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## **CHAPTER 3: REVIEW AND APPROVAL PROCEDURES**

### **3.1 COMMON REVIEW AND APPROVAL PROCEDURES**

#### **3.1.1 Authority to File Applications**

- (A) Unless otherwise specified in this chapter, applications for review and approval may be initiated by:
- (1) the owner of the property that is the subject of the application; (2) a lessee or person holding an option or contract to purchase or lease land; (3) the owner's authorized agents; or (4) any review or decision-making body as specified in Chapter 2 of this Ordinance. An easement holder may also apply for development approval for such development as is authorized by the easement.
- (B) When an authorized agent files an application under this chapter on behalf of a property owner, the agent shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.
- (C) When a review or decision-making body initiates action under this Ordinance, it does so without prejudice toward the outcome.

#### **3.1.2 Form of Application**

Applications required under this chapter shall be submitted in a form and in such number as required by the responsible staff department.

#### **3.1.3 Processing Fees**

Applications shall be accompanied by the fee amount that has been established by the Town Council. The fees for permits and approvals are periodically determined and changed by the Town Council through adoption of the annual operating budget ordinance and are not part of the text of this Ordinance. The fees are listed in a fee schedule that is available through the various staff departments.

#### **3.1.4 Application Completeness**

An application will be considered complete if it is in the required form, includes all mandatory information, including all supporting materials specified by this Ordinance and by the official responsible for accepting the application, and is accompanied by the applicable fee. The Planning Director shall make a determination of application completeness. Until an application is determined to be complete, an application has not been submitted. If an application is determined to be incomplete, the Director shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected in a future re-submittal. An application that is determined to be incomplete may or may not retain its same processing cycle.

#### **3.1.5 Pre-Application Conferences**

The purpose of a pre-application conference is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance that are required to permit the proposed development. This conference should be held prior to the initial creation of a development plan, if applicable, to ensure that the plan will address all applicable requirements of this Ordinance.

**(A) Applicability**

- (1) A pre-application conference generally is required prior to submittal of the following types of applications:
  - (a) Substantive Amendments to the Comprehensive Plan (Section 3.2.2)
  - (b) Rezoning (Section 3.4);
  - (c) Special uses (Section 3.8);
  - (d) Development Plans (Section 3.9);
  - (e) Variances (Section 3.20).
- (2) Pre-application conferences are not required for changes to already-approved development plans if the following conditions are met:
  - (a) For non-residential development, the proposed increase in building square footage is less than fifty (50) percent of the existing building square footage.
  - (b) For residential development, the proposed increase in the number of units or lots is not more than fifty (50) percent of the existing number of units or lots.
- (3) A pre-application conference is optional prior to submission of any other application under this Ordinance.

**(B) Initiation of Pre-Application Conference**

Any potential applicant may request a pre-application conference, in the manner prescribed in other Town manuals or documents, with the Planning Director. Prior to the pre-application conference, the applicant shall provide to the Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of development permit sought.

**(C) Pre-Application Conference Content**

The Director shall schedule a pre-application conference after receipt of a request. At the conference, the applicant, the Planning Director, and any other persons the Director deems appropriate to attend shall discuss the proposed development. Rezoning requests to planned development districts shall be reviewed by the Development Review Committee. Based upon the information provided by the applicant and the provisions of this Ordinance, the parties should discuss in general the proposed development and the applicable requirements and standards of this Ordinance.

**3.1.6 Notice Requirements****(A) Content of Notices**

All notices required under this Ordinance shall comply with notice requirements set forth in the North Carolina General Statutes. Generally, all published and written notices of legislative public hearings or quasi-judicial evidentiary hearings should, unless otherwise specified in this

Ordinance: (1) identify the date, time, and place of the hearing, (2) if applicable, describe the property involved in the application by street address or by Property Identification Number (PIN) and nearest cross street; (3) describe the nature of the proposed action and in the case of zoning map amendments, that the proposed change may be made to the entire area described or any part or parts of each area to the classification designated or to any more restrictive classification; (4) indicate in the case of legislative public hearings that interested parties may appear at the hearing and speak on the matter, and in the case of quasi-judicial evidentiary hearings, that witnesses under oath may present competent, material, and substantial evidence that is not repetitive; and (5) indicate where additional information on the matter may be obtained.

**(B) Published Notice**

When the provisions of this Ordinance or law require that notice be published, the Planning Director shall cause a notice to be published on the Town's website pursuant to the procedures of Section 2-2 of the Town of Cary Code of Ordinances. The notice shall be published once a week for two (2) successive calendar weeks, and shall be published for the first time at least ten (10) days and not more than twenty-five (25) days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

**(C) Written (Mailed) Notice**

**(1) Application or Procedure for Not Requiring a Quasi-Judicial Hearing**

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that does not require a quasi-judicial hearing, the Planning Director shall cause to be prepared a list of all owners of the subject property, all abutting properties, and all properties located within one hundred (100) feet of the subject property and their current addresses, compiled from the current tax abstracts of the applicable county. The Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

**(2) Application or Procedure Requiring a Quasi-Judicial Evidentiary Hearing**

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that requires a quasi-judicial evidentiary hearing, notice of such hearing 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; and to the owners of all parcels or land abutting the parcel of land that is the subject of the hearing. 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 Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff

person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

For the purpose of this Section 3.1.6(C), properties are "abutting" even if separated by a street, railroad, or other transportation corridor.

**(D) Posted Notice**

When the provisions of this Ordinance or law require that notice be posted, the Planning Director shall cause a notice to be posted on the property. Such notice should be posted at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall provide a phone number for interested parties to utilize in order to obtain information regarding the proposed application. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.

**(E) Constructive Notice**

All notices not required by the North Carolina General Statutes are for the convenience of the public and any defective notice shall not invalidate the proceeding.

**(F) Type of Notice**

The following table summarizes the type of hearing and notice requirements for all procedures in this chapter:

<b>TABLE 3.1-1: HEARING TYPE AND NOTICE REQUIREMENTS</b>					
<b>Type of Application or Procedure</b>	<b>LDO Section</b>	<b>Hearing Type</b>	<b>Notice Required</b>		
			<b>Published See 3.1.6(B)</b>	<b>Mailed See 3.1.6(C)</b>	<b>Posted 3.1.6(D)</b>
Owner-Initiated Annexation Petition	3.1.10	L	Yes	N/A	N/A
Cosmetic Amendments to the Comprehensive Plan	3.2	N/A	N/A	N/A	N/A
Initial Adoption of or Substantive Text or Map Amendments to the Comprehensive Plan	3.2	L	Yes	N/A	N/A
Amendments to the text of the LDO	3.3	L	Yes	N/A	N/A
Zoning Map Amendments	3.4	L	Yes	Yes	Yes
Repair of Zoning Map Errors	3.4	L*	Yes	N/A	N/A
Accessory Use Permit	3.5	N/A	N/A	N/A	N/A
Permitted Uses	3.6	N/A	N/A	N/A	N/A

<b>TABLE 3.1-1: NOTICE REQUIREMENTS (Cont'd)</b>					
<b>Type of Application or Procedure</b>	<b>LDO Section</b>	<b>Hearing Type</b>	<b>Notice Required</b>		
			<b>Published See 3.1.6(B)</b>	<b>Mailed See 3.1.6(C)</b>	<b>Posted 3.1.6(D)</b>
Temporary Uses	3.7	N/A	N/A	N/A	N/A
Special Uses	3.8	E	No	Yes	Yes
Development Plans Reviewed by Planning Director	3.9.2(G)	N/A	N/A	N/A	N/A
Development Plans Reviewed by Town Council or Zoning Board of Adjustment	3.9.2(H)	E	No	Yes	Yes
Development in Flood Hazard Area	3.12	N/A	N/A	N/A	N/A
Grading Permits	3.13	N/A	N/A	N/A	N/A
Building Permits	3.14	N/A	N/A	N/A	N/A
Certificates of Occupancy	3.15	N/A	N/A	N/A	N/A
Sign Permits	3.16	N/A	N/A	N/A	N/A
Vested Rights Certificate	3.17	L	Yes	Yes	Yes
Minor Modifications Reviewed by Planning Director	3.19	N/A	N/A	N/A	N/A
Minor Modifications Reviewed by Zoning Board of Adjustment	3.19	E	No	Yes	Yes
Variances	3.20	E	No	Yes	Yes
Appeals of Administrative Decisions	3.21	E	No	Yes	Yes
Tree Clearing Certificate	3.22	N/A	N/A	N/A	N/A
Reimbursement Agreements	3.24.1	N/A	N/A	N/A	N/A
Development Agreements	3.24.2	L	Yes	Yes	Yes
Reasonable Accommodation	3.25	E	No	Yes	Yes
Zoning Compliance Permit	3.26	N/A	N/A	N/A	N/A
Designation of Historic District	3.27	L	Yes	Yes	No
Designation of Historic Landmark	3.27	L	Yes	Yes	Yes
Certificate of Appropriateness - Minor Works	3.27	N/A	N/A	N/A	N/A
Certificate of Appropriateness - Major Works	3.27	E	Yes	Yes	Yes
Certificate of Appropriateness - Demolition of Historic Structures	3.27	E	Yes	Yes	Yes
<b>Hearing Types</b> A = Administrative L = Legislative L* = Legislative, if hearing required by Town Council (see applicable LDO section) E = Evidentiary					

**(G) [Reserved]**

**(H) Expanded Published Notice Authorized**

If a zoning map amendment proposes to change the zoning designation of more than fifty (50) properties, owned by at least fifty (50) different property owners, expanded published notice may be given in lieu of written (mailed) notice as provided in G.S. 160D-602(b).

**3.1.7 Hearing Procedures**

The procedures and requirements set forth in this section shall apply to all hearings required by this Ordinance, both legislative public hearings and quasi-judicial evidentiary hearings at which evidence is submitted and testimony given under oath, unless a contrary intent is indicated.

- (A)** When the Town has determined that an application is complete and that a hearing is required by this Ordinance, the Director shall schedule a date, time, and place for the required hearing, and shall ensure that all notices are provided pursuant to Section 3.1.6 above.
- (B)** If any resident or property owner submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the Town Clerk at least two business days prior to the proposed vote on such change, the Clerk shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to the decision-making body shall not disqualify any member of the body from voting.
- (C)** Any person may appear and speak at a legislative public hearing. Legislative public hearing comments should be directed toward the substance of the proposed action. In quasi-judicial evidentiary hearings, the applicant, Town staff, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) may participate as a party. Other witnesses may present competent, material, and substantial evidence that is not repetitive.
- (D)** Each person who appears at a hearing shall identify himself or herself and his or her address and, if appearing on behalf of an organization, shall state the name and mailing address of the organization, and shall observe any rules related to the conduct of the hearing adopted by Council or the appropriate board.
- (E)** All testimony and evidence given in a quasi-judicial evidentiary hearing in front of the Zoning Board of Adjustment, the Historic Preservation Commission, or the Town Council shall be given under oath or by affirmation to the body conducting the hearing.
- (F)** In a quasi-judicial evidentiary hearing, any party participating in the hearing or their legal representative may, upon receiving proper recognition from the chairperson of the body conducting the hearing, question or cross-examine other persons appearing as witnesses who present adverse evidence or testimony.
- (G)** In a quasi-judicial evidentiary hearing, the chairperson of the body conducting the hearing may exclude any testimony, evidence, or questioning that the chairperson finds to be incompetent, irrelevant, immaterial, or unduly repetitious.

- (H) In a quasi-judicial evidentiary hearing, at any time upon reasonable request, any person may examine the application and materials submitted in support of or in opposition to an application. The Town shall ensure that copies of such materials are made available.

### 3.1.8 Conditions of Approval

Some procedures set forth in this chapter authorize the decision-making body to impose such conditions upon the premises benefited by the approval as may be necessary to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the Comprehensive Plan and this Ordinance. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be reasonable and appropriate. In no case shall a condition of approval be less restrictive than the requirements of this Ordinance.

### 3.1.9 Simultaneous Processing of Development Applications

Where possible without creating an undue administrative burden on the Town's decision-making bodies and staff, this Ordinance intends to accommodate the simultaneous processing of applications for different permits and approvals that may be required for the same development project in order to expedite the overall review process. Review and decision-making bodies considering applications submitted simultaneously shall render separate recommendations and decisions on each application based on the specific standards applicable to each approval.

- (A) Examples of concurrent filing and processing of applications include, but are not limited to:
- (1) A development plan along with a special use;
  - (2) A development plan and a proposed amendment to a planned development master plan; and
  - (3) A variance along with a special use or development plan.
- (B) No rezoning application shall be accepted or processed while an application for any of the permits or approvals listed in this chapter is pending for the same property, and vice versa. This general rule has the following exceptions:
- (1) A rezoning application may be submitted along with an owner-initiated annexation petition (see Section 3.1.10 below).
  - (2) A rezoning application may be submitted along with a development plan provided that the plan complies with the zoning already in place at the time the plan is submitted.
  - (3) A rezoning application to a conditional use district may be submitted along with a development plan even if the plan does not conform to current zoning, provided the development plan will be a condition of the conditional use zoning.
  - (4) A rezoning application to a flexible use district may be submitted along with a development plan.

- (C) Some forms of approval depend on the applicant having previously received another form of approval, or require the applicant to take particular action within some time period following the approval in order to avoid having the approval lapse. Therefore, even though this Ordinance intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this chapter has its own timing and review sequence.

#### **3.1.10 Owner-Initiated Annexation Petitions**

- (A) Where the owner or developer of a property wishes the Town to annex the property into the Town's corporate boundaries as well as to approve proposed development on the property, then an owner-initiated annexation petition must be processed and considered by the Town Council. The petition shall be accompanied either by a rezoning application consistent with Sections 3.4 and 4.1.3 of this Ordinance or a development plan for the property.
  - (1) All owner-initiated annexation petitions shall be submitted and reviewed in accordance with the Town's policy statements on owner-initiated annexation petitions and annexation policy, as may be amended from time to time by the Town Council. The Town Council has discretion as to whether it annexes the property. The owner-initiated annexation petition shall include all the property that is subject to the rezoning or development plan.
  - (2) For properties located within the Town's extraterritorial jurisdiction, if a rezoning application is submitted with the annexation petition, the rezoning and annexation shall be processed and approved simultaneously. For properties located outside the Town's extraterritorial jurisdiction, the annexation petition must be approved prior to the rezoning application.
  - (3) If a development plan is submitted with the annexation petition, the decision-making body responsible for approving the development plan may not approve the plan until the annexation has been approved.
- (B) All proposals to connect to the Town's water and/or sanitary sewer system shall be required to submit a petition for annexation into the Town's corporate boundaries at the time an application for rezoning or development plan approval is filed with the Town.
- (C) Any development plan seeking to create a use that is considered to be urban development, and is inside the Town's extraterritorial jurisdiction, shall be required to submit an annexation petition regardless of whether or not connection to Town's water and/or sanitary sewer system is necessary.

#### **3.1.11 Processing Cycles**

The Planning Director shall issue timetables for reviewing each type of development application or procedure under this chapter. Processing timetables will be advisory, and failure to meet processing goals will not result in deemed approvals. Failure by an applicant to meet processing goals may result in a delayed review process. Timetables may be revised from time to time and may include:

- (A) Dates of regular meetings of review bodies and decision-makers;

- (B) Deadlines for receipt of a complete application for consideration of such application at a particular meeting; and
- (C) Schedule and routing of staff and agency reviews.

### **3.1.12 Inaction by Review and Decision-Making Bodies**

When a review or decision-making body fails to take action on an application within the time required (which varies by type of application), such inaction shall be deemed a denial of the application, unless the decision-making body agrees to an extension of the time frame.

### **3.1.13 Lapse of Approval**

The lapse of approval time frames established by the procedures of this chapter may be extended only when all of the following conditions exist:

- (A) The provisions of this chapter must expressly allow the extension;
- (B) An extension request must be filed prior to the applicable lapse-of-approval deadline;
- (C) The extension request must be in writing and include justification; and
- (D) Unless otherwise noted, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

### **3.1.14 Discontinuance of Application Review; Permit Expiration**

Development application review shall be discontinued, and development permits shall expire, pursuant to G.S. 143-755 and G.S. 160D-108. For purposes of this section, "development permit" has the meaning set out in G.S. 143-755.

### **3.1.15 Development Approval**

A development approval shall be in writing and may be provided in print or electronic form; if electronic form is used, then it must be protected from further editing. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this chapter attach to and run with the land.

### **3.1.16 Revocation of Development Approval**

If any development approval is revoked pursuant to this Ordinance, the review and approval of the revocation shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing. The revocation of a development approval may be appealed pursuant to G.S. 160D-405 and section 3.21 of this Ordinance.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21)

## **3.2 AMENDMENTS TO THE COMPREHENSIVE PLAN**

### **3.2.1 Cosmetic Amendments to the Comprehensive Plan**

The Director of any Town department may make cosmetic amendments to the Comprehensive Plan at any time. The Director may submit a proposed cosmetic amendment to the Town Council for their approval if the Director desires advice and consent from the Council. Cosmetic changes submitted to the Town Council for review do not require a public hearing, public notification, or action by the Planning and Zoning Board.

### **3.2.2 Regular Review of the Comprehensive Plan**

The Planning Director shall initiate a regular review of the Comprehensive Plan, assisted as necessary by the directors of other Town departments and advisory boards. Such Review shall include an overall assessment of the adequacy and effectiveness of the existing Plan, including identification of new issues not adequately addressed by the Plan, issues which require further study and investigation, suggested improvements, and specific revisions to Plan maps and policies requested by citizens. As a result of a review, the Planning Director may pursue one or more of the following major planning processes:

- (1) Preparation of a new comprehensive plan;
- (2) An update to the existing plan such that a new or expanded vision is introduced.

The major planning processes above shall include opportunities for citizen engagement in plan preparation. Any changes proposed to the Comprehensive Plan as a result of these processes shall follow the review and adoption process for substantive amendments set forth in Section 3.2.4.

### **3.2.3 Initiation of Comprehensive Plan Amendment**

The Town Council may at any time direct the Planning Director to conduct a review and assessment of the Comprehensive Plan, or evaluate a substantive amendment proposal for consideration in accordance with the provisions of Section 3.2.4. Additionally, the Planning Director may at any time initiate a substantive amendment proposal for consideration in accordance with the provisions of Section 3.2.4, and where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment. In accordance with the Chatham-Cary Joint Plan resolution, a citizen may initiate an amendment to the Chatham-Cary Joint Land Use Plan by filing an application with the Planning Department.

### **3.2.4 Substantive Amendments to the Comprehensive Plan**

#### **(A) Procedure**

##### **(1) *Concurrent Review***

A plan amendment and a zoning map amendment may be considered concurrently; if considered concurrently, only one application and application fee shall be required and the procedure shall follow the process for rezonings in accordance with Section 3.4.

**(2) Public Hearings and Public Notice**

A public hearing shall be held before the Town Council on each proposed substantive amendment to the comprehensive plan. Notice of the hearing shall be provided, and such hearing shall be conducted in accordance with the general provisions of Sections 3.1.6 and 3.1.7.

**(3) Staff Report to Town Council**

The Planning Director, and other staff as appropriate, shall review each proposed substantive amendment in light of the standards of review set forth in paragraph (B). The Director shall provide a report to the Town Council at the public hearing. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment.

**(4) Planning and Zoning Board Recommendation**

The Planning and Zoning Board shall review the proposed amendment and make a recommendation to the Town Council, based on the standards of review set forth in paragraph (B). If no recommendation is made within ninety (90) days of the first meeting at which the proposed amendment is presented to them for review, then the Town Council may act on the proposed amendment without a recommendation from the Planning and Zoning Board.

**(5) Town Council Action**

- (a)** After reviewing the reports and recommendations of the Planning Director and Planning and Zoning Board if applicable, the Town Council may call for a second public hearing or take action based on the standards of review set forth in paragraph (B). Such action may include the following:
  - 1. Approve the amendment by motion, either as submitted or with modifications suggested by staff or by the Council or Planning and Zoning Board;
  - 2. Reject the proposed amendment; or
  - 3. Refer the proposed amendment back to the Planning and Zoning Board for further consideration.
- (b)** Failure of the Town Council to take any action within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting shall be deemed a denial of the amendment request.

Where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment as provided in Section 3.2. A plan amendment and a zoning amendment may be considered concurrently.

**(6) Automatic Amendment of the Future Land Use Plan Map**

In accordance with G.S. 160D-605, if Town Council approves a rezoning that is deemed inconsistent with the Comprehensive Plan, the rezoning shall have the effect of also amending the Future Growth Framework Map in the Comprehensive Plan, and no additional request or application for a plan amendment shall be required. If a plan amendment was initiated as described in Section 3.4.1(C) and ran concurrently with the rezoning, the Future Growth Framework Map shall be amended in accordance with the plan amendment. If a plan amendment was not initiated as described in Section 3.4.1(C), staff shall amend the Future Growth Framework Map as appropriate.

**(B) Standards of Review**

Proposals to amend the Comprehensive Plan shall be evaluated based upon whether the amendment is necessary in order to address conditions including, but not limited to, the following:

- (1)** A change in projections or assumptions from those on which the Comprehensive Plan is based;
- (2)** Identification of new issues, needs, or opportunities that are not adequately addressed in the Comprehensive Plan;
- (3)** A change in the visions, values, policies, or objectives on which the plan is based, or standards governing the physical development of the Town or any other geographic areas addressed by the Comprehensive Plan; or
- (4)** Identification of errors or omissions in the Comprehensive Plan.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 2007-04, 3-22-07; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

**3.3 AMENDMENTS TO THE TEXT OF THE LAND DEVELOPMENT ORDINANCE****3.3.1 Purpose and Scope**

The Town Council may amend the text of this Ordinance in accordance with the procedures set forth in this section. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to Ordinance text that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Town.

**3.3.2 Procedure****(A) Initiation of Amendments and Filing of Applications**

An amendment to the text of this Ordinance may be initiated by any review or decision-making body. Any owner of a legal or equitable interest in land located in the Town or its extraterritorial jurisdiction, or any resident of the Town or its extraterritorial jurisdiction may submit a request for an LDO text amendment to the Planning Director, who may then choose to forward the request on to the Town Council for its consideration.

**(B) Public Hearing; Public Notice**

The Town Council shall hold at least one (1) public hearing on each LDO text amendment application. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.

**(C) Planning Director Review, Report, and Recommendation**

The Planning Director shall review each LDO text amendment application based on the approval criteria of Section 3.3.3, and shall distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the Director shall provide a report to the Town Council at the public hearing on the proposed amendment. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment, and a recommendation regarding whether to approve or deny the proposed amendment.

**(D) Review by Planning and Zoning Board**

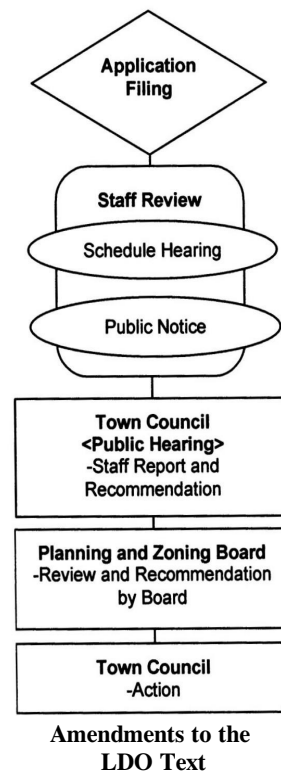
After the public hearing, the Planning and Zoning Board shall review the proposed amendment and submit a written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and any other officially adopted applicable plans, and addresses other matters deemed appropriate by one or more Board members. The Planning and Zoning Board shall determine their recommendation within ninety (90) days of the first meeting at which the proposed amendment is presented to them for review. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is determined and no extension is granted within ninety (90) days, the Town Council may act on the proposed amendment without a recommendation from the Planning and Zoning Board.

**(E) Town Council Action**

After reviewing the reports and recommendations of the Planning Director and the Planning and Zoning Board, the Town Council may take action, based on the approval criteria of Section 3.3.3. Such action may include the following:

- (1) Adopt the proposed amendment by ordinance;
- (2) Adopt the proposed amendment with modifications by ordinance;
- (3) Reject the proposed amendment;
- (4) Refer the proposed amendment back to the Planning and Zoning Board.

Pursuant to G.S. 160D-605, when approving or rejecting an LDO text amendment, Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with the Comprehensive Plan.



### **3.3.3 Approval Criteria For Text Amendments**

In reviewing applications to amend the text of this Ordinance, Council should consider the following criteria:

- (A) Whether the proposed amendment corrects an ambiguity or error or meets the challenge of some changing condition, trend, or fact;
- (B) Whether the proposed amendment is consistent with the Comprehensive Plan and the stated purposes of Section 1.3 of this Ordinance;
- (C) Whether the proposed amendment will protect the health, safety, morals, or general welfare of the public, and
- (D) Whether the proposed amendment will result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

### **3.3.4 Effect of Decision on Successive Applications**

#### **(A) Effect of Denial**

No new application for the same or substantially the same amendment shall be accepted within one (1) year of the date of denial of a LDO text amendment application. The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

#### **(B) Effect of Approval**

No request to modify an approved LDO text amendment shall be considered by the Town Council within one (1) year of the date of approval, except by the initiation of the Town.

(Ord. No. 06-009, 4-27-06; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

## **3.4 REZONINGS**

### **3.4.1 Rezoning Generally**

#### **(A) Purpose and Scope**

The Town Council may rezone property (i.e., amend the classifications of property appearing on the Zoning Map). The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to the Zoning Map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Town.

#### **(B) Conditional Use and Flexible Use District Rezoning Distinguished**

- (1) Applications for the rezoning of property to a conditional use district are governed by the procedures set forth both in this Section 3.4.1 and also in Section 3.4.2. For purposes of this Ordinance, conditional use district zoning means “conditional zoning” as defined by G.S. 160D-102(7), and conditional use district means “conditional district” as permitted by G.S. 160D-703.

- (2) An application for rezoning to a general use district shall not be converted into an application for rezoning to a conditional use district at any point in the application review process, nor shall an application for rezoning to a conditional use district be converted into an application for rezoning to a general use district. If such a conversion is desired, the applicant must submit a new application for rezoning to the other type of district in accordance with the requirements of this Section 3.4.
- (3) Applications for the rezoning of property to the MXD Flexible Use District are governed by the procedures set forth in Section 3.4.5.

**(C) Relationship to the Comprehensive Plan**

Where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment as provided in Section 3.2. A plan amendment and a zoning amendment may be considered concurrently.

**(D) Procedure**

**(1) *Initiation of Amendments and Filing of Applications***

A rezoning may be initiated by any review or decision-making body; by application from any owner (or owner's agent) of land for which the rezoning is requested; or by any owner or resident of land within five hundred (500) feet of the land for which the rezoning is requested, but only as long as the rezoning is not a "down-zoning" as defined in G.S. 160D-601. When the owner of land is not an individual, then the rezoning application shall include a disclosure statement that indicates the type of entity involved, and the name and address of each person who holds ten (10) percent or more of the business entity. When the owner of land is publicly-owned business entity, then the rezoning application shall include a disclosure statement that indicates the name and address of each person who holds twenty-five (25) percent or more of the business entity. An application requesting the rezoning shall be filed with the Planning Department.

**(2) *Pre-Application Conference***

Before filing an application, a private-party applicant may request a pre-application conference with the Planning Director. See Section 3.1.5.

**(3) *Traffic Impact Analysis (TIA)***

A Traffic Impact Analysis (TIA) or Traffic Analysis Report (TAR) is required if the proposed new zoning district could result in a use or mix of uses that can be expected to generate one hundred (100) or more total peak hour trips. Total peak hour trips represent gross trips expected to be generated by the proposed new zoning district prior to applying any reduction for internal trips.

**(a) *Preparing the TIA***

The Town shall prepare or have prepared (using Town staff or a retained consultant) the written TIA.

**(b) Study Area Boundaries**

The extent of the study area for the TIA depends upon the location and size of the rezoning and the prevailing conditions of the surrounding area. The study area is defined in the following table. Controlled access roadways are not included in the study area or analysis; the controlled access ramp intersections with non-controlled access roadways are subject to analysis. The distances described below are to be measured from the property boundaries and include those intersections within the identified area.

<b>TABLE 3.23-1: STUDY AREA BOUNDARIES</b>		
	<b>Trip Generation</b>	<b>Study Area</b>
Base Zone	One hundred (100) - One hundred fifty (150) peak hour trips	One-half (1/2) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.
Base Zone	More than One hundred fifty (150) peak hour trips	One (1) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.
Central Zone	More than one hundred (100) peak hour trips within the Central Transportation Zone	One-quarter (1/4) mile plus any intersections on which at least seven (7) percent of any traffic movement approach volume are generated by or as a result of the proposed project.

**(c) Trip Generation Standards**

Trip generation data for each project shall be based upon the Institute of Traffic Engineers' Trip Generation Manual or, at the discretion of the Town, other sources of trip generation data (e.g., local data) if this source data is deemed more representative of the proposed development use. The following other standards also apply to projects:

**1. Defining Peak Hour Trips**

Peak hour trips are those occurring on peak travel demand days on the adjacent roadway (e.g., daily trips on a Sunday may not be applicable). It is not the intent of this section to require a TIA for a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour. For example, facilities designed for sporting events, concerts or other similar uses may not require a traffic analysis because the events occur during a non-peak hour or non-peak day. If a traffic study is required for a use, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

2. *Credit for Mixed Use, Pass-By Trips*

The determination of the number of trips generated shall also take into account pass-by trips, internal trip capture for integrated mixed use projects (e.g., roadway and/or pedestrian connectivity) and any proposed transportation demand management system, provided that adequate guarantees can be provided to the Town to ensure that such demand management system will function as claimed for the life of the project. In addition, if the proposed development is designed and integrated with an adjacent mixed use project (e.g., roadways), then a credit for trips may be permitted.

3. *Estimated Trips for Rezoning/PDDs*

In evaluating the impact of a proposed rezoning or planned development where the specific uses or exact number of dwelling units have not been specified, estimates shall be based upon the highest level of density or intensity of use that would be authorized by the requested approvals. However, if the highest level of intensity of use is a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour, such as athletic fields, outdoor amphitheaters, or other similar uses, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

(d) *Submission Requirements*

At the time of the initial submission, the applicant is required to submit the following information:

1. Traffic analysis base information, site location map, site layout, if applicable;
2. Data on the existing/proposed land use;
3. Description of the project.
4. Additional information as may be requested by staff.

5. *Study Fee*

After preliminary review of the data submitted under item (d) above, the Town shall prepare an estimate of consulting fees for the analysis of traffic impact for the project. Upon receipt of payment of fees from the applicant in the amount of ninety percent (90%) of the projected cost estimate, the Town shall release the work to a consultant for analysis. After completion of the analysis, the Town shall evaluate the actual costs incurred for the study and will reimburse to the applicant any remaining balance of the fee paid.

**(e)** *Required Factors to Include in Study*

The TIA shall evaluate the projected impact of the proposed rezoning on the public facilities in question at the time of projected build-out, which will be assumed to be five (5) years from the date the rezoning application was submitted. This analysis will take into account not only the status of existing facilities and the impact of the proposed development, but also the projected impact of the following on the capacity of those facilities:

1. Future capital improvements that will increase the capacity of the facilities in question should be considered if construction of the improvements has received all necessary governmental approvals and funding is in place, or that such approvals and funding appear reasonably certain.
2. All residential dwelling lots (excluding those for multi-family uses) that have received final plat approval but that do not contain a completed dwelling.
3. All development plans that have been approved, so long as such approvals have not expired.
4. For any developments for which the notice to proceed has been granted for a traffic study, even if the traffic study is not complete at the time of scoping the background traffic for a subsequent study to be conducted. If there is no additional action with regards to the project within six (6) months after the completion to the traffic study (such as a rezoning application submitted or approved), the traffic from the completed study will no longer be included in the background traffic for the subsequent study.
5. No traffic from a previously approved planned development should be included as background traffic for the same planned development, if no development plan approval has been granted.
6. Typical background traffic increases that are not directly related to known previously approved development.

**(f)** *Tracking of Required Factors*

The staff shall develop a system of keeping track of the factors described in subsection (e) above.

**(g)** *Level of Service*

The TIA shall measure and report the Level of Service (LOS) at peak hours for each intersection within the required study area, with LOS as defined by the most current edition of the Highway Capacity Manual. If the projected LOS for any intersection in the central zone, as defined in Section 7.11.16 of the LDO, is LOS "F", the TIA shall list potential transportation system improvements that would ensure there is no increase in average delay for the intersection (measured in its entirety). If the projected LOS in the base zone, as defined in Section 7.11.6 of the LDO, falls below LOS "D" based upon the standard ITE average peak hour, the TIA shall list potential transportation system improvements that would

ensure there is no increase in average delay for the intersection (measured in its entirety). However, no transportation system improvements shall be listed for intersections for which the existing intersection configuration already meets the requirements of the Comprehensive Transportation Plan.

All forms of transportation system improvements should be considered at non-signalized intersections, including separate left and right turn lanes, geometric modifications, alternative access management strategies, and signalization. Signalization should not be considered the primary solution. Installation of new signals at existing or new intersections should only be considered when the intersection meets required warrants for a signal; the signal does not cause an undesirable delay in the surrounding road system; and other transportation improvements do not result in acceptable levels-of-service.

**(h)** *Expiration of TIA*

The TIA shall expire after five (5) years.

- (i)** No application for a rezoning shall be accepted by the Town of Cary until the draft findings of the TIA have been received unless the Development Review Committee agrees in advance that the draft findings may be submitted within a week after the date of the rezoning application.

**(4)** ***Neighborhood Meeting***

**(a)** *Applicability*

This section 3.4.1(D)(4) shall apply to all rezoning applications filed and accepted as complete.

**(b)** *Procedure*

Neighborhood meetings for complete rezoning applications shall be held at a date, time and location established and scheduled by staff. At the neighborhood meeting, each applicant shall conduct a meeting with any attendee interested in that proposed rezoning. The applicant shall record meeting minutes and provide the Town a digital copy of the written meeting minutes. The purpose of this neighborhood meeting is to ensure that nearby property owners are aware of the request and have an opportunity to inform the applicant of issues and concerns prior to the public hearing.

A general orientation meeting shall be conducted by staff for all applications at the beginning of each neighborhood meeting.

**(c)** *Alternative Outreach for Certain Rezoning Cases*

An alternative means of conducting public outreach, such as one (1) or more open houses, may be utilized in lieu of the neighborhood meeting for widespread zoning changes initiated for the general purpose of implementing the goals and policies of the Comprehensive Plan. Examples of such changes include the establishment and application of new types of zoning districts or widespread changes to the applicability of or location of existing zoning districts or overlay

districts. The Town shall provide outreach and input opportunities as needed to ensure that citizens have an opportunity to ask questions and understand the proposed rezoning prior to the public hearing. Notification shall include posting on the Town's web site, and, based on the nature of the change and the number of parcels affected, either mailing of a notice to individual property owners affected, or publication of a half (½) page ad in a local newspaper.

The standard neighborhood meeting shall be required for all citizen-initiated rezoning requests and all town-initiated rezoning requests for Town-owned property.

**(5) *Public Notice***

Published, written, and posted notice of public hearings shall be provided in accordance with Section 3.1.6.

**(6) *Public Hearings***

At least one (1) public hearing shall be held before Town Council in accordance with Section 3.1.7, provided, however, that only the first public hearing shall require written (mailed) notice.

The Planning Director shall review each proposed rezoning in light of the approval criteria of paragraph (E) and distribute the application to the Development Review Committee and, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Town Council at the initial public hearing on the proposed rezoning. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment.

**(7) *Planning and Zoning Board Recommendation on Rezoning***

Following the initial public hearing before the Town Council, the Planning and Zoning Board shall consider the proposed rezoning and shall submit a written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and other officially adopted applicable plans and addresses other matters deemed appropriate by one (1) or more Board members. The Planning and Zoning Board shall determine their recommendation within ninety (90) days of the first meeting at which the proposed rezoning is presented to them for review. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is determined and no extension is granted within ninety (90) days, then the Town Council may act on the proposed rezoning without a recommendation from the Planning and Zoning Board.

**(8) *Town Council Action***

**(a)** After reviewing the reports of the Planning Director and recommendation of the Planning and Zoning Board, the Town Council may call for a second public hearing or take one of the following actions based on the rezoning considerations of paragraph (E):

1. Approve the rezoning by ordinance;

2. Reject the proposed rezoning;
3. Refer the proposed rezoning back to the Planning and Zoning Board for further consideration;
4. Table the proposed rezoning; or
5. Rezone the property by ordinance to any zoning district that is classified higher than the district requested in the application for rezoning, but only with the consent of the applicant. See Section 4.1.1(B) for an explanation of "higher" districts versus "lower" districts.

Pursuant to G.S. 160D-605, when approving or rejecting a rezoning, Town Council shall approve 1) a brief statement describing whether its action is consistent or inconsistent with the Comprehensive Plan, and 2) a statement analyzing the reasonableness of the proposed rezoning. The statement of reasonableness and the plan consistency statement may be approved as a single statement. If Town Council approves a rezoning and finds the rezoning to be inconsistent with the Comprehensive Plan, the rezoning shall have the effect of also amending the Future Growth Framework Map in the Comprehensive Plan, and no additional request or application for a plan amendment shall be required. If a plan amendment was initiated as described in Section 3.4.1(C) and ran concurrently with the rezoning, the Future Growth Framework Map shall be amended in accordance with the plan amendment.

- (b) Failure of the Town Council to take one (1) of the actions listed above within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting shall be deemed a denial of the rezoning request.

**(9) *Withdrawal of Application***

A rezoning application not initiated by a Town review or decision-making body may be withdrawn by the applicant at any time prior to final Town Council action on the application. If an applicant fails to pursue a rezoning application for a period of six (6) months, the application shall be deemed withdrawn.

**(E) *Rezoning Considerations***

Without limiting Council's broad discretion, in reviewing proposed rezonings, Council may, among other things, consider whether:

- (1) The proposed rezoning corrects an error or meets the challenge of some changing condition, trend, or fact;
- (2) The proposed rezoning furthers the purposes and policies set forth in this Ordinance, including those set forth in Section 1.3 of this Ordinance; or
- (3) The proposed zoning classification is suitable for the subject property.

**(F) *[Reserved]***

**(G) Waiting Period for Subsequent Applications**

- (1) When a rezoning application has been approved or denied by the Town Council, or has been withdrawn by the applicant after notice has been given of the public hearing on the application, no rezoning application covering the same property shall be accepted or considered within twelve (12) months after the date of the approval, denial, or withdrawal. This restriction shall apply regardless of whether the new application is for a different zoning classification than the original application.
- (2) The inclusion of an additional lot or lots in the new application shall not be permitted when it is evident that the inclusion of the new lot or lots is for the express purpose of avoiding these restrictions.
- (3) The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

**(H) [Reserved]****(I) Repair of Zoning Map Errors**

Where errors are found on the Official Zoning Map, the repair of these errors is not considered to be a rezoning as described in Section 3.4 of this Ordinance. As a result, Zoning Map errors may be corrected upon adoption by the Town Council of a resolution noting and approving the correction. Though not required, Council may, in its discretion, call for a public hearing on the matter as part of its consideration. The matter shall not be considered by the Planning and Zoning Board and action by the Council may be taken following the hearing.

**3.4.2 Rezoning to Conditional Use Districts****(A) Purpose of Conditional Use Districts**

If the regulations and restrictions of a general use zoning district are inadequate to ensure the compatibility of the proposed development with the immediately surrounding neighborhood in accordance with the principles of the Comprehensive Plan and this Ordinance, the property owner may apply for rezoning to a conditional use district that bears the same designation as a general use zoning district but is a conditional use zoning district subject to additional conditions in which limited uses are permitted and that are contained in the ordinance approving the conditional use district.

**(B) Process Required**

A person petitioning for rezoning of a tract of land may elect to request a conditional use district for that tract. The conditional use district application must specify the intended use or uses and the proposed conditions for the property specified in the petition. The intended use or uses must be permitted in the corresponding general use district. The Town Council is to approve or disapprove the application on the basis of the specific use or uses and conditions proposed. Development in a conditional use district requires approval of a single application similar to a general use district rezoning application, which shall be reviewed by the Town Council through a legislative process.

**(1) Conditional Use Rezoning Process**

Rezoning to a conditional use district shall require submission and approval of an application for a rezoning in accordance with the general procedures set forth in Section 3.4.1, as modified by this Section 3.4.2. A rezoning to a conditional use district may be initiated only by an application signed by all of the owners of the property or by an agent authorized by all of the owners to file such application, which application shall include the affidavit required by Section 3.4.2(C)(4) and (5). If the application is approved, the Town Council shall adopt an ordinance authorizing the requested use with such reasonable conditions as mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

**(C) Conditions**

- (1)** The conditional use rezoning application shall specify the use or uses that are intended for the property or any use or uses that are prohibited, as well as any additional conditions on the use of the property that the applicant may propose be conditions of the rezoning. The applicant may propose conditions regarding building design elements as defined in G.S. 160D-702 and other development considerations. Conditions are limited to:
  - (a)** Those that address conformance of the development and use of the site to Town ordinances or officially adopted plans; or
  - (b)** Those that address the impacts reasonably expected to be generated by the development or use of the site.
- (2)** An applicant may include a concept plan as a zoning condition in addition to written zoning conditions. A concept plan is a conceptual, illustrative plan that may not be used to eliminate or reduce any LDO or other requirement unless such elimination or reduction is designated as such and specifically provided for in this Ordinance. A concept plan shall show the overall site layout for the proposed development or a portion thereof including, but not limited to, development features such as:
  - (a)** Land uses;
  - (b)** Maximum number of residential units or non-residential square footage;
  - (c)** Any building setbacks and/or buffers that exceed minimum requirements of the LDO;
  - (d)** Natural open space areas to remain undisturbed;
  - (e)** Improved open space areas, including stormwater management devices; and
  - (f)** Vehicular and pedestrian access and circulation.
- (3)** No condition shall be less restrictive than the standards of the parallel general use district or the standards of any overlay district that applies to the property.

- (4) No condition shall be made part of the application, or shall be attached to approval of the conditional use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, or any other exclusionary device; which states that the use of the property will not be subject to regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property; or which sets a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.
- (5) The applicant shall make no changes to proposed zoning conditions within fifteen (15) business days of a meeting at which the rezoning case is scheduled for consideration. Changes to proposed zoning conditions received after publication of the notice of the initial public hearing must be more restrictive than the conditions initially advertised. A revised affidavit meeting the requirements of Section 3.4.2(C)(6) which includes the revised conditions must be received by the Planning Department prior to the meeting at which the rezoning request is to be presented.
- (6) The conditional use rezoning application shall include an affidavit listing all proposed zoning conditions and provisions and attaching any proposed concept plan. A revised affidavit shall be submitted each time the applicant proposes new zoning conditions or a new concept plan. The initial and revised affidavit shall state that:
  - (a) All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
  - (b) The property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions, provisions or concept plans; and
  - (c) The property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions, provisions and concept plans; and
  - (d) The property owner/applicant intends for all future owners of the property to be bound by the zoning conditions, provisions and concept plans, should the Town Council adopt them as part of the rezoning; and
  - (e) The property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions, provisions and concept plans.

**(D) Changes to Conditions of Approved Conditional Use District**

**(1) *Written Zoning Conditions***

Any change to written conditions attached to an approved conditional use rezoning shall be considered a change to the conditional use district, and shall be processed as a new conditional use application in accordance with the procedures set forth in this Section 3.4.2.

**(2) Concept Plan**

Staff may only approve changes to approved concept plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

**(3) Eligibility for Zoning Amendments**

If multiple parcels of land are subject to a conditional use district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

**3.4.3 Rezoning to Planned Development Districts****(A) Applicability and Scope**

A planned development district (PDD) is a type of conditional zoning. No approval for construction of any on-site or off-site improvements in a PDD shall be granted until a master plan for the planned development is approved in accordance with the procedures and requirements of this section.

**(B) Rezoning Procedures Apply**

Applications requesting a rezoning to a PDD classification shall be submitted in accordance with the general rezoning procedures set forth in Section 3.4.1, as modified by the specific procedures set forth in this Section 3.4.3.

**(C) Coordination with Review of Development Plans**

An application for PDD master plan approval and any required application for development plan approval (Section 3.9) may be filed simultaneously. The review and processing of these applications shall be coordinated and consolidated as much as possible. The Development Review Committee, the Planning and Zoning Board, and the Town Council, however, shall render separate reports, recommendations, and decisions on each application based on the specific standards applicable to each approval.

**(D) Procedure****(1) Pre-Application Conference**

Before filing an application for PDD master plan approval, the applicant may request a pre-application conference with the Development Review Committee. See Section 3.1.5. The applicant shall provide the Development Review Committee with the following information at the pre-application conference:

- (a)** Size and location of the parcel proposed for development as a planned development;

- (b) Proposed gross density and/or the amount of non-residential square footage for the proposed planned development and net density of individual parcels within the PDD;
- (c) A concept plan showing general land uses proposed for the planned development including location, acreage, park, open space areas and school sites, if applicable;
- (d) Number of acres and location of land within the parcel proposed for development as a planned development within a Watershed Protection Overlay district; and
- (e) A schematic description of utility and circulation improvements for the planned development.

**(2) *Application Filing***

An application for a PDD rezoning approval shall be filed and processed in accordance with the rezoning procedures set forth in Section 3.4.1. In addition, the application shall be accompanied by a master plan and supporting plans and documents as specified by the Planning Department. The application shall also include an affidavit, and a revised affidavit shall be submitted each time the applicant proposes revisions to the master plan, stating that:

- (a) All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- (b) The property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- (c) The property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- (d) The property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- (e) The property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

**(3) *Review by Town***

The Development Review Committee, the Planning and Zoning Board, and the Town Council shall review the application and the proposed master land use plan for compliance with the requirements of Section 3.4.1 and also this Section 3.4.3.

**(4) *Review by Other Bodies***

The Development Review Committee may transmit the proposed master plan to the Parks, Recreation, and Cultural Resources Advisory Board, and/or any other board or commission, including the Wake County Board of Education, deemed appropriate by the Town Council for review and comment.

**(E) Considerations**

In addition to the general approval considerations for rezonings set forth in Section 3.4.1(E), and without limiting council's broad discretion, council may, when reviewing a proposed PDD rezoning request, consider whether the PDD designation is necessary to address a unique situation or represents a substantial benefit to the Town, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards.

**(F) Effect of Approval**

- (1) The approval of a PDD application and a master plan shall not become effective until the applicant has submitted to the Planning Department a copy of the master plan incorporating all changes, if any, that were required as conditions to Town Council approval, and such additional information as the Town Council may have required as a condition of PDD or master plan approval.
- (2) Upon receipt of all required submittals, the Planning Director shall mark and sign the master plan as approved, and return a marked and signed copy of the master plan to the applicant. A copy marked "ORIGINAL" shall be retained for the records of the Planning Department.
- (3) Actual development of the property comprising the approved PDD shall be subject to all applicable state requirements, development plan approvals, and other permits and approvals otherwise required by this Ordinance. Such development shall comply with all requirements of this Ordinance unless the approved PDD documents specifically state otherwise.

**(G) Submission of Conditions**

Conditions proposed by the applicant in the master plan are limited to those that address conformance of the development and use of the site to Town ordinances or officially adopted plans, or those that address the impacts reasonably expected to be generated by the development and use of the site. The applicant may propose conditions regarding building design elements as defined in G.S. 160D-702 and other development considerations. After the town has published the initial notice of public hearing for the application, the applicant shall make no changes to the conditions that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least fifteen (15) business days before the date scheduled for consideration by the Town Council or the Planning and Zoning Board.

**(H) Changes to Conditions of Approved Planned Development District****(1) Written Conditions**

Any change to written conditions in the master plan shall be considered a change to the planned development district, and shall be processed as a new application in accordance with the procedures set forth in this Section 3.4.3.

**(2) Master Plan**

Staff may only approve changes to approved master plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

**(3) Eligibility for Zoning Amendments**

If multiple parcels of land are subject to a planned development district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

**3.4.4 Rezoning in the Town Center (TC) District and Walnut Street Corridor Transition (CT) District**

Rezoning of sub-districts in the TC and CT districts are processed the same as a general or conditional use district.

**3.4.5 Rezoning to Mixed Use District (MXD)****(A) Applicability**

An MXD district is a type of conditional zoning. The MXD district is designed to be used in conjunction with the Mixed Use Overlay District (MUOD) as follows:

- (1)** Property which is within a Mixed Use Overlay District and within the Destination Center, Commercial Center Mixed Use, or Mixed Use Employment Center development category in the Shape chapter of the Cary Community Plan may be rezoned only to Mixed Use District consistent with the Comprehensive Plan.
- (2)** Property which is within a Mixed Use Overlay District and within the Commercial Center development category in the Shape chapter of the Cary Community Plan may be rezoned to Mixed Use District or any other general use or conditional use zoning district consistent with the Comprehensive Plan.
- (3)** Property which is within a Mixed Use Overlay District and is not within the Destination Center, Commercial Center Mixed Use, Mixed use Employment Center or Commercial Center development category in the Shape chapter of the Cary Community Plan may not be rezoned to Mixed Use District but may be rezoned to any other district consistent with the Comprehensive Plan.
- (4)** Property which is not within a Mixed Use Overlay District may not be rezoned to the Mixed Use District but may be rezoned to any other district consistent with the Comprehensive Plan.

**(B) Application****(1) *Pre-Application Conference***

The applicant shall schedule and attend a Pre-Application Conference (see Section 3.1.5) in accordance with the calendar maintained by the Planning Department.

**(2) *Application Materials***

Applications for rezoning to MXD shall be submitted in a form and in such number as specified by the Planning Director and available from the Planning Department. Applications shall include all of the following:

**(a) *Preliminary development plan or development plan, and table of uses***

The applicant shall provide a preliminary development plan or, at the applicant's option, a detailed development plan (both hereinafter referred to as "preliminary development plan" or "PDP"). The preliminary development plan shall illustrate the proposed type and mix of uses, density or intensity of development, site design features, public spaces and the like which shall become a requirement of the rezoning if approved. The preliminary development plan shall only cover the area within the boundaries of the property proposed to be rezoned and shall be in sufficient detail to determine consistency with the Comprehensive Plan, LDO requirements, Community Appearance Manual and Site Design Standards. A detailed table of uses that specifies the allowed uses, square footages of nonresidential development, and the numbers and types of residential units shall be attached to and incorporated into the preliminary development plan. Detailed development requirements, including but not limited to, minimum lot size, lot width, building height, building setbacks, landscape buffer types and widths shall be specified on the plan or in a separate document which is attached to and incorporated into the preliminary development plan. Results of a tree survey for champion trees shall be shown on the plan, and an arborist report to verify size, species and health of each champion tree shall be provided in a separate document. Drawings shall be submitted in a form and in such number as specified by the Planning Director.

**(b) *Supporting Materials***

The application shall also be accompanied by information as specified by the Planning Director, including but not limited to:

1. a statement regarding compliance with the Comprehensive Plan;
2. a statement analyzing the reasonableness of the proposed rezoning as required by G.S. 160D-605;
3. a statement about how the rezoning meets the considerations in Sec. 3.4.1(E) and 4.5.2(E); and
4. an affidavit. A revised affidavit shall be submitted each time the applicant proposes new zoning conditions or a new PDP. The initial and revised affidavit shall state that:

- i. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- ii. the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- iii. the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- iv. the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- v. the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

**(C) Review and Approval Process**

**(1) *Neighborhood Meeting***

A neighborhood meeting shall be conducted in conformance with LDO Section 3.4.1(D)(4).

**(2) *Initial Public Hearing***

**(a) *Process***

The first public hearing on the proposed MXD rezoning shall be conducted by the Town Council. A rezoning to MXD will not be scheduled for an initial public hearing unless the application is found by planning staff to be complete and ready for consideration. Such hearing shall be noticed as required in Section 3.1.6 of this Ordinance, and notification should also be provided to all persons on the mailing list submitted pursuant to Section 3.4.5(B)(3)(d). At the public hearing:

1. The applicant shall present the merits of the rezoning and shall specifically address the considerations contained in Sections 3.4.1(E) and 4.5.2(E);
2. The staff shall provide a report which evaluates the proposed rezoning, taking into consideration, among other factors, the Comprehensive Plan and the Land Development Ordinance; and
3. The public may also provide comments on the considerations contained in Sections 3.4.1(E) and 4.5.2(E).

**(b) *Action by Town Council***

Following the initial public hearing, the Town Council shall refer the proposed rezoning to the Planning and Zoning Board for a recommendation.

**(3) *Changes Made After the Public Hearing***

The applicant shall make no changes to proposed zoning conditions within fifteen (15) business days of a meeting of the Planning and Zoning Board at which the rezoning case is scheduled for consideration.

**(4) *Planning and Zoning Board Recommendation***

The Planning and Zoning Board shall consider the proposed rezoning in accordance with Section 3.4.1(D)(7).

**(5) *Changes After Consideration by the Planning and Zoning Board***

After the Planning and Zoning Board has considered the application, the applicant shall make no changes to the conditions that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least fifteen (15) business days before the date scheduled for consideration by the Town Council.

**(6) *Town Council Action***

Town Council shall take action on the rezoning request in accordance with Section 3.4.1.(D)(6) of the LDO.

**(D) *Effect of Approval***

Following rezoning to the MXD district, all subsequent development plans submitted within the boundaries of the mixed use district shall be consistent with the terms of the approved district and shall be reviewed and approved pursuant to Section 3.9. Actual development of the property comprising the approved mixed use district shall be subject to all applicable state requirements, development plan approvals, and other permits and approvals otherwise required by this Ordinance. Such development shall comply with all requirements of this Ordinance unless the approved MXD District states otherwise.

**(E) *Changes to Approved MXD Districts***

Staff may only approve changes to approved MXD districts if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

**(F) Eligibility for Zoning Amendments**

If multiple parcels of land are subject to a MXD district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

**(G) Waiting Period for Subsequent Applications**

The waiting period for subsequent rezoning applications on the same property after action by the Town Council or withdrawal of the request by the applicant shall be as provided in Section 3.4.1(G) of this Ordinance.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 04-011, 9-9-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 13-LDO-01, 2-13-13; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-05, 12-11-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-004, 8-27-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-04, 11-17-22; Ord. No. 2023-LDO-03, 6-22-23)

**3.5 ACCESSORY USE PERMITS****3.5.1 Purpose**

An accessory use permit is required to ensure that certain accessory uses, which could have a negative effect on residential neighborhoods due to congestion, noise, or other impacts, comply with all applicable zoning standards in this Ordinance.

**3.5.2 Applicability**

An accessory use permit shall be required prior to commencement of the activity for which the permit is required.

**3.5.3 Procedures**

**(A)** An application for an accessory use permit shall be filed with the Planning Department. Within fifteen (15) days after the application is determined complete, the Planning Director shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in Section 5.3 of this Ordinance.

**(B)** If the Planning Director denies the application, the applicant shall have thirty (30) days to submit a corrected application without paying a separate application fee. If a corrected application is not resubmitted within thirty (30) days, the application shall be considered withdrawn and a new application fee shall be required for future re-submittals.

(Ord. No. 2014-LDO-03, 8-14-14)

### **3.6 PERMITTED USES**

**3.6.1** Those uses designated as "permitted uses" in Chapters 4 and 5 of this Ordinance require no special treatment under this Chapter 3 different from the provisions generally applying to the zoning district in which the use is located and any use-specific regulations listed in Chapter 5. However, depending on the nature and location of the use, development plan approval (Section 3.9), approval for development in the Flood Hazard Area (Section 3.12), and/or a grading permit (Section 3.13) may be required before the permitted use may be established.

**3.6.2** No permitted use shall be established until the person proposing the use applies for and receives all building permits and certificates of occupancy required under Sections 3.14 and 3.15.  
(Ord. No. 2021-LDO-01, 6-24-21)

### **3.7 TEMPORARY USES**

#### **3.7.1 Temporary Use Permit Required**

No use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property without first receiving a temporary use permit. No temporary use permit is required for events taking place on county-owned park property.

#### **3.7.2 Filing and Contents of Application**

- (A) An application for a temporary use permit may be filed only by the owner of the property, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B) An application for a temporary use permit shall be filed with the Planning Department. Where appropriate, each application shall be accompanied by a sketch plan showing the boundaries of the property, the use of adjacent properties, the location of the temporary use or structure on the property, and other information sufficient to show that the temporary use or structure complies with the standards set forth in Section 5.4 of this Ordinance.

#### **3.7.3 Filing Deadline**

All applications for temporary use permits shall be filed at least two (2) weeks prior to the date the temporary use will commence, or at least four (4) weeks prior to the date the temporary use will commence if public safety support is requested from the Town. The Planning Director may waive this filing deadline requirement in an individual case, for good cause shown.

#### **3.7.4 Approval Criteria**

The Planning Director shall issue a temporary use permit if the proposed temporary use satisfies the requirements set forth in Section 5.4.

#### **3.7.5 Duration of Permit**

A temporary use permit shall be valid only for the time period stated on the permit, unless otherwise authorized in this Ordinance.

**3.7.6 Temporary Structure Permit Required**

No tent, trailer, or other temporary structure governed by the State Building Code shall be occupied or used in conjunction with a temporary use until and unless the applicant has received a tent permit or a building permit from the Inspections and Permits Department pursuant to the State Building Code.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2022-LDO-02, 4-28-22)

**3.8 SPECIAL USES****3.8.1 General Provisions****(A) Purpose and Applicability**

Special uses are generally compatible with other land uses permitted in a zoning district yet, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may require the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location. Any use designated in Chapter 5 of this Ordinance as a "special use" shall not be established without the approval of the Zoning Board of Adjustment in accordance with the procedures and requirements set forth in this section.

**(B) Relationship to Development Plan Requirements****(1) *Coordination with Review of Development Plans***

If a development plan is necessary for the proposed special use pursuant to Section 3.9, then the review and approval of both the development plan and the special use shall be coordinated. The two (2) applications shall be filed together and review of each application shall proceed simultaneously. However, the Zoning Board of Adjustment shall render separate decisions on each application, recognizing that the applications are distinct and subject to different standards for approval.

**(2) *Lapse of Special Use Approval***

Approvals of special uses shall be automatically conditioned on the subsequent approval of a development plan required under Section 3.9. Accordingly, the approval of any special use shall lapse, and become null and void, upon the expiration of the approved development plan.

**(C) Special Uses in Nonconforming Structures or Lots**

If a proposed special use involves one (1) or more non-conforming structures or lots, the application for special use approval shall be accompanied by any applications necessary for enlargement, expansion, alteration, or major repair of a nonconforming structure or lot in accordance with Chapter 10. This application shall be processed concurrently with the special use application and in accordance with Chapter 10 of this Ordinance. However, approval of the alteration of a nonconforming structure and/or lot request shall be a prerequisite to approval of the special use.

**3.8.2 Procedures****(A) Pre-Application Conference**

Before filing the application, an applicant for a special use shall request a pre-application conference with the Planning Department (see Section 3.1.5).

**(B) Filing of Application and Content Requirements**

- (1) An application for approval of a special use may be filed only by the owner of the lot on which the use is to be located, an agent, lessee, or contract purchaser specifically authorized by the owner to file such application, or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.
- (2) An application for approval of a special use shall be filed with the Planning Department.
- (3) After determining that the application is complete, the Planning Department shall transmit all applications, plans, and other records pertaining to the proposed special use to the decision-making body. If a development plan is required under Section 3.9, the Planning Department shall complete review of the development plan in accordance with the requirements of Section 3.9, and transmit other records pertaining to the proposed special use to the decision-making body.

**(C) Notice and Conduct of Quasi-Judicial Evidentiary Hearings**

Notice and conduct of quasi-judicial evidentiary hearings required under this section shall be provided pursuant to the general provisions of Sections 3.1.6 and 3.1.7.

**(D) Planning Director Review and Report**

The Planning Director shall review the proposed special use based on the approval criteria of Section 3.8.3 and distribute the application to the Development Review Committee and, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Zoning Board of Adjustment at a quasi-judicial evidentiary hearing on the special use. This report shall include a discussion of all plans and policies that have been adopted by the Town that are relevant to the proposed application.

**(E) Review and Decision**

- (1) The Zoning Board of Adjustment shall hold at least one (1) quasi-judicial evidentiary hearing on the proposed special use and, based on the staff report, the evidence presented at the hearing, the approval criteria of Section 3.8.3, and any applicable use-specific standards of Section 5.2 or 5.3, approve, approve with modifications, or deny the proposed special use. The Zoning Board of Adjustment may approve, or approve with modifications, any special use by a majority vote.
- (2) If the special use also requires a development plan, then the Zoning Board of Adjustment shall also review the development plan in accordance with Section 3.9. Final action to approve the development plan shall not occur until after approval of the special use.

- (3) The Zoning Board of Adjustment shall determine contested facts and make its decision within a reasonable time. The decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and shall be approved by the Board and signed by the Chair of the Zoning Board of Adjustment, or his designee. The decision is effective upon filing with the Planning Department.
- (4) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

### **3.8.3 Approval Criteria**

The Zoning Board of Adjustment shall not approve a proposed special use and any accompanying development plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the quasi-judicial evidentiary hearing or otherwise appearing in the record of the case:

- (A) The proposed use or development of the land will generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town;
- (B) The proposed use or development of the land will not materially endanger the public health or safety;
- (C) The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
- (D) The proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
- (E) The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
- (F) The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
- (G) The proposed use will not cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway.

### **3.8.4 Effect of Approval or Denial**

#### **(A) Conditions**

In approving a special use, the Zoning Board of Adjustment may attach reasonable and appropriate conditions and safeguards. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the Town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by a local government, 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 G.S. 160A-307, or other unauthorized limitations on the development or use of land.

**(B) Subsequent Permits and Approvals**

Approval of an application to establish a special use authorizes the applicant to obtain building permits, certificates of occupancy, development plan approval, and other permits or approvals that the Town may require for the proposed development. If the special use included a development plan that must be approved by the Zoning Board of Adjustment, then approval of the special use is contingent on approval of the development plan. The Planning Department shall review applications for these permits for compliance with the terms of the special use approval. A permit, certificate, or other approval shall be issued or valid only for work that complies with the terms of the special use approval.

**(C) Transferability of Approval**

A special use approval is not transferable from one (1) property to another, but may be transferred to a successor-in-interest to the property.

**(D) Resubmission of Denied Applications**

No application for approval of a special use shall be filed with or accepted by the Planning Department that is identical or substantially similar to an application that has been denied by the Zoning Board of Adjustment within the previous year. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of four-fifths (4/5) of the members of the Zoning Board of Adjustment.

**(E) Recording of Approved Special Uses**

Upon expiration of the appeal period, a copy of the signed resolution approving a special use should be recorded with the applicable county's Register of Deeds.

**3.8.5 Changes to Terms and Conditions of Approval**

Any changes to the terms or conditions of approval of the special use shall require separate review and approval by the Zoning Board of Adjustment. Any application for approval of such a change shall be filed, processed, reviewed, and approved or denied in the manner set forth in this section for an original application for special use approval. This section shall not apply, however, to modifications to the approved development plan for the special use, which are governed by Section 3.9 of this Ordinance.

**3.8.6 Appeal**

Every decision on a request for a special use permit shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of Superior Court by the later of thirty (30) days after the decision is effective, or after a written copy thereof is given in accordance with Section 3.8.2(E)(4). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 2007-21, 12-13-07; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

### **3.9 SUBDIVISIONS PLATS AND DEVELOPMENT PLANS**

#### **3.9.1 Purpose and Structure of This Section; Applicability**

- (A) This section sets forth the procedures for review and approval of both subdivision plats and development plans.
- (B) A development plan is required for all residential and non-residential development, as defined in Section 12.4, with the exception of the following:
  - (1) One detached dwelling or one duplex dwelling, in both cases including all associated accessory structures and accessory uses, on an existing lot of record.
  - (2) Plats as specified in Section 3.9.3(B) of this Ordinance.

#### **3.9.2 Common Procedures for Review and Approval of Development Plans**

##### **(A) Pre-Application Conference Required**

A pre-application conference is required prior to submission of most new development plan applications and for some modifications to already-approved plans; see Section 3.1.5 for instances in which a conference is not required. Generally, minor modifications to approved plans do not need a pre-application conference.

##### **(B) Application Materials**

All development plan applications shall include a set of application materials prepared pursuant to this section. Approval of these materials shall be a prerequisite to the review and approval procedures set forth in this section.

##### **(1) *General Application Requirements***

Applications shall be filed with the Planning Department and shall consist of maps or plans that show the proposed development layout and related information and drawings, as specified by the Planning Director and prepared to the specifications of the Planning Director. All proposed or existing rights of way, easements, restrictive covenants or other matters of record that are known or should reasonably be known by the property owner(s) and that may affect the property shall be disclosed. Data provided shall be accurate. Submission of an application containing inaccurate, misleading, or false information, including but not limited to incorrect measurement or mathematical results, or submission of an application that omits required information, shall be grounds for rejection or refusal to act on the application and shall constitute a violation of this Ordinance and be subject to appropriate penalties and remedies set forth in Chapter 11.

- (a) The application shall provide a statement identifying any and all modifications from the design standards or improvement requirements set forth in Chapters 7 and 8 that the applicant will be requesting, including requests for Minor Modifications (see Section 3.19) or Variances (see Section 3.20).
- (b) The application shall also be accompanied by other applications, if appropriate, such as a Special Use application (Section 3.8) and/or an owner-initiated annexation petition.

- (c) Any applicant desiring to make a payment of money in lieu of land dedication pursuant to Section 8.2.2. of this Ordinance shall attach a letter to the plan application requesting approval to make payment in lieu of dedication of land.
- (d) A Traffic Management Plan as further described in Section 8.1.1 shall be submitted with an application for any proposed school planned to have an enrollment of two hundred (200) or more students and for any proposed religious or other assembly use (i.e., club, lodge, or hall; or special event center) planned to have a capacity of two hundred (200) or more persons. The Plan shall be in a format as specified by the Transportation and Facilities Department Director.
- (e) During review of the application, the Planning Department, the Development Review Committee, and/or the Town Council may require such additional information as may be necessary to review the submission, if applicable.

**(2) *Prohibiting Phasing to Avoid Requirements***

It is the Town's intent to ensure that larger developments are not phased or subdivided in piecemeal fashion in order to comply with numerical requirements of this Ordinance. Two (2) or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically proximate to one another. The following factors will be considered to determine whether there is a unified plan of development:

- (a) There is unified ownership, indicated by the fact that:
  - 1. The same person has retained or shared control of the developments;
  - 2. The same person has ownership or a significant legal or equitable interest in the developments; or
  - 3. There is common management of the developments controlling the form of physical development or disposition of parcels of the development.
- (b) There is a reasonable closeness in time between the completion of eighty (80) percent or less of one (1) development and the submission to the Town of a master plan or series of plans or drawings for the other development that is indicative of a common development effort.
- (c) The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments.
- (d) There is a common advertising scheme or promotional plan in effect for the developments.
- (e) Any information provided by the applicant that the project is not being phased or subdivided to avoid requirements of this Ordinance.

**(3) *Two Types of Plans***

The applicant has the option to submit either a "full plan" application or a "sketch plan" application:

**(a) *Full Plan Application***

A full plan application shall include information and supporting materials required as specified by the Planning Director. Once the application is complete, the Planning Department shall transmit the application to the Development Review Committee. If the Committee determines that the materials comply with all applicable requirements of this Ordinance and Town specifications, then the Planning Director shall mark the plans as approved. If the Committee determines that the materials do not comply with all applicable requirements, or that meeting the applicable requirements would require a change to the plan that could not be approved by the Planning Director using the Minor Modification process (see Section 3.19), then the Development Review Committee shall submit the plans to the Zoning Board of Adjustment for review, modification, and approval or denial.

Development plans shall meet the required improvements listed in Section 8.1.3(A) unless plans meet the criteria of Section 8.1.3(B), Exceptions to General Requirements.

**(b) *Sketch Plan Application***

At the option of the applicant, a "sketch plan" instead of a full plan may be submitted. The information and supporting materials required shall be as specified by the Planning Director. This option is intended to give an applicant a preliminary review of their proposed development without having to prepare complete construction plans, which are required for a full plan application. This option is a two (2)-step process, with the applicant first submitting for approval of a sketch plan, followed by submittal of the construction plans (incorporating the sketch plan approval) in order to receive complete "full plan" approval to move forward to construct the proposed development.

**1. *Approval of Sketch Plan Conditional on Approval of Construction Drawings***

If the application is submitted under the sketch plan submission option, approval of the sketch plan shall automatically be conditioned on the Development Review Committee's subsequent approval of construction drawings for all improvements required in the plan.

**2. *One Year Deadline to Submit Construction Drawings***

Construction drawings shall be submitted to the Planning Department no more than one (1) year after the date the sketch plan is approved. Failure to submit the construction drawings within this one (1) year period shall result in the lapse of approval of the sketch plan. The Planning Director may grant a single, one (1) year extension of this time limit for good cause shown, upon receiving a request from the applicant.

**3. *Review by Development Review Committee of Construction Drawings Following Approval of a Sketch Plan***

- a.** If the Committee determines that the materials comply with all requirements of this Ordinance and applicable Town specifications,

then the Planning Director shall mark the construction drawings as approved.

- b. If the Development Review Committee determines that the materials do not comply with all applicable requirements, or that meeting the applicable requirements would require a change to the plan that could not be approved by the Planning Director using the Minor Modification process, then the Development Review Committee shall submit the construction drawings to the Zoning Board of Adjustment for review, modification, and approval or denial.

**(C) Owner-Initiated Annexation Petition Required**

If the property within the proposed plan boundaries requires annexation into the Town limits, then official approval of the plan connecting to Town utilities is contingent on annexation into the Town. See Section 3.1.10.

**(D) Coordination of Plan Review with Special Use and/or Subdivision Plat Review**

- (1) The review and approval of development plans should be coordinated with the review and approval of Special Uses (see Section 3.8) to the maximum extent possible. An application for approval of a development plan may be submitted at the same time as an application for approval of a special use for the same development. However, the Development Review Committee shall render separate recommendations and the decision-making body (if subject to its approval) shall render a separate decision on each application, recognizing the applications as distinct and subject to different standards for approval. However, the decision-making body may choose to approve both applications with one (1) vote.
- (2) Application for a subdivision plat may only be submitted following development plan approval, unless a development plan is not required (see Section 3.9.3(B)).

**(E) Plans in Nonconforming Structures or Lots**

If a proposed plan involves one (1) or more structures or lots that do not conform to the regulations of the district in which the plan is located, then, this plan may be reviewed as a Re-use/Redevelopment Plan provided that the proposal is consistent with the requirements in Section 3.11.2. If the proposal is not consistent with Section 3.11.2, or includes an expansion of the nonconforming use, structure, or site, beyond that allowed by Section 3.11.3 then such proposal shall be required to obtain special use approval (see Section 3.8) unless the applicant has previously obtained the necessary variances from the Zoning Board of Adjustment. In cases where a variance has been granted, such plans would follow the normal development plan process.

**(F) Approval Authority**

**(1) *Approval by Zoning Board of Adjustment***

The Zoning Board of Adjustment shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section:

- (a) Plans for uses that require approval of a Special Use; and
- (b) Plans that propose one hundred (100) residential units or more, or that would construct one hundred thousand (100,000) square feet of nonresidential floor area or more, or that would construct a new drive-through facility or expand an existing drive-through facility; excepting plans meeting the following criteria, which plans shall be reviewed by the Planning Director:
  - 1. A rezoning for the property was approved within the two (2) calendar years prior to the date of application for the development plan and the plan is not otherwise subject to review by the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1)(a); or
  - 2. Plans for property (a) subject to a development agreement approved by the Town pursuant to G.S. Chapter 158, Article 1; Chapter 160D, Article 10; or 160D-1315; and (b) for which no zoning condition requires approval of the plan by the Town Council.

**(2) *Approval by Town Council***

The Town Council shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section.

- (a) Plans for property within an approved Mixed Use District where conditions of the associated preliminary development plan require action by Town Council.

**(3) *Approval by Planning Director***

The Planning Director shall have final decision-making authority on all development plans not subject to review by the Town Council or Zoning Board of Adjustment. Such plans shall be reviewed for compliance with all requirements of this Ordinance and applicable Town specifications.

**(G) Planning Director Review and Approval Process**

- (1) Within ninety (90) days from the submittal or any re-submittal of the application, the Planning Director shall review the plan and the comments and recommendations of the Development Review Committee. The Director shall either approve or deny the plan within this time period unless the applicant has caused additional delay or failed to provide necessary or accurate information.
- (2) If the Planning Director denies the plan, then the reasons for the denial shall be stated in the record of action on the plan.
- (3) In the event the Planning Director denies a plan, an appeal may be filed with the Zoning Board of Adjustment pursuant to Section 3.21 of this Ordinance.

**(H) Town Council and Zoning Board of Adjustment Review and Approval Process**

**(1) *Action by Town Council or Zoning Board of Adjustment***

The application, recommendations, and comments of the Development Review Committee and other appropriate review bodies shall be forwarded to the Town

Council or Zoning Board of Adjustment, as appropriate, for action. The Town Council or Zoning Board of Adjustment shall review this information, hold a quasi-judicial evidentiary hearing, and approve, conditionally approve, or reject the plan. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The decision-making body may approve, or conditionally approve, any plan by a majority vote. The decision shall be reduced to writing and reflect the decision-making body's determination of contested facts and their application to the applicable standards. The written decision shall be approved by Town Council and signed by the Mayor or his designee, or approved by the Zoning Board of Adjustment and signed by the Chair of the Zoning Board of Adjustment or his designee. The decision of either decision-making body is effective upon filing with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.



**Development Plan Review Process**

**(I) Approval Criteria**

A development plan may be approved by the Town Council or Zoning Board of Adjustment only if it meets the criteria set forth below:

- (1) The plan complies with all applicable requirements of this Ordinance, including all applicable Town specifications and official plans and manuals or documents adopted by the Town. (Note: Plans within Planned Developments may be subject to different requirements based on the approval).
- (2) The plan adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
- (3) The plan provides harmony and unity with the development of nearby properties;
- (4) The plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways;
- (5) The plan provides safe ingress and egress for emergency services to the site; and
- (6) The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

**(J) Recording of Instrument for Required Dedications**

- (1) Approval of a development plan shall automatically be conditioned upon the applicant dedicating any and all lands, interests in land, and rights-of-way required to be dedicated as part of the approved plan through an instrument in a form approved by the Town and recorded with the Wake County Register of Deeds.
- (2) For development plans not requiring a subdivision plat, such instruments shall be recorded prior to the issuance of a building permit. In addition, the applicant shall cause the Wake County Register of Deeds to mail a copy of the original recorded instruments to the Transportation and Facilities Department.
- (3) For development plans requiring a subdivision plat, such instruments must be recorded prior to, or in conjunction with the recording a subdivision plat for the development unless otherwise allowed within this Ordinance. Failure to satisfy this requirement shall render approval of the plan null and void.

**(K) Effect of the Plan Approval**

- (1) Approval of a plan shall authorize the applicant to proceed with any applications for environmental permits, building permits, and other permits and approvals required in order to develop the property in conformity with the approved plan. A permit, certificate, or other approval may be issued by the Town only if it conforms to the approved plan, and the applicant has made all dedications and improvements required by this Ordinance, except where the non-compliance is the subject of a modification to the plan approved pursuant to Section 3.19, *Minor Modifications* or is otherwise permitted by this Ordinance.

**(L) Effect of Decision on Successive Applications**

- (1) When a plan application has been denied by the Town Council or the Planning Director, no plan application covering the same property with similar land use shall be accepted or considered within twelve (12) months after the date of the denial.
- (2) The waiting period required by this Section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

**(M) Changes to Approved Plans**

Changes to approved development plans may be requested by the applicant and may be approved by the Planning Director under the procedure and criteria set forth in Section 3.19, *Minor Modifications*.

**3.9.3 Subdivisions of Land****(A) Purpose**

This Section sets forth specific provisions applicable to the review and approval of applications for subdivisions of land. These specific provisions supplement the common procedures set forth in Section 3.9.2.

**(B) Applicability**

A development plan and subdivision plat are required for all developments that meet the "subdivision" definition (see Chapter 12), except that only plat recordation is required for the division of a tract or parcel of land in single ownership if all the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision (2) of the definition of Subdivision in Section 12.4.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five (5) acres.
- (4) After division, no more than three (3) lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
  - (a) All lot dimension size requirements of the applicable land-use regulations, if any.
  - (b) The use of the lots is in conformity with the applicable zoning requirements, if any.
  - (c) A permanent means of ingress and egress is recorded for each lot.

**(C) Prerequisites for Other Approvals**

- (1) No building permit or certificate of occupancy may be issued for any building, structure, or improvement located within a subdivision, and no plat for a subdivision may be recorded with the applicable Register of Deeds, until a development plan has been approved, all required dedications of land have been made, and all required improvements have been installed in accordance with the procedures and requirements of this section.
- (2) The Town shall not accept or maintain any street, and shall not extend or connect any street lighting, water service, or sanitary sewer service to any subdivision of land, until and unless a plat for the subdivision has been approved and recorded in accordance with the requirements set forth in this Section.

**(D) [Reserved]****(E) Review and Approval of Final Plats****(1) *Required Dedications, Improvements, Payments, and Guarantees***

Prior to approval of the plat, all dedications and improvements, or payments and guarantees in lieu thereof that are required by Chapter 8 of this Ordinance shall be installed on and/or finalized for the property.

**(2) *Application Requirements***

An application for plat approval under this Section may be filed only by all of the owners of the property or by an agent, lessee, or contract purchaser specifically authorized by all of the owners to file such application. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Town with written documentation that all of the owners of the property have authorized the filing of the application.

**(3) *Application Filing***

Preliminary copies and required fees for plat approval shall be submitted to the Planning Director.

**(4) *Planning Director Review and Approval of Plat*****(a) *Approval Criteria for Plats***

The Planning Director shall approve the plat if it is in substantial conformity to the approved development plan and the applicant has carried out the improvements shown on the development plan and made all dedications and improvements, or payments and guarantees in lieu thereof, as associated with the approved plan and as required by Chapter 8. The district highway engineer shall be given an opportunity to make recommendations concerning a subdivision plat if the plat contains proposed State streets, State highways, or related drainage systems.

**(b) Processing of Approved Plat**

If all conditions and requirements for approval of the plat have been met, the Planning Director or designee shall sign all copies of the plat for recording. The Planning Department shall return the approved and signed copies to the applicant, one (1) of which the applicant shall file with the applicable Register of Deeds within thirty (30) days after approval.

**(5) Effect of Approval of a Plat**

The recording of the approved plat with the Register of Deeds shall authorize the subdivider, owner, or any subsequent developer of the property, to proceed with such applications for permits as this Ordinance may require for development on the property. No building permit may be issued until an approved subdivision plat has been recorded.

**(6) Appeal of Denial**

In the event the Planning Director denies a plat, an appeal may be made pursuant to G.S. 160D-1403(b).

**(F) Actions by Register of Deeds**

The Town shall file a copy of this Ordinance with the applicable county's Register of Deeds. After that filing, the Register of Deeds shall not file or record a plat of subdivision located within the corporate limits or extraterritorial jurisdiction of the Town without the approval of the Town. The landowner shown on a plat submitted for recording, or his or her authorized agent, shall sign a statement on the plat stating whether or not any land shown on the plat is within the corporate limits or extraterritorial jurisdiction of the Town. The filing or recording of a plat without the approval of the Town as required by this Section shall be null and void. The Clerk of the Superior Court of the applicable county shall not order or direct the recording of a plat where such recording would conflict with this Section.

**(G) Restriction on Sale or Transfer of Subdivided Land without Approved Plat**

Any person who transfers or sells any land located within the corporate limits or extraterritorial jurisdiction of the Town by reference to a plat that has not been approved by the Town and recorded with the applicable county's Register of Deeds shall be guilty of a misdemeanor with the exception of presale contracts as authorized in G.S. 160D-807. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The Town also may enjoin such transfer or sale by filing an action for an injunction.

**3.9.4 [Reserved]**

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 13-LDO-01, 2-13-13; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-04, 8-28-14; Ord. No. 2015-LDO-004, 8-27-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-02, 8-9-18; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-04, 11-16-23)

**3.10 [RESERVED]****3.11 RE-USE/REDEVELOPMENT PLANS**

The re-use or redevelopment of a vacant nonconforming structure or vacant conforming structure on a nonconforming site shall not be required to undergo the typical development plan review procedure if the eligibility requirements of Section 3.11.3 below are met. Owners of such properties may submit a re-use/redevelopment plan in lieu of a full development plan (see Section 3.9). For purposes of this Section 3.11, a nonconforming site is a site that was lawful at the time it was established and was part of an approved development plan at the time it was established, but which fails to comply with one (1) or more of the applicable regulations or standards of this Ordinance, including development plan requirements.

**3.11.1 Intent**

The intent of the re-use/redevelopment plan process is to encourage the utilization of existing nonconforming buildings and sites as opposed to their remaining vacant while at the same time reducing such nonconformities to the extent practical. The process allows owners to make improvements to an existing structure or site without having to go through a lengthy review process, produce a detailed development plan, reach compliance with all provisions of this Ordinance, or make roadway improvements.

**3.11.2 Changes Allowed for Nonconformities**

Notwithstanding the provisions of this Section, development proposals for vacant nonconforming structures or conforming structures on nonconforming sites may utilize the provisions of Section 8.1.3(B) to make minor or inconsequential changes provided that there is no net increase in the amount of building square footage or improved floor area.

**3.11.3 Eligibility Requirements**

To qualify for submission of a re-use/redevelopment plan, the following conditions must exist:

- (1) The proposed use is permitted within the underlying zoning district, and provided that the new or expanded use does not generate twenty percent (20%) more traffic compared to the amount of traffic generated by the existing and/or previous use as determined by the ITE Trip Generation Manual.
- (2) The previous use was part of an approved development plan (whether approved by the Town of Cary or other jurisdiction such as Wake County).
- (3) The redeveloped use will occupy an existing building(s) on the site, with no expansions or additions proposed.
- (4) If the site is in the Watershed Protection Overlay district, the requirements of Section 7.3 Stormwater Management must be addressed; or if the site is outside of the Watershed Protection Overlay district, no more than twelve thousand (12,000) square feet of additional area is disturbed as a part of the proposal.
- (5) The proposed new use does not expand existing encroachments into required buffers or streetscapes.
- (6) The site will be in compliance with the provisions of Chapter 9, Signs.

- (7) The structure or site has been abandoned for a period of one hundred eighty (180) calendar days or more.

#### **3.11.4 Limitations**

Proposed uses only allowable through an overlay district designation may not utilize the re-use/redevelopment plan process. Proposals which do not meet the eligibility requirements of Section 3.11.3 are required to undergo the normal development plan review process and/or the special use process (see Sections 3.8 and 10.1.8) in cases of expansion or major alteration.

Proposals involving a change in use that, although may be permitted within the underlying zoning district, will increase the intensity of the use(s) originally approved, will be required to demonstrate compliance with the current Ordinance requirements applicable to the proposed change prior to the issuance of a Building Permit and/or Certificate of Occupancy. Demonstrating compliance can be accomplished either through the development plan or re-use/redevelopment plan process, whichever is applicable.

Proposals for nonconforming sites or structures that have been vacant for less than one hundred eighty (180) calendar days and do not involve, either proposed or required, any changes to the site or exterior of the structure shall be reviewed during the Building Permit and/or Certificate of Occupancy process for compliance with the approved development plan or ordinance requirements in effect at the time it was established. If one (1) or more aspects of the site and/or structure fail to comply with the applicable plan approval or ordinance requirements, the deficiencies shall be corrected and the Planning Director must verify compliance prior to the issuance of a Certificate of Occupancy.

#### **3.11.5 Dedication and Roadway Improvements**

- (A) While such redevelopment projects are not typically required to make roadway or other off-site improvements, dedication of required right-of-way is required as part of the re-use/redevelopment plan approval process.
- (B) Full dedication of all lands designated by the Cary Transportation Plan is not required if such dedication would result in the removal of required parking spaces or other features needed for the development to operate. In such cases, a partial dedication of lands indicated as needed by the Transportation Plan, but not needed for site functionality may be required.
- (C) In some cases, if curb and gutter and/or sidewalk/trail installation may be required if it does not exist along the property's frontage, and can be properly located for the ultimate roadway section indicated in the Transportation Plan without disturbing existing functional site features or is needed to provide an important link with existing or future sidewalks/trails.
- (D) In some cases, grading to the future roadway widening may be required if needed to accommodate landscaping requirements. Postponing landscape requirements may be done if the future widening will ultimately remove the required plantings.
- (E) If the site is located along an existing two (2) lane roadway, the Transportation and Facilities Director may require roadway improvements to address the use's impact.

**3.11.6 Required Improvements and Plan Submittal Requirements**

A re-use/redevelopment plan shall include and address, at a minimum, the following elements:

- (1) Lighting (parking lot, building lighting, and street lights); and
- (2) Landscaping and/or fencing adequate to minimize impact on adjoining properties; and
- (3) Off-street parking/parking lot design (dimensional standards and standard specifications); and
- (4) Screening of dumpsters, storage, heating and air conditioning, and similar equipment; and
- (5) Building improvements (painting or other changes); and
- (6) Access roads and entrances or exit drives to ensure automotive and pedestrian safety and traffic flow; and
- (7) Depiction of all right-of-way and easement dedications to meet the Transportation Plan (if applicable).

**3.11.7 Exceptions for Required Improvements**

The Director of Planning and/or the Director of Transportation and Facilities and/or the Director of Water Resources may waive, in part or in full, certain required improvements if meeting them is deemed impractical or unreasonable given the constraints on the existing site. Consideration may also be given to the extent of the required improvements in relation to the specific nature and scope of the re-use/redevelopment proposal.

(Ord. No. 04-001, 1-8-04; Ord. No. 06-009, 4-27-06; Ord. No. 2009-LDO-04, 7-23-09; Ord. No. 2014-LDO-03, 8-14-14)

**3.12 DEVELOPMENT IN FLOOD HAZARD AREA****3.12.1 Floodplain Administrator**

The Town shall appoint a Floodplain Administrator to administer and implement the provisions of Section 3.12. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this section, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this section. The Floodplain Administrator's duties shall include, but are not limited to, the following:

- (A) Review all floodplain development permit applications and other forms of development approval for compliance with the provisions in Section 14.7 ("Flood Damage Prevention") and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas;
- (B) Review all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

- (C) Notify adjacent communities, the North Carolina Department of Public Safety, Division of Emergency Management, and the State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, that it has been demonstrated that the altered watercourse is maintained so that the flood carrying capacity of the watercourse is not diminished, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- (D) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 14.7.3 of this ordinance;
- (E) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 14.7.3 of this ordinance;
- (F) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Section 14.7.3 of this ordinance;
- (G) When floodproofing is utilized for a particular structure, obtain certification from a registered professional engineer or architect in accordance with the provisions of Section 14.7.3 of this ordinance;
- (H) Interpret the exact location of the boundaries of the Special Flood Hazard Area;
- (I) Obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source where base flood elevation data has not been provided in accordance with Section 14.7.2 in order to administer the provisions of Section 14.7, Flood Damage Prevention;
- (J) Provide the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program maps delineating new corporate limits within six (6) months from the date of annexation or change in corporate limits;
- (K) Maintain all records pertaining to the provisions of this Section 3.12 and Section 14.7, and to hold them open for public inspection; and
- (L) Review all applications for development and all variances to the required standards and to maintain all of the records required by Section 14.7.

### **3.12.2 Permit and Approval Requirements**

#### **(A) Compliance Required**

No development shall occur in the Flood Hazard Area, unless it complies with the procedures set forth in this section and the flood damage prevention standards set forth in Section 14.7 of this Ordinance. In general, no development is allowed in the Flood Hazard Area unless a special use is approved; the property/use is exempted from this requirement; or the development is for roads, greenways, pedestrian crossings, park-related equipment, or public utilities and facilities such as waste water, gas, electrical, and water systems that are located and constructed to minimize flood damage.

**(B) Establishment of Floodplain Development Permit**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas determined in accordance with Section 14.7 of this ordinance.

The person undertaking such development shall file an application for a floodplain development permit with the Floodplain Administrator. The application shall be filed on a form prescribed by the Floodplain Administrator. The Floodplain Administrator shall review the application and shall issue the permit only if the proposed development conforms to the flood damage prevention standards set forth in Section 14.7 of this Ordinance.

**(C) Additional Requirement for Non-Residential Structures Located within the Flood Hazard Area**

No non-residential structure or related impervious surface shall be built, expanded, or located within the Flood Hazard Area until and unless the Zoning Board of Adjustment has approved a special use permit for such structure or surface under Section 3.8. The Board shall approve such a structure as part of the development plan only upon finding that, without this ability, the owner cannot make a reasonable use of his or her property. In other words, this restriction causes undue hardship. The Board may attach to the approval of the development plan such reasonable conditions as it deems necessary to safeguard the public health, safety, and welfare against any flood hazards that the proposed non-residential structure may present.

**3.12.3 Approval Procedure**

- (A)** Upon receiving any application for development within the Flood Hazard Area, the Floodplain Administrator shall determine whether the proposed development meets the flood damage prevention standards set forth in Section 14.7.
- (B)** If the Floodplain Administrator determines that the proposed development does not meet these standards, then the Town shall issue no permit, certificate, or other form of approval for the proposed development.
- (C)** In those cases where this Ordinance requires some other form of approval for development in the Flood Hazard Area, the Floodplain Administrator shall report its determination to the body or agency responsible for the issuance of that other form of development approval, within a reasonable amount of time for that body to act accordingly in approving or denying the proposed development.
- (D)** In those cases where no other form of approval is required for the proposed development in an area of special flood hazard, the Floodplain Administrator shall notify the applicant of its determination within a reasonable amount of time.

**3.12.4 Appeals**

- (A)** All questions on the enforcement of this section shall first be addressed to the Floodplain Administrator. The decisions of the Floodplain Administrator may be appealed by following the procedure set forth in Section 3.21.

- (B) The Zoning Board of Adjustment may grant relief from a decision of the Floodplain Administrator only if the Board finds that the Floodplain Administrator acted incorrectly in interpreting or administering any of the duties or functions listed under Section 3.12.1; other provisions of this Section 3.12; or Section 14.7, *Flood Damage Prevention*.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-03, 10-27-22)

### 3.13 GRADING PERMITS

#### 3.13.1 Purpose and Scope

This section sets forth the procedures for obtaining a grading permit for development and land-disturbing activities within the Town and its extraterritorial jurisdiction. (The standards for control of sedimentation and soil erosion appear in Section 14.4.)

##### (A) Applicability

- (1) Except as provided in paragraphs (B) and (C) below, it shall be unlawful to conduct any land-disturbing activity without first obtaining a grading permit from the Town.
- (2) Except where an adopted Town policy allows the issuance of grading permits prior to final development plan approval, no application for a grading permit shall be filed or accepted until the project for which the permit is sought has received all other necessary approvals required under Chapter 3 of this Ordinance.

##### (B) Exemptions from All Grading Standards and Permit Requirements

The requirements of this section and Section 14.4 of this Ordinance shall apply to all land-disturbing activities undertaken by any person within the Town's corporate limits or extraterritorial jurisdiction, except for the following:

##### (1) Agriculture

Land-disturbing activities undertaken on agricultural land that is taxed at the present-use value standard;

##### (2) Forestry

Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the N.C. Department of Environment and Natural Resources. Within the Watershed Protection Overlay, however, both a permit and a valid forestry management plan shall be required from the appropriate federal or state agencies.);

##### (3) Mining

Land-disturbing activities undertaken by persons, as defined in G.S. 113A-52(8), who are otherwise regulated by the provisions of the Mining Act of 1971, as amended (G.S. 74-46 through G.S. 74-68);

**(4) Fire Fighting**

Land-disturbing activities undertaken for the purpose of fighting fires; and

**(5) Activities Regulated by Sedimentation Control Commission**

The following land-disturbing activities that are regulated by the North Carolina Sedimentation Control Commission:

- (a)** Land-disturbing activities conducted by the State, the United States, a unit of local government, or persons or agencies having the power of eminent domain;
- (b)** Land-disturbing activities licensed by the State or the United States;
- (c)** Land-disturbing activities funded in whole or in part by the State or the United States.

**(C) Exemptions from Grading Permit Requirements**

The land-disturbing activities set forth below need not obtain a grading permit, yet shall nevertheless comply with the requirements set forth in this Ordinance, including the soil erosion and sedimentation control requirements of Section 14.4. These activities include:

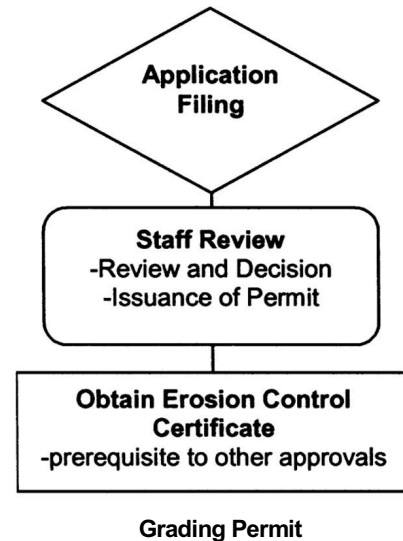
- (1)** Construction of a structure subject to regulation under the North Carolina Residential Code for One- and Two-family Dwellings on a single lot, except when the disturbed area exceeds one (1) acre;
- (2)** Land-disturbing activities that do not exceed twelve thousand (12,000) square feet in surface area, on contiguous lands under single or diverse ownership being developed as a unit; and
- (3)** The stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that the exposed surface area of such materials does not exceed a contiguous area of twelve thousand (12,000) square feet.

**3.13.2 Application Requirements**

- (A)** An application for a grading permit shall be filed with the Town. An application for a grading permit may be filed only by the owner of the property on which the land-disturbing activity is to occur or a contractor, agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B)** The application shall include an erosion control plan that has been designed and signed by a registered professional engineer or registered landscape architect who is qualified in hydrology.
- (C)** Before filing the application, the applicant is strongly encouraged to request a pre-application conference with the Planning Department. See Section 3.1.5.

**3.13.3 Review and Approval**

- (A) The Town shall review each application and shall act to approve, approve with modifications, approve with performance reservations, or deny the application, based on the criteria set forth in Section 3.13.4. The review shall be conducted in conjunction with any development plan approval that may be required for the proposed development.
- (B) Where the application must be revised in accordance with any modifications or performance reservations required by the Town, the applicant shall submit a revised application to the Town. The Stormwater Manager shall approve or deny the revised application.



- (C) Upon approval of the application, the Town shall issue a grading permit for the proposed land-disturbing activity. The applicant shall keep a copy of the grading permit and the approved erosion control plan on file at the job site.
- (D) In the event that the Town disapproves the application, the Town shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Town's decision to deny or modify the proposed application by following the appeals procedure set forth in Section 3.21. If the Zoning Board of Adjustment upholds the denial or modification of the application, then the applicant may appeal this decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(C) and N.C. Administrative Code Title 15, 4B.0018(b). Alternatively, the applicant may appeal the disapproval of the plan directly to the Commission, in accordance with G.S. 113A-61, without appeal to the Zoning Board of Adjustment.

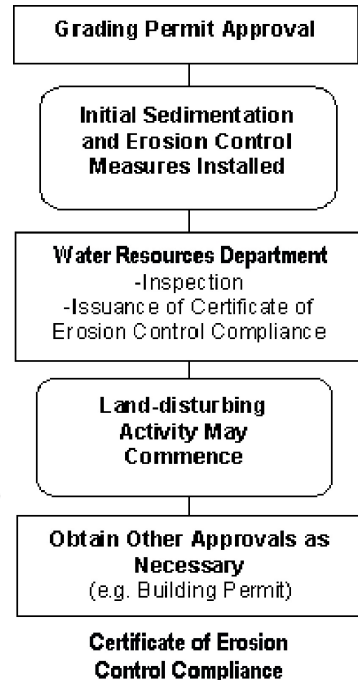
**3.13.4 Approval Criteria**

- (A) The Town shall approve only those applications that are shown to have the potential to control accelerated erosion and prevent off-site siltation at least the equivalent in effectiveness, safety, quality, and durability of that prescribed in the current edition of the "Erosion and Sedimentation Control Planning and Design Manual" published by the North Carolina Sedimentation Control Commission.
- (B) The Town may deny the application for any of the following reasons, if the applicant, or any parent or subsidiary corporation (if the applicant is a corporation) meets any of the criteria set forth below. For purposes of this subsection, an applicant's record may be considered for only the two (2) years prior to the application date.
- (1) The applicant has failed to substantially comply with state rules or local ordinances and regulation adopted pursuant to the Sedimentation Pollution Control Act;
  - (2) The applicant is conducting or has conducted land-disturbing activity without an approved permit, or has received notice of violation of a permit previously approved by the North Carolina Sedimentation Control Commission, the Town, or another local government, and has not complied with the notice within the time specified therein;

- (3) The applicant has failed to pay a civil penalty assessed pursuant to the Sedimentation Pollution Control Act or this Ordinance for failure to comply with the applicable sedimentation and erosion control requirements, where such payment is due and no appeal is pending regarding the penalty;
- (4) The applicant has been convicted of a misdemeanor pursuant to G.S. 113A-64(b), or any similar provision of this Ordinance, for failure to comply with the applicable sedimentation and erosion control requirements.

### 3.13.5 Effect of Approval; Certificate of Erosion Control Compliance

- (A) Following approval of the grading permit application, the applicant shall install the initial sedimentation and erosion control measures specified in the approved erosion control plan.
- (B) The land-disturbing activity shall not begin until the Stormwater Manager has inspected these initial measures and issued a certificate of erosion control compliance indicating that these initial measures conform to the approved application.
- (C) No building permit or certificate of occupancy shall be issued by the Inspections and Permits Department prior to the issuance of the certificate of erosion control compliance.
- (D) The grading permit shall be valid so long as the development plan to which it refers remains valid and in effect. When the approval of the development plan lapses, the grading permit is null and void.



### 3.13.6 Responsibility for Maintenance and Additional Erosion Control Measures

- (A) During development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved application and any provision of, or order adopted pursuant to, this Ordinance or the Sedimentation Pollution Control Act (G.S. 113A-50 et seq., as amended).
- (B) After development of the site is complete, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except for those measures installed within a road or street right-of-way or easement that a government agency has accepted for maintenance.
- (C) Whenever the Town determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite the application and maintenance of protective practices, the person conducting the land-disturbing activity or the person responsible for maintenance shall be required to take additional protective action as the Town deems necessary to control the sedimentation.

- (D) All uncovered areas that existed on the effective date of the State rules and resulted from land disturbing activity, exceed twelve thousand (12,000) square feet, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation. The required ground cover shall be consistent with this Section 3.13 and Chapters 7 and 14 of this Ordinance.

### **3.13.7 Changes to Approved Erosion Control Plans**

#### **(A) Changes Initiated by Department**

Following commencement of a land-disturbing activity pursuant to an approved grading permit, if the Town determines that the approved application is inadequate to meet the requirements of this Ordinance, then the Town may require such revisions to the plan as are necessary to comply with this Ordinance.

#### **(B) Changes Initiated by Applicant**

The applicant may apply at any time to amend a grading permit, in written and/or graphic form, under the same conditions and following the same procedure as the original application. Until such time as the Town approves such an amendment, the land-disturbing activity shall not proceed except in accordance with the application as originally approved.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

## **3.14 BUILDING PERMITS**

### **3.14.1 Building Permit Required**

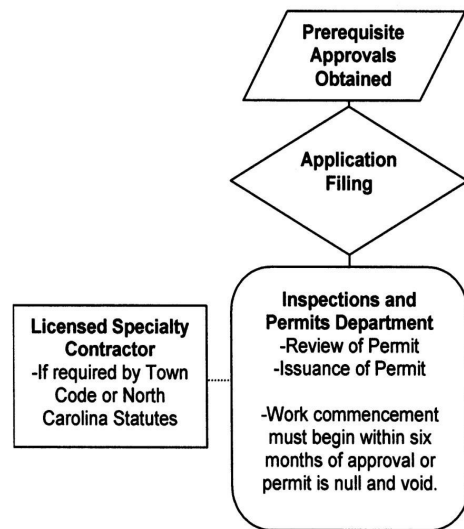
A building or structure that is governed by the State Building Code may be constructed, reconstructed, altered, repaired, moved, occupied, or demolished only after the Inspections and Permits Department has issued a building permit for such work. A building permit shall be issued only for work that conforms to the requirements and standards of this Ordinance and the terms and conditions of any other permits, approvals, or variances granted pursuant to this Ordinance.

### **3.14.2 Application Requirements**

- (A) An application for a building permit shall be filed with the Inspections and Permits Department and may be filed only by the owner of the lot on which the building or structure is to be located or an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B) Applications for new construction shall include evidence that a new water and/or sewer service connection has been approved for such construction, in accordance with the Cary Code of Ordinances.
- (C) A review of compliance with the requirements of this Ordinance will occur concurrently with the evaluation of a building permit application. This review shall include, but is not limited to: off-street parking, landscaping, buffers, or other developmental standard as listed in Chapters 5 through 8 of this Ordinance.

- (D) For all residential detached dwellings and related accessory buildings with a permanent foundation to be located within five (5) feet of a required setback line or easement, a sealed as-built foundation survey and a written statement from the surveyor, builder, owner or architect identifying the distance which sills, cornices, eaves or other architectural or ornamental features will extend beyond the exterior walls, must be submitted to the Inspections and Permits Department at the time of foundation inspection. For all buildings without a permanent foundation to be located within five (5) feet of a required setback line or easement, a sealed as-built foundation survey and a written statement from the surveyor, builder, owner or architect identifying the distance which sills, cornices, eaves or other architectural or ornamental features will extend beyond the exterior walls, must be submitted to the Inspections and Permits Department prior to the scheduling of the rough-in inspection. The survey shall be prepared by a registered land surveyor in the State of North Carolina and shall illustrate to location of all existing and proposed structures and improvements, as well as all property lines, building setback lines, buffers and easements. The requirements for a survey shall not apply to the following:

- (1) Any structures which do not require a building permit; or
- (2) Where there is an existing structure and an accurate survey already available such that the Permits and Inspections Department can determine the field location of existing and proposed structures without requiring a new survey.



#### Building Permit

#### 3.14.3 Approval Procedure; Duration of Approval

- (A) When proper application for a building permit and the payment of all required fees and charges has been made, the Inspections and Permits Department shall issue the building permit upon finding that the application and the proposed work comply with the provisions of this Ordinance and all other applicable ordinances and construction codes of the Town.
- (B) Where any ordinance or construction code of the Town or any provision of the General Statutes of North Carolina requires that work be done by a licensed specialty contractor of any kind, no building permit for such work shall be issued unless it is to be performed by such licensed specialty contractor.
- (C) Approval and distribution of drawings and specifications required shall be coordinated by the Inspections and Permits Department and shall conform to the current edition of the North Carolina State Building Code.
- (D) The building permit issued by the Inspections and Permits Department shall be conspicuously posted by the applicant on the property for which it was obtained in the manner prescribed by the Inspections and Permits Department. The building permit shall

remain so posted until the applicant has obtained a permanent certificate of occupancy from the Inspections and Permits Department pursuant to Section 3.15.

- (E) A building permit shall become null and void unless the work approved by the permit is commenced within six (6) months after the date of issuance. No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured.

#### **3.14.4 Notification and Approval Before Construction Begins**

- (A) Before any work begins pursuant to the building permit, the applicant shall furnish the Inspections and Permits Department with the names of all contractors and subcontractors who will be performing the work.
- (B) The applicant, or his or her agent, foreman, or superintendent, shall provide twenty-four (24) hours advance notice to the Inspections and Permits Department at such time as the work is ready for inspection under the State Building Code. Upon receiving such notification, the Inspections and Permits Department shall inspect the work. No building or structure shall be occupied prior to the completion of all required inspections.

#### **3.14.5 Changes to Approved Permits**

- (A) After a building permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without the specific written approval of such changes or deviations by the Inspections and Permits Department.
- (B) An amendment to a building permit that requires payment of an additional fee, either because of an increase in the size of the buildings, a change in the scope of work, or an increase in the estimated cost of the proposed work, shall not be approved until the applicant has paid the additional fees and the amendment has been properly reviewed and approved for conformance with the State Building Code.
- (C) Any change in tenancy, occupation, or use of an existing structure shall require review and approval of a Building Permit application consistent with the requirements of this Section.

#### **3.14.6 Revocation of Building Permit**

The Inspections and Permits Department may revoke and require the return of any building permit by notifying the permit holder in writing, stating the reason for such revocation. The Department shall revoke building permits for any of the following reasons:

- (A) Any material departure from the approved application, plans, or specifications;
- (B) Refusal or failure to comply with the requirements of this Ordinance or any other applicable State or local laws;
- (C) False statements or misrepresentations made in securing such permit.

The Inspections and Permits Department may also revoke any building permit issued in violation of this Ordinance or any other applicable State or local laws. Appeals of Building Permit requirements or revocations must be made to the North Carolina State Building Code Council. (Ord. No. 04-007, 7-15-04; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2021-LDO-01, 6-24-21)

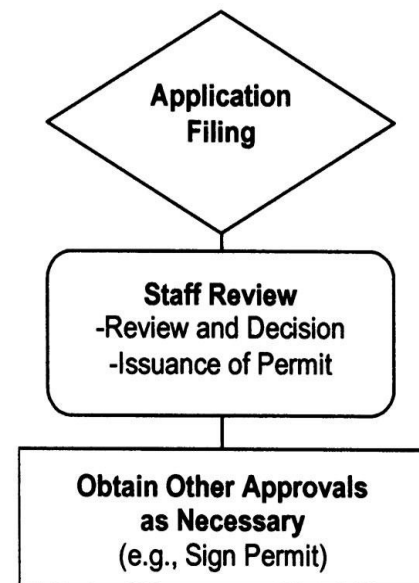
### 3.15 CERTIFICATES OF OCCUPANCY

#### 3.15.1 Certificate of Occupancy Required

- (A) No new building or part thereof may be occupied, no addition or enlargement of any existing building may be occupied, no existing building that has been altered or moved may be occupied, and no change in the use or occupancy of any building may be made in any existing building or part thereof, until the Inspections and Permits Department has issued a certificate of occupancy or temporary certificate, stating that the building and/or the proposed use complies with the provisions of this Ordinance, including any applicable regulations applying to the proposed use and/or the zoning district in which the use is to be located.
- (B) A certificate of occupancy shall be required for the purpose of maintaining, renewing, changing, or extending a nonconforming use.

#### 3.15.2 Approval Procedure

- (A) The Inspections and Permits Department shall issue a certificate of occupancy when, after examination of the building, structure, landscaping and/or other improvements or changes to the property, the Department finds that the building complies with the applicable provisions of this Ordinance and other applicable ordinances and construction codes of the Town.
- (B) The Inspections and Permits Department shall issue the certificate of occupancy within ten (10) days after the erection or structural alteration of the building or part thereof to be occupied has been completed in conformity with the applicable provisions of this Ordinance and other applicable ordinances and construction codes of the Town.
- (C) The Director may issue a temporary certificate of occupancy, which shall be valid only for the period of time stated in the certificate, for a specified portion or portions of a building that may safely be occupied prior to final completion of the entire building and/or site. Conditions that are attached to the temporary certificate of occupancy must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the temporary certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the Director stating satisfactory reasons for the failure to complete work within the given time period, the Director may renew the certificate for a specified period of time, not to exceed ninety (90) days.



(Ord. No. 2021-LDO-01, 6-24-21)

### **3.16 SIGN PERMITS**

#### **3.16.1 Permits Required for Sign**

If a sign requiring a permit under this chapter is to be placed, constructed, erected or modified on a site, the owner of the lot shall secure a sign permit prior to the construction, placement, erection or modification of such a sign in accordance with the requirements of this chapter.

#### **3.16.2 Permits To Be Consistent with This Chapter**

With the exception of signs that comply with a Master Sign Plan within a Planned Development (provided such plan was approved prior to April 14, 2011), no sign permit of any kind shall be issued for an existing or proposed permanent sign unless such sign is consistent with:

- (A) Any Master Sign Plan approved and in effect for the property; and
- (B) The conditions of this chapter.

#### **3.16.3 Application Requirements**

- (A) An application for a sign permit may be filed only by the owner of the property on which the sign is to be erected, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.
- (B) An application for a sign permit shall be filed with the Planning Department on a form prescribed by the Department, along with the fee for such certificate as prescribed by the Town Council.
- (C) Each application for a sign permit shall contain the information required on the application form, and such other information regarding the proposed sign as the Planning Department may deem necessary in order to determine whether the proposed sign complies with the applicable requirements of this chapter and other applicable ordinances of the Town.
- (D) The Planning Department shall determine whether the application is complete. If the Department determines that the application is not complete, then it shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies.

#### **3.16.4 Approval Procedure**

Signs identified in Table 9.2-1, Table 9.2-2, or Table 9.2-3, whichever is applicable, as requiring a permit shall be erected, installed or created only in accordance with a duly issued and valid sign permit from the Planning Director. Such permit shall be issued only in accordance with the following requirements and procedures:

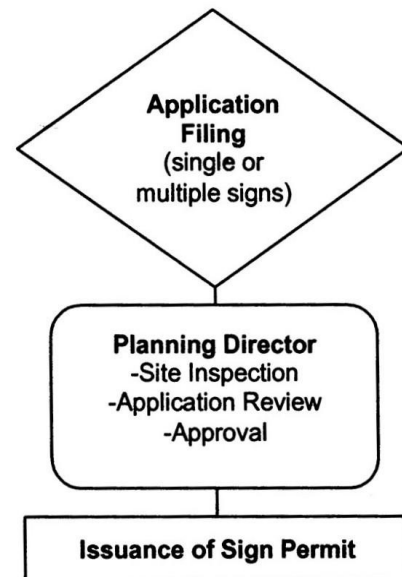
- (A) An application for construction, creation or installation of a new sign or for modification of an existing sign shall be accompanied by detailed drawing to show the dimensions, design, structure, and location of each particular sign, to the extent that such details are not contained in a Master Sign Plan then in effect for the site. One (1) application may include multiple signs on the same site.

(B) The Planning Director may cause an inspection of the site for which each permit for a new sign or modification of an existing sign is issued during the sixth month period after the issuance of such permit or at such earlier date as the owner may request. If the construction is substantially complete but not in full compliance with this chapter or other applicable codes, the Planning Director shall give the owner or applicant notice of the deficiencies and shall allow an additional thirty (30) days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse.

(C) Within five (5) working days of receiving an application for a sign permit or for a Master Sign Plan, the Planning Director shall review it for completeness. If it is incomplete, the Planning Director shall within such five (5)-day period, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this chapter or Chapter 9.

(D) Within twenty (20) days of submission of a complete application for a sign permit, the Planning Director shall either:

- (1) Issue the sign permit, if the sign conforms in every respect with the requirements of this chapter or Chapter 9, and the applicable Master Sign Plan; or
- (2) Deny the sign permit if the sign fails in any respect to conform to the requirements of this chapter or Chapter 9, and the applicable Master Sign Plan. In case of a rejection, the Planning Director shall specify the sections of this chapter or Chapter 9 with which the sign is inconsistent.



Sign Permit Approval Procedure

### 3.16.5 Lapse of Sign Permit

A sign permit shall lapse automatically if the business is discontinued for a period of ninety (90) days or more.

### 3.16.6 Reserved

### 3.16.7 Removal of Signs Upon Discontinuation of Use

Whenever the use of a building or premises by a specified business or other establishment is discontinued by the owner or occupant for a period of ninety (90) days, the sign permits for all signs pertaining to that business or establishment that were installed by the occupant or owner shall be deemed to have lapsed, and the signs shall be removed, as well as all signs that do not conform to the standards of this chapter. The Master Sign Plan for the premises, if applicable, shall remain in effect provided it does not conflict with the requirements of this Chapter.

(Ord. No. 2007-04, 3-22-07; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-02, 12-8-16)

### **3.17 SITE-SPECIFIC VESTING PLANS; VESTED RIGHTS**

#### **3.17.1 Purpose**

The purpose of this Section is to provide for the establishment of site-specific vesting plans pursuant to G.S. 160D-108.1 in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning in recognition that Town approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses. Vested rights may also be established pursuant to G.S. 160D-108 or by application of common law principles.

#### **3.17.2 Establishment and Effect of Site-Specific Vesting Plan**

A vested right shall be deemed established with respect to any property upon the approval of a site-specific vesting plan, pursuant to the provisions of this Section. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific vesting plan. This right to carry out the development in accordance with the approved plan shall attach to and run with the land, rather than being personal to the recipient of plan approval.

#### **3.17.3 Vested Rights Period**

- (A)** A vested right to develop under a site-specific vesting plan shall terminate two (2) years after the effective date of approval of the site specific vesting plan with respect to all buildings and uses for which the developer has not, by that time, filed a valid building permit application in accordance with Section 3.14 of this Ordinance.
- (B)** In approving a site-specific vesting plan, the Town Council may extend the two (2)-year vested rights period to a period of up to five (5) years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This decision shall be in the sound discretion of the Town Council.

#### **3.17.4 Procedure**

In order to be entitled to the vested rights period set forth in Section 3.17.3 above, the owner or developer of the property must apply for a site-specific vesting plan with the Planning Department.

##### **(A) Applicability; application**

An applicant who wishes to obtain a site-specific vesting plan shall apply for such at the time of an initial development plan application. The site-specific vesting plan application 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, stormwater, roads, and pedestrian walkways.

**(1) *Planning Director Review, Report, and Recommendation***

The Planning Director shall review each proposed site-specific vesting plan and development plan and shall distribute the application to the Development Review Committee. The Development Review Committee shall determine if the development plan complies with this Ordinance. If the Development Review Committee finds the development plan complies with this Ordinance, the Director shall provide a report to the Town Council for consideration. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the application as well as the Development Review Committee's recommendation.

**(2) *Town Council Action***

If the development plan requires review by the Zoning Board of Adjustment pursuant to Section 3.9.2, the development plan must first be considered and approved by the Zoning Board of Adjustment. If the development plan does not require Zoning Board of Adjustment review and approval, or if the Zoning Board of Adjustment has approved the development plan, then the site-specific vesting plan will be transmitted to the Town Council. The Town Council, after holding a legislative public hearing, may approve, conditionally approve, or deny the application for the site-specific vesting plan. The Town Council may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare.

**(B) *Notice and Conduct of Public Hearings***

Public hearings on site-specific vesting plans shall be legislative public hearings and shall be published and posted in accordance with the general notice requirements of Section 3.1.6, and shall be conducted in accordance with the general provisions of Section 3.1.7.

**(C) *Effect of Denial or Withdrawal of Application***

No application for a site-specific vesting plan covering the same property will be considered until after a lapse of twelve (12) months from the date of denial or withdrawal of the application. This twelve (12)-month provision may be waived for good cause shown by a four-fifths (4/5) vote of the Town Council.

**3.17.5 *Exceptions***

The provisions of Section 3.17.2 shall not apply in the following instances:

- (A)** Where the property owner consents, in writing, to making the development conform to the requirements of this Ordinance, or any amendment thereto, which would make the development nonconforming;
- (B)** Where the Town Council finds, after notice and a quasi-judicial evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
- (C)** Where the Town Council finds, after notice and a quasi-judicial evidentiary hearing, that the property owner or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the Town's approval of the site-specific vesting plan;

- (D) Where the state or federal government has enacted or promulgated a law or regulation which precludes developing the property as contemplated in the approved site-specific vesting plan, in which case the Town Council may, by ordinance, modify the affected provisions of the approved plan upon finding, after notice and a quasi-judicial evidentiary hearing, that the change in state or federal law has a fundamental effect on the approved site-specific vesting plan;
- (E) Where the Town has compensated the property owner for all costs, expenses, and other losses incurred by the property owner after approval of the vested rights certificate, including but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees, together with interest as provided under G.S. 160D-106, not including any diminution in the value of the property.

### **3.17.6 Amendments to Approved Plan**

This Ordinance provides for situations in which the property owner or developer may obtain Town approval for particular changes to a site-specific vesting plan that the Town has already approved. The effect of such changes is as follows:

#### **(A) Amendments approved by Planning Director**

Where the change is an amendment to a development plan that may be approved by the Planning Director under the terms of this Ordinance then approval of the change shall have no effect on the vested rights period and site specific vesting plan. The Director's approval of the proposed change shall not be deemed to extend or renew the vested rights period.

#### **(B) Changes Requiring Approval of the Zoning Board of Adjustment**

Where the change is an amendment to a development plan that requires the approval of the Zoning Board of Adjustment under the terms of this Ordinance, then the property owner or developer must submit an application for a new site specific vesting plan along with the application for approval of the development plan change in order to extend or renew the vested rights period. In no case shall the total period of vesting for any piece of property be longer than five (5) years, no matter how many major changes are made to the property. The new site specific vesting plan may be approved only in accordance with the requirements of Section 3.17.4 above.

#### **(C) Changes Requiring a Variance**

Where the change is one that requires a variance from the Zoning Board of Adjustment, then the vested rights period set forth in Section 3.17.3 shall terminate immediately upon the Zoning Board of Adjustment's approval of the variance.

### **3.17.7 Provisions to Which Vesting Does Not Apply**

The establishment of a vested right for a site specific vesting plan shall not preclude the Town from applying overlay zoning or other development regulations which impose additional requirements but that do not affect the allowable type or intensity of use, regulations governing nonconformities that appear in Chapter 10 of this Ordinance, or regulations that are general in nature and apply to all property subject to development regulation by the Town, including but not limited to building, fire, plumbing, electrical, and mechanical codes. All other regulations shall become effective with respect to the property upon the expiration or termination of the vested rights period set forth in Section 3.17.3.

**3.17.8 Statutory and Common Law Vested Rights; Owner-Initiated Annexation**

- (A) A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Planning Director, who shall make an initial determination as to the existence of the vested right. The decision of the Planning Director may be appealed as provided in Section 3.21. On appeal, the existence of the vested right shall be reviewed de novo. In lieu of seeking a determination or pursuing an appeal, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.
- (B) A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160D-108 or 160D-108.1. A statement that declares that no zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

(Ord. No. 04-001, 1-8-04; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21)

**3.18 ADEQUATE PUBLIC SCHOOL FACILITIES (REPEALED 9/9/04)**

The repeal of this section (Adequate Public School Facilities) shall be effective upon adoption and such repeal shall apply to applications for approval of development plans that are submitted for approval by the Town after the effective date of repeal unless the property for which development plan approval is sought is subject to a zoning condition or a developer agreement that requires compliance with this (the Adequate Public School Facilities) ordinance. These properties/planned developments include Cary Park (Rezoning Case # 00-REZ-04), Glenkirk (02-REZ-15), Cameron Pond (02-REZ-27), Amberly (02-REZ-05), Stonewater (02-REZ-08), Village at the Park (02-REZ-06), Huggins Glen - currently known as The Battery (02-REZ-26), and Riggsbee Farm - currently known as Stonecreek Village (02-REZ-23). If the property is subject to a developer agreement or zoning condition or other approval requiring or contemplating compliance, then such property shall be subject to the requirements of the developer agreement or zoning approval which shall be interpreted in terms of this ordinance as it exists immediately before repeal, unless such requirement is modified or removed after review on a case by case basis.

(Ord. No. 04-011, 9-9-04; Ord. No. 2021-LDO-01, 6-24-21)

**3.19 MINOR MODIFICATIONS****3.19.1 Minor Modifications to Development and Zoning District Standards****(A) Applicability**

- (1) As part of the review and approval of any procedure set forth in this Chapter 3, an applicant may request a minor modification of any of the development or zoning district standards that are listed in the following table pursuant to the procedures described below. Specifics on allowable modifications may be found in the associated text listed in the table. For properties owned by the Town, the Planning Director shall review all requests for minor modifications listed in the table.
- (2) Review of a minor modification is limited to review of that modification only. Consideration of a requested minor modification does not change the applicable approval authority for the development plan as a whole.

- (3) Development plans seeking to deviate beyond the scope of the Minor Modification process are required to undergo the typical rezoning and/or development plan review process or may request a variance, if applicable, pursuant to Section 3.20. The Minor Modification process is not available for use in situations when there is an existing nonconforming site or structure.

<b>TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED</b>		
<b>Standard That May be Modified</b>	<b>Decision-Making Body</b>	<b>Modification Allowed (%)</b>
Highway Corridor Buffer width [Section 7.2.15]	Zoning Board of Adjustment *	Up to 70
Impervious surface limitations within the Swift Creek portion of the Watershed Protection Overlay [Section 4.4.6(l)]	Zoning Board of Adjustment *	See Section 4.4.6(l)
Building setback requirements (Sections 6.1 and 6.2); building height (Section 6.4)	Planning Director	15
Building setback requirements (Sections 6.1 and 6.2)	Zoning Board of Adjustment *	More than 15
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and modifications to parking standards are addressed in Section 7.8.2)	Planning Director	15
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and modifications to parking standards are addressed in Section 7.8.2)	Zoning Board of Adjustment *	30
Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO sections: 7.2.8(A), 7.7.3(C), 7.8.2(G), 7.10.3, and 7.10.4.	Planning Director	(not applicable)
Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO section: 7.2.5	Zoning Board of Adjustment *	(not applicable)
Subdivision design standards, numerical, excluding Standard Specifications and Details and Section 8.1.4(A)(10) (Chapter 8)	Planning Director	15
Subdivision design standards, numerical, excluding Standard Specifications and Details and Section 8.1.4(A)(10) (Chapter 8)	Zoning Board of Adjustment *	30
Required right-of-way dedication, Section 8.1.4(A)(10)	Transportation and Facilities Director	5% of their half of the required street standard width
Required right-of-way dedication, Section 8.1.4(A)(10)	Zoning Board of Adjustment	More than 5% of their half of the required street standard width
* For properties owned by the Town, the Planning Director shall review all requests for minor modifications that would otherwise be reviewed by the Zoning Board of Adjustment.		

**(B) Exceptions to Authority to Grant Minor Modifications**

In no circumstance shall any decision-making body approve a minor modification that results in:

- (1) An increase in overall project density;
- (2) A change in permitted uses or mix of uses;
- (3) [reserved];
- (4) A deviation from the Use-Specific Standards, set forth in Section 5.2; or
- (5) A change in zoning conditions.

**(C) Procedure****(1) *Minor Modifications Approved by Planning Director or Transportation and Facilities Director***

- (a) The Planning Director or Transportation and Facilities Director may approve a minor modification allowed under this section at any time prior to submittal of the staff report on an application to another decision-making body, if a report is required, or prior to final decision, if no report is required.
- (b) Such modification shall be reviewed pursuant to criteria found in the applicable Ordinance section for each modification. If no approval criteria are present, the modification shall be approved if:
  1. it otherwise meets all requirements of this Ordinance and applicable Town specifications; and,
  2. the applicant establishes that compliance with the provision sought to be modified is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure; and,
  3. the applicant establishes that the modification requested represents the least deviation required to make compliance practicable.
- (c) The Planning Director's decision on a request for minor modification may be appealed to the Zoning Board of Adjustment.

**(2) *Minor Modifications Approved by Zoning Board of Adjustment***

The Zoning Board of Adjustment may initiate or approve a minor modification allowed under this section at any time before the applicable approval authority takes action on a development application. The Zoning Board of Adjustment may approve the minor modification only if it finds, after conducting a quasi-judicial evidentiary hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or

relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Zoning Board of Adjustment may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering. Requests for modifications that exceed the percentages in Table 3.19-1 shall be treated as requests for a variance.

**(3) *Noted on Pending Application***

Staff shall specify any approved minor modifications and the justifications for such modifications on the pending development application for which the modifications were sought.

**3.19.2 Minor Modifications to Approved Development Plans, Plats, and PDD, MXD, and Conditional Use Zoning Districts**

**(A) Approved Development Plans or Plats**

- (1)** The Planning Director may approve the following minor modifications to plans or plats approved either through an administrative or quasi-judicial process, provided that those changes meet the requirements of this Ordinance:

**(a) *Approved Development Plans***

Changes to an approved development plan to allow:

1. The addition of mechanical or other incidental equipment outside of an existing structure provided that this addition does not exceed one percent (1%) of the existing building square footage or improved floor area;
2. Alteration to building elevations;
3. Changes to the amount or layout of parking; or
4. Minor field alterations to accommodate physical site conditions, including the relocation of buildings and the relocation or substitution of landscape material.

**(b) *Approved Subdivision Plats***

Changes to an approved subdivision plat to allow:

1. Combination or recombination of existing platted lots so that the total number of lots is not increased and the amended plat represents the same general lot relationships as shown in the plat prior to amendment;
2. Changes to a plat that are the result of minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of easements, utilities and infrastructure, which represents the same general lot and easement relationships, topography, landscaping, and minimum utility standards; or

3. Modification of any of the design standards or improvement requirements set forth in Section 8.1 where necessary to make the approved subdivision plat conform to any Mixed-Use Preliminary Development Plan, Planned Development District master land use plan, or concept plan submitted as part of a conditional zoning that the Town Council has approved for a property.

**(2) Exceptions**

Any other proposed change to an approved plan or plat not listed above shall be accomplished in the same manner as the original approval. In no circumstance shall a modification be granted under this section that results in:

- (a) A change in overall project density by more than five (5) percent;
- (b) A change in permitted uses or mix of uses;
- (c) An increase in building height beyond twenty (20) percent of the structure's original height; or
- (d) A change in a zoning condition.

**(3) Approval Criteria; Procedure**

The Planning Director may approve a minor modification under this section if all of the relevant criteria below have been met. If approved, the Planning Director shall note the terms of the approved modification directly on the amended plan and affix his or her signature and the date of approval.

- (a) All changes shall conform to the minimum required standards for the zoning district in which the property is located;
- (b) All additions, alterations, and expansions shall be compatible with existing or approved lots, easements, infrastructure, existing or approved structures, and parking areas;
- (c) Any additional required landscaping shall be comparable to the approved plan and shall follow Town specifications and guidelines;
- (d) The effect of the landscaping, buffers, or screening on the site, or on the approved development plan shall not be diminished;
- (e) The number of access points to public streets shall not be increased or substantially relocated;
- (f) The circulation pattern shall continue to provide for the safe, controlled, and orderly flow of pedestrians and vehicles;
- (g) The change will result in better or equal performance of the overall objectives of the approved development plan and specific zoning district classification;

- (h) The change does not otherwise violate any provision of this Ordinance, the Town Code, or other applicable laws; and
- (i) The use and development of the property is otherwise in full compliance with the requirements of this Ordinance.

**(B) Approved PDD, MXD, or Conditional Use Zoning Districts**

**(1) *Applicability***

- (a) The Planning Director may approve the following changes to PDD master plans and conditions, MXD preliminary development plans and conditions, or conditional use district concept plans or conditions using the approval criteria of Section 3.19.2(A)(3):

1. Relocation of a road or intersection;
2. Minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of the buildings or uses shown on an approved master plan, PDP, or concept plan, which represents the same general building relationships, topography, landscaping, and minimum utility standards; and
3. A reduction of intensity of use necessary to meet minimum development standards of the LDO.

- (b) In some cases, the ability to implement or strictly follow zoning conditions can be problematic (i.e. conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

1. Undisturbed buffers/streetscapes which may be beyond the applicant's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;
2. Specimen or champion trees required to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

The Director may decide to permit re-vegetation when such conditions exist depending upon the extent of the disturbance, the size and quality of the existing vegetation remaining, and the long term viability/benefit of retaining the existing vegetation versus re-forestation.

- (2) Any other proposed change not listed above shall be accomplished in the same manner as the original zoning approval. In no circumstance shall a modification be granted under this section that results in:

- (a) A change in overall project density;
- (b) A change in permitted uses or mix of uses;

- (c) An increase in building height beyond twenty (20) percent of the structure's original height;
- (d) A reduction in buffer width or buffer standards adjacent to residential development;
- (e) A change to the overall concept of the plan; or
- (f) A change in any other zoning condition.

### **3.19.3 Minor Building Encroachments into Required Setbacks**

The Planning Director may approve encroachments of a principal building or accessory structure into any required setback up to a maximum of fifteen percent (15%) of the applicable required setback, provided that:

- (A) The request involves encroachment into two (2) or fewer required setbacks per lot; and
- (B) The encroachment is a result of a construction error by the property owner or a person acting on his or her behalf whether discovered during the construction process or afterwards, or special circumstances or conditions exist (e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other properties that are similarly situated.
- (C) The encroachment, if approved, will not pose substantial danger to public health and safety.

In addition, the Director may grant additional encroachments for structures that were constructed prior to May 13, 1999 (Implementation Date of Required Foundation Surveys) which do not meet the setback and other requirements of this Ordinance provided that Item (B) is met above and building permits were obtained and approved for the structure.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-07, 12-19-13; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

## **3.20 VARIANCES**

### **3.20.1 Purpose and Scope**

The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create an unnecessary hardship. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where a hardship results from conditions peculiar to the property itself. State and/or federal laws or requirements may not be varied by the Town.

### **3.20.2 Provisions From Which Variances Are Allowed**

The following standards of this Ordinance are eligible for a variance:

- (A) Any of the development or zoning district standards listed in Table 3.19-1 or any building encroachment into a required setback, but only when the Minor Modification procedures in Section 3.19 are unable to address the hardship; and,
- (B) Any other provision of this Ordinance, so long as the Ordinance does not provide a mechanism for modification or waiver of the provision, and the requested variance would not constitute a use variance as further described in Section 3.20.4(E).

### 3.20.3 Application Requirements; Determination of Completeness

#### (A) Persons Authorized to File Applications

An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

#### (B) Pre-Application Conference

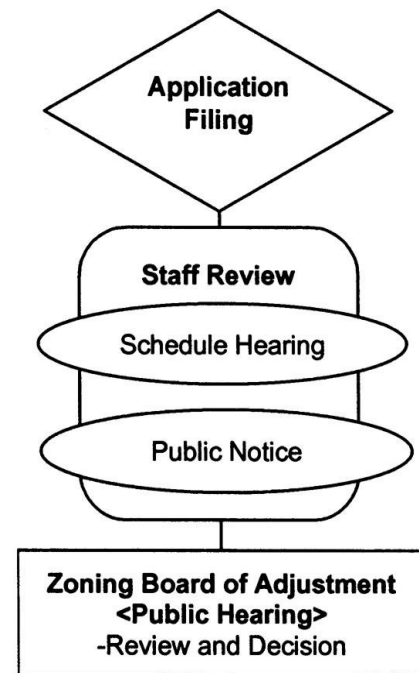
Before filing a variance application, the applicant shall request a pre-application conference with the Planning Department. See Section 3.1.5.

#### (C) Application Filing

An application for a variance shall be filed with the Planning Department. Once the application is complete, the Planning Department shall schedule the application for consideration at a hearing before the Zoning Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such variance prior to the hearing on the application.

### 3.20.4 Action by the Zoning Board of Adjustment

- (A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the proposed variance. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.
- (B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.20.5, and all testimony and evidence received at the hearing.
- (C) After conducting the hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional hearing on the application; or grant the requested variance.



- (D) In granting any variance, the Zoning Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the criteria set forth in Section 3.20.5, to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance provided such conditions are reasonably related to the variance.
- (E) Under no circumstances shall the Zoning Board of Adjustment grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Ordinance for the zone district containing the property for which the variance is sought.
- (F) Under no circumstances shall the Board of Adjustment grant a variance from any written conditions attached to approval of a Special Use (Section 3.8). Development standards for development plans (Section 3.9) that were approved by Town Council or through a quasi-judicial process but could, by current standards, be approved administratively may be eligible for a variance.
- (G) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the approval criteria of Section 3.20.5. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.
- (H) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

### **3.20.5 Approval Criteria**

The Zoning Board of Adjustment may approve the variance only if it finds that all of the criteria below have been met:

- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (D) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

**3.20.6 Effect of Approval or Denial**

- (A) After the Zoning Board of Adjustment approves a variance, the applicant shall follow the procedures set forth in this Chapter 3 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted by the Zoning Board of Adjustment.
- (B) The Zoning Board of Adjustment shall refuse to hear a variance request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

**3.20.7 [Reserved]****3.20.8 Appeal**

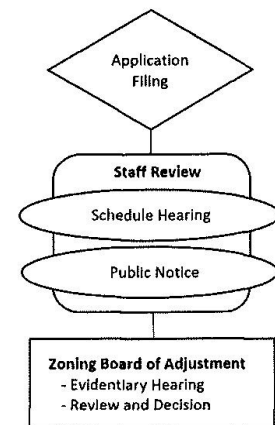
Every decision on a request for a variance shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of Superior Court by the later of thirty (30) days after the decision is effective or after the date a written copy of the decision is given in accordance with Section 3.20.4(H). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition. (Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21)

**3.21 APPEALS OF ADMINISTRATIVE DECISIONS****3.21.1 Purpose and Scope**

The Zoning Board of Adjustment shall hear appeals as provided below, and the duties of the Town Council in connection with this Ordinance shall not include the hearing or passing upon disputed questions that may arise in connection with the enforcement thereof, unless otherwise specifically required by this Ordinance.

**3.21.2 Decisions That May Be Appealed**

An appeal may be brought by the Town or any person who has standing under G.S. 160D-1402(c) from any decision made by an administrative official charged with implementation, administration, or enforcement of the Land Development Ordinance. The official making an administrative decision under this Ordinance shall give written notice of the determination made to the owner of the property who is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner. As used in this section, "determination" includes any written, final, and binding order, requirement, or determination regarding an administrative decision. An appeal may also be taken by any aggrieved party from the Historic Preservation Commission's action in granting or denying any Certificate of Appropriateness. Appeal shall be made to the Zoning Board of Adjustment, unless this Ordinance requires that the appeal be made to the Town Council.



Appeals of Administrative Decisions

**3.21.3 Filing of Appeal; Effect of Filing**

- (A) An application for an appeal shall be filed with the Planning Director. The notice of appeal shall state the grounds for the appeal. Once the application is complete, the Planning Department shall schedule the appeal for consideration at a hearing before the Zoning Board of Adjustment.
- (B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (C) The owner or other party shall have thirty (30) days from receipt of the written notice of the decision within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt of any source or actual or constructive notice of the decision within which to file appeal. In the absence of evidence to the contrary, notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. Appeals must be received before 5:00 p.m. EST on the due date to be timely.
- (D) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign, no greater than five (5) square feet in area, containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact the Planning Department for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant, although the Town may elect to post such sign after any decision is made. If the landowner or applicant posts such sign, verification of the posting in the form of a certification under oath made by the applicant or landowner shall be provided to the official who made the decision.
- (E) The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness and shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (F) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom unless the official who made the decision certifies to the Board after 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 shall meet to hear the appeal within fifteen (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 the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issued being appealed.

- (G) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

#### **3.21.4 Action by the Zoning Board of Adjustment**

- (A) The Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the appeal and shall decide the appeal upon a majority vote of the members within a reasonable time, subject to the provisions of Section 3.21.3(F). Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the Town, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
- (B) Either at the hearing or a subsequent meeting, the Zoning Board of Adjustment shall adopt a written resolution reversing or affirming, wholly or partly, or modifying the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. In reversing, affirming, or modifying the decision, the Zoning Board of Adjustment shall have all relevant powers of the administrative officer from whom the appeal is taken.
- (C) The Zoning Board of Adjustment shall not reverse or modify the decision unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Town.
- (D) When hearing an appeal pursuant to G.S. 160D-947(e) (certificate of appropriateness, historic district) 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(j).
- (E) When hearing an appeal regarding a civil penalty amount, in determining the penalty or fine, the Zoning Board of Adjustment shall consider the following:
  - (1) The gravity of the violation;
  - (2) Any action taken by the violator to correct the violation;
  - (3) The cost of the action to correct the violation; and
  - (4) Any previous violation committed by the violator, on the same or different site.
- (F) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.

- (G) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

#### **3.21.5 Effect of Reversal or Modification**

In the event that the Zoning Board of Adjustment reverses or modifies the decision, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Zoning Board of Adjustment.

#### **3.21.6 Appeal from Zoning Board of Adjustment**

Any appeal from a decision of the Zoning Board of Adjustment shall be to the Superior Court for the applicable county by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the Court Clerk by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective, or after a written copy of the decision is given in accordance with Section 3.21.5(G). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 04-007, 7-15-04; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

#### **3.22 RESERVED**

*[Text continues on p. LDO 3-89.]*



**3.23 RESERVED****3.24 REIMBURSEMENT AND REDEVELOPMENT AGREEMENTS****3.24.1 Reimbursement Agreements****(A) Authority**

This Ordinance sets forth the authority for and procedures and terms under which the Town Manager may negotiate and approve reimbursement agreements and intersection and roadway improvement agreements. Additional authority for such agreements and fee credits may exist elsewhere, and this is meant to be supplementary to such authority. This Ordinance is authorized by Charter, App. 2.11, G.S. 160A-309, G.S. 160A-320 and G.S. 160A-499. Town approval authority for agreements under this section shall be governed by general Town contracting authorizations and delegations.

**(B) Municipal Infrastructure Reimbursement Agreements**

The Town Manager may approve municipal infrastructure reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the Town's capital improvement plan and serves the developer or property owner. For the purpose of this Ordinance, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities. The Town Manager, or designee, is authorized to negotiate municipal infrastructure reimbursement agreements with private developers and property owners in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that the private developer or property owner shall comply with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the Town. Reimbursements may be paid from any lawful source. [Authority App. 2.11 and G.S. 160A-499]

**(C) Public Enterprise Reimbursement Agreements**

The Town Manager may approve public enterprise reimbursement agreements with a developer or property owner or a private party under contract with such developer or property owner, for the design and construction of public enterprise improvements that are in addition to those required by the Town's land development regulations and are adjacent or ancillary to a private land development project. The Town Manager, or designee, is authorized to negotiate public enterprise reimbursement agreements with a developer or property owner in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that (a) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to G.S. Chapter 143, Article 8 and (b) the coordination of separately constructed improvements would be impracticable. Such intersection and roadway improvement agreements shall not be subject to G.S. Chapter 143, Article 8, if the public cost will not exceed two hundred fifty thousand dollars (\$250,000). [Such improvements may be constructed on property owned by the developer or property owner or by the Town.] [Authority G.S. 160A-320]

**(D) Intersection and Roadway Improvement Agreements**

The Town Manager may approve intersection and roadway improvement agreements with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. The Town Manager, or designee, is authorized to negotiate intersection and roadway improvement agreements with a developer or property owner (or private party under contract with the developer or property owner) in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that (a) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to G.S. Chapter 143, Article 8, and (b) the coordination of separately constructed public intersection or roadway improvements would be impracticable. Such intersection and roadway improvement agreements shall not be subject to G.S. Chapter 143, Article 8, if the public cost will not exceed two hundred fifty thousand dollars (\$250,000). [Authority G.S. 160A-309].

**3.24.2 Development Agreements**

The Town may enter into development agreements authorized by G.S. 160D, Article 10. Such agreements are subject to review and approval by the Town Council. A public hearing shall be conducted on any proposed development agreement. Published, written, and posted notice of the public hearing shall be provided in accordance with Section 3.1.6 and applicable state law.

(Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

**3.25 REASONABLE ACCOMMODATION****3.25.1 Authority and Purpose**

The Zoning Board of Adjustment is authorized to grant reasonable accommodations under the Federal Fair Housing Act for the circumstances set forth in this section.

**3.25.2 Application Requirements; Determination of Completeness****(A) Persons Authorized to File Applications**

An application for a reasonable accommodation may be filed only by the owner of the land affected by the reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

**(B) Pre-Application Conference**

Before filing an application for a reasonable accommodation, the applicant may request a pre-application conference with the Planning Department. See Section 3.1.5.

**(C) Application Filing**

An application for a reasonable accommodation shall be filed with the Planning Department. No filing fee is required for such application. Once the application is complete, the Planning Department shall schedule the application for consideration at a hearing before the Zoning

Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such reasonable accommodation prior to the hearing on the application.

### **3.25.3 Action by the Zoning Board of Adjustment**

- (A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the proposed reasonable accommodation and shall decide the request upon a majority vote of the members within a reasonable time. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.
- (B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.25.4, and all testimony and evidence received at the hearing.
- (C) After conducting the hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional hearing on the application; or grant the requested reasonable accommodation.
- (D) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.
- (E) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

### **3.25.4 Approval Criteria**

The Board of Adjustment shall grant a reasonable accommodation to any provision of this ordinance if the Board finds by a greater weight of the evidence that the proposed reasonable accommodation is determined to be both reasonable and necessary, in accordance with the following:

#### **(A) "Reasonable"**

An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's ordinance provisions; and

#### **(B) "Necessary"**

An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.

**3.25.5 Effect of Approval or Denial**

- (A) After the Zoning Board of Adjustment approves a reasonable accommodation, the applicant shall follow the procedures set forth in this Chapter 3 for the approval of any permits, certificates, and other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation granted by the Zoning Board of Adjustment.
- (B) The Zoning Board of Adjustment shall refuse to hear a reasonable accommodation request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

**3.25.6 [Reserved]****3.25.7 Appeal**

Any appeal from the decision of the Zoning Board of Adjustment shall be to the Superior Court for the applicable county by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the court clerk by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective, or after the date a written copy of the decision is given in accordance with Section 3.25.3(E). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 12-LDO-01, passed 2-23-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

**3.26 ZONING COMPLIANCE PERMIT****3.26.1 Applicability**

A Zoning Compliance Permit shall be required prior to operation of certain permitted principal or accessory uses as set forth in Tables 5.1-1, 5.1-2 or 5.1-3. These uses may be subject to use-specific standards which require approval procedures, research, monitoring, or other review to ensure compliance with such standards, including separation between the proposed use and another use. It shall be unlawful to operate these uses until the Planning Director has issued a zoning compliance permit.

**3.26.2 Approval Procedures****(A) Submittal**

Applications for a zoning compliance permit shall be submitted to the Planning Director. The Planning Director shall prescribe the form(s) on which such applications are made, and shall prescribe any material that may reasonably be required to determine compliance with this Ordinance. No application shall be accepted by the Planning Director unless it complies with such submittal requirements. Applications that are not complete shall be returned to the applicant with notation of deficiencies.

**(B) Planning Director Decision**

The Planning Director shall take final action on the application based on compliance with the use-specific standards of Section 5.2 applicable to the proposed use, as well as other applicable provisions of this Ordinance.

**(C) Actions Subsequent to Decision**

In the case of approval, the Planning Director shall issue the zoning compliance permit. In the case of denial of an application, the Planning Director shall notify the applicant of the reasons for such denial and the applicant may appeal the decision of the Planning Director pursuant to Section 3.21 of this Ordinance.

**3.26.3 Additional Provisions Applicable to Specific Uses****(A) Group Homes and Family Care Home**

In addition to or as an alternative to the option to appeal the decision of the Planning Director per Section 3.26.2(C), the applicant may request approval of a reasonable accommodation by the Zoning Board of Adjustment pursuant to Section 3.25 of this Ordinance.

(Ord. No. 12-LDO-01, passed 2-23-12; Ord. No. 13-LDO-01, passed 2-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15)

**3.27 HISTORIC PRESERVATION****3.27.1 Designation of Historic Districts/Historic Landmarks**

The historical heritage of the Town of Cary is a valuable and important asset. By designating historic districts and landmarks, the Town of Cary seeks to safeguard the heritage of the town by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or pre-history; to promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the town, the County and the State as a whole; and to conserve the value of buildings and land and promote the general welfare of its citizens. The Town Manager or designee shall appoint staff who will oversee the historic preservation program and serve as liaison to the Historic Preservation Commission.

**(A) Historic District Designation****(1) *Historic Districts Should Be Areas of Special Significance***

Historic district overlay zoning may from time to time be designated, amended, or repealed; provided, however, that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance. Such district must also possess integrity of design, setting, materials, feeling and/or association.

**(2) *Historic District Overlay Zoning and Other Zonings Distinguished***

Historic district overlays are established as districts which overlay other zoning districts and include additional development requirements. All uses permitted in the underlying zoning district, whether by right or as a special use, shall be permitted in the historic district.

**(3) Application**

An application for the designation of properties as a historic district may be submitted by any of the following:

- (a) The Historic Preservation Commission;
- (b) The Town Council;
- (c) The Planning and Zoning Board; and/or
- (d) The Planning Department.

**(4) Required Application Information**

Applications shall be filed with staff. Each application for designation as a historic district shall be accompanied by a sketch plan that describes the boundaries of the proposed district. An investigation and report, including current electronic images of properties in the proposed district, that describes the particular historical, pre-historical, architectural, or special character of the buildings, structures, features, sites or surroundings included in the proposed district must also accompany the application.

**(5) Opportunity for Comment from the North Carolina Department of Natural and Cultural Resources**

No district shall be designated, amended, or repealed until the following has occurred:

- (a) Staff shall forward the application and completed report to the Department of Natural and Cultural Resources with a written request for analysis of and recommendations concerning the application, report, and description of proposed boundaries ("the Analysis").
- (b) If the Department of Natural and Cultural Resources does not make its Analysis and submit its comments to the Town Council within thirty (30) calendar days following receipt of the report, the Town shall be relieved of any responsibility for awaiting the Analysis, and the Town Council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

**(6) Other Reviews**

The Historic Preservation Commission will review and provide recommendations concerning the report. The Town Council may also, in its discretion, refer the report and the proposed historic district boundaries to any other interested body for its recommendations prior to taking action to amend the zoning map.

**(7) Action**

Upon receipt of comments and recommendations pursuant to this subsection, the Town may initiate the process to create a Historic Preservation Overlay zoning district.

**(8) *Changes in Boundaries***

With respect to any changes in the boundaries of a historic district after its initial establishment, the investigative studies and reports required by subdivision (4) of subsection (A) of this section shall be prepared by the Historic Preservation Commission, and shall be referred to the Planning and Zoning Board for a finding of consistency with the Comprehensive Plan according to procedures set forth in Section 3.4.1 of this Ordinance. Changes in the boundaries of a historic district shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (5) of subsection (A) of this section.

**(B) *Historic Landmark Designation*****(1) *Historic Landmarks Should Be of Special Significance***

Town Council may adopt and from time to time amend or repeal an ordinance designating one (1) or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

**(2) *Inventory of Possible Landmarks***

As a guide for the identification and evaluation of landmarks, the Historic Preservation Commission shall maintain an inventory of properties of historical, architectural, and cultural significance within the land development jurisdiction of the town.

**(3) *Application***

An application for the designation of a property as a historic landmark may be submitted to staff by any of the following:

- (a)** The Historic Preservation Commission
- (b)** The Town Council
- (c)** The Planning Department, and/or
- (d)** Any resident or property owner within the zoning jurisdiction of the town.

**(4) *Required Application Information***

Applications shall be filed with staff. Each application shall be accompanied by a sketch plan that describes the boundaries of the proposed landmark, electronic images of building elevations for each building proposed for designation and a statement from the property owner indicating consent to the filing of the application. A report shall also be prepared on the historic, architectural, pre-historical, educational or special character of each building, structure, site or object proposed for designation and must accompany the application.

**(5) *Opportunity for Comment from the Department of Natural and Cultural Resources***

No landmark shall be designated, amended, or repealed until the following has occurred:

- (a)** Staff shall forward the application and completed report to the Department of Natural and Cultural Resources with a written request to review and comment upon the substance and effect of the designation ("the Review").
- (b)** If the Department of Natural and Cultural Resources does not submit its comments or recommendation to the Historic Preservation Commission within thirty (30) days following receipt of the investigation and report, the Historic Preservation Commission and the Town Council shall be relieved of any responsibility to consider such comments.

**(6) *Creation of Ordinance for Designation***

- (a)** Staff, with the assistance of the Legal Department, shall draft all ordinances for the designation of property as a historic landmark.
- (b)** The ordinance shall describe the property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or pre-historical value, including the land area of the property so designated, and any other information the Town Council deems necessary.
- (c)** The ordinance shall specify the interior features to be reviewed pursuant to Section 3.27.2 and the specific nature of the Historic Preservation Commission's jurisdiction over the interior, if such jurisdiction has been consented to by the property owner.

**(7) *Public Hearing by the Historic Preservation Commission***

The Historic Preservation Commission shall hold a public hearing on the proposed ordinance. Following the public hearing, the Historic Preservation Commission shall make a recommendation to the Town Council whether to approve or deny the proposed designation. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, materials, feeling and/or association.

**(8) *Public Hearing by the Town Council***

After receiving the recommendation of the Historic Preservation Commission, the Town Council shall hold a public hearing on the proposed ordinance. Following the public hearing, the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

**(9) Post-Adoption Procedures**

- (a) Upon adoption of the ordinance, the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits.
- (b) One copy of the ordinance and all amendments thereto shall be filed by the Historic Preservation Commission in the offices of the register of deeds of the county in which the landmark is located.
- (c) A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Town Clerk and be made available for public inspection at any reasonable time.
- (d) A third copy of the ordinance and any amendments thereto shall be given to the building inspector for the town.
- (e) The fact that a building, structure, site or area has been designated a landmark shall be clearly indicated on all tax maps maintained by Wake County for such period as the designation remains in effect.
- (f) Upon adoption of the landmark ordinance or any amendments thereto, the Historic Preservation Commission shall give notice thereof to the tax supervisor of the county in which the property is located, and the designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

**(10) Amendments**

Any amendment to an ordinance designating a historic landmark shall be made pursuant to the procedures of this subsection (B).

**3.27.2 Certificates of Appropriateness****(A) Certificate of Appropriateness Required**

After the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. Such a certificate is required to be issued by the Historic Preservation Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures. A certificate of appropriateness shall be required whether or not a building or other permit is required, and may be issued subject to reasonable conditions necessary to carry out the purposes of G.S. Chapter 160D, Article 9, Part 4. Notwithstanding the foregoing, a certificate of appropriateness for minor works may be reviewed and approved as further described in subsection (B) below.

**(1) *Applicability to State of North Carolina***

The State of North Carolina (including its agencies, political subdivisions and instrumentalities) and the Town of Cary shall be required to obtain a certificate of appropriateness for construction, alteration, moving or demolition within a historic district or of designated landmarks; provided, however, that this Section 3.27.2 shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission pursuant to the provisions of G.S. 160D-947(e).

**(2) *Exterior Features Defined***

For purposes of this Section 3.27.2, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features.

**(3) *Jurisdiction Over Interior Features***

The jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned landmarks for which consent for interior review has been given by the owners. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the Register of Deeds office of the county in which the property is located and indexed according to the name of the owner of the property in the grantor and grantee indexes. The Landmark Designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

**(4) *Certain Changes Not Prohibited***

Nothing in this Section 3.27.2 shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, materials, or appearance thereof, nor to prevent ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs. Nothing herein shall be construed to prevent a property owner from making any use of his or her property that is not prohibited by other law or to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the Historic Preservation Commission.

**(5) *Enforcement and Remedies***

Compliance with the terms of the certificate of appropriateness shall be enforced pursuant to the procedures of Chapter 11 of this Ordinance. Failure to apply for a certificate when one is required, or to comply with a certificate once issued, shall be a violation of this Ordinance. An application for a certificate of appropriateness submitted after work has been initiated must be reviewed and approved by the Commission.

**(B) Certificate of Appropriateness - Minor Works (Minor COA)****(1) *Minor COA Defined***

Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or district as a whole. Such minor works shall be limited to those listed below:

- (a) Alteration or additions to existing accessory buildings/outbuildings.
- (b) Removal of accessory buildings/outbuildings which are not architecturally or historically significant.
- (c) Alteration/addition/removal of architectural details.
- (d) Alteration/addition/removal of awnings, canopies, or shutters.
- (e) Alteration/addition/removal of existing decks.
- (f) Alteration/removal of existing doors.
- (g) Addition or installation of new doors, including storm doors.
- (h) Alteration/addition to/removal of existing driveways.
- (i) Construction of new driveways.
- (j) Addition/alteration/removal of existing fences or walls.
- (k) Construction of new fences and walls.
- (l) Alteration of exposed foundations.
- (m) Installation or removal of gutters and/or downspouts.
- (n) Removal or significant pruning of trees eight (8) inches or greater in diameter, measured four and one-half (4 ½) feet above ground level.
- (o) Removal of dead, diseased, or dangerous trees.
- (p) Installation/alteration/removal of exterior lighting.
- (q) Installation of window air conditioners.
- (r) Painting when there is a change in color.
- (s) Alteration/addition/removal of existing parking lots.
- (t) Alteration/addition/removal of existing patios.
- (u) Construction of new patios.

- (v) Change in roofing materials.
- (w) Installation of satellite dishes and/or television antennae.
- (x) Alteration/addition of exterior building surfaces.
- (y) Installation/removal of signs.
- (z) Alteration/construction/removal of exterior stairs and steps.
- (aa) Alteration/construction/removal of temporary features associated with a medical condition.
- (bb) Alteration/installation/removal of vents and ventilators.
- (cc) Alteration/addition to/removal of existing walkways.
- (dd) Construction of new walkways.
- (ee) Alteration or removal of existing windows.
- (ff) Addition/installation of new windows, including storm windows.
- (gg) Addition/alteration/removal of other building appurtenances or accessory site features not specifically listed.

**(2) *Pre-application Meeting***

A pre-application meeting is not required prior to applying for a minor COA, but applicants are advised to contact staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

**(3) *Required Application Information***

Applications shall be filed with staff. A sketch plan and building elevations must accompany the application unless waived by staff for a particular application.

**(4) *Determination of Compliance***

Once a complete application is submitted, staff shall review the application and approve or deny it within forty-five (45) days based on compliance with the standards contained in the principles and guidelines adopted by the Historic Preservation Commission for review of changes. If after staff has reviewed the application, and upon closer review and inspection determines that the requested minor alterations or changes are more appropriately considered major, or determines that the request should be denied, staff will so inform the applicant and the application will follow the major COA review and approval process.

**(5) *Appeals***

Appeals of approvals of certificates of appropriateness for minor works shall be heard by the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

**(C) Certificate of Appropriateness - Major Works (Major COA)****(1) *Applicability***

This subsection (C) is applicable to any exterior change that does not constitute a Minor COA according to the provisions of Section 3.27.2(B) and that does not constitute relocation, demolition, or destruction of a designated landmark or a building, structure, or site within a historic district; or to any exterior change that does constitute a minor COA and for which application is made after work has been initiated.

**(2) *Process Type***

Approval of a major COA by the Historic Preservation Commission requires a quasi-judicial evidentiary hearing.

**(3) *Pre-Application Meeting***

A pre-application meeting is not required, but applicants are advised to contact Town staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

**(4) *Required Application***

Applications for a major COA shall be filed with the Planning Department. Each application shall be accompanied by sketches, building elevations, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction.

**(5) *Determination of Application Completeness***

The staff to the Commission shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for an evidentiary hearing before the Historic Preservation Commission. Staff shall transmit to the Commission all applications, reports, and written materials relevant to the matter being considered, and may distribute them to the Commission members prior to the hearing if at the same time they are also provided to the applicant and to the landowner if that person is not the applicant. As a part of the application review procedure, Commission members may view the premises at issue before the hearing so long as at the commencement of the hearing the members disclose the site visit and any facts or information gleaned from the site visit that are relevant to the case. Staff and Commission members may seek the advice of the Department of Archives and History or other such expert advice as it may deem necessary under the circumstances.

**(6) *Evidentiary Hearing***

Notice of the hearing shall be provided and the Historic Preservation Commission shall conduct an evidentiary hearing on the application in accordance with Sections 3.1.6 and 3.1.7.

**(7) Decision**

The Historic Preservation Commission must act on a request for a Major COA within one hundred eighty (180) days from the date the application is filed. Following the hearing, the Historic Preservation Commission may approve, deny, or approve with conditions the application for a Major Certificate of Appropriateness. The Commission shall take no action regarding a Certificate of Appropriateness except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features that would be incongruous with the special character of the landmark or district. In making decisions on certificates of appropriateness, the Commission shall apply the rules and standards adopted by the Commission pursuant to G.S. 160D-947(c). The decision shall be reduced to writing and shall be approved by the Commission and signed by the Chair of the Historic Preservation Commission or his designee. The decision is effective upon filing the written decision with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

**(8) Appeals**

An appeal in the nature of certiorari from the decision of the Historic Preservation Commission regarding a major Certificate of Appropriateness application may be taken to the Zoning Board of Adjustment by any aggrieved party in accordance with Section 3.21 of this Ordinance.

**(D) Certificate of Appropriateness - Demolition of Landmarks or of Buildings within Historic Districts****(1) Applicability**

A Certificate of Appropriateness - Demolition, is required prior to the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within a historic district.

**(2) Process Type**

Approval of a Certificate of Appropriateness – Demolition by the Historic Preservation Commission requires a quasi-judicial evidentiary hearing.

**(3) Pre-Application Meeting**

A pre-application meeting is not required prior to applying for a COA-Demolition, but applicants are advised to contact staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

**(4) Required Application Information**

Each application shall be accompanied by a sketch plan designating the extent of the proposed demolition, removal or destruction of historic structures.

**(5) Determination of Application Completeness**

Staff shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for an evidentiary hearing before the Historic Preservation Commission. Staff shall transmit to the Commission all applications, reports, and written materials relevant to the matter being considered, and may distribute them to the Commission members prior to the hearing if at the same time they are also provided to the applicant and to the landowner if that person is not the applicant. As a part of the application review procedure, Commission members may view the premises at issue before the hearing so long as at the commencement of the hearing the members disclose the site visit and any facts or information gleaned from the site visit that are relevant to the case. Staff and Commission members may seek the advice of the Department of Archives and History or other such expert advice as it may deem necessary under the circumstances.

**(6) Evidentiary Hearing**

Notice of the hearing shall be provided and the Historic Preservation Commission shall conduct an evidentiary hearing on the application in accordance with Sections 3.1.6 and 3.1.7.

**(7) Decision**

The Historic Preservation Commission must act on a request for a COA-Demolition within one hundred eighty (180) days from the date the application is filed. Following the hearing, the Historic Preservation Commission may approve, deny, or approve with conditions the application for a COA-Demolition in accordance with the below provisions. The decision shall be reduced to writing and shall be approved by the Commission and signed by the Chair of the Historic Preservation Commission or his designee. The decision is effective upon filing the written decision with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

- (a)** The Historic Preservation Commission may approve the request if the request is not incongruous with the special character of the landmark or district.
- (b)** The Historic Preservation Commission may deny the request only if the building, structure or site has been determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places; provided, however, that such request may not be denied if the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the denial.
- (c)** The Historic Preservation Commission may delay the effective date of such a certificate by up to three hundred sixty-five (365) days from the date of approval if the request would be incongruous with the special character of the landmark or district. The period of delay should be reduced by the Historic Preservation Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by

virtue of the delay. During the delay period, the Historic Preservation Commission shall negotiate with the owner and other parties in an effort to find a means of preserving the building, structure or site. If the Historic Preservation Commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal. If the Historic Preservation Commission has voted to recommend the designation of a landmark or the designation of an area as a historic district, and final designation has not been made by the Town Council, the demolition or destruction of any building, structure or site located on the property of the proposed landmark or in the proposed district may be delayed by the Commission for up to one hundred eighty (180) days or until the Town Council takes final action on the designation, whichever occurs first.

**(8) *Appeals***

An appeal in the nature of certiorari from the decision of the Historic Preservation Commission regarding a major Certificate of Appropriateness application may be taken to the Zoning Board of Adjustment by any aggrieved party in accordance with Section 3.21 of this Ordinance.

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)