of the Town Council, taking into consideration the recommendation of the Planning Board, citizen comments, if provided, and the standards in Section <>, Review Processes.
04. In making its decision, the Town Council shall adopt a written statement of reasonableness and consistency with the Town's adopted policy guidance in accordance with NCGS§160D-605.

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

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

01. Whether the proposed rezoning advances the public health, safety, or welfare;
02. 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;
03. Whether an approval of the rezoning is reasonable and in the public interest; and
04. Other factors, as the Town Council may determine to be relevant.

#### **J. DESIGNATION**

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

#### **K. SEQUENCE**

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

#### **L. EFFECT**

01. Lands subject to an approved Conventional Rezoning application shall be subject to all the applicable standards in this Ordinance, which shall be binding and shall run with the land.
02. Development located outside the Town's corporate limits shall comply with all Town policies related to annexation and the extension of utilities.
03. In cases where the Town Council approves a Conventional Rezoning application they deem to be inconsistent with the Town's adopted policy guidance, the rezoning approval shall also have the effect of amending any applicable future land use map included in the Town's adopted policy guidance, and no additional request or application for a comprehensive plan amendment shall be required.

#### **M. APPEAL**

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



**2.5.12. DETERMINATION**

**A. PURPOSE AND INTENT**

The purpose and intent of this section is to provide a process utilized by the Planning Director when an applicant requests that Town staff explain a particular development regulation, condition of approval, how land is zoned, or other similar question.

**B. APPLICABILITY**

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

**C. DETERMINATIONS DISTINGUISHED**

**01. FORMAL DETERMINATIONS**

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

**02. ADVISORY OPINIONS**

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

**D. APPLICATION FILING**

See Section <>, Application Filing.

**E. PROCEDURE**

The review procedure for a Determination shall be in accordance with Section <>, Application Summary Table, and Figure <>, Determination Procedure.

**F. DECISION**

- 01. The Planning Director shall provide Determinations in accordance with Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.
- 02. Prior to rendering a determination, a Town staff member may consult with the Town Attorney, other Town officials or the Town's professional consultants.

**G. REVIEW CRITERIA**

**01. OFFICIAL ZONING MAP BOUNDARIES**

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

**02. TEXT PROVISIONS AND PRIOR APPROVALS**

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

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

**03. UNLISTED USE TYPES**

**FIGURE <>:  
DETERMINATION  
PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application Clarify if a formal Determination or advisory opinion is sought
3	Completeness Determination
4	Staff Review May include consultation with town attorney or other hired Town professionals
5	Decision by Planning Director Formal determinations are made in writing and may be appealed to the BOA
6	Notification of Decision



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

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

#### **04. UNDEFINED TERMS**

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

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

#### **05. VESTING STATUS**

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

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

#### **H. EFFECT**

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

#### **I. APPEAL**

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



**2.5.13. DEVELOPMENT AGREEMENT**

**A. PURPOSE AND INTENT**

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

**B. APPLICABILITY**

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

**C. APPLICATION FILING**

See Section <>, Application Filing.

**D. PROCEDURE**

Development Agreements are reviewed in accordance with Section <>, Application Summary Table, and **Figure <>**, Development Agreement Procedure.

**E. DECISION**

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

**F. REVIEW CRITERIA**

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

**G. SEQUENCE**

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

**H. ANNUAL REVIEW**

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

**I. AMENDMENT**

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

**J. EXPIRATION**

**FIGURE <>: DEVELOPMENT AGREEMENT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference
2	Neighborhood Meeting (optional)
3	File Application
4	Completeness Determination
5	Staff Review Includes preparation of a staff report prepared in consultation with Town legal staff
6	Public Notification
7	Review and Decision by Town Council
8	Notification of Decision
9	Annual Review



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

**K. VESTING**

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

**L. APPEAL**

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



**2.5.14. DRIVEWAY PERMIT**

**A. PURPOSE AND INTENT**

The purpose of this section is to provide a process and procedures for application to the Town and the NCDOT for a permit to allow driveway access onto a public street. Driveway access to private streets shall be at the discretion of the street's owner or subject to the access provisions in an applicable easement.

**B. APPLICABILITY**

- 01.** All lots seeking to gain vehicular access to a North Carolina Department of Transportation (NCDOT)-maintained or Town-maintained street via a driveway shall obtain a Driveway Permit in accordance with this section.
- 02.** Lots seeking to gain vehicular access to a private street are not required to obtain a Driveway Permit from the Town, but shall obtain a Zoning Compliance Permit (see Section <>, Zoning Compliance Permit), and provide proof of permission from the owner of the street if no public access easement is recorded or public access agreement is in place.

**C. APPLICATION FILING**

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

**D. PROCEDURE**

Driveway Permits are reviewed in accordance with Section <>, Application Summary Table, and Figure <>, Driveway Permit Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Driveway Permit in accordance with NCDOT, the standards in Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

A driveway accessing a public street shall be in compliance with:

- 01.** The Town Code of Ordinances or other policy documents;
- 02.** Any applicable requirements of this Ordinance, including but not limited to Section <>, Access and Circulation;
- 03.** NCDOT's Policy on Street and Driveway Access to North Carolina Highways, if applicable; and
- 04.** All other standards or conditions of any prior, applicable permits, and development approvals.

**G. SEQUENCE**

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

**H. INSPECTION**

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

**I. AMENDMENT**

A Driveway Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. EXPIRATION**

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

**FIGURE <>: DRIVEWAY PERMIT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application Permits on NCDOT streets require NCDOT review
3	Completeness Determination
4	Review and Decision by Planning Director
5	Review and Decision by NCDOT (if applicable)
6	Notification of Decision



**K. VESTING**

See Section <>, Statutory Vested Rights.

**L. APPEAL**

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

**2.5.15. EXEMPT SUBDIVISION**

**A. EXEMPT SUBDIVISIONS, GENERALLY**

- 01.** Subdivisions exempted from this Ordinance are identified in NCGS§160D-802.
- 02.** The Town may not require a Final Plat for an Exempt Subdivision but the Henderson County Register of Deeds may require a Final Plat to record the division of land.
- 03.** Land divided as an Exempt Subdivision is subject to other requirements in this Ordinance, including but not limited to water supply watershed standards, stormwater, and the SFHA standards.

**B. APPLICABILITY**

- 01.** Applications for review of an Exempt Subdivision are strictly voluntary and at the discretion of the landowner or subdivider.
- 02.** Subdivisions, including combinations or recombinations of existing lot lines, that do not meet the standards an Exempt Subdivision established in NCGS§160D-802 shall be reviewed in accordance with the appropriate subdivision review procedure in this Ordinance.
- 03.** Applications for an Exempt Subdivision that do not comply with the applicable standards in this Ordinance shall be not be reviewed as an Exempt Subdivision, and may also require approval of a Zoning-Related Variance in accordance with Section <>, Zoning-Related Variance.

**C. APPLICATION FILING**

See Section <>, Application Filing.

**D. PROCEDURE**

When requested by an applicant, Exempt Subdivisions are reviewed in accordance with Section <>, Application Summary Table, and Figure <>, Exempt Subdivision Procedure.

**E. DECISION**

Exempt Subdivisions shall be decided by the Planning Director in accordance with the standards in Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

**01. GENERALLY**

An Exempt Subdivision shall be approved provided it complies with the following:

- a.** Includes a title block identifying the subdivision as an Exempt Subdivision, and describes what makes the subdivision exempt per NCGS§160D-802;
- b.** Complies with the standards in NCGS§47-30;
- c.** Is prepared, signed, and sealed by a licensed professional land surveyor;
- d.** Complies with the impervious surface requirements, and the minimum buffer requirements, to the maximum extent practicable, if located within the Water Supply Watershed Protection Overlay (WSPO) District; and
- e.** Includes all applicable statements and declarations in Section <>, Subdivision Certifications and Declarations.

<b>FIGURE &lt;&gt;: EXEMPT SUBDIVISION PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application Applications are voluntary at the discretion of the subdivider
3	Completeness Determination
4	Review and Decision by Planning Director
5	Notification of Decision
6	Recordation (optional)



**02. COMBINATIONS OR RECOMBINATIONS**

An Exempt Subdivision consisting of a combination or recombination of lots shall be approved provided it complies with the following:

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

**G. APPEAL**

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



**2.5.16. FAMILY SUBDIVISION**

**A. PURPOSE AND INTENT**

The purpose for the Family Subdivision is to establish a procedure for the review of requests to subdivide land for the purpose of creating one additional lot for conveyance to an immediate family member.

**B. APPLICABILITY**

- 01.** The standards in this section shall apply to the conveyance of a single lot from one immediate family member to another immediate family member.
- 02.** For the purposes of this section, immediate family members shall include direct lineal descendants (children and grandchildren), direct lineal ascendants (parents and grandparents), siblings, and adopted or step-relationships.
- 03.** Subdivisions that include construction of new or extension of existing public utilities are Preliminary Plats (see Section <>, Preliminary Plats) regardless of the ownership, number, or size of lots created.

**C. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** Lots in a Family Subdivision shall maintain a minimum lot area of one acre or less, as permitted in the zoning district where located. Nothing shall require a single lot in a Family Subdivision to maintain a minimum lot size greater than one acre, though a subdivider may propose lots larger than one acre, at their own discretion.
- 03.** Applications for a Family Subdivision shall not include an application fee.

**D. PROCEDURE**

The review procedure for a Family Subdivision shall be in accordance with Section <>, Application Summary Table, and Figure <>, Family Subdivision Procedure.

**E. DECISION**

The Planning Director shall decide applications for a Family Subdivision in accordance with Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

A Family Subdivision shall be approved if the application complies with the following:

- 01.** All lots created from the original tract comply with the minimum dimensional standards for the zoning district where located unless exempted by NCGS§160D-903 of the North Carolina General Statutes;
- 02.** Each Family Subdivision lot that is created shall front a street or be served by a shared driveway located within an access easement recorded at the Henderson County Register of Deeds;
- 03.** Unless located in the RUM district, principal uses shall be limited to single-family detached dwellings (including manufactured housing) and customary secondary uses;
- 04.** The lot has been certified by a soil scientist or the Henderson County Health Department as capable of accommodating the wastewater generated from the proposed use, in cases when the lot is not served by a centralized wastewater system;
- 05.** The lot has been certified by the appropriate agency as served by an acceptable source of potable water;
- 06.** The Family Subdivision lot complies with all other applicable requirements in this Ordinance and the Mills River Town Code of Ordinances;
- 07.** In cases where a Family Subdivision is proposed to allow a transfer of a lot between immediate family members, proof of kinship in the form of a signed and notarized affidavit is provided that states that lots will only be transferred to immediate family members, and no more than one lot shall be created for each individual immediate family member at a time; and

<b>FIGURE &lt;&gt;: FAMILY SUBDIVISION PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application Transfers limited to direct lineal descendants or ascendants
3	Completeness Determination
4	Review and Decision by Planning Director
5	Notification of Decision
6	Recordation



- 08.** If a Family Subdivision application is denied, then the reasons for denial shall be stated in writing. The applicant may revise and resubmit an application for a Family Subdivision that has been denied.

**G. EFFECT**

- 01.** Approval of a Family Subdivision allows the conveyance of a lot to an immediate family member.
- 02.** When transferred between immediate family members, land subject to a Family Subdivision at shall be titled under the immediate family member's name for a period of at least three years.
- 03.** Zoning Compliance Permits may be issued following recordation of the Family Subdivision.

**H. RECORDATION**

Once a Family Subdivision is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The Family Subdivision may not be recorded without this certification.

**I. EXPIRATION**

A Family Subdivision shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 60 days of approval.

**J. APPEAL**

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



**2.5.17. FEE-IN-LIEU**

**A. PURPOSE AND INTENT**

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

**B. APPLICABILITY**

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

**01. LAND DEDICATION OR EASEMENT**

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

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

**02. PUBLIC INFRASTRUCTURE**

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

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

**03. PRIVATE SITE FEATURES**

Payment of a fee-in-lieu of inclusion of the following features:

- a. Required open space set-aside;
- b. Required landscaping or retention of existing trees; and
- c. Parking lot cross-access.

**C. REQUESTS DISTINGUISHED**

**01. APPLICANT-REQUESTED**

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

**02. TOWN-MANDATED**

In some instances, the Town may require an applicant to provide a fee in-lieu of required land, infrastructure, or site features when doing so is in the best interest of the Town. When required, Town-mandated fee-in-lieu payments are processed in accordance with the following.

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

**D. APPLICATION FILING**

- 01. See Section <>, Application Filing.
- 02. Applicant-requested fee-in-lieu proposals shall be made in writing and shall identify the following:

**FIGURE <>: FEE-IN-LIEU PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application Town-mandated fee-in-lieu requests are reviewed as part of a Site Plan, Subdivision, or Zoning Compliance Permit
3	Completeness Determination
4	Staff Review
5	Decision by Review Authority deciding associated application (or Planning Director when not associated with another application)
6	Notification of Decision
7	Pay Fee



- a. The purpose(s) for the fee-in-lieu;
  - b. The rationale for why a fee-in-lieu is in closer alignment with the purpose and intent of this Ordinance;
  - c. The items or site features being replaced by the proposed fee-in-lieu;
  - d. The amount of the proposed fee-in-lieu; and
  - e. How the fee amount was determined.
- 03.** The Town will notify the applicant of its preference regarding payment of a fee-in-lieu during initial review of the application or preparation of the staff report.

**E. PROCEDURE**

The review procedure for a Fee-in-Lieu shall be in accordance with Section <>, Application Summary Table, and Figure <>, Fee-in-Lieu Procedure.

**F. DECISION**

- 01.** The Review Authority deciding the associated application shall make a decision as to whether the Town will accept or mandate a fee-in-lieu, and if fee-in-lieu is acceptable in accordance with , Section <>, Review Criteria, and Section <>, Review Processes.
- 02.** In cases where the fee-in-lieu application is filed after a related development application or is not associated with another development application, the fee-in-lieu application shall be decided by the Planning Director in accordance with Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**G. REVIEW CRITERIA**

Acceptance of a fee-in-lieu shall be in accordance with the following:

**01. GENERALLY**

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

**02. PARK LAND**

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

**03. GREENWAYS OR TRAILS**

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

**04. SIDEWALKS AND TRAILS**



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

**05. OPEN SPACE SET-ASIDE**

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

**06. OTHER CRITERIA**

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

**H. DETERMINATION OF FEE**

The amount of a fee-in-lieu payment shall be in accordance with the following:

**01. LAND**

- a. The fee-in-lieu shall be calculated based upon the assessed value of the lot multiplied by the percentage of the lot's total acreage required for dedication or reservation.
- b. The land's current assessed value shall be as determined by the Henderson County Tax Assessor or a Town-approved appraisal by a certified North Carolina appraiser.

**02. INFRASTRUCTURE**

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

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

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

**J. SEQUENCE**

- 01.** Applications for payment of fee-in-lieu may be submitted with the associated development application or at any time prior to issuance of a Certificate of Compliance or other final approval.
- 02.** In cases where a fee-in-lieu is requested by the applicant and approved by the Town, the payment shall take place prior to recordation of a Final Plat or approval of the Construction Drawing phase of a Site Plan.
- 03.** In cases where a fee-in-lieu is mandated by the Town, the payment shall take place prior to the approval of a final Certificate of Compliance or other final approval.

**K. EFFECT**

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

**L. APPEAL**



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

**2.5.18. FINAL PLAT (MAJOR SUBDIVISION)**

**A. PURPOSE AND INTENT**

The purpose and intent of the Final Plat procedure is to provide the process for preparing, submitting, and recording a Final Plat. Submittal of a Final Plat application is the last stage of a proposed subdivision of more than eight lots or that includes public infrastructure. The Final Plat ensures that the subdivision and associated public infrastructure (if provided) is configured in substantial conformity with the Preliminary Plat and all applicable regulations. It also helps ensure the Town or another landowner may readily determine and accurately reproduce the location, bearing, radius (as applicable) and length of the elements of a subdivision plat.

**B. APPLICABILITY**

- 01. Final Plats shall be submitted for every Preliminary Plat.
- 02. In cases where a subdivision has multiple phases, each phase must be depicted on its own Final Plat though there is no limitation on including two or more different phases on the same Final Plat.

**C. APPLICATION FILING**

- 01. See Section <>, Application Filing.
- 02. A Final Plat shall be prepared by a professional land surveyor licensed to practice in North Carolina.

**D. PROCEDURE**

The review procedure for a Final Plat shall be in accordance with Section <>, Application Summary Table, and Figure <>, Final Plat Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Final Plat in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

Final Plats shall be decided in accordance with the following:

- 01. The Final Plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds, or is in a digital format;
- 02. The Final Plat is prepared and sealed by a professional land surveyor licensed to practice in North Carolina;
- 03. The Final Plat complies with the standards in NCGS§47-30;
- 04. The Final Plat includes all required certifications and declarations identified in Section <>, Subdivision Certificates and Declarations;
- 05. All required infrastructure improvements (e.g., streets, sewer lines, water lines, drainage, etc.) depicted on the Construction Drawings are installed, inspected, and accepted by the respective public agency (NCDOT, etc.), or are subject to a Performance Guarantee (see Section <>, Performance Guarantee);
- 06. In cases where the subdivision is served by a public potable water system, and the Final Plat includes lots intended for residential occupancy, functional fire protection shall be in place;
- 07. All required easements and rights-of-way are properly depicted on the Final Plat;
- 08. If no public wastewater service is associated with the subdivision, all lots have been certified by the Henderson County Health Department (as appropriate) as capable of accommodating the wastewater generated from the proposed use;
- 09. The Final Plat is in substantial conformance with the associated Preliminary Plat(s);
- 10. The applicant has secured all required State, federal, and other applicable County permit approvals; and

**FIGURE <>: FINAL PLAT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review May include comment by TRC
5	Decision by Planning Director
6	Notification of Decision
7	Recordation of Final Plat



11. The Final Plat complies with all standards and conditions of any applicable permits and development approvals and requirements in this Ordinance and Town policy.

## **G. RECORDATION**

### **01. GENERAL**

- a. Once a Final Plat is approved, a signed statement by the Planning Director shall be entered on the face of the Final Plat. The Final Plat may not be recorded without this and all other required certifications.
- b. Following Final Plat certification, the applicant, or the Town staff, as appropriate, shall record the Final Plat and all associated protective covenants and deed restrictions in the office of the Henderson County Register of Deeds. Failure to record the final plat in accordance with [Section <>, Expiration](#), shall render the plat null and void.
- c. In cases where the applicant records the Final Plat, the applicant shall be responsible for delivering a digital copy of the recorded Final Plat to the Planning Department. Failure to deliver the digital copy in accordance with [Section <>, Expiration](#), may interfere with the Town's ability to review and approve any subsequent development applications associated with the land identified in the Final Plat.

### **02. RESIDENTIAL**

- a. A Final Plat may not be recorded until after public infrastructure has been accepted by the appropriate public agency;
- b. Functional fire protection has been installed, if the subdivision is served by a public potable water system; and
- c. All Performance Guarantees, if proposed, have been provided in accordance with [Section <>, Performance Guarantee](#).

### **03. NON-RESIDENTIAL**

A Final Plat may not be recorded until after all required public infrastructure has been installed and accepted by the appropriate public agency or these features have been made subject to a Performance Guarantee in accordance with [Section <>, Performance Guarantee](#).

## **H. ACCEPTANCE OF PUBLIC INFRASTRUCTURE**

01. Approval and recordation of a Final Plat constitutes an offer of dedication by the owner of the right-of-way of each public street and any other public infrastructure shown on the Plat.
02. 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.
03. Improvements within rights-of-way or easements, such as, drainage facilities, trails, or sidewalks may be accepted for maintenance by the Town, when deemed appropriate, in the Town's sole discretion.
04. A Final Plat shall not be recorded until public water and sewer service is accepted and in service, if lots in the subdivision are served by public water and sewer service.

## **I. EFFECT**

01. Approval of a Final Plat allows the sale or conveyance of lots within the subdivision following recordation in the office of the Henderson County Register of Deeds.
02. Zoning Compliance Permits may be issued following recordation of the Final Plat.

## **J. AMENDMENT**

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

## **K. EXPIRATION**

01. A Final Plat shall be null and void unless it is recorded in the office of the Henderson County Register of Deeds within 60 days of approval.
02. If a Final Plat is not recorded within two years of the associated Preliminary Plat approval, or if there is a lapse of more than four years between the recording of different sections or phases, then the Preliminary Plat shall expire. In such cases, the Town may record a notice of expiration in the office of the Henderson County Register of Deeds.
03. An expired Preliminary Plat may be resubmitted in accordance with [Section <>, Preliminary Plat](#).

## **L. VESTING**



See Section <>, Site-Specific Vesting Plan.

**M. APPEAL**

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

**2.5.19. LIMITED SUBDIVISION**

**A. PURPOSE AND INTENT**

The purpose of this section is to provide a subdivision review procedure for smaller subdivisions of three or fewer lots that do not include establishment of new or extension of new public infrastructure, and that do not qualify as Family Subdivisions.

**B. APPLICABILITY**

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

<b>FIGURE &lt;&gt;: LIMITED SUBDIVISION PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application Must include soil evaluation if served by on-site wastewater
3	Completeness Determination
4	Review and Decision by Planning Director
5	Notification of Decision
6	Recordation

**C. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** Applications for a Limited Subdivision shall include a plat document prepared by a professional land surveyor licensed to practice in North Carolina.
- 03.** Applications for a Limited Subdivision served by on-site wastewater systems shall include an evaluation from a licensed soil scientist or from the Henderson County health department indicating that an on-site wastewater system may be used on each lot included in the subdivision.

**D. PROCEDURE**

The review procedure for a Limited Subdivision shall be in accordance with Section <>, Application Summary Table, and Figure <>, Limited Subdivision Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Limited Subdivision in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

The Limited Subdivision shall be configured in accordance with the following:

- 01.** Is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds, or is in a digital format;
- 02.** Is prepared and sealed by a professional land surveyor licensed to practice in North Carolina;
- 03.** Complies with all applicable standards in this Ordinance and NCGS§47-30;



04. Complies with all applicable water supply watershed protection provisions, if located within the Water Supply Watershed Protection Overlay (WSPO) District;
05. Includes all required certifications and declarations identified in Section <>, Subdivision Certifications and Declarations;
06. The applicant has secured all required State and federal permit approvals;
07. All lots have been certified by a soil scientist or the Henderson County Health Department as capable of accommodating the wastewater generated from the proposed use, if served by an on-site wastewater system;
08. All lots comply with the applicable dimensional requirements for the zoning district and overlay zoning district standards where located;
09. No drainage or utility easements will be required to serve any interior lots;
10. All lots are served by a depicted permanent means of ingress and egress; and
11. Do not include any lots recorded as part of a Limited Subdivision within the preceding ten years.

### **G. RECORDATION**

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

### **H. SEQUENCE**

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

### **I. EFFECT**

01. Approval of the Limited Subdivision allows the sale or conveyance of lots within the subdivision.
02. Zoning Compliance Permits may be issued following the recording of the plat.
03. All lots recorded as part of a Limited Subdivision shall not be further subdivided as a Limited Subdivision for a period of ten years.

### **J. EXPIRATION**

A Limited Subdivision shall be null and void unless it is recorded in the Henderson County office of the Register of Deeds within 60 days of its approval.

### **K. VESTING**

See Section <>, Statutory Vested Rights.

### **L. APPEAL**

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



**2.5.20. MINOR SUBDIVISION**

**A. PURPOSE AND INTENT**

The purpose for this Minor Subdivision procedure is to allow subdivisions of land not qualifying as Exempt Subdivisions, Family Subdivisions, Limited Subdivisions, or Preliminary Plats to be reviewed via an administrative review procedure based on the limited number of new lots proposed.

**B. APPLICABILITY**

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

**C. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** Applications for a Minor Subdivision shall include a plat prepared by a registered land surveyor or professional engineer licensed to practice in North Carolina.
- 03.** The application shall include a Traffic Impact Analysis, when required by Section <>, Traffic Impact Analysis.
- 04.** Applications for a Minor Subdivision served by on-site wastewater systems shall include an evaluation from a soil scientist or the Henderson County Health Department indicating that an on-site wastewater system may be used on each lot included in the subdivision.
- 05.** Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.

<b>FIGURE &lt;&gt;: MINOR SUBDIVISION PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	Consideration of Site Plan or Other Associated Permits

**D. PROCEDURE**

The review procedure for a Minor Subdivision shall be in accordance with Section <>, Application Summary Table, and Figure <>, Minor Subdivision Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Minor Subdivision in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

**01. GENERALLY**

- a. The Minor Subdivision plat is on a sheet or sheets suitable for recording with the Henderson County Register of Deeds;
- b. The Minor Subdivision plat is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
- c. The Minor Subdivision plat complies with all applicable standards in this Ordinance and NCGS§47-30;
- d. The Minor Subdivision plat includes all required certifications and declarations in Section <>, Subdivision Certifications and Declarations;
- e. The applicant has secured all required State and federal permit approvals;
- f. All lots have been certified by a soil scientist or the Henderson County Health Department as capable of accommodating the wastewater generated from the proposed use, if served by an onsite wastewater system;
- g. No drainage or utility easements will be required to serve any interior lots;
- h. All lots will have frontage on existing approved streets or qualify for ingress and egress via a shared driveway (see Section <>, Shared Driveways);



- i. All lots in the Minor Subdivision comply with the applicable dimensional requirements for the zoning district where located, or a subject to an Administrative Adjustment (see Section <>, Administrative Adjustment), or Zoning-Related Variance (see Section <>, Zoning-Related Variance); and
- j. The development complies with all applicable overlay zoning district standards in Section <>, Districts: Overlay.

**G. RECORDATION**

- 01.** Once a Minor Subdivision plat is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The plat may not be recorded without this and all other required certifications.
- 02.** Following certification, the subdivider shall record the plat in the Henderson County Register of Deeds office.
- 03.** Failure to record the plat in accordance with Section <>, Expiration, shall render the plat null and void.
- 04.** Land may not be conveyed, or construction started until the Minor Subdivision is recorded.

**H. LIMIT ON SUCCESSIVE MINOR SUBDIVISIONS**

No land established as part of a Minor Subdivision may be the subject on a subsequent application for another Minor Subdivision within ten years of the preceding Minor Subdivision approval. Instead, these applications shall be reviewed as a Preliminary Plat.

**I. SEQUENCE**

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

**J. EFFECT**

- 01.** Approval of the Minor Subdivision plat allows the sale or conveyance of lots within the subdivision.
- 02.** Building Permits may be issued following the recordation of the Minor Subdivision plat.

**K. EXPIRATION**

A Minor Subdivision plat shall be null and void unless the signed or certified plat is recorded in the office of the Register of Deeds of the county where it is located within 60 days of approval.

**L. VESTING**

See Section <>, Statutory Vested Rights.

**M. APPEAL**

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



**2.5.21. NONCONFORMING AUTHORIZATION**

**A. PURPOSE AND INTENT**

- 01.** The Nonconforming Authorization procedure is a means for a landowner to request the Town authorize existing development in the Town to become or to remain nonconforming with respect to this Ordinance following a proposed alteration to the existing development. Approval of a Nonconforming Authorization will permit existing development to be altered in ways that do not comply with all applicable standards in this ordinance, but shall also render the land and development in question as nonconforming. Nonconforming development shall be subject to the standards and requirements in Chapter 7, Nonconformities.
- 02.** Applicants proposing development that does not fully compliance with all applicable requirements of this Ordinance may instead choose to seek approval of an Administrative Adjustment, Alternative Plan, Conditional Rezoning, Development Agreement, or Variance as an alternative to requesting a Nonconforming Authorization that will result in the land being considered nonconforming..

**B. APPLICABILITY**

- 01.** Applications for a Nonconforming Authorization may be submitted by landowners owning land with lawful, existing development that, following subsequent development or alteration, will likely fail to comply with all applicable requirements in this Ordinance.
- 02.** In cases where subsequent development or alteration of existing development will fail to reach full compliance with all applicable standards of this Ordinance, an applicant may seek relief from the applicable standards in accordance with the methods described in Section <>, Incentives or Alternatives, or may file a request for a Nonconforming Authorization in accordance with this section.
- 03.** In no instance shall a Nonconforming Authorization application be submitted in order to allow the establishment of a principal or secondary use that is prohibited in the zoning district where located.
- 04.** In cases where land or existing development is already subject to a Nonconforming Authorization any further development or alteration shall require full compliance with the standards in this Ordinance, approval of an authorized incentive or alternative (see Section Incentives or Alternatives), or approval of a new Nonconforming Authorization in accordance with this section.

**C. APPLICATION**

- 01.** See Section <>, Application Filing.
- 02.** An application for a Nonconforming Authorization shall be accompanied by a Statement of Consent signed by all owners of record that indicates the landowner’s consent for the land and development in question to become nonconforming with respect to the applicable standards in this Ordinance as required in accordance with NCGS§160D-601(d).
- 03.** Applications for a Nonconforming Authorization shall not filed unless or until a pre-application conference (see Section <>, Pre-Application Conference) has been conducted.

**D. PROCEDURE**

The review procedure for a Nonconforming Authorization shall be in accordance with Section <>, Application Summary Table, and **Figure<>**, Nonconforming Authorization Procedure.

**E. RECOMMENDATION**

After conclusion of a public meeting, the Planning Board shall make a recommendation on the application based on its consistency with Section <>, Review Criteria.

<b>FIGURE &lt;&gt;: NONCONFORMING AUTHORIZATION PROCEDURE</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference
2	File Application Must include consent for becoming nonconforming
3	Completeness Determination
4	Staff Review
5	Review and Recommendation by Planning Board
6	Public Notification
7	Decision by Town Council
8	Notification of Decision
9	Recordation of Consent



**F. DECISION**

- 01.** After the conclusion of a legislative public hearing, the Town Council shall decide the application in accordance with Section <>, Review Criteria.
- 02.** The decision shall be one of the following:
  - a. Approval of the application;
  - b. Denial of the application; or
  - c. Remand of the application to Town staff or the Planning Board for further consideration.
- 03.** The decision shall be based on the legislative discretion of the Town Council, taking into consideration the recommendation of the Planning Board and the standards in Section <>, Review Processes.

**G. REVIEW CRITERIA**

Authorization for existing development to be amended or altered in ways that do not reach full compliance with all applicable standards of this Ordinance, and thus result in the establishment of a nonconformity, may only be granted based upon the following criteria:

- 01.** Full compliance with all applicable standards in this Ordinance is impractical or impossible due to physical conditions or some other aspect not easily addressed by the applicant;
- 02.** The nonconforming outcome of the proposed alteration can not adequately or appropriately be addressed by one of the other alternatives already available in Section <>, Incentives and Alternatives;
- 03.** The proposed alteration does not meet standards for a hardship associated with a Variance;
- 04.** The site or development is not already subject to an approved Conditional Rezoning;
- 05.** The request will not result in the establishment of a principal or secondary use that is prohibited in the zoning district where located;
- 06.** The request for nonconforming authorization includes consent to become nonconforming from all affected landowners;
- 07.** The proposed change will result in development that is in harmony with its immediate surroundings, and is not likely to pose a risk to public safety or negative impact upon adjacent property values;
- 08.** The configuration of the proposed change is as close to full compliance with this Ordinance as is possible, in the sole opinion of the Town Council; and
- 09.** The applicant has demonstrated, to the satisfaction of the Town Council, that any potential negative impacts resulting from approval of the Nonconforming Authorization, if any, have been mitigated to the maximum extent practicable.

**H. RECORDATION REQUIRED**

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

**I. SEQUENCE**

Nonconforming Authorization applications may be filed as stand-alone applications or may accompany an application for a Site Plan, Subdivision, Zoning Compliance Permit, or other associated application type, but in no instance shall a Zoning Compliance Permit application be approved prior to approval of a required Nonconforming Authorization.

**J. EFFECT**

Approval establishes the ability for existing development to become nonconforming with respect to the applicable standards in this Ordinance. Nonconformities shall be subject to the standards and requirements in Chapter 7, Nonconformities.

**K. APPEAL**

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



**2.5.22. PERFORMANCE GUARANTEE**

**A. PURPOSE AND INTENT**

- 01.** These standards create the additional flexibility necessary for lots in a subdivision to be conveyed or for issuance of a Certificate of Occupancy prior to completion of all required infrastructure or site improvements, subject to the prior approval of the Town, and provided funds have been reserved for completion of these features.
- 02.** These provisions ensure that funds are available for the Town’s use to complete required public infrastructure or private site features in the event an applicant is unable to do so.

**B. ELIGIBLE FEATURES**

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

**C. INELIGIBLE FACILITIES**

**01. RESIDENTIAL DEVELOPMENT**

In cases where new development includes lots or structures intended for residential occupancy, the following forms of infrastructure may not be subject to a Performance Guarantee, and shall be completed and inspected prior to conveyance of lots or issuance of a Certificate of Compliance:

- a. Functional fire protection infrastructure in subdivisions served by a public potable water system;
- b. The base and initial courses of asphalt on a street;
- c. Street signs;
- d. Required stormwater control measures; and
- e. Land disturbance features related to sedimentation or erosion control.

**02. NON-RESIDENTIAL DEVELOPMENT**

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

- a. Street signs;
- b. Required stormwater control measures; and
- c. Land disturbance features related to sedimentation or erosion control.

**D. APPLICATION FILING**

- 01.** See Section <>, Application Filing.

**FIGURE <>: PERFORMANCE GUARANTEE PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application Applications may be filed concurrently or subsequent to associated development applications
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Notification of Decision
7	Install required Features
8	Inspection
9	Release



- 02.** An application for a Performance Guarantee may be filed concurrently or subsequent to an application that establishes development subject to a Performance Guarantee.
- 03.** Performance Guarantees mandated by the town do not require filing of an application.

**E. FORM OF GUARANTEE**

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

**F. PROCEDURE**

The review procedure for a Performance Guarantee shall be in accordance with Section <>, Application Summary Table, and Figure <>, Performance Guarantee Procedure.

**G. DECISION**

The Planning Director shall decide an application for a Performance Guarantee in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**H. REVIEW CRITERIA**

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

**I. AMOUNT**

**01. GENERALLY**

- a. The amount of the performance guarantee shall be 125 percent of the reasonably estimated cost of completion (including mobilization costs) at the time the Performance Guarantee is issued.
- b. The Town may determine the amount of the Performance Guarantee or use a cost estimate determined by the applicant.
- c. The reasonably estimated cost of completion shall include 100 percent of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing.



d. The additional 25 percent includes inflation and all costs of administration regardless of how such fees or charges are denominated.

**02. ESTIMATED COSTS**

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

**03. EXTENSION**

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

**04. RENEWAL**

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

**J. SEQUENCE**

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

**K. AS -BUILTS REQUIRED**

**01. PUBLIC IMPROVEMENTS**

Upon completion of public improvements, a professional engineer shall certify, in writing, that the completed public improvements have been constructed in accordance with the approved plans and shall submit actual "as-built" plans in accordance with Section <>, As-Builts.

**02. INSPECTION REQUIRED**

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

**L. MAINTENANCE WARRANTY**

**01. MAINTENANCE OF STREETS UNTIL ACCEPTANCE**

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

**02. MAINTENANCE OF STORMWATER CONTROL MEASURES**

The Town may require applicants completing development proposals with private stormwater control measures to provide a maintenance warranty for the ongoing, long-term maintenance of the stormwater control measure. Such maintenance warranties may take the form of a performance guarantee. The amount of a maintenance performance guarantee shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation, and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation. In no instance shall the total amount of the maintenance guarantee exceed 10 percent of the original cost of the SCM construction. The owner or party responsible for the maintenance of the SCM may retain the performance guarantee, but shall provide evidence of the existence of the guarantee and its amount to the Town upon demand.

**M. MAXIMUM TERM**

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



**N. INSPECTION**

Inspection of guaranteed improvements by the Town shall take place within 30 days of the request for inspection by the applicant.

**O. EXPIRATION**

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

**P. FORFEITURE**

**01. NOTICE OF FAILURE TO INSTALL OR COMPLETE IMPROVEMENTS**

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

**02. TOWN COMPLETION OF IMPROVEMENTS**

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

**Q. RELEASE OR REDUCTION**

**01. RELEASE OR REDUCTION REQUESTED**

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

- a.** The owner or developer has submitted a written request to the Town for a release or reduction of the Performance Guarantee that includes certification by a professional engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);
- b.** Town staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications;
- c.** No release or reduction in Performance Guarantee amounts will be considered until more than 25 percent of the work is in place and approved; and
- d.** Release of a performance guarantee shall take place no more than 30 days after the completion and/or acceptance of the guaranteed improvements by the Town has taken place.

**02. ACCEPTANCE SHALL BE DOCUMENTED**

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

**03. IMPROPER RELEASE OF PERFORMANCE GUARANTEE**

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

**R. APPEAL**

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



**2.5.23. PRELIMINARY PLAT (MAJOR SUBDIVISION)**

**A. PURPOSE AND INTENT**

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

- 01. Orderly growth and development;
- 02. Protect the Town’s established rural character by screening new development from view;
- 03. Protect existing farming operations from adjacent incompatible residential development;
- 04. Coordination of transportation and utility networks;
- 05. Preservation of open space for purposes of recreation or natural resource protection;
- 06. Protection from flooding, damaging sedimentation, and decreased surface water quality; and
- 07. Distribution of population in ways that supports infrastructure investment and diminishes the impact of traffic and overcrowding.

**B. APPLICABILITY**

Unless exempted by NCGS§160D-802(a) in accordance with Section <>, Exempt Subdivision, or configured in accordance with Section <>, Limited Subdivision, Section <>, Minor Subdivision, or Section <>, Family Subdivision, all divisions of land creating one or more new lots or involving the installation of new or extension of existing public infrastructure shall be considered through this Preliminary Plat procedure and subject to the standards of this section.

**C. APPLICATION FILING**

- 01. See Section <>, Application Filing.
- 02. A Preliminary Plat shall be prepared by a licensed professional surveyor, registered professional landscape architect, or licensed professional engineer.
- 03. When a subdivision is to be developed in phases, a master plan shall be submitted for the entire development and a Preliminary Plat shall be submitted for each phase, though there is no limitation on the number of phases that may be included in a Preliminary Plat. Phasing shall be in accordance with Section <>, Phased Development.
- 04. The application shall include a Traffic Impact Analysis, as appropriate, when required by Section <>, Traffic Impact Analysis.
- 05. In cases where lots in the subdivision will utilize on-site wastewater, the subdivider shall provide a report from a licensed soil scientist in the form of a letter, signed and dated, that describes the possibilities of lot sizes the site can support and their general locations within the subdivision.
- 06. Subdivisions seeking to utilize public sewer shall include a wastewater availability request completed in accordance with all Town requirements.
- 07. Subdivisions seeking to utilize public potable water shall include a potable water availability request completed in accordance with all Town requirements.
- 08. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.

**D. PROCEDURE**

The review procedure for a Preliminary Plat shall be in accordance with Section <>, Application Summary Table, and Figure <>, Preliminary Plat Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Preliminary Plat in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**FIGURE <>: PRELIMINARY PLAT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	Proceed with Construction Drawings



**F. REVIEW CRITERIA**

- 01.** The Preliminary Plat is prepared and sealed by a professional land surveyor or professional engineer, licensed to practice in North Carolina;
- 02.** The Preliminary Plat includes all applicable certifications and declarations in Section <>, Subdivision Certifications and Declarations;
- 03.** All lots have been certified by soil scientist or the Henderson County Health Department as capable of accommodating the wastewater generated from the proposed use, in cases when the lot(s) are served by on-site wastewater systems;
- 04.** All lots have been certified by soil scientist or the Henderson County Health Department as capable of accommodating the potable water needed by the proposed use, in cases when the lot(s) are served by on-site private wells;
- 05.** The lots shown on the Preliminary Plat are in conformance with all applicable requirements in the zoning district and overlay district standards where located;
- 06.** The Preliminary Plat complies with all standards and conditions of any applicable Concept Plans, permits and development approvals from outside agencies, utilities, volunteer fire departments, and any other applicable agency or service provider;
- 07.** Documentation has been provided that all street names have been accepted by the County; and
- 08.** The Preliminary Plat complies with all other applicable requirements in this Ordinance and Town policy.

**G. EFFECT**

- 01.** Approval of a Preliminary Plat does not constitute the approval for recording a subdivision with the Register of Deeds, or approval for the conveyance of lots, but nothing shall prohibit the landowner or the subdivider, as appropriate, from entering into contracts to sell or lease land by reference to an approved Preliminary Plat in accordance with NCGS§160D-807(c). However, conveyance of ownership may not take place until after recordation of a Final Plat in accordance with Section <>, Final Plat.
- 02.** In cases where the Preliminary Plat and the Construction Drawings review are conducted separately, approval of a Preliminary Plat authorizes the subdivider to submit Construction Drawings for the installation of public infrastructure in accordance with Section <>, Construction Drawings.

**H. DEVELOPMENT PHASING**

- 01.** Phased development shall comply with Section <>, Phased Development.
- 02.** The Preliminary Plat may depict one or more phases of the development.
- 03.** Construction Drawings and Final Plats may be prepared by phase and there is no limitation on including two or more phases on the same set of Construction Drawings or Final Plat provided that the phasing submitted must match the phasing approved as part of the Preliminary Plat. In no instance shall a portion of a phase be submitted for Construction Drawing or Final Plat review.

**I. AMENDMENT**

Amendment of a Preliminary Plat approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. EXPIRATION**

- 01.** An approved Preliminary Plat shall be valid for two years from the date of its approval.
- 02.** Failure to submit an application for Construction Drawings or a Final Plat for the phase of the land subject to the Preliminary Plat within two years of its approval shall render the Preliminary Plat null and void.

**K. VESTING**

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

**L. APPEAL**



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

**2.5.24. SIGN PERMIT**

**A. PURPOSE AND INTENT**

The purpose of this section is to provide a process for the provision of individual signs, or those designed as part of a uniform sign plan. A procedure for the review of signage is to ensure they are safe, aesthetically compatible, compliant with local zoning laws, do not represent public hazards, traffic issues, or visual clutter.

**B. APPLICABILITY**

- 01. All signs except those exempted from the sign regulations in Section <>, Exemptions, shall obtain a Sign Permit in accordance with this section before being erected, replaced, relocated, or altered.
- 02. Alterations limited to sign copy on a lawfully-established sign shall not require approval of a Sign Permit.
- 03. Temporary signage shall be reviewed in accordance with these standards.
- 04. Establishment of new outdoor advertising after *(insert the effective date of this Ordinance)*, shall be prohibited. Changes to existing outdoor advertising shall only be considered in accordance with Section <>, Special Use Permit.
- 05. Establishment of new electronic message boards after *(insert the effective date of this Ordinance)*, shall be prohibited, unless exempted from these standards.
- 06. Establishment of new development comprised of two or more principal buildings on one or more lots are encouraged to configure signage in accordance with a Uniform Sign Plan as a part of a Sign Permit application. Only those developments with two or more principal uses that have a Uniform Sign Plan are permitted to apportion the total amount of allowable signage across different buildings without prior approval of an Alternative Plan.
- 07. Applicants seeking to deviate from otherwise applicable signage provisions may request consideration of deviations in accordance with Section <>, Alternative Plan.

<b>FIGURE &lt;&gt;: SIGN PERMIT PROCESS</b>	
<b>STEP</b>	<b>ACTION</b>
1	Pre-Application Conference (optional)
2	File Application Must indicate if application is for a temporary or permanent sign
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Notification of Decision

**C. APPLICATION FILING**

- 01. See Section <>, Application Filing.
- 02. Applications for signage shall indicate if the proposed signage is permanent or temporary.

**D. PROCEDURE**

The review procedure for a Sign Permit shall be in accordance with Section <>, Application Summary Table, and *Figure <>*, Sign Permit Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Sign Permit in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

Applications for Sign Permits shall comply with:

**01. GENERALLY**

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



**02. UNIFORM SIGN PLANS**

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

- a. A Uniform Sign Plan shall include measured drawings and details about the parameters of signage permitted by the Plan;
- b. If the total amount of allowable signage in the development will be apportioned in a manner that deviates from the standards in Section <>, Signage, and if so, how the signage will be apportioned;
- c. The maximum sign sizes by sign type, and by building type, if different;
- d. The rules for signage placement on multi-tenant buildings;
- e. The range of proposed unifying elements for signage in the development, including but not limited to style, illumination, color, material;
- f. Any sight distance triangles on the site; and
- g. Any additional information identified by the Planning Director as necessary to determine compliance with this Ordinance.

**G. INSPECTION REQUIRED**

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

**H. SEQUENCE**

- 01. In cases when a Sign Permit application is associated with a Site Plan or subdivision, the Sign Permit application shall not be submitted until after the Site Plan or subdivision has been approved.
- 02. An application for a Sign Permit may be submitted with a request for consideration of an Alternative Plan, but the Alternative Plan request shall be decided prior to the Sign Permit.

**I. EFFECT**

**01. SIGN PERMIT**

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

**02. UNIFORM SIGN PLAN**

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

**J. AMENDMENT**

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

**K. EXPIRATION**

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

**L. VESTING**

In accordance with Section <>, Statutory Vested Rights.

**M. APPEAL**

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



**2.5.25. 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 it in plan format. Site Plan review is intended to:

- 01.** Verify that proposed development meets all applicable standards of this Ordinance and other applicable regulations;
- 02.** Promote orderly, safe, and efficient development through coordinated review of site design, access, circulation, utilities, landscaping, parking, signage, and related site features;
- 03.** Ensure that development is compatible with adjacent properties and public rights-of-way, while respecting existing community character;
- 04.** Facilitate predictable, timely, and transparent review of development proposals through an administrative process;
- 05.** Identify and address technical or design issues to reduce conflicts, delays, and unnecessary expenditures; and
- 06.** Provide a clear basis for approval, approval subject to additional comments, or denial based on objective standards.

**B. APPLICABILITY**

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

- 01.** Any development involving construction, moving, or alteration of a building or habitable structure;
- 02.** Any development that results in the increase in the amount of impervious surface on a lot;
- 03.** Any development that changes the vehicular access to or internal circulation on a lot; or
- 04.** Any development subject to a Concept Plan.

**C. EXEMPTIONS**

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

**D. PLANS ASSOCIATED WITH CONDITIONAL REZONING OR SPECIAL USE PERMITS**

**FIGURE <>: SITE PLAN PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	Neighborhood Meeting (optional)
3	File Application Must be prepared by a licensed professional
4	Completeness Determination
5	Staff Review Includes comment by TRC
6	Decision by Planning Director
7	Notification of Decision
8	Proceed with Other applications (if applicable)



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

**E. APPLICATION FILING**

- 01. Site Plan applications shall be prepared by a North Carolina licensed professional qualified to prepare such documents. Site Plans shall be prepared to scale and shall include the basic information for Site Plans identified in the Town's requirements.
- 02. When a development includes phases, the Site Plan shall depict the entire development and shall indicate all phasing boundaries.
- 03. Phasing shall be in accordance with Section <>, Phased Development.
- 04. The application shall include a Traffic Impact Analysis, when required by Section <>, Traffic Impact Analysis.
- 05. Applications that involve changes to or extension of public infrastructure shall include Construction Drawings prepared in accordance with Section <>, Construction Drawings.
- 06. Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information mandated in Section <>, Fee-in-Lieu.
- 07. Applications seeking to propose an alternative means of compliance with Ordinance requirements shall comply with the standards and requirements in Section <>, Alternative Plan.

**F. PROCEDURE**

The review procedure for a Site Plan shall be in accordance with Section <>, Application Summary Table, and Figure <>, Site Plan Procedure.

**G. DECISION**

The Planning Director shall decide an application for a Site Plan in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**H. REVIEW CRITERIA**

Applications for Site Plans shall comply with:

- 01. All standards, conditions, or approval comments of any prior applicable permits and development approvals;
- 02. Any applicable Concept Plans or plats;
- 03. All applicable requirements of this Ordinance and Town policy; and
- 04. All applicable County, State, and federal requirements.

**I. SEQUENCE**

- 01. Site Plan applications may be submitted or reviewed concurrently with Construction Drawings or any other development application, but Site Plans shall not receive final approval until after the approval of an associated Annexation, Development Agreement, Conditional Rezoning, Conventional Rezoning, or Final Plat.
- 02. Construction Drawings associated with a Site Plan that include the installation of new or extension of existing public infrastructure shall not be approved until after the associated Site Plan has been approved.
- 03. Developments subject to a Site Plan shall also be required to obtain a Zoning Compliance Permit, a Building Permit, and may be required to obtain other approvals. Permits associated with site features depicted on a Site Plan may be filed with a Site Plan application, but shall not be issued until after the Site Plan is approved.

**J. EFFECT**

**01. ZONING COMPLIANCE PERMIT**

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

**02. CONSTRUCTION DRAWINGS**



Approval of a Site Plan that includes the installation of new or extension of existing public infrastructure allows submittal or review of associated Construction Drawings in accordance with Section <>, Construction Drawings.

**03. PERFORMANCE GUARANTEES**

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

**04. FEE-IN-LIEU**

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

**K. AMENDMENT**

Amendment of a Site Plan approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**L. EXPIRATION**

- 01.** Approval of a Site Plan application shall expire and become null and void if substantial commencement is not undertaken within two years of the date of approval.
- 02.** Approval of a Site Plan application shall expire and become null and void if work is voluntarily stopped by the developer and the development fails to maintain substantial progress for a period of one year or longer.
- 03.** Where more than one principal building is included with an approved Site Plan, the applicant may submit a series of Zoning Compliance Permit and/or Building Permit applications. The first application shall be submitted within one year from the date the Site Plan is approved. Each subsequent Building Permit or Zoning Compliance Permit application shall be submitted within 180 days from the date of issuance of a Certificate of Occupancy or other final approval for the previous building.

**M. VESTING**

- 01.** See Section <>, Site-Specific Vesting Plan, or Section <>, Multi-Phase Development Plan, as appropriate.
- 02.** Seeking a longer vesting term for a site-specific vesting plan may file an application in accordance with Section <>, Vested Rights Certificate.

**N. APPEAL**

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



**2.5.26. SPECIAL FLOOD HAZARD PERMIT**

**A. PURPOSE AND INTENT**

The Special Flood Hazard Permit is proposed to permit very limited forms of development within the Town’s designated Special Flood Hazard Areas, while at the same time permitting maintenance of existing structures, restoration of streams, allowable water-dependent facilities, public utilities, and access, where necessary. The requirements in this section are intended to:

- 01.** Promote public health, safety, and general welfare;
- 02.** Minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas.
- 03.** Help maintain a stable tax base by providing for the sound use and development of property in all flood-prone areas of the Town; and
- 04.** Secure safety from the dangers posed by water and flooding.

**B. APPLICABILITY**

- 01.** A Special Flood Hazard Permit is required for any of the following forms of development when located within any designated Special Flood Hazard Area indicated on the Town’s Official Zoning Map:
  - a.** A secondary or accessory residential structure with no dwellings, temperature control, or utilities in the structure;
  - b.** Bona-fide farm and/or agricultural land uses, except that:
    - i.** No permit application is required for bona-fide farm structures located outside the floodway and not elevated with fill; and
    - ii.** No permit is required for agricultural land maintenance activities as defined in this Ordinance that do not cause a significant change in the elevation of the farm land in the SFHA;
  - c.** Functionally-dependent facilities;
  - d.** A governmental or public utility use;
  - e.** Activity associated with a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or
  - f.** A driveway, shared driveway, or private street used solely to access a single-family dwelling that is not located within a Special Flood Hazard Area.
- 02.** All other forms of new development in a Special Flood Hazard Area are expressly prohibited, including but not limited to: non-residential uses and structures, mixed-use uses and structures, and residential uses and structures.

**C. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** Applications for a Special Flood Hazard Permit shall include, at a minimum, the following items:
  - a.** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - i.** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - ii.** The boundary of the Special Flood Hazard Area as delineated on a Town-designated map, or a statement that the entire lot is within the Special Flood Hazard Area;
    - iii.** The boundary of the floodway(s) or non-encroachment area(s), including the base flood elevation, if available;
    - iv.** The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
    - v.** The certification of the plot plan by a registered land surveyor or professional engineer.
  - b.** Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
  - c.** Certification that all other local, State, and federal permits required prior to Special Flood Hazard Permit issuance have been received including copies of the issued approvals;

**FIGURE <> SPECIAL FLOOD HAZARD PERMIT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	File for Other Associated Permits



- d. A description of proposed watercourse alteration or relocation, when applicable, along with a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation; and
- e. An engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream when included as part of a no-rise certification flood study.

**D. PROCEDURE**

The review procedure for a Special Flood Hazard Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Special Flood Hazard Permit Procedure.

**E. DECISION**

The Planning Director shall decide an application for a Special Flood Hazard Permit in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

An application for a Special Flood Hazard Permit shall be reviewed in accordance with the following:

- 01. The permit is issued prior to the commencement of development; and
- 02. The development complies with all applicable standards in Section <>, Special Flood Hazard Area (SFHA).

**G. SEQUENCE**

Applications for Special Flood Hazard Permits may be submitted with any other application for development located within the SFHA, but a Special Flood Hazard Permit shall be reviewed and approved prior to any other application type.

**H. EFFECT**

Approval of a Special Flood Hazard Permit authorizes an applicant to proceed with development following issuance of a Zoning Compliance Permit.

**I. AMENDMENT**

A Special Flood Hazard Permit application may only be amended and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. REVOCATION**

A Special Flood Hazard Permit may be revoked by the Planning Director, following written notice to the violator, for any of the following reasons:

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

**K. EXPIRATION**

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

**L. VESTING**

See Section <>, Statutory Vested Rights.

**M. APPEAL**

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



**2.5.27. SPECIAL USE PERMIT**

**A. PURPOSE AND INTENT**

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

**B. APPLICABILITY**

- 01.** Uses identified as requiring a Special Use Permit in [Table <>](#), Listing of Common Principal Uses, or in [Table <>](#), Listing of Common Secondary Uses, shall be reviewed in accordance with the procedures and standards of this section.
- 02.** In cases where a single use type located within a larger multi-building or multi-use development requires a Special Use Permit, only that particular use type and the lot it is located upon shall be subject to the Special Use Permit, not the entire development.

**C. APPLICATION FILING**

An application for a Special Use Permit shall include a Concept Plan depicting the aspects described in the Town’s Procedures Manual. The Technical Review Committee shall review and comment on the Concept Plan prior to consideration of the application by the Board of Adjustment.

- 01.** The application shall include a Traffic Impact Analysis when required by [Section <>](#), Traffic Impact Analysis.
- 02.** Applications that involve new or extension of existing public infrastructure shall identify these features on the Concept Plan.
- 03.** Applications complying with a Town-mandated Fee-in-Lieu or anticipated to include an applicant-requested Fee-in-Lieu shall include information identified in [Section <>](#), Fee-in-Lieu.
- 04.** In cases where development is seeking allowable alternative forms of compliance, the application shall include supplemental details and justification for the use of these provisions in accordance with [Section <>](#), Alternative Plan.

**D. PROCEDURE**

The review procedure for a Special Use Permit shall be in accordance with [Section <>](#), Application Summary Table, and [Figure <>](#), Special Use Permit Procedure.

**E. DECISION**

- 01.** A decision by the Board of Adjustment on a Special Use Permit shall be based on the competent, material, and substantial evidence in the record, as supplemented by arguments presented at the evidentiary hearing,
- 02.** The decision shall be one of the following:
  - a. Approval of the Special Use Permit, as submitted;
  - b. Approval of a revised Special Use Permit; or
  - c. Denial of the Special Use Permit.
- 03.** In making its decision on a Special Use Permit, the Board of Adjustment shall not waive or reduce any applicable standard of this Ordinance. It is permissible for the Board of Adjustment to apply conditions of approval that exceed the standards in this Ordinance, as necessary, to mitigate any potentially negative impacts of the use on its surroundings.

**F. REVIEW CRITERIA**

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

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

STEP	ACTION
1	Pre-Application Conference
2	Neighborhood Meeting (optional)
3	File Application must include a Concept Plan
4	Completeness Determination
5	Staff Review includes Concept Plan review and comment by TRC
6	Public Notification of Public Hearing
7	Decision by Board of Adjustment
8	Written Notice of Decision



01. Is subject to a Concept Plan that accurately depicts the proposed use's configuration and addresses public infrastructure if changes to or extension of public infrastructure are required as part of the application;
02. Complies with all required standards, conditions, and specifications of this Ordinance, including all zoning district dimensional requirements and use-specific standards;
03. Will not materially endanger the public health or safety;
04. Will not substantially injure the value of the abutting land, or the special use is a public necessity;
05. Will not include or result in such additional traffic volume so as to strain the flow of traffic on the streets and roads of the Town; and
06. Will be in harmony with the intensity, scale, and character of existing or anticipated development in the area in which it is to be located.

## G. CONDITIONS

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

## H. SEQUENCE

01. Special Use Permit applications may include an application for a Site Plan, Zoning Compliance Permit, and Building Permit, but the Special Use Permit shall be decided first.
02. A Concept Plan shall not substitute for a required Site Plan or subdivision plat. Site Plans and subdivisions are reviewed after approval of the Special Use Permit.
03. Special Use Permit applications may be filed with a rezoning application, but the rezoning application shall be decided first.
04. Special Use Permit applications may be filed with an application for a Variance, but the Variance application shall be decided first.

## I. EFFECT

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

## J. AMENDMENT

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

### 01. MINOR MODIFICATIONS



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

**02. MAJOR MODIFICATIONS**

- a. Changes that materially affect the basic configuration of the development, a condition of approval, or that require additional evidentiary support beyond that presented at the public hearing shall be considered major modifications.
- b. Major modifications include, but are not limited to:
  - i. A change in the boundaries of a site;
  - ii. A change in the approved use type;
  - iii. An increase in the amount of floor area by five percent or more beyond that approved under the initial Special Use Permit;
  - iv. An increase or decrease in the total number of provided off-street parking spaces by ten percent or more beyond that approved under the initial Special Use Permit;
  - v. A change in the location of a principal or secondary structure by more than 10 feet in any direction;
  - vi. Structural alterations increasing the structure height;
  - vii. Alterations affecting the form, ornamentation, or appearance of a principal or secondary structure as shown in the Concept Plan;
  - viii. Changes in density or intensity;
  - ix. Decreases in open space;
  - x. Substantial changes in the location of streets (particularly if streets are to be deleted or access points to the development moved so traffic flows both inside and outside the development are affected) or pedestrian access or circulation;
  - xi. A change in the amount or location of proposed landscaping or required screening; or
  - xii. Changes to site features that require the application of professional judgment or discretion by a licensed landscape architect, architect, or professional engineer.
- c. Major modifications must be reviewed and considered only in accordance with the procedures and standards established for the original application approval.

**K. EXPIRATION**

**01. REPLACEMENT**

If a special use is replaced by a use type permitted by-right in the zoning district, the Special Use Permit and the corresponding Concept Plan approval is deemed abandoned and the Special Use Permit approval is null and void.

**02. FAILURE TO START OR COMPLETE CONSTRUCTION**

Unless otherwise stated in the Special Use Permit approval, a Special Use Permit and the corresponding Concept Plan shall expire and become null and void two years after the date of issuance if:

- a. An application for a Site Plan or subdivision application has not been filed;
- b. Substantial commencement of construction has not taken place; or
- c. Construction activities have started, but the owner has voluntarily stopped construction and substantial progress has not been maintained.

**03. MULTIPLE BUILDING PERMITS**

Where more than one principal building is included with an approved Special Use Permit, the applicant may submit a series of Zoning Compliance Permit or Building Permit applications. The first application shall be submitted within two years of the date the Special Use Permit is approved. Each subsequent Building Permit or Zoning Compliance Permit application shall be submitted within 180 days from the date of issuance of a Certificate of Occupancy or other final approval for the previous building.

**L. REVOCATION**

- 01.** In the event of failure to comply with the plans or any other conditions imposed upon the Special Use Permit approval, the Planning Director shall give the permit holder 10 days written notice of intent to revoke the permit and request the permit holder to contact staff to set a reasonable time for the violation to be corrected.
- 02.** A Special Use Permit may only be revoked in accordance with the procedure used to grant its approval.



03. If the permit is revoked and the special use has not ceased, the use is considered a violation of this Ordinance and subject to enforcement and penalties in Chapter 7, Violations.

**M. VESTING**

01. See Section <>, Site-Specific Vesting Plan.
02. Applicants seeking a longer vesting term may file an application in accordance with Section <>, Vested Rights Certificate.

**N. APPEAL**

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



**2.5.28. TEMPORARY USE PERMIT**

**A. PURPOSE AND INTENT**

The purpose of a temporary use permit is to allow for certain non-permanent uses and structures within the Town’s planning jurisdiction. This procedure is intended to:

01. Provide a clear and predictable process for authorizing temporary uses and temporary structures;
02. Ensure that temporary uses and structures are appropriately located, sized, and operated to minimize adverse impacts on nearby properties, public rights-of-way, and public facilities;
03. Establish reasonable limits on duration, intensity, and permanent physical improvements;
04. Confirm that approval of temporary uses and structures do not establish vested rights, alter allowable uses, or create expectations of permanence;
05. Allow flexibility for seasonal activities, construction-related facilities, community events, and transitional land uses; and
06. Provide a basis for approval, approval with comments, or denial based on objective standards.

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

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Notification of Decision

**B. APPLICABILITY**

01. The standards in this section apply to non-permanent uses and structures that take place on a temporary basis whether on a site with an existing principal use or a vacant site.
02. Temporary uses occurring within a public right-of-way require approval by the Town Council or NCDOT, as appropriate, and are not subject to a Temporary Use Permit, but may require some other form of authorization by the Town or other public agency responsible for the right-of-way.

**C. EXEMPTIONS**

01. Temporary uses or structures operated by the Town or the County for public safety or as part of a sanctioned governmental event shall be exempted from these requirements.
02. Temporary signs shall be subject to the standards in Section <>, Sign Permit.

**D. APPLICATION FILING**

See Section <>, Application Filing.

**E. PROCEDURE**

The review procedure for a Temporary Use Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Temporary Use Permit Procedure.

**F. DECISION**

The Planning Director shall decide an application for a Temporary Use Permit in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**G. REVIEW CRITERIA**

Applications for a Temporary Use Permit shall be subject to the following:

01. The applicant has written permission from the landowner, or is otherwise authorized to make use of the land;
02. The applicant has obtained the appropriate permits and approvals from the Town and other agencies;
03. The temporary use or structure meets public utility and Town requirements for proper connection to water, sewer, electrical, and other utility service connections, as applicable;
04. Inclusion of any lighting or electrical service shall be subject to an approved electrical permit;
05. Any habitable structures shall require approval of a Building Permit;
06. The temporary use or activity complies with all applicable provisions in Section <>, Temporary Uses;
07. The temporary use does not violate the applicable conditions of approval that apply to a site or use on the site;



08. The proposed site contains sufficient land area for the temporary use and for the parking and traffic movement associated with the temporary use, without impacting the site's ability to comply with other applicable requirements of this Ordinance;
09. The temporary use or structure is located outside a Special Flood Hazard Area, or there is no other alternative location, in the opinion of the Planning Director;
10. The temporary use or structure provides adequate on-site restroom facilities, if necessary;
11. Adequate provisions for crowd control shall be provided, if necessary, in the opinion of authorized public safety personnel; and
12. The site of the temporary use or structure shall be cleared of all debris at the end of the temporary use and all temporary structures shall be cleared from the site within five days after the use is terminated.

#### **H. SEQUENCE**

Temporary Permits shall be issued prior to issuance for Building Permit for a temporary structure.

#### **I. EFFECT**

Approval of a Temporary Use Permit shall authorize the establishment of a temporary use, structure, or activity for the duration identified in the approval.

#### **J. AMENDMENT**

Amendment of an Temporary Use Permit approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval and [Section <>, Approved Application Amendment](#).

#### **K. EXPIRATION**

01. If the work authorized by a Temporary Use Permit is not substantially commenced within the earlier of the allowable duration for the use or structure, or six months from the date of issuance, the Temporary Use Permit shall become null and void.
02. An approval of a Temporary Use Permit is only valid for the term included in the approval. In cases where the activity associated with a Temporary Use Permit approval cannot be undertaken within the allowable duration, the applicant may withdraw the application and re-apply.
03. Failure to achieve substantial commencement or complete the temporary use or activity within the permitted duration shall render the Temporary Use Permit approval null and void.

#### **L. VESTING**

The vesting terms shall be in accordance with [Section <>, Issuance of a Building Permit](#).

#### **M. APPEAL**

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



**2.5.29. TEXT AMENDMENT**

**A. PURPOSE AND INTENT**

The purpose of the development ordinance Text Amendment procedure is to provide a transparent legislative process for considering changes to the text of this Ordinance as necessary to respond to evolving conditions, changing State or federal law, changing jurisprudence, to clarify regulatory intent, and to implement adopted policy guidance. This procedure is intended to:

- 01.** Ensure that the text of this Ordinance are consistent with adopted policy guidance;
- 02.** Provide a mechanism to correct errors, resolve ambiguities, and improve clarity in the UDO; and
- 03.** Maintain the overall structure, internal consistency, and regulatory intent of the Ordinance.

**B. APPLICABILITY**

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

**C. INITIATION**

**01. TOWN INITIATED**

Requests to amend the text of this Ordinance may be made by the Town Council, the Planning Board, the Board of Adjustment, or by Town staff. Text amendments shall only be initiated in cases when doing so is in the public interest and where the proposed amendment is consistent with NCGS§160D-601(d).

**02. LANDOWNER INITIATED**

- a.** Requests to amend the text of this Ordinance may be submitted by a landowner who owns property within the Town’s planning jurisdiction.
- b.** Applications for a text amendment to this Ordinance by a landowner that would constitute a down-zoning under NCGS§160D-601(d) shall not be accepted as complete unless accompanied by written consent for the text amendment from all affected property owners.
- c.** As an alternative to directly initiating a text amendment to this Ordinance, a landowner may request the Town Council undertake a Town-initiated text amendment to this Ordinance. The decision to undertake such an amendment shall be in the sole legislative discretion of the Town Council.

**D. PROCEDURE**

- 01.** The review procedure for a Text Amendment shall be in accordance with Section <>, Application Summary Table, and Figure <>, Text Amendment Procedure.
- 02.** In cases where a potential text amendment to this Ordinance is proposed, it shall be accompanied by evidence of consent from all affected parties if required in accordance with NCGS§160D-601.
- 03.** Town-initiated text amendments shall not require a pre-application conference.

**E. RECOMMENDATION**

- 01.** After conclusion of a public meeting, the Planning Board shall make a recommendation on the application in accordance with Section <>, Review Criteria.
- 02.** In making its recommendation, the Planning Board shall prepare a written statement regarding the application’s consistency with the Town’s adopted policy guidance.

**F. CITIZEN COMMENT**

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

**FIGURE <>: TEXT AMENDMENT PROCEDURE**

STEP	ACTION
1	Pre-application Conference
2	Request Initiated
3	Completeness Determination
4	Staff Review
5	Review and Recommendation by the Planning Board
6	Public Notification
7	Decision by Town Council Must include written statement of reasonableness and consistency with adopted policy guidance
8	Notification of Decision
9	Amend Ordinance Text (if approved)



**G. DECISION**

- 01.** The decision shall be based on the legislative discretion of the Town Council, taking into consideration any recommendation received from the Planning Director, prepared in consultation with other Town staff, the recommendation of the Planning Board, citizen comments, and Section <>, Review Criteria.
- 02.** In making its decision, the Town Council shall adopt a written statement of reasonableness and consistency with the Town's adopted policy guidance in accordance with NCGS§160D-605.

**H. REVIEW CRITERIA**

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or deny the proposed Text Amendment, the Town Council may, but is not required to, consider whether and the extent to which the proposed Text Amendment:

- 01.** Enhances the public's health, safety, and welfare;
- 02.** Is consistent with Section <>, Purpose and Intent of Ordinance;
- 03.** Is consistent with the Town's adopted policy guidance;
- 04.** Is required by or is proposed in response to changed conditions;
- 05.** Addresses a demonstrated community need;
- 06.** Does not create a downzoning, or is subject to prior written consent of affected landowners in accordance with NCGS§160D-601;
- 07.** Addresses an unforeseen matter not present when the Ordinance was adopted or subsequently amended;
- 08.** Addresses other factors determined to be relevant by the Town Council; and
- 09.** 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.

**I. SEQUENCE**

A Text Amendment application shall not be submitted with another application.

**J. EFFECT**

The Planning Director shall make changes to the text of this Ordinance promptly after approval of a Text Amendment application by the Town Council.

**K. APPEAL**

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



**2.5.30. TRAFFIC IMPACT ANALYSIS (TIA)**

**A. PURPOSE AND INTENT**

The purpose of this section is to ensure that applications for new construction, Site Plans, Special Use Permits, subdivisions, additions and/or expansions to existing structures, changes of use, and conditional rezonings consider and mitigate the impact of the development on the existing and/or proposed roadway system. A traffic impact analysis (TIA) helps ensure that the transportation network has adequate capacity to handle projected transportation demand associated with the development project, helps identify problems with the existing transportation system that need to be addressed in advance of additional development needs, and identify improvements to be incorporated into the proposed development.

**B. APPLICABILITY**

A Transportation Impact Analysis, prepared in accordance with this section, shall be required for any of the following:

- 01.** Any new development, alteration of an existing development, change of use, or other alteration that is part of a larger development that, when considered cumulatively, will generate 75 or more vehicle trips during the AM or PM peak hour, or 750 or more vehicle trips per day, based on the most recent edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual; or
- 02.** The proposed development is located on a roadway that has demonstrated transportation capacity or public safety issues, as determined by the Planning Director; or
- 03.** There are likely to be significant changes to adjacent development traffic patterns or hazards to public safety, as determined by the Planning Director, as a result of the proposed development.

**C. EXCEPTION**

- 01.** A TIA shall not be required as a part of a development application if the property to be developed has been the subject of a TIA within the previous three years, provided:
  - a.** The projected trip generation of the newly proposed development is equal to or less than the previous TIA performed; and
  - b.** The trip distribution has not significantly changed.
- 02.** In no instance shall a traffic impact analysis be required as part of a conventional rezoning application.

**D. APPLICATION FILING**

- 01.** See Section <>, Application Filing.
- 02.** The type, scope, assumptions, and contents of a Traffic Impact Analysis shall be determined by NCDOT during the mandatory pre-application conference (see Section <>, Pre-Application Conference). The pre-application conference is conducted to identify the study area, the trip distribution, the traffic counts to be utilized, approved developments in the area, additional hours of analysis (other than AM or PM peak), resolve any questions specific to the site, and address any related concerns of the applicant, the Town, or the NCDOT.
- 03.** When calculating vehicle counts for commercial and industrial developments where the projected traffic primarily consists of trucks, tractor trailers, and other large commercial vehicles, a passenger car equivalent (PCE) shall be provided in addition to truck traffic counts. Truck trips shall be converted to passenger vehicle trips using a 2.0 PCE factor for two-axle trucks, 2.5 PCE factor for 3-axle trucks, and 3.0 PCE factor for 4-axle trucks and larger trucks.
- 04.** The Town may require special/specific analysis in the TIA relative to the proposed development.

**E. PROCEDURE**

**FIGURE <>: TRAFFIC IMPACT ANALYSIS PROCEDURE**

STEP	ACTION
1	Pre-Application Conference/TIA Screening
2	File Application/TIA Scoping must be prepared by a professional engineer
3	TIA Submittal / Completeness Determination
4	Staff Review - In coordination with NCDOT - Included comment by TRC
5	Third Party Review (if appropriate)
6	Consideration by Planning Director - In coordination with NCDOT - Planning Director may accept or not accept the TIA
7	Notification of Decision



The review procedure for a Traffic Impact Analysis shall be in accordance with Section <>, Application Summary Table, and Figure <>, Traffic Impact Analysis Procedure.

### **F. THIRD-PARTY REVIEW**

- 01.** The Planning Director may require that an independent third party be hired by the Town at the applicant's expense to perform a required Traffic Impact Analysis, or to review a Traffic Impact Analysis filed by an applicant. The third party shall be a professional engineer licensed in the State of North Carolina to prepare such analyses, and the third party's contract shall be administered solely by the Town.
- 02.** The Town shall determine the scope of services to be performed by a third party and receive a cost estimate from the third party for such services.
- 03.** The applicant shall provide funds to the Town for the third-party review in accordance with the Town's fee schedule.
- 04.** Funds for third-party review are not refundable if an applicant withdraws their application prior to third-party review.

### **G. DECISION**

- 01.** Traffic impact analyses that include State roads shall require coordination with and review by the NCDOT.
- 02.** The Planning Director shall accept or not accept a traffic impact analysis. In cases where a traffic impact analysis is not accepted, the applicant may request review by a third party in accordance with Section <>, Third Party Review.
- 03.** Consideration of a traffic impact analysis shall be in accordance with Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

### **H. REVIEW CRITERIA**

Traffic Impact Analyses shall be prepared and considered in accordance with the following:

- 01.** The analysis is prepared and sealed by a licensed professional engineer with expertise in traffic engineering;
- 02.** The analysis includes a summary of findings and recommendations for mitigation based on the Town's adopted policy guidance and applicable State regulations;
- 03.** The analysis conforms with the requirements of this section;
- 04.** Full payment for all third-party review costs has been provided, if required;
- 05.** The analysis identifies the post-development roadway lane configurations and levels of service for signalized and unsignalized intersections within the study area;
- 06.** The projected traffic generated by the project, combined with existing traffic, either does not exceed the desirable operating level established, or the impacts of the project traffic are properly mitigated by on-site and off-site improvements recommended in the analysis;
- 07.** The analysis identifies the parties responsible for any recommended improvements; and
- 08.** The applicant is willing and able to successfully mitigate the proportional impact that the proposed development will have on the public transportation network as identified in the Traffic Impact Analysis.
- 09.** A Traffic Impact Analysis shall be prepared by a professional engineer licensed in the State of North Carolina, and shall include all of the following:
  - a.** Existing traffic volumes;
  - b.** A detailed description of the proposed development, including proposed land use(s);
  - c.** Site access and site distances at all existing and proposed access points;
  - d.** Existing traffic counts for road(s) and intersection(s) studied and dates/times counts were conducted;
  - e.** All proposed and planned NCDOT and Town roadway improvement projects including pedestrian/bicycle transportation projects;
  - f.** Impacts on the transportation system from the proposed development;
  - g.** Existing and future Level of Service (LOS) for studied intersections and road segments including the LOS at the time of build-out;
  - h.** All improvements necessary to maintain level of service (LOS) D for roads and intersections as defined in the NCDOT Highway Capacity Manual.



- i. AM and PM peak hour vehicle trips for pre-development and post-development conditions;
- j. Average daily vehicle trips for pre-development and post-development conditions;
- k. Existing traffic accident counts;
- l. Physical improvements or enforceable management strategies to mitigate negative impacts;
- m. Continuity and adequacy of pedestrian and bicycle facilities shall be provided to the nearest destination of significance (existing or planned) within ¼ mile of the boundary of the development site (destinations of significance include: public transportation stops, schools, parks, activity centers, major bicycle facilities and corridors, and population centers);
- n. The analysis methodology;
- o. An inventory of the data used;
- p. The findings of the analysis; and
- q. Recommendations based on the results.

**I. IMPROVEMENTS REQUIRED**

**01. GENERALLY**

- a. In those cases where the Town or NCDOT requires improvements to be constructed in order to accommodate additional traffic generated by the proposed development, the improvements shall be funded and/or constructed by the developer in accordance with the standards and direction provided by the Town or the NCDOT.
- b. The improvements shall be complete and in place prior to issuance of any Certificate of Compliance or Certificate of Occupancy required for any phase or portion of the project.
- c. The Town may require additional mitigation, on-site improvements, and/or off-site improvements provided the improvements are acceptable by NCDOT. However, a TIA shall not be utilized as a means to require transportation improvements remote from and not affected by the property for which the TIA is submitted.

**02. TURN LANES AND TAPERS**

Improvements may be required based on requirements of the NCDOT Policy on Street and Driveway Access to North Carolina Highways or other NCDOT standards.

**03. ADDITIONAL RIGHT-OF-WAY REQUIRED**

If a proposed development is located along a street projected to be widened or improved by NCDOT or an adopted Town plan, additional right-of-way along the development's street frontage shall be dedicated in accordance with NCDOT or Town requirements.

**04. OFF-SITE IMPROVEMENTS**

- a. If a street segment or intersection is currently performing at a level of service (LOS) D or better and is projected to perform at LOS E or F at the time of build-out of the proposed development, improvements must be made to as necessary in order to maintain the street segment or intersection's operation at LOS D.
- b. If a street segment or intersection is currently performing at LOS E or F and is projected to continue to perform at the same LOS (E or F) at the time of build-out of the proposed development, the TIA shall demonstrate how an LOS D could be achieved and also specify what improvements must be made to ensure that the street segment or intersection LOS is not degraded any further than the current levels. The Town may require off-site improvements be made to preserve the LOS existing at the time of build-out of the proposed development.

**05. OTHER REQUIRED IMPROVEMENTS**

- a. Additional improvements may be required based on the TIA recommendations related to topographic/environmental conditions, safe sight distance, street offsets, conflicting movements, existing traffic accident counts, circulation, and other potential traffic issues resulting from the proposed development.
- b. Additionally, the Town may require additional improvements deemed necessary to ensure the safety and welfare of residents and transportation network users.

**J. SEQUENCE**

A Traffic Impact Analysis may be filed concurrently with an application for a Conditional Rezoning, Preliminary Plat, Site Plan, Special Use Permit, or Zoning Compliance Permit, but the Traffic Impact Analysis shall be decided before these other application types.

**K. EFFECT**



- 01.** A related development application may be denied upon the basis of the Traffic Impact Analysis even in cases where the Planning Director accepts the analysis.
- 02.** Acceptance of a Traffic Impact Analysis permits an applicant to file for the next kind of development approval in the sequence.
- 03.** In some cases, the results of a Traffic Impact Analysis may result in an applicant amending other applications in one or more of the following ways:
  - a.** Changes in use type or scope to reduce the projected vehicle trips per day;
  - b.** The dedication of additional right-of-way;
  - c.** The rerouting of traffic or modifications or additions of the internal street network or proposed access and egress points;
  - d.** Participation in the funding of a traffic signal, intersection improvement, or other off-site transportation improvement; or
  - e.** Other modification determined to be necessary.

**L. AMENDMENT**

Amendment to an approved Traffic Impact Analysis may only be reviewed and considered in accordance with the procedures and standards established for its original acceptance and Section <>, Approved Application Amendment.

**M. EXPIRATION**

A Traffic Impact Analysis acceptance shall expire within three years of its acceptance unless the Site Plan, Major Subdivision, or Zoning Compliance Permit it is associated with has a longer expiration term.

**N. APPEAL**

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



**2.5.31. VARIANCE, WATER-RELATED**

**A. PURPOSE AND INTENT**

The purpose for this section is to establish a standardized and predictable procedure for consideration of requests to reduce or deviate from some water-related standards of this Ordinance when the landowner demonstrates that a literal application of the standards is not possible, feasible, or would result in undue and unique hardship to the landowner and that any potential negative impacts have been adequately mitigated.

**B. APPLICABILITY**

The standards in this section shall apply to Variance requests from any of the following provisions:

- 01.** The Special Flood Hazard Area standards in Section <>, Special Flood Hazard Area (SFHA);
- 02.** The setback standards in Section <>, Stream Setbacks; and
- 03.** The water supply watershed standards in Section <>, Water Supply Watershed Protection Overlay (WSPO) District.

**C. VARIANCES DISTINGUISHED**

- 01.** Water-related Variance applications shall take one of the following four forms:
  - a. A Variance of the Town’s special flood hazard area provisions;
  - b. A Variance of the Town’s riparian setbacks in Section <>, Riparian Setbacks;
  - c. A Minor Variance of the applicable Water Supply Watershed standards; and
  - d. A Major Variance of the applicable Water Supply Watershed Standards.
- 02.** For the purposes of this section, a Minor Variance of the Water Supply Watershed standards includes:
  - a. The relaxation by a factor of five percent or less for required buffers, maximum density, or built-upon area maximum under the high-density development option; or
  - b. The relaxation, by a factor of up to 10 percent of any of the management requirements under the low-density option.
- 03.** For the purposes of this section, a Major Variance of the Water Supply Watershed standards includes:
  - a. The relaxation, by a factor greater than 10 percent, of any management requirement under the low-density option;
  - b. The relaxation, by a factor greater than five percent, of any buffer, density or built upon area requirement under the high-density option; or
  - c. Any variation in the design, maintenance or operation requirements of an approved stormwater control measure (SCM).

**FIGURE <>: WATER-RELATED VARIANCE PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application clarify type of Variance
3	Completeness Determination
4	Staff Review
5	Public Notification
6	Decision by Board of Adjustment The Board of Adjustment only provides a recommendation to the NC EMC for Major Variances to water supply watershed standards
7	Notification of Decision
8	Transmit to NC Environmental Management Commission (as appropriate)
9	Report Water Supply Watershed Variances to other local governments in the watershed

**D. APPLICATION FILING**

See Section <>, Application Filing.

**E. PROCEDURE**

The review procedure for a Water-Related variance shall be in accordance with Section <>, Application Summary Table, and Figure <>, Water-related Variance Procedure.

**F. DECISION**

- 01.** The Board of Adjustment shall decide Water-Related Variance applications pertaining to the SFHA, stream buffers, and Minor Variances to Water Supply Watershed standards. It shall submit a recommendation (but not decide) applications for Major Variances to Water Supply Watershed standards, which shall be decided by the NC Environmental Management Commission.



- 02.** Decisions and recommendations shall be based on the competent, material, and subsequent evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the standards in Section <>, Water-Related Variance Review Standards, Section <>, Special Flood Hazard Area (SFHA), Section <>, Water Supply Watershed Protection Overlay (WSPO) District, Section <>, Riparian Setbacks, as appropriate. The decision or recommendation shall be one of the following:
  - a. Approval of the Water-Related Variance as proposed;
  - b. Approval of the Water-Related Variance application with revisions; or
  - c. Denial of the Water-Related Variance.
- 03.** Each decision or recommendation shall be made in writing and reflect the Board of Adjustment's determination of facts and their application to the standards in this Ordinance.
- 04.** The written decision or recommendation shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
- 05.** In the case of Major Variance of Water Supply Watershed Standards applications, the application materials, along with the recommendation of the Board of Adjustment shall be forwarded to the North Carolina Division of Water Resources for consideration by the North Carolina Environmental Management Commission.
- 06.** The final decision regarding a Major Variance of Water Supply Watershed Standards application pertaining to shall be made within 90 days of receipt by the North Carolina Environmental Management Commission (EMC) in accordance with all applicable State law. The decision by the Commission shall be one of the following:
  - a. Approval of the Major Variance of Water Supply Watershed Standards application;
  - b. Approval of the Major Variance of Water Supply Watershed Standards application with additional conditions; or
  - c. Denial of the Major Variance of Water Supply Watershed Standards application.
- 07.** Any decision by the North Carolina Environmental Management Commission on a Major Variance of Water Supply Watershed Standards shall be subject to review by the Superior Court of Henderson County.
- 08.** Denials of a Major Variance of Water Supply Watershed Standards application shall not be forwarded to the North Carolina Environmental Management Commission by the Board of Adjustment.

## **G. REVIEW CRITERIA**

### **01. SPECIAL FLOOD HAZARD AREA VARIANCE**

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

A water-related variance pertaining to the Special Flood Hazard Area standards shall be approved on a finding the applicant demonstrates all of the following standards are met:

- i. There is a good and sufficient cause to grant the Water-Related Variance;
- ii. Failure to grant the Water-Related Variance would result in exceptional hardship to the landowner;
- iii. Granting the Water-Related 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;
- iv. The Water-Related Variance is the minimum necessary, considering the flood hazard, to afford relief;
- v. It does not allow for a land use or structure that is prohibited by this Ordinance or result in a violation of a State, federal, or local law;
- vi. It does not allow for structures in a floodway / non-encroachment area;
- vii. It does not allow for fill in a flood prone area that results in the elevation of the subject property more than two feet above the base flood elevation (BFE);
- viii. It does not result in any increase in flood levels during the base flood discharge; and
- ix. It does not authorize fill that covers more than fifteen percent of the SFHA.

#### **b. ADDITIONAL CONSIDERATIONS**

All of the following factors shall be considered by the Board of Adjustment if an application for a Water-Related Variance pertaining to the Special Flood Hazard Area standards is denied:

- i. The danger that materials may be swept onto other lands and injure others;
- ii. The danger to life and land due to flooding or erosion damage;
- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual landowner;
- iv. The importance of the services provided by the proposed facility to the community;
- v. The necessity to the facility of a waterfront location as a functionally-dependent facility;



- vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the Town's adopted policy guidance;
- ix. The safety of access to the use in times of flood for ordinary emergency vehicles;
- x. The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

**02. WATER SUPPLY WATERSHED VARIANCE**

A Water-Related Variance pertaining to the water supply watershed standards shall be approved on a finding that there are practical difficulties or unnecessary hardships that prevent compliance with this Ordinance, and a finding of practical difficulties or unnecessary hardships requires that all of the following standards are met:

- a. The applicant can make no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
- b. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
- c. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;
- d. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
- e. The Water-Related Variance is in harmony with the general purpose and intent of the State's water supply watershed requirements and this Ordinance and preserves its spirit; and
- f. In granting the Water-Related Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

**03. RIPARIAN SETBACKS**

A Water-Related Variance pertaining to the riparian setback standards shall be approved on a finding the applicant demonstrates all of the following standards are met:

- a. The applicant can secure no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
- b. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
- c. The hardship is due to the physical nature of the applicant's property, such as its location, size, shape, or topography, and compliance with provisions of this Ordinance would not allow reasonable use of the property;
- d. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
- e. The Water-Related Variance is consistent with the general spirit, purpose, and intent of the State law and this Ordinance; and
- f. In granting the Water-Related Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

**H. CONDITIONS**

In granting a Water-Related Variance, the Board of Adjustment may prescribe conditions of approval to assure that the use of the land to which the Water-Related Variance applies will be compatible with surrounding lands and will not alter the essential character of the community. Conditions of approval shall be in accordance with Section <>, Conditions of Approval, and the following:

- 01.** Conditions of approval must be reasonably related to the application, the Town's adopted policy guidance, and the spirit and intent of this Ordinance;
- 02.** An application approval granted subject to a condition of approval shall be permitted as long as there is compliance with the condition;
- 03.** Violation of a condition of approval shall be deemed a violation of this Ordinance; and
- 04.** If a violation or invalidation of a condition of approval occurs, the Planning Director, as appropriate, may revoke the authorization for the development subject to the approval.

**I. SEQUENCE**



A Water-Related Variance application may be filed with any other application except an appeal or rezoning, but the Water-Related Variance approval shall always be required prior to any other associated application.

**J. EFFECT**

**01. GENERALLY**

Approval of a Water-Related Variance authorizes only the particular regulatory relief approved by the Board of Adjustment. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the Variance is granted should receive other permits or development approvals unless and until the relevant and applicable portions of this Ordinance are met.

**02. REPORTING**

- a. Upon request, the Planning Director shall report all Special Flood Hazard Area Variances approved to the State or federal government.
- b. The Planning Director shall notify all local jurisdictions in the watershed, including entities using the water supply for drinking water treatment, distribution, and consumption by the public, of receipt of an application, the proposed public hearing for, and the approval of a Water Supply Watershed Variance application.

**K. APPEAL**

01. Appeal of a decision by the Board of Adjustment shall be in accordance with [Section <>, Decisions by Board of Adjustment](#).
02. Appeal of applications decided by the North Carolina Environmental Management Commission shall be taken to the Superior Court for Henderson County in accordance with applicable State law.



**2.5.32. VARIANCE, ZONING-RELATED**

**A. PURPOSE AND INTENT**

The purpose of this Zoning-Related Variance procedure is to allow deviations from certain standards of this Ordinance when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner’s control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. This section also includes provisions for reasonable accommodation of persons with physical disabilities.

**B. APPLICABILITY**

Zoning-Related Variance applications shall take one of the following two forms:

**01. VARIANCE**

- a. Development that would otherwise be subject to undue and unique hardship from the applications of the standards in this Ordinance may seek relief from the standards in accordance with this section.
- b. No Variance may be sought for uses not allowed in a zoning district.
- c. No Variance may be sought that increases development density (e.g., units per acre) beyond that allowed in the zoning district where located.

**02. REASONABLE ACCOMMODATION**

- a. In cases where the strict application of the standards of this Ordinance would deprive an eligible person of their right to equal opportunity to use a dwelling under the federal Fair Housing Act, the person may apply for a Reasonable Accommodation in accordance with this section.
- b. For the purposes of this section, an “eligible person” is a person who meets the definition of a disabled or handicapped person under federal law.
- c. A person recovering from substance abuse is considered a person with a disability or handicap provided they are not currently engaging in the illegal use of controlled substances.

**C. APPLICATION FILING**

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

**D. PROCEDURE**

The review procedure for a Zoning-Related Variance shall be in accordance with Section <>, Application Summary Table, and Figure <>, Zoning-Related Variance Procedure.

**E. DECISION**

Zoning-Related Variance applications shall be decided by the Board of Adjustment in accordance with the following:

- 01. The decision shall be based on the competent, material, and substantial evidence in the record, as supplemented by arguments presented at the evidentiary hearing and the standards in Section <>, Review Criteria.
- 02. The decision shall be one of the following:
  - a. Approval of the Zoning-Related Variance as proposed;
  - b. Approval of the Zoning-Related Variance with revisions; or

FIGURE <>: ZONING-RELATED VARIANCE PROCEDURE	
STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application clarify type of Variance
3	Completeness Determination
4	Staff Review
5	Public Notification
6	Decision by Board of Adjustment
7	Notification of Decision



- c. Denial of the Zoning-Related Variance as proposed.
- d. Voting shall be in accordance with [Section <>, Voting](#).
- 03.** Each decision shall be made in writing and reflect the Board of Adjustment’s determination of facts and their application to the standards in this Ordinance.
- 04.** The written decision shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
- 05.** The decision of the Board of Adjustment shall be effective upon the filing of the written decision in the offices of the Planning Department.

**F. REVIEW CRITERIA**

**01. VARIANCE**

**a. REQUIRED FINDINGS**

A Variance application shall be approved subject to a finding the applicant demonstrates all of the following:

- i. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
- ii. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.
- iii. The hardship did not result from actions taken by the applicant or the landowner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the Variance shall not be regarded as a self-created hardship.
- iv. The requested Variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.
- v. The Variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure.

**b. NOT AVAILABLE AS A BASIS FOR DECISION**

None of the following may be used as the basis for approving a Variance:

- i. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- ii. Personal circumstances;
- iii. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- iv. The citing of other conforming or nonconforming uses of land or structures in the same or other zoning districts;
- v. The fact that land or a structure may be utilized more profitably or be more marketable with a Variance; or
- vi. Financial hardship.

**02. REASONABLE ACCOMMODATION**

**a.** A Reasonable Accommodation application shall be approved on a finding the proposed accommodation:

- i. Will be used by an individual or individuals with a disability or handicap protected under federal law;
- ii. Is the minimum needed to provide accommodation; and
- iii. Is reasonable and necessary.

**b.** For the purposes of this section, an accommodation is reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other Town standard, and it will not impose significant financial and administrative burden upon the Town.

**c.** For the purposes of this section, an accommodation is necessary if it would provide direct or meaningful improvement of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to use housing in the Town’s planning jurisdiction.

**G. CONDITIONS**

In granting a Zoning-Related Variance, the Board of Adjustment may prescribe conditions of approval to assure that the use of the land to which the Zoning-Related Variance applies will be compatible with surrounding lands and will not alter the essential character of the community. Conditions of approval shall be in accordance with [Section <>, Conditions of Approval](#), and the following:

- 01.** Conditions of approval must be reasonably related to the application.
- 02.** An application approval granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
- 03.** Violation of a condition of approval shall be deemed a violation of this Ordinance.



- 04.** If a violation or invalidation of a condition of approval occurs, the Planning Director, as appropriate, may revoke the authorization for the development subject to the approval.

## **H. SEQUENCE**

A Zoning-Related Variance application may be filed with any other application except an appeal or rezoning, but the Zoning-related Variance approval shall always be required prior to any other associated application.

## **I. EFFECT**

### **01. GENERALLY**

Approval of a Zoning-Related Variance authorizes only the particular regulatory relief approved by the Board of Adjustment. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the Zoning-Related Variance is granted should receive other permits or development approvals unless and until the relevant and applicable portions of this Ordinance are met.

### **02. REASONABLE ACCOMMODATIONS**

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

## **J. APPEAL**

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



**2.5.33. VESTED RIGHTS CERTIFICATE**

**A. PURPOSE AND INTENT**

The purpose for this Vested Rights Certificate procedure is to permit an applicant to request vesting, or an extended vesting period, from changes in this Ordinance that take place after approval of a development application but prior to completion of an approved site-specific vesting plan associated with the application.

**B. APPLICABILITY**

An application for a Vested Rights Certificate shall be limited to applications with an approved site-specific vesting plan in accordance with Section <>, Site-Specific Vesting Plan.

**C. APPLICATION FILING**

See Section <>, Application Filing.

**D. PROCEDURE**

The review procedure for a Vested Rights Certificate Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Vested Rights Certificate.

**E. DECISION**

01. After the conclusion of an evidentiary public hearing, the Town Council shall decide the application in accordance with the standards in Section <>, Review Criteria.
02. The decision shall be one of the following:
  - a. Approval of the Vested Rights Certificate as proposed;
  - b. Approval of a revised Vested Rights Certificate; or
  - c. Denial of the Vested Rights Certificate.
03. If approved, the Vested Rights Certificate is deemed established upon the date of approval of a qualifying site-specific vesting plan to which the application for a Vested Rights Certificate was attached.

FIGURE <>: VESTED RIGHTS CERTIFICATE PROCEDURE	
STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review and Recommendation
5	Public Notification
6	Decision by Town Council
7	Written Notice of Decision
8	Consideration of Site Plan or Other Associated Permits

**F. REVIEW CRITERIA**

An application for a Vested Rights Certificate shall be approved if:

01. The Vested Rights Certificate is for an approved site-specific vesting plan;
02. The development is valid and unexpired;
03. Any required Variances have been obtained; and
04. The request is in accordance with NCGS§160D-108, and Section <>, Vested Rights.

**G. SEQUENCE**

01. An application for a Vested Rights Certificate may be submitted concurrently with or following the application qualifying as a site-specific vesting plan, but consideration of a Vested Rights Certificate shall only take place following approval of the site-specific vesting plan.
02. A Vested Rights Certificate shall be approved prior to issuance of a Zoning Compliance Permit.

**H. EFFECT**

01. Each document used to establish a site-specific vesting plan shall bear the following notation: "Approval of this application establishes a zoning vested right under Section 160D-108 of the North Carolina General Statutes, as amended. Unless terminated at an earlier date, the vested right shall be valid until \_\_\_\_ (date)."
02. The establishment of a vested right shall not preclude the application of overlay zoning district provisions that impose additional requirements but do not affect the allowable type and intensity of use, or through ordinances that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to: building, fire, plumbing, electrical, and mechanical codes.



**I. AMENDMENT**

Amendment of Vested Rights Certificate may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. DURATION**

- 01.** In no instance shall a Vested Right Certificate provide a vested right for a period of longer than five years from the date of approval of the site-specific vesting plan.
- 02.** A Vested Right Certificate shall expire and become null and void:
  - a.** At the end of the approved vesting period; or
  - b.** If a Building Permit application for the development subject to the certificate is not submitted within two years of the approval of the Vested Rights Certificate; or
  - c.** Upon a finding by the Town Council after public notice and a public hearing, that:
    - i.** Natural or man-made hazards on or in the immediate vicinity of the land, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated;
    - ii.** The landowner or landowner's representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site-specific vesting plan;
    - iii.** The landowner failed to comply with any condition imposed upon the establishment of the site-specific development plan or Vested Rights Certificate; or
  - d.** Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval of the certificate by the Town, together with interest at the legal rate until paid. Compensation shall not include any diminution in the value of the land which is caused by such action; or
  - e.** With the written consent of the affected landowner.
- 03.** Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, the Town Council may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the State or federal law have a fundamental effect on the site-specific vesting plan.

**K. EXPIRATION**

Unless terminated in accordance with Section <>, Termination of a Vested Right, a Vested Rights Certificate shall expire at the end of the term identified in the approval.

**L. APPEAL**

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



**2.5.34. WATERSHED PERMIT**

**A. PURPOSE AND INTENT**

The purpose of this section is to set out a procedure for the review of development located within a Water Supply Watershed Protection Overlay (WSPO) district for the purpose of ensuring that potable water quality is not negatively impacted.

**B. APPLICABILITY**

The standards in this section shall apply to all development located within the WSPO as indicated on the Town's Overlay Zoning District Map or other appropriate map, including the State of North Carolina's Water Supply Watershed Map.

**C. APPLICATION FILING**

See Section <>, Application Filing.

**D. PROCEDURE**

The review procedure for a Watershed Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Watershed Permit Procedure.

**E. DECISION**

The decision on a Watershed Permit shall be made by the Planning Director based on the standards in Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

A Watershed Permit shall be approved provided the application complies with all the applicable standards in Section <>, Water Supply Watershed Protection Overlay (WSPO) District.

**G. SEQUENCE**

Applications for Watershed Permits may be submitted with any other application for development located within a water supply watershed, but a Watershed Permit shall be reviewed and approved prior to consideration of an associated Site Plan, Subdivision, or Zoning Compliance Permit.

**H. EFFECT**

Approval of a Watershed Permit authorizes an applicant to proceed with development following issuance of a Zoning Compliance Permit.

**I. AMENDMENT**

A Watershed Permit application may only be reviewed and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

**J. EXPIRATION**

A Watershed Permit shall expire if substantial commencement has not taken place within one year of the approval.

**K. VESTING**

See Section <>, Statutory Vested Rights.

**L. APPEAL**

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

**FIGURE <>: WATERSHED PERMIT PROCEDURE**

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Notification of Decision
7	Proceed with Associated Application Review



**2.5.35. 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**

- 01.** A Zoning Compliance Permit shall be required for the following forms of development:
  - a. Establishment or alteration of new development, whether subject to or exempted from Site Plan or Building Permit review;
  - b. Establishment of new or alterations to existing principal and secondary uses or structures;
  - c. Establishment of a new principal or secondary use within an existing building or structure;
  - d. Establishment of or changes to an open-air uses taking place without a structure (like outdoor storage); and
  - e. Land disturbing activities.
- 02.** The Town may require a Zoning Compliance Permit for any development on a bona fide farm that may not qualify for exemption from this Ordinance due to it being a non-farm related development activity.

**C. APPLICATION FILING**

- 01.** Applications for a Zoning Compliance Permit shall include a generalized sketch of the development that identifies the lot lines and the outer extents of all of the following features (if present):
  - a. Principal structure(s);
  - b. Secondary structures (including those there on a temporary basis);
  - c. Open-air uses of land;
  - d. Required setbacks and allowable encroachments, if applicable;
  - e. Existing and proposed potable water wells, septic tanks, drain fields, and reserve or back-up drain field locations;
  - f. Required tree save areas;
  - g. Required stormwater control measures;
  - h. Any other features identified by the Planning Director as necessary for determining compliance with the requirements of this Ordinance; and
  - i. Proposed uses, structures, or development activity associated with the Zoning Compliance Permit.
- 02.** Sketches are not required to be professionally prepared, but must be drawn to scale.
- 03.** Development activity associated with signage shall comply with the standards in Section <>, Sign Permit.
- 04.** Establishment of a temporary use, structure, or activity shall comply with the standards in Section <>, Temporary Use Permit.

**D. PROCEDURE**

The review procedure for a Zoning Compliance Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Zoning Compliance Permit Procedure.

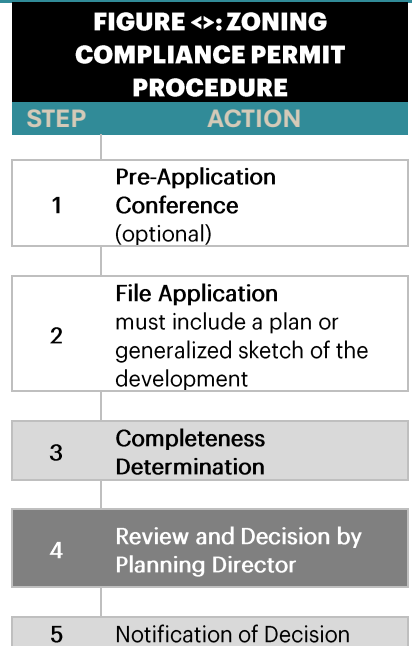
**E. DECISION**

The Planning Director shall decide an application for a Zoning Compliance Permit in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

**F. REVIEW CRITERIA**

A Zoning Compliance Permit shall be subject to the following:

- 01.** All standards or conditions of any prior applicable permits and developments approvals;



- 02.** Any applicable County, State, and federal requirements;
- 03.** All applicable requirements of this Ordinance, the Town Code of Ordinances, and any applicable policy manuals or associated regulatory documents; and
- 04.** Approval of the Zoning Compliance Permit does not require any reduction, deviation, or waiver not already approved by the Town.

**G. SEQUENCE**

A Zoning Compliance Permit application may be filed with or after any other application type except for a Building Permit or Certificate of Compliance.

**H. EFFECT**

Approval of an Zoning Compliance Permit allows an applicant to file for a Building Permit or commence with development in cases where no Building Permit is required.

**I. 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 and Section <>, Approved Application Amendment.

**J. EXPIRATION**

- 01.** A Zoning Compliance Permit shall expire and become null and void if the development it authorizes is not substantially commenced within six months of the permit issuance.
- 02.** A Zoning Compliance Permit shall expire if work is discontinued for a period of 12 months after work has commenced.

**K. VESTING**

See Section <> Statutory Vested Rights

**L. APPEAL**

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

