

AGENDA

Catawba County Board of Commissioners Meeting
Monday, March 17, 2014, 7:00 p.m.
Robert E. Hibbits Meeting Room, 1924 Courthouse
30 North College Avenue, Newton, NC

PRIOR TO THIS REGULAR MEETING, MEMBERS OF THE BOARD OF COMMISSIONERS WILL BE ATTENDING THE GROUNDBREAKING CEREMONY FOR THE CLAREMONT SPEC BUILDING AT 4:00 P.M. AT 2421 BGA DRIVE, CLAREMONT, NC.

1. Call to Order.
2. Pledge of Allegiance to the Flag.
3. Invocation.
4. [Approval of the minutes from the Board's Regular Meeting and Special Meeting of February 17, 2014.](#)
5. Recognition of Special Guests.
6. Public Comment for Items Not on the Agenda.
7. Presentation:
[National Library Week Proclamation. Presented to Library Director Suzanne White.](#)
8. Public Hearings:
 - a. [Proposed Amendment to the Unified Development Ordinance – Modified Definition of *bona fide farm*. Presented by Planner Chris Timberlake.](#)
 - b. [Proposed Amendment to the Unified Development Ordinance – Board of Adjustment Procedures. Presented by Planner Chris Timberlake.](#)
9. [Appointments.](#)
10. Departmental Reports:
 - a. [Catawba Valley Medical Center: Installment Purchase Contract Financing for Medical Equipment. Presented by Sr. Vice President David Boone, Catawba Valley Medical Center.](#)
 - b. [Financing/Purchasing: Bid Award – HVAC Controls in Existing Justice Center. Presented by Finance Director Rodney Miller and Purchasing Manager Debbie Anderson.](#)
 - c. [Legal/Utilities and Engineering: Bunker Hill School Sewer Assignment of Easements and Quitclaim Deed to City of Conover. Presented by Assistant County Attorney Jodi Stewart.](#)
11. Other Items of Business.
12. Attorneys' Report.
13. Manager's Report.

14. Adjournment.

PERSONS WITH DISABILITIES: Individuals needing assistance should contact the County Clerk at 828-465-8990 within a reasonable time prior to the meeting. Access to the 1924 Courthouse for individuals with disabilities is at the south side ("A" Street). The elevator is located at the north end of the building. Participation in public meetings is without regard to race, creed, religion, national origin, sex, age, color, or disability.

INFOTALK/INTERNET: The Catawba County Telephone Information System will allow you to use your touch tone telephone to obtain current information on Catawba County 24 hours a day. Information is updated on a regular basis. Dial 465-8468 and INFOTALK will direct your questions with easy to understand instructions. Reach Catawba County on the Internet at <http://www.catawbacountync.gov>.

CALENDAR: April Board of Commissioners meetings will take place on Monday, April 7, 2014 at 9:30 a.m. and on Monday, April 21, 2014 at 7:00 p.m. in the Robert E. Hibbits Meeting Room, 1924 Courthouse, 30 North College Avenue, Newton, NC.



**PREVIEW OF COUNTY COMMISSION AGENDA
MONDAY, MARCH 17, 2014, 7 P.M.
ROBERT E. HIBBITTS MEETING ROOM
1924 COURTHOUSE, NEWTON, N.C.**



The Catawba County Board of Commissioners will hold two public hearings on 1) a proposed amendment to the County's Unified Development Ordinance (UDO), which would include a modified definition of the "bona fide farm", pursuant to North Carolina House Bill 168; and 2) a proposed amendment to the County's Unified Development Ordinance (UDO), specific to the Board of Adjustment procedures, pursuant to North Carolina House Bill 276, when it meets at 7 p.m. on Monday, March 17, 2014, at the 1924 Courthouse at 30 North College Avenue in Newton. The Board will also receive an update on steps taken to address a Board goal for Fiscal Year 2013-2014 to "increase citizens' awareness of County programs and services and promote healthy activities throughout the County by strengthening communications and outreach to citizens."

The Board will consider approving a resolution authorizing Catawba Valley Medical Center to execute an installment purchase agreement in order to finance \$5 million of medical equipment, and consider a recommendation to assign and convey the Bunker Hill School Sewer Project easements and an associated quitclaim deed to the City of Conover, as specified in a 2011 agreement with the City of Conover regarding that sewer project. It will consider awarding a bid for Heating, Ventilating and Air Conditioning (HVAC) Controls for the existing Justice Center building to Trane U.S., Inc., in the amount of \$440,000, following an energy audit that determined that new controls would result in an estimated energy savings of more than 850,000 kilowatt hours per year and \$65,000 per year, equal to a return on investment of 7.2 years. And the Board will issue a proclamation declaring April 13-19, 2014, as National Library Week in Catawba County.

PRESENTATIONS

The Board will issue a proclamation declaring April 13-19, 2014 as National Library Week and encourage all residents to visit the library to take advantage of the wide variety of resources available to library patrons.

PUBLIC HEARINGS

A. The Board will hold a public hearing to receive citizens' comments and consider amending the definition of bona fide farm as listed in the County's Unified Development Ordinance (UDO), in order to be consistent with North Carolina General Statute (NCGS) 153A-340. Historically, North Carolina General Statutes have exempted bona fide farms and their activities from county zoning regulations. Since the adoption of Catawba County's first zoning ordinance in 1974, bona fide farms have been exempt from zoning regulations. Although the first ordinance made exceptions for farms, a definition for bona fide farm was not included in the zoning ordinance until 1989. In 2011, House Bill 168 made further modifications to the State's definition of bona fide farm specific to the types of evidence the farmer can provide demonstrating the property is a bona fide farm. Staff is submitting text amendments to bring greater consistency between the County ordinance and State law. The Planning Board held a public hearing on February 24, 2014, to consider the proposed amendment. Mr. Josh Grant, owner of Red Wolf Farms in Maiden, spoke in support of the amendment. There were no questions from the Planning Board about the amendment. The proposed definition is as follows:

Bona fide farm – The production and activities relating or incidental to the production of crops, grains, fruits, vegetables, sod, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in NCGS 106-581.1, and as provided in NCGS 106-743.4 (Enhanced Voluntary Agricultural Districts) regarding the sale and production of nonfarm products recognized as "Goodness Grows in North Carolina" and subject to NCGS 153A-340(b). Any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the North Carolina Department of Revenue, or
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to NCGS 105-277.3, or

- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return, or
- d. A forest management plan, or;
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

B. The Board will hold a public hearing to receive citizens' comments and consider amendments to the County's Unified Development Ordinance (UDO) concerning Board of Adjustment procedures, in order to be consistent with North Carolina General Statute 160A-388.

North Carolina General Statutes authorize counties to adopt local zoning and land use regulations. Subsequently, the State authorizes the appointment of a Board of Adjustment. The board is quasi-judicial, having a partial judicial character with the right to hold hearings and conduct investigations into disputed claims and infractions of regulations, as well as make decisions in the general manner of the courts. The board hears requests for appeals, special use permits and variances, and interprets the zoning and land use regulations (Unified Development Ordinance) adopted by the Board of Commissioners. Catawba County's Board of Adjustment has existed since the adoption of the first zoning ordinance in 1974. In 2013, House Bill 276 made modifications to board of adjustment legislation. In an effort to bring greater consistency between the County ordinance and State law, staff is submitting substantive text amendments affecting the appeal process; notification of hearings; how the board votes on certain matters; variance requests and notifications of quasi-judicial hearings mailed to abutting property owners; and the site being posted but with advertising not required in a local newspaper.

When applying the appropriate changes to the UDO, staff recognized the opportunity to consolidate sections of the ordinance that cover Board of Adjustment procedures, hearing and notification processes, appeals, special use and variance requests. In doing so, staff is also proposing simple text modifications offering clarity, correcting grammar, revising section numbers and references, and placing some procedural matters (i.e. the option to subpoena witnesses, limiting the number of cases to be heard, limiting time limits for presentation) in a Board of Adjustment By-laws/Procedures document. The Planning Board held a public hearing on February 24, 2014, to consider the proposed amendment. No one from the public spoke about the proposed amendment. The Planning Board did not have any questions regarding the proposed amendments and reorganization of the text.

DEPARTMENTAL REPORTS

CATAWBA VALLEY MEDICAL CENTER

The Board will consider adopting a resolution that would authorize Catawba Valley Medical Center (CVMC) to execute an installment purchase agreement to finance \$5 million of medical equipment. CVMC is proposing an installment purchase contract through US Bancorp to finance the purchase. Seven installment purchase agreement proposals were received from banks with a North Carolina presence. The Catawba Valley Medical Center Board of Trustees reviewed the proposals at its regular monthly meeting on February 24, 2014. US Bancorp was selected because of its competitive rate and fee structure. The term of the installment purchase agreement is 59 months, with a fixed interest rate of 1.326 percent. CVMC's bond attorney, Steve Cordell with Nexsen Pruet, PLLC, developed this resolution and has reviewed and approved the other documents associated with this financing.

FINANCE/PURCHASING

The Board will consider a request to award a bid for HVAC Controls for the existing Justice Center building to Trane U.S., Inc. in the amount of \$440,000 and approve the required budget revision. In April of last year, the County engaged Sud Associates to conduct an energy audit of multiple County buildings. The first building selected was the Justice Center, which has experienced numerous heating and cooling issues and complaints from building occupants over the years. The major recommendation from the report was to install an HVAC control system, which will add a new controller and actuator to each air handling unit and allow staff to remotely adjust temperature settings. In addition, the system will allow for time of day scheduling for heating and cooling so occupied and non-occupied temperature settings can be maintained separately. Estimated energy savings from this project are more than 850,000

kilowatt hours per year, resulting in savings of more than \$65,000 per year, equal to a return on investment of 7.2 years.

In June 2013, the City of Newton issued a Request for Proposals, from its customers that have a peak annual billing demand of at least 250 kilowatts, for energy efficiency grants offered through ElectriCities. As a major utility user, the County submitted a proposal and was awarded an \$85,000 grant from the City of Newton to install an HVAC control system in the existing Justice Center. The County will receive \$50,000 as a credit to the electric bill once installation begins and the additional \$35,000 as a credit to the electric bill when the project is finished. On December 2, 2013, the Board authorized a preferred alternate for Trane and Trane Tracer Summit Controls, which are the prominent equipment and building automation systems used in County buildings.

McKnight-Smith-Ward-Griffin Engineers, Inc. prepared the plans and specifications for the project. The estimated cost of the project was \$450,000, with the grant funds offsetting approximately 20% of the cost. Funding for the project will come from General Capital project fund balance, which was planned in the current budget in the event the grant request was approved. A pre-bid conference was held on January 23, 2014, with two contractors present; a bid opening was then held on February 5, 2014, with only one contractor presenting a bid (Trane). Since North Carolina General Statute 143-132 and 143-129(b) requires three bids for formal construction projects, the bid from Trane was not opened and the project was re-advertised. A second bid opening was held on February 18, 2014. One bid was received and opened from Trane U.S., Inc. North Carolina General Statutes 143-132 and 143-129(b) allow the bids to be opened when less than three bids are received after a re-advertisement. The bid from Trane U.S., Inc. was a base bid of \$446,300, with an alternate bid of \$38,600 for 10-year parts and labor warranty for all equipment and controls. McKnight-Smith-Ward-Griffin Engineers, Inc. negotiated with Trane U.S. Inc. and Trane agreed to lower the bid to \$440,000 and include a two-year parts & labor warranty for all equipment and controls.

LEGAL/UTILITIES AND ENGINEERING

The Board will consider approving the assignment and conveyance of the Bunker Hill School Sewer Project easements and executing a quitclaim deed to the City of Conover. On May 15, 2006, Catawba County approved a revenue sharing agreement entitled “Agreement between Catawba County and City of Conover for Revenue Sharing on Bunker Hill School Sewer Project” and amended the Agreement on May 2, 2011. The purpose of the Agreement was to locate, fund, and maintain sewer lines to serve Bunker Hill High School and the surrounding area. The County acquired easements for the project and acquired fee simple title to property from Mr. James F. Moser and wife, Ms. Linda Allred Moser, for the purpose of locating a pump station on the property for the sewer project. The Agreement required the County to transfer the rights-of-way, easements, and encroachments acquired for the project to the City of Conover upon completion of the project. The sewer lines have been installed, and the City of Conover is operating and maintaining the sewer lines. The property will be transferred to the City of Conover by recording the Assignment of Easements and Quitclaim Deed.

MANAGER’S REPORT

The Board will receive an update on the activities staff has undertaken to further the Board’s goal to increase citizens’ awareness of County programs and services and promote healthy activities throughout the County by strengthening communications and outreach to citizens. These activities, which strive to proactively push relevant information to citizens in an interesting and engaging way, span a continuum of communications tactics. Many of the activities focus on enhanced web presence and strengthened use of social media. Some will focus on strengthening inter-departmental communications. Others attempt to heighten the availability of frequently requested or useful information to citizens while presenting it in a package that is more visually appealing.

The efforts to be presented to the Board at this meeting represent initial steps aimed at enhancing the County’s current efforts to keep citizens informed and engaged. These include:

- strategically strengthening the County’s use of available social media outlets such as Facebook and Twitter, using these channels to promote a “*Did You Know?*” video, which includes numerous facts and figures about Catawba County Government’s program and service impacts in the community; strengthen promotion of

County programs and events; publically release the synopsis of Board of Commissioners meetings previously located only on a web link; deliver real-time updates on Board of Commissioners actions at Board meetings via Twitter and Facebook and use Twitter to deliver a minimum of two tweets a week that feature miscellaneous County facts and figures, information on County events and programs, or other relevant information to citizens;

- Make information on advisory board and committee membership more easily accessible to the general public via the County's website by posting the names and number of terms served of all board and commission members, accompanied by contact information for the assigned staff contact.
- Designing and implementing ideas for content of the back side of business cards carried by staff to send key messages to the public (including QR codes for County website, links to information on County awards, volunteer opportunities, and timely information such as availability of flu shot clinics, etc.)
- Integrating key messages and themes from ICMA's "*Life, Well Run*" campaign, which promotes the value of professional local government management, into the County website via creation of a video focusing on the role of the County and neighboring jurisdictions in fostering strong quality of life.
- Freshening up the look and feel of information about County services.

Future efforts will focus on increasing the visibility of available local government and community offerings related to community health, active lifestyle, and healthy living, as well as enhancing the quality and visual appeal of the information being communicated.

CONTACT: DAVE HARDIN, PUBLIC INFORMATION OFFICER 465-8464

Government of Catawba County, North Carolina

“Keeping the Spirit Alive Since 1842!”

PROCLAMATION ***National Library Week 2014***

“Lives change @ your library!”

WHEREAS, libraries help lives change in their communities, campuses, and schools; and

WHEREAS, librarians work to meet the changing needs of their communities, including providing resources for everyone and bringing services outside of library walls; and

WHEREAS, libraries and librarians bring together community members to enrich and shape the community and address local issues; and

WHEREAS, librarians are trained, tech-savvy professionals, providing technology training and access to downloadable content like e-books; and

WHEREAS, libraries offer programs to meet community needs, providing residents with resume writing classes, 24/7 homework help, and financial planning services to include teens applying for student loans and older adults planning their retirement; and

WHEREAS, libraries continuously grow and evolve in how they provide for the needs of every member of their communities; and

WHEREAS, libraries, librarians, library works and supporters across America are celebrating National Library Week.

NOW, THEREFORE, THE CATAWBA COUNTY BOARD OF COMMISSIONERS, does hereby proclaim April 13-19, 2014 as **National Library Week** and encourages all residents to visit the library to take advantage of the wonderful resources available to library patrons.

This 17th day of March, 2014.

Katherine W. Barnes, Chair
Catawba County Board of Commissioners

MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Chris Timberlake, Planner

DATE: March 17, 2014

RE: Proposed Amendment to the Unified Development Ordinance – Modified definition of *bona fide farm*

REQUEST

A public hearing is scheduled to consider amending the definition of bona fide farm as listed in the Unified Development Ordinance in order to be consistent with North Carolina General Statute 153A-340.

BACKGROUND

Historically, North Carolina General Statutes have exempted bona fide farms and their activities from county zoning regulations. Since the adoption of the County's first zoning ordinance in 1974, bona fide farms have been exempt from zoning regulations. Although the first ordinance made exceptions for farms, a definition for bona fide farm was not included in the zoning ordinance until 1989. In 2011, House Bill 168 made further modifications to the state's definition of bona fide farm specific to the types of evidence the farmer can provide demonstrating the property is a bona fide farm. Staff is submitting text amendments to bring greater consistency between County ordinance and State law.

Staff Recommendation

Staff recommends amendment to the Unified Development Ordinance definition for bona fide farm as indicated in the attachment.

Public Hearing Discussion

The Planning Board held a public hearing on February 24, 2014 to consider the proposed amendment. Josh Grant, owner of Red Wolf Farms in Maiden, spoke in support of the amendment. There were no questions from the board about the amendment.

PLANNING BOARD RECOMMENDATION

By a vote of 6 – 0, the Planning Board favorably recommends the Board of Commissioners amend the Unified Development Ordinance definition for bona fide farm to be consistent with North Carolina General Statute 153A-340.

Note: Proposed new text is shown in blue and underlined (ex. text). Proposed deletions are shown in red and stricken through (ex. ~~text~~).

Sec. 44-105. Bona fide farm exemption.

In accordance with NCGS 153A-340, this Chapter does not regulate bona fide farms.

DEFINITIONS

(a) *Terms defined.* Words contained in this Appendix are those having a special meaning relative to the purposes of this Chapter. Words not listed in this section shall be defined by reference to: (1) Chapter 2 of the North Carolina State Building Code or, if not there, in (2) Webster's Third New International Dictionary, unabridged. Words and terms not defined in this Appendix but defined elsewhere in the Unified Development Ordinance (UDO) shall be given the meanings in the UDO. Particular uses not defined shall have the meaning assigned in the Article IV, Division 1, Table 44-403-1 Use Matrix and the NAICS Manual.

(b) *Words defined.*

Bona fide farm – The production and activities relating or incidental to the production of crops, grains, fruits, vegetables, sod, ~~or~~ ornamental and flowering plants, dairy, livestock, poultry, and all other forms of ~~agricultural~~ agriculture, as defined in NCGS 106-581.1, and as provided in NCGS 106-743.4 (Enhanced Voluntary Agricultural Districts) regarding the sale and production of nonfarm products recognized as “Goodness Grows in North Carolina” and subject to NCGS 153A-340(b). ~~products having a domestic or foreign market meeting one of the present use value criteria:~~ Any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- ~~1) Agricultural land, consisting of at least 10 acres, or horticultural land, consisting of at least 5 acres, both of which may be in one or more tracts that are in actual production. These tracts may be owned or leased by the operator which must have one of the following:~~
 - ~~a. Sales of \$1,000.00 for each of the 3 years proceeding January 1 of the year of application;~~
 - ~~b. A business plan, which at a minimum must include a marketing strategy and projected income and expenses;~~
 - ~~c. A signed contract with an established retail or wholesale entity showing a future sales outlet for the product; or~~
 - ~~d. Production of a non-farm product recognized by the North Carolina Department of Agriculture and Consumer Services as a “Goodness Grows in North Carolina” product, that is produced on a farm subject to a conservation agreement under G.S 106-743.2.~~

2) ~~A minimum of 20 acres of forestland for which a woodland management plan has been prepared by the U.S. Forest Service.~~

a. A farm sales tax exemption certificate issued by the Department of Revenue, or

b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to NCGS 105-277.3, or

c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return, or

d. A forest management plan, or;

e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

Ordinance No. 2014-

BE IT ORDAINED that the Catawba County Code of Ordinances, Unified Development Ordinance, is hereby amended to read as follows:

Sec. 44-105. Bona fide farm exemption.

In accordance with NCGS 153A-340, this Chapter does not regulate bona fide farms.

DEFINITIONS

(a) *Terms defined.* Words contained in this Appendix are those having a special meaning relative to the purposes of this Chapter. Words not listed in this section shall be defined by reference to: (1) Chapter 2 of the North Carolina State Building Code or, if not there, in (2) Webster’s Third New International Dictionary, unabridged. Words and terms not defined in this Appendix but defined elsewhere in the Unified Development Ordinance (UDO) shall be given the meanings in the UDO. Particular uses not defined shall have the meaning assigned in the Article IV, Division 1, Table 44-403-1 Use Matrix and the NAICS Manual.

(b) *Words defined.*

Bona fide farm – The production and activities relating or incidental to the production of crops, grains, fruits, vegetables, sod, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in NCGS 106-581.1, and as provided in NCGS 106-743.4 (Enhanced Voluntary Agricultural Districts) regarding the sale and production of nonfarm products recognized as “Goodness Grows in North Carolina” and subject to NCGS 153A-340(b). Any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue, or
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to NCGS 105-277.3, or
- c. A copy of the farm owner’s or operator’s Schedule F from the owner’s or operator’s most recent federal income tax return, or
- d. A forest management plan, or;
- e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

This 17th day of March, 2014

Katherine W. Barnes, Chair

Catawba County Board of Commissioners

MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Chris Timberlake, Planner

DATE: March 17, 2014

RE: Proposed Amendment to the Unified Development Ordinance – Board of Adjustment procedures

REQUEST

A public hearing is scheduled to consider amendments to the Unified Development Ordinance concerning Board of Adjustment procedures in order to be consistent with North Carolina General Statute 160A-388.

BACKGROUND

North Carolina General Statutes authorize counties to adopt local zoning and land use regulations. Subsequently, the State authorizes the appointment of a Board of Adjustment. The board is quasi-judicial having a partial judicial character with the right to hold hearings and conduct investigations into disputed claims and infractions of regulations as well as make decisions in the general manner of the courts. The board hears requests for appeals, special use permits, variances, and interprets the zoning and land use regulations (Unified Development Ordinance) adopted by the Board of Commissioners. Catawba County's Board of Adjustment has existed since the adoption of the first zoning ordinance in 1974. In 2013, House Bill 276 made modifications to board of adjustment legislation. In an effort to bring greater consistency between the County ordinance and State law, staff is submitting substantive text amendments affecting:

- the appeal process;
- notification of hearings;
- how the board votes on certain matters;
- variance requests; and
- notifications of quasi-judicial hearings being mailed to abutting property owners, the site is posted, but advertising is not required in the local newspaper.

Moreover, when applying the appropriate changes to the UDO, staff recognized the opportunity to consolidate sections of the ordinance that cover Board of Adjustment procedures, hearing and notification processes, appeals, special use and variance requests. In doing so, staff is also proposing:

- simple text modifications offering clarity;
- correcting grammar;

- revisions to section numbers and references; and
- placing some procedural matters (i.e. the option to subpoena witnesses, limiting the number of cases to be heard, limiting time limits for presentation) in a Board of Adjustment By-laws/Procedures document.

Staff Recommendation

Staff recommends amendment to the Unified Development Ordinance regarding procedures for the Board of Adjustment as shown in the attachment.

Public Hearing Discussion

The Planning Board held a public hearing on February 24, 2014 to consider the proposed amendment. The board did not have any questions regarding the proposed amendments and reorganization of the text.

PLANNING BOARD RECOMMENDATION

By a vote of 6 – 0, the Planning Board favorably recommends the Board of Commissioners amend the Unified Development Ordinance concerning Board of Adjustment procedures in order to be consistent with North Carolina General Statute 160A-388.

Note:

Text = New text or existing text that has been moved to a different section (Ex. Section 44-304 moved to Section 44-326).

~~Text~~/Text = Deleted text.

Text = New text reflecting changes required by House Bill 276.

ARTICLE II. ADMINISTRATIVE AGENCIES.

Division 3. Board of Adjustment

*State law references: County board of adjustment, G.S. 153A-345.1.

Sec. 44-224. Established.

There is established the Catawba County Board of Adjustment.

Sec. 44-225. Composition.

The board of adjustment shall be composed of 5 members, and up to 3 alternates, selected to represent various areas of the County. Representatives should be selected to adequately represent the small area planning areas when possible.

Sec. 44-226. Appointment.

The board of commissioners shall appoint the members of the board of adjustment.

Sec. 44-227. Terms.

Terms on the board of adjustment shall be for a 3-year period. A board ~~of adjustment~~ member shall be eligible for reappointment to the board ~~of adjustment~~. Each member shall serve until his successor is duly appointed.

Sec. 44-228. Filling vacancies.

If a vacancy occurs in the membership of the board of adjustment, other than by expiration of a term, the vacancy shall be filled by appointment for the unexpired term.

Sec. 44-229. Compensation.

The members of the board of adjustment shall receive compensation for their services as may be fixed from time to time by the board of commissioners.

Sec. 44-230. Powers.

(a) Pursuant to North Carolina law, the board of adjustment has the power to:

~~(a) By a vote of 4/5 of its members having a quorum present constituting 5 members:~~

- (1) Hear and decide appeals from and review any order, requirement, decision, or determination made by the planning director in the performance of his duties as the order, requirement, decision, or determination relates to this Chapter.
- (2) Hear and decide applications for the approval of those special uses requiring board ~~of adjustment~~ approval.

- (3) Hear and decide applications for variances. Nothing in this Chapter shall be construed to authorize the board ~~of adjustment~~ to permit a use in a district where that use is neither a permitted use nor a permissible special use.
 - (4) Hear and decide any other matters as may be required by this Chapter.
 - (5) Make interpretations of the meaning and intent of this Chapter
- (b) ~~By~~ Except for a variance, a simple majority vote ~~of the board~~ decides any quasi-judicial matter or conducting routine business, such as electing a chair or determining time of next meeting.

~~Sec. 44-231. Procedures.~~ (moved to Sec. 44-329)

- ~~(a) Procedure for filing applications and appeals; priority for agenda. The following guidelines shall be followed in the preparation of the agenda for a board of adjustment meeting in respect to the cases that shall be heard:~~
- ~~(1) A matter for the board of adjustment must be filed and accepted 45 days before the scheduled board of adjustment meeting, counting the day of the board of adjustment meeting as the 45th day.~~
 - ~~(2) The application, and any required materials, must be complete and any applicable filing fee must be paid at the time the application is submitted or said application shall not be accepted. When a complete application is filed, the date and time of filing shall be written on the face of the application. The date and time of filing shall not be marked on the application unless the application is complete and the fee has been paid.~~
 - ~~(3) The general policy shall be to schedule cases on a first come, first serve basis, in accordance with the date and time the application was properly filed.~~
 - ~~(4) The normal agenda for the board of adjustment shall not exceed 5 cases unless the planning director determines that some cases may be expeditiously disposed of.~~
 - ~~(5) The planning director shall have the discretion not to schedule any matter for the next regularly scheduled meeting of the board of adjustment if the planning director determines that he needs more time to investigate and to prepare a review of that particular matter in order to make an appropriate presentation before the board of adjustment.~~
 - ~~(6) Matters that cannot be scheduled for the forthcoming meeting of the board of adjustment shall automatically be scheduled on a first come, first serve basis for the next scheduled meeting of the board of adjustment.~~
 - ~~(7) If the board of adjustment hears any matter, the board may continue that matter for the consideration of additional or rebuttal evidence that could not have reasonably been presented at the initial meeting.~~

~~(b) Hearings.~~

~~(1) Notice. Notice of the time and place of each hearing before the board of adjustment shall be given to the following:~~

~~a. The applicant;~~

~~b. The owner of the property that is the subject of the application;~~

~~c. The owners of property adjacent to and directly across the street from and immediately in the rear of the property that is the subject of the application; and~~

~~d. Anyone directly named in the application.~~

~~(2) No meeting may continue past 11:00 p.m. without a majority vote of the board members to suspend this rule.~~

~~(3) Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows:~~

~~a. All parties desiring to speak about an issue must sign in with the recording secretary to the board of adjustment before the meeting is called.~~

~~b. The applicant may present evidence, arguments and call witnesses. Only factual evidence is permitted. Hearsay evidence shall not be considered. Applicants shall be limited to one hour for presentation, including cross-examination of opposing witnesses.~~

~~c. The opposition may present evidence, arguments and call witnesses. Only factual evidence is permitted. Hearsay evidence shall not be considered. The opposition shall be limited to one hour for presentation, including cross-examination of opposing witnesses.~~

~~d. If there are facts within the special knowledge of a member of the board of adjustment or acquired by the member's personal inspection of the premises, they may be properly considered. However, they must be revealed at the public hearing and made a part of the record so that the applicant will have an opportunity to meet them by evidence or argument, and the reviewing board may judge their competency and materiality.~~

~~e. Members of the board of adjustment may ask questions of either the applicant or his representative, any of the witnesses, the opposition, County representatives, or the recording secretary.~~

~~f. Following any board discussion, the chairperson shall ask for a motion to grant the request. If the motion is seconded, a vote shall be called.~~

~~(c) Subsequent hearings. Should a matter fail to receive a favorable vote of approval, any applicant must wait one year before the matter may be submitted again for the board's consideration.~~

- ~~(d) — *Application withdrawal.* Should an application be withdrawn after the first notice of the public hearing, the application shall be considered to be denied, and any applicant must wait one year before the matter may be submitted again for the board's consideration.~~

~~Sec. 44-232. — **Decisions.** (moved to Sec. 44-330)~~

- ~~(a) — *Time.* Decisions of the board of adjustment on any matter shall generally be made at the conclusion of the hearing, or within 30 days from the conclusion of the hearing.~~
- ~~(b) — *Form and appeal.* If an aggrieved party has made a written request for a decision, NCGS 153A-345 shall apply. If an aggrieved party has not made a written request for a decision as provided for in NCGS 153A-345, the aggrieved party may be informed of the decision by telephone, by regular mail, or in any other way that enables the aggrieved party to be informed of the decision.~~
- ~~(c) — *Minutes.* The final decision of the board of adjustment on each matter shall be shown in the record of the case and recorded in the minutes. Such records shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the board of adjustment. Where a variance is granted, the record shall state in detail any requirements of NCGS 153A-345. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a variance or an exception.~~

~~Sec. 44-233. — **Appeals.** (moved to Sec. 44-331)~~

- ~~(a) — Approval criteria for an appeal of a decision of the planning director.~~
- ~~(1) — The board may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination of the planning director from which an appeal is taken and make the correct order, requirement, decision, or determination. For that purpose, the board has the same authority as the planning director from which the appeal is taken.~~
- ~~(2) — The board may rule in favor of the appellant if it finds the order, requirement, decision, or determination from which an appeal is taken:~~
- ~~a. — Was the result of an incorrect or unlawful interpretation of this Chapter; or~~
- ~~b. — Would result in a taking of private property, or otherwise result in a deprivation of constitutional rights.~~
- ~~(3) — The board's decision shall provide the minimum amount of relief necessary in order to comply with the requirements of Subsection (2) above.~~
- ~~(4) — The planning director shall not amend the board of adjustment's decision.~~

~~(b) — *Appeal of board of adjustment decisions.* Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the planning office, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.~~

~~(c) — *Recording.* A copy of the board's decision shall be maintained by the planning director.~~

~~**Sec. 44-234. — Annual report.**~~

~~In January of every year the board of adjustment shall prepare, and submit to the board of commissioners, a report of its activities for the previous calendar year. Such report shall contain a statement of the number of cases heard and a summary of the actions taken, along with any other matters which the board of adjustment determines appropriate for inclusion in the report.~~

~~**Sec. 44-235-231 - 240. Reserved.**~~

ARTICLE III. PROCEDURES.

Division 1. Generally

Purpose: This article establishes the application, notice, hearing and review procedures for all types of land use actions, ranging from rezoning to zoning authorization permits.

Sec. 44-300. General procedural requirements.

- (a) The procedures for all applications have the following common elements:
- (1) Submittal of a complete application, which includes the required fee payment as well as all necessary information;
 - (2) Review of the completed application by appropriate staff and boards;
 - (3) Action to approve, approve with conditions, or deny the application; and
 - (4) If approved, issuance of a permit.
 - (5) Applications, plan requirements, plat certificates for all residential and nonresidential development are located in the Procedures Manual. Development types, open space illustrations, connectivity and circulation, site and building design along with photographs and graphics are located in the Design Manual. These manuals are separate documents, which supplements the Unified Development Ordinance. The manuals may be

amended from time to time by the Planning Director as an administrative function where the modifications or amendments are not inconsistent or in conflict with the intent of the UDO. The Design Manual is not part of the regulatory requirements of the UDO.

- (b) *Pre-application conference.* The applicant should meet with the planning director to discuss the nature of the proposed application, application compatibility with current adopted plans and policy, application submittal requirements, the procedure for action, and the standards for evaluation of the application. While not mandatory, this process can be extremely helpful to the applicant in expediting the application process.

Sec. 44-301. Concept site plan.

- (a) A concept site plan must be submitted to the applicable board for a conditional zoning district or special district rezoning in accordance and in conformance with the procedures manual.
- (b) The concept site plan must depict internal relationships between or among uses and activities proposed and their supporting systems and facilities, and relation to surrounding uses, activities, systems, and facilities.
- (c) Concept site plans must include data reasonably necessary for the board of commissioners to determine whether the proposed development meets the general requirements, limitations, and intent for a conditional zoning or special district request.
- (d) Upon approval of the concept site plan by the board of commissioners, a detailed site plan must be submitted in conformance with Sec. 44-317 and the procedures manual for a zoning authorization permit to be administratively approved.
- (e) Changes in approved concept site plans.
 - (1) The planning director may approve minor changes to concept site plans, as long as they are in harmony with the action of the board of commissioners and provided that:
 - a. All applicable regulations in effect at the time of the establishment of the district are met; or
 - b. All applicable regulations currently in effect are met.Minor changes are those changes that do not meet the criteria established in Subsection (2) below for an amendment.
 - (2) An amendment to the concept site plan requires approval by the board of commissioners and shall be handled as a new application.
 - a. The planning director ~~shall~~ will use the following criteria in determining whether a proposed change is an amendment. If any of the following criteria are met, the change constitutes an amendment:

1. Any increase in intensity of use which means an increase in:
 - i. Usable floor area by more than 10%;
 - ii. Number of dwelling or lodging units by more than 10%; or
 - iii. Outside land area devoted to sales, displays, or demonstrations;
 2. Any change in parking areas resulting in an increase or reduction of more than 10% in the number of spaces approved by the board of commissioners;
 3. Structural alterations affecting the basic size, form, style, and the like of the building, as shown on the approved concept site plan;
 4. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screens; or
 5. Substantial changes in pedestrian or vehicular access or circulation.
- b. If the planning director determines that the proposed action is an amendment, the applicant shall be required ~~the applicant~~ to file a request for approval of the amendment, which shall follow the procedures for the original request.

Sec. 44-302. Phasing.

A development or subdivision may be constructed in phases, provided that:

- (a) A phasing plan shall be submitted showing any proposed phases of development; and
- (b) The degree and extent of road construction, water supply, sewage disposal, landscaping, parking, stormwater management, erosion and sedimentation control and other required improvements in the current phase, and previously approved phases, must be sufficient to serve or handle all development within the current phase.
- (c) In lieu of providing the improvements noted in Subsection (b) above, the applicant may post a performance guarantee as provided for in Sec. 44-361.
- (d) For subdivisions:
 - (1) A subdivision phase must contain at least 3 lots; and
 - (2) The amount of any required open space on a per-lot basis in a particular phase, including the current or any previously approved phase, is at least proportional to the open space requirements of the whole development.

The approving authority has the right to grant a waiver on the proportional open space provided based on a phasing schedule.

- (e) Any phasing extensions or expirations are subject to requirements of Sec. 44-359.

Sec. 44-303. Completeness review.

- (a) *Generally.* The planning director shall review any application required by this Chapter for completeness. An application is not deemed complete unless all the information required by this Chapter and the procedures manual is included and all filing fees have been paid. Current application materials are available in the planning department.
- (b) *Time periods.* Whenever this Article establishes a time period for processing an application, such time period shall not commence until the planning director has reviewed such application for completeness in order to determine whether the application has been properly submitted and the applicant has corrected all deficiencies in the application. Review for completeness is solely for the purpose of determining whether preliminary information required for submission with the application is sufficient to allow further processing, and shall not constitute a decision as to whether the application complies with the provisions of this Chapter.
- (c) *Scheduling of review board consideration.*
 - (1) A complete application must be submitted a minimum of 45 days prior to the regularly scheduled meeting of the applicable board where the request is considered.
 - (2) If the application is determined not to be complete, the planning director ~~shall~~ will specify those parts of the application that are incomplete and indicate the manner in which they can be made complete. The applicant will be furnished with a list and thorough description of the specific information ~~he~~ needs to submit ~~to~~ a complete ~~the~~ application.
 - (3) Upon receipt of any missing materials or required fee, a new 45-day period may begin.
- (d) *Effect of completeness determination.* The applicant must submit all information as specified in this Chapter and in the procedures manual. The department or the reviewing agency may, in the course of processing the application, request the applicant to clarify, or correct, the information required for the application.
- (e) *Appeal of planning director's decision regarding completeness review.*
 - (1) For purposes of this Section, the boards referenced below are referred to as the "Appellate Board."
 - (2) All decisions of the planning director pertaining to completeness review may be appealed as follows:
 - a. The board of adjustment will address completeness appeals of: detailed site plans, zoning authorization permits, zoning

compliance certificates, zoning amendments, conditional districts; ~~special, special~~ use permits, variances and nonconformities.

- b. The subdivision review board will address completeness appeals on subdivision sketch and preliminary plat applications.
- (3) If the application, together with the required materials and fees, is determined not to be complete, the applicant may appeal that decision in writing to the appellate board. The appellate board shall render a final written determination on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. If the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this Chapter. ~~Nothing in this Section precludes an applicant and the department from mutually agreeing to an extension of any time limit provided in Section 44-305.~~

Sec. 44-304. Fees. (moved from Sec. 44-308)

No application, subject to this Chapter, shall be accepted unless it is accompanied by all required fees established by the board of commissioners. Before any zoning authorization permit or zoning compliance certificate can be issued covering building or other operations regulated by this Chapter, the applicant must pay a fee in an amount fixed by the board of commissioners.

~~Sec. 44-304. Public hearing procedures.~~ (moved to Sec. 44-326)

- ~~(a) Scope of action. The reviewing agency may take any action on the application that is consistent with the public notice given, including approval of the application, conditional approval or denial.~~
- ~~(b) Record of proceedings. The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with NCGS Chapter 132 and the Catawba County Code.~~
- ~~(c) Notice provisions.
 - ~~(1) Notice of public hearing. Notice of public hearing shall state the time and place of the public hearing, summarize the nature of the application and proposed development and invite interested parties to review the application at the planning department and submit oral or written comments on the application at the public hearing. Notice shall be provided as follows:
 - ~~a. Published notice. An advertisement shall be placed by the planning director, in a local newspaper of general circulation once a week for two successive calendar weeks. The first notice shall be published not less than 10 days nor more than 25 days before the date fixed for public hearing; and~~~~~~

~~b. — *Mailed notice.* The planning director must notify by first class mail all property owners, as indicated by the latest County tax listing of property ownership, subject to the application and all property owners abutting that property subject to the application to the address listed for such owners in the County tax abstracts. This notice must be placed in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The planning director shall certify to the board of commissioners the date the notices were mailed.~~

~~(2) — *Major rezoning.*~~

~~a. — For zoning map amendments directly affecting more than 50 properties owned by at least 50 different property owners, the County may elect to send mailed notices as provided in Subsection (c)(1)b. above or the County may, as an alternative, elect to publish notice of the hearing as described in subsection Subsection (c)(1)a. above, provided that each advertisement must be at least ½ of a newspaper page in size;~~

~~b. — The newspaper advertisement is effective notice only for those property owners who reside in the area of general circulation of the newspaper which publishes the notice; and~~

~~c. — Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, must be provided with mailed notice.~~

~~(3) — *Posted notice.* A sign noticing the public hearing must be prominently posted by the planning director, on the property subject to the application at least 10 days but not more than 25 days prior to the public hearing at which the application will be reviewed. The sign must be posted on the property at a point visible from the nearest public street. In the case of multiple parcels, sufficient signage must be posted to provide reasonable notice to interested parties.~~

~~(4) — *Minor defect in notice.* Minor defects in notice will not impair the notice or invalidate proceedings pursuant to the notice if a good faith attempt has been made to comply with the applicable notice requirements.~~

~~(5) — *Administrative permits.* No notice shall be required for an administrative permit issued pursuant to this Chapter unless otherwise provided for by law.~~

~~(d) — *Quasi-judicial hearings.* (moved to Sec. 44-329)~~

~~(1) — *Applicability.* This Section applies to any application for a special use permit, variance, expansions or changes to noneconformities, appeal, or any other quasi-judicial action. In making quasi-judicial decisions, the board of adjustment must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a~~

~~basis for their official action, and may exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use regulations to individual situations, such as variances, special use permits, and appeals of administrative determinations. These decisions involve two key elements:~~

- ~~a. The finding of facts regarding the specific proposal, and~~
- ~~b. The exercise of discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence.~~

~~(2) Rulemaking authority. The board of adjustment may adopt general rules for quasi-judicial public hearings.~~

~~(3) Notice provisions. Notices for quasi-judicial hearings shall meet the provisions in (c)(1) and (c)(3)–(c)(5) above.~~

~~(4) Conduct of hearing. The hearing shall be conducted in accordance with the procedures set forth in NCGS 153A-345.~~

~~(e) Minor changes.~~

~~(1) Applicability.~~

~~a. After notice and/or completion of a public hearing, the reviewing agency may allow minor changes to the application which:~~

- ~~1. Proposes fewer dwelling units, reduced floor area or decreases impervious surface than requested on the original application;~~
- ~~2. Reduces the impact of the development; or~~
- ~~3. Reduces the amount of land involved from that indicated in the notices of the hearing; and~~
- ~~4. Is consistent with Sec. 44-301(e)(2).~~

~~b. This Subsection does not apply if the regulations, specific standards, conditions for approval of the rezoning or findings of fact applicable to the specific permit prohibit minor changes.~~

~~(2) Prohibition. Unless the applicant re-initiates the application for the permit or development and a new notice is posted, the reviewing agency shall not permit any of the following:~~

- ~~a. An apparent change of the overall character of the project;~~
- ~~b. A density or intensity increase of over 10%;~~
- ~~c. A use falling in a different general use category;~~
- ~~d. A larger land area than indicated in the original application; or~~

e. ~~— A greater variance than was indicated in the notice.~~

~~Sec. 44-305. — Appeal of administrative decisions. (moved to Sec. 44-331)~~

~~(a) — The board of adjustment shall hear and decide all appeals from and review any zoning order, requirement, decision, or determination made by the planning director. The aggrieved applicant must submit an appeal, in writing, to the board of adjustment within 30 days following the date of the decision. The written appeal must be filed with the recording secretary of the board of adjustment. If a written appeal is not made within the 30-day period, the matter shall be deemed to be closed, and the decision of the planning director shall be final. See Sec. 44-318(d) for administrative decisions.~~

~~(b) — Initiation.~~

~~(1) — The appeal to the board of adjustment must be filed with the planning director at least 45 days before the scheduled board of adjustment meeting. When an appeal is filed, the date and time of filing shall be written on the face of the application.~~

~~(2) — An appeal to the board of adjustment from a decision or determination by the planning director stays all enforcement proceedings in furtherance of the decision or determination appealed from, except as provided in Subsection (3), below.~~

~~(3) — An appeal to the board of adjustment of a determination or decision of the planning director shall not stay enforcement proceedings in furtherance of the decision or determination appealed from, if the planning director certifies either that:~~

~~a. — A stay would cause imminent peril to life or property; or~~

~~b. — The situation appealed from is transitory in nature, and, therefore, an appeal would seriously interfere with enforcement of this chapter.~~

~~In each instance, the planning director shall place in writing the facts to support the conclusion.~~

~~(c) — In considering appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this Chapter and those based upon alleged hardship resulting from strict enforcement of this Chapter.~~

~~Sec. 44-306. — Post decision appeals.~~

~~(a) — *Zoning procedures.* An appeal of an administrative decision pursuant to this Chapter shall be processed as provided in NCGS 153A-345 and Sec. 44-305 of this Chapter.~~

~~(b) — *Subdivision plats.* An appeal of a subdivision plat decision shall be processed in accordance with Sec. 44-346 of this Chapter.~~

~~(c) — *Appeal of board of adjustment decision.* — An appeal of the board of adjustment decision follows the procedures in Article II, Sec. 44-233(b).~~

~~Sec. 44-307. — **Revocation of permit or approval.** (moved to Sec. 44-320)~~

~~(a) — *Applicability.* — Where a violation of this Chapter involves a failure to comply with approved plans or conditions to which the approval was made subject, the planning director may, upon notice to the applicant and other known parties of interest (including any holders of building permits affected), revoke the permit or approval.~~

~~(b) — *Grounds for revocation.* — The following are grounds for revocation of a permit or approval:~~

~~(1) — The applicant intentionally supplies misleading information. — The provision of information is considered “intentional” when the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.~~

~~(2) — The failure to comply with specific conditions of a development order or development permit.~~

~~(3) — Any permit or approval mistakenly issued in violation of an applicable State or local law may be revoked.~~

~~(c) — *Decision and notice.* — The planning director shall render a decision to revoke the permit or approval, to allow the applicant to retain the development permit or approval, or to reconsider the permit or approval. The planning director shall notify the holder of the permit or approval in the manner provided in NCGS 153A-362. If the department finds that any portion of this Chapter is being violated, it shall notify the responsible owner, tenant, or authorized agent (the initial written notice may be the final notice) requesting correction of the violation within 10 days of the date of receipt of the notice by one or more of the following methods:~~

~~(1) — *Certified mail.* — When service of notice is refused or unclaimed notice may be sent by regular mail. — Service shall be deemed complete if the registered or certified mail is delivered, unclaimed or refused, and the regular mail is not returned by the post office within 10 days after the date mailed.~~

~~(2) — *Personal service.* — Such service shall be accomplished by delivering the notice to the responsible owner, tenant, or their authorized agent at their dwelling house or usual place of abode or to their business address and leaving it with the responsible party or some person of suitable age and discretion abiding therein. An affidavit should be prepared showing how, when, where, and to whom the notice was served.~~

~~(3) — *Publication.* — Notice may be given by publication in a newspaper having general circulation in the County at least once and no later than the time at which personal service would be required under the provisions of this~~

~~Article. This method of service may be used when the identities or whereabouts of any owners are unknown and cannot be ascertained in the exercise of reasonable diligence. An affidavit should be prepared to this effect and notice of the violation posted in a conspicuous place on the affected premises.~~

~~(d) — Appeals. The decision of the planning director may be appealed as set forth in Sec. 44-305 of this Chapter. Unless appealed, a decision to revoke a development permit or approval shall become final upon the returned certified receipt or a regularly mailed letter not returned within 10 days. After that, any further activities shall be deemed to be in violation of this Chapter and shall be subject to the remedies as prescribed in this Chapter.~~

~~(e) — Right cumulative. The right to revoke a development permit or approval, as provided in this Section, shall be cumulative to any other remedy allowed by law.~~

~~Sec. 44-308. — Fees. (moved to Sec. 44-304)~~

~~No application, subject to this Chapter, shall be accepted unless it is accompanied by all required fees established by the board of commissioners. Before any zoning authorization permit or zoning compliance certificate can be issued covering building or other operations regulated by this Chapter, the applicant must pay a fee in an amount fixed by the board of commissioners.~~

~~Sec. 44-309-305 - 315.~~

~~Reserved.~~

Division 2. Zoning Authorization Permit and Zoning Compliance Certificate

Sec. 44-316. Generally.

Purpose: This section prescribes procedures for zoning authorization permits and zoning compliance certificates.

Applicability. This section applies to any permitting action subsequent to approval of any detailed site plan as set forth in Sec. 44-317. Administrative permits and certificates include:

- (a) Zoning authorization permits, Sec. 44-318, and
- (b) Zoning compliance certificates, Sec. 44-319.

Sec. 44-317. Site plan – detailed.

Purpose: Detailed site plans are required for any non-residential development, residential duplexes or multi-family developments. Approval of a detailed site plan is a one-step process requiring approval by the planning director.

- (a) *Detailed site plan approval.* Detailed site plans shall be administratively approved for the following:
 - (1) Any non-residential, duplex or multi-family application for a zoning authorization permit.

- (2) Any supplemental use regulations as required in Article VI and that is permitted by right in the applicable zoning district; or
 - (3) A concept site plan previously approved by legislative or quasi-judicial board action.
- (b) *Procedures for administrative detailed site approval.*
- (1) The applicant is encouraged to attend an informal pre-application meeting with the planning director before filing a detailed site plan application.
 - (2) An application for detailed site plan approval must be filed with the planning director and must include information listed in the procedures manual.
 - (3) ~~The applicant must comply with Completeness review. See~~ Sec. 44-303.
 - (4) On receipt of the detailed site plan application, the planning director shall review the application and notify the applicant in writing of any discrepancies between the detailed site plan and the requirements of this Chapter. The notification may include any suggested minor changes and conditions needed to achieve compliance with this Chapter without constituting an amendment requiring further board action. If necessary, the applicant must submit a revised detailed site plan to the planning director. The planning director shall approve, approve with conditions, or disapprove the detailed site plan.

Sec. 44-318. Zoning authorization permit.

- (a) *Applicability.*
- (1) A zoning authorization permit is required for all residential and nonresidential development regulated under this Chapter, including developments approved by legislative or quasi-judicial board action.
 - (2) No new development activity, change of use or extension of existing uses shall occur until all permits applicable to the proposed development are issued.
 - (3) A zoning authorization permit is required prior to beginning ~~the excavation, for the construction, or the moving,~~ or alteration; except ordinary repairs. Repairs or alterations within a flood plain are subject to a zoning authorization permit.
- (b) *Criteria.*
- (1) All zoning authorization permit applications must be made in writing to the planning director on forms provided for that purpose. The planning director will keep a record of all applications on file.
 - (2) Every application for a single-family residential zoning authorization permit for construction, moving, alteration, or change in type of use must include a plot plan drawn to scale, showing the following in sufficient

detail to enable the planning director to ascertain whether the proposed work or use is in conformance with this Chapter:

- a. The actual shape, location, and dimensions of the lot, or if the lot is not a lot of record, sufficient data must be provided to detail that the lot is a legally approved lot; and
- b. The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of any other buildings or other structures already on the lot; and
- c. The existing and intended use of the lot and all structures upon it; and
- d. Other information concerning the lot, adjoining lots, or other matters to determine compliance with this Chapter. The zoning authorization permit must include necessary information for the planning director to make a determination that the plans are in conformance with this Chapter.

- (3) When 2 or more lots are proposed for one zoning authorization permit, a recorded deed must be submitted combining the lots into one zoning lot.
- (4) A parcel of land created by deed recorded after July 31, 1982 shall not be occupied until such lot ~~shall have~~ has a subdivision plat approved by the County in accordance with the subdivision regulations that were in place at the date of the creation of the deeded lot.
- (5) A legal lot created and recorded on or before March 18, 1996 must have an access easement which has been recorded in the office of the register of deeds. The easement must be a minimum of 15 feet in width and connect to a state-maintained road.
- (6) A legal lot created and recorded after March 18, 1996 must have a minimum 45-foot right-of-way connecting to a state-maintained road. An exception to this requirement is lots created for an estate settlement or lots exempt from subdivision regulations in accordance with Sec. 44-341(a), which must have a minimum 15-foot access easement as required in Subsection (5) above.
- (7) A zoning authorization permit will not be issued for a principal or accessory residential structure within a recorded platted easement, such as a common area or lake access lot. An exception is allowed for a boat dock, boathouse or community recreation facility in association with the intended purpose of the recorded easement.
- (8) A zoning authorization permit must be issued before the issuance of environmental health and building permits.

(c) *Issuance.*

- (1) The planning director shall consult with applicable agencies, including but not limited to, the County engineer, the County division of environmental health, NCDOT, and NCDENR.
- (2) The planning director shall not issue a zoning authorization permit unless a determination is made that all plans, specifications, and the intended use of the structures and land subject to the application conform in all respects to this Chapter.

(d) *Administrative decisions.*

- (1) Administrative decisions are routine, non-discretionary, zoning, or implementation matters carried out by the staff, including issuance of permits for permitted uses. The planning department is an administrative agent following the literal provisions of this Chapter.
- (2) The planning department may engage in some fact finding, (for example, as in making an initial determination as to whether a nonconforming use was in existence at the time a zoning provision was adopted). This involves determining objective facts that do not involve an element of discretion.
- (3) In contrast to quasi-judicial hearings, administrative decisions are made without a hearing at all, with the staff member reviewing an application to determine if it is complete and compliant with objective standards set forth in this Chapter.

(e) *Expiration.*

Zoning authorization permits expire 6 months from the date of issuance unless a valid building permit has been issued for the work authorized by the zoning authorization permit. When a building permit expires, the zoning authorization permit shall also automatically expire.

Sec. 44-319. Zoning compliance certificate.

No building, structure, or zoning lot for which a zoning authorization permit has been issued, with exception of a single-family dwelling, can be used or occupied until the planning director has issued a zoning compliance certificate. The planning director shall conduct a final inspection before issuing the zoning compliance certificate to determine that all required improvements have been installed in conformance with the detailed site plan and zoning authorization permit or a performance guarantee has been approved as detailed in Sec. 44-361. The certificate shall indicate that the building, structure or lot complies with the zoning authorization permit and any applicable sections of this Chapter. The issuance of a zoning compliance certificate does not waive any sections of this Chapter.

Sec. 44-320. Revocation of permit or approval. (moved from Sec.44-307)

- (a) *Applicability.* Where a violation of this Chapter involves a failure to comply with approved plans or conditions to which the approval was made subject, the planning director may, upon notice to the applicant and other known parties of

interest (including any holders of building permits affected), revoke the permit or approval.

(b) *Grounds for revocation.* The following are grounds for revocation of a permit or approval:

(1) The applicant intentionally supplies misleading information. The provision of misleading information is considered “intentional” when the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.

(2) The failure to comply with specific conditions of a development order or development permit.

(3) Any permit or approval mistakenly issued in violation of an applicable State or local law may be revoked.

(c) *Decision and notice.* The planning director shall render a decision to revoke the permit or approval, to allow the applicant to retain the development permit or approval, or to reconsider the permit or approval. The planning director shall notify the holder of the permit or approval in the manner provided in NCGS 153A-362. If the department finds that any portion of this Chapter is being violated, it shall notify the responsible owner, tenant, or authorized agent (the initial written notice may be the final notice) requesting correction of the violation within 10 days of the date of receipt of the notice by one or more of the following methods:

(1) *Certified mail.* When service of notice is refused or unclaimed notice may be sent by regular mail. Service will be deemed complete if the registered or certified mail is delivered, unclaimed or refused, and the regular mail is not returned by the post office within 10 days after the date mailed.

(2) *Personal service.* Such service will be accomplished by delivering the notice to the responsible owner, tenant, or their authorized agent at their dwelling house or usual place of abode or to their business address and leaving it with the responsible party or some person of suitable age and discretion abiding therein. An affidavit should be prepared showing how, when, where, and to whom the notice was served.

(3) *Publication.* Notice may be given by publication in a newspaper having general circulation in the County at least once and no later than the time at which personal service would be required under the provisions of this Article. This method of service may be used when the identities or whereabouts of any owners are unknown and cannot be ascertained in the exercise of reasonable diligence. An affidavit should be prepared to this affect and notice of the violation posted in a conspicuous place on the affected premises.

(d)(e) ~~*Right cumulative*~~ *Cumulative right.* The right to revoke a ~~development~~ permit or approval, as provided in this Section, will be cumulative to any other remedy allowed by law.

Division 3. Zoning Procedures

Sec. 44-326. Public hearing procedures. (moved from Sec. 44-304)

- (a) *Scope of action.* The reviewing ~~agency~~board may take any action on the application that is consistent with the public notice given, including approval of the application, conditional approval or denial.
- (b) *Record of proceedings.* The ~~body~~board conducting the hearing will record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with NCGS Chapter 132 and the Catawba County Code.
- (c) *Notice provisions.*
 - (1) *Notice of public hearing.* Notice of public hearing will state the time and place of the public hearing, summarize the nature of the application and proposed development and invite interested parties to review the application at the planning department and submit oral or written comments on the application at the public hearing. Notice will be provided as follows:
 - a. *Published notice.* An advertisement will be placed by the planning director, in a local newspaper of general circulation once a week for two successive calendar weeks. The first notice will be published not less than 10 days nor more than 25 days before the date fixed for public hearing; and
 - b. *Mailed notice.* The planning director must notify by first class mail all property owners, as indicated by the latest County tax listing of property ownership, subject to the application and all property owners abutting that property subject to the application to the address listed for such owners in the County tax abstracts. This notice must be placed in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The planning director will certify to the board of commissioners the date the notices were mailed.
 - (2) *Major rezoning.*
 - a. For zoning map amendments directly affecting more than 50 properties owned by at least 50 different property owners, the County may elect to send mailed notices as provided in Subsection (c)(1)b. above or the County may, as an alternative, elect to publish notice of the hearing as described in ~~subsection~~-Subsection (c)(1)a. above, provided that each advertisement must be at least ½ of a newspaper page in size;
 - b. The newspaper advertisement is effective notice only for those property owners who reside in the area of general circulation of the newspaper which publishes the notice; and

- c. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, must be provided with mailed notice.
- (3) *Posted notice.* A sign noticing the public hearing must be prominently posted by the planning director, on the property subject to the application at least 10 days but not more than 25 days prior to the public hearing at which the application will be reviewed. The sign must be posted on the property at a point visible from the nearest public street. In the case of multiple parcels, sufficient signage must be posted to provide reasonable notice to interested parties.
 - (4) *Minor defect in notice.* Minor defects in notice will not impair the notice or invalidate proceedings pursuant to the notice if a good faith attempt has been made to comply with the applicable notice requirements.
 - (5) *Administrative permits.* No notice will be required for an administrative permit issued pursuant to this Chapter unless otherwise provided for by law.
- (d)(e) *Minor changes.*
- (1) *Applicability.*
 - a. After notice ~~and/or~~ completion of a public hearing, the planning director may allow minor changes to the application that are consistent with Sec. 44-301(e)(2) subject to the following ~~which~~:
 - 1. Proposes fewer dwelling units, reduced floor area or decreases impervious surface than requested on the original application;
 - 2. Reduces the impact of the development; or
 - 3. Reduces the amount of land involved from that indicated in the notices of the hearing; ~~and~~.
 - 4. ~~Is consistent with Sec. 44-301(e)(2).~~
 - b. This Subsection does not apply if the regulations, specific standards, conditions for approval of the rezoning or findings of fact applicable to the specific permit prohibit minor changes.
 - (2) *Prohibition.* Unless the applicant re-initiates the application for the permit or development and a new notice is posted, the reviewing agency will not permit any of the following:
 - a. An apparent change of the overall character of the project;
 - b. A density or intensity increase of over 10%;
 - c. A use falling in a different general use category;
 - d. A larger land area than indicated in the original application; or
 - e. A greater variance than was indicated in the notice.

Sec. 44-326327. Zoning map (rezoning) and text amendments.

Purpose: This section establishes procedures for processing zoning map amendments (rezonings) and zoning text amendments.

- (a) *Applicability.* This section applies to any application to:
 - (1) Amend the Official Zoning Map (a "rezoning"), or
 - (2) Change the regulations of this Chapter (a "text amendment").
- (b) *Initiation.* A zoning map or text amendment may be initiated by the following:
 - (1) The board of commissioners~~’~~*own motion*;
 - (2) The planning board;
 - (3) An application by a subject property owner; or
 - (4) The planning staff.
- (c) *Application.* The procedure for filing for an amendment to this Chapter is as follows:
 - (1) *Filing of applications.* All applications for amendments to this Chapter must be in writing, on a form prescribed by the County, signed, and filed with the planning director.
 - (2) *Contents of application.* All applicants for amendments to this Chapter, must complete an application, meet the concept site plan requirements as contained in the procedures manual, when applicable, and contain at least the following:
 - a. If the proposed amendment would require a change in the official zoning atlas to change only a portion of an existing parcel, a fully dimensional map showing the portion of the parcel covered by the proposed amendment;
 - b. If applicable, a detailed statement of any alleged error in this Chapter which would be corrected by the proposed amendment and a detailed explanation of the manner the proposed amendment will correct the alleged error; and
 - c. A detailed statement of all other circumstances, factors and reasons including a statement as to the reasonableness of the proposed rezoning, which the applicant offers in support of the proposed amendment, such as:
 - 1. Consistency with the comprehensive plan and other County adopted plans~~;~~;
 - 2. Compatibility of the proposed rezoning with the property and surrounding area~~;~~; and

3. The benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors and the surrounding community.
 - d. If applicable, a legal description of such land;
- (d) *Completeness review.* ~~See~~ **The applicant must comply with** Sec. 44-303.
- (e) *Public hearing required.* A public hearing shall be required in conformance with Sec. 44-~~304~~**326**.
- (f) *Decision.*
 - (1) *Planning director recommendation.* The planning director, upon receipt of the application to amend this Chapter or the zoning map, shall examine it for completeness review purposes and ~~approve~~**accept** the application. The planning director shall then prepare and submit a written report with a recommendation to the planning board.
 - (2) *Planning board recommendation.*
 - a. The planning board shall receive the report from the planning director and conduct a public hearing on the proposed request.
 - ~~b. Following a public hearing the planning board shall make a recommendation to the board of commissioners.~~
 - ~~e-b~~ After hearing presentations, the planning board must review the amendment application, staff report, and additional information and comments submitted or presented to the planning board, and must recommend to the board of commissioners approval or denial of the application in writing.
 - ~~d.c.~~ In deciding whether to recommend approval or denial of the application, the planning board shall consider whether the proposed amendment is consistent with the comprehensive plan and other County adopted plans and otherwise advances the public health, safety and general welfare.
 - (3) *Board of commissioners.*
 - a. The board of commissioners shall not enact the proposed amendment until 30 days after the referral to the planning board or until the planning board makes its recommendation report, whichever first occurs.
 - ~~b. Prior to the board of commissioners' public hearing, the planning director shall prepare a report. The report shall include an overview of public comments received at the planning board hearing along with the recommendation of the planning board.~~
 - c. Prior to the public hearing, the board of commissioners shall receive **a report from the planning director including an overview of public comments received at the planning board hearing along with the recommendation of the planning director and planning**

~~board.the recommendation of the planning board and the planning director.~~ The board of commissioners shall conduct a public hearing on the proposed request. The board of commissioners shall then take one of the following actions:

1. Approve the application;
 2. Approve a modified version of the application; or
 3. Deny the application.
- d. Before completing review and making its final decision, the board of commissioners may postpone its discussion and/or action to a later meeting or refer the application back to the planning board for further consideration. In deciding whether to approve or deny an amendment application, the board of commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board of commissioners considers the action taken to be reasonable and in the public interest. The board of commissioners may adopt the statement furnished by staff, applicant, other agencies or may formulate its own statement.
- (g) *Approval criteria.* The board of commissioners shall, at a minimum, consider the following factors for:
- (1) Map amendment (rezoning):
 - a. The size of the tract in question;
 - b. Whether the proposal conforms with, and furthers the goals of, any applicable adopted comprehensive plans or other adopted plans, and the goals, objectives, and policies of this Chapter;
 - c. Any change of character in the area due to installation of public facilities, other zoning changes, new growth trends, deterioration, and development;
 - d. The zoning districts and existing land uses of the surrounding properties, including a determination of whether the rezoning is compatible with the adjacent neighborhood, especially residential neighborhood stability and character; and
 - e. A detailed statement of any alleged error on the official zoning maps which would be corrected by the proposed map amendment.
 - (2) Text amendment:
 - a. A detailed statement of any error in this Chapter which would be corrected by the proposed amendment and a detailed explanation of the manner the proposed amendment will correct the alleged error; or
 - b. Changing conditions or trends; or

- c. Whether the proposal conforms with, and furthers the goals of, any applicable adopted plans, and the goals, objectives, and policies of this Chapter.
- (h) *Effect of withdrawals or denials on applications.*
 - (1) An applicant may withdraw the application at any time by written notice to the planning director subject to the following conditions:
 - a. Planning board: Any application withdrawn, prior to or after the planning board's action on the public hearing, is not subject to a 12-month waiting period for re-submittal.
 - b. Board of commissioners: Any application withdrawn after the first advertisement of the board of commissioners' public hearing, or after a denial of the request may not be resubmitted within 12 months of the date of the board of commissioners' action on the public hearing, unless substantially changed.
 - (2) A withdrawn or denied application must follow the procedures for a new application.
- (i) *Scope of approval.* A zoning text amendment or a rezoning does not authorize the development of land. The applicant or landowner must still secure all required zoning authorization permits and subdivision approvals after a text amendment or rezoning is approved.
- (j) *Codification.* A zoning text amendment shall be codified as provided for in the Catawba County Code. A change resulting from a map amendment shall be depicted on the official zoning map.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-~~327~~328. Conditional zoning district.

- (a) *Intent.* The conditional zoning districts included- ~~herein~~ **in this Section** allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.
- (b) *Applicability.* Conditional zoning districts may be appropriate when one or more of the following factors, separate or in combination, are proposed:

- (1) The tract size meets or exceeds the minimum acreage for the corresponding zoning district;
 - (2) The tract is within a designated non-residential node, corridor, village or commercial center as identified in the small area plans, as amended from time-to-time;
 - (3) The aggregate square footage of the non-residential building(s) on a single zoning lot is more than 50,000 square feet gross leasable area regardless of the number of uses within the building or structures planned; or
 - (4) Planned developments.
- (c) *Application.* Except as ~~herein~~ provided in this Chapter, petitions to establish a conditional zoning district must be submitted and will be processed in accordance with the provisions in this Chapter. Petitioning for a conditional zoning district is a voluntary procedure and can be initiated only by the owner(s) of the property(ies) in question or by his/her authorized agent. Applications shall be submitted on a form provided by Catawba County.
- (d) *Contents of application.* All applications must include a concept site plan, drawn to scale, and supporting text that, as approved, will become part of the ordinance amendment. The concept site plan must include any supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that in addition to all predetermined ordinance requirements, will govern the development and use of the property. The applicant shall, at a minimum, include each of the items listed below, in addition to the items required in Section 44-~~326-327~~ as the same may from time to time be amended, and any other applicable sections of this Chapter. The concept site plan, including all additional information shown on it, and the following checklist shall constitute part of the petition for rezoning to a conditional zoning district:
- (1) A vicinity map showing the property's general location in relation to major streets, railroads, waterways.
 - (2) A drawing of the parcel, including the parcel identification number.
 - (3) All existing easement, reservations, and rights-of-way on the property(ies) in question.
 - (4) Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps for Catawba County and delineation of watershed boundaries labeled with their respective classifications.
 - (5) Existing and proposed topography at 5 foot contour intervals or less.
 - (6) For residential uses, the number of units and an outline of the area where the structures will be located. For nonresidential uses, the approximate

square footage of all structures and an outline of the area where the structure will be located.

- (7) Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets including typical parking space dimension and locations along with typical street cross sections. This shall include all existing and proposed points of access to public streets.
 - (8) All proposed setbacks, buffers, screening and landscaping required by this Chapter and regulations of other agencies or otherwise proposed by the petitioner. In addition, the location of significant trees or tree stands on the subject property must be identified.
 - (9) Generalized information on the number, height, size, and location of structures.
 - (10) A sample of the exterior features of proposed principal structures.
 - (11) The proposed phasing of the project.
 - (12) The proposed number, location, type and size of all signs. This must include a sample diagram of the sign design.
 - (13) **Dedication or reservation of right-of-way.**
 - a. Right-of-way dedication is required for all conditional zoning districts fronting along roadways funded for improvements in the current State Transportation Improvement Program (STIP) and must be indicated on any subdivision plat, site plan, or zoning authorization permit applications. When right-of-way is dedicated, density bonuses are provided as shown in Sec. 44-502 (b) and (c).
 - b. The building setback would include the required setback plus ½ the estimated right-of-way needed for future road improvements.
- (e) *Additional information.* When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the planning director, planning board and/or board of commissioners may request additional information in addition to that required above, as they deem necessary.
- (f) *Review.* In evaluating an application for the establishment of a conditional zoning district, it is appropriate for the planning board and board of commissioners to consider the following:
- (1) Adherence to the general policies and objectives of the adopted land use plan, particularly in relation to the proposed site and surrounding area;
 - (2) The potential impacts on the surrounding area, including but not limited to the absolute certainty the specific use(s), traffic, stormwater, land values

and the compatibility of land use activities. Higher standards and conditions may be proposed for the development, and other community benefits, mutually agreed upon by the developer and County;

- (3) Addresses spot zoning;
 - a. Size of tract;
 - b. Compatibility with adopted plan;
 - c. Public benefits and detriments of proposed rezoning; and
 - d. The relationship between proposed use and current use of adjacent properties; and
 - (4) The reasonableness of the proposed rezoning, defined as:
 - a. Supporting the general policies, goals and objectives of the adopted comprehensive land use plan and small area plans;
 - b. Promoting the harmony and compatibility of the proposed conditional zoning district in relationship to the surrounding land uses;
 - c. Serving the best interest of the community;
 - d. Promoting economic development; and
 - e. Encouraging different uses in close proximity to lessen traffic and environmental concerns.
 - (5) Consistency statement. The planning board and the ~~Board~~ board of commissioners must make written findings that either:
 - a. The proposed zoning is consistent with the adopted plan(s) based upon criteria in Section 44-~~327328~~(f)(1) – (4) above; or
 - b. The proposed zoning is not consistent with the adopted plan(s), but is reasonable in light of circumstances generally defined under Section 44-~~327328~~(f)(1) – (4) above, with the exception of (f)(3)b. above.
- (g) *Conditions of approval of petition.* In approving a petition for the reclassification of a piece of property to a conditional zoning district, the planning board may recommend and the board of commissioners may of its own accord require that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions shall be limited to those that address the conformance of the development plan and use of the site to county ordinances and an officially adopted comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. For example, conditions that relate to the relationship of the proposed uses to the surrounding property, proposed support facilities, e.g., parking areas, pedestrian circulation systems), screening and landscaping, timing of development, street and right-of-way improvements, water and sewer improvements, provisions of open space, and other matters that the planning board and board of commissioners may find appropriate or the petitioner may propose. Such conditions of approval

may include, but are not limited to, the dedication of right-of-way or easements for streets and/or utilities to serve the development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the board of commissioners. Only those conditions mutually agreed upon by board of commissioners and the applicant, with input from the public, may be incorporated into the conditional zoning district.

- (h) *Effect of approval.* If a petition for conditional zoning district is approved the development and use of the property shall be governed by:
 - (1) The standards and regulations applicable to the district's zoning classification;
 - (2) The approved site plan for the district;
 - (3) Any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district; and
 - (4) All general and additional rules, regulations and conditions are binding on the property as an amendment to these regulations and the Zoning Map.
- (i) *Zoning map designation.* Following approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation followed by the letters "CD."
- (j) *Determination – Major change requiring an amendment.* Before making a determination as to whether a proposed action is an amendment based upon a major change, the planning director shall review the record of the proceedings on the original application for the approval of the conditional zoning district.
 - (1) An amendment comprising a major change requires approval by the board of commissioners and shall be handled as a new application. A change in a specific or general use category shall constitute a new application.
 - (2) The planning director ~~shall~~ will use the following criteria in determining whether a proposed change is an amendment constituting a major change to the approved conditional zoning district:
 - a. An increase in intensity of use which means an increase in:
 - 1. Usable floor area by more than 10%.
 - 2. Number of dwelling or lodging units by over 10%; or
 - 3. Outside land area devoted to sales, displays, or demonstrations.
 - b. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of commissioners.
 - c. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved plan.

- d. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screening.
 - e. Substantial changes in pedestrian or vehicular access or circulation.
- (3) If the planning director determines that the proposed action is an amendment, he shall require the applicant to file a request for approval of the amendment, which shall be submitted to the planning board and board of commissioners. The planning board shall hold a public hearing and make a recommendation to the board of commissioners who shall hold a public hearing and approve or disapprove the amendment.
- (k) *Minor changes and modifications.* The planning director shall have the delegated authority to approve minor changes in the conditional zoning district provided they are in harmony with the action of the board of commissioners. A minor change shall mean any change(s) that:
- (1) Any change in location or any increase in the size or number of signs;=
 - (2) Increases the intensity of nonresidential development by no more than 10% or 1,000 square feet, whichever is less;
 - (3) Any change(s) that increases the density of residential development by no more than 10%;
 - (4) Any time an applicant agrees to impose standards that are more stringent than those previously approved by the board of commissioners; or
 - (5) All other changes or modifications to the conditional zoning district shall be treated the same as amendments to these regulations or the zoning map and shall be processed in accordance with Section 44-~~326~~-327 of this Chapter.
- (l) *Review of approval of a conditional zoning district.* It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than 5 years after the date of approval of the petition, the planning board may examine the progress made toward developing the property in accordance with the approval petition and any conditions attached to the approval. If the planning board determines that progress has not been made in accordance with the approved petition and conditions, the planning board shall forward to the board of commissioners a report which may recommend that the property be classified to another zoning district in accordance with the procedure set out in Section 44-~~326~~327, as the same may from time to time be amended.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-329. Quasi-judicial procedures. (moved from Sec. 44-304(d))

(a)(4) *Applicability.* This Section applies to any application for a special use permit, variance, expansions or changes to nonconformities, appeal, or any other quasi-judicial action heard by the board of adjustment.

(b)(a) *Procedure for filing applications and appeals; priority for agenda.* The following guidelines/procedures shall be followed in the preparation of the agenda for a board of adjustment meeting in respect to the cases that shall be heard:

- (1) A matter for the board of adjustment must be filed and accepted 45 days before the scheduled board of adjustment meeting, counting the day of the board of adjustment meeting as the 45th day.
- (2) The application, and any supporting documentation required to be filed for a matter before the board of adjustment, and any required materials, must be complete and any applicable filing fee must be paid at the time the application is submitted or said the application shall not be accepted. When a complete application is filed, the date and time of filing shall be written on the face of the application. ~~The date and time of filing shall not be marked on the application unless the application is complete and the fee has been paid.~~
- (3) The general policy ~~shall be~~ is to schedule cases on a first come, first serve basis, in accordance with the date and time the application was properly filed.
- (4) The ~~normal~~ agenda for the board of adjustment ~~shall~~ will not exceed 5 cases unless the planning director determines that some cases may be expeditiously disposed of.
- (5) The planning director ~~shall have~~ has the discretion to not ~~to~~ schedule any matter for the next regularly scheduled meeting of the board of adjustment if the planning director determines that ~~he needs~~ more time is needed to investigate and ~~to~~ prepare a review of that particular matter in order to make an appropriate presentation before the board of adjustment.
- (6) Matters that cannot be scheduled for the forthcoming meeting of the board of adjustment ~~shall~~ will automatically be scheduled on a first come, first serve basis for the next scheduled meeting of the board of adjustment.
- (7) If the board of adjustment hears any matter, the board may continue that matter for the consideration of additional or rebuttal evidence that could not have reasonably been presented at the initial meeting.

(c)(b) *Hearings.*

- (1) *Mailed notice.* The County may rely upon its tax listing to determine owners of property entitled to mailed notice of the time and place of the hearing before the board of adjustment. Notices shall be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing ~~given~~ to the following:

- a. The applicant person or entity whose application, request, or appeal is the subject of the hearing;
 - b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing application;
 - c. The owners of property abutting adjacent to and directly across the street from and immediately in the rear of the property that is the subject of the hearing application; and
 - d. Anyone directly named in the application or entitled to receive notice as provided in this Chapter.
- (2) *Posted notice.* A notice of the hearing shall be prominently posted on the site that is the subject of the hearing or on an adjacent street or highway right of way at least 10 days, but not more than 25 days, prior to the date of the hearing.
- (3) *Quasi-judicial.* The board of adjustment shall follow quasi-judicial procedures when deciding applications and requests for variances, special use permits, extensions of nonconforming uses and appeals.
- (4)(3) *Order of business.* Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall will be:
- a. All parties desiring to speak about an issue must sign in with the recording secretary to the board of adjustment before the meeting is called. The chair of the board or any member acting as chair and the secretary are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.
 - b. The applicant, opposition, and County may present evidence and arguments, and call witnesses. Only factual evidence is permitted. Hearsay evidence shall not be considered. Each party Applicants shall will be limited to one hour for presentation, including cross-examination of opposing witnesses.
 - c. ~~The opposition may present evidence, arguments and call witnesses. Only factual evidence is permitted. Hearsay evidence shall will not be considered. The opposition shall will be limited to one hour for presentation, including cross-examination of opposing witnesses.~~
 - d. If there are facts within the special knowledge of a member of the board of adjustment or acquired by the member's personal inspection of the premises, they may be properly considered. However, they must be revealed at the public hearing and made a part of the record so that the applicant will have an opportunity to

meet them by evidence or argument, and the reviewing board of adjustment may judge their competency and materiality.

- e. Members of the board of adjustment may ask questions of either the applicant or his representative, any of the witnesses, the opposition, County representatives, or the recording secretary.
- f. Following any board discussion, the chairperson shall ask for a motion to grant the request. If the motion is seconded, a vote shall be called.

(5)(2) *Time limit.* No meeting may continue past 11:00 p.m. without a majority vote of the board members to suspend this rule.

(6) *Rulemaking authority.* The board of adjustment may adopt general rules for quasi-judicial-public hearings.

(7) *Conduct of hearing.* The hearing shall will be conducted in accordance with the procedures set forth in NCGS 153A-345 160A-388.

(d)(e) *Subsequent hearings.* Should a matter fail to receive a favorable vote of approval, any applicant must wait one year before the matter may be submitted again for the board's consideration.

(e)(d) *Application withdrawal.* Should an application be withdrawn after the first notice of the public hearing, the application shall be considered to be denied, and any applicant must wait one year before the matter may be submitted again for the board's consideration.

Sec. 44-232330. Decisions by the board of adjustment. (moved from Sec. 44-232)

(a) *Scope of action.* In making quasi-judicial decisions, the board of adjustment must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and may exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use regulations to individual situations, such as variances, special use permits, and appeals of administrative determinations. These decisions involve two key elements:

- (1)a. The finding of facts regarding the specific proposal, and
- (2)b. The exercise of discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence.

- (b) *Decision.* The term decision includes any final and binding order, requirement, or determination and shall be based upon competent, material, and substantial evidence in the record.
- (c)(a) *Time.* Decisions of the board of adjustment on any matter shall generally be made at the conclusion of the hearing, or within a reasonable time 30 days from the conclusion of the hearing. A quasi-judicial decision is effective upon filing the written decision with the secretary.
- (d)(b) *Form and appeal.* ~~If an aggrieved party has made a written request for a decision, NCGS 153A-345 shall apply. If an aggrieved party has not made a written request for a decision as provided for in NCGS 153A-345, the aggrieved party may be informed of the decision by telephone, by regular mail, or in any other way that enables the aggrieved party to be informed of the decision.~~ Decisions 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 signed by the chair or other duly authorized member of the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and any person who has submitted a written request for a copy. The planning director shall certify that proper notice has been made.
- (e)(e) *Minutes.* The final decision of the board of adjustment on each matter shall be shown in the record of the case and recorded in the minutes. Such records shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the board of adjustment. Where a variance is granted, the record shall state in detail any requirements of NCGS 153A-345.1. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a variance or an exception.

Sec. 44-233331. Appeals. [\(moved from Sec. 44-233\)](#)

- (a) *Applicability.* The board of adjustment shall hear and decide all appeals from and review any zoning order, requirement, decision, or determination made by the planning director. Each decision of the board of adjustment is subject to review by the superior court by proceedings in the nature of certiorari.
- (b)(a) *Approval criteria for an appeal of a decision of the planning director Planning director – decision.*
 - (1) The appellant ~~aggrieved applicant~~ must submit an appeal, in writing, to the board of adjustment within 30 days following the date of the decision. The written appeal must state the grounds for the appeal and be filed with the recording secretary of the board of adjustment. If a written appeal is not made within the 30-day period, the matter shall be deemed to be closed, and the decision of the planning director shall be final. See Sec. 44-318(d) for administrative decisions.

- (2) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the County would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing.
- (3) An appeal to the board of adjustment from a notice of violation, enforcement order, decision or determination by the planning director stays all enforcement proceedings in furtherance of the decision or determination appealed from, except as provided in Subsection (4), below.
- (4) An appeal to the board of adjustment of a determination or decision of the planning director shall not stay enforcement proceedings in furtherance of the decision or determination appealed from, if the planning director certifies either that:
 - a. Because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or
 - b. The situation appealed from is transitory in nature, and, therefore, an appeal would seriously interfere with enforcement of this chapter.
 - c. In such case, enforcement proceedings shall not be stayed except by an order granted by a court.

~~In each instance, the planning director shall place in writing the facts to support the conclusion.~~

- (5) If enforcement proceedings are not stayed, the appellant may file with the planning director a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.
- (6) The planning director will provide copies of all documents and exhibits constituting the record upon which the action appealed from is taken to the board, the applicant, and the landowner if the appellant is not the landowner.
- (7e) In considering appeals, ~~the~~ the board of adjustment may hear both those based upon an allegedly improper or erroneous interpretation of this Chapter and those based upon alleged hardship resulting from strict enforcement of this Chapter.
- (81) The board may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination of the planning director from which an appeal is taken and make the correct order, requirement, decision, or determination. For that purpose, the board has the same authority as the planning director from which the appeal is taken.
- (92) The board may rule in favor of the appellant if it finds the order, requirement, decision, or determination from which an appeal is taken:

- a. Was the result of an incorrect or unlawful interpretation of this Chapter; or
 - b. Would result in a taking of private property, or otherwise result in a deprivation of constitutional rights.
- (103) The board's decision shall provide the minimum amount of relief necessary in order to comply with the requirements of Subsection (9) above.
- (11) 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 the final decision of permit applications or building permits affected by the issue being appealed.
- (124) The planning director shall not amend the board of adjustment's decision.
- (13) *Recording.* A copy of the board's decision shall be maintained by the planning director.
- (c)(b) ~~Appeal of Board of adjustment - decisions.~~ Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the planning office, or after a written copy thereof is delivered to every appellant who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. ~~The decision of the board may be delivered to the appellant either by personal service or by registered mail or certified mail return receipt requested.~~

Sec. 44-~~328~~332. Special use permits.

- (a) *Applicability.* This section applies to any use that is designated as a special use in Table 44-403-1.
- (b) *Application.* The application for a special use permit, along with a detailed site plan, must be submitted to the planning director and must include the information required by the procedures manual.
- (c) *Completeness review.* ~~The applicant must comply with~~ See Sec. 44-~~303~~303.
- (d) ~~Public~~ **Quasi-judicial** hearing required. A **public quasi-judicial** hearing shall be required which follows the quasi-judicial process in Sec. 44-~~304~~329.
- (e) *Decision.*
 - (1) ~~Within 45 days of the receipt of an application,~~ The planning director shall submit ~~within 45 days~~ a report to the board of adjustment.

(2) After hearing the planning director's report ~~and at the~~ completion of the ~~public-quasi-judicial~~ hearing, the board of adjustment shall approve, approve with conditions, or disapprove the application. In every case, the board of adjustment shall include a summary of the evidence supporting the action taken on the application.

(f) *Approval criteria.*

(1) Before any application for a special use is approved, the board of adjustment shall make written findings certifying compliance with the specific standards governing each individual special use and that the general standards contained in this section are met. The board shall make appropriate findings, supported by evidence in its record, on each general and specific standard.

(2) General standards.

a. The following general standards must be met for approval of special uses pursuant to this Chapter:

1. The use will not materially endanger the public health, safety, and general welfare, if located where proposed and developed and operated according to the application;:-
2. The use, which is listed as a special use in the district in which it is proposed to be located, complies with all required regulations and standards of this Chapter, unless greater or different regulations are contained in the individual standards for that special use;:-
3. The use will not substantially injure the value of adjoining or abutting property; and
4. The use is consistent with any adopted area plans that encompass the property subject to the application.

b. The board of adjustment shall make these general findings based upon substantial evidence contained in its proceedings. The board may refer to staff's report to aid in its deliberations. The applicant has the responsibility of presenting evidence in the form of testimony, exhibits, documents, models, plans, and the like to support the application for approval of a special use.

(3) Imposed conditions.

- a. The board of adjustment may impose such reasonable conditions, upon approval of a special use granted pursuant to this Chapter, as will afford protection of the public safety and welfare and substantial justice done.
- b. Such conditions shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.

(g) *Expiration.* Special use permits are valid for 5 years from the date the board of adjustment approved the use and shall automatically expire at that time unless the property is being used in conformance with all requirements of the permit.

~~(h) If the application is withdrawn by the applicant prior to the advertising of the board of adjustment's public hearing or the request is denied, the planning director shall not accept another application for the same, or substantially the same amendment affecting the same property until the expiration of a 12-month period, from the date of denial or withdrawal, as relevant.~~

(ih) *Amendments and minor changes.* Before making a determination as to whether a proposed action is an amendment or a minor change, the planning director ~~shall~~ **will** review the record of the proceedings on the original application for the approval of the special use.

(1) An amendment requires approval by the board of adjustment and shall be handled as a new application. A change in use shall constitute a new application.

(2) The planning director may approve minor changes in **an** approved special uses **permit**, as long as they are in harmony with the action of the board of adjustment. The planning director ~~shall~~ **will** use the following criteria in determining whether a proposed change is an amendment to the approved special use permit:

a. Any increase in intensity of use which means an increase in:

1. Usable floor area;
2. Number of dwelling or lodging units; or
3. Outside land area devoted to sales, displays, or demonstrations.

b. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of adjustment.

c. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved detailed site plan.

d. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screens.

e. Substantial changes in pedestrian or vehicular access or circulation.

(3) If the planning director determines that the proposed action is an amendment based on the criteria in Subsection (2) above, ~~the~~ **shall applicant shall be** required ~~the applicant~~ to file a request for an amendment to the special use permit, which shall be submitted to the board of

adjustment. The board of adjustment shall hold a ~~public-quasi-judicial~~ hearing and approve or disapprove the amendment.

- (ji) *Notice of disposition.* The planning director shall send notice of the disposition of the application to the applicant by personal ~~delivery, electronic mail, service~~ or by ~~first-class registered mail or certified mail return receipt requested~~. A copy of the decision must be maintained in the office of the planning director.
- (kj) *Scope of approval.*
 - (1) After the approval of a special use detailed site plan, a zoning authorization permit may be issued. A zoning authorization permit shall not be issued if the development activities do not conform to the approved detailed site plan.
 - (2) The site plan is binding on the applicant and any successors in title, unless it expires or is amended as provided in this Section.

Sec. 44-~~329~~333. Variances.

- (a) *Applicability.* This Section applies to any application to vary any dimensional requirements or modify any of the provisions of this Chapter but does not include a use variance.
- (b) *Application.* The application for a variance, along with a plot plan, sealed by a licensed professional, must be submitted to the planning director and must include information required by the procedures manual.
- (c) *Completeness review.* ~~The applicant must comply with~~ See Sec. 44-303.
- (d) *Public-Quasi-judicial hearing required.* A ~~public-quasi-judicial~~ hearing shall be required which follows the quasi-judicial process in Sec. 44-~~304~~329.
- (e) *Decision.*
 - (1) ~~Within 45 days of receipt of an application, the~~ planning director shall submit ~~within 45 days of receipt of an application,~~ a report to the board of adjustment.
 - (2) After hearing the planning director's report and completion of the ~~public quasi-judicial~~ hearing, the board of adjustment shall approve, approve with conditions, or disapprove the application. In every case, the board of adjustment shall include a summary of the evidence supporting the action taken on the application.
 - (3) **The concurring vote of four-fifths of the board is necessary to grant a variance.**
- (f) *Approval criteria.*
 - (1) The board of adjustment may approve a variance only in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:

- a. ~~The alleged hardships or practical difficulties are unique and singular as they relate to the property of the person requesting the variance and are not those suffered in common with other property similarly situated.~~ Unnecessary hardship would result from the strict application of this ordinance. It will not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. ~~The alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with this Chapter and include substantially more than mere inconvenience and inability to attain a higher financial return.~~ The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. ~~The variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.~~ 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 variance is in harmony with, and serves the general intent and purpose of this chapter and the adopted land use plan.~~ 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.
- e. ~~Allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this chapter and the individual hardships that will be suffered by a failure of the board of adjustment to grant a variance.~~

(2) All of these findings of fact shall be made in the indicated order by the board of adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all ~~5~~ four categories. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the board.

(3) ~~The board of adjustment may impose reasonable conditions upon the granting of any variance to ensure that the public's safety and welfare are secured and substantial justice done. A violation of any conditions shall be a violation of this Chapter.~~ No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance.

~~(4) The decision shall not permit a use that is not allowed in the applicable zoning district.~~

(g) *Expiration.* A variance does not expire and runs with the land.

~~(h) If the application is withdrawn by the applicant prior to the advertising of the board of adjustment's public hearing or the request is denied, the planning director shall not accept another application for the same or substantially the same amendment variance affecting the same property until the expiration of a 12-month period. This time period starts with the date of denial or withdrawal, as relevant.~~

(ih) *Change to variance.* A change to an approved variance requires a new variance application.

(ji) *Zoning authorization permit.* After approval of a variance, the applicant must apply for a zoning authorization permit before undertaking any development authorized by the variance.

(kj) *Notice of disposition.* The planning director shall give notice of the disposition of the application to the applicant by personal ~~delivery~~ *service*, *electronic mail* or by ~~first-class~~ *registered* mail ~~or certified mail return receipt requested~~. The planning director shall file a copy of the decision in the office of the planning director.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-~~330-334~~ - 340.

Reserved.

Ordinance No. 2014-

BE IT ORDAINED that the Catawba County Code of Ordinances, Unified Development Ordinance, is hereby amended to read as follows:

ARTICLE II. ADMINISTRATIVE AGENCIES.

Division 3. Board of Adjustment

*State law references: County board of adjustment, G.S. 153A-345.1.

Sec. 44-224. Established.

There is established the Catawba County Board of Adjustment.

Sec. 44-225. Composition.

The board of adjustment shall be composed of 5 members, and up to 3 alternates, selected to represent various areas of the County. Representatives should be selected to adequately represent the small area planning areas when possible.

Sec. 44-226. Appointment.

The board of commissioners shall appoint the members of the board of adjustment.

Sec. 44-227. Terms.

Terms on the board of adjustment shall be for a 3-year period. A board member shall be eligible for reappointment to the board. Each member shall serve until his successor is duly appointed.

Sec. 44-228. Filling vacancies.

If a vacancy occurs in the membership of the board of adjustment, other than by expiration of a term, the vacancy shall be filled by appointment for the unexpired term.

Sec. 44-229. Compensation.

The members of the board of adjustment shall receive compensation for their services as may be fixed from time to time by the board of commissioners.

Sec. 44-230. Powers.

- (a) Pursuant to North Carolina law, the board of adjustment has the power to:

- (1) Hear and decide appeals from and review any order, requirement, decision, or determination made by the planning director in the performance of his duties as the order, requirement, decision, or determination relates to this Chapter.
 - (2) Hear and decide applications for the approval of those special uses requiring board approval.
 - (3) Hear and decide applications for variances. Nothing in this Chapter shall be construed to authorize the board to permit a use in a district where that use is neither a permitted use nor a permissible special use.
 - (4) Hear and decide any other matters as may be required by this Chapter.
 - (5) Make interpretations of the meaning and intent of this Chapter
- (b) Except for a variance, a simple majority vote of the board decides any quasi-judicial matter or conducting routine business, such as electing a chair or determining time of next meeting.

Sec. 44-231 - 240. Reserved.

ARTICLE III. PROCEDURES.

Division 1. Generally

Purpose: This article establishes the application, notice, hearing and review procedures for all types of land use actions, ranging from rezoning to zoning authorization permits.

Sec. 44-300. General procedural requirements.

- (a) The procedures for all applications have the following common elements:
 - (1) Submittal of a complete application, which includes the required fee payment as well as all necessary information;
 - (2) Review of the completed application by appropriate staff and boards;
 - (3) Action to approve, approve with conditions, or deny the application; and
 - (4) If approved, issuance of a permit.
 - (5) Applications, plan requirements, plat certificates for all residential and nonresidential development are located in the Procedures Manual. Development types, open space illustrations, connectivity and circulation, site and building design along with photographs and graphics are located in the Design Manual. These manuals are separate documents, which supplements the Unified Development Ordinance. The manuals may be

amended from time to time by the Planning Director as an administrative function where the modifications or amendments are not inconsistent or in conflict with the intent of the UDO. The Design Manual is not part of the regulatory requirements of the UDO.

- (b) *Pre-application conference.* The applicant should meet with the planning director to discuss the nature of the proposed application, application compatibility with current adopted plans and policy, application submittal requirements, the procedure for action, and the standards for evaluation of the application. While not mandatory, this process can be extremely helpful to the applicant in expediting the application process.

Sec. 44-301. Concept site plan.

- (a) A concept site plan must be submitted to the applicable board for a conditional zoning district or special district rezoning in accordance and in conformance with the procedures manual.
- (b) The concept site plan must depict internal relationships between or among uses and activities proposed and their supporting systems and facilities, and relation to surrounding uses, activities, systems, and facilities.
- (c) Concept site plans must include data reasonably necessary for the board of commissioners to determine whether the proposed development meets the general requirements, limitations, and intent for a conditional zoning or special district request.
- (d) Upon approval of the concept site plan by the board of commissioners, a detailed site plan must be submitted in conformance with Sec. 44-317 and the procedures manual for a zoning authorization permit to be administratively approved.
- (e) Changes in approved concept site plans.
 - (1) The planning director may approve minor changes to concept site plans, as long as they are in harmony with the action of the board of commissioners and provided that:
 - a. All applicable regulations in effect at the time of the establishment of the district are met; or
 - b. All applicable regulations currently in effect are met.Minor changes are those changes that do not meet the criteria established in Subsection (2) below for an amendment.
 - (2) An amendment to the concept site plan requires approval by the board of commissioners and shall be handled as a new application.
 - a. The planning director will use the following criteria in determining whether a proposed change is an amendment. If any of the following criteria are met, the change constitutes an amendment:
 - 1. Any increase in intensity of use which means an increase in:

- i. Usable floor area by more than 10%;
 - ii. Number of dwelling or lodging units by more than 10%; or
 - iii. Outside land area devoted to sales, displays, or demonstrations;
- 2. Any change in parking areas resulting in an increase or reduction of more than 10% in the number of spaces approved by the board of commissioners;
- 3. Structural alterations affecting the basic size, form, style, and the like of the building, as shown on the approved concept site plan;
- 4. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screens; or
- 5. Substantial changes in pedestrian or vehicular access or circulation.
- b. If the planning director determines that the proposed action is an amendment, the applicant shall be required to file a request for approval of the amendment, which shall follow the procedures for the original request.

Sec. 44-302. Phasing.

A development or subdivision may be constructed in phases, provided that:

- (a) A phasing plan shall be submitted showing any proposed phases of development; and
- (b) The degree and extent of road construction, water supply, sewage disposal, landscaping, parking, stormwater management, erosion and sedimentation control and other required improvements in the current phase, and previously approved phases, must be sufficient to serve or handle all development within the current phase.
- (c) In lieu of providing the improvements noted in Subsection (b) above, the applicant may post a performance guarantee as provided for in Sec. 44-361.
- (d) For subdivisions:
 - (1) A subdivision phase must contain at least 3 lots; and
 - (2) The amount of any required open space on a per-lot basis in a particular phase, including the current or any previously approved phase, is at least proportional to the open space requirements of the whole development. The approving authority has the right to grant a waiver on the proportional open space provided based on a phasing schedule.
- (e) Any phasing extensions or expirations are subject to requirements of Sec. 44-359.

Sec. 44-303. Completeness review.

- (a) *Generally.* The planning director shall review any application required by this Chapter for completeness. An application is not deemed complete unless all the information required by this Chapter and the procedures manual is included and all filing fees have been paid. Current application materials are available in the planning department.
- (b) *Time periods.* Whenever this Article establishes a time period for processing an application, such time period shall not commence until the planning director has reviewed such application for completeness in order to determine whether the application has been properly submitted and the applicant has corrected all deficiencies in the application. Review for completeness is solely for the purpose of determining whether preliminary information required for submission with the application is sufficient to allow further processing, and shall not constitute a decision as to whether the application complies with the provisions of this Chapter.
- (c) *Scheduling of review board consideration.*
 - (1) A complete application must be submitted a minimum of 45 days prior to the regularly scheduled meeting of the applicable board where the request is considered.
 - (2) If the application is determined not to be complete, the planning director will specify those parts of the application that are incomplete and indicate the manner in which they can be made complete. The applicant will be furnished with a list and thorough description of the specific information needed to submit a complete application.
 - (3) Upon receipt of any missing materials or required fee, a new 45-day period may begin.
- (d) *Effect of completeness determination.* The applicant must submit all information as specified in this Chapter and in the procedures manual. The department or the reviewing agency may, in the course of processing the application, request the applicant to clarify or correct the information required for the application.
- (e) *Appeal of planning director's decision regarding completeness review.*
 - (1) For purposes of this Section, the boards referenced below are referred to as the "Appellate Board."
 - (2) All decisions of the planning director pertaining to completeness review may be appealed as follows:
 - a. The board of adjustment will address completeness appeals of: detailed site plans, zoning authorization permits, zoning compliance certificates, zoning amendments, conditional districts, special use permits, variances and nonconformities.
 - b. The subdivision review board will address completeness appeals on subdivision sketch and preliminary plat applications.

- (3) If the application, together with the required materials and fees, is determined not to be complete, the applicant may appeal that decision in writing to the appellate board. The appellate board shall render a final written determination on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. If the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this Chapter.

Sec. 44-304. Fees.

No application, subject to this Chapter, shall be accepted unless it is accompanied by all required fees established by the board of commissioners. Before any zoning authorization permit or zoning compliance certificate can be issued covering building or other operations regulated by this Chapter, the applicant must pay a fee in an amount fixed by the board of commissioners.

Sec. 44-305 - 315. Reserved.

Division 2. Zoning Authorization Permit and Zoning Compliance Certificate

Sec. 44-316. Generally.

Purpose: This section prescribes procedures for zoning authorization permits and zoning compliance certificates.

Applicability. This section applies to any permitting action subsequent to approval of any detailed site plan as set forth in Sec. 44-317. Administrative permits and certificates include:

- (a) Zoning authorization permits, Sec. 44-318, and
- (b) Zoning compliance certificates, Sec. 44-319.

Sec. 44-317. Site plan – detailed.

Purpose: Detailed site plans are required for any non-residential development, residential duplexes or multi-family developments. Approval of a detailed site plan is a one-step process requiring approval by the planning director.

- (a) *Detailed site plan approval.* Detailed site plans shall be administratively approved for the following:
 - (1) Any non-residential, duplex or multi-family application for a zoning authorization permit.
 - (2) Any supplemental use regulations as required in Article VI and that is permitted by right in the applicable zoning district; or

- (3) A concept site plan previously approved by legislative or quasi-judicial board action.
- (b) *Procedures for administrative detailed site approval.*
- (1) The applicant is encouraged to attend an informal pre-application meeting with the planning director before filing a detailed site plan application.
 - (2) An application for detailed site plan approval must be filed with the planning director and must include information listed in the procedures manual.
 - (3) The applicant must comply with Sec. 44-303.
 - (4) On receipt of the detailed site plan application, the planning director shall review the application and notify the applicant in writing of any discrepancies between the detailed site plan and the requirements of this Chapter. The notification may include any suggested minor changes and conditions needed to achieve compliance with this Chapter without constituting an amendment requiring further board action. If necessary, the applicant must submit a revised detailed site plan to the planning director. The planning director shall approve, approve with conditions, or disapprove the detailed site plan.

Sec. 44-318. Zoning authorization permit.

- (a) *Applicability.*
- (1) A zoning authorization permit is required for all residential and nonresidential development regulated under this Chapter, including developments approved by legislative or quasi-judicial board action.
 - (2) No new development activity, change of use or extension of existing uses shall occur until all permits applicable to the proposed development are issued.
 - (3) A zoning authorization permit is required prior to beginning excavation, construction, moving, or alteration except ordinary repairs. Repairs or alterations within a flood plain are subject to a zoning authorization permit.
- (b) *Criteria.*
- (1) All zoning authorization permit applications must be made in writing to the planning director on forms provided for that purpose. The planning director will keep a record of all applications on file.
 - (2) Every application for a single-family residential zoning authorization permit for construction, moving, alteration, or change in type of use must include a plot plan drawn to scale, showing the following in sufficient detail to enable the planning director to ascertain whether the proposed work or use is in conformance with this Chapter:

- a. The actual shape, location, and dimensions of the lot, or if the lot is not a lot of record, sufficient data must be provided to detail that the lot is a legally approved lot; and
 - b. The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of any other buildings or other structures already on the lot; and
 - c. The existing and intended use of the lot and all structures upon it; and
 - d. Other information concerning the lot, adjoining lots, or other matters to determine compliance with this Chapter. The zoning authorization permit must include necessary information for the planning director to make a determination that the plans are in conformance with this Chapter.
- (3) When 2 or more lots are proposed for one zoning authorization permit, a recorded deed must be submitted combining the lots into one zoning lot.
 - (4) A parcel of land created by deed recorded after July 31, 1982 shall not be occupied until such lot has a subdivision plat approved by the County in accordance with the subdivision regulations that were in place at the date of the creation of the deeded lot.
 - (5) A legal lot created and recorded on or before March 18, 1996 must have an access easement which has been recorded in the office of the register of deeds. The easement must be a minimum of 15 feet in width and connect to a state-maintained road.
 - (6) A legal lot created and recorded after March 18, 1996 must have a minimum 45-foot right-of-way connecting to a state-maintained road. An exception to this requirement is lots created for an estate settlement or lots exempt from subdivision regulations in accordance with Sec. 44-341(a), which must have a minimum 15-foot access easement as required in Subsection (5) above.
 - (7) A zoning authorization permit will not be issued for a principal or accessory residential structure within a recorded platted easement, such as a common area or lake access lot. An exception is allowed for a boat dock, boathouse or community recreation facility in association with the intended purpose of the recorded easement.
 - (8) A zoning authorization permit must be issued before the issuance of environmental health and building permits.
- (c) *Issuance.*
- (1) The planning director shall consult with applicable agencies, including but not limited to, the County engineer, the County division of environmental health, NCDOT, and NCDENR.

(2) The planning director shall not issue a zoning authorization permit unless a determination is made that all plans, specifications, and the intended use of the structures and land subject to the application conform in all respects to this Chapter.

(d) *Administrative decisions.*

(1) Administrative decisions are routine, non-discretionary, zoning, or implementation matters carried out by the staff, including issuance of permits for permitted uses. The planning department is an administrative agent following the literal provisions of this Chapter.

(2) The planning department may engage in some fact finding, (for example, as in making an initial determination as to whether a nonconforming use was in existence at the time a zoning provision was adopted). This involves determining objective facts that do not involve an element of discretion.

(3) In contrast to quasi-judicial hearings, administrative decisions are made without a hearing at all, with the staff member reviewing an application to determine if it is complete and compliant with objective standards set forth in this Chapter.

(e) *Expiration.*

Zoning authorization permits expire 6 months from the date of issuance unless a valid building permit has been issued for the work authorized by the zoning authorization permit. When a building permit expires, the zoning authorization permit shall also automatically expire.

Sec. 44-319. Zoning compliance certificate.

No building, structure, or zoning lot for which a zoning authorization permit has been issued, with exception of a single-family dwelling, can be used or occupied until the planning director has issued a zoning compliance certificate. The planning director shall conduct a final inspection before issuing the zoning compliance certificate to determine that all required improvements have been installed in conformance with the detailed site plan and zoning authorization permit or a performance guarantee has been approved as detailed in Sec. 44-361. The certificate shall indicate that the building, structure or lot complies with the zoning authorization permit and any applicable sections of this Chapter. The issuance of a zoning compliance certificate does not waive any sections of this Chapter.

Sec. 44-320. Revocation of permit or approval.

(a) *Applicability.* Where a violation of this Chapter involves a failure to comply with approved plans or conditions to which the approval was made subject, the planning director may, upon notice to the applicant and other known parties of interest (including any holders of building permits affected), revoke the permit or approval.

- (b) *Grounds for revocation.* The following are grounds for revocation of a permit or approval:
- (1) The applicant intentionally supplies misleading information. The provision of misleading information is considered “intentional” when the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.
 - (2) The failure to comply with specific conditions of a development order or development permit.
 - (3) Any permit or approval mistakenly issued in violation of an applicable State or local law may be revoked.
- (c) *Decision and notice.* The planning director shall render a decision to revoke the permit or approval, to allow the applicant to retain the development permit or approval, or to reconsider the permit or approval. The planning director shall notify the holder of the permit or approval in the manner provided in NCGS 153A-362. If the department finds that any portion of this Chapter is being violated, it shall notify the responsible owner, tenant, or authorized agent (the initial written notice may be the final notice) requesting correction of the violation within 10 days of the date of receipt of the notice by one or more of the following methods:
- (1) *Certified mail.* When service of notice is refused or unclaimed notice may be sent by regular mail. Service will be deemed complete if the registered or certified mail is delivered, unclaimed or refused, and the regular mail is not returned by the post office within 10 days after the date mailed.
 - (2) *Personal service.* Such service will be accomplished by delivering the notice to the responsible owner, tenant, or their authorized agent at their dwelling house or usual place of abode or to their business address and leaving it with the responsible party or some person of suitable age and discretion abiding therein. An affidavit should be prepared showing how, when, where, and to whom the notice was served.
 - (3) *Publication.* Notice may be given by publication in a newspaper having general circulation in the County at least once and no later than the time at which personal service would be required under the provisions of this Article. This method of service may be used when the identities or whereabouts of any owners are unknown and cannot be ascertained in the exercise of reasonable diligence. An affidavit should be prepared to this effect and notice of the violation posted in a conspicuous place on the affected premises.
- (d) *Cumulative right.* The right to revoke a permit or approval, as provided in this Section, will be cumulative to any other remedy allowed by law.

Division 3. Zoning Procedures

Sec. 44-326. Public hearing procedures.

- (a) *Scope of action.* The reviewing board may take any action on the application that is consistent with the public notice given, including approval of the application, conditional approval or denial.
- (b) *Record of proceedings.* The board conducting the hearing will record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with NCGS Chapter 132 and the Catawba County Code.
- (c) *Notice provisions.*
 - (1) *Notice of public hearing.* Notice of public hearing will state the time and place of the public hearing, summarize the nature of the application and proposed development and invite interested parties to review the application at the planning department and submit oral or written comments on the application at the public hearing. Notice will be provided as follows:
 - a. *Published notice.* An advertisement will be placed by the planning director, in a local newspaper of general circulation once a week for two successive calendar weeks. The first notice will be published not less than 10 days nor more than 25 days before the date fixed for public hearing; and
 - b. *Mailed notice.* The planning director must notify by first class mail all property owners, as indicated by the latest County tax listing of property ownership, subject to the application and all property owners abutting that property subject to the application to the address listed for such owners in the County tax abstracts. This notice must be placed in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The planning director will certify to the board of commissioners the date the notices were mailed.
 - (2) *Major rezoning.*
 - a. For zoning map amendments directly affecting more than 50 properties owned by at least 50 different property owners, the County may elect to send mailed notices as provided in Subsection (c)(1)b. above or the County may, as an alternative, elect to publish notice of the hearing as described in Subsection (c)(1)a. above, provided that each advertisement must be at least ½ of a newspaper page in size;
 - b. The newspaper advertisement is effective notice only for those property owners who reside in the area of general circulation of the newspaper which publishes the notice; and

- c. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, must be provided with mailed notice.
- (3) *Posted notice.* A sign noticing the public hearing must be prominently posted by the planning director, on the property subject to the application at least 10 days but not more than 25 days prior to the public hearing at which the application will be reviewed. The sign must be posted on the property at a point visible from the nearest public street. In the case of multiple parcels, sufficient signage must be posted to provide reasonable notice to interested parties.
 - (4) *Minor defect in notice.* Minor defects in notice will not impair the notice or invalidate proceedings pursuant to the notice if a good faith attempt has been made to comply with the applicable notice requirements.
 - (5) *Administrative permits.* No notice will be required for an administrative permit issued pursuant to this Chapter unless otherwise provided for by law.
- (d) *Minor changes.*
 - (1) *Applicability.*
 - a. After notice or completion of a public hearing, the planning director may allow minor changes to the application that are consistent with Sec. 44-301(e)(2) subject to the following:
 - 1. Proposes fewer dwelling units, reduced floor area or decreases impervious surface than requested on the original application;
 - 2. Reduces the impact of the development; or
 - 3. Reduces the amount of land involved from that indicated in the notices of the hearing.
 - b. This Subsection does not apply if the regulations, specific standards, conditions for approval of the rezoning or findings of fact applicable to the specific permit prohibit minor changes.
 - (2) *Prohibition.* Unless the applicant re-initiates the application for the permit or development and a new notice is posted, the reviewing agency will not permit any of the following:
 - a. An apparent change of the overall character of the project;
 - b. A density or intensity increase of over 10%;
 - c. A use falling in a different general use category;
 - d. A larger land area than indicated in the original application; or
 - e. A greater variance than was indicated in the notice.

Sec. 44-327. Zoning map (rezoning) and text amendments.

Purpose: This section establishes procedures for processing zoning map amendments (rezonings) and zoning text amendments.

- (a) *Applicability.* This section applies to any application to:
 - (1) Amend the Official Zoning Map (a "rezoning"), or
 - (2) Change the regulations of this Chapter (a "text amendment").
- (b) *Initiation.* A zoning map or text amendment may be initiated by the following:
 - (1) The board of commissioners;
 - (2) The planning board;
 - (3) An application by a subject property owner; or
 - (4) The planning staff.
- (c) *Application.* The procedure for filing for an amendment to this Chapter is as follows:
 - (1) *Filing of applications.* All applications for amendments to this Chapter must be in writing, on a form prescribed by the County, signed, and filed with the planning director.
 - (2) *Contents of application.* All applicants for amendments to this Chapter, must complete an application, meet the concept site plan requirements as contained in the procedures manual, when applicable, and contain at least the following:
 - a. If the proposed amendment would require a change in the official zoning atlas to change only a portion of an existing parcel, a fully dimensional map showing the portion of the parcel covered by the proposed amendment;
 - b. If applicable, a detailed statement of any alleged error in this Chapter which would be corrected by the proposed amendment and a detailed explanation of the manner the proposed amendment will correct the alleged error; and
 - c. A detailed statement of all other circumstances, factors and reasons including a statement as to the reasonableness of the proposed rezoning, which the applicant offers in support of the proposed amendment, such as:
 - 1. Consistency with the comprehensive plan and other County adopted plans;
 - 2. Compatibility of the proposed rezoning with the property and surrounding area; and

3. The benefits and detriments of the proposed rezoning for the landowner, the immediate neighbors and the surrounding community.
- d. If applicable, a legal description of such land.
- (d) *Completeness review.* The applicant must comply with Sec. 44-303.
 - (e) *Public hearing required.* A public hearing shall be required in conformance with Sec. 44-326.
 - (f) *Decision.*
 - (1) *Planning director recommendation.* The planning director, upon receipt of the application to amend this Chapter or the zoning map, shall examine it for completeness review purposes and accept the application. The planning director shall then prepare and submit a written report with a recommendation to the planning board.
 - (2) *Planning board recommendation.*
 - a. The planning board shall receive the report from the planning director and conduct a public hearing on the proposed request.
 - b. After hearing presentations, the planning board must review the amendment application, staff report, and additional information and comments submitted or presented to the planning board, and must recommend to the board of commissioners approval or denial of the application in writing.
 - c. In deciding whether to recommend approval or denial of the application, the planning board shall consider whether the proposed amendment is consistent with the comprehensive plan and other County adopted plans and otherwise advances the public health, safety and general welfare.
 - (3) *Board of commissioners.*
 - a. The board of commissioners shall not enact the proposed amendment until 30 days after the referral to the planning board or until the planning board makes its recommendation report, whichever first occurs.
 - b.
 - c. Prior to the public hearing, the board of commissioners shall receive a report from the planning director including an overview of public comments received at the planning board hearing along with the recommendation of the planning director and planning board. The board of commissioners shall conduct a public hearing on the proposed request. The board of commissioners shall then take one of the following actions:
 1. Approve the application;

2. Approve a modified version of the application; or
 3. Deny the application.
- d. Before completing review and making its final decision, the board of commissioners may postpone its discussion and/or action to a later meeting or refer the application back to the planning board for further consideration. In deciding whether to approve or deny an amendment application, the board of commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board of commissioners considers the action taken to be reasonable and in the public interest. The board of commissioners may adopt the statement furnished by staff, applicant, other agencies or may formulate its own statement.
- (g) *Approval criteria.* The board of commissioners shall, at a minimum, consider the following factors for:
- (1) Map amendment (rezoning):
 - a. The size of the tract in question;
 - b. Whether the proposal conforms with, and furthers the goals of, any applicable adopted comprehensive plans or other adopted plans, and the goals, objectives, and policies of this Chapter;
 - c. Any change of character in the area due to installation of public facilities, other zoning changes, new growth trends, deterioration, and development;
 - d. The zoning districts and existing land uses of the surrounding properties, including a determination of whether the rezoning is compatible with the adjacent neighborhood, especially residential neighborhood stability and character; and
 - e. A detailed statement of any alleged error on the official zoning maps which would be corrected by the proposed map amendment.
 - (2) Text amendment:
 - a. A detailed statement of any error in this Chapter which would be corrected by the proposed amendment and a detailed explanation of the manner the proposed amendment will correct the alleged error; or
 - b. Changing conditions or trends; or
 - c. Whether the proposal conforms with, and furthers the goals of, any applicable adopted plans, and the goals, objectives, and policies of this Chapter.
- (h) *Effect of withdrawals or denials on applications.*
- (1) An applicant may withdraw the application at any time by written notice to the planning director subject to the following conditions:

- a. Planning board: Any application withdrawn, prior to or after the planning board's action on the public hearing, is not subject to a 12-month waiting period for re-submittal.
 - b. Board of commissioners: Any application withdrawn after the first advertisement of the board of commissioners' public hearing, or after a denial of the request may not be resubmitted within 12 months of the date of the board of commissioners' action on the public hearing, unless substantially changed.
- (2) A withdrawn or denied application must follow the procedures for a new application.
- (i) *Scope of approval.* A zoning text amendment or a rezoning does not authorize the development of land. The applicant or landowner must still secure all required zoning authorization permits and subdivision approvals after a text amendment or rezoning is approved.
 - (j) *Codification.* A zoning text amendment shall be codified as provided for in the Catawba County Code. A change resulting from a map amendment shall be depicted on the official zoning map.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-328. Conditional zoning district.

- (a) *Intent.* The conditional zoning districts included in this Section allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.
- (b) *Applicability.* Conditional zoning districts may be appropriate when one or more of the following factors, separate or in combination, are proposed:
 - (1) The tract size meets or exceeds the minimum acreage for the corresponding zoning district;
 - (2) The tract is within a designated non-residential node, corridor, village or commercial center as identified in the small area plans, as amended from time-to-time;

- (3) The aggregate square footage of the non-residential building(s) on a single zoning lot is more than 50,000 square feet gross leasable area regardless of the number of uses within the building or structures planned; or
 - (4) Planned developments.
- (c) *Application.* Except as provided in this Chapter, petitions to establish a conditional zoning district must be submitted and will be processed in accordance with the provisions in this Chapter. Petitioning for a conditional zoning district is a voluntary procedure and can be initiated only by the owner(s) of the property(ies) in question or by his/her authorized agent. Applications shall be submitted on a form provided by Catawba County.
- (d) *Contents of application.* All applications must include a concept site plan, drawn to scale, and supporting text that, as approved, will become part of the ordinance amendment. The concept site plan must include any supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that in addition to all predetermined ordinance requirements, will govern the development and use of the property. The applicant shall, at a minimum, include each of the items listed below, in addition to the items required in Section 44-327 as the same may from time to time be amended, and any other applicable sections of this Chapter. The concept site plan, including all additional information shown on it, and the following checklist shall constitute part of the petition for rezoning to a conditional zoning district:
- (1) A vicinity map showing the property's general location in relation to major streets, railroads, waterways.
 - (2) A drawing of the parcel, including the parcel identification number.
 - (3) All existing easement, reservations, and rights-of-way on the property(ies) in question.
 - (4) Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps for Catawba County and delineation of watershed boundaries labeled with their respective classifications.
 - (5) Existing and proposed topography at 5 foot contour intervals or less.
 - (6) For residential uses, the number of units and an outline of the area where the structures will be located. For nonresidential uses, the approximate square footage of all structures and an outline of the area where the structure will be located.
 - (7) Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets including typical parking space dimension and locations along with typical street cross sections. This shall include all existing and proposed points of access to public streets.

- (8) All proposed setbacks, buffers, screening and landscaping required by this Chapter and regulations of other agencies or otherwise proposed by the petitioner. In addition, the location of significant trees or tree stands on the subject property must be identified.
 - (9) Generalized information on the number, height, size, and location of structures.
 - (10) A sample of the exterior features of proposed principal structures.
 - (11) The proposed phasing of the project.
 - (12) The proposed number, location, type and size of all signs. This must include a sample diagram of the sign design.
 - (13) *Dedication or reservation of right-of-way.*
 - a. Right-of-way dedication is required for all conditional zoning districts fronting along roadways funded for improvements in the current State Transportation Improvement Program (STIP) and must be indicated on any subdivision plat, site plan, or zoning authorization permit applications. When right-of-way is dedicated, density bonuses are provided as shown in Sec. 44-502 (b) and (c).
 - b. The building setback would include the required setback plus ½ the estimated right-of-way needed for future road improvements.
- (e) *Additional information.* When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the planning director, planning board and/or board of commissioners may request additional information in addition to that required above, as they deem necessary.
- (f) *Review.* In evaluating an application for the establishment of a conditional zoning district, it is appropriate for the planning board and board of commissioners to consider the following:
- (1) Adherence to the general policies and objectives of the adopted land use plan, particularly in relation to the proposed site and surrounding area;
 - (2) The potential impacts on the surrounding area, including but not limited to the absolute certainty the specific use(s), traffic, stormwater, land values and the compatibility of land use activities. Higher standards and conditions may be proposed for the development, and other community benefits, mutually agreed upon by the developer and County;
 - (3) Addresses spot zoning;
 - a. Size of tract;
 - b. Compatibility with adopted plan;

- c. Public benefits and detriments of proposed rezoning; and
 - d. The relationship between proposed use and current use of adjacent properties; and
- (4) The reasonableness of the proposed rezoning, defined as:
- a. Supporting the general policies, goals and objectives of the adopted comprehensive land use plan and small area plans;
 - b. Promoting the harmony and compatibility of the proposed conditional zoning district in relationship to the surrounding land uses;
 - c. Serving the best interest of the community;
 - d. Promoting economic development; and
 - e. Encouraging different uses in close proximity to lessen traffic and environmental concerns.
- (5) Consistency statement. The planning board and the board of commissioners must make written findings that either:
- a. The proposed zoning is consistent with the adopted plan(s) based upon criteria in Section 44-328(f)(1) – (4) above; or
 - b. The proposed zoning is not consistent with the adopted plan(s), but is reasonable in light of circumstances generally defined under Section 44-328(f)(1) – (4) above, with the exception of (f)(3)b. above.
- (g) *Conditions of approval of petition.* In approving a petition for the reclassification of a piece of property to a conditional zoning district, the planning board may recommend and the board of commissioners may of its own accord require that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions shall be limited to those that address the conformance of the development plan and use of the site to county ordinances and an officially adopted comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. For example, conditions that relate to the relationship of the proposed uses to the surrounding property, proposed support facilities, e.g., parking areas, pedestrian circulation systems), screening and landscaping, timing of development, street and right-of-way improvements, water and sewer improvements, provisions of open space, and other matters that the planning board and board of commissioners may find appropriate or the petitioner may propose. Such conditions of approval may include, but are not limited to, the dedication of right-of-way or easements for streets and/or utilities to serve the development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the board of commissioners. Only those conditions mutually agreed upon by board of commissioners and the applicant, with input from the public, may be incorporated into the conditional zoning district.

- (h) *Effect of approval.* If a petition for conditional zoning district is approved the development and use of the property shall be governed by:
- (1) The standards and regulations applicable to the district's zoning classification;
 - (2) The approved site plan for the district;
 - (3) Any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district; and
 - (4) All general and additional rules, regulations and conditions are binding on the property as an amendment to these regulations and the Zoning Map.
- (i) *Zoning map designation.* Following approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation followed by the letters "CD."
- (j) *Determination – Major change requiring an amendment.* Before making a determination as to whether a proposed action is an amendment based upon a major change, the planning director shall review the record of the proceedings on the original application for the approval of the conditional zoning district.
- (1) An amendment comprising a major change requires approval by the board of commissioners and shall be handled as a new application. A change in a specific or general use category shall constitute a new application.
 - (2) The planning director will use the following criteria in determining whether a proposed change is an amendment constituting a major change to the approved conditional zoning district:
 - a. An increase in intensity of use which means an increase in:
 1. Usable floor area by more than 10%.
 2. Number of dwelling or lodging units by over 10%; or
 3. Outside land area devoted to sales, displays, or demonstrations.
 - b. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of commissioners.
 - c. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved plan.
 - d. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screening.
 - e. Substantial changes in pedestrian or vehicular access or circulation.
 - (3) If the planning director determines that the proposed action is an amendment, he shall require the applicant to file a request for approval of the amendment, which shall be submitted to the planning board and board

of commissioners. The planning board shall hold a public hearing and make a recommendation to the board of commissioners who shall hold a public hearing and approve or disapprove the amendment.

- (k) *Minor changes and modifications.* The planning director shall have the delegated authority to approve minor changes in the conditional zoning district provided they are in harmony with the action of the board of commissioners. A minor change shall mean any change(s) that:
 - (1) Any change in location or any increase in the size or number of signs;
 - (2) Increases the intensity of nonresidential development by no more than 10% or 1,000 square feet, whichever is less;
 - (3) Any change(s) that increases the density of residential development by no more than 10%;
 - (4) Any time an applicant agrees to impose standards that are more stringent than those previously approved by the board of commissioners; or
 - (5) All other changes or modifications to the conditional zoning district shall be treated the same as amendments to these regulations or the zoning map and shall be processed in accordance with Section 44-327 of this Chapter.
- (l) *Review of approval of a conditional zoning district.* It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than 5 years after the date of approval of the petition, the planning board may examine the progress made toward developing the property in accordance with the approval petition and any conditions attached to the approval. If the planning board determines that progress has not been made in accordance with the approved petition and conditions, the planning board shall forward to the board of commissioners a report which may recommend that the property be classified to another zoning district in accordance with the procedure set out in Section 44-327, as the same may from time to time be amended.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-329. Quasi-judicial procedures.

- (a) *Applicability.* This Section applies to any application for a special use permit, variance, expansions or changes to nonconformities, appeal, or any other quasi-judicial action heard by the board of adjustment.
- (b) *Filing applications and appeals; priority for agenda.* The following procedures shall be followed in the preparation of the agenda for a board of adjustment meeting in respect to the cases that shall be heard:
 - (1) A matter for the board of adjustment must be filed and accepted 45 days before the scheduled board meeting, counting the day of the board meeting as the 45th day.

- (2) The application and any supporting documentation required to be filed for a matter before the board of adjustment, must be complete and any applicable filing fee must be paid at the time the application is submitted or the application shall not be accepted. When a complete application is filed, the date and time of filing shall be written on the face of the application.
- (3) The general policy is to schedule cases on a first come, first serve basis, in accordance with the date and time the application was properly filed.
- (4) The agenda for the board of adjustment will not exceed 5 cases unless the planning director determines that some cases may be expeditiously disposed of.
- (5) The planning director has the discretion to not schedule any matter for the next regularly scheduled meeting of the board of adjustment if the planning director determines more time is needed to investigate and prepare a review in order to make an appropriate presentation before the board.
- (6) Matters that cannot be scheduled for the forthcoming meeting of the board of adjustment will automatically be scheduled on a first come, first serve basis for the next scheduled meeting of the board of adjustment.
- (7) If the board of adjustment hears any matter, the board may continue that matter for the consideration of additional or rebuttal evidence that could not have reasonably been presented at the initial meeting.

(c) *Hearings.*

- (1) *Mailed notice.* The County may rely upon its tax listing to determine owners of property entitled to mailed notice of the time and place of the hearing before the board of adjustment. Notices shall be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing to the following:
 - a. The person or entity whose application, request, or appeal is the subject of the hearing;
 - b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
 - c. The owners of property abutting the property that is the subject of the hearing; and
 - d. Anyone directly named in the application or entitled to receive notice as provided in this Chapter.
- (2) *Posted notice.* A notice of the hearing shall be prominently posted on the site that is the subject of the hearing or on an adjacent street or highway right of way at least 10 days, but not more than 25 days, prior to the date of the hearing.

- (3) *Quasi-judicial.* The board of adjustment shall follow quasi-judicial procedures when deciding applications and requests for variances, special use permits, extensions of nonconforming uses and appeals.
- (4) *Order of business.* Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing will be:
 - a. All parties desiring to speak about an issue must sign in with the recording secretary to the board of adjustment before the meeting is called. The chair of the board or any member acting as chair and the secretary are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.
 - b. The applicant, opposition, and County may present evidence and arguments, and call witnesses. Only factual evidence is permitted. Hearsay evidence shall not be considered. Each party will be limited to one hour for presentation, including cross-examination of opposing witnesses.
 - c. If there are facts within the special knowledge of a member of the board of adjustment or acquired by the member's personal inspection of the premises, they may be properly considered. However, they must be revealed at the public hearing and made a part of the record so that the applicant will have an opportunity to meet them by evidence or argument, and the board of adjustment may judge their competency and materiality.
 - d. Members of the board of adjustment may ask questions of either the applicant or his representative, any of the witnesses, the opposition, County representatives, or the recording secretary.
 - e. Following any board discussion, the chairperson shall ask for a motion to grant the request. If the motion is seconded, a vote shall be called.
- (5) *Time limit.* No meeting may continue past 11:00 p.m. without a majority vote of the board members to suspend this rule.
- (6) *Rulemaking authority.* The board of adjustment may adopt general rules for quasi-judicial hearings.
- (7) *Conduct of hearing.* The hearing will be conducted in accordance with the procedures set forth in NCGS 160A-388.
- (d) *Subsequent hearings.* Should a matter fail to receive a favorable vote of approval, any applicant must wait one year before the matter may be submitted again for the board's consideration.
- (e) *Application withdrawal.* Should an application be withdrawn after the first notice of the public hearing, the application shall be considered to be denied, and any

applicant must wait one year before the matter may be submitted again for the board's consideration.

Sec. 44-330. Decisions by the board of adjustment.

- (a) *Scope of action.* In making quasi-judicial decisions, the board of adjustment must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and may exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use regulations to individual situations, such as variances, special use permits, and appeals of administrative determinations. These decisions involve two key elements:
 - (1) The finding of facts regarding the specific proposal, and
 - (2) The exercise of discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence.
- (b) *Decision.* The term decision includes any final and binding order, requirement, or determination and shall be based upon competent, material, and substantial evidence in the record.
- (c) *Time.* Decisions of the board of adjustment on any matter shall generally be made at the conclusion of the hearing, or within a reasonable time from the conclusion of the hearing. A quasi-judicial decision is effective upon filing the written decision with the secretary.
- (d) *Form.* Decisions 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 signed by the chair or other duly authorized member of the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and any person who has submitted a written request for a copy. The planning director shall certify that proper notice has been made.
- (e) *Minutes.* The final decision of the board of adjustment on each matter shall be shown in the record of the case and recorded in the minutes. Such records shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the board of adjustment. Where a variance is granted, the record shall state in detail any requirements of NCGS 153A-345.1. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a variance or an exception.

Sec. 44-331. Appeals.

- (a) *Applicability.* The board of adjustment shall hear and decide all appeals from and review any zoning order, requirement, decision, or determination made by the planning director. Each decision of the board of adjustment is subject to review by the superior court by proceedings in the nature of certiorari.
- (b) *Approval criteria for an appeal of a decision of the planning director Planning director – decision.*
 - (1) The appellant must submit an appeal, in writing, to the board of adjustment within 30 days following the date of the decision. The written appeal must state the grounds for the appeal and be filed with the recording secretary of the board of adjustment. If a written appeal is not made within the 30-day period, the matter shall be deemed to be closed, and the decision of the planning director shall be final. See Sec. 44-318(d) for administrative decisions.
 - (2) The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the County would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing.
 - (3) An appeal to the board of adjustment from a notice of violation, enforcement order, decision or determination by the planning director stays all enforcement proceedings in furtherance of the decision or determination appealed from, except as provided in Subsection (4).
 - (4) An appeal to the board of adjustment of a determination or decision of the planning director shall not stay enforcement proceedings in furtherance of the decision or determination appealed from, if the planning director certifies either that:
 - a. Because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or
 - b. The situation appealed from is transitory in nature, and, therefore, an appeal would seriously interfere with enforcement of this chapter.
 - c. In such case, enforcement proceedings shall not be stayed except by an order granted by a court.
 - (5) If enforcement proceedings are not stayed, the appellant may file with the planning director a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.
 - (6) The planning director will provide copies of all documents and exhibits constituting the record upon which the action appealed from is taken to the board, the applicant, and the landowner if the appellant is not the landowner.

- (7) In considering appeals, the board of adjustment may hear both those based upon an allegedly improper or erroneous interpretation of this Chapter and those based upon alleged hardship resulting from strict enforcement of this Chapter.
 - (8) The board may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination of the planning director from which an appeal is taken and make the correct order, requirement, decision, or determination. For that purpose, the board has the same authority as the planning director from which the appeal is taken.
 - (9) The board may rule in favor of the appellant if it finds the order, requirement, decision, or determination from which an appeal is taken:
 - a. Was the result of an incorrect or unlawful interpretation of this Chapter; or
 - b. Would result in a taking of private property, or otherwise result in a deprivation of constitutional rights.
 - (10) The board's decision shall provide the minimum amount of relief necessary in order to comply with the requirements of Subsection (9) above.
 - (11) 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 the final decision of permit applications or building permits affected by the issue being appealed.
 - (12) The planning director shall not amend the board of adjustment's decision.
 - (13) *Recording.* A copy of the board's decision shall be maintained by the planning director.
- (c) *Board of adjustment - decision.* Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the planning office, or after a written copy thereof is delivered to every appellant who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later.

Sec. 44-332. Special use permits.

- (a) *Applicability.* This section applies to any use that is designated as a special use in Table 44-403-1.
- (b) *Application.* The application for a special use permit, along with a detailed site plan, must be submitted to the planning director and must include the information required by the procedures manual.
- (c) *Completeness review.* The applicant must comply with Sec. 44 - 303.

- (d) *Quasi-judicial hearing required.* A quasi-judicial hearing shall be required which follows the quasi-judicial process in Sec. 44-329.

- (e) *Decision.*
 - (1) Within 45 days of the receipt of an application, the planning director shall submit a report to the board of adjustment.
 - (2) After hearing the planning director's report at the completion of the quasi-judicial hearing, the board of adjustment shall approve, approve with conditions, or disapprove the application. In every case, the board of adjustment shall include a summary of the evidence supporting the action taken on the application.

- (f) *Approval criteria.*
 - (1) Before any application for a special use is approved, the board of adjustment shall make written findings certifying compliance with the specific standards governing each individual special use and that the general standards contained in this section are met. The board shall make appropriate findings, supported by evidence in its record, on each general and specific standard.
 - (2) General standards.
 - a. The following general standards must be met for approval of special uses pursuant to this Chapter:
 - 1. The use will not materially endanger the public health, safety, and general welfare, if located where proposed and developed and operated according to the application;
 - 2. The use, which is listed as a special use in the district in which it is proposed to be located, complies with all required regulations and standards of this Chapter, unless greater or different regulations are contained in the individual standards for that special use;
 - 3. The use will not substantially injure the value of adjoining or abutting property; and
 - 4. The use is consistent with any adopted area plans that encompass the property subject to the application.
 - b. The board of adjustment shall make these general findings based upon substantial evidence contained in its proceedings. The board may refer to staff's report to aid in its deliberations. The applicant has the responsibility of presenting evidence in the form of testimony, exhibits, documents, models, plans, and the like to support the application for approval of a special use.

- (3) Imposed conditions.
 - a. The board of adjustment may impose such reasonable conditions, upon approval of a special use granted pursuant to this Chapter, as will afford protection of the public safety and welfare and substantial justice done.
 - b. Such conditions shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.
- (g) *Expiration.* Special use permits are valid for 5 years from the date the board of adjustment approved the use and shall automatically expire at that time unless the property is being used in conformance with all requirements of the permit.
- (h) *Amendments and minor changes.* Before making a determination as to whether a proposed action is an amendment or a minor change, the planning director will review the record of the proceedings on the original application for the approval of the special use.
 - (1) An amendment requires approval by the board of adjustment and shall be handled as a new application. A change in use shall constitute a new application.
 - (2) The planning director may approve minor changes in an approved special use permit, as long as they are in harmony with the action of the board of adjustment. The planning director will use the following criteria in determining whether a proposed change is an amendment to the approved special use permit:
 - a. Any increase in intensity of use which means an increase in:
 - 1. Usable floor area;
 - 2. Number of dwelling or lodging units; or
 - 3. Outside land area devoted to sales, displays, or demonstrations.
 - b. Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the board of adjustment.
 - c. Structural alterations significantly affecting the basic size, form, style, and the like of the building, as shown on the approved detailed site plan.
 - d. A 10% or more decrease in the amount or location of open space, recreation facilities, or landscape screens.
 - e. Substantial changes in pedestrian or vehicular access or circulation.
 - (3) If the planning director determines that the proposed action is an amendment based on the criteria in Subsection (2) above, the applicant

shall be required to file a request for an amendment to the special use permit, which shall be submitted to the board of adjustment. The board of adjustment shall hold a quasi-judicial hearing and approve or disapprove the amendment.

- (i) *Notice of disposition.* The planning director shall send notice of the disposition of the application to the applicant by personal delivery, electronic mail, or by first-class mail. A copy of the decision must be maintained in the office of the planning director.
- (j) *Scope of approval.*
 - (1) After the approval of a special use detailed site plan, a zoning authorization permit may be issued. A zoning authorization permit shall not be issued if the development activities do not conform to the approved detailed site plan.
 - (2) The site plan is binding on the applicant and any successors in title, unless it expires or is amended as provided in this Section.

Sec. 44-333. Variances.

- (a) *Applicability.* This Section applies to any application to vary any dimensional requirements or modify any of the provisions of this Chapter but does not include a use variance.
- (b) *Application.* The application for a variance, along with a plot plan, sealed by a licensed professional, must be submitted to the planning director and must include information required by the procedures manual.
- (c) *Completeness review.* The applicant must comply with Sec. 44-303.
- (d) *Quasi-judicial hearing required.* A quasi-judicial hearing shall be required which follows the quasi-judicial process in Sec. 44-329.
- (e) *Decision.*
 - (1) Within 45 days of receipt of an application, the planning director shall submit a report to the board of adjustment.
 - (2) After hearing the planning director's report and completion of the quasi-judicial hearing, the board of adjustment shall approve, approve with conditions, or disapprove the application. In every case, the board of adjustment shall include a summary of the evidence supporting the action taken on the application.
 - (3) The concurring vote of four-fifths of the board is necessary to grant a variance.
- (f) *Approval criteria.*

- (1) The board of adjustment may approve a variance only in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:
 - a. Unnecessary hardship would result from the strict application of this ordinance. It will 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 hardships 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.
 - (2) All of these findings of fact shall be made in the indicated order by the board of adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all four categories. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the board.
 - (3) No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance.
- (g) *Expiration.* A variance does not expire and runs with the land.
 - (h) *Change to variance.* A change to an approved variance requires a new variance application.
 - (i) *Zoning authorization permit.* After approval of a variance, the applicant must apply for a zoning authorization permit before undertaking any development authorized by the variance.
 - (j) *Notice of disposition.* The planning director shall give notice of the disposition of the application to the applicant by personal delivery, electronic mail or by first-class mail. The planning director shall file a copy of the decision in the office of the planning director.

(Ord. No. 2008-17, 10/20/08)

Sec. 44-334 - 340.

Reserved.

This 17th day of March, 2014

Katherine W. Barnes, Chair

Catawba County Board of Commissioners

APPOINTMENTS

LYNN LAIL (Due) Nursing and Rest Home Advisory Board

Commissioner Lail recommends the appointment of Ron Young for a first term on the Nursing and Rest Home Advisory Board to fill a vacant position. This initial term will expire March 17, 2015.

BARBARA BEATTY (DUE) Catawba County Board of Adjustment

Commissioner Beatty recommends the appointment of Troy Sigman for a first term to succeed Laban Helderman on the Catawba County Board of Adjustment. Mr. Sigman's term will expire November 30, 2016.

DAN HUNSUCKER (Upcoming) Industrial Facilities and Pollution Control Financing Authority

03/31/14

Diane Klein

Eligible for a 5th term

Barry Whisnant

Eligible for a 3rd term

6-year terms

Commissioner Hunsucker recommends the reappointment of Diane Klein for a fifth term and Barry Whisnant for a third term on the Industrial Facilities and Pollution Control Financing Authority. These terms will expire March 31, 2020.

MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: David Boone, Sr. VP Finance/CFO, Catawba Valley Medical Center

DATE: March 17, 2014

SUBJECT: Installment Purchase Contract Financing

REQUEST

Catawba Valley Medical Center (CVMC) is requesting the Board of Commissioners adopt the attached resolution which authorized CVMC to execute an installment purchase agreement to finance \$5 million of medical equipment.

BACKGROUND

Catawba Valley Medical Center is proposing an installment purchase contract through US Bancorp to finance \$5 million of medical equipment. Seven installment purchase agreement proposals to finance this equipment were received from banks with a North Carolina presence. The Catawba Valley Medical Center Board of Trustees reviewed the proposals at their regular monthly meeting on February 24, 2014. US Bancorp was selected because of their competitive rate and fee structure. The term of the installment purchase agreement is 59 months, with a fixed interest rate of 1.326 percent.

The attached resolution authorizes CVMC to execute the installment purchase agreement. CVMC's bond attorney, Steve Cordell with Nexsen Pruet, PLLC, developed this resolution and has reviewed and approved the other documents associated with this financing.

RECOMMENDATION

Staff recommends the Board of Commissioners adopt the attached resolution which authorized CVMC to execute an installment purchase agreement to finance \$5 million of medical equipment.

**EXHIBIT A
EQUIPMENT LIST
CATAWBA VALLEY MEDICAL CENTER**

Quantity	Description	Vendor/Mfg	Equipment Cost
	LAPTOPS, HP SB	CDW GOVERNMENT, IN	10,464
1	INBOUND FAX, 2 CHANNEL	FORWARD ADVANTAGE	11,004
1	OUTBOUND FAX, 6 CHANNEL	FORWARD ADVANTAGE	12,154
1	PATIENT LIFT, BARIATRIC TRAVERSE SYSTEM	MID-ATLANTICARE	12,759
1	EEG RECORDING SYS, AMBULATORY	NATUS MEDICAL	13,904
1	TELEPHONY SYSTEM, 2 CHANNEL BED	FORWARD ADVANTAGE	14,099
40	SAMSUNG CLOUD DISPLAY	CDW GOVERNMENT, IN	18,481
1	BED, BARIATRIC TOTALCARE	HILL-ROM	23,343
1	CRYOSTAT, THERMO SCIENTIFIC	FISHER HEALTH CARE	25,004
50	MONITORS, SAMSUNG - ZERO CLIENT	CDW GOVERNMENT, IN	25,944
1	VENTILATOR, HIGH FREQUENCY JET	BUNNELL INSPIRED INF	32,215
63	TOUCH SCREENS	CDW GOVERNMENT, IN	32,382
1	HYSTEROSCOPY/MORCELLATOR SYSTEM	SMITH & NEPHEW	62,646
1	ANESTHESIA MACHINE	DATEX-OHMEDA INC	62,950
11	TRANSDUCER SYSTEMS, WIRELESS	PHILIPS HEALTHCARE	85,303
300	CLIENTS, ZERO	CDW GOVERNMENT, IN	100,500
1	SOLAR MONITORING SYSTEM	GE MEDICAL SYSTEMS	180,078
1	MONITORING SYSTEM, BEDSIDE	GE MEDICAL SYSTEMS	268,964
1	16 SLICE CT SCANNER	NOT IDENTIFIED	1,280,000
1	DIGITAL MOBILE RADIOGRAPHIC SYSTEM	GE MEDICAL SYSTEMS	143,755
1	ANTARES ULTRASOUND SYSTEM	SIEMENS	180,000
1	NUCLEAR MEDICINE GAMMA CAMERA	NOT IDENTIFIED	400,000
1	CT SCANNER	NOT IDENTIFIED	800,000
1	RADIOLOGY & FLUOROSCOPY SYSTEM	NOT IDENTIFIED	450,000
1	JACKSON TABLE	NOT IDENTIFIED	90,000
5	SCOPES	NOT IDENTIFIED	35,000
1	OR BARIATRIC BED	NOT IDENTIFIED	45,000
1	BARIATRIC SHOULDER POSITIONER	NOT IDENTIFIED	45,000
1	DEMAYO HIP POSITIONER	NOT IDENTIFIED	10,000
	OTHER MEDICAL EQUIPMENT	NOT IDENTIFIED	<u>529,051</u>
			<u>5,000,000</u>

**EXTRACT FROM MINUTES OF BOARD OF COMMISSIONERS OF
THE COUNTY OF CATAWBA, NORTH CAROLINA**

A regular meeting of the Board of Commissioners for the County of Catawba, North Carolina, was held in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, the regular place of meeting, at [7:00] p.m., on March 17, 2014.

PRESENT: _____

ABSENT: _____

ALSO PRESENT: _____

* * * * *

Catawba Valley Medical Center Chief Financial Officer David Boone Introduced the following resolution, a copy of which had been provided to each Commissioner and which was read by title:

RESOLUTION # 2014-__

RESOLUTION APPROVING INSTALLMENT CONTRACT FINANCING FOR ACQUISITION OF EQUIPMENT FOR CATAWBA VALLEY MEDICAL CENTER IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$5,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH, AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the Board of Commissioners (the “Board”) desires to approve a proposed plan of financing in an aggregate principal amount of up to \$5,000,000, which plan would involve the entry by the County into an installment financing contract pursuant to North Carolina General Statutes 160A-20, as amended, with U.S. Bancorp Government Leasing and Finance, Inc. (the “Lessor”), the proceeds of which would be used to pay all or a portion of the costs of acquiring certain equipment (collectively the “Project”) to be owned and used by Catawba Valley Medical Center (“CVMC”), and under said installment financing contract the County and CVMC would secure the repayment of the moneys advanced pursuant to such contract by granting a security interest in and lien on all or a portion of the Project;

WHEREAS, there have been submitted to this meeting draft forms of the following documents (the “Financing Documents”) with respect to the financing for the Project:

- (1) a Master Tax-Exempt Lease/Purchase Agreement, proposed to be dated on or about March 15, 2014 (the “Master Agreement”), between the County, CVMC and the Lessor as

counterparty, pursuant to which the Lessor will provide financing to the County and CVMC for the cost of the Project and the County and CVMC agree to make periodic installment payments (the "Installment Payments") to repay the amount financed, with interest (although it is anticipated that CVMC will make all such Installment Payments and interest payments);

(2) an Addendum to the Master Agreement, proposed to be dated on or about March 15, 2014 (the "Addendum"), between the County, CVMC and the Lessor as counterparty; and

(3) an Escrow Agreement (the "Escrow Agreement"), proposed to be dated on or about March 15, 2014, among the Lessor, the County, CVMC and U.S. Bank National Association, as Escrow Agent;

WHEREAS, the obligations of the County and/or CVMC to make Installment Payments and other payments pursuant to the Master Agreement shall constitute limited obligations of the County and/or CVMC, payable solely from currently budgeted appropriations of the County and/or CVMC and shall not constitute a pledge of the faith and credit of the County or CVMC within the meaning of any constitutional debt limitation;

WHEREAS, no deficiency judgment may be rendered against the County or CVMC in any action for breach of a contractual obligation under the Master Agreement, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Master Agreement; and

WHEREAS, the Board is agreeable to the terms and conditions to be imposed upon it and CVMC in connection with the proposed plan of financing and desires to approve the Financing Documents and to authorize other actions in connection therewith;

NOW, THEREFORE, BE IT RESOLVED by the Board, as follows:

Section 1. All actions taken by or on behalf of the County and/or CVMC to date to effectuate the proposed financing, including the selection of the Lessor as the counterparty to the Master Agreement and related documents and Nexsen Pruet, PLLC, as special counsel, are hereby ratified, approved and authorized pursuant to and in accordance with the transactions contemplated by the Financing Documents.

Section 2. The acquisition of the Project, the financing thereof and the granting of security interests therein, all as provided in the Financing Documents referenced in this Resolution, are hereby ratified and approved.

Section 3. Each of the Master Agreement, the Addendum and the Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and any of the Chairman or Vice-Chairman of the Board (the "Chairman" and the "Vice-Chairman," respectively) or the Finance Director is hereby authorized to execute and deliver each of those documents in the name and on behalf of the County, with such changes, insertions or omissions as the persons executing such documents may approve, the execution and delivery thereof to constitute conclusive evidence of such approval. The Clerk to the Board is hereby authorized to affix the seal of the County to each of said documents as may be appropriate and to attest to the same.

Section 4. Any of the Chairman, the Vice-Chairman or the Finance Director is authorized to approve all details of the financing of the Project, including, without limitation, the amount advanced under the Master Agreement (which shall not exceed \$5,000,000), the principal amounts and the interest amounts of the Installment Payments, which interest amounts shall not exceed 2.00% per annum and the final maturity of the amount advanced under the financing, which shall be less than 5 years. Execution of the Master Agreement by any of the Chairman, the Vice-Chairman or the Finance Director shall conclusively evidence such approval of all such details of said financing.

Section 5. Any of the Chairman, the Vice-Chairman, the Finance Director and the County Attorney are each hereby authorized to take any and all such further action, including approval of modifications to the Financing Documents, and to execute and deliver for and on behalf of the County such other documents and certificates (including, without limitation, agreements with securities depositories, financing statements, appropriate tax certificates and agreements and other documents and agreements (including repurchase agreements) relating to the investment of the proceeds from the execution and delivery of the Master Agreement) as they may deem necessary or advisable to carry out the intent of this resolution and to effect the financing pursuant to the Financing Documents. The Clerk to the Board is hereby authorized to affix the seal of the County to such documents and certificates as may be appropriate and to attest to the same and to execute and deliver the same as may be needed.

Section 6. The County covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will do and perform all acts and things to comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), in order to assure that the interest component of the Installment Payments paid pursuant to the Master Agreement will not be includable in gross income for purposes of federal income taxation, except to the extent that the County obtains an opinion of special counsel to the effect that noncompliance would not result in the interest component of said Installment Payments being includable in gross income for purposes of federal income taxation.

Section 7. This Resolution shall become effective immediately upon its adoption.

Thereupon, upon motion of Commissioner _____, the foregoing resolution entitled "RESOLUTION APPROVING INSTALLMENT CONTRACT FINANCING FOR ACQUISITION OF EQUIPMENT FOR CATAWBA VALLEY MEDICAL CENTER IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$5,000,000, AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH, AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS" was adopted and passed by the following vote:

AYES: _____

NOES: _____

* * * * *

I, Barbara Morris, Clerk to the Board of Commissioners for the County of Catawba, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on March 17, 2014, as relates in any way to the passage of a resolution (No. 2014-___) approving a plan of financing for the acquisition of equipment for Catawba Valley Medical Center described therein utilizing an installment financing contract under North Carolina General Statutes Section 160A-20, and that said proceedings are recorded in Minute Book No. ___ of the minutes of said Board, beginning at page ___.

I DO HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board, stating that regular meetings of said Board are held on the first and third Mondays of each month at 9:30 a.m. and 7:00 p.m., respectively (with such exceptions applicable thereto) in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, has been on file in my office as of a date not less than seven days before the date of said meeting in accordance with G.S. 143-318.12.

WITNESS my hand and the corporate seal of said County, this 17th day of March, 2014.

Clerk to the Board of Commissioners

MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Rodney Miller, Finance and Facilities Director
Debbie Anderson, Purchasing Manager

DATE: March 17, 2014

IN RE: Bid Award -HVAC controls in Existing Justice Center

Request

The Catawba County Board of Commissioners is requested to award the bid for HVAC Controls for the existing Justice Center building to Trane U.S., Inc. in the amount of \$440,000 and approve the attached budget revision.

Background

In April of last year, the County engaged Sud Associates to conduct an energy audit of multiple county buildings. The first building selected was the Justice Center, which has experienced numerous heating/cooling issues and complaints from building occupants over the years. The major recommendation from the report was to install an HVAC control system, which will add a new controller and actuator to each air handling unit and allow staff to remotely adjust temperature settings. In addition, the system will allow for time of day scheduling for heating and cooling so occupied and non-occupied temperature settings can be maintained separately. Estimated energy savings from this project are more than 850,000 kwh/yr, resulting in savings of more than \$65,000 per year, equal to a return on investment of 7.2 years.

In June, the City of Newton issued a Request for Proposals from its customers that have a peak annual billing demand of at least 250kW for energy efficiency grants offered through Electricities. As a major utility user, the County submitted a proposal and was awarded an \$85,000 grant from the City for its C & I Energy Efficiency Program to install an HVAC control system in the existing Justice Center. The County will receive \$50,000 as a credit to the electric bill once installation begins and the additional \$35,000 as a credit to the electric bill when the project is finished.

On December 2, 2013, the Board of Commissioners authorized a preferred alternate for Trane and Trane Tracer Summit Controls, which are the prominent equipment and building automation systems that are used in County buildings.

Review

McKnight – Smith – Ward – Griffin Engineers, Inc. prepared the plans and specifications for the project. The estimated cost of the project was \$450,000, with the grant funds offsetting

approximately 20% of the cost. Funding for the project will come from General Capital project fund balance, which was planned in the current budget in the event the grant request was approved.

A pre-bid conference was held on January 23, 2014 with two contractors present; a bid opening was then held on February 5, 2014 with only one contractor presenting a bid (Trane). Since North Carolina General Statute 143-132 and 143-129(b) requires three bids for formal construction projects, the bid from Trane was not opened and the project was re-advertised. A second bid opening was held on February 18, 2014; one bid was received and opened from Trane U.S., Inc. North Carolina General Statute 143-132 and 143-129(b) allow the bids to be opened when less than three bids are received after a re-advertisement.

The bid from Trane U.S., Inc. is as follows:

Base Bid	\$446,300
Alternate (10-Year Parts & Labor Warranty for all Equipment and Controls)	38,600

McKnight – Smith – Ward and Griffin Engineers, Inc. negotiated with Trane U.S. Inc. and Trane agreed to lower the bid to \$440,000 and include a two-year parts & labor warranty for all equipment and controls.

Recommendation

The Catawba County Board of Commissioners is requested to award the bid for HVAC Controls for the existing Justice Center to Trane U.S., Inc. in the amount of \$440,000 and authorize the budget revision below.

Budget Revision:

410-460100-988000-12004	Justice Center HVAC Controls	\$440,000
410-460100-690100	General Capital Fund Balance	\$440,000

MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Jodi Stewart, Assistant County Attorney

DATE: March 17, 2014

SUBJECT: Bunker Hill School Sewer Assignment of Easements and Quitclaim Deed to City of Conover

REQUEST

Staff recommends the Board of Commissioners approve the assignment and conveyance of the Bunker Hill School Sewer Project easements and quitclaim deed to the City of Conover.

BACKGROUND

On May 15, 2006, Catawba County approved a revenue sharing agreement entitled “Agreement between Catawba County and City of Conover for Revenue Sharing on Bunker Hill School Sewer Project” and amended the Agreement on May 2, 2011. The purpose of the Agreement was to locate, fund, and maintain sewer lines to serve Bunker Hill High School and the surrounding area. The County acquired easements for the project and acquired fee simple title to property from James F. Moser and wife, Linda Allred Moser, for the purpose of locating a pump station on the property for the sewer project.

The Agreement required the County to transfer the rights-of-way, easements, and encroachments acquired for the project to the City of Conover upon completion of the project. The sewer lines have been installed, and the City of Conover is operating and maintaining the sewer lines. The property will be transferred to the City of Conover by recording the attached Assignment of Easements and Quitclaim Deed.

RECOMMENDATION

Staff recommends the Board of Commissioners approve the assignment and conveyance of the Bunker Hill School Sewer Project easements and quitclaim deed to the City of Conover.

NORTH CAROLINA
COUNTY OF CATAWBA

ASSIGNMENT OF EASEMENTS

REVENUE STAMPS: \$0.00
Prepared by and return to: Jodi Stewart, Attorney, Catawba County, Post Office Box 389, Newton, NC 28658

This conveyance made this the ___ day of _____, 2014, by and between CATAWBA COUNTY, a political subdivision of the State of North Carolina, having a mailing address of Post Office Box 389, Newton, North Carolina 28658, (hereinafter "Assignor") and the CITY OF CONOVER, having a mailing address of Post Office Box 549, Conover, North Carolina 28613 (hereinafter "Assignee").

WITNESSETH:

WHEREAS, the Assignor and Assignee executed an agreement entitled "Agreement between Catawba County and City of Conover for Revenue Sharing on Bunker Hill School Sewer Project" (hereinafter "Agreement") dated May 15, 2006 and amended May 2, 2011; and

WHEREAS, pursuant to the Agreement, Assignor acquired easements for sewer lines for the Bunker Hill School Sewer Project, said easements being more particularly described below; and

WHEREAS, the Bunker Hill School Sewer Project is complete, and Assignor is assigning to Assignee the sewer line easements as set forth in the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Assignor assigns to Assignee, its successors and assigns, all right, title, and interest in and to the following described easements:

Being all of those easements acquired by Catawba County and recorded in the Books and Pages of the Catawba County Registry as shown on Exhibit "A" attached and incorporated by reference.

TO HAVE AND TO HOLD the aforesaid land and interest conveyed and all privileges and appurtenances belonging to Assignee, its successors and assigns.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed as of the day and year first above written.

CATAWBA COUNTY BOARD OF COMMISSIONERS

[Seal]

Katherine W. Barnes, Chair

ATTESTED BY:

Barbara E. Morris, Clerk

STATE OF NORTH CAROLINA
CATAWBA COUNTY

_____, a Notary Public, do hereby certify that Barbara E. Morris personally appeared before me this day and acknowledged that she is County Clerk and that, by authority duly given and as the act of the Catawba County Board of Commissioners, the foregoing instrument was signed in its name by its Chair, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the ____ day of _____, 2014.

[Seal]

Notary Public

My commission expires: _____

Exhibit A

Deed Book	Page
03020	0563-564A
02947	0716-0718
02946	1451-1454
03003	0424-0427
02971	0506-0509
03034	0886-0889
02947	0719-0721
02982	0641-0644
02982	0645-0647
02992	1836-1838
02996	0378-0381
02996	0370-0373
02996	0374-0377
02997	1864-1866
02950	1296-1298
02932	0529-0532
02932	0525-0528
02932	0533-0536
02950	1302-1305
02950	1299-1301
03013	0193-0197
03013	0188-0192
02375	1191-1193
02985	0344-0346
02950	1314-1316
02950	1288-1291
03009	0281-0283
02979	1013-1016
02950	1309-1313
03099 (File No. 2011-CVS-997)	0576-0585
02966	0348-0351
02950	1317-1320
02950	1321-1324
03026	1208-1210
03100	1981-1986
03100	1987-1990
02950	1292-1295
02982	1016-1019
02950	1306-1308
03015	0848-0849
03015	1868-1871

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: Zero Dollars

Parcel Identifier No. 3762-07-69-5489 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: Monroe Pannell, Attorney for the City of Conover, Post Office Box 519, Conover, NC 28613

This instrument was prepared by: Jodi Stewart, Attorney for Catawba County, Post Office Box 389, Newton, NC 28658

Brief description for the Index: 0.112 acres, Clines Township

THIS DEED made this _____ day of _____, 2014, by and between

GRANTOR

GRANTEE

Catawba County
A North Carolina Body Politic
Post Office Box 389
Newton, North Carolina 28658

City of Conover
A North Carolina Municipal Corporation
Post Office Box 549
Conover, North Carolina 28613

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Claremont, Clines Township, Catawba County, North Carolina and more particularly described as follows:

See Exhibits A and B attached.

Preparer of this deed has not performed a title search or title exam with respect to this property.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 2979, Page 1009, Catawba County Registry.

All or a portion of the property herein conveyed does not include the primary residence of the Grantor.

A map showing the above described property is recorded in Plat Book _____ page _____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

CATAWBA COUNTY BOARD OF COMMISSIONERS

{Seal}

Katherine W. Barnes, Chair

ATTESTED BY:

Barbara E. Morris, Clerk

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

I, _____, a Notary Public, do hereby certify that Barbara E. Morris personally appeared before me this day and acknowledged that she is County Clerk and that, by authority duly given and as the act of the Catawba County Board of Commissioners, the foregoing instrument was signed in its name by its Chair, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the _____ day of _____, 2014.

{Seal}

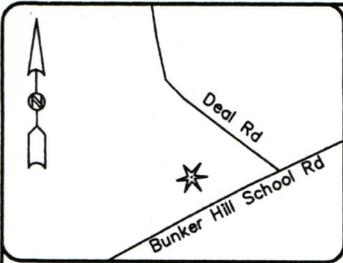
Notary Public

My Commission Expires: _____

Exhibit A

Lying and being in Clines Township, Catawba County, North Carolina, and being more particularly described as follows:

BEGINNING at a point in the 60' public right-of-way of Bunker Hill School Road, as shown on the survey attached as Exhibit B; thence running with the right-of-way of Bunker Hill School Road South $62^{\circ} 39' 04''$ West 60.03 feet to a computed point located in the right-of-way of Bunker Hill School Road; thence running new lines located within the property owned by James F. Moser (Deed Book 1051, Page 257) the following eight (8) calls; North $27^{\circ} 20' 56''$ West 81.82 feet to a computed point; North $62^{\circ} 39' 04''$ East 22.44 feet to a computed point; North $62^{\circ} 39' 04''$ East 37.59 feet to a computed point; South $27^{\circ} 20' 56''$ East 5.99 feet to a computed point; South $27^{\circ} 20' 56''$ East 12.50 feet to a computed point; South $27^{\circ} 20' 56''$ East 25.01 feet to a computed point; South $27^{\circ} 20' 56''$ East 12.50 feet to a computed point; South $27^{\circ} 20' 56''$ East 25.82 feet to a computed point, the POINT OF BEGINNING, and containing 0.112 acres, more or less, according to the survey entitled "Catawba County, NC" dated November 5, 2008 by AccuTech Surveying & Mapping LLP, to which reference is hereby made for greater certainty of description.



VICINITY MAP
not to scale

All distances are horizontal unless otherwise noted.

All acreage is by coordinate method.

No attempt has been made as a part of this boundary survey to obtain or show data concerning existence, size, depth, condition, capacity, or location of any utility or municipal/public service facility.

The location and/or existence of utility service lines to the property surveyed are unknown and are not shown.

This survey does not constitute a title search by Surveyor. Surveyor has made no investigation or independent search for easements or record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate and current title search may disclose.

Copyright © AccuTech Surveying & Mapping, LLP. All rights reserved. No part of this drawing may be reproduced by photocopying, recording or by any other means, or stored, processed or transmitted electronically without the prior written permission of the surveyor. This survey is valid only for the parties indicated in the title block.

1012

EXHIBIT B

Chester E. Deal
DB 461 PG 63
Parcel ID 376304509054

Cora J. Danner
DB 936 PG 4
Parcel ID 376304607274

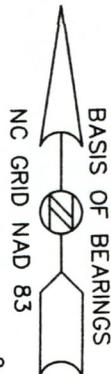
Area in Permanent
Utility Easement
18292.4114 sq. ft ±
0.4199 Acres ±

Pump Station Lot
4911.679 sq. ft ±
0.112 Acres ±

James F. Moser
DB 1051 PG 257
Parcel ID 376207595575

Area in Existing Permanent
Utility Easement
3009.773 sq. ft ±
0.069 Acres ±
Area in Temporary
Construction Easement
3031.577 sq. ft ±
0.069 Acres ±

This map shall supersede the easement map
previously recorded in DB 2375 PG 1173



NUMBER	DIRECTION	DISTANCE
L1	S 27°20'56" E	5.99'
L2	S 27°20'56" E	12.50'
L3	S 27°20'56" E	25.01'
L4	S 27°20'56" E	12.50'
L5	S 27°20'56" E	25.82'
L6	S 62°39'04" W	60.03'
L7	N 27°20'56" W	81.82'
L8	N 62°39'04" E	22.44'
L9	N 62°39'04" E	37.59'
L10	N 27°20'56" W	86.69'
L11	N 89°37'07" E	65.92'
L12	N 89°37'07" E	48.20'
L13	S 25°59'04" E	23.32'
L14	N 61°13'54" E	80.49'
L15	N 87°15'00" E	12.55'
L16	N 87°15'00" E	10.84'
L17	N 79°11'49" E	14.22'
L18	N 79°11'49" E	12.51'
L19	S 08°03'43" E	40.15'
L20	S 61°13'54" W	116.29'
L21	S 08°03'43" E	30.91'
L22	S 61°13'54" W	107.34'
L23	N 61°13'54" E	89.44'
L24	N 08°03'43" W	13.96'
L25	S 62°39'04" W	17.46'
L26	N 08°03'43" W	6.48'

State of North Carolina
County of Catawba

Chris Timberlake, review officer of
Catawba County, certify that the map or plat to
which this certification is affixed meets all statutory
requirements for recording.

6/25/09
Date

Chris Timberlake
Review Officer

LEGEND

- PROPERTY LINE
- TIE LINE
- ADJOINING PROPERTY LINE
- PROPERTY CORNER
- ⊗ COMPUTED POINT (NOT SET)
- TM TAX MAP
- DB PG DEED BOOK & PAGE
- ROAD RIGHT OF WAY LINE
- EXISTING SEWER EASEMENT LINE
- PERMANENT EASEMENT LINE
- TEMPORARY CONSTRUCTION EASEMENT LINE

NOTE: This is a non-buildable parcel in regard to residential or commercial development. Its intended use is a pump station.

Revised 6-19-2009 per McGill commits.



AccuTech Surveying & Mapping, LLP



546 Newell Street NW
Concord, NC 28025
(704) 784-3286
accutech@accutechsurveying.com



Property corners noted as found were recovered during an actual field survey. other corners are calculated or copied from records. This map was prepared for the purpose of right of way/or easement acquisition only, and is not intended to be a boundary survey of the property shown hereon. This map was prepared under my supervision.

Rodrick A. Sutton
Rodrick Allen Sutton, PLS / NC Reg # L-3228

Survey For:

Catawba County, NC

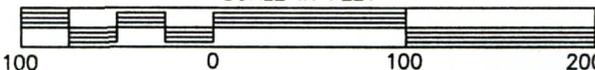
Showing Utility Easement and Property to be Acquired From:

James F. Moser

Clines Township
June 19, 2009

Catawba County, North Carolina
Scale 1" = 100'

SCALE IN FEET



MEMORANDUM

TO: Catawba County Board of Commissioners

FROM: Mary S. Furtado, Assistant County Manager

DATE: March 17, 2014

RE: Progress Update on Communications Enhancement Initiative

BACKGROUND

In acknowledgement of the Fiscal Year 2014-2015 goal adopted by the Board of Commissioners to *"Increase citizens' awareness of County programs and services and promote healthy activities throughout the County by strengthening communications and outreach to citizens,"* staff has mobilized to undertake a number of activities aimed at furthering this objective.

These activities, which strive to proactively push relevant information to citizens in an interesting and engaging way, span a continuum of communications tactics. Many of the activities focus on enhanced web presence and strengthened use of social media. Others focus on strengthening inter-departmental communications. Others attempt to heighten the availability of frequently requested or useful information to citizens while presenting it in a package that is more visually appealing. A sampling of these efforts includes:

- Strategically strengthening the County's use of available social media outlets such as Facebook and Twitter, using these channels to:
 - Promote the *"Did You Know?"* video, which includes numerous facts and figures about Catawba County Government's program and service impacts in the community
 - Strengthen the promotion of County programs and events
 - Publically release the synopsis of Board of Commissioners meetings that had previously been shared with staff via the web
 - Delivering real-time updates on Board of Commissioners actions at Board meetings via Twitter and Facebook
 - Using Twitter to deliver a minimum of 2 tweets a week that feature miscellaneous County facts and figures, information on County events and programs, or other relevant information to citizens
- Making information on advisory board and committee membership more easily accessible to the general public via the website by posting the names and number of terms served of all board and commission members, accompanied by contact information for the assigned staff contact.
- Designing and implementing ideas for using the back side of business cards carried by staff to send key messages to the public (including QR codes for County website, links to information on County awards, volunteer opportunities, and timely information such as availability of flu shot clinics, etc.)
- Integrating key messages and themes from ICMA's *"Life, Well Run"* campaign that promotes the value of professional local government management into the County website via creation

of a video focusing on the role of the County and neighboring jurisdictions in fostering strong quality of life.

- Freshening up the look and feel of information about County services.

These efforts represent initial steps aimed at enhancing the County's current efforts to keep citizens informed and engaged. Future efforts will focus on increasing the visibility of available local government and community offerings related to community health, active lifestyle, and healthy living, as well as enhancing the quality and visual appeal of the information being communicated.