

SANFORD LEE COUNTY BROADWAY
UNIFIED DEVELOPMENT ORDINANCE

ARTICLE 3 – ZONING & PERMITTING PROCEDURES

Summary: This Article describes how to obtain a permit under the Unified Development Ordinance. It establishes the rules for submitting a complete application, the agencies responsible for processing and rendering a decision, and the general criteria for approval. Each section describes the rights granted by the application under “Scope of Approval.” Subsections relating to “recording” this application set forth record keeping procedures.

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3.1 GENERAL PROCEDURES

3.1.1 APPLICATION PROCESS AND OFFICIAL FILING DATE

The specific procedures followed in reviewing various Applications for Development Approval may vary. Generally, the procedures for all applications have four common elements: (1) submittal of a complete application, including required fee payment and appropriate information; (2) review of the submittal by appropriate staff and boards; (3) action to approve, approve with conditions, or deny the application; and (4) issuance of a permit, based on complete and approved plans.

3.1.1.1 PRE-APPLICATION CONFERENCE

The applicant should meet with the Department of Community Development to discuss the nature of the proposed application, application submittal requirements, the procedure for action, and the standards for evaluation of the application.

3.1.2 COMPLETENESS REVIEW

3.1.2.1 The Department of Community Development shall review any application required by this Article for completeness. No Application shall be deemed complete unless all of the information required by Appendix B is included, and all filing fees required by this Ordinance have been paid. Current application materials shall be made available in the Department of Community Development Offices. Such applications shall be filed in advance of any public hearing or public meeting required pursuant to this Article or statute.

3.1.3 LOCAL PLANNING BOARD

3.1.3.1 Each local planning board shall hold regularly scheduled hearings to receive and review public input on those items required by this Ordinance and the NCGS. On those items where it has review authority, the Board shall recommend to the appropriate Governing Body approve, approve with conditions, or deny applications. The Department of Community Development will submit the proposed item to the Governing Body for its consideration.

3.1.3.2 The Department of Community Development shall provide for minutes to be written and retained, shall record the evidence submitted within the allotted hearing time, and shall include a Unified Development Ordinance summary of the considerations and the action of the Board.

3.1.4 CITY COUNCIL, COUNTY COMMISSION, AND TOWN BOARD OF COMMISSIONERS

The Governing Bodies of the City of Sanford, Town of Broadway, and Lee County shall hold regularly scheduled hearings to act upon all items required by this Ordinance and the NCGS to be considered by them. The Governing Bodies shall decide whether to approve, approve with conditions (if applicable), or deny such applications.

3.1.4.2 The Clerk to the Board shall provide for minutes to be written and retained, shall record the evidence submitted within the allotted hearing time, and shall include a summary of the considerations

and the action of the respective Governing Body.

3.1.5 HEARINGS AND DECISION-MAKING PROCEDURES

3.1.5.1 SCOPE OF ACTION The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable), or denial. The reviewing body may allow minor amendments to the application which: (1) proposes fewer dwelling units, floor area or impervious surface than that 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. The reviewing body shall not, in any case, permit: a greater amount of development, a use falling in a different general use category, a larger land area than indicated in the original application, or a greater variance than was indicated in the notice. In addition, the reviewing body shall not reduce or eliminate conditions for a Conditional District unless a new notice is provided prior to the meeting at which a final decision is to be made.

3.1.5.2 LEGISLATIVE AND ADVISORY PUBLIC HEARINGS PROCEDURES

3.1.5.2.1 Purpose.

The purpose of a legislative or advisory review hearing is to provide the public with an opportunity to be heard. Unlike quasi-judicial hearings, a legislative proceeding does not require procedural due process protections, such as the right of the parties to offer evidence, sworn testimony, or findings of fact. Like quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Legislative hearings are required for legislative review hearings, such as amendments to the Comprehensive Plan, amendments to this Ordinance (including Zoning provisions of this Ordinance and the Zoning Map), and applications for a Planned Unit Development.

3.1.5.2.2 Conduct of Hearing.

Testimony may be presented by any member of the public, but need not be submitted under oath or affirmation. The decision-making body may establish a time limit for testimony.

3.1.5.2.3 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. The Department of Community Development will provide the record upon request by application and payment of a fee set by the County of Lee (to cover duplication costs.)

3.1.5.2.4 Notice Provisions.

The notice requirements for legislative and advisory proceedings, including amendments to this Ordinance, or the Official Zoning Map, shall be that as provided in NCGS §§ 160D-601; -602. More specifically, a notice of the hearing shall be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date

fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Notice of rezoning hearings conducted pursuant to this section shall be mailed to the person or entity whose application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the County of Lee may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the County of Lee shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3.1.5.3 QUASI-JUDICIAL HEARING PROCEDURES

3.1.5.3.1 Applicability.

The provisions of this section apply to any application for a special use permit, variance, appeal, or any other quasi-judicial action. The board deciding such action(s) shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board of adjustment. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

3.1.5.3.2 Rulemaking Authority.

The Planning Boards and the County of Lee may adopt general rules which apply to quasi-judicial hearings. These hearings may relate to a Special Use permit or to a proceeding before the Board of Adjustment.

3.1.5.3.3 Conduct of Hearing.

Any person or persons with standing may appear as a Party at a quasi-judicial hearing and submit evidence, either individually or as a representative. Other witnesses may present competent, material,

and substantial evidence that is not repetitive as allowed by the board. Each person who appears at a hearing shall state, for the record, his or her name, address, and if appearing on behalf of an organization or group, its name and mailing address. The hearing shall be conducted in accordance with the procedures set forth in NCGS § 160D-406.

3.1.5.3.4 Notice Provisions.

Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3.1.5.4 ADMINISTRATIVE DECISIONS

3.1.5.4.1 Administrative decisions are zoning ordinance implementation matters carried out by the staff, including issuance of permits for permitted uses. In general, the Department of Community Development is a purely administrative agent following the literal provisions of this Ordinance. The Department of Community Development 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). 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 Ordinance. *Lancaster County v. Mecklenburg County*, 334 N.C. 496, 434 S.E.2d 604 (1993).

3.1.5.4.2 The procedures for processing administrative permits, such as Zoning Clearance Permit, are set forth in the sections of this Ordinance pertaining to such permits.

3.1.5.4.3 No notice shall be required for an administrative permit issued pursuant to §3.2 of this Ordinance unless otherwise provided by this Ordinance or by law.

3.2 ADMINISTRATIVE PERMITS

3.2.1 PURPOSE

The purpose of this Section is to prescribe procedures for permits which do not require quasi-judicial or legislative notice or a hearing. A hearing is not required for permits set forth in this Section for one or more of the following reasons:

3.2.1.1 If required, hearings have already been conducted relating to the permit application. The permit application procedure was designed to ensure that the proposed use complies with a previously approved subdivision plat, site plan, specific plan, comprehensive plan amendment, or conditional rezoning (e.g., zoning clearing, certificate of occupancy).

3.2.1.2 The proposed use is permitted by right in the applicable zoning district (e.g., zoning clearance, certificate of occupancy).

3.2.1.3 The permit is subject to unique provisions of state or federal law which restrict the County of Lee's discretion, and which require expedited review.

3.2.2 APPLICABILITY

3.2.2.1 The provisions of this Section shall apply subsequent to approval of any site plan or final site plan as set forth in § 3.6 of this Ordinance. Administrative permits include:

- a Zoning Clearance Permit (§ 3.2.3, below)
- a building permit (§ 3.2.4, below)
- a sedimentation and pollution control permit (§ 3.2.5, below)
- a sign permit (§ 3.2.6, below)
- temporary use permit (§ 3.2.7, below)

3.2.2.2 All development permits applicable to a proposed development must be issued in accordance with the provisions of this Ordinance, prior to any development activity. Permits are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards, and laws and to ensure consistency with the Comprehensive Plan and policies of the County of Lee.

3.2.3 ZONING CLEARANCE PERMIT

3.2.3.1 APPLICATION

Upon adoption of this Ordinance, buildings or structures shall be erected or constructed, and uses shall be established, only on parcels of land that have been created in conformance with this Ordinance. To construct any structure, use any land, or change the use of any structure or land, a zoning clearance permit must be obtained from the Department of Community Development and a building permit obtained from the appropriate Building Inspections Department.

3.2.3.2 RESTRICTION ON SINGLE-FAMILY DETACHED DWELLING LOTS

In any zoning district which permits single-family detached dwellings, no Zoning Clearance Permit shall be issued for a use or dwelling on the same lot as an existing detached single-family dwelling except as provided for in this Ordinance.

3.2.3.3 ADDITIONS TO EXISTING STRUCTURES

3.2.3.3.1 The provisions of this section apply to any expansion or addition to an existing conforming structure or building. This Ordinance classifies additions or expansions of existing structures into three categories for the purpose of identifying what design standards shall apply. Expansion of nonconforming structures is regulated in Article 12 of this Ordinance.

- (a) **Low Impact Additions/Expansions** shall be defined as an addition that equates to less than 25% to the total Gross Floor Area (GFA) of a site and requires less than 10 additional off- street parking spaces. Low Impact (Type 1) expansions shall be exempt from most UDO design improvements, except:
- the building expansion shall conform to the UDO standards for building setbacks
 - new or expanded off-street parking areas shall be paved in accordance with section 8.2.6.1
 - if fronting on a corridor as defined in Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section
 - all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO
- (b) **Moderate Additions/Expansions** shall be defined as:
- a proposed addition that is greater than 25% but less than 50% total of the total GFA of a site, and/or
 - a proposed addition that requires 10 or more additional off-street parking spaces.

Moderate Additions/Expansion shall provide the following site improvements from this Ordinance:

- Street Yard buffer as set forth in Section 7.7 of this Ordinance. The Street Yard buffer shall not be required where existing buildings encroach into the area that would be required to provide such a buffer. This exemption does not include existing parking areas.
- Parking area landscaping as set forth in Section 7.6 of this Ordinance.
- If abutting single-family residential developed properties, a Buffer (screening) Yard as set forth in Section 7.5 of this Ordinance.
- Conformity to the standards for Article in terms of off-street parking and driveway design.

- new or expanded off-street parking areas shall be paved in accordance with Section 8.2.6.1
- if fronting on a corridor as defined in Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO

- (c) **Substantial Additions/Expansion** shall be defined as proposed additions that equate to 50% or more of total GFA of a site. Construction of a “Substantial Addition/Expansion” shall require compliance with the full design and dimensional requirements of the UDO.

3.2.3.3.2 Required improvements for additions or expansion to existing structures as identified in this § 3.2.3.2 shall be applied to the portion of a development site where the addition is being constructed. The area to be included for improvements shall be determined by the Administrator.

3.2.3.3.3 In situations where compliance with Section 3.2.3.3.1 of this Ordinance could only be achieved through the removal of an existing building space, the Administrator shall have the authority to reduce or eliminate these requirements where (and only where) such requirements conflict with an existing building(s).

3.2.3.4 CHANGES OF USE

3.2.3.4.1 A Change of Use shall require a Zoning Compliance Permit only when the change of use would otherwise require a building permit. A “Change of Use” shall be further defined as “a change from one principal use of a building or land to another principal use of the building or land whether or not there is an increase in the size of the existing building or extent of the use of land”. Furthermore, for the purposes of zoning, a change of use shall be determined based on the broad land use groupings of Table 4.6-1 of this UDO (i.e. “Institutional and Civic” vs. “Retail Trade”). If it is determined that no change of use has occurred, no design standards of this UDO shall be required.

3.2.3.4.2 If it is determined that a change of use has occurred, the Administrator must then determine what design standards should apply.

- (a) **Minor Change of Use.**

This group includes the following:

- a change of use has occurred, but no additional parking is required
- a change of use has occurred, and additional parking is required but is less than 10 total spaces.

When a Minor Change of Use is determined, no additional UDO design or dimensional standards shall be applied except that:

- uses abutting single-family residential developed properties must provide a Buffer (screening) Yard as set forth in Section 7.5 of this Ordinance.

- off-street areas that will be used for the new land use shall be paved in accordance with Section 8.2.6.1.
- if fronting on a corridor as defined in Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section.
- all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO.

(b) **Major Change of Use.**

For a change of use that provides 10 or more additional total parking spaces, the following UDO site improvements shall be required:

- street Yard buffer as set forth in Section 7.7 of the UDO. The Street Yard buffer shall not be required where existing buildings encroach into the area that would be required to provide such a buffer. This exemption does not include existing parking areas.
- parking area landscaping as set forth in Section 7.6 of the UDO.
- if abutting single-family residential developed properties, a Buffer (screening) Yard as set forth in Section 7.5 of the UDO.
- off-street parking areas that will be used for the new land use shall be paved in accordance Section 8.2.6.1.
- if fronting on a corridor as defined Section 10.7 of the UDO, the building(s) shall be retrofitted to conform to all design standards of that section.
- all outdoor solid waste disposal areas shall be screened in accordance with Section 10.1 of the UDO.

3.2.3.5 EXCEPTIONS

The provisions of Section 3.2 shall not apply to any legal nonconforming use established in accordance with provisions of Article 13 of this Ordinance.

3.2.3.6 PROCEDURES

The Applicant shall file a complete application on the prescribed form for a Zoning Clearance Permit with the Administrator. If Site Plan Review is required in accordance with § 3.6 of this Ordinance, the approved site plan must be submitted with application for a zoning clearance. If the proposed development or development activity is not subject to site plan review pursuant to § 3.6, a plot plan must be filed for review as set forth in Figure 3.2-1. The requirements for a plot plan are:

- Location of structure(s), including but not limited to all proposed decks, steps, or other similar structural improvements
- Building Setbacks
- Location of off-street parking
- Location of 100-year floodplain

Following review, the Administrator shall approve, approve with conditions, or deny the application for a zoning clearance permit. Applications that are denied shall have reasons for denial, in writing, attached to the application. An appeal of the decision of the Administrator is allowed as provided for in § 3.7 (see also Figure 3.2-1).

3.2.3.7 APPROVAL CRITERIA

The zoning clearance permit shall be issued by the Administrator only if the application complies with all pertinent provisions of this Ordinance, and any approved Special Use permit, conditional rezoning, or site plan.

3.2.3.8 VALIDITY

The zoning clearance permit shall be valid for its established use if:

- The use is in compliance with applicable codes.
- A building permit has been obtained by the applicant within six (6) months of issuance of the zoning clearance permit.

If twelve (12) months elapse without the issuance of a building permit, the zoning clearance permit shall expire. Resubmission of plans and materials and an application for a new zoning clearance permit, including applicable fee(s), shall be required for any approved project that did not commence construction within that 12 (twelve)-month period.

3.2.3.9 REQUEST FOR EXTENSION TO INSTALL IMPROVEMENTS

The applicant may submit a written request for extension to the Administrator when an application for a certificate of compliance cannot be approved because certain improvements cannot be completed or installed due to adverse weather conditions or other reasonable factors. The applicant shall submit to the Administrator the following information:

(1) a specific description of the factor(s) hindering completion or installation of the required improvement(s); and (2) a self-imposed deadline for Unified Development Ordinance completion of the unfinished improvement(s). In no event shall the timeline for completion of said improvements extend for more than one (1) year beyond the date of the request. Failure to complete improvements within stated timeline may result in a violation of this Ordinance and shall be prosecuted in accordance with § 1.6.

3.2.4 BUILDING PERMITS AND/OR CERTIFICATES OF OCCUPANCY

3.2.4.1 Issuance of all building permits and/or certificates of occupancy shall come under the authority of the Inspections Division of the Sanford/Lee Community Development Department. Authority to issue such permits and/or certificates shall be based on the most recently adopted version of the North Carolina State Building Codes.

3.2.4.2 New construction projects which shall require a Building Permit and/or certificate of occupancy shall also require a Zoning Clearance Permit as set forth in this § 3.2.

3.2.5 SEDIMENTATION AND EROSION CONTROL PERMIT

The applicant shall obtain a Sedimentation and Erosion Control Permit from the State of North Carolina for any land-disturbing activity subject to the Sedimentation and Pollution Control Act of 1973 (NCGS §§ 113A-50 to 113A-67), as may be amended from time to time.

3.2.6 SIGN PERMIT

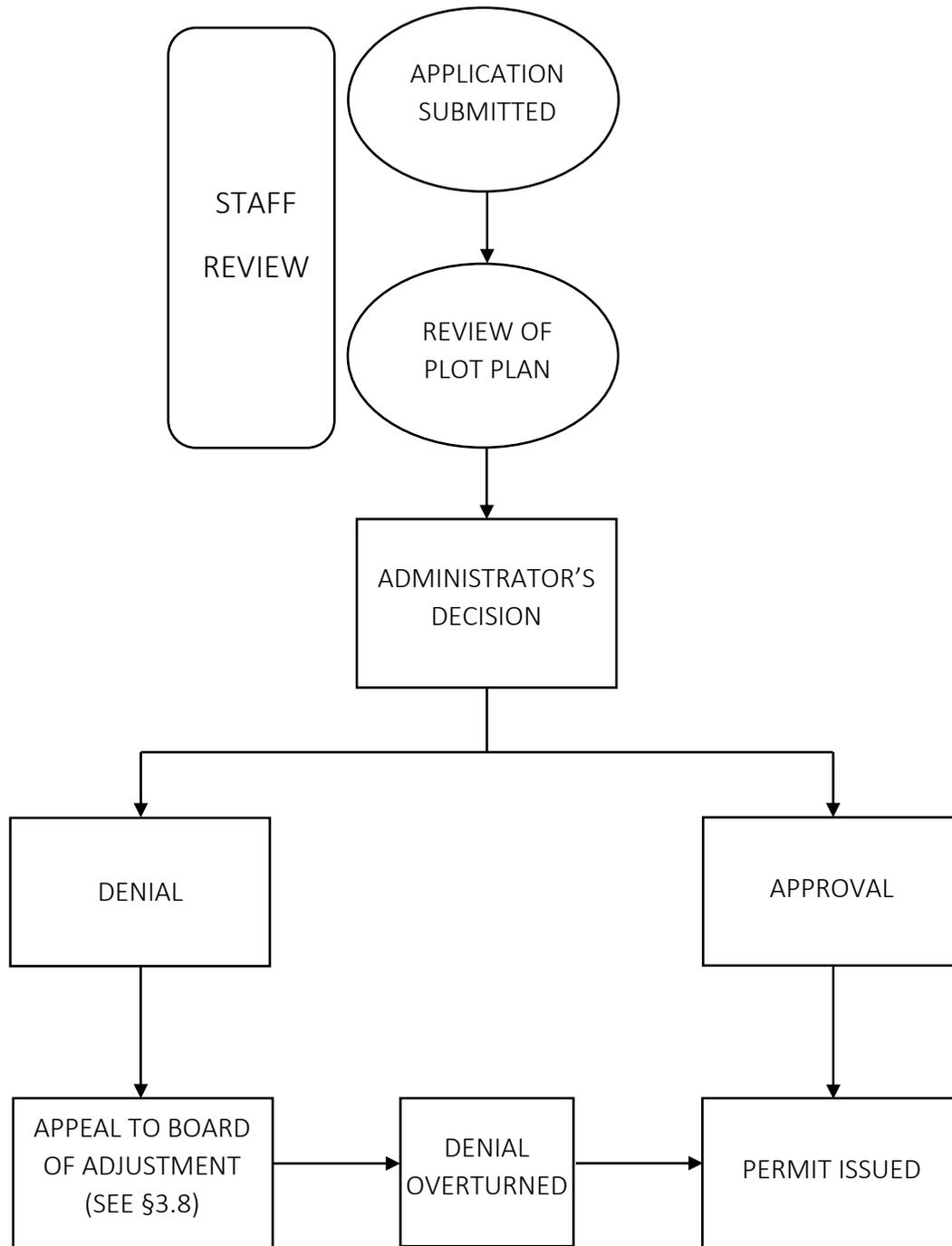
See § 11.3 of this Ordinance.

3.2.7 TEMPORARY USE PERMIT

No Temporary Use subject to the Temporary Use Regulations (§ 5.34) of this Ordinance shall be established unless and until a Zoning Clearance Permit has been issued by the Department of Community Development.

Figure 3.2-1 – ADMINISTRATIVE PERMIT REVIEW PROCESS*

**Includes only administrative permit applications that are not required to obtain site plan approval as set forth in §3.7 of this Ordinance*



3.3 ZONING MAP AMENDMENT AND TEXT AMENDMENTS

3.3.1 PURPOSE & APPLICABILITY

- (a) The purpose of this Section is to establish uniform procedures for processing changes to the Official Zoning Map (“rezonings”) or for amendments to the text of this Ordinance
- (b) The provisions of this Section apply to any application for an amendment to the text of this Ordinance, or for an amendment to the Official Zoning Map. An amendment to the Official Zoning Map which reclassifies property from one zoning district to another is known as a “rezoning.”

3.3.2 INITIATION OF A ZONING MAP AMENDMENT (REZONING)

Any person, board, department, or commission may apply for a change in zoning district boundaries (rezoning) except that third party applications for downzoning are prohibited. The prohibition on third party downzoning applications does not apply to local government initiated down-zonings. An amendment to the Official Zoning Map (a “Rezoning”) may be initiated by filing an application with the Department of Community Development. Before any application is accepted by the Department of Community Development, the applicant should meet with the Department of Community Development. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for a zoning amendment request. During the conference, the Department of Community Development will identify the submittal requirements.

3.3.3 DECISION

3.3.3.1 The Department of Community Development shall transmit the application to the respective Local Planning Board (see § 2.3) for consideration at its next available meeting. In the case of a “small-scale” or a conditional zoning petition as cited in NCGS 160D-703, the Community Development staff shall also transmit a statement analyzing the “reasonableness” of the proposed rezoning (as required in NCGS 160D-605). Notice of the public hearing shall be provided as set forth in § 3.1.5 of this Ordinance. The Planning Board shall consider the request and act to recommend approval or denial of the zoning amendment in accordance with the procedures for a legislative hearing as set forth in § 3.1.5.2 of this Ordinance and in accordance with NCGS §160D-604. A majority vote is required for the Planning Board to recommend approval or denial of a zoning map amendment. The Planning Board shall transmit its recommendation to the Governing Body for consideration. In accordance with NCGS 160D604(d), this recommendation shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the Board considers the petition to be reasonable/unreasonable, and (c) why the Board considers the petition to be in the public interest/not in the public interest.

3.3.3.2 Upon the recommendation of the Planning Board, the Department of Community Development shall then transmit the application to the appropriate Governing Body. The Governing Body shall

consider the request and act to approve or deny the zoning map amendment by a majority vote, including cases in which the vote is taken on first reading. The Governing Body shall approve or deny the zoning map amendment in accordance with the procedures for a legislative hearing as set forth in § 3.1.5.2 of this Ordinance. The Governing Body is not bound by the recommendation of the Planning Board. In accordance with NCGS 160D-605, the decision of the Governing Body shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Sanford/Lee County 2020 Land Use Plan, (b) why the Board considers the petition to be reasonable/unreasonable, and (c) why the Board considers the petition to be in the public interest/not in the public interest.

3.3.4 APPROVAL CRITERIA

Whenever the public necessity, safety, or general welfare justifies such action, and after obtaining the recommendation by the Planning Board, the Governing Body may change zoning district boundaries. The Planning Board and the Governing Body should consider the following factors in reviewing an application for a rezoning:

- The size, physical conditions, and other attributes of the tract in question.
- Whether the proposal conforms with and furthers the goals of the Comprehensive Plan, other adopted plans, and the goals, objectives, and policies of this Ordinance.
- Any changed conditions in the area warranting the amendment, including the installation of public facilities, other zone changes, new growth trends, deterioration, and development.
- The benefits and detriments to the landowners, the neighbors, and the surrounding community.
- Why the action taken is in the public interest.
- The relationship between the current actual and permissible development and the development permissible under the proposed amendment.

3.3.5 INITIATIONS OF A ZONING TEXT AMENDMENT

3.3.5.1 Any person, board, department, or commission may apply for a change in the text of this Unified Development Ordinance. An amendment to the text of this Ordinance may be initiated by filing an application with the Department of Community Development.

3.3.6 DECISION

3.3.6.1 The Department of Community Development shall transmit the application to the Joint Planning Commission (see § 2.4) for consideration at its next available meeting. Notice of the public hearing shall be provided as set forth in § 3.1.5.2.4 of this Ordinance. The Joint Planning Commission shall consider the request and act to recommend approval or denial of the zoning text amendment in accordance with the procedures for a legislative hearing as set forth in § 3.1.5.2 of this Ordinance. A majority vote is required for the Joint Planning Commission to recommend approval or denial of a text amendment.

3.3.6.2 Upon the recommendation of the Joint Planning Commission, the Department of Community Development shall then transmit the application to the respective Local Planning Board (see § 2.3) for consideration at its next available meeting. Notice of the hearing shall be provided as set forth in § 3.1.5

of this Ordinance. The Local Planning Board shall consider the request and act to recommend approval or denial of the zoning text amendment in accordance with the procedures for a legislative hearing as set forth in § 3.1.7.4 of this Ordinance and in accordance with NCGS §160D-604. A majority vote is required for the Local Planning Board to recommend approval or denial of the text amendment. Upon the recommendation of the Local Planning Board, the Department of Community Development shall then transmit the application to the appropriate Governing Body. The Governing Body shall consider the request and act to approve or deny the text amendment by a majority vote. The Governing Body shall approve or deny the zoning amendment in accordance with the procedures for a legislative hearing as set forth in § 3.1.5.2 of this Ordinance. In accordance with NCGS 160D-605, the decision of the Governing Body shall include a statement that addresses: (a) the consistency/inconsistency of the petition with the Comprehensive Plan, (b) why the Board considers the petition to be reasonable/unreasonable, and (c) why the Board considers the petition to be in the public interest/not in the public interest.

3.3.7 RE-APPLICATION FOR A DENIED PERMIT

3.3.7.1 In the event that an application for a rezoning or text amendment is denied by the Governing Body, the Department of Community Development shall refuse to accept another application for the same amendment within one year of the original hearing. For denied zoning map amendments, this rule shall apply to any attempt to rezone to a district that was denied on the same property or any portion of the same property within one year of the original hearing.

3.3.7.2 Reapplication from a denied general use district to a conditional zoning district shall constitute a different request and shall not be subject to the one-year prohibition as set forth in this § 3.3.7 if it can be demonstrated that the proposed conditional zoning district provides new substantive elements that could not be addressed via the denied attempt to obtain a general use zoning change. This determination shall be under the authority of the Administrator.

3.3.8 SCOPE OF APPROVAL

The approval of a zoning map or text amendment does not authorize any development activity. Application for a Zoning Clearance Permit and any other administrative permits required by §3.2 of this Ordinance shall be required. If an amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required.

3.4 CONDITIONAL ZONING

3.4.1 PURPOSE

3.4.1.1 Conditional Zoning Districts are zoning districts in which the development and use of the property is subject to site-specific conditions incorporated as part of the legislative decision creating the district and applying it to the particular property. A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted comprehensive plan, and adopted district and area plans.

3.4.1.2 There are two types of Conditional Zoning Districts available:

- Conditional Zoning District Type 1
- Conditional Zoning District Type 2

3.4.2 CONDITIONAL ZONING DISTRICT TYPE 1

3.4.2.1 The Conditional Zoning District Type 1 is defined as a conditional zoning district created as a stand-alone district with its own unique conditions. Under a Conditional Zoning District Type 1, an owner would have the freedom to develop his/her own unique list of permitted uses and design standards. It is also understood that such a district would need to be designed so as to maintain the integrity and characteristics of the surrounding community as well as conform to the spirit and intent of the Zoning Ordinance. A Conditional Zoning District Type 1 would be most suitable in situations where none of the current conventional Zoning Districts accommodate the desired use(s), such as a large mixed-use planned development in which the owner/developer has a clear vision as to how the property is to be developed.

3.4.2.2 Only the property owner(s) of a proposed Conditional Zoning District Type 1 shall be eligible to apply for rezoning to a Conditional Zoning District, and all owners of property proposed for inclusion in the conditional zoning must petition for the rezoning.

3.4.2.3 The owner shall specify the use(s) of the property and shall propose additional conditions to ensure compatibility between the development and the surrounding neighborhood. The conditions shall include all of the following (as applicable):

- The location on the property of the proposed use(s);
- The number of dwelling units;

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- The location and extent of supporting facilities such as parking lots, driveways, and access streets;
 - The location and extent of buffer areas and other special purpose areas;
 - The timing of development;
 - The location and extent of rights-of-way and other areas to be dedicated for public purposes;
 - And any other such conditions the applicant may wish to propose.

The application shall include a Site Plan and detailed narrative text that specifies the conditions that will govern the development and use of the property.

3.4.2.4 It is required that applicants consult with the Community Development staff prior to submission of an application for a Conditional Zoning District. The Community Development staff can assist the applicant in determining preliminary assessments regarding the appropriateness of the proposed conditions with respect to existing zoning and surrounding land use.

3.4.2.5 Applications for Conditional Zoning Districts shall be submitted and reviewed in the same procedural manner as set forth in Sections 3.3.2 through 3.3.4 of this Ordinance.

3.4.3 CONDITIONAL ZONING DISTRICT TYPE 2

3.4.3.1 The Conditional Zoning District Type 2 is defined as a conditional zoning district created for the purpose of allowing a property owner to place additional conditions upon an existing, equivalent conventional, general use zoning district. Conditional Zoning District Type 2 would be the preferred zoning approach if a petitioner desired to (a) to reduce or narrow the number of permitted uses and/or (b) impose higher level design standards than that which exists within an equivalent general use zoning district. Conditional Zoning District Type 2 would also be practical in situations where a petitioner desires to install or construct additional buffers or other physical features that would serve to increase the protection afforded neighboring properties and/or the appearance of the proposed development.

Only the property owner(s) of a proposed Conditional Zoning District Type 2 shall be eligible to apply for rezoning to a Conditional Zoning District, and all owners of property proposed for inclusion in the conditional zoning must petition for the rezoning.

3.4.3.2 The owner shall specify the use(s) of the property and shall propose additional conditions to ensure compatibility between the development and the surrounding neighborhood. The conditions shall include all of the following (as applicable):

- The location on the property of the proposed use(s);
- The number of dwelling units;
- The location and extent of supporting facilities such as parking lots, driveways, and access streets;
- The location and extent of buffer areas and other special purpose areas;
- The timing of development;

- The location and extent of rights-of-way and other areas to be dedicated for public purposes;
- And any other such conditions the applicant may wish to propose.

3.4.3.3 The application shall include a site plan and detailed narrative text that specifies the conditions that will govern the development and use of the property.

3.4.3.4 It is required that applicants consult with the Community Development staff prior to submission of an application for a Conditional Zoning District. The Community Development staff can assist the applicant in determining preliminary assessments regarding the appropriateness of the proposed conditions with respect to existing zoning and surrounding land use.

3.4.3.5 Applications for Conditional Zoning Districts shall be submitted and reviewed in the same procedural manner as set forth in Sections 3.3.2 through 3.3.4 of this Ordinance.

3.4.4 SCOPE OF APPROVAL

3.4.4.1 Any conditions in association with a Conditional Zoning District and so authorized shall be perpetually binding upon the property included in such Conditional Zoning District unless subsequently changed or amended as provided for in this Article. However, minor modifications that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively by the Administrator. Minor modifications may include, but are not limited to, location and orientation of buildings; layout and location of streets, sidewalks, amenities, and utilities; changes to lot or parcel lines; plant material in required buffers or islands; and size or location of signage.

3.4.4.2 The applicant shall obtain certification of the approval of the Conditional Use District and shall record the legal description and accompanying map exhibit/site plan in the office of the register of deeds of Lee County.

3.4.4.3 If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any of the conditions of approval, the Conditional Zoning District shall be deemed null and void and the governing body shall initiate proceedings to rezone the property to its previous zoning classification. Continued or repeated violation of the conditions in an approved Conditional Zoning District shall constitute an applicant's failure to accept said conditions.

3.4.4.4 Any violation of a condition in an approved Conditional Zoning District shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any such violation.

3.4.4.5 The approval of a zoning map or text amendment does not authorize any development activity. Application for a Zoning Clearance Permit and any other administrative permits required by § 3.2 of this Ordinance shall be required.

3.5 SPECIAL USE PERMITS

3.5.1 APPLICABILITY

3.5.1.1 The purpose of this Section is to establish procedures and standards for the processing and approval of Special Use Permits. Special Use permits provide a form of discretionary approval for certain uses which are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration. Special Uses ensure the appropriateness of the use at a particular location within a given zoning district.

3.5.1.2 Only those uses that are enumerated as Special Uses in a zoning district, as set forth in the Use Matrix (§ 4.6, Table 4.6-1 of this Ordinance), shall be authorized by the Board of Adjustment.

3.5.2 APPROVAL PROCEDURE

3.5.2.1 No special use permit shall be authorized, developed, or otherwise carried out until the applicant has secured approval of the special use by the Board of Adjustment and approval of a final site plan by the Administrator. **3.5.2.2** Applications for special use permit approvals shall be filed with the Administrator. Pre-application meetings with the Administrator prior to filing are required.

3.5.2.3 Major site plan applications (see Appendix B) shall be filed concurrently with special use permit applications. The information shall be provided to the Board of Adjustment during their deliberations.

3.5.2.4 The Board of Adjustment shall conduct a quasi-judicial hearing in accordance with the requirements of § 3.1.5.3 of this Ordinance. The Board of Adjustment shall deny the request, approve the request; or approve the request with conditions.

3.5.2.5 The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. Any conditions proposed by the Board must be agreed to in writing by the applicant. The conditions shall become a part of the special use permit approval and shall be included in the final site plan application.

3.5.2.6 Violations of any of the conditions shall be treated in the manner as set forth in §1.6 of this Ordinance.

3.5.2.7 An application for a special use permit that has been denied may be resubmitted only if there has been a substantial change in circumstances, as determined by the Administrator, or if substantial revisions have been made to the application for development approval (see § 3.5.6 for further restrictions on reapplication).

3.5.2.8 Minor field alterations or minor revisions to approved special uses may be approved by the Administrator if the special use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the Administrator determines that the change is not minor, the

Applicant shall apply for a revised Special Use Permit. The applicant may appeal the decision of the Administrator to the Board of Adjustment.

3.5.3 APPROVAL CRITERIA

Uses permitted subject to Special Use review shall be permitted only if the applicant demonstrates to the Board of Adjustment that:

3.5.3.1 The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved,

3.5.3.2 The use meets all required conditions and specifications,

3.5.3.3 The use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and

3.5.3.4 The location and character of the use, if developed according to the plan submitted and approved, will be in harmony with the area in which it is located and in general conformity with all adopted land use plans.

3.5.3.5 The Board may impose additional conditions upon granting the Special Use Permit so long as said conditions are reasonable and appropriate.

3.5.4 ADDITIONAL STUDIES FOR CERTAIN LAND USES

3.5.4.1 Upon determining that the proposed use will have particular impacts potentially inconsistent with any of the above approval criteria, the County may retain the services of a consultant mutually acceptable to it and the applicant to conduct a study of such impacts as related to the above criteria. The applicant shall pay a fee as part of the special use permit application for the cost of the consulting services incurred by the County, and the report of the study results shall be submitted to and approved by the County prior to issuance of the special use permit. **3.5.4.2** This section 3.5.4 shall apply only to those land uses requiring a Special Use Permit and as listed within the “Industrial and Manufacturing” or “Transportation, Communications and Utilities” land use subcategories as found in the Permitted Use Matrix (§ 4.6, Table 4.6-1 of this Ordinance).

3.5.5 VOTING

A majority of the members of the Board of Adjustment shall be required to decide on whether to grant a Special Use Permit. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

3.5.6 SCOPE OF APPROVAL AND VESTED RIGHT

3.5.6.1 The approval of a Special Use permit shall authorize the applicant to apply for final site plan

approval pursuant to § 3.6 of this Ordinance. All approvals of Special Use permits require approval of the site plan. Any Special Use permit approval shall become null and void if a required site plan is not approved within 24 months after the date of the approval.

No Zoning Clearance Permit may be issued until the final major site plan and Special Use permits are approved. Approval of a Special Use permit does not authorize any development activity.

3.5.6.2 Minor field alterations or minor revisions to approved Special Uses may be approved by the Department of Community Development if the Special Use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the Department of Community Development determines that the change is not minor, The Applicant shall apply for a revised Special Use Permit. The applicant may appeal the decision of the Department of Community Development to the Board of Adjustment.

3.5.6.3 Violations of any of the conditions shall be treated in the manner as set forth in §1.6 of this Ordinance.

3.5.7 RECORDATION

The applicant shall obtain certification of the approved Special Use Permit from the Clerk to the Board and shall record this Order in the office of the register of deeds of Lee County. The Applicant must provide the Department of Community Development a copy of the recorded notification, affixed with the Register's seal and the date, book and page number of recording in order to receive approval of the application for a zoning clearance.

3.5.8 SUBSEQUENT APPLICATIONS

In the event that an application for a Special Use Permit is denied by the Board of Adjustment, the Board of Adjustment shall refuse to accept another application for the same amendment on the same property or any portion of the same property within one (1) year of the original hearing. However, the Board of Adjustment may consider such application within that time if relevant evidence that was not reasonably available at the time of the original hearing is presented.

3.6 SITE PLAN REVIEW

3.6.1 PURPOSE

The site plan review provisions and regulations of this Section are intended to promote the safe, functional, and aesthetically pleasing development of property and to ensure that new structures, utilities, streets, parking, circulation systems, yards, and open spaces are developed in conformance with the standards of this Ordinance. The site plan review considers the siting of structures and related site improvements to promote harmonious relationships with adjacent development.

3.6.2 MAJOR/MINOR SITE PLAN DEFINED

No application for development approval in the following categories shall be approved unless a site plan has been approved in accordance with the procedures prescribed in this Section.

(a) The following shall require **MINOR SITE PLAN** approval:

- An application for development approval requesting a non-residential use or any multifamily dwelling unit, which is permitted by right in the applicable zoning district.
- Any application for approval of a use for which a site plan is required pursuant to Article Five of this Ordinance.

(b) The following applications shall require **MAJOR SITE PLAN** approval:

- Any application for approval of a Conditional Zoning Map Amendment (rezoning) or Village Neighborhood District.
- An application for approval of a Special Use Permit.

(c) The foregoing approval shall be referred to in this Section as the “Underlying Zoning Application.”

3.6.3 EXEMPTIONS

Detached single-family dwelling units and duplex developments on individual lots of record shall be exempt from the provisions of this section. Detached single-family dwelling units and duplexes on individual lots of record shall be reviewed in accordance with § 3.2.3.

3.6.4 CONFORMITY WITH APPROVED PLAN

Development activities subject to the requirements of this Section may be carried out only in substantial conformance with the approved site plan and attached any conditions or restrictions. Any substantial deviation from the approved site plan, unless approved in advance and in writing by the Department of Community Development, shall be deemed a violation of this Ordinance. Further, no certificate of compliance shall be issued if the development activities do not conform to the approved site plan

3.6.5 APPROVAL PROCEDURE FOR MINOR SITE PLANS

Approval of a Minor Site Plan is a one-step process. The Applicant submits a Minor Site Plan for approval by the Department of Community Development and an application for a Zoning Clearance Permit. If the

site plan is complete, but does not conform to the provisions of this Ordinance and/or required conditions (if applicable), the Department of Community Development shall deny the site plan and return to applicant for revision and resubmission.

3.6.6 APPROVAL PROCEDURE FOR MAJOR SITE PLANS

3.6.6.1 GENERALLY

Approval of a Major Site Plan is a two-step process. As the first step, the Applicant submits a Preliminary Site Plan for review by the Department of Community Development, which is accompanied by an application for a Special Use Permit, conditional zoning, or a rezoning to a zoning district for which a Major Site Plan is required. As the second step, after the decision-making agency renders its decision on the underlying zoning map amendment and/or Special Use permit application, the applicant files a final site plan for approval by the Department of Community Development and an application for a Zoning Clearance Permit.

3.6.6.2 PRELIMINARY SITE PLAN

- (a) The Department of Community Development shall determine whether the application for a preliminary site plan is complete as prescribed in Appendix B.
- (b) If the preliminary site plan is complete, the Department of Community Development shall forward the application, along with the zoning amendment or Special Use permit application, to the Planning Commission as prescribed in § 3.4, or the Board of Adjustment as prescribed in § 3.5. If the preliminary site plan is incomplete, the Department of Community Development shall return it to the applicant with a statement of the reasons why the proposed preliminary site plan does not conform to the provisions of Appendix B.

3.6.6.3 FINAL SITE PLAN

After a final decision to approve, or approve with conditions the zoning map amendment or Special Use permit application and preliminary site plan, the applicant may file an application for Final Site Plan approval. The final site plan shall be prepared and submitted to the Department of Community Development.

3.6.7 FINAL INSPECTION

The Department of Community Development shall inspect the site for compliance with the approved site plan before a Zoning Clearance Permit is issued for the project. The Department of Community Development will write a letter to the applicant stating any deficiencies.

3.6.8 SCOPE

3.6.8.1 The Department of Community Development will sign and date the site plan to indicate approval. Approval shall become effective immediately.

3.6.8.2 The Department of Community Development shall inspect the site for compliance with the approved site plan before a Zoning Clearance Permit is issued for the project. The Department of Community Development will write a letter to the applicant stating any deficiencies.

3.7 VARIANCES

3.7.1 PURPOSES

The Department of Community Development shall inspect the site for compliance with the approved site plan before a Zoning Clearance Permit is issued for the project. The Department of Community Development will write a letter to the applicant stating any deficiencies.

3.7.2 APPLICABILITY

This Section applies to any an application for a variance as prescribed in NCGS § 160D-705.

3.7.3 DECISION

3.7.3.1 The application shall be considered by the appropriate Board of Adjustment following receipt of a complete application and appropriate notification of meeting. The Board of Adjustment shall conduct a hearing on the appeal pursuant to the procedures established in NCGS § 160D-406 and §3.1.5.3 of this Ordinance.

3.7.3.2 Appeals from the decision of the Board of Adjustment shall be filed with the Clerk of the local government jurisdiction, within 30 days of the final decision of the Board. The Board of Adjustment's decision shall be considered a final decision upon filing of the Board's Order in the Clerk to the Board's office.

3.7.4 APPROVAL CRITERIA

3.7.4.1 When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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

3.7.4.2 No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

3.7.4.3 Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

3.7.5 APPLICATION FOR VARIANCE

A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the criteria established in NCGS § 160D-705.

3.8 APPEALS

3.8.1 PURPOSE

The purpose of this Section is to protect the rights of applicants, landowners, and affected persons by providing procedures to hear and decide appeals from decisions of administrative officials charged with enforcement of the unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. This Section implements the provisions of NCGS § 160D-405.

3.8.2 APPLICABILITY

This Section applies to any of the following:

- (1) appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing this Ordinance, as prescribed in NCGS §§ 160D-405.

3.8.3 PROCEDURES

3.8.3.1 The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- a) Any person who has standing under G.S. §160D-1402 or the local government with jurisdiction over the location of the property at issue may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the Clerk to the Board of Adjustment. The notice of appeal shall state the grounds for the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words “Zoning Decision” or “Subdivision Decision” in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.

- e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations, the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- g) Subject to the provisions of subsection (f) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time. A majority vote of the members shall be required to decide an appeal from a decision of the Administrator or any other quasi-judicial matter (except a Variance) or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- h) The official who made the decision or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- i) When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402. j) The parties to an appeal that has been made under this subsection

may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

- j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.