

# LDO AMENDMENT A.24.03

## APPROVED 05-02-24; EFFECTIVE 05-02-24

### BUTNER, NORTH CAROLINA

### LAND DEVELOPMENT ORDINANCE

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2023 S-4 Supplement contains:  
Local legislation current through Ord. TA.23.08, passed 12-7-2023; and  
State legislation current through  
2022 North Carolina Legislative Service, Pamphlet #3

Published by:  
American Legal Publishing  
525 Vine Street \* Suite 310 \* Cincinnati, Ohio 45202  
1-800-445-5588 \* [www.amlegal.com](http://www.amlegal.com)

#### LAND DEVELOPMENT ORDINANCE

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### § 1.1 TITLE.

This document shall officially be known as the “Land Development Ordinance of the Town of Butner, North Carolina” and may be referred to throughout the document as the “LDO” or the “ordinance”.

### § 1.2 AUTHORITY.

This ordinance consolidates the town’s land use regulatory authority as authorized by the state’s general statutes, and is adopted pursuant to the authority granted to the town by G.S. Ch. 160A, Art. 8, G.S. Ch. 160D, and any special legislation enacted for the town by the state’s General Assembly.

(Ord. A.21.01, passed 6-3-2021)

### § 1.3 EFFECTIVE DATE.

This ordinance shall become effective on October 1, 2008.

### § 1.4 APPLICABILITY AND JURISDICTION.

**1.4.1 General applicability.** The provisions of this ordinance shall apply to the use and development of all land within the corporate limits of the town and its Extraterritorial Jurisdiction (ETJ) unless such use or development is expressly exempted by a specific section or division of this ordinance.

**1.4.2 Application to government units.** Except as stated herein, the provisions of this ordinance shall apply to:

- (A) Development and use of land owned by the town;
- (B) Development and use of land by public colleges or universities;

Article 4, Enforcement. The adoption of this ordinance does not affect nor prevent any pending or future action to abate violations of previous ordinances.

(Ord. A.21.01, passed 6-3-2021)

## **§ 1.10 SEVERABILITY.**

Should any article, section, division, phrase, or word of this ordinance be held invalid or unconstitutional by a court of competent jurisdiction of either the state or the United States, such decision does not affect, impair, or invalidate the validity of the remaining parts of this ordinance which can be given effect without the invalid provision.

### **1.11 VESTED RIGHTS.**

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

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

#### **1.11.3 Effect of a vested right.**

A. Development approvals that have an established vested right in accordance with NCGS§160D-108 and this section shall preclude any action by the town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.

B. Except when subject to sub-section (C) below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:

1. Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;

2. Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;

3. A site-specific vesting plan approved in accordance with this Ordinance and NCGS§160D-108.1;

4. A multi-phase development approved in accordance with this Ordinance and NCGS§160D-108; and

5. A vested right established by the terms of an approved development agreement in accordance with this Ordinance and Article 10 of Chapter 160D of the North Carolina General Statutes.

C. Amendments to this Ordinance shall apply to vested development approvals if:

1. A change to State or federal law occurs and has a retroactive effect on the development or use;

2. There is written consent to be subject to the amendment by the landowner;

3. The development approval expires; or

4. The development is not undertaken or completed in accordance with the approval.

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

**A. Common law vested rights.**

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

- a. Zoning permits;
- b. Sign permits;
- c. Building permits;
- d. Special use permits; and
- e. Subdivision preliminary plats.

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

- a. The applicant has, prior to the adoption or amendment of an ordinance, made substantial expenditures of time, effort, or money on a proposed development; and
- b. The obligations and/or expenditures were incurred in good faith; and
- c. The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required provided however, a mistakenly-issued governmental permit shall not give rise to a common law vested right; and
- d. The amended or newly adopted ordinance is a substantial detriment to the applicant.

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

- 1. The applicant shall not be required to file for a determination to establish common law vested rights or maintain vested status during the time period for which the building permit remains valid.
- 2. The owner has a vested right only as long as the building permit remains valid and only for the work approved by the building permit.
- 3. A building permit may expire in accordance with the applicable Granville County or North Carolina General Statute provisions.
- 4. The building permit may be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or State law, and any misrepresentations made in securing the permit.
- 5. Building permits mistakenly issued may be revoked.
- 6. If the building permit expires or is revoked, the vested right based on it is also lost.

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

1. Issuance of a building permit is not considered a development permit, and the vesting term shall only continue in accordance with the provisions in NCGS§160D-801.

2. A development permit is valid for one year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity.

3. If the applicant fails to substantially commence authorized work within one year, then the development permit and vesting expire.

4. Vesting shall continue provided there is a substantial commencement of authorized work under a valid development permit.

5. The development permit and vesting shall expire after substantial work commences if there is a two-year period of intentional and voluntary discontinuance of work unless otherwise specified by statute.

**D. Site-specific vesting plan.**

1. **Defined.**

a. For the purposes of this section, a site-specific vesting plan is defined as a plan submitted to the town in which the applicant requests vesting, describing with reasonable certainty on the plan, the type and intensity of use for a specific parcel or parcels of property.

b. A site-specific vesting plan must provide, with reasonable certainty, all of the following:

i. The boundaries of the development;

ii. Topographic and natural features affecting the site;

iii. The approximate location of proposed buildings, structures, and other improvements;

iv. The approximate dimensions, including height, of proposed buildings and other structures;

v. The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;

vi. The type or types of proposed land uses; and

vii. The density or intensity of development.

c. A concept plan or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a site-specific vesting plan.

d. The following development approvals constitute a site-specific vesting plan:

i. A concept plan associated with a conditional rezoning or the gateway districts;

ii. A preliminary plat;

iii. Site plans; and

- ii. A preliminary plat;
- iii. Site plans; and
- iv. A concept plan associated with a special use permit.

## 2. Establishment.

a. Development approvals identified by this Ordinance as site-specific vesting plans shall be granted a vested right to develop for a maximum period of two years from the date of the approval, provided the applicant has requested, in writing, that a vested right is sought, and provided the development subject to the approval complies with all applicable terms and conditions.

b. In cases where a concept plan is associated with an approved conditional rezoning, the conditional zoning designation shall run with the land but the vesting status of the associated concept plan shall be in accordance with the standards for any other site-specific vesting plan.

## 3. Extension.

a. The two-year vesting duration of a site-specific vesting plan may be extended up to five years from the date of the approval only in accordance with division 3.2.14, Vested Rights Certificate.

b. Site-specific vesting plans meeting the definition of a multi-phase development shall be vested in accordance with division 1.11.4.E, Multi-phase development plan.

## E. Multi-phase development plan.

1. A multi-phase development plan that occupies at least 25 acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval and includes more than one phase shall be considered as a multi-phase development plan that is granted a vested right to develop for a period of seven years from the date of approval of the first site plan associated with the development.

2. Vesting shall commence upon approval of the site plan for the first phase of the development.

3. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

F. Development agreement. A development agreement shall be vested in accordance with the vesting term identified in the development agreement.

## G. Voluntary annexation.

1. Any petition for annexation filed with the town shall contain a signed statement from the applicant indicating if vested rights on the properties subject to the petition have been established in accordance with NCGS§160D-108.

2. A statement that declares that no zoning vested right has been established or the failure to provide a statement declaring whether vested rights have been established, shall result in a termination of any vested rights established prior to annexation.

### 1.11.5 Termination of a vested right.

#### A. Generally.

- 1. Vested rights established in accordance with this Ordinance shall run with the land.

2. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval.

3. In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.

4. In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.

5. In no instance shall vested rights continue if the Town Council finds, after a duly noticed public hearing, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.

6. In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within 24 months of the discontinuance of work. This 24-month period shall not include the time associated with work stoppage resulting from an appeal or litigation.

**B. Limitations.**

1. The establishment of a vested right does not preclude the town's application of overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity.

2. A vested right shall not preclude the application of changes to building, fire, plumbing, electrical, or mechanical codes made after the development approval where a vested right was established.

(3) Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate standards of this ordinance; and

(4) Is accompanied by the fee established for the particular type of application.

**(B) *Incomplete applications.*** If the application is determined to be incomplete, the Ordinance Administrator shall notify the applicant of the deficiencies within ten business days following submittal. Following notification, the applicant may correct the deficiencies and resubmit the application for review.

### **3.1.7 *Permit choice.***

(A) If a land development regulation is amended by the Town Council between the time a development permit application was ~~submitted~~ determined to be complete and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application in the manner established in G.S. § 143-755. In cases where an applicant has a choice as to which adopted version of the rule or ordinance shall apply, the applicant shall notify the Town, in writing, as to which adopted version of the rule or ordinance has been selected.

(B) If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.

(C) If an applicable rule or ordinance is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant.

(D) If a permit application is placed on hold at the request of the applicant for a period of six consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the local or state government for a period of six consecutive months or more, the application review shall be discontinued and the development regulations in effect at the time permit processing is resumed shall be applied to the application.

**(E) *Multiple permits for development project.*** Subject to G.S. § 160D-108(d), where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

**3.1.8 *Final approval by the Ordinance Administrator.*** When an application that is subject to final approval by the Ordinance Administrator is submitted and determined to be complete, he or she shall review the application and approve or deny it based on the standards set forth in the ordinance. Following his or her approval or denial of the application, the Ordinance Administrator shall notify the applicant of his or her decision within the time period set forth in the submission and review schedule.

**3.1.9 Preparation of staff report.** When an application which will be considered by a reviewing or decision-making body is submitted and determined to be complete, the Ordinance Administrator shall review the application and prepare a written staff report.

(A) The staff report shall be addressed to the reviewing or decision-making body as appropriate, and shall state whether the application complies with all appropriate standards of this ordinance and all other applicable policy documents.

(B) The Ordinance Administrator may include a recommendation for approval or denial of the application in the staff report. Proposed conditions of approval may also be included in the report to the extent, and in the manner, allowed by law and specified in this ordinance.

(C) A copy of the staff report shall be delivered to the applicant, and to the landowner(s), if different from the applicant prior to consideration by a decision-making body.

**3.1.10 Public hearings.** Legislative hearings will be scheduled for LDO text amendments, zoning map amendments, Conditional Zoning District classifications, and the establishment of vested rights. The Ordinance Administrator shall be responsible for scheduling public hearings for all applications for which one is required. The hearing may be scheduled for either a regular meeting or a special called meeting of the Town Council. Hearings shall be scheduled in a manner that will allow sufficient time for public notice to be given in accordance with statutory requirements.

**3.1.11 Public notification of legislative decisions.**

**(A) Content.** All public notices required under this ordinance shall comply with G.S. §§ 160D-601 and 160D-602. Additionally, all notices, except for posted notices shall:

- (1) Identify the date, time, and location of the ~~meeting or~~ public hearing;
- (2) Identify the property involved by the street address (if applicable) or by the legal description and/or parcel identification number (PIN);
- (3) Describe the nature and scope of the proposed action;
- (4) Indicate that interested parties may appear at public hearings and speak on the matter; and
- (5) Indicate how additional information on the matter can be obtained.

**(B) Published notice.** When the provisions of this ordinance require that notice of a public hearing ~~or meeting~~ be published pursuant to G.S. § 160D-601, the Ordinance Administrator shall publish a notice of the ~~meeting or~~ public hearing once a week for two successive weeks in a newspaper having general circulation in the town. The first notice shall be published not less than ten days nor more than 25 days prior to the date fixed for the hearing ~~or meeting~~. In computing such period, the day of publication is not included but the day of the hearing ~~or meeting~~ shall be included.

**(C) Mailed notice.**

(1) When the provisions of this ordinance require that mailed notice be provided pursuant to G.S. § 160D-602, the Ordinance Administrator shall prepare a notice of the public hearing ~~or meeting~~ and deliver the notice via first class mail to the following persons:

- (i) The applicant;
- (ii) Listed property owner(s) directly affected by the proposed action if the applicant is not the owner;
- (iii) Listed owners of adjacent property (this includes adjacent properties even if they are separated by a street, railroad, or other transportation corridor); and

(iv) Listed owners of property lying within 500 feet of the boundary of the subject property or zoning district boundary, as applicable.

(2) Mailed notices shall be deposited in the mail no fewer than ten days and no more than 25 days prior to the date of the public hearing ~~or meeting~~.

(3) The Ordinance Administrator shall certify to the Town Council that the required mailed notice procedures have been followed. This certification shall be conclusive evidence that the terms of this division have been met as set forth in G.S. § 160D-602.

(4) Mailed notice shall not be required when an application to amend the Official Zoning Map includes more than 50 different lots or tracts, owned by at least 50 different landowners, provided that the town publishes a notice (occupying at least one-half of a newspaper page) in a newspaper of general circulation once a week for two consecutive weeks beginning at least ten but not more than 25 days prior to the public hearing date. Affected landowners residing outside of the ~~town's jurisdiction or the~~ newspaper's circulation area shall be notified via first class mail in accordance with the procedures set forth in divisions (C)(1) and (C)(2) above.

**(D) Posted notice.**

(1) When a zoning map amendment is proposed, the Ordinance Administrator shall prominently post the notice on the subject property or on an adjacent public street or highway right-of-way at least ten days prior to the first public hearing ~~or meeting~~. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons. In computing such period, the day of the posting shall not be counted, but the day of the hearing shall be counted. Posted notices shall remain in place until such time that the approving authority has rendered its final decision on the matter.

(2) If no part of the subject property is visible from a public right-of-way, the notice shall be posted along the nearest street in the public right-of-way in such a manner as to ensure consistency with the intent of this division (D).

**(E) Constructive notice.**

(1) Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with the applicable notice requirements. Minor defects in notices may include, but are not limited to:

(i) Errors in legal descriptions; or

(ii) Typographical or grammatical errors that do not impede the communication of the notice to affected parties.

(2) Failure of an affected party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a public hearing or meeting and the location of the subject property(ies) shall be strictly adhered to.

(3) If question arises at the hearing ~~or meeting~~ regarding the adequacy of the notice, the reviewing or decision-making body shall direct the Ordinance Administrator to make a formal finding as to whether there was substantial compliance with the notice requirements of this ordinance, and such findings shall be made available to the reviewing or decision-making body prior to further action being taken on the request.

**(F) Summary of notice requirements.** The following table summarizes the public notice requirements for development applications requiring legislative decisions.

**Table 3-2: Summary of Notice Requirements**

Table 3-2: Summary of Notice Requirements			
Application Type	Notice Type		
	Published Notice	Mailed Notice	Posted Notice
Conditional Zoning District classification	X	X	X
Establishment of vested rights	X	X	X
Land development ordinance text amendment	X		
Zoning map amendment	X	X	X

**3.1.12 Public notification of quasi-judicial decisions.** Evidentiary hearings will be scheduled for special use permits, variance, watershed variances, floodplain variances, and appeals of administrative decisions. The Ordinance Administrator shall be responsible for scheduling evidentiary hearings for all applications for which one is required. The hearing may be scheduled for either a regular meeting or a special called meeting of the Board of Adjustment. Hearings will be scheduled in a manner that allows sufficient time for notice to be given in accordance with statutory requirements.

**3.1.13 Notice of evidentiary hearings.** Notice of evidentiary hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the [zoning-land development or unified development ordinance](#). In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The Board of Adjustment may continue an evidentiary hearing that has been convened [to a date certain that is specified during an evidentiary hearing](#) without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board of Adjustment is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

**3.1.14 Administrative materials.** The Ordinance Administrator shall transmit to the Board of Adjustment all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the Board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

**3.1.15 Presentation of evidence.** The applicant, the local government, and any person who would have standing to appeal the decision under G.S. § 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board of Adjustment. The Board Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Board. These rulings are also subject to judicial review pursuant to G.S. § 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

3.1.22, is a summary of state law only and parties are advised to consult the state's general statutes which shall govern judicial review of quasi-judicial decisions.

**3.1.23 Conditions of approval.** See applicable standards regarding conditions of approval for conditional zoning (§ 3.2.3(4)(C)), special use permits (§ 3.2.4(F)), and variances (§ 3.2.5(F)).

**(A) All other development approvals.** In other cases when a decision-making body may, according to the express terms of this ordinance, approve a development application with conditions, such body may impose reasonable and appropriate conditions or restrictions on the approval.

(1) The conditions may, as appropriate, ensure compliance with the general goals and policies of this ordinance, or with particular standards of this ordinance, in order to prevent or minimize adverse effects from the proposed development on surrounding lands.

**(2) Limitations.** The restrictions and conditions imposed must be directly related, in both type and scope, to the impact that the proposed development would have on the public and surrounding lands. All conditions imposed shall be expressly set forth in the motion by the decision-making body to approve the development application.

(3) Conditions of approval included as part of the decision on a development application shall be accepted, in writing, by the applicant prior to delivery of written notification of a decision or filing of a final order.

#### **3.1.24 Deferral of application.**

**(A) Request prior to publication of notice.** An applicant may request that a decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the Ordinance Administrator prior to the publication of notice for the public hearing. The Ordinance Administrator may grant such requests for good cause. The date of the new public hearing at which the application will be heard shall be set at the time the deferral is granted.

**(B) Request after publication of notice.** If a request for deferral of consideration of an application by a decision-making body is submitted subsequent to publication of notice, the request for deferral shall be placed on the public hearing agenda and acted upon by the decision-making body. The decision-making body may grant such requests for good cause. The date of the new public hearing at which the application will be heard shall be set at the time the deferral is granted. If a deferral is granted, the application may be subject to additional application fees to defray the costs of processing the application and advertising the public hearing, if any. Any additional fees must be paid to the town prior to the readvertisement of the public hearing notice.

#### **3.1.25 Changes to application after notice of public hearing.**

**(A) Clerical errors.** Minor additions, deletions, or corrections constituting clerical errors in an application may be made without referral of the application, as amended, back to the Ordinance Administrator for review and preparation of a staff report, or to any review bodies as is required for the original review of the application.

**(B) Major changes.** No substantive changes to a development application related to uses, densities, intensities, street layout, access, open space configuration, or other major element shall be made after notification of a public hearing. Major changes by the applicant after notification of a public hearing require that the original application be withdrawn and a new application be submitted along with any required fees. The resubmitted application must go through the entire review process as if it were a new application in order to ensure the proper review of all changes.

**(C) Conditions of approval.** Proposed changes in conditions of approval may be considered by the Town Council or Board of Adjustment without referral back to the Ordinance Administrator or other recommending body.

### **3.1.26 Withdrawal of application.**

**(A) Submission of request.** Any request for withdrawal of an application subject to a public hearing shall be submitted in writing to the Ordinance Administrator, or shall be made through a verbal request at the public hearing for which the application has been scheduled.

**(B) Prior to notice of public hearing.** The Ordinance Administrator shall approve a request for withdrawal of an application if it has been submitted prior to public notification of the application.

**(C) Subsequent to notice of public hearing.**

(1) If the request for withdrawal of an application is submitted subsequent to public notification, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the decision-making body.

(2) Whenever an application subject to a requirement for a public hearing before the Town Council is withdrawn after public notification, but prior to a decision by the Town Council, no similar application may be submitted for the same property for a period of 90 days following the withdrawal.

**(D) Fees.** Fees shall not be refunded for withdrawn applications.

**(E) Waiting period.** No more than two withdrawals of the same type of development application for the same property may be filed within any single 12-month period, and no similar type of application may be filed for the same land within one year following the second withdrawal.

**(F) Notification of decision to applicant.** Within a reasonable period of time after a decision on an application, the Town Clerk shall notify the applicant of the decision in writing. Within a reasonable period of time after the decision, a copy of the decision shall also be made available to the public in the office of the Town Clerk.

**(G) Lapse of approval.** Lapse of approval (also referred to as “expiration”) shall occur as provided by this ordinance for the various types of development applications. If no provision for lapse is given by this ordinance for a particular type of development permit or approval, and if no lapse period is imposed as part of an approval by the decision-making body, lapse shall occur if development is not commenced or a subsequent permit authorized by that approval, or an extension is not obtained within two years. Withdrawal of an application by an applicant shall render the application and any associated approval null and void upon withdrawal.

**(H) Examination of application and supporting documents.** At any time upon reasonable request and during normal business hours, any person may examine an application, a finalized staff report and materials submitted in support of or in opposition to an application in the office of the Town Clerk. Copies of such materials shall be made available at a reasonable cost.

(Ord. A.21.01, passed 6-3-2021)

## **§ 3.2 STANDARDS, PROCEDURES, AND REQUIREMENTS FOR DEVELOPMENT APPLICATIONS.**

This section includes the review procedures, standards, and related information for each of the development application procedures as summarized in Table 2-1, Summary of Review and Approval Authority.

### **3.2.1 Zoning map amendment.**

**(A) Purpose.** The purpose of this section is to provide a uniform means for amending the Official Zoning Map.

**(B) Authority.** The Town Council may adopt an ordinance amending the Official Zoning Map upon compliance with the provisions of this section.

**(C) Initiation.** An application to amend the Official Zoning Map may be initiated by the Town Council, the Planning Board, the Ordinance Administrator, ~~or~~ a resident of the town, or any other person having a financial or other interest in land located within the town's zoning jurisdiction.

**(D) Downzoning.** No amendment to zoning regulations or a zoning map that downzones property in accordance with the definition of downzoning included in this ordinance and consistent with the definition provided in G.S. § 160D-601(d) shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the downzoning amendment, unless the downzoning amendment is initiated by the town.

**(E) Conditional Zoning District classification distinguished.**

(1) Applications for an amendment to the Official Zoning Map that are accompanied by applicant sponsored conditions or limitations shall be considered as a Conditional Zoning District classification, and shall be reviewed in accordance with this division and division 3.2.3, Conditional Zoning District Classification.

(2) In no case shall an application for an amendment to the Official Zoning Map be converted into an application for a Conditional Zoning District classification, nor shall an application for a Conditional Zoning District classification be converted into an application for an amendment to the Official Zoning Map. If such a conversion is desired by the applicant, he or she shall withdraw the original request and resubmit a new application and any required fees for the desired process.

**(F) Procedures.**

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures.

**(2) Review and recommendation by Ordinance Administrator.** Prior to the submission of the application to the Planning Board, the Ordinance Administrator shall review the application and make a written recommendation which he or she shall present to the Planning Board during the meeting at which it considers the application.

**(3) Review and recommendation by the Planning Board.** Following the review by the Ordinance Administrator, the application shall be forwarded to the Planning Board for its review and recommendation.

(i) During the meeting, the Planning Board shall consider the application, relevant supporting materials, the Ordinance Administrator's recommendation, and any comments given by the public on the matter. Within ~~45 days of the first meeting on an application~~ a reasonable period of time, the Planning Board shall make a written recommendation to the Town Council.

(ii) In making its recommendation, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable, in accordance with G.S. § 160D-604(d).

(iii) The Planning Board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

rezoning under G.S. § 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(iii) The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

**(7) Citizen Comment.** If anyone submits a written statement regarding a proposed zoning map amendment to the Town Clerk within two days of the date the matter is to be voted on by the Town Council, the Town Clerk shall deliver the written statement to the Town Council, who may, at its sole discretion, take the written statement under advisement.

**(G) Zoning map amendment standards.** Amending the Official Zoning Map is a matter committed to the legislative discretion of the Town Council. In determining whether to approve or deny a proposed amendment, the Town Council shall consider and weigh the relevance of the following factors.

(1) Whether, and to the extent which, the proposed amendment is consistent with the comprehensive plan, Land Use Plan, and any other relevant plans;

(2) Whether, and to the extent which, the proposed amendment addresses a demonstrated community need;

(3) Whether, and to the extent which, the proposed amendment is compatible with existing and proposed uses surrounding the land subject to the amendment;

(4) Whether, and to the extent which, the proposed amendment would result in a logical and orderly pattern of development;

(5) Whether, and to the extent which, the proposed amendment would encourage premature development in the area subject to the amendment;

(6) Whether, and to the extent which, the proposed amendment would result in adverse impacts to property values in the area surrounding the land subject to the amendment; and

(7) Whether, and to the extent which, the proposed amendment would result in significantly adverse impacts on the natural environment.

### **3.2.2 Land development ordinance text amendment.**

**(A) Purpose.** The purpose of this division is to provide a uniform means for amending the text of the land development ordinance.

**(B) Authority.** The Town Council may adopt an ordinance amending the text of the land development ordinance upon compliance with the provisions of this section.

**(C) Initiation.** An application to amend the text of the land development ordinance may be initiated by the Town Council, the Planning Board, the Ordinance Administrator, a resident of the town, or any other person having a financial or other interest in land located within the town's zoning jurisdiction.

#### **(D) Procedures.**

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures.

**(2) Review and recommendation by Ordinance Administrator.** Prior to the submission of the application to the Planning Board, the Ordinance Administrator shall review the application and make a written recommendation, which he or she shall present to the Planning Board.

**(3) Review and recommendation by Planning Board.**

(i) Following the review and recommendation by the Ordinance Administrator, the application shall be forwarded to the Planning Board for its review and recommendation. During the meeting, the Planning Board shall consider the application, relevant supporting materials, the Ordinance Administrator's recommendation, and any comments given by the public on the matter. Within ~~45 days of the first meeting on an application~~ a reasonable period of time, the Planning Board shall make a written recommendation to the Town Council.

(ii) In making its recommendation, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable, in accordance with G.S. § 160D-604(d).

(iii) The Planning Board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

**(4) Review and action by Town Council.** Following the receipt of a recommendation from the Planning Board, the Town Council shall conduct a public hearing to review and consider the application, the relevant supporting materials, the Ordinance Administrator's recommendation, the recommendation of the Planning Board, and the comments given during the hearing (if any). Following the close of the public hearing, the Town Council shall take one of the following actions:

- (i) Approve the amendment as proposed;
- (ii) Approve a revised amendment;
- (iii) Remand the application back to the Planning Board for further consideration; or
- (iv) Deny the proposed amendment.

**(5) Council consistency review.** Regardless of the decision on the application, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with the adopted comprehensive plan.

**(6) Citizen Comment.** If anyone submits a written statement regarding a proposed land development ordinance text amendment to the Town Clerk within two days of the date the matter is to be voted on by the Town Council, the Town Clerk shall deliver the written statement to the Town Council, who may, at its sole discretion, take the written statement under advisement.

**(E) Land development ordinance text amendment standards.** Amending the text of the land development ordinance is a matter committed to the legislative discretion of the Town Council. In determining whether to approve or deny a proposed amendment, the Town Council shall consider and weigh the relevance of the following factors:

- (1) Whether, and to the extent which, the proposed amendment is consistent with the comprehensive plan, the Land Use Plan, and any other relevant plans;
- (2) Whether, and to the extent which, the proposed amendment addresses a demonstrated community need;
- (3) Whether the proposed amendment is in conflict with any other provision of this ordinance or other related town regulations;

(4) Whether, and to the extent which, the proposed amendment is consistent with the purpose of the zoning districts in the ordinance, or will improve compatibility among uses and will ensure efficient development in the town; and

(5) Whether, and to the extent which, the proposed amendment would result in significantly adverse impacts on the natural environment.

### **3.2.3 Conditional Zoning District classification.**

**(A) Purpose.** A Conditional Zoning District classification allows particular land uses to be established only in accordance with specific standards and conditions adopted as part of the establishment of the district. In cases where the standards of a Base Zoning District are inadequate to ensure the compatibility of a proposed development with immediately surrounding lands, the landowner may apply for an amendment to the Official Zoning Map to a Conditional Zoning District classification. Conditional Zoning Districts are subject to additional conditions or restrictions above and beyond the standards of the parallel Base Zoning District as a means of ensuring compatibility of the proposed development with the use of neighboring lands.

**(B) Procedure.** Approval of a Conditional Zoning District classification shall require an amendment to the Official Zoning Map (using the procedures established in division 3.2.1, Zoning Map Amendment) accompanied by the submission of applicant sponsored conditions limiting the scope of the development proposal and a concept plan (reviewed in accordance with division 3.2.6(D)(3), Concept Plan - Conditional Zoning District classification).

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures. Applications for a conditional zoning district application shall be signed by all landowners of the property subject to the request.

**(2) Concept plan review by the Ordinance Administrator.** Applications for a Conditional Zoning District classification shall be subject to review of a concept plan (see division 3.2.6, Concept Plan) by the Ordinance Administrator prior to the preparation of a staff report. Establishment of development identified in a concept plan may not take place until a site plan, in substantial conformity with the approved concept plan, is approved in accordance with division 3.2.7, Site Plan. An applicant may choose to file a site plan with a Conditional Zoning District classification, which shall be reviewed by the Ordinance Administrator prior to consideration by the Planning Board. In cases where a Conditional Zoning District classification application includes a site plan, the Town Council shall render a decision on the site plan. In cases where a site plan is submitted, all stormwater and public infrastructure aspects must comply with all applicable town and governmental agency requirements before the site plan may be approved.

**(3) Review and recommendation by the Planning Board.** After the review of the concept plan and the preparation of a staff report, the application shall be referred to the Planning Board for review and recommendation. During the meeting, the Planning Board shall consider the application, the relevant supporting materials, the concept plan, the staff report, and the public comments given at the meeting. Within ~~45 days of the first meeting on an application~~ a reasonable period of time, the Planning Board shall make a written recommendation to the Town Council. This shall include a plan consistency review following the procedures in § 3.2.1(F)(3).

**(4) Review and action by Town Council.** Following the receipt of a recommendation from the Planning Board, the Town Council shall hold a legislative hearing on the application. At the public hearing, the Town Council shall consider the application, the relevant supporting materials, the concept plan, the staff report, the recommendation of the Planning Board, and comments given at the public hearing (if any). After the close of the public hearing, the Town Council shall, by a simple majority of all members present and qualified to vote, approve, approve with conditions, or deny the

application. This shall include a plan consistency review following the procedures in § 3.2.1(F)(5) and a reasonableness review following the procedures in § 3.2.1(F)(6).

**(C) Conditions.** Specific conditions of approval may be proposed by the petitioner or the town.

(1) Only those conditions approved by the town and consented to by the petitioner in writing may be incorporated into the zoning regulations.

(2) All conditions shall be expressly set forth in the motion by the decision-making body to approve the development application.

(3) Unless consented to by the petitioner in writing, the town may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. § 160D-702(b), driveway-related improvements in excess of those allowed in G.S. §§ 136-18(29) and 160A-307, or other unauthorized limitations on the development or use of land.

(4) Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. § 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.

(5) No use shall be authorized within a Conditional Zoning District except those uses proposed by the applicant and approved by the Town Council. In no case shall any use prohibited within a parallel Base Zoning District be authorized in a corresponding Conditional District.

(6) No condition shall be less restrictive than the parallel Base Zoning District or any applicable Overlay District standards.

(7) No condition shall be included that specifies the ownership status, race, religion, or character of the occupants of dwelling units, the minimum value of improvements, or any other exclusionary device.

(8) No changes in the concept plan, ~~site plan~~, or proposed conditions that are less restrictive than those in the application (e.g., smaller setbacks, more dwelling units, greater height, more access points, new uses, fewer improvements, and the like) shall be proposed by the applicant following public notification. Nothing in this division 3.2.3(C)(4) shall limit the application of new or more restrictive conditions after public notification, provided such conditions are received by the Ordinance Administrator in writing and signed by all owners of the property at least ten business days prior to the final decision on the application by the Town Council.

(9) In addition to any conditions proposed by the applicant, the Town Council may attach any additional conditions in accordance with division 3.1.23, Conditions of Approval (e.g., limitations on location, hours of operation, extent of the proposed uses, and the like), but the Town Council shall not attach a condition that requires a landowner to waive a vested right.

**(D) Effect of approval.** Lands subject to a Conditional Zoning District classification shall also be subject to the approved concept plan and approved conditions. The approved concept plan and conditions shall constitute the standards for the approved Conditional Zoning District, and are binding on the land as an amendment to this ordinance and the Official Zoning Map.

**(E) Designation.** A Conditional Zoning District classification shall bear the same designation as the parallel Base Zoning District, but shall also include the suffix "CD." ~~along with the ordinance number establishing the Conditional Zoning District classification.~~

**(F) Changes to an approved conditional zoning.** The owners of individual parcels may apply for a minor deviation or an amendment so long as the change would not result in other properties

failing to meet the terms of the conditions. Any approved changes shall only be applicable to those properties whose owners petitioned for the change.

**(G) Minor deviation.** The Ordinance Administrator is authorized to review and approve a minor deviation to a concept plan, site plan, or approved conditions if the proposed revision meets all of the following limitations:

(1) It does not involve a change in uses permitted or the density of overall development permitted;

(2) It complies with the intent of both the underlying zoning standards and other applicable conditions of the approval; and

(3) It involves technical considerations which could not be reasonably anticipated during the approval process, or any other change which has no material effect on the character of the approved development or any of its approved conditions.

For example, minor deviations shall include, but not be limited to, the following if they comply with the provisions in (G)(1), (G)(2), and (G)(3) in this subsection:

- (a) Driveway relocations;
- (b) Structure floor plan revisions;
- (c) Facility design modifications for amenities and other site features;
- (d) Adjustments to road configuration or internal circulation;
- (e) Adjustments to building location;
- (f) Minor adjustments to landscaping;
- (g) Adjustments to lot configuration; and
- (h) Adjustments to utility alignment and/or stormwater facilities.

**(H) Amendment.** Changes that do not qualify as minor deviations shall be amendments that may only be considered in accordance with the procedure used to establish the Conditional Zoning District.

**(I) Expiration.** The Town ~~Council~~ may initiate a zoning map amendment ~~hold a public hearing in accordance with the zoning map amendment procedure~~ in accordance with division 3.2.1 to ~~abolish~~ remove the a Conditional Zoning District classification and 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. Such time period shall not be extended with transfer of ownership.

**(J) Extension.** Upon written application by the owner, submitted at least 30 days prior to the expiration of the Conditional Zoning District classification, and in light of all relevant circumstances, including, but not limited to, extreme weather events, economic cycles, and market conditions, the Town Council may grant one extension, not to exceed six months, for an applicant to obtain a building permit (or other similar permit for uses which do not involve the construction of a structure). Failure to obtain a building permit (or other similar permit for uses which do not involve the construction of a structure) within the time established in the extension ~~shall~~ may result in the Town initiating a zoning map amendment to remove ~~expiration of~~ the Conditional Zoning District classification and revert the land to its prior conventional zoning district classification (or the closest corresponding conventional zoning district).

### 3.2.4 *Special use permit.*

**(A) Purpose.** Special uses are uses that are generally compatible with the other uses permitted in a zoning district, but require individual review of their location, design, configuration, density and intensity of use, and usually require the imposition of conditions to ensure the appropriateness of the use at a particular location.

**(B) Authority.** The Board of Adjustment is authorized to review and decide applications for special use permits in accordance with this section. Only those uses identified as special uses in Table 7-1, Table of Permitted Uses, are authorized to be considered as special uses under this section. The designation of a use as a special use does not constitute an authorization that such use shall be approved through a special use permit in accordance with this section. Rather, each proposed special use shall be evaluated by the Board of Adjustment for compliance with the standards set forth in this section and the applicable standards for the use in § 7.3, Use Specific Standards (if applicable).

**(C) Initiation.** Application for a special use permit may only be initiated by the owner(s), an authorized agent, lessee, or contract purchaser(s), of the property for which the special use permit is designated in accordance with division 3.1.1.

#### **(D) Procedures.**

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures.

**(2) Concept plan required.** A concept plan must be submitted as part of the application for a special use permit. The concept plan shall conform to the requirements set forth in division 3.2.6(E), Concept Plan Standards. Establishment of a special use identified in a concept plan may not take place until a site plan, in substantial conformity with the approved concept plan, is approved in accordance with division 3.2.7, Site Plan. An applicant may choose to file a site plan with a special use permit application, which shall be reviewed by the Ordinance Administrator prior to consideration by the Board of Adjustment. In cases where a Special Use Permit application includes a site plan, the Board of Adjustment shall render a decision on the site plan. In cases where a site plan is submitted, all stormwater and public infrastructure aspects must comply with all applicable town and governmental agency requirements before the site plan may be approved.

**(3) Action by Board of Adjustment.** After proper notice and scheduling of a public hearing following the procedures in §§ 3.1.12 and 3.1.13, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application following the procedures in §§ 3.1.14 through 3.1.21. At the public hearing, the Board of Adjustment shall consider the application, the relevant supporting materials, the concept plan, and any evidence presented at the quasi-judicial public hearing. After the close of the public hearing, the Board of Adjustment shall approve, approve with conditions, or deny the application based on the standards in division 3.2.4(E), Special Use Permit Standards. In accordance with the standards set forth in G.S. § 160D-406(i), granting approval or conditional approval of a special use permit shall require an affirmative vote of the majority of the members of the Board of Adjustment who are eligible to vote.

#### **(E) Special use permit standards.**

(1) The proposed use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

(2) The proposed use is in compliance with all standards in § 7.3, Use Specific Standards.

(3) The proposed use is compatible with the character of surrounding property and uses permitted in the zoning district(s) of surrounding property.

**(K) Extension.** Upon written application submitted at least 30 days prior to the expiration of the permit period by the applicant, and in light of all relevant circumstances, including, but not limited to, extreme weather events, economic cycles, and market conditions, the Ordinance Administrator may grant one extension not to exceed six months. Failure to submit an application for an extension within the time limits established by this division shall result in the expiration of the special use permit.

**(L) Minor deviation.** The Ordinance Administrator is authorized to review and approve a minor deviation to a concept plan, site plan, or approved conditions if the proposed revision meets all of the following limitations:

(1) It does not involve a change in uses permitted or the density of overall development permitted;

(2) It complies with underlying zoning standards and other applicable conditions of the approval; and

(3) It involves technical considerations which could not be reasonably anticipated during the approval process, or any other change which has no material effect on the character of the approved development or any of its approved conditions.

For example, minor deviations shall include, but not be limited to, the following if they comply with the provisions in (L)(1), (L)(2) and (L)(3) in this subsection:

(a) Driveway relocations;

(b) Structure floor plan revisions;

(c) Facility design modifications for amenities and other site features;

(d) Minor adjustments to road configuration or internal circulation;

(e) Minor adjustments to building location;

(f) Minor adjustments to landscaping;

(g) Minor adjustments to lot configuration; and

(h) Minor adjustments to utility alignment.

**(M) Amendments.**

(1) Changes to a special use permit that do not qualify as minor deviations may only be made in accordance with the procedures and standards established for the original approval of a special use permit.

(2) If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for a permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification.

**3.2.5 Variance.**

**(A) Purpose.** The purpose of a variance is to allow certain deviations from the standards of this ordinance (such as height, yard setback, lot coverage, or similar numeric standards), when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), the 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. Variances to

the standards established in Article 15, Watershed Protection or Article 16, Flood Damage Prevention shall be subject to additional requirements as set forth in divisions 3.2.5(J) and 3.2.5(K) respectively.

**(B) Authority.** The Board of Adjustment shall review and decide any applications for variances from the requirements of this ordinance in accordance with this division 3.2.5.

**(C) Initiation.** Application for a variance may only be initiated by the owner(s), an authorized agent, lessee, or contract purchaser(s), of the property for which the variance is designated in accordance with division 3.1.1.

**(D) Procedures.**

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures.

**(2) Action by Board of Adjustment.** After appropriate notice has been given, the Board of Adjustment shall conduct a quasi-judicial hearing on the application. At the hearing, the Board of Adjustment shall consider the application, the relevant support materials and the sworn testimony given at the public hearing. Within a reasonable time following the close of the public hearing, the Board of Adjustment shall approve, approve with conditions, or deny the application based on the standards in division 3.2.5(E), Required Findings of Fact. In accordance with the standards set forth in G.S. § 160D-406, granting approval or conditional approval of a variance shall require an affirmative vote of at least four-fifths of the members of the Board of Adjustment who are eligible to vote.

**(E) Required findings of fact.** When unnecessary hardships would result from carrying out the strict letter of the LDO, the Board of Adjustment shall vary any of the provisions of the LDO upon a showing of all of the following.

(1) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. 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.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

**(F) Conditions of approval.** In approving a variance, the Board of Adjustment may impose additional appropriate conditions on the variance provided that the conditions are reasonably related to the variance. All conditions that are included as part of the approval shall be consented to in writing by the landowner and the permit applicant, if different from the landowner, before the variance is issued.

**(G) Recordation.** When the Board of Adjustment grants a variance, the town shall, at the applicant's expense, record the written decision on the variance in the office of the County Register of Deeds within 30 days of its issuance.

**(H) Subsequent development.** Development authorized by the variance shall not be carried out until the applicant has secured all other permits required by this ordinance. A variance does not

(ii) In the case of a special use permit, the Ordinance Administrator shall review the concept plan for conformance to the ordinance and forward his or her comments to the Board of Adjustment, which shall consider the concept plan as it makes its decision on approving, conditionally approving, or denying approval of the special use permit.

(3) Concept plans associated with an application for a site plan or subdivision preliminary plat in one of the Gateway Districts shall be considered as an applicant sponsored condition of approval. The Ordinance Administrator shall provide his or her recommendation on the concept plan to the Planning Board, which shall consider the concept plan in making its own recommendation to the Town Council. Following a recommendation from the Planning Board, the Town Council may approve, approve with conditions, or deny approval of a concept plan for development in any of the Gateway Districts.

**(D) Procedures.**

(1) **Preliminary procedures.** The preliminary procedures for submission and review of a concept plan are established in § 3.1, Common Review Procedures.

**(2) Concept plan ~~is~~ site plan or subdivision preliminary plat.**

(i) **Review by Ordinance Administrator.** In the case of a concept plan submitted for review in association with a site plan or subdivision preliminary plat, the Ordinance Administrator shall review the concept plan for compliance with the applicable standards set forth in the ordinance and division 3.2.6(E), Concept Plan Standards. Following his or her review, he or she shall submit his or her comments in writing to the applicant, who may then begin the preparation of the site plan or subdivision preliminary plat.

**(3) Concept plan ~~is~~ ~~Conditional~~ ~~conditional~~ ~~Zoning~~ ~~zoning~~ ~~District~~ ~~district~~ classification.**

(i) **Review and recommendation by Ordinance Administrator.** In the case of a concept plan submitted in association with an application for Conditional Zoning District classification, the Ordinance Administrator shall review the concept plan for compliance with the applicable standards set forth in the ordinance and division 3.2.6(E), Concept Plan Standards, and prepare a staff report which he or she will forward to the Planning Board for consideration as it makes its recommendation on the Conditional Zoning District classification.

(ii) **Review and recommendation by Planning Board.** Following receipt of the staff report from the Ordinance Administrator, the Planning Board shall review and make a recommendation on the concept plan as part of the Conditional Zoning District classification process following the procedures in division 3.2.3(B)(3).

(iii) **Review and action by Town Council.** Following the receipt of a recommendation from the Planning Board, the Town Council shall review and make its decision on the concept plan as part of the Conditional Zoning District classification process following the procedures in division 3.2.3(B)(4).

(iv) Subsequent site plan and/or subdivision review. Development depicted in a concept plan shall also be required to undergo subdivision review in accordance with division 3.2.9 Subdivision, and/or site plan review in accordance with division 3.2.7, Site Plan. Subdivision plats or site plans shall be in substantial conformity with the approved concept plan.

(v) Site plan alternative to a concept plan. An applicant for a conditional rezoning district classification may, in the applicant's sole discretion, file a site plan with the application instead of a concept plan. In this instance, the site plan shall be reviewed in the same manner as a concept plan, and if approved by the Town Council, shall not require subsequent review in accordance with division 3.2.7, Site Plan. In cases where a site plan is submitted as an alternative to a concept plan, all

stormwater and public infrastructure aspects must comply with all applicable town and governmental agency requirements before the site plan may be approved. In the event a site plan approved in this manner requires an amendment, it shall require a reconsideration as a conditional rezoning district classification.

**(4) Concept plan = special use permit.**

**(i) Review by Ordinance Administrator.** In the case of a concept plan submitted in association with an application for a special use permit, the Ordinance Administrator shall review the concept plan for compliance with the applicable standards set forth in the ordinance and division 3.2.6(E), Concept Plan Standards, and submit his or her comments to the Board of Adjustment for consideration as it makes its decision on the special use permit application.

**(ii) Review and action by Board of Adjustment.** Following the receipt of comments from the Ordinance Administrator, the Board of Adjustment shall review the concept plan as part of the special use permit application process following the procedures in division 3.2.4(D)(3).

**(iii) Subsequent site plan and/or subdivision review.** Development depicted in a concept plan shall also be required to undergo subdivision review in accordance with division 3.2.9 Subdivision, and/or site plan review in accordance with division 3.2.7, Site Plan. Subdivision plats or site plans shall be in substantial conformity with the approved concept plan.

**(iv) Site plan alternative to a concept plan.** An applicant for a special use permit may, in the applicant's sole discretion, file a site plan with the application instead of a concept plan. In this instance, the site plan shall be reviewed in the same manner as a concept plan, and if approved by the Board of Adjustment, shall not require subsequent review in accordance with division 3.2.7, Site Plan. In cases where a site plan is submitted as an alternative to a concept plan, all stormwater and public infrastructure aspects must comply with all applicable town and governmental agency requirements before the site plan may be approved. In the event a site plan approved in this manner requires an amendment, it shall require a reconsideration as a special use permit.

**(5) Concept plan = Gateway District.**

**(i) Review and recommendation by Ordinance Administrator.** In the case of a concept plan submitted in association with an application for site plan or subdivision preliminary plat in a Gateway District, the Ordinance Administrator shall review the concept plan for compliance with the applicable standards set forth in the ordinance and division 3.2.6(E), Concept Plan Standards, and prepare a staff report which he or she will forward to the Planning Board for consideration as it makes its recommendation.

**(ii) Review and recommendation by Planning Board.** Following receipt of the staff report from the Ordinance Administrator, the Planning Board shall review and make a recommendation on the concept plan.

**(iii) Review and action by Town Council.** Following the receipt of a recommendation from the Planning Board, the Town Council shall review and make its decision on the concept plan.

**(E) Concept plan standards.** A concept plan shall be reviewed for compliance with the applicable standards set forth in the ordinance for the particular type of development and the following:

- (1) Setbacks and lot coverage;
- (2) Building envelopes for single-family residential development;
- (3) Building location and orientation for multi-family and nonresidential development;

(2) **Review of concept plan.** Except when a site plan is submitted with an application for a conditional rezoning district classification or a special use permit. The review of a concept plan, in accordance with division 3.2.6, shall be required prior to the consideration of a site plan.

(3) **Review and decision by Ordinance Administrator.** Following the review and approval of a concept plan, the applicant shall prepare a site plan that reflects the configuration and composition depicted in the concept plan. Following the submission of a site plan by an applicant, the Ordinance Administrator shall review and approve, approve with modifications, or deny approval of the site plan based on the standards in division 3.2.7(E), Site Plan Standards.

(E) **Site plan standards.** A site plan shall be approved only upon a finding that it adequately depicts the precise design, location, and profile of all structures, site features, and public facilities proposed for development, as well as all other technical considerations. In addition, the site plan shall demonstrate that all of the following standards are met:

(1) The use is allowed in the zoning district in accordance with Table 7-1, Table of Permitted Uses;

(2) The development and uses in the site plan comply with § 7.3, Use Specific Standards;

(3) The development is consistent with the associated concept plan and applicant sponsored conditions (if applicable).

(4) The development proposed in the site plan and its general layout and design comply with all appropriate standards in this ordinance; and

(5) The development complies with all other applicable town requirements.

(F) **Effect of approval.** The approval of a site plan allows the applicant to apply for a land development permit to initiate land development activities in accordance with the approved site plan.

(G) **Expiration.** Site plan approval shall automatically expire at the end of two years following initial approval if a building permit has not been issued and construction pursuant to that permit has not commenced for at least one building in the proposed development. A change in ownership shall not affect this time frame.

(H) **Minor deviation.** The Ordinance Administrator is authorized to review and approve a minor deviation to a concept plan or approved conditions if the proposed revision meets all of the following limitations:

(1) It does not involve a change in uses permitted or the density of overall development permitted;

(2) It complies with underlying zoning standards and other applicable conditions of the approval; and

(3) It involves technical considerations which could not be reasonably anticipated during the approval process, or any other change which has no material effect on the character of the approved development or any if its approved conditions.

For example, minor deviations shall include, but not be limited to, the following if they comply with the provisions in (H)(1), (H)(1), and (H)(1) in this subsection:

(a) Driveway relocations;

(b) Structure floor plan revisions;

(c) Facility design modifications for amenities and other site features;

appeal of a decision of an administrative official charged with enforcement of the LDO, any appeal arising out of the LDO, or any appeal made in the nature of certiorari as set forth in G.S. § 160D-406. All decisions shall be in accordance with division 3.1.13, Quasi-Judicial Decisions.

**(C) Effect of appeal.** An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from (including the accrual of fines and fees) unless the official who made the decision certifies to the Board of Adjustment after the notice of appeal has been filed, that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed. Filing of an appeal shall toll all time periods associated with conditions of approval, permit expiration, or vesting until the appeal is decided.

**(D) Appeals in the nature of certiorari.** When hearing an appeal pursuant to G.S. §160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160D-1402.

**(E) Other forms of dispute resolution.** The parties to an appeal that has been made under division 3.2.13, Appeals of Administrative Decisions, may agree to mediation or other forms of alternative dispute resolution.

### 3.2.14 ~~Establishment of vested rights~~ Vested rights certificate.

**(A) Purpose.** The purpose of this division is to implement the provisions of G.S. §§ 160D-108 and 160D-108.1 in order 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. ~~for the establishment of a statutory zoning vested right upon the approval of a site specific vesting plan.~~

**(B) Applicability.** An application for a vested rights certificate shall be limited to applications with an approved site-specific vesting plan in accordance with division 1.11.4.D, Site-specific vesting plan. ~~Vested rights shall only be available to a landowner with a legally established and approved site specific vesting plan. For the purposes of this division, a site specific vesting plan shall include the following:~~

- ~~— (1) Development subject to an approved special use permit;~~
- ~~— (2) Development subject to a subdivision preliminary plat;~~
- ~~— (3) Development subject to a site plan; and~~
- ~~— (4) Land subject to a Conditional Zoning District classification.~~

#### **(C) Procedure.**

**(1) Preliminary procedures.** The preliminary procedures and requirements for submission and review of an application are established in § 3.1, Common Review Procedures.

~~— (2) **Review and recommendation by Planning Board.** Following review by the Ordinance Administrator, the application shall be referred to the Planning Board for review and recommendation.~~

~~During the meeting, the Planning Board shall consider the application, the relevant support materials, and any public comments given on the application. Within 45 days of the first meeting on an application, the Planning Board shall make a written recommendation to the Town Council. In addition to making a recommendation as to approval or denial of the application and the appropriate period of time to vest a site-specific vesting plan, the Planning Board may also recommend the imposition of conditions on the approval in accordance with division 3.1.15, Conditions of Approval. In no case shall the application proceed to the public hearing before the Town Council without a recommendation by the Planning Board.~~

**(32) Review and decision by Town Council.** After ~~the receipt of a recommendation from the Planning Board, public notification, and the scheduling of a public hearing,~~ the Town Council shall conduct a public hearing on the application. At the public hearing, the Town Council shall consider the application, the relevant support materials, ~~the recommendation of the Planning Board,~~ and the testimony given at the public hearing. After the close of the public hearing, the Town Council shall, by simple majority of those present and eligible to vote, approve, approve with conditions, or deny the application based on the standards in division 3.2.14(D), Vested Rights Certificate Standards. In the event the application is approved, the Town Council shall establish the vesting period, which shall not exceed a maximum of five years from the date of approval of the establishment of vested rights.

**(D) Vested rights certificate standards.** The Town Council shall only grant a vested rights certificate in accordance with ~~this division 3.2.14 after making the following findings of fact:~~

(1) The site-specific vesting plan was lawfully established and approved in the appropriate manner by the appropriate decision-making body;

(2) The site-specific vesting plan has not expired and the development proposed remains valid and unexpired;

(3) All required variances, if any, ~~included as a condition of the approval of a site-specific vesting plan~~ have been obtained; and

(4) The site-specific vesting plan provides sufficient information to establish the types and intensity of proposed development with reasonable certainty.

In approving the establishment of vested rights, the Town Council may extend the two-year vested rights period to a period of up to five years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, economic cycles, and market conditions.

**(E) Effect.**

(1) 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).”

(2) The establishment of a vested right shall not preclude the application of overlay zoning district provisions that impose additional requirements but do not affect the allowable type and intensity of use, or through ordinances that are general in nature and are applicable to all property subject to land use regulation by the town, including, but not limited to: building, fire, plumbing, electrical, and mechanical codes.

**(F) Duration.**

(1) In no instance shall a vested right certificate provide a vested right for a period of longer than five years from the date of approval of the site-specific vesting plan.

(2) A vested right certificate shall expire and become null and void:

a. At the end of the approved vesting period; or

b. If a building permit application for the development subject to the certificate is not submitted within two years of the approval of the vested rights certificate associated with a special use permit concept plan, subdivision preliminary plat, or site plan, or five years of the approval of a vested rights certificate associated with a conditional rezoning concept plan; or

c. Upon a finding by the Town Council after public notice and a public hearing, that:

i. Natural or man-made hazards on or in the immediate vicinity of the land, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated;

ii. The landowner or landowner's representative intentionally supplied inaccurate information or made material misrepresentations which affected the approval of the site-specific vesting plan;

iii. The landowner failed to comply with any condition imposed upon the establishment of the site-specific development plan or vested rights certificate; or

d. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval of the certificate by the town, together with interest at the legal rate until paid. Compensation shall not include any diminution in the value of the land which is caused by such action; or

e. With the written consent of the affected landowner.

(3) Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, the Town Council may modify the affected provisions of the certificate by ordinance, if after conducting a hearing, it finds the changed conditions created by the change in the State or federal law have a fundamental effect on the site-specific vesting plan.

### ~~3.2.15 Multi-phased development.~~

~~(A) A multi-phased development, as defined in this ordinance and consistent with the definition in G.S. § 160D-108(j)(4) is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development.~~

~~(B) A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.~~

### ~~3.2.16~~ **15 Special intensity allocation.**

**(A) Purpose.** The purpose of this division 3.2.16-15 is to set forth the procedures and requirements for the review and approval of a special intensity allocation in compliance with the standards of § 15.1, Water Supply Watershed Protection Rules.

**(B) Applicability.** SIA can only be requested in WS-II-NSW-P.

**(C) Procedure.**

**CIVIC SPACE.** An outdoor area dedicated for public use.

**CLUSTER DEVELOPMENT.** The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed-use development are considered as CLUSTER DEVELOPMENT.

**COLLECTOR STREET.** A street whose principal function is to carry traffic between local, subcollector, and cul-de-sac streets and streets of higher classification, but which may provide direct access to abutting properties.

**COLLEGE or UNIVERSITY.** A public or private, non-profit institution for post-secondary education offering courses in general or technical education which operates on buildings or premises of any tract size owned or leased by the institution for administrative and faculty offices, classrooms, laboratories, chapels, auditoriums, lecture halls, libraries, student and faculty centers, athletic facilities, dormitories, fraternities and sororities, and other facilities which further the educational mission of the institution.

**COMMENCEMENT OF CONSTRUCTION.** The first placement of permanent evidence of a structure on a site pursuant to a duly issued building permit, such as the pouring of slabs or footings or any work beyond the stage of excavation, including the relocation of a structure. COMMENCEMENT OF CONSTRUCTION does not include the installation of streets or walkways; nor the excavation for a basement, footings, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of temporary buildings, such as garages, sheds, or trailers, not part of the main structure nor occupied as dwelling units.

**COMMERCIAL RECREATION, INDOOR.** A private indoor (entirely within enclosed structure) use providing for sport and recreation activities, that are operated or carried on primarily for financial gain. Examples of INDOOR COMMERCIAL RECREATION uses include, but are not limited to, fitness centers, bowling alleys, skating rinks, indoor commercial swimming pools, and racquet and tennis club facilities (indoor).

**COMMERCIAL RECREATION, OUTDOOR.** A private outdoor use providing facilities for sport activities, which is operated or carried on primarily for financial gain, outdoors. Examples of OUTDOOR COMMERCIAL RECREATION uses include, but are not limited to, miniature golf facilities, outdoor commercial tourist attractions, and privately owned active sports facilities such as ball fields and basketball courts, and racquet and tennis club facilities (outdoor).

**COMMISSION.** The North Carolina Environmental Management Commission, in the Department.

**COMMON LAW VESTED RIGHT.** Legal doctrine that recognizes where property owners have reasonably made a substantial expenditure of money, time, labor, or energy in a good faith reliance on a permit from the government, that they acquire “vested rights” or a protected right to complete the development of their land as originally begun despite any changes in the zoning on the property.

**COMMON PLAN OF DEVELOPMENT.** Site with multiple lots where there is a single development plan for all of the lots, usually represented by a master plan or a set of declarations of restrict covenants.

**COMPATIBLE.** A term used to describe how the visual aspects of a structure (including signage) are similar to or consistent with the other structures on the same parcel, site, or in the immediate vicinity. Visual aspects include, but are not limited to: color, texture, materials, scale, size, form, and aspect.

**DESIGN MANUAL.** The Stormwater Design Manual approved for use in this part of the Falls Watershed by the North Carolina Department of Environmental Quality for the proper implementation of the requirements of the Falls Watershed stormwater program or any manual published by NCDEQ that is generally applicable throughout the state. All references herein to the DESIGN MANUAL are to the latest published edition or revision.

**DEVELOPER.** The legal or beneficial owner or owners of a lot or of any land included in a proposed development, including the holder of an option or contract to purchase or other persons having enforceable proprietary interests in such land.

**DEVELOPMENT.** The initiation, construction, change, or enlargement of any use or structure, the disturbance of land through the removal of trees or ground cover, or the division of land into two or more parcels, or any land disturbing activity which adds to or changes the amount or nature of impervious or partially impervious cover on a land area, or which otherwise decreases the infiltration of precipitation into the soil. DEVELOPMENT shall include, but not be limited to, the following:

- (A) Construction or enlargement of a building or structure;
- (B) Change in the type of use of a building, structure, or land;
- (C) Material increase in the intensity of use of land, such as an increase in the number of businesses, offices, manufacturing establishments, or dwelling units located in a building or structure or on the land;
- (D) Commencement or expansion of resource extraction, agricultural, horticultural, or forestry activities on a parcel of land;
- (E) Demolition of a structure or the removal of trees from a parcel of land;
- (F) Deposition of refuse, solid or liquid waste, or fill on a parcel of land;
- (G) Alteration, either physically or chemically, of the shore, bank, or channel of any stream, lake, or other body of water or alteration of any wetland; and
- (H) Any land disturbing activity that adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law (from G.S. § 143-214.7)

**DEVELOPMENT AGREEMENT.** A written agreement between the Town and a developer or applicant that sets down the rights and responsibilities of each party as pertaining to a single development.

**DEVELOPMENT, MULTI-PHASED.** A development containing 25 acres or more that is both of the following:

- (A) Submitted for development permit approval to occur in more than one phase;
- (B) Subject to a master development plan with committed elements showing the type and intensity of use of each phase.

**GOLF DRIVING RANGE.** A limited area on which golf players do not walk, but onto which they drive golf balls from a common driving tee. Such uses may include a concessions stand, netting, exterior lighting fixtures, putting greens, as well as maintenance and outdoor storage areas. Such uses do not include golf courses.

**GOOD CAUSE.** Legally adequate or substantial grounds or reason to take a certain action based upon the circumstances of each individual case.

**GOOD FAITH.** Sincere conduct free from malice or a desire to defraud others.

**GOVERNMENT OFFICES AND FACILITIES.** An office or other facility of a governmental agency that provides administrative and/or direct services to the public, such as, but not limited to, town and county administrative offices, courts, employment offices, public assistance offices, motor vehicle licensing and registration services, maintenance and repair centers, and supply and equipment depots. This use does not include jails or correctional institutions.

**GRADE.** The elevation of the land or land level at a specific point.

**GRADE, STREET.** The height of the top of the curb, or if no curb exists, the height of the edge of pavement in the lane of travel.

**GROUND COVER.** Any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.

**GROUP CARE FACILITY.** A facility licensed by the state (called by any name, which is not a “family care home” as defined by this ordinance) which employs supervisory and support personnel to provide care for fewer than 30 individuals, including room, board, and personal care and habilitation services in a communal setting.

**HEAVY EQUIPMENT SALES AUCTION.** An auction that exists primarily for the sale of construction, agricultural, and transportation equipment and other related items. These auctions must be intermittent in nature (limited to a maximum of eight annual events).

**HEIGHT.** The vertical distance from the mean grade elevation taken at the fronting street side of a structure to the parapet or roof line of a flat roof, the eave of a pitched roof, or the deck line of a mansard roof.

**HOME OCCUPATION.** A business, profession, occupation, or trade which is conducted within a residential dwelling unit for the economic gain or support of a resident of the dwelling, and is incidental and secondary to the residential use of the lot and which does not adversely or perceptively affect the character of the lot or surrounding area. HOME OCCUPATION includes, but is not limited to: offices; electronic and off-site retail; personal services such as physical therapy by licensed individuals, beauty parlors, pet grooming, and the like. HOME OCCUPATION does not include such businesses as: automotive repair and the like; any licensed or unlicensed practitioner who performs invasive procedures (acupuncture, tattooing, body piercing, and the like); restaurants, bars, social clubs and the like; animal kennels or hospitals and the like; or any other business which is clearly inappropriate or out of character for a residential area such that its location constitutes an adverse impact on neighboring residential properties.

**HOSPITAL.** An institution specializing in giving clinical, temporary, and emergency services of a medical or surgical nature to human patients and injured persons, that is licensed by state law to provide facilities and services in surgery, obstetrics, or general medical practice. Such institutions may include in-patient medical or surgical care for the sick or injured and related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

**HOTELS AND MOTELS.** Hotel and motel are to be considered synonymous uses. A HOTEL OR MOTEL means a building or a group of buildings in which sleeping accommodations are offered to the public and intended primarily for rental for temporary occupancy by persons on an overnight basis, not including bed and breakfast establishments or a rooming house. Such uses may include microwaves and refrigerators for each guest unit.

**IMPERVIOUS SURFACE.** Buildings; parking areas; driveways; streets; sidewalks; areas of concrete, asphalt, gravel, or other compacted aggregate; and areas covered by the outdoor storage of goods or materials which do not absorb water.

**IMPROVEMENT.** Any building, structure, bridge, work of art, area, parking facility, public facility, fence, gate, wall, landscaping, or other object, or any part thereof, constituting physical addition to real property.

**INDUSTRIAL DEVELOPMENT (STORMWATER).** Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity.

**INDUSTRY, LIGHT.** The mechanical transformation of predominantly previously prepared materials into new products, including assembly of component parts and the creation of products for sale to the wholesale or retail markets or directly to consumers. Such uses are wholly confined within an enclosed building, do not include processing of hazardous gases and chemicals, and do not emit noxious noise, smoke, vapors, fumes, dust, glare, odor, or vibration. Examples include, but are not limited to: production or repair of small machines or electronic parts and equipment; woodworking and cabinet building; publishing and lithography; computer design and development; research, development, testing facilities and laboratories; apparel production; sign making; assembly of pre-fabricated parts, manufacture of electric, electronic, or optical instruments or devices; manufacture and assembly of artificial limbs, dentures, hearing aids, and surgical instruments; manufacture, processing, and packing of food products, cosmetics, and manufacturing of components, jewelry, clothing, trimming decorations, and any similar item.

**INTERMITTENT STREAM.** A stream which fails to convey water for some or part of the year due to fluctuations in season, temperature, or humidity.

**INTERPRETATION.** An interpretation of this ordinance made in writing by the Ordinance Administrator or designee in accordance with the standards in division 1.6, Ordinance Interpretation.

**JUNK VEHICLE.** A vehicle which does not lawfully display a current license plate and which is partially dismantled or wrecked, or cannot operate under its own power.

**JUNKYARD.** An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or for operation and maintenance of a place of business for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor parts.

**JUST CAUSE.** Legitimate cause; legal or lawful ground for action.

**KENNEL, COMMERCIAL.** A facility where dogs, cats, or other domestic animals over three months of age are kept, raised, sold, boarded, bred, shown, treated, or groomed. Such a facility may have an indoor and outdoor component.

**LAND.** The earth, water, and air, above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

**PERMIT CHOICE.** State laws that permit an applicant to choose which set of development rules to follow if the development rules change between the time an applicant's application form is determined to be complete and when a decision is made on the application by the Town.

**PERMITTED USES.** Uses allowed to occur by right within a designated zoning or other planning district.

**PERSON.** For the purposes of enforcing this ordinance in accordance with Article 4, Enforcement, PERSON includes any individual, corporation, government agency, government official, business trust, partnership, two or more persons having a joint interest, or any other legal entity. PERSONS subject to the remedies and penalties established in Article 4, Enforcement, for violating this ordinance shall include: an architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the land on which the violation occurs. For all other purposes, PERSON means any individual, corporation, government agency, business trust, partnership, two or more persons having a joint interest, or any other legal entity.

**PERSON WITH DISABILITIES.** A person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. § 122C-3(11)(b).

**PERVIOUS SURFACE.** A surface that is penetrable by water to some degree. PERVIOUS SURFACES may be constructed of mixed pervious and impervious surfaces such as concrete and grass, or "grass-crete".

**PHASE.** The discrete portion of a proposed development.

**PLAN, CONCEPT.** A plan for development intended solely for illustrative purposes and reviewed in accordance with division 3.2.6, Concept Plan, to assist a review authority in its consideration of a proposed development (like a Type 3 Conditional Rezoning or a Special Use Permit). A Concept Plan may, but does not necessarily need to include, the detailed elements typically found in a site plan (for example, detailed locations of buildings, location of off-street parking, location of landscaping, etc.) ~~A general plan reviewed as part of another development review process in accordance with division 3.2.6, Concept Plan.~~

**PLAN, SITE.** A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities, that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site ~~specific~~ plan is reviewed and approved or denied by the Ordinance Administrator in accordance with division 3.2.7, Site Plan.

**PLAN, SITE-SPECIFIC VESTING.** A plan that describes, with reasonable certainty, the type and intensity of use for a specific lot or lots. The plan may be in the form of a Subdivision plat, a Site Plan, a Special Use Permit, or a Conditional District plan. The plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

effective date, where the total number of lots is not increased and the resultant lots are equal to the standards of this ordinance and the appropriate planning area classification.

(B) The division of land into parcels greater than ten acres where street right-of-way dedication or reservation is not involved.

(C) The creation of strips of land for the widening or opening of streets, sidewalks, or greenways, or the location of public utility rights-of-way.

(D) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where street right-of-way dedication or reservation is not involved and where the resultant lots are equal to or exceed the standards of the appropriate planning area classification.

(E) The division of land into plots or lots for use as a cemetery.

**SUBDIVISION FINAL PLAT.** A type of subdivision approval reviewed and approved or denied by the Town Council in accordance with division 3.2.9(E), Subdivision Final Plat.

**SUBDIVISION PRELIMINARY PLAT.** A type of subdivision approval reviewed and approved or denied by the Town Council in accordance with division 3.2.9(D), Subdivision Preliminary Plat.

**SUBSTANTIAL CHANGE.** An amendment or deviation in a development, a development application, a use, or a site condition that is significant enough to alter the nature of the development or proposal, its function, or its impact on its surroundings. Substantial changes typically require re-review or additional consideration by an appropriate review authority.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, expansion, or improvement of a structure, the cost of which exceeds 50% of the assessed value of a structure as determined either before the expansion or improvement begins or before the damage occurred giving rise to the repair or reconstruction. SUBSTANTIAL IMPROVEMENT shall not include, however, any repair or improvement required bringing the structure into compliance with existing state or town health, sanitary, safety, or building ordinance specifications necessary to ensure safe habitation of the structure.

**SUBSTANTIALLY COMMENCEMENT.** The initiation of development or development-related activity subject to the requirements of this Ordinance. Each of the following activities must have taken place in order to achieve substantial commencement:

- All required authorizations to begin the development (including a Building Permit) are secured; and

- All application fees and applicable fines have been paid in full; and

- Any required notice of commencement to all governmental entities or other identified parties has taken place; and

- Performance of some form of site-related activity that requires prior approval from the Town has taken place.

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

Substantial commencement does not require the start of construction on a principal structure or commencement of the anticipated operation of the approved use. A development project has substantially commenced if it meets any of the following:

~~—(A) It has installed any operational infrastructure or building footings, and these improvements have been approved, constructed, and passed final inspection; and/or~~

~~—(B) Ten percent or more of the total cost of the development project approved as part of the permit has been expended, not including the land cost, for construction, alteration, demolition, excavation, or other similar work.~~

~~—A project that has SUBSTANTIALLY COMMENCED for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.~~

**SUBSTANTIAL CONFORMITY.** A condition where there is no variation from the preliminary plan or plat, other than minor changes in the size of lots, the location of lot lines, the locations or sizes of easements, or the width of streets. Change in types or numbers of land uses, any variance in residential density, or any change in location of a public right-of-way shall not be considered as being in substantial conformity with an initial approval. For the purposes of this definition, minor changes shall be changes in dimensional attributes of five feet or less or any variation of a dimensional standard of five percent or less.

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

**SURFACE WATERS.** All waters of the state as defined in G.S. § 143-212 except underground waters.

**SWIMMING POOL.** An above- or below-ground structure with a potential water depth of two feet or more that may be filled with water and used for swimming.

**TAP ROOM.** A room or defined interior space that is ancillary to the production of beer at a microbrewery, brewpub, or large brewery where the public can purchase and/or consume only the beer produced on-site.

**TEMPORARY FAMILY HEALTH CARE STRUCTURE.** A transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. § 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

**TEXT AMENDMENT.** An amendment to the language of this ordinance approved, approved with conditions, or denied by the Town Council in accordance with division 3.2.2, Land Development Ordinance Text Amendment.

**TOWN.** Town of Butner, North Carolina.

**TOXIC SUBSTANCE.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth), or physical deformities in such organisms or their offspring or other adverse health effects.