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# UNIFIED DEVELOPMENT ORDINANCE

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## ARTICLE III: PROCEDURES



**CATAWBA COUNTY, NORTH CAROLINA**



## 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 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, he shall require 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 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 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 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. Public hearing procedures.**

- (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.*
- (1) *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. 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.**

- (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.**

- (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.**

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 - 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) *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 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 - 325. Reserved.**

**Division 3. Zoning Procedures**

**Sec. 44-326. 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 Sec 44-303.
- (e) *Public hearing required.* A public hearing shall be required in conformance with Sec. 44-304.
- (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 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.
- c. 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. 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 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. Conditional zoning district.**

- (a) *Intent.* The conditional zoning districts included herein 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, 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 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)
  - 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  $\frac{1}{2}$  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 44-327(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 44-327(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 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 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, as the same may from time to time be amended.

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



**Sec. 44-328. 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.* See Sec. 44 - 303.
- (d) *Public hearing required.* A public hearing shall be required which follows the quasi-judicial process in Sec. 44-304.
- (e) *Decision.*
  - (1) The planning director shall submit within 45 days a report to the board of adjustment.
  - (2) After hearing the planning director's report and completion of the public 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.
- (i) *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 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 approved special uses, as long as they are in harmony with the action of the board of adjustment. The planning director shall 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, he shall require 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 hearing and approve or disapprove the amendment.
- (j) The planning director shall send notice of the disposition of the application to the applicant by personal service or by registered mail or certified mail return receipt requested. A copy of the decision must be maintained in the office of the planning director.
- (k) *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. 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.* See Sec. 44-303.



- (d) *Public hearing required.* A public hearing shall be required which follows the quasi-judicial process in Sec. 44-304.
- (e) *Decision.*
  - (1) 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 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) 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.
    - 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.
    - 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.
    - d. The variance is in harmony with, and serves the general intent and purpose of this chapter and the adopted land use plan.
    - 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 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.

- (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.
- (i) A change to an approved variance requires a new variance application.
- (j) After approval of a variance, the applicant must apply for a zoning authorization permit before undertaking any development authorized by the variance.
- (k) The planning director shall give notice of the disposition of the application to the applicant by personal service or by 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 - 340. Reserved.**

#### **Division 4. Subdivision Procedures**

**Sec. 44-341. Generally.**

- (a) *Applicability.*
  - (1) Subdivision includes all divisions of a tract or parcel into 2 or more lots, building sites, or other divisions for the purposes of sale or building development, whether immediate or future, and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided all of the following shall not be included within this definition nor be subject to the regulations authorized by this Chapter in accordance with NCGS 153A-335:
    - a. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County as shown in this Chapter.
    - b. The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.



- c. The public acquisition by purchase of strips of land for widening or opening of streets.
  - d. The division of a tract in single ownership, the entire area of which is no greater than 2 acres into no more than 3 lots, if no street right-of-way is involved and where the resultant lots are equal to or exceed the standards of the County, as shown in this Chapter, including lot dimensions, ROW width and road construction requirements.
  - e. Estate settlement.
- (2) A parcel of land for which a separate deed has been recorded after July 31, 1982 shall not be occupied until such lot shall have a subdivision plat, as defined in this Article, approved by the County in accord with the subdivision regulations that were in place at the date of the creation of the deeded lot.
  - (3) No subdivision shall be made, platted or recorded for any purpose, nor shall parcels resulting from such subdivision be sold unless such subdivision meets all of the requirements of this Chapter and applicable related regulations.
  - (4) No plat of any subdivision within such jurisdiction shall be filed or recorded by the County register of deeds until it shall have been submitted to and approved by the appropriate authority and such approval entered in writing on the plat.
- (b) *Classification of subdivisions.*
- (1) There are 3 categories of subdivisions subject to this Division: Major, Minor and Family. The plat classification and required approvals for each type of subdivision are listed in Table 44-341-1 below.
  - (2) For purposes of this chapter, a "family subdivision" means a subdivision where lots are conveyed to members of the lineal family or siblings. "Lineal family" includes great grandparents, grandparents, parents, children, grandchildren, great-grandchildren. Lots can be conveyed as a gift or for a nominal consideration.



**Table 44-341-1. Plat classifications and required approvals.**

Classification	Description	Preliminary Plat Required	Final Plat Required
Major Subdivision	<ul style="list-style-type: none"> <li>• New roads, built to NCDOT standards, are required with rights-of-way dedication;</li> </ul>	√	√
	<ul style="list-style-type: none"> <li>• Existing right-of-way dedicated on or after October 1, 1975 but road not built to NCDOT standards; or</li> </ul>	√	√
	<ul style="list-style-type: none"> <li>• The subdivision does not meet the definition of a family or minor subdivision as defined in this Table.</li> </ul>	√	√
	<ul style="list-style-type: none"> <li>• Subdivisions of 200 or more lots must be approved as a Planned Development (Sec. 44-443)</li> </ul>	√	√
Minor Subdivision	<ul style="list-style-type: none"> <li>• Creation of not more than 3 new lots after March 18, 1996 that front along an existing state-maintained road. One of the 3 new lots includes the residual/original parcel leaving a maximum of 2 additional lots; or</li> </ul>		√
	<ul style="list-style-type: none"> <li>• Creation of not more than 3 new lots after March 18, 1996 that front along a minimum 45-foot dedicated right-of-way that was platted and recorded before October 1, 1975 (NCGS 136-102.6) and is constructed to standards which will allow NCDOT to maintain (paved, dirt or gravel). One of the 3 new lots includes the residual/original parcel leaving a maximum of 2 additional lots; or</li> </ul>		√
	<ul style="list-style-type: none"> <li>• Creation of not more than 3 new lots after March 18, 1996 that front along an existing non state-maintained road which is built to North Carolina Department of Transportation standards as verified by the NCDOT or a North Carolina registered professional engineer (PE). One of the 3 new lots includes the residual/original</li> </ul>		√



Classification	Description	Preliminary Plat Required	Final Plat Required
	parcel leaving a maximum of 2 additional lots.		
Family Subdivision	<ul style="list-style-type: none"> <li>Creation of not more than 3 new lots after March 18, 1996 for lineal family or sibling members. One of the 3 new lots includes the residual/original parcel leaving a maximum of 2 lots for other lineal or sibling family members where a newly dedicated unimproved 45' ROW is required.</li> </ul>		√

- (c) The effect of plat approval on the status of dedications is as follows:
- (1) The approval of a plat does not constitute or effect an acceptance by the County or the public of the dedication of any street, open space or other improvements shown upon the plat.
  - (2) Acceptance of such dedications shall only be by resolution of the board of commissioners or appropriate action by the state department of transportation. The board of commissioners shall consider such resolutions only on determination that any required improvements have been properly installed and all applicable conditions met, as set out in this Chapter and that a public purpose is served.
- (d) *Effect of subdivision regulations on naming streets.* It shall be unlawful for any person to lay out any new street or road, and to name such street or road on any plat, by any marking, or in any deed or instrument without first getting the approval of the appropriate authority as specified in the procedures manual. Any person violating this Subsection shall be guilty of a misdemeanor.
- (e) Markers and monuments.
- (1) Monuments must comply with the requirements of the North Carolina General Statutes and the current edition of the Standards of Practice for Land Surveying in North Carolina and be placed in all subdivisions.
  - (2) Any permanent monuments or markers displaced or destroyed during the course of development or construction in the subdivision shall be accurately witnessed and replaced upon completion of such development or construction.

**Sec. 44-342. Sketch plats/preliminary plats.**

- (a) Applications for approval of subdivision plats must be filed with the planning director for the subdivision review board's consideration.



- (1) *Sketch plat.* A sketch plat is an optional submittal that is less detailed than a preliminary plat and may be considered by the subdivision review board for review purposes. The procedures manual shall be followed for required information on a sketch plat. A review of a sketch plat gives the developer direction as to how to proceed with the preliminary plat and does not constitute authorization to proceed with any development improvements.
  - (2) *Preliminary plat:* A preliminary plat submittal is required as note in Table 44-341-1 above, and has sufficient detail to be considered by the subdivision review board for approval. Substantial details are noted in the procedures manual and at a minimum must include: topography, lot lines and dimensions, existing structures, easements, proximity to airports/airstrips, street plans and profiles, drainage patterns and design.
- (b) *Completeness review.* See Sec. 44-303.
- (c) *Decision*
- (1) The planning director shall review an application for a major subdivision plat and make recommendations to the subdivision review board, including the recommendations of other affected agencies of government. The subdivision review board shall take action as provided in this Section.
  - (2) Subdivision review board.
    - a. The subdivision review board shall approve, approve with conditions, or deny the major subdivision application. The subdivision review board shall take action on applications submitted 45 days prior to the regularly scheduled subdivision review board meeting, unless the applicant consents in writing to an extension of this time limit.
    - b. If the subdivision review board or planning director determines that the application does not comply with this Section, the application and related materials shall be returned to the applicant with written findings as to required corrections and/or completions necessary prior to resubmission. A new time period of at least 45-days prior to the regularly scheduled meeting is required for each resubmission. If the planning director or subdivision review board determines that the errors are minor, the application may be revised and resubmitted without resubmitting the application.
    - c. Where applications are approved without conditions, the planning director shall notify the applicant of the approval date.



- d. Where applications are approved with conditions, the planning director shall notify the applicant in writing of the conditions and the reasons.
  - e. Where applications are denied, the planning director shall notify the applicant of the reasons. All such notices shall be in writing and dispatched by first class mail to the applicant within 10 working days of the date of decision by the subdivision review board.
  - f. The decision, and the grounds for the decision, shall be recorded in the minutes of the subdivision review board.
- (3) When the subdivision review board fails to take action on the application within the time period prescribed above, the application is deemed to be approved without conditions. If the application is returned for correction of errors or omissions and resubmittal, or the applicant agrees to an extension of the time limitations, the action shall be taken within the new time limit or the time limit agreed to by the applicant. If action is not taken within the revised time period, the application is deemed to be approved without conditions.
- (d) *Extensions of approval and substantial progress.*
- (1) Upon approval of the preliminary plat by the subdivision review board, the applicant has up to 5 years to complete all improvements in compliance with this Chapter and obtain final plat approval. An additional extension of 5 years may be granted by the subdivision review board only where the applicant demonstrates good cause and where there has been a substantial expenditure of resources directly related to the subdivision development as reviewed by the subdivision review board. Examples of substantial expenditures include consulting fees from development specialists for the survey of the property, soil evaluation, erosion control plan, engineering design for roadway, waterlines, sewer lines, permit fees or fees associated with land preparation such as clearing, rough grading or fine grading.
  - (2) In all cases where extensions are granted, the cumulative time period for obtaining final plat approval shall not exceed a total period of 10 years from the date of the initial preliminary plat approval.
- (e) A copy of the decision approving the preliminary plat will be maintained in the planning office.
- (f) There is no limit on successive applications for preliminary plat approval; however, before a new preliminary plat application can be accepted a written request must be submitted from the previous applicant or current owner to withdraw a preliminary plat previously approved.. The subdivision review board must vote on the withdrawal of the previous preliminary plat before considering the new application.



- (g) *Amendments.* Minor changes may be administratively approved. If the amendment is not a minor change, a preliminary plat shall be amended by filing and obtaining approval from the subdivision review board. An amendment to a preliminary plat includes:
- (1) When the location of a road is altered or a new road is proposed
  - (2) Additional lots are proposed,
  - (3) The amount and location of open space is revised
  - (4) Addition or deletion of community amenities

**Sec. 44-343. Major subdivision final plats.**

- (a) Preliminary plat approval must be obtained before applying for final plat approval.
- (b) An application for final plat approval must be filed with the planning director within 5 years of the preliminary plat approval, unless an extension is approved; otherwise, the preliminary plat approval shall expire.
- (c) *Completeness review.* See Sec. 44-303.
- (d) *Decision.* The planning director shall administratively approve the final major plat within 10 working days from receipt of a complete final subdivision submittal. All required improvements must be complete or a performance guarantee package, as detailed in Sec. 44-361, must be submitted and approved by the planning director.
- (e) *Approval criteria.*
- (1) The final plat shall be approved if it conforms to the approved preliminary major plat and all preliminary conditions of approval; and
  - (2) Except where a performance guarantee has been approved, all required improvements must be completed by the applicant, or his agents, and inspected and approved by appropriate public officials or agencies before final plats can be approved; and
  - (3) The final plat meets the requirements of the procedures manual.
- (f) There is no limit on successive applications for final plat approval.
- (g) A final plat may be amended by filing and obtaining approval of a new application for final plat approval.
- (h) *Recording.* If an approved major subdivision final plat is not recorded in the register of deeds office, within 60 days of approval, the plat expires and a new plat must be submitted.



**Sec. 44-344. Minor subdivisions.**

- (a) A minor subdivision plat approval is initiated by filing an application for final plat approval with the planning director.
- (b) *Completeness review.* See Sec. 44-303.
- (c) A minor subdivision plat is administratively reviewed and approved by the planning director. The planning director shall have up to 10 working days to review the minor subdivision plat and approve or deny the minor subdivision plat.
- (d) No application for a minor subdivision plat shall be approved unless it complies with all applicable requirements of this Chapter.
- (e) A minor subdivision plat may be amended by filing and obtaining approval of a new application for minor subdivision plat approval.
- (f) *Recording.* If an approved minor subdivision plat is not recorded in the register of deeds office, within 60 days of approval, the plat expires and a new plat must be submitted.

**Sec. 44-345. Family subdivisions.**

- (a) A family subdivision plat approval is initiated by filing an application for final plat approval with the planning director.
- (b) *Completeness review.* See Sec. 44-303.
- (c) A family subdivision plat is administratively reviewed and approved by the planning director. The planning director shall have up to 10 working days to review the family subdivision plat and determine if it meets the requirements for approval of a family subdivision in accordance with the following:
  - (1) The application and plat indicate that it qualifies as a family subdivision as defined in this Article;
  - (2) The applicant must sign an affidavit attesting to the linear or sibling relationship that qualifies the applicant for the family subdivision;
  - (3) Where right-of-way is less than the required 45-foot width, additional right-of-way has been dedicated; and
  - (4) The right-of-way, as shown on the submitted plat, is located where a road can feasibly be built.
- (d) A family subdivision plat may be amended by filing and obtaining approval of a new application for family subdivision plat approval.
- (e) *Recording.* If an approved family subdivision plat is not recorded in the register of deeds office, within 60 days of approval, the plat expires and a new plat must be submitted.



**Sec. 44-346. Appeals process.**

- (a) *Appeals of planning director's actions.* Any subdivision-related decision of the planning director may be appealed to the subdivision review board by the applicant or his agent within 30 days from the date of the decision. An appeal must be in writing and delivered to the planning department. If a written appeal is not made within the time period the decision of the planning director shall be final.
- (b) *Appeals of subdivision review board's actions.* Actions of the subdivision review board may be appealed to the board of adjustment. Appeals must be filed in the planning department, by the applicant of the subdivision plat or his agent, within 30 days of the date of the action of the subdivision review board.

**Sec. 44-347. Vacating a plat and road abandonment.**

*Purpose: This Section establishes procedures and criteria for approving the elimination of a plat, in whole or in part.*

- (a) *Applicability.* The owner of a parcel subject to an approved plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat. If lots in the plat have been sold or built upon, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.
- (b) *Initiation.* The owner or owners of lots in any approved subdivision, must initiate a plat vacation by filing a final plat with the planning director.
- (c) *Completeness review.* See Sec. 44-303.
- (d) *Decision.*
  - (1) *Vacated plat.* The vacated plat shall be approved under the procedures for which the original plat was approved. The approving entity shall approve or deny an application for a plat vacation.
  - (2) *Road abandonment.*
    - a. A major subdivision road that is dedicated to the public but not yet accepted by NCDOT cannot be abandoned without approval from the subdivision review board.
    - b. A family/minor subdivision road that is dedicated to the public but not yet accepted by NCDOT cannot be abandoned without County planning approval.
    - c. Roads dedicated to the public, not open or used within 15 years after dedication, may be withdrawn in accordance with GS 136-96 without NCDOT or County approval.



- (e) *Approval criteria.*
  - (1) No application for a plat vacation shall be approved unless it complies with all applicable requirements of this Chapter.
  - (2) The approving entity shall not approve an application for a plat vacation if it will materially injure the rights of any non-consenting property owner or any public rights related to public improvements unless expressly agreed to by the agency with jurisdiction over such improvements.
- (f) *Recording.* After the new plat is approved, the plat must be recorded, within 60 days, with the register of deeds office. Upon the execution and recording of the new plat, the vacated plat has no effect. The re-subdivision of the land covered by a plat that is vacated shall be platted in the same manner as is prescribed by this Chapter for an original plat.

**Sec. 44-348 - 358. Reserved.**

#### **Division 5. Site Specific Expirations**

**Sec. 44-359. Expiration of development and preliminary subdivision plat approvals.**

- (a) *Time limits on approvals.* Unless otherwise specifically provided for in this Chapter, approvals shall automatically expire and become null and void, and all activities taken pursuant to such application shall cease, and all activities pursuant to such approval thereafter shall be deemed in violation of this Chapter, when:
  - (1) The applicant fails to satisfy any condition that was imposed as part of the original or revised approval of the application for approval, or that was made pursuant to the terms of any development agreement, including the failure to abide by specified time limits established; or
  - (2) The applicant fails to present a subsequent extension request within 5 years of the approval of the original application.
- (b) *Default provision.* If no time limit for satisfaction of conditions is specified in the original or revised approval of the application, the time limit is presumed to be 5 years from the date of approval, unless an extension is granted in conformance with Subsection (f) below.
- (c) *Date from which time limit is measured.* Each time period referenced in this Chapter relating to the scope of an approval shall run from the final action of the appropriate official, officer, or board with valid and legal jurisdiction to take such action. Except as may be otherwise indicated in this Chapter, the date of final action shall be the date such action was taken or such approval was granted.



- (d) *Annotation of dates.* In order to ensure that all applicants for approvals are informed of the applicable time limit, the date of final action and the expiration date should be shown on each such approval. However, the final decision maker's failure to include either the date of final action or the expiration date shall not be deemed to be a waiver of such dates nor shall it be the basis of any action by the applicant to challenge the applicable expiration date. The burden is on the applicant to know the date of issuance and the expiration date.
- (e) *Expiration of approvals.* All approvals shall expire on the expiration date prescribed, unless a valid extension has been granted on or before the expiration date.
- (f) *Extensions of time limits.* Extensions of time limits for approval may be approved by the board granting the original approval. Unless otherwise prohibited by state law or this Chapter, the board may extend the time for expiration of an approval for an additional 5-years from the end of the original 5-year period, if the application for extension is made in writing within the original timeframe based upon substantial progress. No additional extensions of any time limits for approvals are permitted, unless the board granting the original approval granted a phased time table exceeding 10 years.

Before granting an extension, the board shall determine whether any applicable changes in land use regulations have occurred which would impose new requirements with respect to such approval, if an extension were denied, and the applicant were compelled to re-file for an approval.

## **Division 6. Development Maintenance and Guarantees**

### **Sec. 44-360. Homeowners' associations.**

- (a) *Applicability.* This Section applies to any situation where a homeowners' association or similar legal entity is responsible for the maintenance and control of roads, open space, recreational facilities, or other common areas and facilities associated with a subdivision or other application for development approval.
- (b) The homeowners' association shall:
  - (1) Have clear legal authority to maintain and exercise control over the common areas, roads and facilities; and
  - (2) Have the power to compel contributions from development residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities; and
  - (3) Be established before any dwelling unit or lot in the development is sold or any building in the development is occupied.



(c) *Documentation.*

- (1) Documents establishing a homeowners' association or similar legal entity in accordance with this Section must be submitted and reviewed by the County attorney before any plat for the development is recorded. The documents must state that the homeowners' association has legal authority to carry out the provisions of this Ordinance or in lieu of the developer may submit an affidavit to this effect.
- (2) The review by the planning director shall be limited to ensuring compliance with Subsection (b) above.

**Sec. 44-361. Completion of improvements and performance guarantees.**

(a) *Generally.* In lieu of completion of all or part of the required improvements, and prior to approval of the final subdivision plat or issuance of a zoning compliance certificate, the applicant may post a performance guarantee in the amount of 1.25 times of the estimated cost for the construction, installation and dedication of the uncompleted portion of the required improvements.

(b) *Type of guarantee.* The following types of performance guarantees are permitted:

- (1) A certified check;
- (2) A no-contest irrevocable bank letter of credit; or
- (3) A performance and payment bond underwritten by a state-licensed corporate surety company.

(c) *Requirements.*

- (1) Except for certified checks, sureties shall not be accepted unless the County attorney has made a review and rendered a written opinion that the interests of the County are fully protected.
- (2) The certified check must be deposited with the County finance director, as escrow agent, who shall deposit the check in an interest-bearing escrow account of the County, with all interest accruing to the applicant.
- (3) The no-contest irrevocable bank letter of credit shall be from a banking corporation licensed to do business in the State of North Carolina. The terms of the letter must include the absolute right of the County finance director to withdraw funds from the bank forthwith upon the County manager's certifying to the bank that the terms and conditions of the performance guarantee have been breached. The letter of credit must be valid for up to 12 months from the date that the performance guarantee was approved.

(d) *Plans, contracts and construction programs.* Procedures for submission of plans, contracts and construction programs are as follows:



- (1) The applicant has the option of submitting either:
    - a. Executed contracts, from state-licensed contractors, made assignable to the applicant and the County; or
    - b. A per-unit cost sheet submitted by a registered, professional engineer who has civil engineering qualifications.
  - (2) Plans, specifications, quantities, unit costs or executed contracts must be provided by the applicant to the planning director, together with a schedule indicating time of initiation and completion of the work. The complete performance guarantee package must be submitted concurrently with the final plat.
  - (3) The planning director shall seek information from relevant government agency, including County engineering staff, as to sufficiency of the costs and the reasonableness of construction plans.
- (e) *Amount, time limits, approval and extensions of performance guarantee.*
- The performance guarantee must include, the terms, amount, time of initiation and completion of the work, reasons for extension, and provisions for release of the guarantee upon completion of the work.
- (1) *Amount.* The guarantee shall be 1.25 times the executed contract amount or the certified cost estimate, whichever is provided. The amount of the guarantee must be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. In reviewing the amount of the performance guarantee, the planning director shall consider the difficulty of restarting a closed project, the size and complexity of the required improvements, the record of the applicant and the site conditions.
  - (2) *Time limit.* The time between initiation and the completion of the required improvements shall not exceed one year from the date the performance guarantee was approved.
  - (3) *Approval.* If the information is complete and the guarantee amount is satisfactory, the planning director shall administratively approve the performance guarantee package.
  - (4) *Extension.* The planning director may grant extensions for performance guarantees based on the circumstances surrounding the request for an extension and the record of the applicant.
- (f) *Inspections; reports; cost responsibility.* Procedures for inspections and reports and the responsibility for the cost are as follows:
- (1) Applicable government agency shall make an inspection to determine whether work has started as scheduled, make periodic inspections during



- the course of work, and make a final inspection to determine whether stages of construction required under the performance guarantee have been completed in accord with the terms of the guarantee.
- (2) Within 10 days of the inspections, copies of reports of the results should be provided to the planning director.
  - (3) The applicant is responsible for all costs associated with making the inspections and preparing the reports.
  - (4) In lieu of having inspections conducted by the government body, the applicant, at his cost, may elect to have a registered, professional engineer licensed in North Carolina conduct the inspections, as stated above, and submit reports to the planning director.
- (g) *Action on inspection reports.* The following actions may be taken regarding inspection reports:
- (1) *Reports indicating satisfaction of requirements.* Where reports indicate satisfactory completion of work within time limits set and are in accord with the terms of the performance guarantee, for agreed-upon stages or for the entire work, the planning director shall indicate so in writing to the applicant, any surety company involved and the County manager. The County manager, upon such notification and any further assurance he may require from the County attorney or government agency exercising operating control, shall then release the performance guarantee in accord with the terms thereof.
  - (2) *Reports indicating failure to satisfy requirements.* Where the reports indicate failure to complete work on schedule in full compliance with the terms of the performance guarantee, the planning director shall indicate so in writing to the applicant, government agency exercising control, any surety company involved, and the County manager. Such notice shall indicate that unless action required under the terms of the performance guarantee is completed within 30 days of the date of such notification, the performance guarantee or portions thereof, set forth in its terms, shall be called. Unless such action is completed, as evidenced by inspections and reports from government agency exercising control transmitted through the planning director, the County manager shall call the performance guarantee or affected portions thereof.
  - (3) *Reports indicating unsatisfactory progress.* Where such reports indicate that work initiated appears unlikely to be completed on schedule, and where the performance guarantee provides for extension of time for cause, the planning director shall notify, in writing, the applicant and any surety company involved, concerning the potential need for an application for an extension. Where notice has been given, no application for an extension shall be considered following the expiration of the original schedule date.



- (h) *Failure to complete work under performance guarantee.* Where work required under the terms of any performance guarantee is not completed by the applicant, and following the call of the guarantee, the County manager shall take the necessary action to procure the completion of the required improvements at the earliest reasonable time, according to the plans and specifications.
- (i) *Guarantee of other government agency or public utility.* Where all or part of required subdivision or development improvements are to be completed by another government agency or public utility, the planning director may accept the written guarantee of the agency to complete the improvements within a time to be mutually agreed upon.
- (j) *Building permits and certificates of occupancy.*
  - (1) Unless a performance guarantee has been approved by the planning director, building permits may not be issued for construction of any structures in the development or subdivision.
  - (2) Certificates of occupancy may be issued, and buildings occupied, only when all of the following improvements are met:
    - a. Under normal weather conditions, streets must be passable for private, service, and emergency vehicles.
    - b. Driveways must be passable under normal weather conditions.
    - c. Adequate drainage must be installed and operative to ensure that, there will be no flooding of the building site or access ways to the site under normal weather conditions.
    - d. Erosion control measures must be in place in accordance with the County's soil, erosion and sedimentation control ordinance (Chapter 16, Article V in the County Code).
    - e. Domestic or public water supply and sanitary sewerage or septic tank must be installed and operative.
  - (3) No permits or certificates shall be issued unless all remaining required improvements are covered by a performance guarantee and the applicant accepts tort liability pending completion of all required improvements.

**Sec. 44-362 - 44-368.**

**Reserved.**



**Division 7. Enforcement Procedures**

**Sec. 44-369. Zoning violations.**

(a) *Generally.*

- (1) Whenever the performance of any act is required or the performance of any act is prohibited or whenever any regulation or limitation is imposed on the use of any land and water or on the erection of a structure, a failure to comply with such provisions shall constitute a violation of this Chapter.
- (2) The owner, tenant, or occupant of any land or structure or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Chapter shall be held responsible for the violation and be subject to the penalties and remedies provided in this Chapter.

(b) *Citations and notices.*

- (1) Upon the determination that any Section of this Chapter is being violated, the planning director shall send, within 10 working days, a written citation by registered mail, certified mail, first class mail or personal delivery to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The planning director has the discretion to send additional written notices.
- (2) The final written notice, which can also be the initial notice, shall state the action the planning director intends to take if the violation is not corrected. The notice shall also advise that the planning director may seek enforcement without prior written notice by invoking any of the remedies allowed by law.

(c) *Remedies.* If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure or land is used in violation of this Chapter or a regulation made under authority conferred by this Chapter, the planning director, in addition to other remedies, may institute any appropriate action or proceedings to:

- (1) Prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
- (2) Restrain, correct or abate the violation;
- (3) Prevent occupancy of the building, structure or land; or
- (4) Prevent any illegal act, conduct, business, or use in or about the premises.



(d) *Penalty.*

- (1) Violation of any Section of this Chapter shall subject the offender to a civil penalty in the amount of \$50.00, to be recovered by the County in a civil action in the nature of debt if the offender does not pay the penalty within a period of 72 hours after being cited. The citation shall be in writing, signed by the planning director, and shall be delivered or mailed to the offender either at his residence or at his place of business or at the place where the violation occurred.
- (2) Each day's continuing violation shall be a separate and distinct offense.

**Sec. 44-370. Subdivision violations.**

(a) Appropriate actions and proceedings may be taken at law or in equity to:

- (1) Prevent any violation of this Chapter;
- (2) Prevent unlawful construction;
- (3) Recover damages;
- (4) Restrain, correct or abate a violation; or
- (5) Prevent illegal occupancy of a building, structure or premises.

(b) *Building permits and utility connections.* No building permit or certificate of occupancy shall be issued nor shall water, sewer or other public facilities or services be extended to or connected to any land for which approval of a subdivision is required under this Chapter unless all Sections of this Chapter are satisfied.

(c) *Penalties for selling lots in unapproved subdivision.* The owner or agent of the owner of any land to be subdivided within the area of jurisdiction of this Chapter who transfers or sells such land by reference to or exhibition of or by any other use of a plat of a subdivision of such land, before such plat has been approved by the County shall be guilty of a misdemeanor. Upon conviction thereof, he shall be punished as provided by law. The description of the land by metes and bounds in the instrument of transfer shall not exempt the transaction from these penalties. Such transfer or sale may be enjoined by appropriate action. Nothing prohibits the owner or agent from entering into a contract to sell or lease a lot in conformance with NCGS 153A-334.

(d) *Penalty.* Any violation of this Chapter or amendments thereto shall constitute a misdemeanor. Those convicted of such violations shall be punished as provided by law. Each day that a violation continues shall be considered a separate and distinct offense.

**Sec. 44-371 - 399. Reserved.**