

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest
Planning Commission

To be held Thursday, March 25, 2021 at 5:00 p.m.

HELD VIA ZOOM – LOG-IN INFORMATION ON OPPOSITE PAGE

A. Roll Call for Attendance

Interim Chairperson Rhoda Groce
Commission Member Karen Cragolin
Commission Member Toya Hauf
Commission Member William Morrison
Commission Member Marjorie Waddell
Alternate Member Dawn Grohs
Alternate Member Paul Zimmerman

B. Introduction of NCGS 160D Changes

C. Non-Mandated Changes for Planning Commission Review

D. Planning Commission Schedule for Review and Implementation
(Next Meeting – Thursday, April 22, 2021 – 5pm)

E. Adjourn

Accessing the March 25, 2021 Planning Commission Meeting

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STAFF MEMORANDUM

Planning Commission Meeting – March 25, 2021



North Carolina General Statutes Chapter 160D Updates to Town Zoning Ordinance and Other Policies

Introduction

NCGS 160D refers broadly to the updating of NC General Statutes that contain rules for how local jurisdictions (both municipalities and counties) can regulate development through areas such as zoning and subdivisions. Chapter 160D and various related provisions were established under Session Law 2019-111, enacted in July 2019.

Previously, land development statutes were divided into two sections - Chapter 153A contained rules for counties and Chapter 160A addressed towns and cities. The General Assembly consolidated these statutes under a new chapter to organize rules for local jurisdictions in a more logical and coherent manner. Chapter 160D also clarifies areas of authority for local governments and modernizes the state rules for planning and development. This modernization requires the Town to update its policies.

Town staff has begun reviewing our existing land use ordinance to ensure compliance with this new State legislation. These updates are necessary for the Town's development regulation function to continue operating in compliance with State law. The attachments to this agenda item, and associated presentation, are meant to provide a detailed review and information.

Review Process

While many amendments staff will recommend are mandated by the above state law, there are also pieces of the existing zoning ordinance that need to be changed for administrative or other reasons. The charge for the Planning Commission over the next several months is to review these required changes as well as additional changes that may be necessary. The proposed schedule for this review and implementation will be discussed in more detail during the meeting.

Attachments

- (1) Town of Biltmore Forest Land Development Ordinances – Subdivision and Zoning
- (2) NCGS 160D Checklist of Changes (provided by UNC School of Government)
- (3) NCGS 160D Q&A (Updated August 2020)

CHAPTER 152: SUBDIVISIONS

Section

General Provisions

- 152.01 Short title
- 152.02 Authority
- 152.03 Jurisdiction
- 152.04 Purpose
- 152.05 Compliance
- 152.06 Definitions
- 152.07 General requirements
- 152.08 Exceptions
- 152.09 Amendments
- 152.10 Legal provisions

Procedure for Review and Approval of Subdivision Plats

- 152.25 Generally
- 152.26 Subdivision Administrator
- 152.27 Pre-application procedure
- 152.28 Sketch plan
- 152.29 Preliminary plat
- 152.30 Start of construction
- 152.31 Improvements; installation or guarantees
- 152.32 Final plat
- 152.33 Recording of the final plat
- 152.34 Effect of plat approval on dedications
- 152.35 Re-subdivision procedures

Improvements Required and Minimum Standards of Design

- 152.50 Generally
- 152.51 Suitability of land
- 152.52 Streets and roads
- 152.53 Pedestrian ways
- 152.54 Blocks
- 152.55 Water and sewer systems
- 152.56 Stormwater drainage
- 152.57 Sedimentation control
- 152.58 Lots
- 152.59 Easements
- 152.60 Street lighting
- 152.61 Final development plans

- 152.99 Penalty

Appendix A: Preliminary Plat Checklist

Appendix B: Final Plat Checklist

GENERAL PROVISIONS

§ 152.01 SHORT TITLE.

This chapter shall be known and may be cited as the “Subdivision Regulations of The Town of Biltmore Forest, North Carolina”.

(Ord. passed 7-17-1984)

§ 152.02 AUTHORITY.

The Town Board of Commissioners, pursuant to the authority granted by the G.S. §§ 160A-371 through 160A-376, hereby ordains and enacts into law these articles and sections for the purpose of providing for the orderly growth and development of the town.

(Ord. passed 7-17-1984)

§ 152.03 JURISDICTION.

These regulations shall govern all subdivision of land lying within the corporate limits of the town, as now or hereafter established.

(Ord. passed 7-17-1984)

§ 152.04 PURPOSE.

The purpose of this chapter is to establish procedures and standards for the development and subdivision of real estate within the corporate limits of the town in an effort, to among other things, ensure proper legal description, identification, monumentation, and recordation of real estate boundaries; further the orderly layout and appropriate use of the land; provide safe, convenient, and economic circulation of vehicular traffic; provide suitable building sites which are readily accessible to emergency vehicles; assure the proper installation of streets and utilities and other improvements; and help conserve and protect the physical and economic resources of the town and its environs.

(Ord. passed 7-17-1984)

§ 152.05 COMPLIANCE.

All plats for the subdivision of land shall conform to the requirements of these regulations, and shall be submitted in accordance with the procedures and specifications established herein. No plat or a subdivision of land within the town shall be filed or recorded by the County Register of Deeds until it has been submitted in accordance with these provisions and given final plat approval by the Town Board of Commissioners.

(Ord. passed 7-17-1984)

§ 152.06 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD OF COMMISSIONERS. Biltmore Forest Town Board of Commissioners.

BUILDING SETBACK LINE. A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.

CORNER LOT. A lot abutting upon two or more streets at their intersection.

CUL-DE-SAC. A street permanently terminated by a turn-around.

EASEMENT. A grant by the property owner of use, by the public, a corporation, or person(s), of a strip of land for specified reasons.

INDIVIDUAL SEWER SYSTEM. Any septic tank or ground absorption system serving a single source or connection and approved by the County Sanitarian.

INDIVIDUAL WATER SYSTEM. Any well or spring used to supply a single connection.

LOT. A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership, or for development, or both. The word **LOT** includes the words **PLOT** or **PARCEL**.

PLANNING COMMISSION. Biltmore Forest Planning Commission.

PUBLIC SEWER SYSTEM. Any sewer system owned and operated by the Town of Biltmore Forest or the Metropolitan Sewerage District in Buncombe County. Plans for public sewer system extensions serving two or more connections to a public system shall be approved by the State Division of Environmental Management.

PUBLIC WATER SYSTEM. The water system operated by the Town of Biltmore Forest. Water systems serving 15 or

more residential connections or serving more than 25-year-round residents are classified as public water supplies, and plans and specifications must be approved by the State Division of Environmental Health. Also, water supply systems serving from two to 14 connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.

REGISTERED ENGINEER. A professional engineer who has been duly registered and licensed as a professional engineer pursuant to G.S. Ch. 89C.

REGISTERED LAND SURVEYOR. A person duly registered to practice land surveying pursuant to G.S. Ch. 89C.

RESIDENTIAL PLANNED UNIT DEVELOPMENT. A group residential development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units, shall be deemed a **RESIDENTIAL PLANNED UNIT DEVELOPMENT**. (PUD). Multi-family structures shall have no less than three, three dwelling units per structure. Residential units within a **RESIDENTIAL PLANNED UNIT** development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time-sharing units, mobile homes, and mobile home parks.

SHALL. The word **SHALL** is always mandatory and not merely directory.

STREET. A dedicated right-of-way intended for vehicular traffic, which affords the principal means of access to abutting properties.

STREET LINE. The edge of the roadway pavement.

SUBDIVIDER. Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. As defined by state, law shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions, for the purpose of sale or building development whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following as defined by state law shall not be included within this definition nor be subject to the subdivision regulations of this chapter; however, divisions (1) through (4) below are regulated through the town's zoning ordinance.

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as required by this chapter.

(2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land, for the widening or opening of streets.

(4) The division of a tract of land in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the town, as required by this chapter.

SUBDIVISION ADMINISTRATOR. An official or designated person of the Town of Biltmore Forest responsible for assisting in the administration and enforcement of this chapter.

(Ord. passed 7-17-1984)

§ 152.07 GENERAL REQUIREMENTS.

(A) *Conformity to surrounding development and street extension; street connections to existing town streets.*

(1) The proposed street layout shall be coordinated with the street system of the surrounding area. Where possible, existing principal streets shall be extended.

(2) (a) All proposals for street extensions or proposals for connecting a street to an existing town street shall require a street permit from the town. In order to receive such a permit, all proposals for street extensions or proposals for connections to any existing town streets shall be reviewed and approved by the Town Board of Commissioners.

(b) If the proposal is part of a subdivision plan, the application for the permit should be made with the preliminary plat and the street permit shall be issued when the Board of Commissioners approve the preliminary plat for the subdivision. All other street extensions or street connections to an existing street not involving a subdivision shall require a permit and application for a new street permit shall be made at the Town Hall.

(c) Persons making such proposals shall prepare and present street plans and traffic generation data to demonstrate the impact upon the town's existing street system. All street plans shall be prepared by a registered engineer. All proposed streets shall meet the requirements and standards of the State Department of Transportation, Division of Highways' *Subdivision Roads Minimum Construction Standards* (latest edition as revised), as specified in §152.52. The Board of Commissioners shall require the street plans to be reviewed and a recommendation provided to the Board by the Planning Commission, and the town's consulting engineer.

(d) The Board of Commissioners shall either approve or disapprove each application for a new street permit. If the Board of Commissioners determine that the proposal will either cause traffic congestion or impair traffic safety, or be detrimental to the existing surrounding neighborhoods, or be detrimental to the health, safety, or welfare of its citizens, the

Town Board of Commissioners shall have the authority to prohibit the extension or connection to any existing town street by disapproving the new street permit. The Board shall state the reasons for applying or disapproving each application.

(B) *Access to adjacent properties.* Where, in the opinion of the Board of Commissioners, it is desirable to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turn-around shall be provided.

(C) *Large tracts or parcels.* Where land is subdivided into large parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future streets and logical further re-subdivision.

(D) *Alleys.* Alleys shall be provided to the rear of all lots used for other than residential purposes. Alleys are prohibited in residential blocks unless such are approved by the Board of Commissioners. All dead-end alleys shall be provided with a turn-around.

(E) *Street names.* Proposed streets, which are obviously in alignment with existing streets, shall be assigned the same name of the existing street. For all other proposed streets, in order to avoid confusion for emergency vehicles, the name of proposed streets shall not duplicate an existing street name in the county. It is the responsibility of the subdivider to contact the County Street Addressing office to obtain approval of the street name.

(F) *Surveying and placements of monuments.* The *Standards of Practice for Land Surveying*, as adopted by the State Board of Registration for Professional Engineers and Land Surveyors, under provisions of G.S. Ch. 89C, shall apply when conducting surveys.

(G) *Final plats.* All final plats to be recorded in the County Register of Deeds shall meet all the mapping requirements set forth in G.S. § 47-30, as amended.

(H) *Preparation of plans by a registered engineer.* All plans for streets, drainage, water and sewer systems, and sedimentation control, as required in this chapter, shall be prepared by a registered engineer. The engineer's seal shall be affixed to such plans. As specified in this chapter, the town's consulting engineer shall review these plans and provide recommendations to the Planning Commission and Board of Commissioners as to the suitability of the proposed systems.

(I) *Natural assets.* In any subdivision, due consideration will be given to preserving natural features such as trees, ponds, streams, rivers, lakes, and for any historical sites which are of value not only to the subdivision but to the town as a whole.

(Ord. passed 7-17-1984)

§ 152.08 EXCEPTIONS.

(A) In compliance with the town zoning ordinance and in specified zoning districts, the standards and requirements of this chapter may be modified in the case of a plan for a residential planned unit development (see definition in § 152.06). Residential planned unit developments shall be reviewed as a conditional use under the zoning ordinance and approved by the Zoning Board of Adjustment. It is the intent of this section to encourage flexibility and innovation in the design of structures and land development, and to provide an opportunity to develop land areas in a manner different from the standards arrangement of one principal building on one lot.

(B) It is further intended that a residential planned unit development will be in harmony with the character of the zoning district in which it is located, and that adequate standards will be maintained to assure the public health, safety, and general welfare. Residential planned unit developments shall be prepared and submitted in accordance with Ch. 153.

(Ord. passed 7-17-1984)

§ 152.09 AMENDMENTS.

(A) *Amendment procedures.* This chapter may be amended from time to time by the Board of Commissioners. Before taking any action on a proposed amendment to this chapter, the Board of Commissioners shall request the Planning Commission to provide a recommendation on each proposed amendment. The Planning Commission shall have 32 days after the proposed amendment has been presented to them to submit its recommendations to the Board of Commissioners. Failure of the Planning Commission to submit recommendations within the 32-day period shall constitute a favorable recommendation.

(B) *Public hearing.* Before enacting any amendment to this chapter, the Board of Commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the county once a week for two successive weeks, the first publication shall not appear less than ten days or more than 25 days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The notice shall include the time, place, and date of the hearing and include a description of the change or amendment to this chapter.

(Ord. passed 7-17-1984)

§ 152.10 LEGAL PROVISIONS.

(A) *Abrogation.* This chapter shall neither repeal, abrogate, annual, impair, nor interfere with any existing subdivisions, the plats of which are properly recorded in the office of the Register of Deeds prior to the effective date of this chapter, nor with existing easements, covenants, deed restrictions, agreements, or permits previously adopted or issued pursuant to law,

prior to the effective date of this chapter.

(B) *Effective date.*

(1) This chapter shall take effect and be in force from and after its adoption by the Town Board of Commissioners, July 17, 1984.

(2) Since the original adoption of this chapter, the ordinance has been amended on May 19, 1987, June 13, 1989, March 19, 1991, November 29, 1994, and January 26, 1995. All amendments are included herein and are a part of this chapter text.

(Ord. passed 7-17-1984)

PROCEDURE FOR REVIEW AND APPROVAL OF SUBDIVISION PLATS

§ 152.25 GENERALLY.

(A) The Town Board of Commissioners and Planning Commission shall be involved in the review of proposed subdivisions as stated in this subchapter. The Planning Commission will serve in an advisory capacity and shall make recommendations to the Board of Commissioners on preliminary and final plats. The Board of Commissioners shall make the final approvals on all preliminary and final plats.

(B) No final plat of a subdivision within the town shall be recorded by the County Register of Deeds until it has been submitted to the Town Planning Commission for review and recommendation and has been approved by the Town Board of Commissioners as provided herein. To secure such approval of a final plat, the subdivider shall follow the procedure established in this subchapter. Furthermore, no street shall be maintained by the town nor street dedication accepted for ownership and maintenance, nor shall water, sewer, or other town facilities or services be connected with any subdivision for which a final plat is required to be approved until all construction has been completed and the final plat has been approved by the Town Board of Commissioners. Pursuant to G.S. § 47-30.2, no final plat shall be recorded without the certification of the appropriate review officer.

(Ord. passed 7-17-1984)

§ 152.26 SUBDIVISION ADMINISTRATOR.

(A) The Town Board of Commissioners shall appoint a Subdivision Administrator who shall be responsible for assisting in the administration and enforcement of the ordinance. The Administrator shall initially receive all plats, plans, and other information in order to prepare the material for review by the Planning Commission and the Board of Commissioners. The Administrator shall be responsible for transmitting all engineering plans for streets, water and sewer systems, drainage, and sedimentation control to the town's consulting engineer, and town departments for review and recommendation prior to preliminary plat approval.

(B) When the developer's engineering plans are required to be reviewed by a state agency, county government, or other organization, the developer/subdivider shall be responsible for transmitting such plans to the appropriate agency and obtaining necessary approvals so that such approvals may be submitted along with the preliminary plat.

(Ord. passed 7-17-1984)

§ 152.27 PRE-APPLICATION PROCEDURE.

Every subdivision applicant is required to meet the Subdivision Administrator or his or her designee in a pre-application conference prior to the submittal of a subdivision plat. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. The sketch plan, if provided, shall be presented for staff review during the conference.

(Ord. passed 7-17-1984)

§ 152.28 SKETCH PLAN.

(A) *Generally.*

(1) Prior to preliminary plat application, the subdivider may submit a sketch plan of the proposed subdivision to the Town Planning Commission. The purpose of submitting the sketch plan is to afford the subdivider an opportunity to obtain the advice and assistance of the Planning Commission in order to facilitate the subsequent preparation and approval of the preliminary plat. This procedure does not require formal application or fee.

(2) The sketch plan shall be submitted to the Chairperson of the Planning Commission at least 14 days prior to a regularly scheduled Planning Commission meeting or to a meeting specially called by said Chairperson to consider such plan. Although not required, it is suggested that a sketch plan be submitted for all subdivisions to ensure that preliminary ideas and plans are consistent with the regulations of this chapter prior to preparing extensive engineering details.

(B) *Contents required.* A simple sketch plan shall be drawn at a scale of no less than 100 feet to one inch and shall show the proposed street layout with approximate pavement width; approximate right-of-way width; proposed lot layout and approximate number of lots; the location of existing and proposed water and sewer lines; existing physical features, including streets, structures, and utilities; significant natural features, including wooded areas, ponds, streams, and marshes;

sketch view of any proposed drainage facilities; proposed use of land; tract boundary; total acres; subdivider's name and address; subdivision name; north point; and a sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, and waterways.

(C) *Sketch plan review procedure.*

(1) The Planning Commission shall review and either approve, approve conditionally, or disapprove each sketch plan and record such decision in the minutes of the Planning Commission. First consideration of said plan shall be at the first regularly scheduled meeting or special meeting called by the Chairperson after the sketch plan is submitted in accordance with this chapter.

(2) The Planning Commission shall take action on the sketch plan at its first consideration or within 32 days of its first consideration, and provide advice that will be helpful to the subdivider in the preparation of the preliminary plat.

(Ord. passed 7-17-1984)

§ 152.29 PRELIMINARY PLAT.

(A) *Generally.*

(1) For all subdivisions, the subdivider shall submit the preliminary plat, containing all required information to the Chairperson of the Planning Commission at least 14 days prior to the regularly scheduled Planning Commission meeting or to a meeting specially called by the Chairperson to consider such plat. Five copies of said preliminary plat shall be required; provided, that additional copies may be required by the Subdivision Administrator. A subdivision fee shall be paid to the town prior to submission of the preliminary plat to the Planning Commission and shall be based upon the schedule of fees as adopted by the Board of Commissioners.

(2) The subdivision filing fees shall be used by the town to pay for the administrative and consulting engineering expenses involved in reviewing proposed subdivisions.

(B) *Contents required.*

(1) The preliminary plat shall be clearly and legibly drawn at a scale of not less than 100 feet to one inch, and shall be drawn on a sheet 18 inches by 24 inches, or 24 inches by 36 inches, or such other size acceptable to the County Register of Deeds.

(2) The preliminary plat shall be prepared by a registered land surveyor and shall contain the following information:

- (a) Subdivision name, subdivider's name, north arrow, scale (denoted graphically, and numerically), date of plat preparation, location of subdivision (township, county, and state), name, and seal of registered surveyor preparing plat;
- (b) The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown;
- (c) Property lines and owners' names of adjoining properties and/or adjoining subdivisions of record;
- (d) Significant natural features, including wooded areas, marshes, major rock outcrops, lakes or streams, soils information, and other natural features affecting the site, and the 100-year floodplain where applicable;
- (e) Existing physical features, including buildings, streets, railroads, power lines, drainage ways, sewer and water lines, utility easements, and town limit lines both on or adjacent to the land to be subdivided;
- (f) Topographic contour lines at five-foot intervals when the area to be subdivided exceeds two acres or has proposed streets which will exceed 800 lineal feet;
- (g) A sketch vicinity map showing the location of the subdivision in relation to the surrounding area;
- (h) All proposed lot and street right-of-way lines with approximate dimensions, lot and block numbers, all easements, designation of any dedication or reservations to be made, building setback lines, and proposed use of land if other than single-family residences;
- (i) Proposed streets showing pavement widths, right-of-ways, curbing (if any), a street profile, proposed street names, and the location of any required street lights;
- (j) A review of proposed street plan. A letter shall accompany the preliminary plat indicating that street plans have been reviewed in the following manner: prior to preliminary plat approval, street plans for all subdivisions within the town shall be reviewed by the town's consulting engineer and a recommendation provided to the Planning Commission and Board of Commissioners indicating whether the proposed street plans meet the street requirements as specified in § 152.52;
- (k) Proposed water and sewer system layouts shall show the location of lines, line sizes, approximate location of manholes, pumps, hydrants, force mains, and the connection of the proposed system(s) with the existing system(s). A typical trench section view and relationship to roadway shall be provided for water, sewer, telephone, gas, and electricity;
- (l) 1. A letter of approval for proposed sanitary sewer and water distribution. Letters of approval shall accompany the preliminary plat indicating that plans for proposed public sewer and water systems have been reviewed and approved by the town Public Works Department, the Metropolitan Sewerage District, and the appropriate state agency (see § 152.55). Water and sewer plans shall be reviewed by the town's consulting engineer with a recommendation provided to the Planning Commission and Board of Commissioners prior to preliminary plat approval; and

2. Where individual systems are permitted (see § 152.55), a letter of approval from the County Health Department shall be submitted with the preliminary plat indicating that each lot has adequate land area and soil conditions to accommodate the proposed methods of water supply and sewage disposal.

(m) An approved sedimentation control plan shall be submitted with the preliminary plat when there are plans for a land-disturbing activity of one acre or more (see § 152.57). The plan must be reviewed by the town's consulting engineer with a recommendation provided to the Planning Commission and Board of Commissioners prior to preliminary plat approval;

(n) Sketch view of proposed, drainage ways, storm sewers, culverts, retaining ponds, or areas where water is to be diverted through grading; and other evidence necessary to assure that the proposed method of drainage will meet the objectives of § 152.56. Drainage provisions must be reviewed by the town's consulting engineer with a recommendation provided to the Planning Commission and Board of Commissioners prior to preliminary plat approval;

(o) Proposed location and description of any other improvements, including, but not limited to, pedestrian or bikeways, reserved open space or recreational facilities, commercial areas, or buffer strips; and

(p) Total acreage in tract to be subdivided; smallest lot size; total number of lots; lineal feet in streets; and zoning district.

(C) *Preliminary plat review procedure.*

(1) (a) The Planning Commission shall review and shall recommend the Board of Commissioners either approve, approve conditionally, or disapprove each preliminary plat.

(b) First consideration of the preliminary plat shall be at the next regularly scheduled Planning Commission meeting or special meeting called by the Chairperson of the Planning Commission that follows at least 14 days after the plat is submitted.

(c) The Planning Commission shall take action on the preliminary plat at its first consideration or within 32 days of its first consideration. Should the Planning Commission fail to act on the preliminary plat within the prescribed period, the subdivider may seek preliminary plat approval at the next regularly scheduled meeting of the Board of Commissioners.

(2) (a) Before making final review of the preliminary plat, the Planning Commission may refer copies of the plat and any accompanying material to those public agencies concerned with new development; provided, that failure of the Planning Commission to receive comment shall not delay Planning Commission action on said plat within the prescribed time limit.

(b) Said agencies could include, but are not limited to:

1. District Highway Engineer;
2. County Health Department;
3. Superintendent of Schools; and
4. The Soil Conservation Service.

(3) (a) If the Planning Commission recommends approval of the preliminary plat, such approval shall be indicated on four copies by the Chairperson or other authorized member of the Planning Commission.

(b) One copy shall be transmitted to the Subdivision Administrator, one copy shall be returned to the subdivider, one copy shall be retained by the Planning Commission, and one copy transmitted to the Town Board of Commissioners for its review.

(4) (a) If the Planning Commission recommends disapproval or conditional approval of said plat, the reasons for such action shall be stated in writing and entered in the records of the Planning Commission, and such recommendations shall be attached to four copies of the plat with copies distributed in the same manner as specified in this division (C).

(b) If the preliminary plat is disapproved, the subdivider may make changes and submit a revised plat which revision shall be submitted, reviewed and acted upon by the Planning Commission pursuant to this division (C), or the subdivider may seek approval from the Board of Commissioners.

(5) (a) 1. Within 45 days from receiving the Planning Commission recommendation, the Board of Commissioners shall approve, approve conditionally, or disapprove the preliminary plat and the reasons for such action shall be stated in writing and entered in the Board's minutes.

2. If the Board approves the preliminary plat, such approval shall be indicated on four copies by the Subdivision Administrator with one copy transmitted to the subdivider, one copy transmitted to the Planning Commission, and one copy retained by the Subdivision Administrator.

(b) 1. If the Board of Commissioners disapproves or approves conditionally the preliminary plat, the reasons for such action or references to conditions shall be stated in writing and attached to four copies of the plat with copies distributed in the same manner as stated above.

2. If the plat is disapproved by the Board, the subdivider may make changes but must resubmit the plat for review and recommendation by the Planning Commission and approval by the Board of Commissioners in accordance with the

procedures outlined in this division (C).

(6) (a) Approval of the preliminary plat shall be valid for one year unless a written extension is granted by the Board of Commissioners on or before the one-year anniversary of said approval.

(b) If the final plat is not submitted for approval within said one-year period, or any period of extension, the said approval of the preliminary plat shall be null and void.

(7) Preliminary plat certificates shall be as follows.

(a) *Recommendation of approval of preliminary plat*

| |
|--|
| <p>This certifies that the Town Planning Commission recommends approval of the preliminary plat for the _____ subdivision at its meeting on the _____ day of _____, 20____.</p> <p>_____</p> <p>Chairperson, Town Planning Commission</p> <p>_____</p> <p>Date</p> |
|--|

(b) *Approval of preliminary plat.*

| |
|--|
| <p>This certifies that the Town Board of Commissioners approves the preliminary plat of the _____ subdivision at its meeting on the _____ day of _____, 20____.</p> <p>_____</p> <p>Subdivision Administrator</p> <p>_____</p> <p>Date</p> |
|--|

(Ord. passed 7-17-1984)

§ 152.30 START OF CONSTRUCTION.

(A) (1) Upon approval of the preliminary plat by the Town Board of Commissioners, the subdivider may proceed with the installation or arrangement for roads, utilities, and other improvements as required.

(2) If and when a building permit is required, then such permit may be obtained only after the approval of the preliminary plat by the Board of Commissioners.

(B) The subdivider/developer shall be responsible for notifying the Subdivision Administrator at least three days in advance of the actual construction of roads or the installation of water and sewer lines and other major improvements so that the Subdivision Administrator and the town's consulting engineer may inspect the materials and construction practices utilized during construction.

(Ord. passed 7-17-1984)

§ 152.31 IMPROVEMENTS; INSTALLATION OR GUARANTEES.

(A) *Generally.*

(1) Upon approval of the preliminary plat by the Board of Commissioners, the subdivider may proceed with the preparation of the final plat and the installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this chapter.

(2) Prior to approval of a final plat, the subdivider shall have installed improvements specified in this chapter; however, if the subdivider is confronted with adverse conditions or unusual circumstances which would likely be overcome if a delay in the installation of said improvements was permitted, which conditions and circumstances are found to exist by the Board of Commissioners, and, further, that it should appeal to the Board of Commissioners that a requested delay would serve the interests of the town and the subdivision, then the subdivider shall guarantee the installation of the specified improvements as provided below.

(B) *Improvements guarantees.*

(1) *Agreement and security required.*

(a) 1. In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements.

2. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved by the Board of Commissioners.

(b) 1. To secure this agreement, the subdivider shall provide, subject to the approval of the Board of Commissioners, the following guarantees, not exceeding one and one-quarter times the entire cost of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat.

2. The estimate of the cost of improvements shall be prepared by the subdivider and submitted to the Subdivision Administrator for approval.

3. The Board of Commissioners shall determine the method of improvements guarantees.

a. *Cash or equivalent security.* The subdivider shall deposit cash or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The use of any instrument other than cash shall be subject to the approval of the Board of Commissioners.

b. *Surety performance bond(s).*

i. The subdivider shall obtain a performance bond(s) from a surety bonding company authorized to do business in the state.

2. The bond(s) shall be payable to the town.

3. The duration of the bond(s) shall be until such time as the improvements are approved by the Board of Commissioners, The Board of Commissioners shall not give said approval until it has been satisfied that all required improvements have been installed.

3. *Letter of credit.*

a. A satisfactory, irrevocable letter of credit as approved by the Town Attorney and Board of Commissioners, and deposited with the Town Clerk, shall be submitted.

b. When a letter of credit is submitted, the following information shall be contained in said letter:

i. Shall be entitled irrevocable letter of credit;

ii. Shall indicate that the town is the sole beneficiary;

iii. The amount (of the letter of credit) as approved by the town;

iv. Account number and/or credit number that drafts may be drawn on;

v. List of improvements that shall be built that the letter is guaranteeing;

terms in which the town may make drafts on the account; and

vi. Expiration date of the letter.

c. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the Board of Commissioners an agreement between the financial institution and himself or herself guaranteeing that the escrow account shall be held in trust until released by the Board of Commissioners and may not be used or pledged by the subdivider for any other matter during the term of escrow.

(2) *Default.*

(a) Upon default, meaning failure on the part of the subdivider to complete the required improvements, then the Board of Commissioners may require the subdivider or the financial institution holding the escrow account to pay all or any portion of the bond or escrow account fund to the town.

(b) Upon payment, the Board of Commissioners, in its discretion, may expend all or such portion of said funds, as it deems necessary to complete all or any portion of the required improvements.

(3) *Release of guarantee security.*

(a) The Board of Commissioners may release a portion of any security posted as the improvements are completed and recommended for approval by the Subdivision Administrator within 32 days after receiving the Subdivision Administrator's recommendation, the Board of Commissioners shall approve or not approve said improvements.

(b) If the Board of Commissioners approves said improvements, then it shall immediately release any security posted.

(Ord. passed 7-17-1984)

§ 152.32 FINAL PLAT.

(A) *Generally.*

(1) (a) The final plat shall constitute only that portion of the preliminary plat, which the subdivider proposed to record and develop at the time of submission.

(b) No final plat shall be approved unless and until the subdivider shall have installed in that area represented on the final plat all improvements required by this chapter, or shall have guaranteed their installation as provided for in § 152.31.

(2) The subdivider shall submit four copies and one original of the final plat to the Chairperson of the Planning Commission no less than 14 days prior to a regularly scheduled Planning Commission meeting or to a meeting specially called by the Chairperson of the Planning Commission to consider the plat.

(B) *Contents required.*

(1) (a) The original of the final plat shall be prepared on linen or Mylar film, drawn on a sheet 18 inches by 24 inches, or 24 inches by 36 inches, or such other size acceptable to the County Register of Deeds and at a scale of not less than 100 feet to one inch, and shall conform substantially to the preliminary plat as approved.

(b) The plat shall conform to the provisions of the G.S. § 47-30, as amended.

(2) The final plat shall be prepared by a registered land surveyor and shall include the following information:

(a) Subdivision name; north arrow; scale denoted graphically and numerically; date of plat preparation; and township, county, and state in which the subdivision is located; and the name(s) of the owner(s) and the registered land surveyor (including the seal and registration number of the registered land surveyor);

(b) The exact boundary lines of the tract to be subdivided fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of adjoining lands;

(c) The names and deed references (when possible) of owners of adjoining properties and adjoining subdivisions of record (proposed or under review);

(d) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other improvements shall be accurately located where crossing or forming any boundary line of the property shown;

(e) Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings, or deflection angles, radii, central angles, and tangent distances for the centerline of curved streets and curved property lines that are not the boundary of curved streets;

(f) The accurate locations and descriptions of all monument markers and control points;

(g) The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block;

(h) Minimum building setback lines;

(i) 1. Street names and right-of-way lines of all streets and the location and width of all adjacent streets and easements; and

2. Designation shall be made as to whether said streets are to be designated as public or private.

(j) The location and dimensions of all rights-of-way, utility, or other easements, natural buffers, pedestrian or bicycle paths, and areas to be dedicated to public use with the purpose of each stated;

(k) A letter from the design engineer certifying to the town that the facilities and improvements were installed in accordance with the plans and specifications approved with the preliminary plat by the Board of Commissioners; and

(l) The following certificates shall be lettered and inked on the original of the final plat in such a manner as to ensure that said certificates will be legible on any prints made therefrom.

1. *Certificate of approval by the Planning Commission*

| |
|---|
| <p>I _____ Chairperson of the Planning Commission, hereby certify that said Commission recommends approval of the final plat of the subdivision entitled _____ on the _____ day of _____ 2_____.</p> <p>_____ Chairperson, Town Planning Commission</p> |
|---|

2. *Certificate of ownership and dedication.*

I (We) hereby certify that I am (we) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish minimum building lines, and dedicate all streets, sewers, water lines, walks, parks, and other sites to public or private use as noted. Further, I (we) certify the land as shown hereon is within the town.

Date _____
Owner _____
Owner _____

3. *Surveyor certificate.* As required by G.S. § 47-30, as amended;

4. *Certification of approval of the installation and construction of streets, utilities, and other required improvements.*

I hereby certify that streets, utilities, and other required improvements have been installed in an acceptable manner and according to town specifications and standards in the subdivision entitled _____, or that a guarantee of the installation of the required improvements in an amount satisfactory to the town has been received.

Date _____
Subdivision Administrator _____

5. *Certificate of completion and warranty.*

The undersigned certifies that he or she is an officer, to wit: **(title of officer)** of **(name of corporation)**, a corporation, and that he or she has been authorized to execute this certificate pursuant to authority granted by resolution of the board of directors of **(name of corporation)**, copy of which resolution is attached hereto.

a. **(Name of corporation)**, through the undersigned, hereby certifies that all improvements required under the authority of the town subdivision regulations have been installed and completed (or guaranteed pursuant to § 152.31) in accordance with the approved preliminary plat and engineering plans for subdivision, and that said improvements are in compliance with the minimum construction standards specified by said regulations.

(Name of corporation), through the undersigned, further certifies that it knows of no defects from any cause and will warrant said improvements to be free from defects in material and workmanship for a period of either one year from the date of final plat approval when such improvements are completed and installed prior to final plat approval, or one year from the date of the Board of Commissioners' approval of completed guaranteed improvements, whichever event last occurs, In the event defects are discovered in any of said improvements during the one-year period, **(name of corporation)** will replace and/or repair the defective improvements at its own expense. Furthermore the **(name of corporation)** shall post a bond by an approved surety company, or other approved method of security, for this one-year period in an amount acceptable to the town to assure that the funds are available to replace and/or repair the defective improvements.

NAME OF CORPORATION

Attest: By:

Secretary

Date

STATE OF NORTH CAROLINA COUNTY OF BUNCOMBE

I, _____ Notary Public of said state and county certify that _____ personally came before me this day and acknowledged that (s) he or she is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of the corporation, the foregoing; instalment was signed in its name by its _____ President, sealed with its corporate seal, and attested by self as its _____ Secretary.

Witness my hand and notarial seal, this the ____ day of _____, 20 ____.

Notary Public

My Commission Expires _____

6. *Certificate of approval for recording plat.*

This certifies that the Town Board of Commissioners approved the final plat of the _____ subdivision at its meeting on the ____ day of _____, 20__.

Date _____

Subdivision Administrator

7. Presentation of certificates. The certificates stated in division (B)(2)(l)2. through division (B)(2)(l)5. above must be presented on the final plat and signed by the designated person prior to Planning Commission review and recommendation.

(C) *Final plat review procedure.*

(1) The subdivider shall submit the final plat to the Planning Commission within one year of the date of preliminary plat approval (unless an extension was granted), and at least 14 days prior to a regularly scheduled Planning Commission meeting or to a meeting specially called by the Chairperson of the Planning Commission to consider the plat, and shall submit at least four copies of the final plat and one original of the final plat. Additional copies may be requested by the Subdivision Administrator.

(2) Before acting on the final plat, the Planning Commission may request reports from any person or agency directly affected by the proposed development. Such reports shall certify compliance with or note deviations from the approved preliminary plat and the requirements of this chapter.

(3) First consideration of the final plat shall be at the next regularly scheduled Planning Commission meeting or special meeting called by the Chairperson of the Planning Commission that follows at least 14 days after the final plat is submitted. The Planning Commission shall recommend approval or disapproval of the final plat at its first consideration or within 32 days of its first consideration. If the Planning Commission fails to act on the final plat within the prescribed period, the subdivider may seek final approval of the plat at the next regularly scheduled meeting of the Board of Commissioners. Prior to the final plat approval, certificates in divisions (B)(2)(l)2. through (B)(2)(l)5. above must be presented on the final plat and signed by the designated person.

(4) If the Planning Commission recommends approval of the final plat, such approval shall be indicated on the original and each copy of the final plat by certificate a from section division (B)(2)(l) above upon recommending approval of the final plat, the Planning Commission shall submit, with recommendations, said plat to the Board of Commissioners, and copies of the plat with recommendations shall be distributed in the same manner as set forth below in division (C)(5) below.

(5) If the Planning Commission recommends disapproval of the final plat, the Planning Commission shall find in writing the provisions of this chapter with which the plat does not comply and the facts constituting noncompliance with said provision(s). One copy of said findings shall be sent to the subdivider within five days of disapproval, one copy shall be retained by the Planning Commission as a part of its proceedings, one copy shall be transmitted to the Board of Commissioners, and one copy shall be filed with the Subdivision Administrator. If the final plat is disapproved, the subdivider may make such changes as needed to bring the plat into compliance with the provisions of this chapter and resubmit the same for reconsideration by the Planning Commission pursuant to the procedures set forth in this division (C), or the subdivider may seek approval from the Board of Commissioners.

(6) The Board of Commissioners shall approve or, disapprove the final plat within 45 days after receiving the final plat and the Planning Commission's recommendation.

(7) If the final plat is approved by the Board of Commissioners, such approval shall be indicated pursuant to division (B)(2)(l) above on the original tracing and on each copy of the final plat. The original tracing of the final plat shall be recorded by the subdivider with the County Register of Deeds within 30 days after the date of Board of Commissioners approval. One print and the original of the plat shall be returned to the subdivider, one print shall be filed with the Planning Commission, one print shall be filed with the Subdivision Administrator, and one print shall become a permanent record of the Board of Commissioners.

(8) If the final plat is disapproved by the Board of Commissioners, the reasons for such disapproval shall be stated in writing, specifying the provision(s) of this chapter with which the final plat does not comply. One copy of such reasons shall be retained by the Board of Commissioners as a part of its proceedings, one copy shall be transmitted to the Planning Commission, one copy shall be transmitted to the subdivider, and one copy shall be retained by the Subdivision Administrator. If the final plat is disapproved, the subdivider may make such changes as will bring the final plat into compliance with this chapter and resubmit the final plat for review and approval in accordance with the procedures outlined in this division (C).

(Ord. passed 7-17-1984)

§ 152.33 RECORDING OF THE FINAL PLAT.

Within 30 days after the final plat has been approved by the Board of Commissioners, it shall have been recorded with the County Register of Deeds. Should the 30-day time limit expire before the plat is recorded, it must be resubmitted to the Planning Commission for reprocessing. Upon adoption of this chapter, the Register of Deeds shall not thereafter file or record a final plat of a subdivision located within the town until said plat has been approved by the town. Without the approval of the Board of Commissioners, the filing or recording of a subdivision plat shall be null and void.

(Ord. passed 7-17-1984)

§ 152.34 EFFECT OF PLAT APPROVAL ON DEDICATIONS.

(A) The approval of a final plat shall not be deemed to constitute or effect the acceptance by the town of the dedication of any street, public utility line, or other public facility shown on the plat; however, the Board of Commissioners shall pass a resolution to actually accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes.

(B) The Board of Commissioners shall pass a resolution formally accepting dedicated improvements no sooner than:

(1) One year from the date of final plat approval when such improvements are completed prior to final plat approval; or

(2) No sooner than one year from the date of the Board of Commissioners approval of completed guaranteed improvements, whichever event in division (B)(1) above or this division (B)(2) last occurs.

(Ord. passed 7-17-1984)

§ 152.35 RE-SUBDIVISION PROCEDURES.

For any replatting or resubdivision of land which has been previously platted or subdivided, the same procedures and requirements shall apply as prescribed in this chapter for an original subdivision.

(Ord. passed 7-17-1984)

IMPROVEMENTS REQUIRED AND MINIMUM STANDARDS OF DESIGN

§ 152.50 GENERALLY.

(A) (1) Each subdivision shall contain the improvements specified in this subchapter, which shall be installed in accordance with the requirements of this chapter and paid for by the subdividers.

(2) Each subdivision shall adhere to the minimum standards of design established by this subchapter.

(3) All public utilities, streets, and other improvements shall be inspected during construction by the design engineer, and the design engineer shall certify to the town that the facilities were installed in accordance with the plans and specifications approved by the Board of Commissioners, and such certification shall be submitted with the final plat.

(B) All improvements shall be warranted by the developer for a period of:

(1) One year from the date of final plat approval when such improvements are completed and installed prior to final plat approval; or

(2) One year from the date of the Board of Commissioners' approval of completed guaranteed improvements, whichever event, division (B)(1) above or this division (B)(2) last occurs.

(Ord. passed 7-17-1984)

§ 152.51 SUITABILITY OF LAND.

Where land to be subdivided is found by the Board of Commissioners to be subject to the conditions of flooding, improper drainage, severe erosion, slides, or to have other characteristics which pose an ascertainable danger to health, safety, or property, the subdivider shall take measures necessary to correct said conditions and to eliminate said dangers.

(Ord. passed 7-17-1984)

§ 152.52 STREETS AND ROADS.

(A) *Generally.*

(1) All lots to be platted shall have access to a street, and all proposed streets shall be installed in accordance with the requirements set forth below prior to final plat approval unless otherwise permitted pursuant to § 152.30. All proposed streets shown on the final plat shall be designated as either public or private streets. For all private streets, the subdivider shall prepare a subdivision streets disclosure statement to be issued to a prospective buyer. The subdivision streets disclosure statement shall include an explanation of the consequences and responsibility for maintenance of the private street.

(2) All streets and roads in the town shall be designed and built in accordance with existing policies and standards of the State Department of Transportation, and all subdivision streets and roads shall be designed and built in accordance with the requirements as set forth by the Department of Transportation, Division of Highways' *Subdivision Roads Minimum Construction Standards*, (latest edition as revised), with only the following variations:

(a) All pavement widths shall be at least 20 feet wide. All street rights-of-way shall be 40 feet, but with the advance written consent and agreement of the town's Department of Public Works, there may be selected areas within the right-of-way that certain sound and healthy trees may be left standing, upon the determination by the Department of Public Works that the placement and maintenance of utilities will not be adversely affected;

(b) All pavement surfaces shall be asphalted and all asphalt paving material, including aggregate base course, bituminous base and surface courses, and prime and tack coats shall meet the requirements of the applicable sections of the latest edition of the State Department of Transportation *Standard Specifications for Roads and Structures*. Bituminous concrete base course shall be Type MB and bituminous concrete surface course shall be Type 1-2. Prime and tack coats grades shall be specified with the job mix formula;

(c) Cul-de-sac streets shall be designed according to DOT standards; however, permanent dead-end streets shall be no longer than 900 feet in length;

(d) All roadways shall be constructed of a minimum of eight inches compacted aggregate base course, and two inches of bituminous surface course Type 1-2;

(e) All pavements shall be designed by a licensed professional engineer with such design being based on the load-bearing capabilities of the proposed subgrade material in accordance with the California Bearing Ratio (CBR) design method. The design shall also be based on the traffic loadings and volumes anticipated for the proposed pavement, including temporary construction vehicles. The calculations, traffic data and other design information, including the soils testing data shall be submitted to the town prior to and as a condition for the preliminary plat approval by the town's Consulting Engineer;

(f) Fill material shall meet the requirements of the classifications in accordance with the Unified Soil Classification

Systems as follows:

1. *Acceptable classifications.* GW, GP, GM, SW, SP, SC, SM, ML, and CL; and
2. *Unacceptable classifications.* PT, OH, OL, CH, and MR

(g) Fill material for subgrade shall have a minimum laboratory dry weight, ASTM 1557, of at least 100 pounds per cubic foot unless specifically exempted from this requirement by the Town Engineer;

(h) The required thickness of the aggregate base course and the asphalt base and surface courses shall be compacted thicknesses;

(i) The standard Proctor method of moisture density relationship test, ASTM D-698, shall be used to determine the maximum laboratory dry density and the optimum moisture content of the material, which is used for fill;

(j) The upper two feet of the soil subgrade in paved areas shall be compacted until its density is not less than 98% of the maximum dry density of the same material. Fill beneath the pavement below a depth of two feet and fill used to construct the roadway shoulders shall be compacted to a minimum of 95% of the maximum laboratory dry density;

(k) Each layer of the aggregate base course material shall be compacted to a density equal to at least 100% of the maximum laboratory dry density. The bituminous concrete base and surface courses shall be compacted to a density of at least 95% of the maximum theoretical density as determined by the Marshall method test;

(l) Non-bituminous bases beneath a bituminous pavement of four inches or less in thickness and non-bituminous bases beneath any bituminous pavement on roadways with grades of 15% or greater shall receive a prime coat treatment. Tack coat treatment shall be applied to side slopes with grades of 1:1 or steeper. Prime and tack coats shall be applied in accordance with the State DOT specifications; and

(m) The State Department of Transportation's *Subdivision Roads Minimum Construction Standards*, contain the necessary design and construction criteria for subdivision streets, including requirements for right-of-way, pavement width, shoulder width, cut and fill slopes, design speed, minimum site distance, intersection design, and the like, with the specific exception that the right-of-way width for subdivision streets with shoulder section shall be 40 feet, and the pavement width with shoulder sections shall be at least 20 feet as referred to in division (A)(2)(a) above.

(B) *Review of subdivision road plans.* Street plans for all subdivisions within the town shall be reviewed by the town's Consulting Engineer and a recommendation provided to the Planning Commission and Board of Commissioners indicating whether the proposed street plans meet the street requirements as specified in division (A) above prior to preliminary plat approval.

(C) *Plan preparation.* The plans for all streets shall be prepared by a registered engineer.

(D) *Proposals.* Proposals for street extensions or connections to an existing town street shall require a new street permit. (See § 152.07(A).)

(Ord. passed 7-17-1984)

§ 152.53 PEDESTRIAN WAYS.

Streets shall be designed or walkways provided to assure safe and reasonable access to parks, playgrounds, and other places of public assembly.

(Ord. passed 7-17-1984)

§ 152.54 BLOCKS.

The length, width, and shape of blocks shall be reasonably designed to provide for the following: adequate building sites for the proposed use; vehicular and pedestrian circulation; and control and safety of traffic.

(Ord. passed 7-17-1984)

§ 152.55 WATER AND SEWER SYSTEMS.

(A) *Generally.* The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The installation of all said systems (except for individual systems septic tanks and wells) shall be required prior to final plat approval, unless otherwise permitted pursuant to § 152.31.

(B) *Public systems.*

(1) All lots shall be provided with direct access to the town's public water and sewer systems, unless otherwise approved by the Board of Commissioners, and when occupied, shall be connected to these public water and sewer systems. The water and sewer systems shall be installed according to town and Metropolitan Sewerage District's (MSD) specifications and standards and designed by a registered engineer, and plans for such systems must be reviewed and approved by the town Public Works Department, MSD, and the appropriate state agency. (See note in division (B)(3) below.)

(2) Letters of approval for such plans from the Town Public Works Department, MSD, and the appropriate state agency

shall be submitted with the preliminary plat. Water and sewer plans shall also be reviewed by the town's Consulting Engineer and a recommendation provided to the Planning Commission and Board of Commissioners stating the suitability of such proposed systems prior to preliminary plat approval.

(3) Note: the plans and specifications for public water supply systems serving 15 or more connections or more than 25 year-round residents shall be approved by the State Division of Water Quality. Plans and specifications for water supply systems serving less than 15 connections shall be approved by the County Health Department. Plans for public sewer system extensions serving two or more connections shall be approved by the State Division of Water Quality.

(C) *Individual systems.*

(1) Individual water and sewer systems shall not be permitted in any proposed subdivision unless otherwise approved by the Board of Commissioners due to topographic and engineering difficulties or other extremely extenuating circumstances involved in extending the public water and/or sewer systems to the lot(s) in the proposed subdivision.

(2) Where individual systems are allowed, such systems shall be reviewed in compliance with State Administrative Code, and a written statement or letter of approval from the County Health Department shall be submitted with the preliminary plat indicating that each lot has adequate land area and soil conditions suitable to accommodate the proposed methods of water supply and sewage disposal. The statement from the Health Department shall be based upon a field investigation and such statement shall be submitted with the preliminary plat.

(D) *Fire hydrants.* Where a water line six inches or greater in diameter is required in the public system, fire hydrants shall be installed on said line. The hydrants shall be spaced so that coverage to all building sites along said line may be provided with not more than 500 feet of hose and shall be located to facilitate access, hose laying, and drainage.

(Ord. passed 7-17-1984)

Cross-reference:

Utilities, see Ch. 50

§ 152.56 STORMWATER DRAINAGE.

(A) The method of providing for stormwater drainage shall be consistent with the Department of Transportation's drainage requirements as stated in *Subdivision Roads Minimum Construction Standards*, and furthermore, it shall be the responsibility of the developer to provide a drainage system, which is designed by a registered engineer and will meet the following objectives:

- (1) Connect onto an existing storm sewer system, where feasible;
- (2) Provide for adequate drainage from all roads, parking lots, and other developed areas;
- (3) Provide a suitable building area on each lot intended for building development, which is safe from inundation, erosion, or subsidence;
- (4) Prevent both the unnecessary impoundment of natural drainage ways and the creation of areas of standing water;
- (5) Ensure that existing drainage ways serving adjacent properties are maintained;
- (6) Ensure that natural runoff levels are not substantially increased in order to prevent harmful flooding downstream and to maintain desirable groundwater levels;
- (7) Prevent inundation of surface water into sanitary sewer systems; and
- (8) Protect all roads, driveways, utilities, and other types of development from damages caused by improper drainage control.

(B) Prior to preliminary plat approval, drainage plans for all subdivisions shall be reviewed by the town's Consulting Engineer and a recommendation provided to the Planning Commission and the Board of Commissioners indicating whether the proposed drainage plan meets the above objectives. Said drainage system shall be arranged prior to final plat approval, unless otherwise permitted pursuant to § 152.31

(Ord. passed 7-17-1984)

§ 152.57 SEDIMENTATION CONTROL.

In order to prevent soil erosion and sedimentation pollution of streams, springs, flat water bodies, or other drainage networks, and when there are plans for a land-disturbing activity of one acre or more, the subdivider shall show proof with the preliminary plat of an erosion and sedimentation control plan which has been approved by the state agency having jurisdiction in accordance with the State Administrative Code, Title 15A, Ch. 4, as adopted by the State Sedimentation Control Commission, June 5, 1981, as amended. Prior to preliminary plat approval, the sedimentation control plan shall be reviewed by the town's Consulting Engineer and a recommendation provided to the Planning Commission and Board of Commissioners indicating whether the plan has provided for adequate sedimentation control measures.

(Ord. passed 7-17-1984)

§ 152.58 LOTS.

The district requirements of Ch. 153 shall govern minimum lot size, lot widths, and building setbacks. These requirements are found in § 153.007.

(Ord. passed 7-17-1984)

§ 152.59 EASEMENTS.

(A) *Utility easements.* Easement for utilities shall be provided, preferably centered on rear or side lot lines and shall be at least ten feet in width.

(B) *Drainage easements.* An easement shall be reserved by the subdivider or otherwise provided conforming with the lines of any drainage way into which natural drainage has been diverted. Said drainage way shall be of sufficient width to carry stormwater runoff from a ten-year storm.

(C) *Buffer strips.* A buffer strip at least 20 feet in width may be required by the Board of Commissioners adjacent to a major street or a commercial development. This strip shall be reserved for the planting of trees and shrubs by the subdivider.

(Ord. passed 7-17-1984)

§ 152.60 STREET LIGHTING.

Street lights of a design and materials meeting reasonable specifications of the town shall be provided and installed at approved locations at the developer's expense at all intersections within new subdivisions and at intersections of such new streets with existing streets in the town.

(Ord. passed 7-17-1984)

§ 152.61 FINAL DEVELOPMENT PLANS.

Upon the final construction and installation of water and sewer lines, streets, and drainage, the design engineer shall submit to the Town Public Works Director a set of final development plans showing the above improvements as constructed and installed. Any variations from the approved engineering plans submitted with the preliminary plat shall be noted and explained.

(Ord. passed 7-17-1984)

§ 152.99 PENALTY.

(A) After the effective date of this chapter, any person who, being the owner or agent of the owner of any land located within the town, thereafter subdivides his or her land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this chapter and recorded in the County Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

(B) The town, through its Attorney or other official designated by the Board of Commissioners, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Further, violators of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties as provided for in G.S. § 14-4. Each day of violation shall be considered a separate offense.

(Ord. passed 7-17-1984)

APPENDIX A: PRELIMINARY PLAT CHECKLIST

The preliminary plat shall be clearly and legibly drawn at a scale of not less than one inch to 200 feet, and may be drawn on a sheet 18 by 24 inches or 24 by 36 inches, or such other size acceptable to the County Register of Deeds. A fee in accordance with this chapter shall be paid to the town upon submission of the preliminary plat. The preliminary plat shall be prepared by a registered land surveyor and shall include the following information:

Name of subdivision _____

Date submitted _____

Location _____

Subdivider _____

Address _____ Telephone _____

Surveyor _____

Address _____ Telephone _____

Checklist:

Copies:

_____ Five copies submitted to Planning Commission.

Title block:

_____ Subdivision name, subdivider's name, north arrow, scale (denoted graphically and numerically), date of plat preparation, location of subdivision (township, county and state), name, and seal of registered land surveyor preparing the plat.

Vicinity map:

_____ A sketch vicinity map showing the location of the subdivision in relation to the surrounding area.

Tract boundaries:

_____ The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown.

Property lines:

_____ Property lines and owner's names of adjoining properties and/or adjoining subdivision of record.

Natural features:

_____ Significant natural features, including wooded areas, marshes, major rock outcrops, lakes or streams, soils information, and other natural features affecting the site, and the 100-year floodplain, where applicable;

Existing physical features:

_____ Existing physical features, including buildings, streets, railroads, power lines, drainage ways, sewer and water lines, utility easements, and town limit lines both on or adjacent to the land to be subdivided.

Topographic lines:

_____ Topographic contour lines at five-foot intervals when the area to be subdivided exceeds two acres or has proposed streets which will exceed 800 lineal feet.

Proposed lot layout:

_____ All proposed lot and street right-of-way lines with approximate dimensions, lot and block numbers, all easements, designation of any dedication or reservations to be made, building setback lines, and proposed use of land if other than single-family residences.

Street layout:

_____ Proposed streets showing pavement widths, right-of-ways, curbing if any, a street profile, and proposed street names. A review of proposed street plan, street plans shall be submitted to the town's Consulting Engineer for review and recommendation to the Planning Commission and Board of Commissioners prior to preliminary plat approval.

Water and sewer layout:

_____ Sketch view of proposed water and sewer system layouts showing location of lines, line sizes, approximate location of manholes, pumps, hydrants, force mains or treatment facilities, and the connection of the proposed system(s) with existing systems. Atypical trench section shall be shown.

_____ Letters of approval for the plans for the proposed sanitary sewer and water distribution systems from the appropriate agencies. (See § 152.55.)

_____ Water and sewer plans shall be submitted to the town's Consulting Engineer for review and recommendation to the Planning Commission and Board of Commissioners prior to preliminary plat approval.

Drainage system:

_____ Sketch view of proposed drainage facilities, including approximate location and dimensions of open drainage ways, storm sewers, culverts, retaining ponds, or areas where water is to be diverted through grading, and any other evidence necessary to assure the Board of Commissioners that the proposed method of drainage meets the objectives of § 152.56.

_____ Drainage provisions shall be submitted to the town's Consulting Engineer for review and recommendation to the Planning Commission and Board of Commissioners prior to preliminary plat approval.

Sedimentation control:

_____ An approved sedimentation control plan. (See § 152.57.)

_____ Sedimentation plan shall be submitted to the town's consulting engineer for review and recommendation to the Planning Commission and Board of Commissioners prior to preliminary plat approval.

Other improvements:

_____ Proposed location and description of any other improvements, including, but not limited to, pedestrian or bike ways, reserved open space or recreational facilities, commercial areas, or buffer strips.

Site data:

_____ Total acreage in tract to be subdivided, smallest lot size (square feet), total number of lots, lineal feet in streets, and zoning district.

APPENDIX B: FINAL PLAT CHECKLIST

The final plat shall meet the following requirements prior to any review of the plat by the Planning Commission.

Date final plat submitted _____

Date preliminary plat approved _____

Name of subdivision _____

Location _____

Subdivider _____

Address _____ Telephone _____

Surveyor _____

Address _____ Telephone _____

ADMINISTRATIVE REQUIREMENTS

_____ Notice from the Subdivision Administrator approving required improvements.

_____ Submitted within 12 months of preliminary plat approval, unless an extension has been granted by the Board of Commissioners.

_____ Final plat is either 18 inches by 24 inches, or 24 inches by 36 inches, or such other size acceptable to the County Register of Deeds, and is a scale of at least one inch equals 200 feet.

_____ Four copies submitted and one reproducible.

REQUIRED DATA

Title block:

_____ Subdivision name, north arrow, scale denoted graphically and numerically, date of plat preparation, and township, county, and state in which the subdivision is located, and the name(s) of the owner(s) and the registered surveyor responsible for the subdivision (including the seal and registration number of the registered surveyor).

Tract boundaries:

_____ The exact boundary lines of the tract to be subdivided fully dimensioned by lengths and bearings, and the location of intersecting boundary lines and adjoining lands.

Adjoining property owners:

_____ The names and deed references of owners of adjoining properties and adjoining subdivisions of record (proposed or under review).

Location of improvements:

_____ All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.

Engineering data:

_____ Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings or deflection angles, radii, central angles, and tangent distances for the centerline of curved streets and curved property lines that are not the boundary of curved streets.

Monuments:

_____ The accurate locations and descriptions of all monument, markers, and control points.

Lot and block numbers:

_____ The blocks numbered consecutively throughout the entire subdivision, and the lot numbered consecutively throughout each block.

Setback lines:

_____ Minimum building setback lines.

Streets:

_____ Street names and right-of-way lines of all streets and the location and width of all adjacent streets and easements. Designation shall be made as to whether said streets are to be designated as public or private.

Right-of-way:

_____ The location and dimensions of all rights-of-way, utility or other easements, natural buffers, pedestrian or bicycle paths, and areas to be dedicated to public use with the purpose of each stated.

Certificates:

_____ The certificates as required in section §152.32(B)(2)(l).

Design engineer certification:

_____ A letter as required in § 152.32(B)(2)(k).

CHAPTER 153: ZONING

Section

General Provisions

- 153.001 Title
- 153.002 Authority and enactment
- 153.003 Jurisdiction
- 153.004 Interpretations and definitions
- 153.005 Establishment of zoning districts and map
- 153.006 Permitted use table
- 153.007 Dimensional requirements
- 153.008 Conditional uses
- 153.009 Exceptions and modifications
- 153.010 Amendments
- 153.011 Violations and remedies
- 153.012 Legal status provisions

General Regulations

- 153.025 Affect on every building and lot
- 153.026 Relationship of building to lot
- 153.027 Lot frontage
- 153.028 Required yards and other spaces
- 153.029 Accessory structures and buildings
- 153.030 Home occupations
- 153.031 Visibility at intersection
- 153.032 Vacant structures and lots
- 153.033 Signs in residential districts, R-1, R-2, R-3, R-4, and R-5
- 153.034 Land disturbance and sedimentation control
- 153.035 Buffer strip required
- 153.036 Nonconforming land uses, or structures
- 153.037 Accessory structures of buildings utilized as dwellings
- 153.038 Off-street parking

- 153.039 Off-street loading and unloading space
- 153.040 No lot subdivision of platted and recorded lots
- 153.041 Minimum dwelling unit size
- 153.042 Subdivision of tracts of land
- 153.043 Maximum roof coverage
- 153.044 Material and color requirements for residential dwelling units
- 153.045 Site design and building form and mass for residential dwelling units
- 153.046 Material and color requirements from commercial buildings
- 153.047 Site design and building form and mass commercial buildings
- 153.048 Impervious surface coverage
- 153.049 Fence, gate and wall regulations

Buffers, Screening, and Landscape

- 153.060 Purpose and intent
- 153.061 General information
- 153.062 Existing vegetation
- 153.063 Buffer strip and screen requirements
- 153.064 Parking lot landscaping requirements
- 153.065 Screening of dumpsters, loading docks, outdoor storage areas, and utility structures
- 153.066 Street trees
- 153.067 Certification of completion
- 153.068 Maintenance
- 153.069 Residential screening of utility structures
- 153.070 Plant specifications
- 153.071 Recreational and commercial vehicle storage

Administration, Enforcement, and Appeals

- 153.085 General process; Duties of the Zoning Administrator, Board of Adjustment, Planning Commission, Board of Commissioners, and courts on matters of administration
- 153.086 Zoning Administrator
- 153.087 Certificate of zoning compliance required
- 153.088 Requirements prior to issuance of a building permit
- 153.089 Building permit required
- 153.090 Certificate of occupancy required
- 153.091 Construction of progress
- 153.092 Construction completion
- 153.093 Compliance
- 153.094 Appeal from the Zoning Administrator

Board of Adjustment

- 153.105 Establishment of Board of Adjustment
- 153.106 Selection of alternate members
- 153.107 Rules of conduct for members
- 153.108 General proceedings of the Board of Adjustment
- 153.109 Meetings

- 153.110 Powers and duties of the Board of Adjustment
- 153.111 Appeals and applications
- 153.112 Appeals from the Board of Adjustment

Design Review Board

- 153.125 Purpose and intent
- 153.126 Composition of Design Review Board and meeting procedure
- 153.127 Development subject to design review
- 153.128 Application required to be filed
- 153.129 Duties and powers of the Design Review Board
- 153.130 Submittal requirements

- 153.999 Penalty

Editor’s note:

Legislative history for the sections in this zoning chapter include the initial zoning ordinance, passed 10-19-1983 and the latest amendment, passed 8-12-2013. The following is a list of all zoning amendments: Ord. passed 10-19-1983; Ord. passed 2-25-1986; Ord. passed 11-29-1994; Ord. passed 12-14-1999; Ord. passed 1-9-2001; Ord. passed 10-9-2001; Ord. passed 7-9-2002; Ord. passed 3-7-2003; Ord. passed 11-9-2004; Ord. passed 12-14-2004; Ord. passed 7-12-2005; Ord. passed 9-12-2006; Ord. passed 1-9-2007; Ord. passed 12-11-2007; Ord. passed 6-10-2008; Ord. passed 9-16-2008; Ord. passed 2-8-2011; Ord. passed 9-13-2011; Ord. passed 12-13-2011; Ord. passed 4-17-2012; Ord. passed 4-9-2013; Ord. passed 7-9-2013; and Ord. passed 8-12-2013

GENERAL PROVISIONS

§ 153.001 TITLE.

This chapter shall be known as the “Zoning Ordinance of the Town of Biltmore Forest, North Carolina”.
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.002 AUTHORITY AND ENACTMENT.

The Town Board of Commissioners, in pursuant of the authority granted by the G.S. §§ 160A-381 through 160A-392, hereby ordains and enacts into law the following articles and sections for the purpose of promoting the health, safety, morals, and general welfare of the community.
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.003 JURISDICTION.

The provisions of this chapter shall be applicable to all land within the corporate limits of town, as established on the map entitled “Official Zoning Map, Town of Biltmore Forest” with the exception of land owned by the town and land used by the town or entities contractually obligated to the town to provide fire protection and emergency medical services, but only during the period of time that such parties are contractually required to provide those services to the town.
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor’s note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.004 INTERPRETATIONS AND DEFINITIONS.

- (A) *Tense; singular and plural.* Words used sed in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.
- (B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

ALLEY. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

APARTMENT. A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

APARTMENT, GARAGE. A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

BOARD OF ADJUSTMENT. The Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.

BOARD OF COMMISSIONERS. The Town of Biltmore Forest Board of Commissioners.

BONA FIDE FARM. All land on which agricultural operations are conducted as the principal use, including the cultivation of crops, the husbandry of livestock and timber resources, and the management of open pasture land.

BUFFER STRIP. A buffer strip is a strip of land together with some form of screening such as existing vegetation, planted vegetation, a landscaped earth berm or grade change, or combination of the above. The purpose of the **BUFFER STRIP** is to minimize the potential conflicts between adjoining land uses.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space.

BUILDING, ACCESSORY. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

BUILDING HEIGHT. The distance measured from the average ground level at the building foundation to the highest point of the roof, but in no event above 40 feet from the highest point in the foundation. A chimney that complies with the minimum the State Building Code requirements for height of a chimney shall not be included in the calculations for height of the building; provided, that the chimney shall not extend more than five feet above the immediately adjoining ridge line of the roof.

BUILDING, PRINCIPAL. A building used for the same purpose as the principal use of the lot.

BUILDING SETBACK LINE. A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.

CARETAKER. A person that maintains grounds or structures on a lot or cares for the well-being of person(s) residing in the principal dwelling on a lot, and resides on the premises without being charged a rental fee.

CLOTHING AND JEWELRY SALE. The sale to the public of clothes and jewelry that have been brought to the home for that purpose.

CLUSTERED HOUSING DEVELOPMENT. Grouping or concentration of housing units on lots smaller than permitted by the existing zoning to preserve open space without increasing the allowable density of the development.

COMMERCIAL SERVICE or PROFESSIONAL SERVICE. Establishments or professions charging a fee for providing a service to the public.

CONDITIONAL USE. A use which is permitted in specified zoning districts only after review by the Board of Adjustment and found to meet specific conditions and procedures as set forth in this chapter to maintain the safety and general welfare and orderly development of the community.

CONSUMER SERVICES. Businesses providing services to the public for profit, including dining and restaurant services (not to include fast food service restaurants), lodging and motel services, financial, real estate and insurance services, and other personal services. In addition to the above, **CONSUMER SERVICES** shall not include filling and gasoline service stations or auto repair shops as defined by this chapter.

DAY NURSERY and PRIVATE KINDERGARTEN. A use of land and buildings to provide group care for children.

DISTRICT. A section of the Town of Biltmore Forest in which zoning regulations are uniform.

DWELLING, MULTI-FAMILY. A building or portion thereof used or designed as a residence for two or more families living independently.

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one family.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EASEMENT. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation, or persons.

ESTATE/AUCTION SALE. The one-time sale to the public of goods that is held at the home. The goods and items offered for sale at said auction must be personal property that has been owned by the resident(s) of said home. No goods or items to be sold shall be shipped or transported to the home from any other location. The sale shall be limited to no more than two consecutive days and the hours for said sale shall be between 10:00 a.m. and 8:00 p.m.

FAMILY. One or more persons occupying a single-dwelling unit; provided, that unless all members are related by blood or marriage or adoption, no such family shall contain over three persons, but further; provided, that domestic servants, caretakers, and security personnel employed or living on the premises may be housed on the premises without being counted as a **FAMILY** or **FAMILIES**.

GARAGE/YARD SALE. The sale to the public of typical household items that is held at the residence. The household items to be sold shall be items from the residence where the sale is to occur. Each residence is limited to one such sale per year. The sale shall not begin before 8:00 a.m. and shall end by 5:00 p.m.

GASOLINE SERVICE STATION/AUTO REPAIR SHOP. Buildings and premises where gasoline, automotive fuel, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made and no other. Sales and servicing as follows: spark plugs, batteries, and distributors and distributor parts; tire servicing and repair, but not recapping or regrooving; replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; radiator cleaning and flushing; washing and polishing, the sale of automotive washing and polishing materials; greasing and lubrication; providing and repairing fuel pumps, oil pumps, and lines; minor servicing and repair of carburetors; emergency wiring repairs; adjusting and repairing brakes, wheel balancing and alignment, minor motor adjustments not involving removal of the head or crankcase or racing the motor; sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operation; automobile body repair services; provision of road maps and other informational materials to customers; provision of restroom facilities.

GRADING. Any land-disturbing activity where the ground cover on or above the soil surface is removed and reconfigured, including trees, grasses, or pavements or other surfaces either natural or human-made.

HOME BUSINESS ACTIVITY. A business conducted from the home such as Internet enterprise, professional office, or the making of crafts or items where no one is employed that does not live in the home and no one comes to the home for a business transaction as part of the activity.

HOME OCCUPATION. An occupation providing a service carried on by the occupants of a dwelling; provided, that certain conditions are met as listed in § 153.008(C)(5).

HOME STAY. Rental of a part of a dwelling unit or accessory structure for consideration, including in kind compensation, to a transient person or persons for a period of less than 90 days. Advertising and renting a room or rooms in a dwelling unit of accessory structure on Airbnb or similar internet web sites would be an example of a **HOME STAY**. **HOME STAYS** are not allowed in any zoning district in Biltmore Forest.

IMPERVIOUS SURFACE. Any paved, hardened, or structural surface, including, but not limited to, buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, tennis courts, and other structures and surfaces, that substantially reduces or prevents the infiltration of stormwater into the ground.

INCOMPATIBLE LAND USE. A land use requiring a conditional use permit from the Board of Adjustment in property zoned R-4 or R-5 adjacent to land zoned R-1, R-2, R-3, Public Service, or land zoned R-4 or R-5 in residential use.

INDIVIDUAL SEWER SYSTEM. Any septic tank, ground absorption system, privy, or other facility serving a single source or connection and approved by the County Sanitarian.

INDIVIDUAL WATER SYSTEM. Any well, spring, stream, or other source used to supply a single connection.

LIVING AREA. Includes the area inside the dwelling walls of each particular floor, but shall not include basements, utility rooms, laundry rooms, storage rooms (other than closets), pantries, garages, and attics. **LIVING AREA** shall, however, include living rooms, dens, studies, kitchens, bedrooms, breakfast rooms, bathrooms, and closets in any of said rooms, foyers, entrance ways, and hallways connecting any of these rooms.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words **PLOT** or **PARCEL**.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

LOT OF RECORD. Any lot for which a plat has been recorded in the Register of Deeds Office of Buncombe County, or described by metes and bounds, the description of which has been so recorded.

LOT WIDTH. The distance between side lot lines measured at the front building line.

MAY. The word **MAY** is permissive.

MOBILE HOME. A factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, to be used without permanent foundation and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.

NONCONFORMING USE. Any parcel of land, use of land, building, or structure existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

ORDINANCE. The Zoning Ordinance of the Town of Biltmore Forest.

PARKING SPACE. An area for parking a vehicle, plus the necessary access space. **PARKING SPACE(S)** shall always be located outside the dedicated street right-of-way and shall be provided with vehicular access to a street or alley.

PARKS. Includes those areas developed either for passive or active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, and the like. The term **PARK** shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

PERSON or APPLICANT. Includes a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.

PLANNED UNIT DEVELOPMENT. A development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a **PLANNED UNIT DEVELOPMENT (PUD)**. Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

PLANNING COMMISSION. The Town of Biltmore Forest Planning Commission.

PROTECTIVE BARRIER. A protective barrier is either:

- (a) A temporary fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails;
- (b) A temporary fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or
- (c) A temporary fence using an equivalent material.

PUBLIC SEWER SYSTEM. Any sewer system owned and operated by a local government in Buncombe County, or other sewage treatment facility serving two or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Natural Resources and Community Development, or a ground absorption system serving two or more connections when approved by the County Sanitarian.

PUBLIC WATER SYSTEM. Water systems serving 15 or more residential connections or serving more than 25-year round residents are classified as public water supplies, and plans and specifications must be approved by the State Department of Human Resources, Division of Health Services. Also, water supply systems serving from two to 14 connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.

RECREATION USER NONPROFIT. An indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of North Carolina.

RECREATION USER PROFIT. An indoor or outdoor recreation facility operated on a profit basis.

RESIDENTIAL DENSITY. The number of dwelling units per acre devoted to residential buildings, accessory uses, and open spaces within the site, but excluding land for streets and street right-of-ways. **RESIDENTIAL DENSITY** shall be calculated by first subtracting the land area required for streets and rights-of-way from the total or gross land area of the tract to derive a net land area, and then dividing the number of dwelling units proposed to be built by the net land area.

RETAIL BUSINESS. Establishments selling commodities directly to the consumer. Fast food service restaurants, gasoline service stations/auto repair, or the dispensation of gasoline as an ancillary service to a retail use shall be prohibited.

ROOF COVERAGE. For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter dealing with roof coverage), **ROOF COVERAGE** shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above-grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed spaces or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above- grade impervious surface (such as a deck, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**.

ROOT PROTECTIVE ZONE. A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances:

- (a) A one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or
- (b) A measurement of the furthest or most outward branch or limb from the main trunk when that distance is then drawn as a circle around the remaining portion of the tree or shrub, commonly referred to as the 'drip line'. The minimum

ROOT PROTECTION ZONE in any case is a radius of eight feet measured from the tree trunk.

SHALL. The word **SHALL** is mandatory.

SHORT TERM RENTAL. Rental of a dwelling unit or accessory structure for consideration, including in kind compensation, for a period of less than 90 days. **SHORT TERM RENTALS** are not allowed in any zoning district in Biltmore Forest.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties. **STREET** also includes the words **ROAD** and **HIGHWAY**.

STREET LINE. The edge of the roadway pavement.

STRUCTURE. Anything constructed or erected, including, but not limited to, buildings, which requires location on the land or attachment to something having permanent location on the land.

SUBSTANTIAL COMPLETION. For the purpose of building construction; the completion of all exterior work on the building; the completion of all plumbing, electrical, and HVAC work; the completion of all window installation; the completion of all interior and exterior door installation, the completion of all wall construction, painting, and/or covering, the completion of all floor installation and/or covering; and the completion of all other work necessary to receive a certificate of occupancy from the Buncombe County Inspections Department. Minor work typically noted on a punch list may be incomplete and the structure shall be deemed to be substantially completed.

SUBSTANTIAL PROGRESS. For the purpose of building construction, it is expected that construction of the building is continuous and that progress is obvious and observable with inspections as required under the State Building Code occurring on a regular basis.

VARIANCE. **VARIANCE** shall be as defined in G.S. § 160A-388(d) together with any amendments thereto.

WHOLESALE BUSINESS. The sale of goods in large quantities usually for resale.

YARD. A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

YARD, FRONT. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard. In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the **FRONT YARD**, however, in the consideration and determination of applications for conditional use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the **FRONT** and **SIDE YARDS** to the street and adjoining properties in any determination.

YARD, REAR. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

YARD, SIDE. An open, unoccupied space on the same lot with a principal building extending the full width of the lot and being situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. Notwithstanding the above definition, for the purposes of determining compliance with minimum yard setback of § 153.007, the **SIDE YARD** shall be the entire length of each side lot line extending from the front lot line to the rear lot line and shall equally apply to lots with a principal building, lots without a principal building and vacant lots. Driveways shall not be located in the side yard setback.

ZONING ADMINISTRATOR. An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

ZONING MAP or **BILTMORE FOREST ZONING MAP.** The official zoning map of the Town of Biltmore Forest.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. 2015-01, passed 8-11-2015)

§ 153.005 ESTABLISHMENT OF ZONING DISTRICTS AND MAP.

(A) *Use districts.* For the purpose of this chapter, the town is hereby divided into the following use districts:

- (1) R-1 Residential District;
- (2) R-2 Residential District;
- (3) R-3 Residential District;
- (4) R-4 Residential District;
- (5) R-5 Residential District; and
- (6) P-S Public Service District.

(B) *Establishment of district boundaries.* The boundaries of these districts are hereby established as shown on the official zoning map of the town.

(C) *Establishment of zoning map.* A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this zoning ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the said map and post any changes thereto as they may be made.

(D) *Rules governing district boundaries.* Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, or other bodies of water, shall be construed to follow such lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines;

(4) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefore as indicated on the zoning map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said zoning map; and

(5) Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (D)(1) through (D)(4) above, the Board of Adjustment shall interpret the district boundaries.

(E) *Statement of district intents.*

(1) *R-1 Residential District.*

(a) The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to preserve and enhance the character of existing neighborhoods and generally to provide a pleasant living environment. These neighborhoods consist of single-family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low-density residential environment.

(b) Nonresidential uses, including home occupations, have been limited in this District as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community.

(c) Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods. Therefore, structures should be compatible in materials, height, siting, color, texture, scale, and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.

(d) Consistent with, and to protect the existing character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(2) *R-2 Residential District.*

(a) The R-2 Residential District is established to protect and maintain existing neighborhoods, which are characterized by single-family residences with smaller lots, and thus greater residential densities than found in the R-1 District.

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(3) *R-3 Residential District.*

(a) The R-3 Residential District is intended to provide locations that will accommodate future residential growth south of the Blue Ridge Parkway. This District is intended to provide locations for future subdivisions and for planned unit residential developments as conditional uses when design plans show that such developments will be compatible with the surrounding development and available public services.

(b) This District is primarily a low-density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a conditional use at a maximum density of eight dwelling units per acre. Nonresidential uses, including home occupations will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(4) *R-4 Residential District.*

(a) The R-4 Residential District provides areas for residential uses, and as conditional uses professional offices and commercial services. Urban sprawl, strip commercial development, and congestion will be discouraged by promoting good design and clustered development. These areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid traffic congestion and safety hazards.

(b) Land uses in this District, other than single-family detached dwelling units, will require a conditional use permit as a means of assuring and promoting safety and good design. The integrity of residential uses in this zone will be preserved by requiring a 20-foot wide buffer strip between residential and nonresidential uses.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(5) *R-5 Residential District.*

(a) The medium-density district is established as a district where both residential and business uses are accommodated. In addition, a wide range of community facilities and services are also available. It is intended that nonresidential uses, including business uses, shall be compatible with and exist in harmony with the community in which they are located and that adequate standards will be maintained pertaining to the public health, safety, and welfare.

(b) In addition, these areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid congestion and safety hazards. Most land use in this District will require a conditional use permit as a means of assuring and promoting safety and good design.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(6) *P-S Public Service District.*

(a) This District is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction.

(b) It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development.

(c) It is expressly intended that any structures and/or buildings shall be prohibited except as associated with a public park or recreational area. Any land-disturbing activity such as driveway connections or landscaping shall be approved by the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. 2015-01, passed 8-11-2015)

§ 153.006 PERMITTED USE TABLE.

(A) *Table.* The following tables show the land uses permitted in each zoning district and the dimensional requirements for each zoning district, including minimum lot sizes, minimum lot widths, and minimum setback requirements.

| Zoning Districts | | | | | |
|--|------------|------------|------------|------------|------------|
| USE | R-1 | R-2 | R-3 | R-4 | R-5 |
| Accessory buildings; structures and uses (does not include rental units by other than a family member) | C | C | C | C | C |
| Banks | | | | C | C |
| Bone fide farms | C | | C | C | P |
| Business or special schools (art, craft, dance, and the like) | | | | C | C |
| Churches/religious assembly | | | | C | C |
| Clothing and jewelry sales* | P | P | P | P | P |
| Country, athletic and social clubs | C | C | C | C | C |
| Commercial business | | | | | C |
| Commercial services (excluding retail trade) | | | | C | C |
| Day nurseries/day care | | | | C | C |
| Estate auction sale** | P | P | P | P | P |
| Fundraising events for nonprofits or political campaigns**** | P | P | P | P | P |
| Garage/yard sales*** | P | P | P | P | P |
| Home business activity***** | P | P | P | P | P |

| | <i>Feet</i> | | <i>Feet</i> | <i>Line</i> | <i>Yard</i> | <i>Yard</i> | <i>In Feet</i> |
|-----|-------------|---|-------------|-------------|-------------|-------------|----------------|
| R-1 | 43,560 | 0 | 150 | 60 | 20 | 25 | 40 |
| R-2 | 20,000 | 0 | 100 | 50 | 15 | 20 | 40 |
| R-3 | 20,000 | 8 | 100 | 50 | 15 | 20 | 40 |
| R-4 | 20,000 | 2 | 100 | 50 | 15 | 20 | 40 |
| R-5 | | 8 | 100 | 50 | 15 | 20 | 40 |
| PS | No Min. | 0 | No Min. | No Min. | No Min. | No Min. | Not App. |

(B) *General provisions.* The following are footnotes applicable to the table in division (A).

(1) *Footnote 1.* The minimum lot area for lots not served by public water and/or sewer shall be subject to approval by the County Health Department to ensure the proper operation of septic tanks and wells. In no case, however, shall minimum lot area be less than those specified in the table in division (A).

(2) *Footnote 3.* The minimum lot width at the street line shall be 125 feet in the R-1 District, and 80 feet in the R-2, R-3, and R-4 Districts.

(3) *Footnote 4.* On all corner lots, a 30-foot side yard setback is required.

(4) *Footnote 5.* Accessory structures, including driveways, shall meet all setback requirements. Notwithstanding the foregoing, setback requirements for driveway entrance columns or driveway entrance walls may be waived or modified by the Board of Adjustment with the granting of a conditional use permit in accordance with § 153.110(C), without the need for a variance pursuant to § 153.110(D).

(5) *Footnote 6.* Height requirements may be varied upon approval of the Board of Adjustment.

(6) *Footnote 7.* Whichever is greater, 20,000 square feet, or twice the gross floor area of the building.

(7) *Footnote 8.* An increase in the side and rear yard setbacks is required for homes (structures) that exceed 25 feet in height. Homes (structures) greater than 25 feet in height shall be setback from the side and rear property lines an additional one and one-half feet for each one foot, or portion thereof, that the home (structure) exceeds 25 feet in height.

(8) *Footnote 9.* Structures exceeding a roof coverage area of 7,000 square feet shall be set back from side and rear property lines an additional 20% of the required setback for each 500 square feet, or increment thereof, that the roof coverage areas exceeds 7,000 square feet.

Example: The rear setback for a single story 8,200 square foot house in the R-1 District would be calculated as follows:

$$8,200 - 7,000 = 1,200$$

$$1,200/500 = 2.4 \text{ (round to 3 to account for increment of change)}$$

$$3 \times 20\% = 60\%$$

$$60\% \times 20 = 12$$

$$25 + 12 = 37$$

Rear setback will be 37 feet

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.008 CONDITIONAL USES.

(A) *Purpose.* The following conditional uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as conditional uses if the provisions of this and all other sections of this chapter have been met.

(B) *Development plan/site plan requirement.*

(1) All applications for conditional use permits shall include a development plan or site plan.

(2) The development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

(a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

(b) Boundary lines of the proposed development, proposed lot lines, and plot designs;

(c) Proposed location and use of all existing and proposed structures;

(d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;

(e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);

(f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved Sedimentation and Erosion Control Plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;

(g) Location and/or notation of existing and proposed easements and rights-of-way;

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

(j) Where applicable, the following written documentation shall be submitted:

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;

2. The zoning district or districts in which the project is located;

3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;

4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;

5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units/acre); and total amount of open space; and

6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) *Conditional use standards.*

(1) *Generally.* The following standards are applied to specific conditional uses. Before issuing a conditional use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.

(2) *Planned unit developments.*

(a) *Purpose.* The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for mixtures of housing types, to provide for the most efficient use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one principal building on one lot. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in each proposed planned unit development project in order to create useful open spaces and preserve natural site features. It is further intended that a planned unit development will be in harmony with the character of the district in which it is located.

(b) *Planned unit development defined.* In this chapter, a **PLANNED UNIT DEVELOPMENT MEANS** a development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a planned unit development (PUD). Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

(c) *Land development standards.*

1. The following land development standards shall apply for all planned unit developments.

2. These planned unit developments may be located only in certain specified districts as conditional uses, subject to a finding by the Board of Adjustment that the following conditions be met.

a. *Ownership control.* The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

b. *Land uses permitted and location of PUDs.* The uses permitted within a planned unit development are limited to residential uses, including multi-family residential units, and those land uses normally allowed (as either permitted or conditional) in the zoning district within which the PUD is located. PUDs shall be permitted in the R-3, R-4, and R-5 Districts. All PUDs must be compatible with and not violate the intent of the zoning districts.

c. *Density requirements.* The proposed residential density of a planned unit development (dwelling units per acre as shown in § 153.007) shall conform to that permitted in the district in which the development is located. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district and must be combined to determine the number of dwelling units allowable in the entire planned unit development.

d. *Frontage requirements.* Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.

e. *Minimum requirements.*

i. *Waiver.* The normal minimum lot size, setbacks, and frontage requirements are hereby waived for the planned unit development; provided, that the spirit and intent of this section are complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

ii. *Height limitations.* No building or structure shall exceed the height limitations of the district in which it is located, except as approved by the Board of Adjustment.

iii. *Required distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

iv. *Streets.* Every dwelling unit shall have access to a public or private street, walkway, or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.

f. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants and adjacent properties for screening of objectionable views or uses, and for reduction of noise. Multi-level buildings shall be located in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

g. *Perimeter requirements.*

i. Structures located on the perimeter of the development must be set back from property lines and right-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.

ii. Structures other than single-family detached units, located on the perimeter of the development, may require buffer strip or screening in a manner which is approved by the Board of Adjustment.

h. *Plans and documentation.* Plans and accompanying documentation shall ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies, and submitted as part of the application.

i. *Preliminary plans.* Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with § 153.038.

j. *Pedestrian and bicycle path circulation system.* Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

k. *Parking areas, service areas, and the like.* Layout of parking areas, service areas, entrances, exits, yards, courts, and landscaping, and control of signs, lighting, noise, or other potentially adverse influences shall be such as to protect the character of the district and desirable character in any adjoining district.

l. *Open spaces, recreational areas, and the like.* Where applicable, conveyance and maintenance of open space, recreational areas, and communally-owned facilities shall be in accordance with the Unit Ownership Act (G.S. Ch. 47A) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

(3) *Country, athletic and social clubs.*

(a) Off-street parking shall be sufficient to meet the requirements found in §153.038.

(b) The Board of Adjustment may require buffering along the side and rear lot lines that meet the requirements as outlined in § 153.063, "buffer strip and screen requirements". This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) The proposed hours of operation shall not be detrimental to the surrounding property due to noise, lights, traffic, and the like.

(d) All developments shall be compatible with surrounding residential uses, therefore, no signs with flashing lights shall

be allowed. The design of all proposed signs shall be submitted with the site plan, and all non-flashing illuminated signs shall be so placed so as not to cast light on nearby residential uses.

(4) *Public utility stations and substations.*

(a) Structures shall be enclosed by a woven wire fence at least eight feet high.

(b) The lot shall be suitably landscaped along the side and rear property lines with vegetation that meets the requirements as outlined in § 153.063, "buffer strip and screen requirements". This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) Entrances and exits shall be designated and designed accordingly so as to promote public safety.

(5) *Home occupation.* An occupation providing a service carried on by the occupants of a dwelling; provided, that:

(a) The occupation is conducted entirely within the dwelling and not in an accessory building or out of doors;

(b) The use of the dwelling unit for the home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes;

(c) There shall be no display, no outside storage, no change in outside appearance of the building or premises, or other visible evidence of the conduct of such home occupations;

(d) Any need for parking generated by the conduct of such home occupation shall be met off the street and not in the front yard;

(e) No equipment or process shall be used in such home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses;

(f) In the case of electrical interference, no equipment or process shall be used which creates a visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the line voltage off the premises; and

(g) No retail sales shall be conducted as part of the home occupation.

(6) *All commercial services, professional office uses, consumer services, and retail businesses.*

(a) Off-street parking shall be sufficient to meet the requirements found in §153.038.

(b) A driveway permit as required by the State Department of Transportation shall be submitted along with the site plan, where applicable.

(c) Front setbacks along Hendersonville Road shall be considered on a case-by-case basis by the Board of Adjustment with input from the Zoning Administrator. The Board of Adjustment shall determine the setback upon consideration of the most suitable location for parking. Required parking shall be provided either at the side, rear, or front of the proposed development, based upon the location of adjacent and/or nearby residential dwellings, topography, existing or proposed screening, or other factors which may include noise or glare. When parking is designated to be at the rear of the proposed building, the front setback shall be determined on a case-by-case basis by the Board of Adjustment; when parking is designated to be at the front of the proposed building, then the front setback shall be 50 feet.

(7) *Libraries, schools, and churches.* Libraries, schools and churches shall provide a buffer that meets the requirements as outlined in § 153.063, "buffer strip and screen requirements".

(8) *Accessory buildings.*

(a) All accessory buildings shall meet the standards of the State Building Code where applicable.

(b) All accessory buildings shall be of a design compatible with the principal building on the lot and with the structures in the neighborhood.

(c) An additional parking space shall be required when an accessory building is permitted for use as a dwelling by a family member.

(d) Accessory buildings shall comply with the district's setback requirements.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.009 EXCEPTIONS AND MODIFICATIONS.

(A) *Compliance.* Compliance with the requirements of this chapter is mandatory; however, under the specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

(B) *Front yard setback for dwellings.* The front yard setback requirements of this chapter for dwellings shall not apply on any lot where the average front yard setback of existing buildings located within 100 feet on each side of such lot is less than the minimum required front yard setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

(C) *Completion of buildings under construction.* Nothing in this chapter shall require any change in the plans,

construction, or designated use of a building under construction at the date of the passage of this chapter; provided, that construction of such building is diligently pursued and the entire building is completed within 18 months from the date of passage of this chapter. A building shall be deemed to be under construction upon the effective date of this chapter if a building permit has been issued.

(D) *Temporary uses.* Temporary uses such as real estate sales field offices or shelter for materials and equipment being used in the construction of a permanent structure may be permitted by the Zoning Administrator, provided, they do not create health, safety, or nuisance hazards.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.010 AMENDMENTS.

(A) *Generally.* This chapter, including the zoning map, may be amended by the Town Board of Commissioners in accordance with the provisions of this subchapter.

(B) *Initiation of amendments.* Proposed changes or amendments may be initiated by the Town Board of Commissioners, the Planning Commission, the Board of Adjustment, or one or more owners of property within the area proposed to be changed or affected. All proposed amendments shall be referred to the Planning Commission for their review and recommendation to the Town Board of Commissioners.

(C) *Application.* Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least ten days prior to the Planning Commission's meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the owner(s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question. The Planning Commission and the Board of Commissioners will not consider an application for property denied within the preceding 12 months by the Board of Commissioners.

(D) *Application fee.* A fee, in an amount as set by the Board of Commissioners from time to time, shall be paid to the town for each application for an amendment to cover costs of advertising and other administrative expenses.

(E) *Planning Commission action.* Before taking any action on a proposed amendment to the ordinance, the Board of Commissioners shall consider the Planning Commission's recommendations on each proposed amendment. The Planning Commission shall have 32 days after the first consideration of the application within which to submit its recommendations to the Board of Commissioners. Failure of the Planning Commission to submit recommendations within the 32-day period shall constitute a favorable recommendation.

(F) *Public hearing.*

(1) Before enacting any amendment to this chapter, the Board of Commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in the county once a week for two successive weeks, the first publication shall not appear less than ten days or more than 25 days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. The notice shall include the time, place, and date of the hearing and include a description of the property or the nature of the change or amendment to the ordinance and/or map.

(2) (a) Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice by the Zoning Administrator of the proposed classification by first class mail at the last address listed for such owners on the county tax abstracts.

(b) The person mailing such notices shall certify to the Town Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. This provision shall apply only when tax maps are available for the area to be zoned.

(G) *Decision.*

(1) The Town Board of Commissioners shall make a decision on the proposed amendment to this chapter initiated by owners of private property within the town within 60 days after the public hearing.

(2) There shall be no time limit after a public hearing for Board action concerning all proposed amendments initiated by the Town Board of Commissioners, the Planning Commission, or the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.011 VIOLATIONS AND REMEDIES.

(A) *Violations.*

(1) Whenever, by the provisions of this chapter, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of any land, or on the erection or alterations, or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this chapter shall constitute a separate violation and a separate offense.

(2) Each day of violation and noncompliance shall be considered a separate offense.

(B) *Remedies.* If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved, or maintained, or any building, structure, or land is used in violation of this chapter, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance, or use, to restrain, correct, or abate the violation, to prevent occupancy of the building, structure, or land, or to prevent any illegal act, conduct of business, or use in or about the premises.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see §153.999

§ 153.012 LEGAL STATUS PROVISIONS.

(A) *Conflict with other laws.*

(1) When provisions of this chapter require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this chapter shall govern.

(2) When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this chapter, the provisions of that statute or local ordinance or regulation shall govern.

(B) *Effective date.* This chapter shall take effect and be in force on October 18, 1983.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

GENERAL REGULATIONS

§ 153.025 AFFECT ON EVERY BUILDING AND LOT.

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved, or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this chapter.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see §153.999

§ 153.026 RELATIONSHIP OF BUILDING TO LOT.

Every building hereafter erected, moved, or structurally altered shall be located on a single lot and in no case shall there be more than one principal building and its customary accessory building on the lot, except in the case of a designed planned unit development.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.027 LOT FRONTAGE.

All lots shall front on a public street. It is suggested but not required that garage doors not face or be visible from the public street, that garage doors not be more than ten feet wide, and if there are multiple garage doors, that there be at least 18 inches of separation between them.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.028 REQUIRED YARDS AND OTHER SPACES.

No part of a yard or open space, or off-street parking or loading space required in §§153.038 and 153.039, or required in connection with any building for the purpose of complying with this chapter, shall be included as a part of a yard, open space, or off-street parking, or loading space similarly required for any other building.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;

- (e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;
- (f) The accessory building must be designed in the same architectural style as the principal structure;
- (g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and
- (h) Solar collectors shall be regulated in accordance with G.S. § 160A-201.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013; Ord. passed -- ; Ord, passed 2-11-2020)

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.030 HOME OCCUPATIONS.

Standards pertaining to home occupations are contained within the conditional use standards, specifically §153.008(C)(5).

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.031 VISIBILITY AT INTERSECTION.

Sight distances at intersections must meet the standards for secondary roads established by the State Department of Transportation. On corner lots, no planting, structure, sign, fence, wall, or other obstruction shall be erected so as to interfere with said sight distance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.032 VACANT STRUCTURES AND LOTS.

Vacant structures, lots, and open spaces shall be maintained consistent with the surrounding neighborhood. All structures shall remain structurally sound. Vegetation shall be neatly trimmed and the accumulation of unsightly debris shall be prohibited.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.033 SIGNS IN RESIDENTIAL DISTRICTS, R-1, R-2, R-3, R-4, AND R-5.

(A) A small sign showing the name of the owner or occupant or the street number of a lot shall be permitted on any lot. One real estate sign per lot not exceeding six square feet shall be permitted for advertising the sale of property.

(B) The design or layout of signs proposed for any conditional use shall be presented along with the development plan as specified in § 153.008(B).

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.034 LAND DISTURBANCE AND SEDIMENTATION CONTROL.

(A) *Land disturbance becoming landscaping.* Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval prior to commencing such activity in a public service district, any land-disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

(B) *Maintain as natural open space areas.* The intent of this requirement is to ensure that these areas are to be maintained as natural open space areas, and that any disturbance such as the building of roads, public utilities, and other such activities be designed and constructed so as to maintain the natural scenic character of these districts. A landscape plan shall be submitted and approved by the Board of Adjustment prior to any land-disturbing activity.

(C) *Compliance with G.S. § 113A-54.* Where applicable, all proposed development projects or land-disturbing activities shall comply with G.S. § 113A-54, and *Rules and Regulations for Erosion and Sediment Control* as established by the State Sedimentation Control Commission, State Department of Natural Resources and Community Development.

(D) *Landscaping plans.* A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall detail all plantings or reforestation to take place as part of the land-disturbing activity.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.035 BUFFER STRIP REQUIRED.

From the time of the adoption of this chapter, all conditional use development projects in the R-4 District that abut a

residential lot or the other residential districts, shall provide a buffer strip that meets the requirements as outlined in § 153.063, "buffer strip and screen requirements".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.036 NONCONFORMING LAND USES, OR STRUCTURES.

Any parcel of land, use of land, building, or structure existing at the time of the adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located, may be continued and maintained subject to the following provisions.

(A) *Nonconforming vacant lots.*

(1) This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the County Register of Deeds office, which at the time of adoption of this chapter or any amendment thereto fail to comply with the minimum area and width requirements of the districts in which they are located.

(2) Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located; provided, that:

(a) Where the lot area is not more than 20% below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning compliance permit; and

(b) Where the lot area is more than 20% below the minimum specified in this chapter or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

(B) *Nonconforming occupied lots.* This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this chapter or any amendment thereto, that fail to comply with the minimum requirements for area, width, yard, and setbacks for the district in which they are located. These lots may continue to be used.

(C) *Nonconforming uses or structures.*

(1) This category of nonconformance consists of buildings or structures used at the time of enactment of this chapter or any amendment thereto for purposes of use not permitted in the district in which they are located, or structures on conforming lots which do not comply with the dimensional requirements of this chapter such as size and height restrictions.

(2) Such uses except as provided in division (E) below may be continued as follows:

(a) 1. An existing nonconforming use may be changed to another nonconforming use of the same or higher use; provided, that the other conditions in this section are complied with.

2. For the purpose of this chapter, the rank order of uses from higher to lower shall be:

- a. Residential;
- b. Public; and
- c. Commercial services.

(b) When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

(c) A nonconforming use may not be extended or enlarged, nor shall a nonconforming structure be altered except as follows:

1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible;
2. Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible;
3. At the time of adoption of this chapter, if an expansion of a nonconforming use is in progress, that is, if at least a building permit for the expansion has been issued, then such expansion may be completed as specified in the building permit; and
4. When any nonconforming use of a building or structure is discontinued for a period in excess of 60 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(D) *Reconstruction of damaged buildings or structures.* Any nonconforming use of a structure or nonconforming structure which has been damaged by fire, wind, flood, or other causes, may be repaired and used as before provided:

- (1) Repairs are initiated within 12 months and completed within two years of such damage;
- (2) The total amount of space devoted to a nonconforming use may not be increased; and
- (3) Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

(E) *Nonconforming home occupation.* Any property owner whose home occupation was made nonconforming by the

ordinance amendment adopted on July 9, 2002, shall have until July 8, 2005 to conform to the current terms of the ordinance.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.037 ACCESSORY STRUCTURES OF BUILDINGS UTILIZED AS DWELLINGS.

(A) Upon adoption of this chapter, accessory buildings used as dwelling units and occupied by a “family” (see definition in § 153.004) member shall be a conforming use. Such units occupied by a non-family member shall be nonconforming uses.

(B) (1) The definitions and provisions of this chapter provide for this situation.

(2) Therefore, the following shall apply:

(a) An existing accessory structure occupied at the time of adoption of this chapter by a non-family member can continue to be used for such purpose. If the unit occupied by a non-family member becomes vacant for more than 60 days (see § 153.036(C)(2)(c)4.), then such unit could only be reoccupied by a family member.

(b) New accessory structures intended for use as dwellings shall only be occupied by a family member.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.038 OFF-STREET PARKING.

(A) Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established in all districts. The number of parking spaces provided shall be at least as great as the number specified below for various uses. When application of said provision results in a fractional space requirement, the next larger requirement shall prevail.

(B) Each lot abutting a major thoroughfare shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street. A parking space shall consist of an area not less than ten feet by 20 feet, plus the necessary access space unless otherwise authorized by the Board of Adjustment.

(1) *Minimum parking requirements.* The required number of off-street parking spaces specified below for each use shall be provided.

| <i>Residential Uses</i> | <i>Required Parking</i> |
|---|--|
| <i>Business and Consumer Services of All Kinds</i> | |
| Business and special schools | 1 space for each students |
| Clubs and lodges | 1 space for each 3 members |
| Day nursery and private space for each kindergartens | 1 space for each staff member, plus 1 space for each 5 students |
| <i>Business Uses</i> | |
| Commercial services; retail space | 1 space for each 200 square feet of gross floor |
| Doctors' and dentists' offices | 5 spaces per doctor or dentist |
| Professional and business offices | 1 space for each 300 offices square feet of gross floor |
| <i>Public and Semi-Public Uses</i> | |
| Churches | 1 space for each four seats in the principal assembly room |
| Public building space | 1 space for each 200 square feet of gross floor |
| Recreational facilities | 2 spaces for every tennis, squash, or racquetball court; health exercise facility—1 space per 50 square feet; golf or country clubs — 2 spaces per tee; places of recreation and assembly shall have 1 space for each 200 square feet of gross floor space |
| Schools; public/private | 1 space for each classroom and administrative office, plus 1 space for each 20 seats or 1 space for each 400 square feet of area used for public assembly |
| <i>Residential Uses</i> | |
| Residential dwellings in a residential planned unit development | 1- 1/2 spaces for each dwelling unit |
| Residential dwellings, single-family | 2 spaces for each dwelling unit |

(2) *On-site parking of vehicles.*

(a) All motorized vehicles (including, but not limited to, cars, trucks, motorcycles, mopeds/scooters, golf carts) must be parked entirely upon a prepared driveway/parking surface (asphalt/pavement, concrete, pavers, gravel, pebbles) located on the lot or tract, or located on any adjoining lots or tracts, of the principal residence or structure. Parking on grassed areas, dirt/soil areas, mulched areas, landscaped areas, or any other natural areas of a lot or tract is expressly prohibited. This provision is applicable to all zoning districts within the town.

(b) Excepted from the requirements of this section is the temporary parking (less than five hours in duration) of vehicles operated by persons who are visiting the owners or occupiers of the residence.

(c) Nothing herein shall be deemed to modify or impact, in any way, the requirements found under §153.071, "recreational and commercial vehicle storage".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.039 OFF-STREET LOADING AND UNLOADING SPACE.

Every lot, on which a business is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street. For the purpose of this section, an off-street loading space shall have the minimum dimensions of 12 feet by 40 feet, and an overhead clearance of 14 feet in height. All businesses shall have at least one such space.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.040 NO LOT SUBDIVISION OF PLATTED AND RECORDED LOTS.

(A) It is the express intention and purpose of this chapter to preserve the town as primarily a low- density residential area. To this end, subject to § 153.042, the number of lots within the town shall be limited to those lots as shown on plats recorded in the County Register of Deeds. Therefore, upon adoption of this chapter, all lots in the town that have been previously platted and recorded with the County Register of Deeds shall be deemed and established as individual lots, and shall remain individual lots, and shall not be subdivided.

(B) If an owner has acquired contiguous or adjoining lots, and the terminology of the deeds or other instruments of conveyance expresses intent that said lots shall be joined together as one residential lot, said lots shall thereafter be considered as one residential lot and shall not be subdivided into individual lots. If an owner of contiguous or adjoining lots develops said lots together, locating a residence on such lot or lots, and has landscaped the same or located other improvements, structures, or amenities on the lots so that from the standpoint of utility or appearance said lots seem to constitute one residential site, then said property shall not thereafter be subdivided, nor revert back to individual, separate lots.

(C) Nothing herein shall preclude property owners from subdividing unimproved previously platted and recorded lots, so as to enlarge existing residential lots or building sites. This subdivided lot shall not thereafter be reestablished as a separate residential lot.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.041 MINIMUM DWELLING UNIT SIZE.

(A) Each dwelling unit hereafter erected on any lot shall contain the following specified minimum living area floor space.

(B) Basement areas shall not be counted as a story and floor space contained in basement areas shall not be included in the minimum required living area floor space.

(1) Dwelling units consisting of a single or one primary story with living area as defined in this chapter shall contain a minimum of 2,250 square feet of living area.

(2) Dwelling units consisting of two or more primary stories with living area as defined in this chapter shall contain a minimum of 1,500 square feet of living area on the first story, and a minimum of 750 square feet of living area on the second story.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.042 SUBDIVISION OF TRACTS OF LAND.

(A) An owner of a tract of land which has not been subdivided and platted into residential lots, but desiring such subdivision and platting, shall prepare a plat and submit same for approval to the Planning Commission.

(B) Provisions shall be made for all utilities and access necessary to properly service said subdivision, subject to the provisions of Ch. 152. All other requirements of this chapter shall likewise be applicable to said subdivision before said owner shall be allowed to subdivide the tract of land.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.043 MAXIMUM ROOF COVERAGE.

(A) (1) (a) The **MAXIMUM ROOF COVERAGE** is defined as the total area(s) under roof of all structures (including detached garages and other accessory structures) on the lot.

(b) The maximum roof coverage standard assures that the size of structures is proportional to the lot size.

(2) The standards for the maximum roof coverage permitted are as follows:

| Lot Size | Max Roof Coverage |
|------------------|--------------------------|
| Up to 0.5 acres | 2,874 square feet |
| Up to 0.75 acres | 3,520 square feet |
| Up to 1 acres | 4,682 square feet |
| Up to 1.2 acres | 5,060 square feet |
| Up to 1.5 acres | 5,500 square feet |
| Up to 2 acres | 6,100 square feet |
| Up to 2.5 acres | 6,700 square feet |
| Up to 3 acres | 7,500 square feet |
| Up to 3.5 acres | 8,200 square feet |
| Up to 4 acres | 8,700 square feet |
| Up to 4.5 acres | 8,900 square feet |
| Up to 5 acres | 9,100 square feet |
| Up to 5.5 acres | 9,300 square feet |
| Up to 6 acres | 9,647 square feet |

(B) (1) Lots exceeding 6 acres in size: Multiply the lot size by 43,560; multiply this number by 3.25% (0.0325); provided, that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet.

(2) If the result is greater than 9,647, structures on the lot may have maximum roof coverage equal to the result produced by the multiplication.

(C) All structures exceeding the maximum roof coverage for the lot on which they are located shall require approval of a variance by the Board of Adjustment in accordance with the procedures and standards set forth in § 153.110(D).

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.044 MATERIAL AND COLOR REQUIREMENTS FOR RESIDENTIAL DWELLING UNITS.

(A) The town is a unique community concerned with historic continuity. The town and its citizens are interested in the exterior appearance of residential structures, including the materials and color used in constructing and reconstructing such structures. To that end, those persons constructing new residences or renovating or expanding existing residences are encouraged to consider the provisions of this section regarding building materials

(B) Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

(1) *Materials.*

(a) The intent of these provisions is to promote the exterior building materials which will blend with the majority of the existing residential structures and natural features of the town.

(b) As required in § 153.087, the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

1. *Siding.*

a. *Suggested exterior siding materials.* Painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum, or heavy gauge vinyl to resemble clapboards, pre-cast concrete panels, fiber cement siding, cultured/cast stone, or as approved by the Design Review Board; and

b. *The following exterior siding materials are discouraged.* Exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted concrete, paper or wood composition board, permatone or faux stone masonry, plywood (unless board and batten), asphalt shingles, ceramic tile (glazed wall tile, ceramic mosaic tile, natural clay tile, and the like), sheet glass, or glass block (not to include glass used for windows, sunrooms or

conservatories), glazed brick.

2. *Roofing visible from adjacent property.*

a. *Suggested roofing materials.* Asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners, or as approved by the Design Review Board; and

b. *The following roofing materials are discouraged.* Tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction).

(2) *Color.* The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

(a) *Suggested exterior colors.* Natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains, or other colors which conform to the intent expressed this division (B)(2). Dwellings which are painted in colors that are considered to be nonconforming at the time of the adoption of this chapter may not be repainted the same color; and

(b) *The following exterior colors are discouraged.* The use of day-glow or fluorescent colors is discouraged.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.045 SITE DESIGN AND BUILDING FORM AND MASS FOR RESIDENTIAL DWELLING UNITS.

(A) (1) The town is a unique community and it is within the public interest and general welfare of the town to regulate the site design and building form and mass encompassing all residential structures.

(2) Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings.

(B) Of particular concern is preservation of the streetscape, signs, lighting, trees, and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the residential structures.

(1) *Site materials and features.* The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, i.e., native flora and curvilinear roadways.

(a) *Built of planted landscape elements*

1. *Permitted.* All native flora and materials, (i.e., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units); and

2. *Prohibited.* Abrupt physical configurations, (i.e., site revisions causing excessive tree removal, land slope revisions greater than natural repose).

(b) *Site lighting.* Permitted; low-intensity security or decorative lighting, up to two street lamps in front yards not to exceed eight-feet in height and located a minimum of ten feet from the edge of the road.

(2) *Prohibited.*

(a) High-intensity flood or spot lighting either of the buildings or landscape features, neon. No flickering or flashing lights and all lighting shall be shielded such that light is not directed toward adjacent residential properties; and

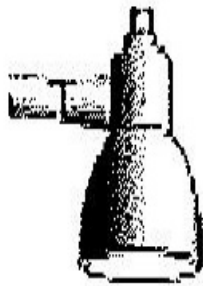
(b) Examples of shielding should be as follows.

NO



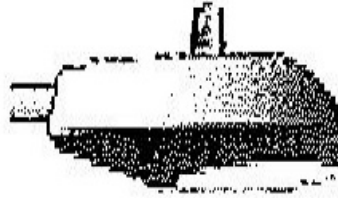
Without shield

YES



With a reflector shield

YES



Full Cutoff fixture

(3) *Building forms and mass.*

(a) *Intent.* The intent of these provisions is to encourage exterior building forms which blend with the majority of existing residential structures and natural features of the town.

(b) *Roof form.*

1. *The following roof forms are encouraged.* Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, and arch; and

2. *The following roof forms are discouraged as inconsistent with existing structures in the town* Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.046 MATERIAL AND COLOR REQUIREMENTS FROM COMMERCIAL BUILDINGS.

(A) The town is a unique community which is dependent on historic continuity with its past. It is within the public interest and general welfare of the town to regulate the exterior appearance of commercial structures, including the exterior materials and color used in constructing and reconstructing and painting buildings.

(B) Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

(1) *Materials.* The intent of these provisions is to promote the use of exterior building materials which will blend with the existing commercial structures and natural features of the town. As required in § 153.087(B)(1), the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

(a) *Siding.*

1. *Permitted exterior materials.* Painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum, or heavy gauge vinyl to resemble clapboards, precast concrete panels or siding, cultured/cast stone, or as approved by the Design Review Board; and

2. *Prohibited exterior materials.* Exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted cast-in-place concrete, paper or wood composition board, permastone or faux stone masonry, plywood, (unless board and batten), asphalt shingles, ceramic tile, (glazed wall tile, ceramic mosaic tile, natural clay tile, and the like), glazed brick, unpainted, or pre-painted ferrous or aluminum metal siding.

(b) *Roofing visible from on-site location or adjacent property*

1. *Permitted roofing materials.* Asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners or roofing as approved by the Design Review Board; and

2. *Prohibited roofing materials.* Tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction). Note that for commercial buildings, flat roofs not visible from residential dwellings may use the above-mentioned roofing materials.

(2) *Color.* The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

(a) *Permitted exterior colors.* Natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains or other colors which conform to the intent expressed in this division (B)(2).

(b) *Prohibited exterior colors.* Day-glow or fluorescent.

(3) *Mechanical/electrical equipment.*

(a) All electric service equipment and sub-panels and all mechanical equipment, including, but not limited to, air-conditioning, pool equipment, fans and vents, utility transformers (except those owned and maintained by public utility companies), and solar panels, shall be painted to match the surrounding wall or roof color or painted or screened to blend with the surrounding natural terrain. Roof-mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be screened or integrated into the design of the structure.

(b) Roof-mounted equipment, including ventilators and satellite dishes, shall be completely screened from view (100% opacity) or isolated so as not to be visible from any public right-of-way or residential zoning district. Roof screens when used shall be coordinated with the building to maintain a unified appearance.

(c) 1. All electrical and mechanical equipment located at ground level shall be screened from view (100% opacity) or isolated so as not to be visible from the right-of-way of an arterial street or residential zoning district. Such screens and enclosures, when used, shall be coordinated with the buildings to maintain a unified appearance.

2. Acoustical buffering is required for all emergency generators to reduce the noise level as audible from the nearest residential dwelling to that of the standard commercial air conditioning compressor.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.047 SITE DESIGN AND BUILDING FORM AND MASS COMMERCIAL BUILDINGS.

(A) The town is a unique community and it is within the public interest and general welfare of the town to regulate the site design and building form and mass encompassing all commercial structures.

(B) Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings. Of particular concern is preservation of the streetscape; signs, lighting, trees and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the commercial structures.

(1) *Site materials and features.* The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, (i.e., native flora and curvilinear roadways).

(a) *Built or planted landscape elements.*

1. *Permitted.* All native flora and materials, (i.e., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete or brick masonry paving units). Refer to the §§ 93.30 through 93.40 for tree removal regulations.

2. *Prohibited.* Final grades that result in slopes greater than 1:1; retaining walls that exceed seven feet in height for property zoned (R-4) and exceed 12 feet in height for property zoned (R-5).

(b) *Site lighting/exterior lighting.* With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the following design standards shall apply when exterior lighting is proposed and/or required:

1. *Shielding.*

a. Exterior lighting shall be shielded and directed downward so that the light source (the actual bulb) is not visible from beyond the property line on which the structure is located.

b. Exterior lighting shall not project above the horizontal plane of the building.

2. *Color.* Warm lighting colors are required.

a. The blue-white colors of florescent and mercury vapor lamps are prohibited.

b. Lamps emitting a color temperature in excess of 5,000 degrees Kelvin are prohibited.

3. *Parking area lighting.* In parking lots, a foot candle as approved by the town's lighting consultant at the perimeter, and between light sources, and a maximum of 5.0 foot candles under light fixtures as required.

4. *Light fixtures.*

a. The height of light fixtures shall be in proportion to the building mass and no more than 14 feet high.

b. When all businesses are closed, only a minimum of security lighting shall be maintained. Shielded spotlights may be used when highlighting trees, artwork, or other special landscape features. Lighting fixtures affixed to structures for the purposes of lighting parking areas shall be prohibited.

5. *Advertising.* The operation of searchlights or similar sources for advertising, display or any other commercial purpose is prohibited.

(2) *Building forms and mass.*

(a) *Intent.* The intent of these provisions is to encourage exterior building forms which blend with the majority of existing commercial structures and natural features of the town.

(b) *Roof form.*

1. *Permitted.* Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, arch, and flat; and

2. *Prohibited.* Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.048 IMPERVIOUS SURFACE COVERAGE.

(A) (1) A maximum percentage of a residential lot that can be devoted to impervious surfaces, as defined in §153.004, is established to assure that the character of the town is preserved and to control stormwater and runoff being directed to streets and adjacent properties.

(2) The percentage of residential lots that can be devoted to impervious surfaces shall be as set forth below.

| Lot Size | Impervious Surface | Sample Calculations 43,560 Square Feet - 1 Acre |
|-------------------------|--------------------------------------|--|
| Up to 1 acre | 27.5% x lot area | E.g., 0.85 acre x 43,560 x 27.5%= 10,182 square feet |
| Over 1 acre to 3 acres | 11,979 square feet or 25% x lot area | 11,979 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 1.75-acre x 43,560 x 25% = 19,058 square feet |
| Over 3 acres to 6 acres | 32,670 square feet or 20% x lot area | 32,670 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 4.5-acres x 43,560 x 20% = 39,204 square feet |

(B) Lots on which new construction and/or development activity would cause the amount of impervious surface on the lot to exceed the percentages set forth above shall proceed with the proposed construction and/or development activity only if a variance for the increased impervious surface coverage is granted by the Board of Adjustment in accordance with the procedures set forth in § 153.110(D).

(C) The Board of Adjustment reserves the right to limit impervious surface coverage to prevent the unreasonable diversion of stormwater or surface water onto another property or properties or to the town streets.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

- (1) The driveway gate and columns shall not be located in the front or side yard setback of a property.
 - (2) The driveway gate shall not be more than eight feet in height.
 - (3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.
 - (4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.
- (C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.
- (1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.
 - (2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.
 - (3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.
- (D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.
- (1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.
 - (2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.
 - (3) No new chain link fencing or gates shall be allowed.
 - (4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).
 - (5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.
 - (6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020)

BUFFERS, SCREENING, AND LANDSCAPE

§ 153.060 PURPOSE AND INTENT.

- (A) The town has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits.
- (B) The landscape and buffering standards set forth below require buffers and landscaping between dissimilar land uses, along public rights-of-way, and within parking lots, in order to:
- (1) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;
 - (2) Protect and improve the visual quality of the town and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities, and mechanical systems and buildings;
 - (3) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;
 - (4) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy; and
 - (5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of the town while allowing flexibility to promote well-designed and creative landscape plantings.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.061 GENERAL INFORMATION.

(A) *Applicability.*

(1) Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments within the town limits.

(2) The following developments shall bring the entire site into full compliance with this section:

(a) New nonresidential development, including conditional uses; and

(b) Renovations with a total cost exceeding 50% of the assessed value of the building, excluding single-family dwellings, according to the county tax records.

(3) New parking spaces or lots are not required to comply with the provisions of this section.

(B) *Landscape and grading plan required.* Applicants are advised to meet with town staff in order to review all ordinance requirements and procedures and receive a copy of the plan checklists. As required in § 153.034, a landscape and grading plan shall be reviewed and approved by the Board of Adjustment prior to any grading.

(C) *Alternative compliance.*

(1) The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Board of Adjustment, in consultation with the Design Review Board, may alter the requirements of this section as long as the existing or added landscape features of the development site comply with the intent of this chapter.

(2) Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

(a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements;

(b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood; or

(c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of the ordinance, and exhibits superior design quality.

(4) The property owner must submit a plan of the area for which alternative compliance is requested to the Town Manager 14 days prior to the meeting of the Design Review Board at which the request will be considered. The site plan shall show existing site features and any additional material the property owner will plant or construct to meet the intent of the buffer, street tree, and parking lot tree requirements.

(5) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. The Design Review Board shall make a recommendation of approval, approval with conditions, or denial within ten working days of reviewing the request for alternative compliance. The Design Review Board's recommendation shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.062 EXISTING VEGETATION.

(A) Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, and mitigate the impacts of development on the community. It is recommended that groups of trees be preserved, as well as individual trees. Existing trees and shrubs designated for preservation may be credited towards required buffer trees, street trees, and parking lot trees.

(B) As required in § 93.32, no person shall remove or in any way damage any protected trees without first filing an application for said removal and receiving a permit from the Town Manager. Special attention shall be given to protected trees located within 20 feet of the of the rear or side property line of property meeting the definition of an incompatible land use.

(1) *Credits and other incentives to preserve vegetation.*

(a) *Vegetation located in the buffer strip.*

2. One existing evergreen shrub over four feet high located in the buffer strip may be credited for two new shrubs, also on a case-by-case basis by the Board of Adjustment.

(b) *Vegetation located elsewhere on the property.*

1. Trees designated for preservation may be credited at the rate of the following.

| |
|---|
| 2-inch to 6-inch caliper tree = 1 tree |
| 7-inch to 12-inch caliper tree = 2 trees |
| 13-inch to 18-inch caliper tree = 3 trees |
| 19-inch to 24-inch caliper tree = 4 trees |
| 25-inch and greater = 5 trees |

2. One existing shrub over four feet high may be credited for two new shrubs. In order to receive credit, vegetation designated for preservation shall be in good health and condition. Trees and shrubs designated to be preserved shall be indicated on the landscape and grading plan, as well as all protective barriers. If a tree or shrub designated for preservation dies within five years of the project's completion, it must be replaced with the total number of trees or shrubs which were credited to the existing tree or shrub.

(2) *Protection of existing trees and shrubs during construction.*

(a) 1. No grading or other land-disturbing activity shall occur on a site with existing trees or shrubs which are designated to be preserved in order to meet the landscaping requirements until the landscape and grading plan has been approved by the Board of Adjustment and protective barriers are installed by the developer and approved by the Zoning Administrator. Trees designated for preservation which are counted toward the landscape and buffering requirements shall be protected by barriers, while trees designated for preservation which do not count toward the landscape and buffering requirements are encouraged to be protected by barriers. The diameter of the trees designated for preservation and the location of protective barriers shall be shown on the landscape and grading and site plans with the dimensions between the tree trunk and barrier indicated.

2. Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within 50 feet of any grading or construction activity. Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub. All protective barriers shall be maintained throughout the building construction process.

(b) 1. All contractors shall be made aware of the areas designated for protection.

2. No disturbance shall occur within the protective barriers, including:

a. Grading;

b. Filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or state cooperative extension specialist is installed to protect the tree from suffocation;

c. Temporary or permanent parking;

d. Storage of debris or materials, including topsoil;

e. Disposal of hazardous wastes or concrete washout; and

f. Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

3. If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or state cooperative extension specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

4. The developer shall coordinate with the utility companies early in the design process to resolve potential conflicts about the placement of utilities and buffer and screening requirements in § 153.063(B)(5). The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two feet directly below the tree roots to minimize root damage.

5. If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the drip line area.

(c) Tree protection zone signs shall be installed on the tree protection barriers visible on all sides of the protection area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language: "TREE PROTECTION ZONE, KEEP OUT" or "TREE SAVE AREA, KEEP OUT".

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

(B) The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use between the property line and any vehicular use areas,

buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

(1) *Use of buffer strips.* Required buffers shall not be disturbed for any reason except for approved driveway openings and other passive or accessory uses compatible with the general separation of land uses and; provided, that the total number of required plantings are still met. Approval from the Town Manager is required prior to initiating any disturbance of the buffer.

(2) *Placement of buffer plantings.* The exact placement of the required plants shall be the decision of the developer or designer, but shall be reviewed by the Town Manager and approved by the Board of Adjustment. Plants shall be placed in a manner to serve as an effective screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.

(3) *Composition of buffer plantings.* A buffer consisting of two staggered rows of evergreen shrubs or sheared evergreen trees, planted 48 inches apart (as measured from the central stem) in a 20-foot wide strip shall be installed to screen the nonresidential use from neighboring residential properties. The trees or shrubs shall be between four and five feet high at time of planting. During times of extended dry weather, the applicant may petition the Board of Adjustment to reduce the required size of vegetation to be planted in order to better ensure its survival. It is suggested that a mixture of two to three shrubs selected from the recommended species list be planted to encourage healthier plants.

(4) *Coordination with stormwater drainage provisions.* If the buffer strip is to be used as part of the area for required stormwater runoff absorption as outlined in Ch. 52, then the shrubs and trees within the buffer shall be water tolerant.

(5) *Coordination with utility easements.* In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of division (C) above maybe altered to be only ten feet wide at the discretion of the Board of Adjustment, based on the factors of space, feasibility, and other considerations which may make it difficult to provide a 20-foot buffer.

(6) *Additional buffering.* The Board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case-by-case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this section. Shrubs shall be planted on the applicant's side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.064 PARKING LOT LANDSCAPING REQUIREMENTS.

Trees and shrubs are required in and around parking lots with more than five spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

(A) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation, measured from the back of the curb and extending ten feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians, and cyclists entering and leaving commercial properties.

(B) (1) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip ten feet wide shall be established and continuously maintained between the growing strip and parking area(s).

(2) Street trees shall be planted within the landscaped planting strip in accordance with §153.066 and parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:

(a) Evergreen shrubs shall be planted 36 inches apart as measured from the center and attain a height of at least 48 inches within four years of installation;

(b) There shall be a fence or wall three feet high constructed of the same material as the principal building; or

(c) There is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 36 inches apart.

(3) No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit, or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

(C) (1) (a) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three parking spaces, with some appropriate clustering of trees permitted, and six-foot by 18-foot projecting landscaped islands generally between ten and 12 parking spaces.

(b) Whenever possible, interior parking spaces should have a continuous planter strip six feet wide between rows of parking.

(2) Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one large maturing deciduous tree shall be provided for a parking lot regardless of the number of spaces provided. No parking space shall be located more than 50 feet from the trunk of a large-maturing deciduous tree. When calculating the number of trees required, the applicant shall round up to the nearest whole number.

(D) All landscaped areas shall be bordered by a concrete curb that is at least six inches above the pavement and six inches wide or a granite curb that is at least six inches above the pavement and four inches wide.

(E) To increase the parking lot landscaped area, a maximum of two feet of the parking stall depth may be landscaped with low-growth, hearty materials in lieu of asphalt, allowing a bumper overhang while maintaining the required parking dimensions.

(F) When more than the required number of parking spaces is provided, the applicant shall provide two times the required number of trees for the spaces provided above the ordinance requirement.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES.

(A) All dumpsters, loading docks, outdoor storage areas, or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or buffer strip. Landscaping shall not interfere with the access and operation of any such structure or facility. Trash and storage areas shall be well-maintained, including prompt repair and replacement of damaged gates, fences, and plants.

(B) Openings of trash enclosures shall be oriented away from public view or screened with sturdy gates wide enough to allow easy access for trash collection, where practical. The consolidation of trash areas between businesses and the use of modern disposal techniques is encouraged. All dumpsters shall be located a minimum of 50 feet from a residential dwelling. All unenclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets.

(C) Screen types include:

(1) A continuous hedge of evergreen shrubs planted in a five-foot strip spaced a maximum of 36 inches apart; and

(2) A wall or fence six feet high, with the finished side of the fence or wall facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees and/or shrubs planted in a minimum five-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50% of the fence or wall.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.066 STREET TREES.

(A) (1) Street trees are required for all developments meeting the applicability requirements of §153.061(A). Street trees shall be required at the rate of one large-maturing tree (over 35 feet in height) for every 40 linear feet of property abutting a street.

(2) In the event that overhead utility lines are present, then one small-maturing tree (less than 35 feet in height) may be planted for every 30 feet of property abutting a street.

(3) This does not imply that trees must be spaced exactly 30 or 40 feet apart.

(4) The exact placement of the required tree or trees may be established with input from the reviewing boards in order to fit in with sign placement and other building issues.

(B) Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in §153.064(A) and also according to regulations from the State Department of Transportation.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.067 CERTIFICATION OF COMPLETION.

(A) Landscaping shall be installed and inspected prior to receiving a certificate of completion. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials. If the season or weather conditions prohibit planting the materials, the developer may provide an irrevocable letter of credit, or other financial surety in an amount equal to 110% of the cost of installing the required landscaping to guarantee the completion of the required planting.

(B) Upon approval of the financial surety, the certificate of completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.068 MAINTENANCE.

(A) The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and

protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Failure to maintain or replace dead, damaged, or diseased material or to repair a broken fence or wall shall constitute a zoning violation and shall be subject to the penalty provisions in § 153.999 if not replaced within 30 days of notification.

(B) If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material shall be in compliance with the minimum size, spacing, and quantity standards of the ordinance requirements in effect at the time of project approval.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

It is required that all new utility structures, whether they are part of a new dwelling or are being added to an existing dwelling, located out of doors, including, but not limited to, heat pumps, air conditioning units (with the exception of window units), and generators shall be screened on all sides except the side closest to the dwelling. The screening shall consist of evergreen shrubs planted a maximum of 36 inches apart, with a height of 18 to 24 inches at time of planting. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.070 PLANT SPECIFICATIONS.

(A) *Recommended plant species.* Plants may be chosen from the recommended plant species list available from the Town Manager. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may be used following approval from the Board of Adjustment.

(B) *Minimum plant size requirements.*

(1) *Large-maturing deciduous tree.* Greater than 35 feet at maturity. Minimum size at planting shall be 12 to 14 feet in height and two inches caliper (diameter);

(2) *Small-maturing deciduous tree.* Smaller than 35 feet at maturity. The tree shall be at least one and one-half inch caliper and eight to ten feet high at time of planting;

(3) *Evergreen tree.* Minimum height of four to five feet at time of planting; and

(4) *Evergreen shrub.* Minimum three gallon container or ten-inch root ball with a height of 18 to 24 inches at time of planting.

(C) *Plant standards.*

(1) All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1.

(2) Plants shall be healthy, well-branched, and free of disease and insect infestation.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.071 RECREATIONAL AND COMMERCIAL VEHICLE STORAGE.

(A) (1) Commercial vehicles and recreational vehicles, including, but not limited to, motor-powered recreational vehicles, recreational trailers, campers, boats and other water craft and the trailers used to tow or transport any such boat or vehicle, shall not be parked or stored outside on any lot or tract of land.

(2) Further, nor shall any such vehicle be parked or stored in or under an open garage/carport or in or under any other type of open accessory structure/building.

(3) However, such vehicles may be parked or stored in an enclosed accessory structure/building (said accessory structure/building is to comply with all size and height requirements of this chapter) or in an enclosed garage such that the vehicle is not visible.

(B) Exceptions to this rule would be those residents who have already received certificate of zoning compliance from the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

ADMINISTRATION, ENFORCEMENT, AND APPEALS

§ 153.085 GENERAL PROCESS; DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, PLANNING COMMISSION, BOARD OF COMMISSIONERS, AND COURTS ON MATTERS OF ADMINISTRATION.

(A) All questions arising in connection with this chapter shall be presented first to the Zoning Administrator, who shall be responsible for the day-to-day administration of this chapter. The Board of Adjustment shall have the authority to rule on matters of interpretation of this chapter, consider appeals from decisions of the Zoning Administrator, issue conditional use permits, and grant variances. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by

law. The duties of the Town Board of Commissioners in connection with this chapter shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as prescribed in this chapter.

(B) The duties of the Board of Commissioners in connection with this chapter shall be the duty of considering and passing upon the initial ordinance and any proposed amendments or repeal of this chapter as provided by law. The Town Planning Commission shall serve in an advisory capacity to the Board of Commissioners and shall provide recommendations to the Board, including recommendations pertaining to zoning amendments and other matters as designated in G.S. § 160A-361.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.086 ZONING ADMINISTRATOR.

(A) The town shall appoint a Zoning Administrator. It shall be the duty of the duly appointed Zoning Administrator to administer and enforce the provisions of this chapter.

(B) The Zoning Administrator shall issue certificates of zoning compliance and certificates of occupancy as prescribed herein. The Zoning Administrator shall serve as clerk to the Board of Adjustment, and all applications for variances and conditional use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustment.

(C) (1) If the Zoning Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

(2) He or she shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Zoning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.087 CERTIFICATE OF ZONING COMPLIANCE REQUIRED.

(A) (1) No building or other structure shall be erected, moved, added to or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall have been issued by the Zoning Administrator.

(2) No certification of zoning compliance shall be issued except in conformity with the provisions of this chapter.

(B) Upon approval of a conditional use permit or variance by the Board of Adjustment, the Zoning Administrator shall issue a certificate of zoning compliance.

(1) *Applications for zoning compliance certificate.*

(a) All applications for zoning compliance certificates shall be accompanied by plans in duplicate and drawn to scale showing the actual dimensions of the lot to be built upon, accurate dimensions and the use of the proposed building, the location on the lot of the building or structure proposed to be erected or altered, required screening of residential utility structures as outlined in § 153.069 and such other information as may be necessary to provide for the enforcement of the provisions of this chapter, including the architectural or building plans of the structure proposed to be erected or altered, and the description of the materials to be used for the exterior siding and roofing materials, and the colors or stains that will be used on the residential or commercial structure.

(b) Refer to § 153.130 for the complete submittal requirements. Prior to issuance of a certificate of zoning compliance, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(2) *Zoning compliance certificate fee.*

(a) All applications for a certificate of zoning compliance shall be accompanied with an application fee based upon construction cost.

(b) The fee shall be \$12 for the first \$2,000 estimated construction cost, plus \$2 for each additional \$1,000 estimated construction cost.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.088 REQUIREMENTS PRIOR TO ISSUANCE OF A BUILDING PERMIT.

Upon approval of a certificate of zoning compliance and prior to the issuance of a building permit, where applicable, the applicant shall obtain the following approvals.

(A) If connection is to be made to the town water or sewer systems, the applicant shall obtain approval for a tap from the town.

(B) If individual septic tanks and/or wells are to be used, the applicant shall obtain preliminary approvals from the County Health Department.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.089 BUILDING PERMIT REQUIRED.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the County Building Inspections office for the construction or alteration of any building or structure pursuant to the procedures of the County Building Inspections office.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.090 CERTIFICATE OF OCCUPANCY REQUIRED.

(A) A certificate of occupancy issued by the Zoning Administrator is required in advance of:

- (1) Occupancy or use of a building hereafter erected, altered, or moved; and
- (2) Change of use of any building or land.

(B) (1) (a) In conjunction with the final building inspection, the Zoning Administrator shall certify that all requirements of this chapter have been met.

(b) The applicant shall call for such certification coincident with the final building inspection or within ten days following completion.

(c) A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within ten days after the erection or structural alterations or change in use of the building, or part, shall have been completed in conformity with the provisions of this chapter.

(2) (a) A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this chapter.

(b) If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal.

(c) A record of all certificates shall be kept on file in the office of the Zoning Administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.091 CONSTRUCTION OF PROGRESS.

If no substantial construction progress has been made within six months of the date of the issuance of the building permit, the building permit becomes invalid.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.092 CONSTRUCTION COMPLETION.

(A) Following approval of plans for construction of a structure or major remodeling of an existing structure and issuance of a building permit for the construction or remodeling, work on the structure shall be initiated within 60 days of issuance of the building permit.

(B) The construction or remodeling shall be substantially complete within two years of the date of issuance of the building permit for the construction.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013) Penalty, see §153.999

§ 153.093 COMPLIANCE.

In case any building is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or land is used in violation of this chapter, the Zoning Administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.094 APPEAL FROM THE ZONING ADMINISTRATOR.

(A) All questions arising in connection with this chapter shall be presented first to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only on appeal from a ruling of the Zoning Administrator.

(B) Any order, requirement, decision, or determination made by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in § 153.111.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

BOARD OF ADJUSTMENT

§ 153.105 ESTABLISHMENT OF BOARD OF ADJUSTMENT.

(A) A Board of Adjustment is hereby established. The Board shall consist of five members appointed by the Town Board of Commissioners. The members of the Board of Adjustment who have served as members of the Board of Adjustment under a zoning ordinance which was in effect prior to the adoption of this chapter shall serve the balance of the term to which said members were appointed.

(B) Upon completion of these terms of office, additional appointments shall be made on a staggered- term basis with one member appointed for a term of one year; two members appointed for a term of two years and two members appointed for a term of three years. All additional appointments to the Board shall be for three-year terms.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.106 SELECTION OF ALTERNATE MEMBERS.

The Board of Commissioners shall also appoint one alternate member to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate member shall be appointed for a three-year term. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The alternate member shall be subject to the provisions of § 153.107.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.107 RULES OF CONDUCT FOR MEMBERS.

(A) Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below.

(B) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(C) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested.

(D) No Board member shall vote on any specific matter unless he or she shall have attended a majority of the hearings on that matter.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.108 GENERAL PROCEEDINGS OF THE BOARD OF ADJUSTMENT.

The Board shall annually elect a Chairperson and a Vice-Chairperson from among its members. The Chairperson in turn will appoint a Secretary, which may be an employee of the town, and such other subordinates as may be authorized by the Town Board of Commissioners. The Chairperson, or in his or her absence the Vice-Chairperson, may administer oaths and request the attendance of witnesses in accordance with G.S. § 160A-388. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.109 MEETINGS.

(A) *Board meetings.* Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. All Board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meeting Law.

(B) *Quorum.* A quorum shall consist of three members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Zoning Administrator, or an application for a variance or conditional use permit when there are less than four members present.

(C) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 153.107. The required vote to decide appeals and applications shall be as provided in §153.111(D), and shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

The powers and duties of the Board of Adjustment shall be as follows:

(A) *Interpretation.* To interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this chapter;

(B) *Administrative review.*

(1) The Board of Adjustment shall hear and decide requests for conditional use permits, variances, and appeal of decisions of the Town Manager. The term **DECISION** includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for conditional uses and variances. The Board of Adjustment may hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development in the town.

(2) Notice of hearings conducted pursuant to this division (B) 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 provide by the zoning or unified development ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listings to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(3) The Board of Adjustment 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. A quasi-judicial decision is effective upon filing the written decision with the Town Manager. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant or property owner as may be applicable, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Town Manager shall certify that proper notice has been made.

(4) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari (G.S. § 160A-393). A petition for review shall be filed with the Clerk of Superior Court within 30 days after the decision is effective or after a written copy is served in accordance with division (B)(3) above.

(5) Members of the Board of Adjustment exercising quasi-judicial functions shall not have a fixed opinion on a matter prior to hearing; shall not have undisclosed ex-parte communication with an applicant, a close familial, business, or other associational relationship with an applicant or a financial interest in the outcome. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(6) The Chair of the Board of Adjustment or any member acting as Chair and the Town Manager are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class I misdemeanor.

(7) The Chair of the Board of Adjustment or anyone acting as Chair, may subpoena witnesses and compel the production of evidence. Any person with standing under G.S. § 160A-393(d) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair or person acting as the Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person subpoenaed fails to obey the subpoena, the Board of Adjustment or the party that requested the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed.

(C) *Conditional uses.*

(1) Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by this chapter, and set forth as conditional uses under the various use districts.

(2) A conditional use permit may be granted by the Board of Adjustment only after making the following findings:

(a) An application for the conditional use has been submitted as prescribed by this chapter;

(b) 1. If the Board of Adjustment finds, in the particular case in question, that the use, including any proposed structures:

a. Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

b. Meets all required conditions and specifications of this chapter and other applicable rules, regulations, and standards;

c. Will not substantially injure the value of adjoining or abutting property;

d. Will be in general conformity with the plan of development of the town and its environs;

e. Will be reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and structure design;

f. Will be in harmony with scale, bulk, height, coverage, density, and character of the area or neighborhood in which it is located; or

g. Is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and will not cause undue traffic congestion or create a traffic hazard.

2. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter.

(c) Before any conditional use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual conditional use (see § 153.008), and that satisfactory provision and arrangement has been made for at least the following, where applicable:

1. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control;

2. Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(2)(c)1. above, and the economic, noise, and odor effects of the conditional use on adjoining properties in the area;

3. Adequate and proper utilities, with reference to locations, availability, and compatibility;

4. Buffering, with reference to type, location, and dimensions;

5. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

6. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability;

7. Buildings and structures, with reference to location, size, and use;

8. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood;

9. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the design standards as outlined in § 153.047, "site design and building form and mass for commercial buildings", shall apply when exterior lighting is proposed and/or required; and

10. A site plan has been submitted as required in §153.008.

(d) 1. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The Zoning Administrator shall report his or her findings to the Board of Adjustment.

2. If at any time after a conditional use permit has been issued, the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued.

3. If a conditional use permit is terminated for any reason, it may be reinstated only after reapplying for a conditional use permit.

(D) *Variances.* Upon application, 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:

(1) 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;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance;

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

(4) 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.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014

§ 153.111 APPEALS AND APPLICATIONS.

(A) *Types of appeals and applications.*

(1) *Appeals.* The Board shall hear and decide all appeals from any decision or determination made by the Zoning Administrator.

(2) *Applications.* All applications for variances and conditional use permits shall first be presented to the Zoning Administrator, who in turn shall refer the application to the Board of Adjustment.

(B) *Appeals.*

(1) The Board of Adjustment shall hear and decide appeals from decisions of the Town Manager.

(2) The following apply to all appeals heard by the Board of Adjustment:

(a) Any person who has standing under G.S. § 160A-393(d) or the town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Manager. The notice of appeal shall state the grounds for the appeal.

(b) The Town Manager 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 owners. 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 the 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 ten 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. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The Town Manager shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from are taken. The Town Manager 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) 1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Town Manager 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.

2. 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 Town Manager 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.

3. 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 division (B)(2)(f) above, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(h) 1. During the conduct of a hearing, any party may appear in person or by agent or by attorney at the hearing.

2. The order of business for the hearing shall be as follows:

a. The Chair, or such person as he or she shall direct, shall give a preliminary statement of the case;

b. The applicant shall present the argument in support of the appeal or application;

c. Persons opposed to granting the appeal or the application shall present their argument against the application;

d. Both sides will be permitted to present rebuttals to opposing testimony; and

e. The Chair or such person as he or she shall direct shall summarize the evidence which has been presented, giving the parties the opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to only consideration of only such evidence as would be admissible in a court of law. The Board may place parties and witnesses under oath and the opposing party may cross examine them. The Town Manager shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. 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 Town Manager.

(i) When hearing an appeal pursuant to G.S. § 160A-400.9(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. § 160A-393(k).

(j) The parties to an appeal that has been made under this division (B)(2)(j) 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.

(C) *Hearings.*

(1) *Time.* After receipt of notice of an appeal or an application, the Board Chairperson shall schedule a time for a hearing which shall be within 36 days from the filing of such notice of appeal or application. Any additional appeal or application shall be received not less than two weeks prior to a scheduled meeting.

(2) *Notice.* In any application for projects involving planned unit developments, the Board shall give notice of the hearing in a newspaper having general circulation in the county five days prior to the date of the hearing. For all other applications and appeals, the Board shall send by first class mail notices of the hearing to the affected parties and to such other persons as the Zoning Administrator shall direct, at least ten days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.

(3) *Re-hearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions of the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.

(D) *Decisions.*

(1) *Time.* A decision by the Board shall be made within 30 days from the time of hearing.

(2) *Form.*

(a) Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the Secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairperson upon approval of the minutes by the Board.

(b) 1. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist.

2. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.

3. Where a conditional use permit is granted, the record shall indicate, by reference to the appropriate sections of the ordinance, that all requirements and standards for the particular conditional use have been met.

(3) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board in granting a variance or a conditional use permit shall expire if a building permit for such use is not obtained by the applicant within six months from the date of the decision.

(4) *Voting.* The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any decision or determination of the Zoning Administrator, or to grant a variance or to approve a conditional use permit.

(5) *Public record of decisions.* The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014

§ 153.112 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. § 160A-388.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

DESIGN REVIEW BOARD

§ 153.125 PURPOSE AND INTENT.

(A) The Town Board of Commissioners finds that new development has a substantial impact on the character of the area in which it is located. Some harmful effects of one land use upon another can be prevented through zoning, subdivision controls, and building codes. Other aspects of development are more subtle. Among these are the general form of the land before and after development and the spatial relationships of the structures and open spaces as they contribute to an area as it is being developed. Such matters require the timely exercise of judgment in the public interest by people qualified to evaluate the design of new development.

(B) The design review process is intended to encourage residential and commercial developments which exemplify the best professional design practices and to promote the historic character of the town. The procedure is established to encourage individual identity for specific uses and structures; to enhance property values in the town and adjoining neighborhoods; to respect each individual site and its environmental qualities; and to minimize visual disharmony resulting from unrelated and poorly designed development.

(C) The purpose of this subchapter is to establish minimum standards for the exterior design of commercial, office, and residential structures, and to ensure high quality of development, redevelopment, and compatibility with evolving architecture or planning themes that contribute to a community image of quality, visual aesthetics, permanence, and stability which are in the best interest of the citizens of the town. These standards are intended to prevent use of materials that are unsightly, rapidly deteriorate, contribute to depreciation of area property values, or cause urban blight.

(D) These standards are further intended to ensure coordinated design of building exteriors, additions and accessory structures' exteriors in order to prevent visual disharmony; minimize adverse impacts on adjacent properties from buildings which are or may become unsightly, and buildings that detract from the character and appearance of the area. It is not the intent of this subchapter to unduly restrict design freedom when reviewing and approving project architecture in relationship to the proposed land use, site characteristics, and interior building layout.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.126 COMPOSITION OF DESIGN REVIEW BOARD AND MEETING PROCEDURE.

(A) The Town Board of Commissioners hereby establishes a Design Review Board.

(B) The Town Board of Commissioners shall appoint five resident members. A minimum of two members shall come from the disciplines of architecture, landscape architecture, landscape contractor, licensed general contractor, or like disciplines.

(C) Members of the Design Review Board shall serve for terms of three years, and may be reappointed. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

(D) The Board shall meet when it has business to discuss, and otherwise has no set meeting schedule.

(E) The Board of Commissioners shall also appoint one alternate member to serve on the Design Review Board in the absence, for any cause, of any regular member. Such alternate member, while attending any regular and or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all powers and duties of such regular member so absent.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.127 DEVELOPMENT SUBJECT TO DESIGN REVIEW.

The following types of development shall be subject to review by the Design Review Board:

(A) All new commercial buildings and new accessory and/or appurtenant buildings;

(B) All exterior expansions, additions, alterations, and modifications of existing commercial buildings and their accessory and/or appurtenant buildings;

(C) All new single- and multi-family dwellings and new accessory and/or appurtenant buildings;

(D) All exterior additions, alterations, and modifications to existing single- or multi-family dwellings and accessory and/or appurtenant buildings;

(E) All new accessory and appurtenant buildings on the premises of existing dwellings;

(F) Driveway redesign or realignment for new and existing residential and commercial buildings; and

(G) Any mechanical equipment when it is installed as part of a new commercial building.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.128 APPLICATION REQUIRED TO BE FILED.

(A) The property owner or authorized agent shall supply all required information and fill out an application form available in the Town Hall. Completed applications shall be considered by the Design Review Board within 30 days and sooner if possible.

(B) Applications shall be submitted at least two weeks prior to the meeting in order to give the Board members adequate

time for study.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.129 DUTIES AND POWERS OF THE DESIGN REVIEW BOARD.

(A) The Design Review Board shall review all applications for the following elements: harmony of proposed building with adjacent buildings and overall town historic character, site design, building form and mass, building materials, and color as set forth in §§ 153.044 through 153.047.

(B) (1) The Design Review Board has the authority to review plans and recommend redesign of a building or driveway.

(2) The Board's comments on an application are intended to assist property owners and developers in building structures that are in harmony with the town's aesthetic and historic character, which will lead to increased property values and aesthetically pleasing structures and environments.

(C) Review shall take into account compliance with other town ordinances that effect design, such as this chapter and §§ 93.30 through 93.40.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.130 SUBMITTAL REQUIREMENTS.

(A) The applicant shall submit the following information for all residential structures:

- (1) Site plan;
- (2) Floor plans; and
- (3) Exterior elevations, including type and color of all exterior building materials, awnings, exterior lighting, and fencing.

(B) In addition to division (A) above, applicants for commercial structures shall submit the following information:

- (1) Elevations and dimensions of all sides of existing and proposed buildings, including roof mechanical equipment, vents, chimneys, or other projecting items above the roof line;
- (2) Elevations and dimensions of all existing or proposed solid waste and recycling containment areas;
- (3) Type and color of all mechanical screening material, metal flashing, and the like;
- (4) In order to aid in evaluating the exterior design, the applicant shall submit schematic floor plans showing, if applicable, window locations, doors, loading docks, projected interior layouts, seating, bar areas, waiting areas, vestibules, storage areas, food preparation areas, interior trash, or recycling space and the like;
- (5) The height, location, and screening materials for heating, air conditioning, and ventilating and electrical equipment;
- (6) Colored exterior building elevations, exterior building, and finish material samples and color pallets; and
- (7) Other information as required.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.999 PENALTY.

(A) Any person, firm, or corporation who violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$50 and/or imprisoned for a period of time not exceeding 30 days. Each day of violation shall be considered a separate offense.

(B) Unless extraordinary and reasonably unforeseeable delaying factors not resulting from the owner's action or inaction can be clearly demonstrated and proven, failure to have the construction or remodeling substantially complete at the end of the two-year time period shall subject the property owner to a fine of \$250 per day.

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices

This checklist outlines provisions in the new Chapter 160D of the North Carolina General Statutes (hereinafter G.S.) as well as related statutory changes that will be incorporated into Chapter 160D. The changes to the statutes affect the language of local ordinances, the options for local decision processes, and the administrative practices related to development regulations.

This checklist is one piece of a larger set of resources and training materials, including an explanatory book, *Chapter 160D: A New Land Use Law for North Carolina*. Each item on this checklist is described more thoroughly in those additional resources. Section headers in this checklist note the corresponding chapter and section of the Chapter 160D book [in brackets]. Check nc160D.sog.unc.edu for additional resources and training.

The checklist has specific notations, which are accompanied by specific icons, as follows:

- Denotes **legislative changes** for which local governments *must* take action (statutory citations are in parentheses)
- Denotes **permissive legislative changes** for which local governments *may* take action
- Denotes **notable legislative changes** that do not require local action but of which local governments must *be aware*

*For items noted with an asterisk, local governments do not have authority for the change until January 1, 2021, unless legislation authorizes earlier effectiveness. Noted changes may be incorporated into ordinances and policies, but they must not be effective until 2021. All other changes may be adopted and effective immediately.

I. Terminology and Citations [Chapter 1, Section III]

- Must** update any references to provisions in G.S. Chapter 160A or 153A to indicate relevant provisions in Chapter 160D. (See appendixes B and C in the Chapter 160D book.)
- Must** align ordinance terminology with Chapter 160D terminology for *conditional zoning* and *special use permits*; must delete use of the terms *conditional use permit*, *special exception*, *conditional use district zoning*, and *special use district zoning*. (See G.S. 160D-102.)
- Must** ensure that ordinance definitions for the following terms are not inconsistent with definitions provided in state law and regulation: *building*, *dwelling*, *dwelling unit*, *bedroom*, and *sleeping unit*. (S.L. 2019-111, § 1.17.)
- May** align ordinance terminology with Chapter 160D terminology, including for the following terms: *administrative decision*, *administrative hearing*, *determination*, *developer*, *development*, *development approval*, *development regulation*, *dwelling*, *evidentiary hearing*, *legislative*

decision, legislative hearing, planning and development regulation jurisdiction, and quasi-judicial decision. (G.S. 160D-102.)

II. Geographic Jurisdiction [Chapter 2, Section I]

- *For extension of extraterritorial jurisdiction (ETJ), a municipality **must** provide mailed notice thirty days prior to ETJ hearing; municipality **may** hold one hearing (with single mailed notice) regarding ETJ and initial zoning amendment. (G.S. 160D-202(d))
- Municipality **may** hold hearings in anticipation of change in jurisdiction. (G.S. 160D-204.)
- *For a parcel in two jurisdictions, the owner and the jurisdictions **may** agree for development regulations from one jurisdiction to apply to the entire parcel. (G.S. 160D-203.)
- *In ETJ, the county **may** elect to exercise development regulations that the municipality is not exercising. (G.S. 160D-202(b).)

III. Boards [Chapter 2, Section II]

A. In General

- Must** adopt broadened conflict-of-interest standards for governing and advisory boards. (G.S. 160D-109.)
- Must** keep minutes of proceedings of each board. (G.S. 160D-308.)
- Must** have each board member take an oath of office before starting his or her duties. (G.S. 160D-309.)
- Must** update ETJ population estimate, at least with each decennial census (also calculation for proportional representation is simplified and process for appointment is clarified). (G.S. 160D-307.)
- Must** provide proportional representation for ETJ on preservation commission if any districts or landmarks are designated in the ETJ. (G.S. 160D-307.)
- May** have detailed rules of procedure for each board; **may** be adopted by governing board; if not, then **may** be adopted by individual board; if adopted, **must** maintain board rules of procedure (by clerk or other officer as set by ordinance) and **must** post board rules of procedure to website, if the jurisdiction has a website. (G.S. 160D-308.)
- May** establish reasonable procedures to solicit, review, and make appointments; governing board typically makes appointments but may delegate that appointment-making authority. (G.S. 160D-310.)
- May** establish additional advisory boards related to development regulations. (G.S. 160D-306.)

B. Planning Board

- May** assign to planning board the coordination of citizen engagement for planning. (G.S. 160D-301.)
- May** assign planning board to serve as preliminary forum for review and comment on quasi-judicial decisions, provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board. (G.S. 160D-301.)

C. Board of Adjustment

- May** assign board of adjustment to hear and decide matters under any development regulation, not just zoning. (G.S. 160D-302.)
- May** assign duties of housing appeals board to board of adjustment. (G.S. 160D-305.)

IV. Land Use Administration [Chapter 2, Section III]

A. In General

- Must** incorporate new staff conflict-of-interest standards into ordinance or policy. (G.S. 160D-109.)
- Must** maintain in paper or digital format current and prior zoning maps for public inspection. (G.S. 160D-105.)
- Must** maintain in paper or digital format any state or federal agency maps incorporated by reference into the zoning map. (G.S. 160D-105.)
- May** enact ordinances, procedures, and fee schedules relating to administration and enforcement of development regulations. (G.S. 160D-402(b).)
- May** charge reasonable fees for support, administration, and implementation of development regulation; **must** use any such fees for that purpose, not for other purposes. (G.S. 160D-402(d).)

B. Enforcement

- Must** issue notices of violation (NOVs) in conformance with statutory procedures (must deliver to permittee and landowner if different; may deliver to occupant or person undertaking the activity; delivery by hand, email, or first-class mail; may be posted onsite; administrator to certify NOV for the file.) (G.S. 160D-404(a).)
- If inspecting, **must** enter the premises during reasonable hours and upon presenting credentials; **must** have consent of premises owner or an administrative search warrant to inspect areas not open to the public. (G.S. 160D-403(e).)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May** perform inspections for other development approvals to ensure compliance with state law, local law, and the terms of the approval; **must** perform (or contract for) inspections for building permits. (G.S. 160D-1113; -403(e).)

- **May** perform inspections for general code compliance and enforcement (inspections unrelated to a development approval). (G.S. 160D-402(b).)
- **May** require a certificate of compliance or occupancy to confirm that permitted work complies with applicable laws and terms of the permit; still **must** require certificate of occupancy for work requiring a building permit. (G.S. 160D-403(g).)
- **May** issue stop-work orders for illegal or dangerous work or activity, whether related to a permit or not. (G.S. 160D-404(b).)
- **May** continue to use general enforcement methods, including civil penalties, fines, court-ordered actions, and criminal prosecution. (G.S. 160D-404(c).)
- △ Be aware that a local government must bring a court action in advance of the applicable five- and seven-year statutes of limitation. (G.S. 1-51 and -49; established prior to Chapter 160D.)

V. Substance of Zoning Ordinance [Chapter 3, Section I]

- **Must** maintain current and prior zoning maps for public inspection (local government clerk or other office may be the responsible office); **may** adopt and maintain in paper or digital format. (G.S. 160D-105.)
- **Must** eliminate conditional-use-district zoning; existing conditional-use-district zoning converts to conditional district on January 1, 2021. (G.S. 160D-703; S.L. 2019-111, § 2.9(b).)
- ***May** incorporate maps officially adopted by state or federal agencies (such as flood-insurance rate maps (FIRMs)) into the zoning map; **may** incorporate *the most recent officially adopted version* of such maps so that there is no need for ordinance amendment for subsequent map updates; **must** maintain current effective map for public inspection; **may** maintain in paper or digital format. (G.S. 160D-105.)
- ***May** require certain dedications and performance guarantees for zoning approvals to the same extent as for subdivision approvals. (G.S. 160D-702.)
- **May** use form-based codes. (G.S. 160D-703(a)(3).)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)
- **May** apply zoning standards jurisdiction-wide, not just on a zoning-district-by-zoning-district basis. (G.S. 160D-703(d).)
- ***May** regulate development over navigable waters, including floating homes. (G.S. 160D-702(a).)

VI. Substance of Other Development Ordinances [Chapter 3, Section II]

- Must** conform subdivision performance guarantee requirements with statutory standards. (S.L. 2019-79 (S.B. 313), to be incorporated into G.S. Chapter 160D.)
- Must** conform subdivision procedures for expedited review of certain minor subdivisions. (G.S. 160D-802, established prior to G.S. Chapter 160D.)
- Must** exempt farm use on bona fide farm in ETJ from city zoning to the same extent it would be exempt from county zoning; Chapter 160D clarifies that other municipal development regulations may still apply. (G.S. 160D-903(c).)
- Must** not exclude manufactured homes based on the age of the home. (G.S. 160D-910.)
- *Must** follow standardized process for housing-code enforcement to determine owner's abandonment of intent to repair and need for demolition. (G.S. 160D-1203(6).)
- May** adopt moratoria for development regulations (subject to limitation on residential uses); moratoria do not affect rights established by permit choice rule. (G.S. 160D-107.)

A. Historic Preservation

- Must** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)
- Must** frame preservation district provisions as "standards" rather than "guidelines." (G.S. 160D-947(c).)
- *May** choose for appeals of preservation commission decisions to go directly to superior court rather than to board of adjustment. (G.S. 160D-947(e).)

B. Development Agreements

- Must** process a development agreement as a legislative decision. (G.S. 160D-105.)
- Must** have a local government as a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently). (G.S. 160D-1001(b).)
- May** consider a development agreement concurrently with a rezoning, subdivision, or site plan; **may** consider a development agreement in conjunction with a conditional zoning that incorporates the development agreement. (G.S. 160D-1001(d).)
- *May** address fewer topics in development agreement content (list of mandated topics is shortened). (G.S. 160D-1006.)
- May** mutually agree with a developer for the developer to provide public improvements beyond what could have been required, provided such conditions are included in the development agreement. (G.S. 160D-1006(d).)
- May** include penalties for breach of a development agreement in the agreement or in the ordinance setting the procedures for development agreements; either party may bring legal action seeking an injunction to enforce a development agreement. (G.S. 160D-1008.)

VII. Comprehensive Plan [Chapter 4, Section I]

- Must** adopt a comprehensive plan by July 1, 2022, to maintain zoning (no need to re-adopt a reasonably recent plan). (G.S. 160D-501(a).)
- Must** adopt a plan or a plan update following the procedures used for a legislative decision. (G.S. 160D-501(c).)
- Must** reasonably maintain a plan. (G.S. 160D-501(a).)
- May** coordinate a comprehensive plan with other required plans, such as Coastal Area Management Act (CAMA) plans. (G.S. 160D-501(a).)
- May** coordinate with other local governments, state agencies, or regional agencies on planning processes. (G.S. 160D-503(a).)

VIII. Legislative Decisions [Chapter 4, Section II]

A. Notice

- Must** follow applicable procedures for legislative decisions under any development regulation authorized under Chapter 160D, not just zoning; **must** adopt any development regulation by ordinance, not by resolution. (G.S. 160D-601.)
- For zoning-map amendments, **must** provide notice not only to immediate neighbors but also to properties separated from the subject property by street, railroad, or other transportation corridor. (G.S. 160D-602.)
- For zoning-map amendments, **must** provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing. (G.S. 160D-602(c).)
- For extension of ETJ, **may** use single mailed notice for ETJ and zoning-map amendment pursuant to statutory procedures. (G.S. 160D-202.)
- For zoning-map amendments, **may** require applicant to notify neighbors and hold a community meeting and **may** require report on the neighborhood communication as part of the application materials. (G.S. 160D-602(e).)

B. Planning Board Comment

- Must** refer zoning amendments to the planning board for review and comment; **must** not have governing board handle planning board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)
- Must** have planning board consider any plan adopted according to G.S. 160D-501 when making a comment on plan consistency. (G.S. 160D-604(d).)
- May** refer development regulation amendments (other than zoning) to the planning board for review and comment. (G.S. 160D-604(c).)

C. Plan Consistency

- When adopting an amendment to the zoning ordinance, **must** adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. (G.S. 160D-605(a).) (**This eliminates the 2017 requirement that statements take one of three particular forms.*)
- May** adopt plan-consistency statement when acting upon the zoning amendment or as a separate motion. (G.S. 160D-605(a).)
- *May** meet the requirement for plan consistency even without formal adoption of a written statement if the minutes of the governing board meeting reflect that the board was fully aware of and considered the plan. (G.S. 160D-605(a).)
- May** concurrently consider a comprehensive plan amendment and a zoning amendment; must not require a separate application or fee for plan amendment. (G.S. 160D-605(a).)
- Must** note on the applicable future land use map when a zoning-map amendment is approved that is not consistent with the map; the future land use map is deemed amended when an inconsistent rezoning is approved. (G.S. 160D-605(a).) (*This clarifies that a rezoning inconsistent with a plan does not amend the text of the plan, but it does amend the future land use map.*)
- *For** a future land use map that is deemed amended, if it is a CAMA plan, then such amendment is not effective until it goes through the CAMA plan-amendment process. (G.S. 160D-501.)
- Must** adopt a statement of reasonableness for zoning-*map* amendments; for such statements, **may** consider factors noted in the statutes; ***may** adopt a statement of reasonableness for zoning-*text* amendments. (G.S. 160D-605(b).)
- May** consider and approve a statement of reasonableness and a plan-consistency statement as a single, combined statement. (G.S. 160D-605(c).)

D. Voting

- *Must** permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law. (G.S. 160A-75; S.L. 2019-111, § 2.5(n).)

E. Certain Legislative Decisions

- Must** prohibit third-party down-zonings; **may** process local government–initiated down-zonings (S.L. 2019-111, Pt. I.)
- Must** obtain applicant’s/landowner’s written consent to conditions related to a conditional-zoning approval to ensure enforceability. (S.L. 2019-111, Pt. I.)
- May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)

- With applicant’s written consent, **may** agree to conditional-zoning conditions that go beyond the basic zoning authority to address additional fees, design requirements, and other development considerations. (S.L. 2019-111, Pt. I.)
- **May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define “minor modification” by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

IX. Quasi-Judicial Decisions [Chapter 4, Section III]

A. Procedures

- **Must** follow statutory procedures for all quasi-judicial development decisions, including variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. (G.S. 160D-102(28).)
- **Must** hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case; the evidentiary hearing **must** have testimony under oath; **must** establish written findings of fact and conclusions of law. (G.S. 160D-406.)
- Board chair **must** rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling **may** be appealed to the full board. (G.S. 160D-406(d).)
- **Must** allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; **may** allow non-parties to present competent, material, and substantial evidence that is not repetitive. (G.S. 160D-406(d).)
- **May** continue an evidentiary hearing without additional notice if the time, date, and place of the continued hearing is announced at a duly noticed hearing that has been convened; if quorum is not present at a meeting, the evidentiary hearing is automatically continued to the next regular meeting of the board with no notice. (G.S. 160D-406(b).)
- **May** distribute meeting packet to board members in advance of the evidentiary hearing; if this is done, then **must** distribute the same materials to the applicant and landowner at the same time; **must** present such administrative materials at the hearing and make them part of the hearing record. (G.S. 160D-406(c).)
- **May** have the planning board serve as a preliminary forum for review in quasi-judicial decisions; if this is done, the planning board must not conduct a formal evidentiary hearing but must conduct an informal preliminary discussion of the application; the forum and recommendation must not be used as the basis for the decision by the board—the decision must still be based on evidence presented at the evidentiary hearing. (G.S. 160D-301.)
- **May** require recordation of special use permits with the register of deeds. (G.S. 160D-705(c).)
- △ **Be aware** that the definition of *close family relationship* as used for conflicts of interest includes spouse, parent, child, brother, sister, grandparent, or grandchild (including step, half, and in-law relationships). (G.S. 160D-109(f).)

- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)

B. Certain Quasi-Judicial Decisions

- Must** not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. (S.L. 2019-111, Pt. I.)
- Must** obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability. (S.L. 2019-111, Pt. I.)
- Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; **must** presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- *May** adjust variance standards to provide for reasonable accommodation under the federal Fair Housing Act. (G.S. 160D-705(c).)
- May** use purely legislative conditional zoning and/or quasi-judicial special use permitting; **must** not use combined legislative and quasi-judicial process, such as conditional-use-district zoning. (G.S. 160D-102.)
- May** allow administrative minor modification of conditional zoning, special use permits, and other development approvals; if allowed, **must** define "minor modification" by ordinance, **must** not include modification of use or density, and major modifications **must** follow standard approval process. (G.S. 160D-403(d), -703(b), -705(c).)

X. Administrative Decisions [Chapter 4, Section IV]

A. Development Approvals

- Must** provide development approvals in writing; **may** provide in print or electronic form; if electronic form is used, then it **must** be protected from further editing. (G.S. 160D-403(a).)
- Must** provide that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property. (G.S. 160D-403(a).)
- Must** provide that development approvals run with the land. (G.S. 160D-104.)
- For revocation of development approval, **must** follow the same process as was used for the approval. (G.S. 160D-403(f).)
- May** require community notice or informational meetings as part of the decision-making process for administrative development approvals (quasi-judicial and legislative decisions already had notice and hearing requirements). (G.S. 160D-403(h).)
- May** set expiration of development approvals if work is not substantially commenced; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).) **Be aware** that legislation will clarify the provisions on duration of development approvals. (G.S. 160D-403(c); S.L. 2019-111, § 1.3.)

- **May** set expiration of development approvals if work is discontinued; default rule is twelve months, unless altered by state or local rule. (G.S. 160D-403(c).)
- **May** authorize administrative staff to approve minor modifications of development approvals and conditional-zoning approvals; if this is done, then **must** define “minor modifications” by ordinance and **must** not include modification of permitted use or density of development; major modifications **must** go through full applicable approval process. (G.S. 160D-403(d); -703(b); -705(c).)

B. Determinations

- **Must** provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner. (G.S. 160D-403(b).)
- **May** designate an official to make determinations for a particular development regulation. (G.S. 160D-403(b).)
- **May** require owner to post notice of determination on the site for ten days; if such is not required, then owner has option to post on the site to establish constructive notice. (G.S. 160D-403(b).)

C. Appeals of Administrative Decisions

- **Must** allow administrative decisions of any development regulations (not just zoning) to be appealed to the board of adjustment, unless provided otherwise by statute or ordinance. (Appeals relating to erosion and sedimentation control, stormwater control, or building-code and housing-code violations are not made to the board of adjustment unless specified by local ordinance.) (G.S. 160D-405.)
- **Must** set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent. (G.S. 160D-405(c).)
- **Must** require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal. (G.S. 160D-406.)
- **Must** pause enforcement actions, including fines, during the appeal. (G.S. 160D-405.)
- **May** assign the duty of hearing appeals to another board; if this is done, such board must follow quasi-judicial procedures. (G.S. 160D-405.)
- **May** designate that appeals be filed with the local government clerk *or* another official. (G.S. 160D-405.)

XI. Vested Rights and Permit Choice [Chapter 5, Section I]

A. Vested Rights

- Must** recognize that building permits are valid for six months, as under prior law. (G.S. 160D-108(d)(1).)
- Must** recognize the default rule that development approvals are valid for twelve months, unless adjusted by statute or local rule. (G.S. 160D-108(d)(2).)
- Must** identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. (G.S. 160D-108(d)(3); -108(f).)
- Must** recognize multi-phase developments—long-term projects of at least 25 acres—with vesting up to seven years, except for specified exceptions (160D-108(d)(4); -108(f).) (The previously authorized phased-development plan is obsolete and should be deleted from ordinance.)
- May** provide for administrative determination of vested rights and for appeal to the board of adjustment. (G.S. 160D-108(c), -405.)
- Be aware** that a person claiming vested rights may bring an original civil action in court, skipping administrative determination and board of adjustment consideration. (G.S. 160D-405(c).)
- Be aware** that vested rights run with the land, except for state-permitted outdoor advertising permits that run with the owner of the permit. (G.S. 160D-108(g); S.L. 2019-111, Pt. I.)

B. Permit Choice

- Must** not make an applicant wait for final action on the proposed change before proceeding if the applicant elected determination under prior rules. (G.S. 160D-108(b).)
- Be aware** that if a local development regulation changes after an application is submitted, the applicant may choose the version of the rule that applies; but **may** require the applicant to comply with new rules if the applicant delays the application for six months. (G.S. 160D-108(b); S.L. 2019-111, Pt. I.)
- Be aware** that an application for one development permit triggers permit choice for permits under any development regulation; such permit choice is valid for eighteen months after approval of the initial application. (S.L. 2019-111, Pt. I.)

XII. Judicial Review [Chapter 5, Section II]

A. Declaratory Judgments

- △ **Be aware** that an individual may bring a declaratory judgment action to challenge legislative zoning decisions, vested rights claims, and challenges to land use authority related to administrative decisions, subject to specified procedures. (G.S. 160D-1401.)
- △ **Be aware** that other civil actions may be authorized—Chapter 160D does not limit availability of other actions. (G.S. 160D-1404.)

B. Appeals of Quasi-Judicial Decisions

- ***Must** update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts; default rule is that such appeals go straight to court; local government may opt for such appeals to go to the board of adjustment, as under prior statutes. (G.S. 160D-947.)
- **Must** provide that appeals of certificates of appropriateness must be filed within thirty days after the decision is effective or written notice is provided, the same as for appeals of other quasi-judicial decisions. (G.S. 160D-947; -1405.)
- △ **Be aware** that on appeal a party may request a stay of the approval or enforcement action. (G.S. 160D-1402(e).)
- △ **Be aware** that a local government may seek a stay in favor of itself (to prevent development under an approval). (G.S. 160D-1402(e).)
- △ **Be aware** that if, in the absence of a stay, an applicant proceeds with development, the person does so at his or her own risk. (G.S. 160D-1402(l).)
- △ **Be aware** that on appeal, the superior court now must allow for supplementing the record on questions of standing, conflicts of interest, constitutional violations, or actions in excess of statutory authority. (S.L. 2019-111, § 1.9.)
- △ **Be aware** that even if there is no objection before the board, opinion testimony from a lay witness shall not be considered competent evidence for technical matters such as property value and traffic impacts. (S.L. 2019-111, § 1.9.)
- △ **Be aware** of specific judicial instructions for decisions of appeals of quasi-judicial decisions. (S.L. 2019-111, § 1.9.)

C. Subdivision Decisions

- **May** establish a rule that administrative subdivision decisions are appealed to the board of adjustment. (G.S. 160D-1405.)
- △ **Be aware** that appeals of administrative subdivision decisions may be appealed directly to superior court. (G.S. 160D-1403.)
- △ **Be aware** that quasi-judicial subdivision decisions are appealed to superior court in the nature of certiorari. (G.S. 160D-1402.)

D. Attorneys' Fees

- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a city or county violated a statute or case law setting forth unambiguous limits on its authority. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court *shall* award attorneys' fees if the court finds that a local government took action inconsistent with, or in violation of, the permit choice and vested rights statutes. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)
- △ **Be aware** that a court may award attorneys' fees in other matters of local government litigation. (G.S. 6-21.7; S.L. 2019-111, Pt. I.)

E. Additional Judicial Rules

- △ **Be aware** that a court may join a civil action challenging an ordinance with an appeal in the nature of certiorari. (G.S. 160D-1402(m).)
- △ **Be aware** that a local government **must** not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing. (S.L. 2019-111, Pt. I.)
- △ **Be aware** that an action is not rendered moot if the party loses the relevant property interest as a result of the local government action being appealed, subject to applicable case law limits. (S.L. 2019-111, Pt. I.)

Chapter 160D Question & Answer

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This Chapter 160D Question & Answer provides clarifications and answers to supplement other resources on Chapter 160D provided by the UNC School of Government. Visit nc160D.sog.unc.edu to view explainer videos, order the Chapter 160D book, and access additional resources.

The content is organized as follows:

| | | |
|-------|---|----|
| I. | Technical Corrections and Legislation Updates | 2 |
| II. | Implementation and Context..... | 2 |
| III. | Jurisdiction and Boards | 7 |
| IV. | Administration | 8 |
| V. | Substance of Development Regulations | 10 |
| VI. | Comprehensive Plans..... | 14 |
| VII. | Legislative Decisions | 15 |
| VIII. | Quasi-Judicial Decisions | 19 |
| IX. | Administrative Decisions | 23 |
| X. | Vested Rights and Permit Choice..... | 24 |
| XI. | Judicial Review | 26 |

I. Technical Corrections and Legislation Updates

When Chapter 160D was enacted, Part I of S.L. 2019-111 and all other applicable legislation enacted in 2019 was to be incorporated into Chapter 160D before it became effective. The General Statutes Commission studied how to do this and recommended implementing legislation to the 2020 session of the General Assembly. In June of 2020, the General Assembly passed Senate Bill 720 and Governor Cooper signed it into law as S.L. 2020-25.

In addition to cleaning up some minor clerical errors, the legislation makes the following technical corrections.

- Accelerates the effective date of Chapter 160D to allow options authorized under Chapter 160D to be effective when local governments update ordinances, while extending the mandatory deadline for adoption of conforming local ordinances until July 1, 2021. This deadline supersedes the deadline extension set in the COVID-19 legislation (S.L. 2020-3) adopted in May of 2020.
- Incorporates Part I provisions including vested rights, permit choice, and judicial review
- Allows “land-use plan” to suffice for requirement to have a comprehensive plan
- Clarifies that while a local development approval expires in one year if no other time is set by statute, a local government has the option of providing for a longer life for some or all of its local approvals in 160D-108(g)
- Adds a subsection to clarify city zoning and subdivision must be applied jurisdiction-wide while county zoning and subdivision regulation can be applied to only part of its jurisdiction in 160D-201
- Fixes provision re appointment of ETJ members to delete reference to hearing that is no longer required in 160D-307(b)
- Clarifies that 15-day time for initial review applies to building permits, not entire Ch. 160D, in 160D-1110(b)
- Adds inadvertently omitted 160A-439.1 re vacant building receivership as 160D-1130

II. Implementation and Context

A. In General

What’s the deal with the numbering? It used to be G.S. 160D-1-1 and now it is 160D-101.

The original numbering of Chapter 160D was altered to comply with the standard numbering conventions of the North Carolina General Statutes, but the order is the same and the numbering is still essentially the same. As adopted, each section of Chapter 160D used this numbering convention: chapter number-article number-section number. For example, the first statutory section in Article 7 on zoning regulations was G.S. 160D-7-1. When codified, a similar but slightly different numbering convention was used, adapting the Chapter 160D numbering to the convention used in other chapters of the General Statutes. Instead of a three-part number, there is a two-part number using this numbering convention: chapter number-section number. For Chapter 160D, each section number will start with the relevant article number. The result is essentially a fusing of the old article number and section number, often with a zero in between. For example, the first section in Article 7 on zoning

regulations will be G.S. 160D-701, while the first section in Article 10 on development agreements will be G.S. 160D-1001, thus retaining to the extent possible the clarification to the law's organizational structure.

How quickly do local governments need to update ordinances??

As a result of S.L. 2020-25, Chapter 160D is effective now. Local governments have until July 1, 2021 to update ordinances and policies to comply. While there is not a prescribed timeline, given the breadth of the changes, local governments would be wise to begin the process of updating ordinances sooner rather than later.

If a local government adopted language to incorporate changes before July 2021, do changes go into effect when adopted or must they wait until Jan 2021 to go into effect?

As a result of S.L. 2020-25, changes in Chapter 160D can now be made immediately, with an effective date as soon as they are adopted.

Can consistency statement changes be implemented immediately or do communities need to wait until 2021?

Yes, as a result of S.L. 2020-25, consistency statement changes can now be implemented immediately.

If a local government has local, special legislation or charter provisions, will it remain or do they have to go back to the legislature?

Local legislation and charter provisions remain unless there is clear intent in Chapter 160D to supersede that local authorization. G.S. 160D-111(b) provides that “[n]othing in this Chapter repeals or amends a charter or local act in effect as of the effective date of this Chapter unless this Chapter or a subsequent enactment of the General Assembly clearly shows a legislative intent to repeal or supersede that charter or local act.”

Are the changes to voting (160A-75, not requiring super majority on first consideration) in effect now?

No. But again, additional legislation could authorize an earlier effective date.

Did 160A and 153A go away? Or just get modified?

Chapter 160A (municipal authority) and Chapter 153A (county authority) still exist. The statutes authorizing broad local government authority, including form of government, general ordinance power,

taxation, law enforcement, utilities, and more are still outlined in those chapters of the North Carolina General Statutes.

The old development regulation statutes were codified as articles within those chapters (Article 19 in Chapter 160A and Article 18 in Chapter 153A). Those specific articles are pulled out to create the new Chapter 160D and those specific articles are repealed once Chapter 160D becomes effective. The broad authorities for local governments are still outlined in Chapter 160A and Chapter 153A.

What is the best way to update statutory references? When my local ordinance references “Chapter 153A-345.1”, for example, do I simply replace that reference with “Chapter 160D-109; -302; -403(b); -405; -406; -702; -705; -1405” drawn from the SOG crossover tables, or do I need to read each individual section of the statutes and only use the relevant sections as replacements?

The best way to update the statutory references depends on the context. In general, it’s helpful to be as specific as possible, both to specify the correct statutory provisions and to make it as easy as possible for ordinance users to find the appropriate statutory section. As a result, that means reading each statutory section referenced in order to confirm that it is the correct one.

Do I have to take a text amendment through the board review and adoption process if I am just making grammatical changes?

If the corrections in question are truly just grammatical corrections that don’t alter the meaning of the ordinance, then staff can make these in coordination with the Town Attorney and the Town Clerk. However, if they have any policy impact, then the proposed updates must go through the board review and decision process. Even if staff or the governing board meant for the ordinance to include certain language and instead the governing board adopted it with different language, any revision must still go through the full board review and decision process.

What happens if a local government does nothing?

While there is not a state agency looking over the shoulders of local governments to demand compliance with Chapter 160D, if a local government did nothing to bring ordinances and policies in line with Chapter 160D, there could be practical and legal problems. Some changes in Chapter 160D will trump local ordinances. The broadened conflict of interest standard, for example, will apply whether or not the local government adopts it. Additionally, the rights of property owners outlined in Chapter 160D and Part I of S.L. 2019-111 will exist regardless of local action. Failure on the part of a local government to recognize such rights could result in legal challenge and, potentially, attorneys’ fees for the challenger.

One notable item is the comprehensive plan requirement. If a local government with zoning fails to adopt a comprehensive plan by July 1, 2022, then the local zoning regulations will be inapplicable and unenforceable until such a plan is in place. If a local government already has a comprehensive plan, there is no need to re-adopt it, but it does need to be reasonably maintained with occasional updates.

When updating a plan, a local government will need to follow the standards and procedures outlined for comprehensive plans.

A. Types of Decisions

What's the deal with special use permits and conditional use permits and conditional use district zoning and such?

The terminology of zoning decisions has caused great confusion and Chapter 160D seeks to align terminology and clarify applicable procedures. Here is a quick rundown of decision terms (and the impact of Chapter 160D).

- Conditional Use Permit (CUP): a quasi-judicial, site-specific development approval with conditions commonly used in North Carolina communities. Under 160D, *conditional use permits* are re-named *special use permits*.
- Special Use Permit (SUP): synonymous with conditional use permit—a quasi-judicial, site-specific development approval with conditions commonly used in North Carolina communities. Under chapter 160D, all quasi-judicial, site specific zoning approvals are referred to as *special use permits*.
- Conditional District Zoning (or Conditional Zoning): a legislative, site-specific zoning approval with conditions. *Conditional zoning* was added to the statutes in 2005 and remains authorized under Chapter 160D.
- Conditional Use District Zoning (also called Special Use District Zoning): a combined process of a legislative rezoning with a quasi-judicial conditional use permit (or special use permit). This process was a creative procedural tool that arose in the 1980s and used to impose conditions on rezoning decisions. Now that legislative zoning with conditions (conditional zoning) is clearly authorized in North Carolina, *conditional use district zoning* is unnecessary and unauthorized.

With regard to current approvals, must a town that has been doing special use permit zoning also transition all the existing, valid SUPs to something else & rezone all of those properties by the January 1 deadline? Do we need to convert our old CUPs to SUPs?

No. Prior-approved projects continue as approved and the decision types are automatically converted to the proper type under Chapter 160D. Conditional use permits become special use permits. Conditional use districts become conditional districts. Local governments should update the terminology in their ordinances so that it uses the correct terms moving forward

Section 2.9(b) of S.L. 2019-111 provides that “[a]ny special use district or conditional use district zoning district . . . shall be deemed a conditional zoning district consistent with the terms of this act, and the special or conditional use permits issued concurrently with establishment of those districts shall be valid. . . Any valid ‘conditional use permit’ issued prior to January 1, 2021, shall be deemed a ‘special use permit’ consistent with the provisions of this act.”

When 160D comes into effect, do we need to change the zoning map to reflect the change to conditional use districts, special use districts, and such?

There is no requirement to update the map, but it may be prudent for administration, record keeping, and public information.

What if you have conditional district rezoning but the new district requires a special use permit for building height? Still allowed?

If the approvals and processes are handled separately, that would be allowed. Chapter 160D gets rid of the combined legislative AND quasi-judicial process of conditional use district zoning. But, Chapter 160D preserves the authority for legislative conditional zoning AND SEPARATELY the authority for the quasi-judicial special use permits. So, presumably, an ordinance could call for conditional zoning for the base approval and quasi-judicial permits for special allowances. The local government, though, should be mindful of meshing those processes together. With the changes of Chapter 160D, a local government should avoid having a district where any and all uses require a special use permit (no permitted uses). The authority for such a district is questionable and it would be prudent to eliminate it.

B. Terminology

How important is it to mirror the exact language of overlapping definitions that appear at the beginning 160D? (i.e. "dwelling" "landowner or owner") Do you think these definitions should be adopted in local codes?

For some terms, the statutes require that the local ordinance terminology match the statutory terminology. For other terms, it will be helpful for interpretation and clarity to have matching terminology. So in general, it is prudent to match the ordinance terminology with the statutory terminology.

Currently, when we publish "Public Hearing" notices, whether it be legislative or Conditional Use, we use the heading of "Notice of Public Hearing by City Council." To be compliant with 160D, must we change title currently in use for these hearings? Will these terms be compliant with 160D?

The procedures and purpose of general public hearings are very different from those for quasi-judicial evidentiary hearings. In order to distinguish between those different hearings, Chapter 160D uses the terms *legislative hearings* for legislative matters and *evidentiary hearings* for quasi-judicial matters. While not explicitly required by Chapter 160D, it would be prudent and advisable to use the same terminology in local ordinances and notices.

III. Jurisdiction and Boards

A. Jurisdiction

When a property is split between two jurisdictions, what is the process for mutual agreement on split jurisdiction properties? Who approves it? What is the form of the agreement for single regulation? Is the agreement in writing for each instance or just in a generic interlocal agreement?

G.S. 160D-203 authorizes mutual agreement for exclusive regulation of split parcels. The agreement takes the form of a mutual agreement under Article 20 of Chapter 160A (Interlocal Cooperation). Additionally, there must be written consent from the landowner. The mutual agreement must be evidenced by a resolution formally adopted by each governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last of the required resolutions.

Is there any change in extraterritorial jurisdiction to allow a municipality to enforce nuisance regulation in the ETJ?

No. Just as was the case under Chapter 160A, ETJ authority under Chapter 160D is authority to exercise development regulations (not general police power ordinances) in the ETJ area.

For county zoning, what about the old requirement that partial county zoning had to cover at least 640 acres?

G.S. 153A-342(d) previously allowed a county to zone less than its entire jurisdiction but required each zoned area to have at least 640 acres, at least 10 parcels, and at least 10 separate landowners. G.S. 160D-201(b) authorizes county planning and development regulations in any area not subject to municipal jurisdiction and does not carry forward the minimum size of areas subject to county zoning regulations. This provides additional flexibility to counties with partial-county zoning coverage. While formerly common, only twelve counties had partial-county zoning as of January 2019.

What is the process for a Town to relinquish control of its ETJ back to the county?

G.S. 160D-202(h) describes the process by which a municipality may relinquish its authority to enforce development regulations in some or all of its extraterritorial jurisdiction. As under prior law, there is not much detail on the procedure, so it is prudent to follow the notice and hearing procedures applicable to extension of extraterritorial jurisdictions. The municipal development regulations remain in effect until the county has adopted development standards or 60 days have elapsed. 160D clarifies that a county may adopt standards concurrently with its assumption of jurisdiction. Additionally, note that if a county and municipality have an agreement concerning ETJ, G.S. 160D-202(i) allows that such agreement may be rescinded with two years' written notice.

B. Boards

Can the planning board serve as the board of adjustment?

Yes. As was the case under prior law, G.S. 160D-302 allows that “[t]he ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties.” Additionally, a local government “may create and designate specialized boards to hear technical appeals.”

Is there an example oath for board members?

G.S. 11-7 provides a standard form for an oath of office. That oath is as follows: “I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.”

If the jurisdiction already has a Historic Preservation Commission established via special legislation, do we need to include the verbiage from 160D-303 in our revised ordinance?

Pursuant to G.S. 160D-111(b) local legislation and charter provisions remain unless there is clear intent in Chapter 160D to supersede that local authorization. The language now codified at 160D-303 for the composition and forms of historic preservation commissions is essentially identical to the provisions at 160A-400.7 under prior law. It would appear there is not clear legislative intent to supersede local legislation concerning the composition and form of a preservation commission.

Are there any special considerations to be aware of in 160D for bodies created using Part/Art. 7 - Community Appearance Commissions in 160A (i.e. 160A-451 through 160A-455)?

Chapter 160D made no substantive changes to the provisions regarding Community Appearance Commissions. This statutory language is now found in G.S. 160D-960 through 160D-963.

IV. Administration

A. In General

Is the requirement to preserve prior zoning maps retroactive? Where in 160D-105 is the requirement that prior zoning maps must be saved and made available?

G.S. 160D-105 provides, among other things, that “[z]oning district maps that are so adopted shall be maintained for public inspection in the office of the local government clerk or such other office as specified in the development regulation. The maps may be in paper or a digital format approved by the local government.” This new map recordkeeping provision aligns with similar requirements for county

and municipal clerks to maintain township and municipal maps and to maintain incorporated technical codes, as required at G.S. 153A-47, 160A-76.

With regard to zoning maps and ordinances, caselaw has established that local governments have an obligation to maintain prior maps and ordinances. *Shearl v. Town of Highlands*, 236 N.C. App. 113, 762 S.E.2d 877 (2014).

For revocation of a development approval, the checklist says the same process must be followed as the approval. In a community that has the governing board (Council) issue special use permits, does that mean it would take Council action to revoke the special use permit?

Yes, in order to revoke a special use permit, it would need to go back to the board that issued the permit. Other enforcement options would be available, however. The local government could issue notices of violation, charge civil penalties, and bring legal action for court ordered enforcement even if the local government does not seek to revoke the permit.

Do the statutes of limitations on court actions apply only to zoning violations? Or to minimum housing cases, as well?

G.S. 1-49 and 1-51 establish a statute of limitations for enforcing a “violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law.” Given that phrasing, it is reasonable to interpret the statute of limitations to apply to enforcement of ordinances adopted and permits issued under Chapter 160D, including zoning, subdivision, minimum housing, and other development regulations. That said, the statute of limitations “does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety.” In the case of minimum housing, a local government may still seek a court-ordered injunction if the case involves clear risk to public health or safety.

What’s the deal with minor modifications?

See the discussion below under Administrative Decisions.

B. Conflicts of Interest

For staff conflicts of interest, the statute refers to conflicts in the case of an “administrative decision.” What about for an administrative recommendation like for a rezoning staff report?

Chapter 160D does not directly address this, but it is prudent to treat staff recommendations the same as staff administrative decisions. Chapter 160D applies the same standard to appointed boards making advisory decisions, so it is reasonable and appropriate for that to extend to staff advisory decisions.

The conflict of interest section cites "associational relationship" as a conflict. Who is this intended to include? Does this mean that a planner could not issue a permit for a neighbor, doctor, pastor, auto mechanic, etc.?

Conflict of interest questions are always fact-specific and depend upon the particular context. Notably the G.S. 160D-109(c) refers to “a close familial, business, or other associational relationship” (emphasis added). A staff person could issue permits to an acquaintance or a general service provider. A staff person could not issue a permit to a close friend. Of course, there are many shades of grey between conflict and no-conflict. The details matter.

It is worth noting that, as specified at G.S. 160D-109(f), “[f]or purposes of this section, a ‘close familial relationship’ means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.”

For staff conflicts of interest, what can be done if there is only one decision maker and they have a direct or familial tie with the applicant?

160D-109(c) provides that “[i]f a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.” In a jurisdiction with limited staff, that may be difficult or impossible. Such small jurisdictions could contract for staff from another jurisdiction to handle such matters or arrange for another authorized official to handle the permitting.

V. Substance of Development Regulations

A. In General

How does 160D coordinate other development regulations like stormwater and watershed with zoning and subdivision regulations and process?

With regard to stormwater control and water supply watershed management, Chapter 160D maintains that authority previously outlined in 160A and 153A. Section 160D-925 continues the authority for local stormwater control regulations with reference to related state and federal regulations. Similarly, Section 160D-926 maintains local authority for watershed regulations pursuant to G.S. 143-214.5, noting that the requirements of this statute take precedence, and that the provisions of Chapter 160D are applicable to the extent they are not inconsistent with that statute. Chapter 160D also clarifies that local governments can include watershed maps by reference.

Notably, Article 6 of Chapter 160D applies to the adoption and amendment of all development regulations. So, the adoption or amendment of a stormwater ordinance or watershed ordinance will need to follow the procedures for legislative decisions as outlined in Article 6, unless another statute provides otherwise.

With regard to zoning exactions, does this mean sidewalk fee in lieu is now legit outside of subdivisions?

Probably yes, but there is some ambiguity.

G.S. 160D-702 provides that “[w]here appropriate, a zoning regulation may include requirements that street and utility rights-of-way be dedicated to the public, that provision be made of recreational space and facilities, and that performance guarantees be provided, all to the same extent and with the same limitations as provided for in G.S. 160D-804.” The intent appears to be to provide uniformity of exactions for subdivision and various zoning decision. That said, this language for the zoning authority does not match precisely with the language for the subdivision authority.

With form-based codes being authorized by 160D, will local governments be able to regulate the physical design of single-family homes?

No. Chapter 160D confirms the authority for form-based codes and preserves the limits on regulating “building design elements” for certain residential structures.

G.S. 160D-703(a)(3) authorizes use of form-based zoning districts that “address the physical form, mass, and density of structures, public spaces, and streetscapes.”

Even though this provision clarifies that use of form-based standards in a zoning regulation is permissible, Chapter 160D does not remove the statutory limits adopted in 2015 that limit regulation of “building design elements” for structures subject to the one-and two-family residential building code. Those limits, which are relocated to G.S. 160D-702(b), prohibit zoning regulation of exterior building color, type or style of exterior cladding material, and other design elements for these residential structures. Chapter 160D continues to provide exceptions if the design standards are consented to as part of a zoning approval.

With regard to development agreements, does the local ordinance have to include provisions on development agreements?

In order to enter into a development agreement, the local government must follow the procedures outlined in Article 10 of Chapter 160D. G.S. 160D-1003 allows the local government to establish local procedures and requirements to consider and enter into development agreements, but there is no requirement for such local rules.

Since the "periodic inspection" procedures were moved from the building code statutes into the housing code statutes, does that mean a local government must adopt a minimum housing code to perform periodic inspections?

No. A general provision allowing periodic inspection of all buildings, not just residential ones, for unsafe, unsanitary, or hazardous conditions, remains in the building code article as G.S. 160D-1117.

G.S. 160D-1129 authorizes local regulations for nonresidential buildings within an entire planning and zoning area. But many cities have unsafe nonresidential buildings ordinances, like their minimum housing ordinances, that apply within the corporate limits. Is this OK?

No. Prior law limited such nonresidential building ordinances to apply only in the corporate limits. Chapter 160D revises that language to align with the geographic scope of other development regulations. G.S. 160D-1129(a) as modified by S.L. 2020-25 reads that such regulations for nonresidential buildings or structures “shall be applicable within the local government’s entire planning and development regulation jurisdiction or limited to one or more designated zoning districts, municipal service districts, or defined geographical areas designated for improvement and investment in an adopted comprehensive plan.” Such ordinances must follow one of these delineations.

B. Subdivision

What will subdivision performance guarantees in conformity with SL 2019-79 contain in terms of actual language?

Those details are outlined in the bulletin 2019 North Carolina Legislation Related to Planning and Development Regulation available at <https://www.sog.unc.edu/publications/bulletins/2019-north-carolina-legislation-related-planning-and-development-regulation>.

Was there any clarification in 160D about the authority to allow fee-in-lieu for sidewalks?

Chapter 160D does not alter the authority under the subdivision statutes for requiring improvements and dedications.

C. Historic Preservation

Does 160D-947(c) mean that we re-title historic district design guidelines to historic district standards, or does it mean that we are to have specific standards in the ordinance for setbacks, building footprint, or stay of demolition?

In G.S. 160D-947(c), the term “guidelines” is replaced with the term “standards.” Documents that have been titled guidelines will need to be titled standards. While some guidelines may need to be tightened up and clarified to serve as standards, there is not necessarily a need to adopt new standards. The intent is to clarify that the design criteria outlined in local design documents are not suggestions or advice but binding, mandatory standards for preservation decisions.

As with all quasi-judicial decisions, decisions for certificates of appropriateness must be based on adequate guiding standards. Architectural congruence demands some amount of judgment by the decision-makers, but COAs must not be based on the gut feelings or whims of the board members. Standards must be in place to guide the evaluation of whether a change is incongruous with character of the district.

160D provides that Preservation Commission decisions may now be appealed directly to Superior Court rather than going to Board of Adjustment first. We plan to consider this, but what are the pros/cons?

Under prior law, preservation commission decisions were appealed to the board of adjustment prior to appeal to superior court. Appeal to the board of adjustment allows for a somewhat less formal appeal (and potentially quicker and less expensive appeal). But, it asks the board of adjustment to act in an unfamiliar way. Boards of adjustment typically are acting like a trial court—holding an evidentiary hearing and making determinations on variances and appeals of staff decisions. When they review preservation commission decisions, boards of adjustment must act like an appeals court—reviewing the evidence from below and evaluating the decision-making process. This is not a familiar role for boards of adjustment and it is easy to mess up (seeking new evidence, applying the wrong standards, etc.).

Under Chapter 160D, the default rule is that preservation commission decisions will go to superior court just like any other quasi-judicial decision.

D. Manufactured Housing and Small Houses

We can no longer exclude manufactured homes based on their age, but can we continue to exclude bringing pre-HUD models? Can we require that HUD models only be located along certain corridors? Can we require appearance criteria of pitched roof?

Chapter 160D does not alter the law concerning local government regulations of manufactured homes. G.S. 160D-910 preserves the allowance to regulate appearance and dimensional criteria for manufactured homes. Additionally, as under prior law, local governments must not prohibit manufactured homes altogether, but they may limit manufactured homes to certain zoning districts.

G.S. 160D-910 confirms the caselaw rule that local governments may not exclude manufactured homes based solely on the age of the home (*Five C's, Inc. v. Pasquotank County*, 195 N.C. App. 410, 672 S.E.2d 737 (2009)). In that case, an ordinance prohibiting manufactured homes more than ten years old was struck down as beyond the statutory authority.

It is worth noting that G.S. 160D-910 continues to reference G.S. 143-145 for the definition of “manufactured home.” It is unclear if that definition may provide some limitations as to HUD labeling.

With the new law in July 2019 prohibiting zoning regulations from establishing minimum dwelling square footage requirements/standards, can "tiny homes" be regulated through zoning as to restricting where such dwellings are allowed?

No. S.L. 2019-174 (H.B. 675) amends the basic zoning authority and will be incorporated into Chapter 160D. Specifically it provides that “[a] zoning ordinance shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One-and Two-Family Dwellings.” With that, a zoning ordinance could not limit residential structures based on minimum

square footages. The ordinance can still regulate density, location, setbacks, and other development standards for residential structures generally.

VI. Comprehensive Plans

Is there a definition of a comprehensive plan? How substantial a plan will now be required?

The technical corrections to Chapter 160D included in S.L. 2020-25 now allow a land-use plan to suffice for the requirement to adopt a comprehensive plan.

In addition, S.L. 2020-25 simplified the definition of a “comprehensive plan” as defined in G.S. 160D-102 to the following: “A comprehensive plan that has been officially adopted by the governing board pursuant to G.S. 160D-501.” G.S. 160D-501 calls for a comprehensive plan that “sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction”, or a land-use plan that “uses text and maps to designate the future use or reuse of land.” Additionally, the statute states that “[a] comprehensive plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs. Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors.” G.S. 160D-501 suggests elements that may be included in a comprehensive plan, but does not require them. The statute does require that the planning process must include “opportunities for citizen engagement in plan preparation and adoption.”

Will adoptions of Comprehensive Plans require advertisements of public hearing?

Yes. At the time of plan adoption, the local government follows the same process as a legislative zoning decision outlined at G.S. 160D-601, including recommendation from the planning board, public notice, and a public hearing.

How old can the comp plan be?

Chapter 160D does not set a specific time frame for updating the comprehensive plan, but it does call for plans to be “reasonably maintained.” Factors determining reasonableness would include rate of growth and change as well as physical, economic, and social conditions. Notably, the requirement is for reasonable maintenance; there is no mandate for a complete rewrite of the comprehensive plan. In general, professional practice calls for comp plans to be updated every 5-10 years. If the community has experienced limited change, then a plan that was adopted more than 10 years ago may still be applicable. If the community has experienced rapid change, then an update every five years may be more defensible. If the plan has been in place for several decades, it is probably time to update it. As a point of reference, under prior law CAMA land use plans were required to be updated every five years.

For CAMA communities, how does this legislation work, in reference to comprehensive plans, with the state statutes for CAMA land use plans? And, does the local governing body need to take special action to make the CAMA land use plan, the town's comprehensive plan?

A community may use one plan to meet the requirements for a comprehensive plan and for a CAMA land use plan. As provided by G.S. 160D-501(c), “[p]lans adopted under this Chapter may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110 [CAMA land use plans].” A local government would need to take action to adopt a plan, but that one action could be to adopt the plan as a land use plan under CAMA and a comprehensive plan under Chapter 160D. With regard to plan amendments, G.S. 160D-501(c) clarifies that for plans that serve as CAMA land use plans, amendments are not effective until appropriate CAMA review and approval is completed.

Are flood ordinances (or other single-purpose ordinances) considered zoning for the comp plan requirement?

It depends. If a community has a single-purpose, land use-related ordinance adopted under the general police powers authority, there likely is no requirement for a comprehensive plan. If, however, a community has an ordinance that substantially affects land use, or if a community has a set of ordinances that addresses a range of land uses, those ordinances may be treated as zoning. The community would need to adopt a comprehensive plan to continue those regulations.

VII. Legislative Decisions

A. Notice and Hearings

Does 160D alter any established public hearing requirements?

G.S. 160D-601 makes clear that a legislative hearing (commonly called public hearing) before the governing board must be held prior to the decision to adopt, amend, or repeal *any* development regulation. This applies to all development regulations, not just zoning.

With regard to notice for zoning map amendments, 160D-602 clarifies what constitutes an abutting property that must be provided a mailed notice. This includes not only property that actually touches the property being rezoned but also property separated from the rezoned property by a street, railroad, or other transportation corridor.

With regard to posted notice, G.S. 160D-602(c) adds a provision to require that the posting be made in the same time period as the mailing of the notice—at least ten but not more than twenty-five days prior to the date of the hearing.

G.S. 160D-602(e) explicitly allows a city or county to require that someone proposing a rezoning communicate with the neighbors prior to submitting a rezoning petition. Rather than specify that the communication come in the form of a neighborhood meeting, the authorization is written broadly to encompass requirements for a mailing, a meeting, or some other means of engaging the neighbors. The

ordinance may also require that the rezoning application include a report on the neighborhood communication.

Is there an official definition for "down zoning"?

G.S. 160D-601(d) as updated by S.L. 2020-25 amends the zoning authority to say that except for actions initiated by the local government, “[n]o amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment.” *Down-zoning* is defined to be a zoning ordinance that affects property in one of the following ways:

- (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- (2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

The training module states that the statutes now explicitly say that rezoning notification letters must be mailed to owners of properties across the street from subject properties proposed for rezoning. Does this include notifying owners of properties across limited access freeways?

Probably yes. G.S. 160D-602 addresses notice of hearings for map amendments and it provides that “[f]or the purpose of this section, properties are ‘abutting’ even if separated by a street, railroad, or other transportation corridor.” A limited access freeway is a transportation corridor, so it appears that notice would be appropriate.

Notice across streets is now required, but what about bodies of water? Creeks/streams/lakes?

G.S. 160D-602 states that for purposes of notice for a legislative map amendment “properties are ‘abutting’ even if separated by a street, railroad, or other transportation corridor.” There is no mention of bodies of water. Of course, local governments can choose to provide such additional notice. The statute sets the minimum notice. Local ordinances and policies can require additional notice.

It is worth noting that for creeks and small streams, the property actually runs to the center line of the water body, making the two properties on opposite sides adjoining. It is prudent to mail notice if the county property tax maps show the properties as abutting.

B. Plan Consistency

How do the plan consistency statement requirements change?

G.S. 160D-605 simplifies the plan consistency statement that must be approved when the governing board adopts a zoning ordinance amendment. As explained in more detail in other resources, Chapter 160D clarifies that the consistency statement does not have to be adopted as a separate motion, allows

that a board can meet the spirit of the requirement even if they don't meet the technical provisions, and simplifies the format for statements.

Should the statement of zoning consistency or inconsistency be signed by Mayor and/or Clerk after it is adopted? Or is a motion sufficient?

G.S. 160D-605 states that the “governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan.” There is no need for a signature.

Can consistency statement changes be implemented immediately or do communities need to wait until 2021?

Yes, consistency statement changes can be implemented immediately as a result of the passage of S.L. 2020-25. The basic expectations for consistency statements—review of applicable plans and formal adoption by the governing board of a statement—remain the same.

Can a plan consistency statement be incorporated into the body of the rezoning amendment ordinance?

Yes.

Does the consistency statement and statement of reasonableness law apply the same to text amendments as map amendments?

A consistency statement is required for an amendment to the zoning ordinance text *or* map. A reasonableness statement is required for an amendment to the zoning map. A local government may choose to include a reasonableness statement for an amendment to the zoning ordinance text.

For a future land use map amendment, is it parcel specific or will it impact similarly situated properties?

G.S. 160D-605 provides that “[i]f a zoning map 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.” The intent of this automatic future land use map amendment is to reduce the discrepancy between the future land use map and the approved zoning for the site and to streamline the process for obtaining the rezoning. The implication is that such automatic future land use map amendments are site-specific and not applicable across the entire map.

For rezoning requests that are approved, but inconsistent with the future land use map (FLUM), are we required to physically change the map? Or simply denote the change in records as an alteration to the map?

The plan itself needs to be updated. G.S. 160D-501(c) says that if the plan is deemed amended by adoption of a rezoning that is inconsistent with the plan, “that amendment shall be noted in the plan.” Exactly how that is accomplished, whether it is updating the FLUM, including a running list of amendments, or some other mean, is up to the local government. It is certainly prudent to occasionally update the FLUM for clarity and future reference.

G.S. 160D-605 provides that “[i]f a zoning map 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.” The future land use map is deemed amended with the adoption of the inconsistent rezoning, regardless of whether the map is formally updated or not. For clarity and record keeping, it would be prudent for the local government to take action to change the future land use map at the time of the rezoning. This likely can be handled administratively as a clerical correction. Or, the local government could include the FLUM update with other comprehensive plan clean-up on some regular schedule (annually, bi-annually, etc.)

C. Conditional Zoning

1. In General

The 160D checklist states that per S.L. 2019-111, conditional zoning conditions can "go beyond the basic zoning authority to address additional fees, design requirements and other development considerations." Does this broaden authority for conditions?

Part I of S.L. 2019-111, codified at G.S. 160D-703(b), clarifies that a local government must have written consent from the petitioner in order to apply to a conditional rezoning conditions “not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160A-381(h), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.” This provision contrasts with the limitation on special use permits.

2. Consent

When conditions are amended during a hearing with the final vote, how do you satisfy the written signed consent? Can a petitioner consent "verbally" at a public hearing? Can conditions go in the minutes?

In order to ensure that conditions are enforceable, the local government should get written consent from the petitioner. There is not a required form, so the written consent could take multiple forms: a signature on a decision document listing the conditions, a signature block on the site plan listing conditions, an affidavit from the petitioner consenting to the agreed upon conditions as reflected in the specific decision, or otherwise.

Does the written agreement of conditions need to be in place prior to the hearing or can their signature be obtained post-hearing/approval?

Depending on the nature of the project and the local practice, conditions may be identified and consented to in advance of the final decision. Commonly, though, conditions are altered at the hearing. In such case the local government will want to secure written consent from the petitioner. Such consent could be at the conclusion of the hearing or within a few days after. One option is to condition the approval upon the petitioner providing written consent in the form required. In other words, the approval may have a condition that the approval is not effective until the petitioner provides written consent and providing a specified time for that consent to be provided.

VIII. Quasi-Judicial Decisions

Should the planner be sworn in during a quasi-judicial hearing if his/her packet can be entered as evidence?

Yes. It is good practice for the person who prepared the information in the packet to appear as a witness and state for the record that they prepared the material, state when and how it was distributed, offer it as an exhibit to be entered into the hearing record, and offer to answer any questions about it that the board may have.

Since some cases that go before the Planning Board are quasi-judicial in nature, what should be included or excluded from the agenda pack so we do not violate the ex parte communication rule?

Under 160D-406(c) planning staff must provide to the decision-making board all applications, reports, and written materials relevant to the matter being considered. Those materials may be distributed to the board prior to the hearing so long as they are provided to the interested parties at the same time. It is prudent to make such materials available to the public as well (posted to the website or otherwise available for public inspection). When the materials are shared with the parties, that resolves the underlying concerns of *ex parte* communication.

A. Variances

As reasonable accommodation variances are now allowed, is there more specific guidance on what criteria must be met by the applicant?

The Federal Fair Housing Act and Americans with Disabilities Act have long required that governments must make reasonable accommodations to individuals with disabilities (this is not a new requirement). The notable change is that Chapter 160D allows such accommodation to be processed as a variance. Previous law had said the personal circumstances and condition of the applicant could not be considered.

Can granting setback variances for disabilities be administrative?

Potentially. If the standards and determination require the application of substantial judgement and discretion, then the decision is quasi-judicial and should be processed as such. Certain requests for reasonable accommodation could be framed as an administrative minor modification but only if appropriate standards and procedures are in place. As with any administrative modification, an administrative reasonable accommodation would have to be defined in the ordinance. There must be clear objective standards for when the modification is available and specific limitations on the scope of allowable modification. Reasonable accommodation may be a topic appropriate for an administrative hearing as defined by Chapter 160D. As with any staff determination, a decision is subject to appeal to the board of adjustment (or other authorized board).

B. Special Use Permits

1. In General

How do we transition from conditional use permits to special use permits?

See the questions above under Implementation and Context.

Is there any good reason to continue to have both a special use process and conditional zoning process in place? We have only a few uses that fall under SUP.

Each process—the quasi-judicial special use permit and the legislative conditional zoning—is a useful tool with pros and cons. Depending on the community goals and politics, one or the other tool may be most useful and effective. Quasi-judicial decisions are based on pre-established guiding standards, the parties must provide evidence to support the application, and the board must base its decision on evidence in the record. Public engagement is more restrained for quasi-judicial decision-making. Legislative conditional zoning has more flexibility—for adjusting standards and applying conditions. The legislative process permits greater public engagement and the decision-making board has more latitude to make decisions based on broad notions of the public interest; the board is not bound by evidence in the record.

Can special use permits be divided into minor (going to the Board of Adjustment) and major going to the governing body and be consistent with 160D?

Yes. A local government may choose to have different classes of special use permits (major/minor; class A/ class B; etc.)

Is there a specific or official way to enter the staff report into the record as evidence?

As noted above, it is good practice for the person who prepared the info in the packet to appear as a sworn witness and state for the record that they prepared the material, state when and how it was

distributed, offer it as an exhibit to be entered into the hearing record, and offer to answer any questions about it that the board may have.

Is it a good idea to have a board perform advisory review of a special use permit prior to review by the final decision-maker? What board should do that?

There is no state requirement for advisory review of quasi-judicial decisions, and indeed, such review can create practical confusion and legal ambiguities (What is the nature of the review? Is it quasi-judicial? What's the status of the evidence presented?). Chapter 160D addresses these issues by allowing, but not mandating, advisory reviews. G.S. 160D-301 authorizes planning board review and comments on pending quasi-judicial matters but limits the practice. The statute clarifies that such reviews are a "preliminary forum." A planning board making an advisory review is not conducting a formal evidentiary hearing but is allowing an informal, preliminary discussion of the application. Given this informality, the statute goes on to provide that "no part of the forum or recommendation" may be used as the basis for a decision by the board making the quasi-judicial decision. The decision must still be based on competent evidence presented at the evidentiary hearing held by the decision-making board.

Do Special Use Permits expire if unused?

Yes, a Special Use Permit expires once its approval period is over unless work authorized by the permit has substantially commenced. Chapter 160D sets the default duration of the development approval at one year, although S.L. 2020-25 clarifies that a local government may specify that some or all designated local approvals are valid for more than one year (such as allowing a two-year life for an SUP or eighteen months for a site plan).

In addition, the terms of the SUP or the local ordinance may specify a longer term. Special use permits commonly are identified as site-specific vesting plans with validity of at least two years.

How do you void or cancel an SUP?

In the case of revocation for enforcement, G.S. 160D-403 provides that "[t]he local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval." Thus, in order to revoke a special use permit, the local government would need to go through the standard notice and evidentiary hearing process for a quasi-judicial decision. Note that a stop work order, notice of violation, civil penalty, or other enforcement tool can still be used to halt unauthorized work even if the permit is not revoked or a revocation is still in process.

2. Conditions

Training materials stated that a local government "may not impose conditions on an SUP that it doesn't have statutory authority to impose." Where is that statutory language?

Limiting language was already included in 160A and 153A. Part I of S.L. 2019-111, codified at G.S. 160D-705(c), further clarifies those limits: "Conditions and safeguards imposed [on special use permits] shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (h) of this section, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land." With that, the conditions imposed through special use permit conditions must be authorized. Such conditions would include, among other things, zoning limitations that are clearly authorized (limits on use, operations, dimensional standards, etc.), authorized improvements and dedications, and other standards authorized by the statutes.

3. Consent

In a training video there is mention of a requirement that an applicant sign off on conditions imposed as part of a special use permit or conditional district. Does that mean that developers now have to agree to conditions by a Board of Adjustment?

As discussed above for consent to Conditional Districts, it is prudent to get written consent from the petitioner to any conditions imposed for a special use permit or conditional zoning district. This arises from several changes in Part I of S.L. 2019-111 that are now incorporated into Chapter 160D at G.S. 160D-703 & -705 (rules for estoppel, rules for judicial remand, and rules for flexibility of conditions).

With regard to conditional zoning districts it has always been the case that the petitioner must agree to the conditions. Now it must be indicated by written consent. With regard to quasi-judicial special use permits, this is a procedural change. In order to protect the enforceability of the conditions, the local government needs to secure written consent.

Can written review of conditions take the form of a recorded special use permit for quasi-judicial cases? In what form should consent be provided for legislative decision?

While recordation generally may indicate acceptance of the approval and conditions, the new legal standards call for written consent from the petitioner. There is no prescribed form of written consent. This could take multiple forms including, for example, a signature on a decision document listing the conditions, a signature block on the site plan listing conditions, an affidavit from the petitioner consenting to the agreed-upon conditions as reflected in the specific decision, or otherwise.

IX. Administrative Decisions

Minor modification cannot include a change in density. So an administrative modification cannot include any change in the number of lots or units from the plan approved by our Council? Or is there still a minor modification acceptable if specified?

160D-703 and -705 allow administrative minor modification of conditional districts and special use permits, respectively. But, each section states that such administrative modifications must “not involve a change in uses permitted or the density of overall development permitted.” While the presumed intent of this language is that administrative staff should not increase density, the language indicates that administrative staff cannot change density (up or down). Under Chapter 160D, it appears that a change in density will require amendment to the approval through the original approval process (legislative or quasi-judicial).

It is worth noting that a developer can, and they often do, build less than what was authorized without a formal amendment to the permit. In the case of a minor design change (a slight change to road configuration, for example) that limited the development of one lot, a reduction in density may be a side effect of the design minor modification. Note, though, that in some circumstances a particular mix of housing may be essential to an approval, and a reduction of numbers for one particular type may be viewed as a major change.

In addition, a local government and an applicant may be able to add some flexibility if mutually desired through the manner in which the development approval is written. For example, the approval might allow up to 200 single-family detached dwelling units and 200 multi-family dwelling units, but include an overall cap of 300 dwelling units. This would enable the developer to choose what combination of housing types to build in response to the latest market feedback, while still remaining within the local government’s overall density cap.

For minor modifications, can you provide some examples of modification parameters for different types of decisions? How specific do they need to be?

While there is not specific guidance in the statutes, we do have some parameters that have been cited favorably by the North Carolina courts. In the *Butterworth v. Asheville* case, the court struck down a modification that amounted to a variance (based on an “unreasonable hardship” standard) that should have gone through a quasi-judicial process. But, in the decision, the court highlighted some acceptable administrative modifications that included specific, neutral, and objective criteria “such as the limitation of a deviation not in excess of ‘up to ten percent or 24 inches . . . from the approved setback,’ or a reduction of no more than ‘25 percent in the number of parking spaces required[.]’” That case, and administrative modification in general, is discussed more in this blog:

<https://canons.sog.unc.edu/administrative-modifications-subdivision-zoning-ordinances/>

Our local government currently allows certain uses administratively if they meet a list of conditions. Is that still allowed?

Yes, communities may continue to establish use-specific standards that must be met before a use can occur in a given zoning district.

Can a building inspector's decision be appealed to the Board of Adjustment?

No. While G.S. 160D-405 authorizes appeals of staff decisions to be made to the board of adjustment, the language explicitly states: “unless a different board is provided or authorized otherwise by statute.” In Article 11 (the article for building code enforcement), G.S. 160D-1114, -1123, and -1127 provide specific guidance for appeals of building inspector decisions on stop-work orders, unsafe building determinations, and building code enforcement. Those specific building code appeal procedures will trump the general board of adjustment appeal procedures.

What kind of hearing is held to when a public officer charges a violation of the minimum housing code?

G.S. 160D-1203(2) requires that the public officer hold an administrative hearing to gather facts needed to make an administrative decision, and give the owner(s) of the property the right to file an answer to the complaint and give testimony.

X. Vested Rights and Permit Choice

A. Permit Choice

In the sections on choice of permits, can a developer choose to proceed under a mix of old and new ordinances? For example, can the applicant proceed under the original stormwater ordinance, but utilize a revised zoning ordinance?

This provision is new and may be subject to future clarification by the courts or legislature, but the current language indicates that an applicant could mix and match between old rules and new rules. Part I amends G.S. 160A-385, now updated as G.S. 160D-108(e) by S.L. 20202-25, to state that permit choice authorizes the development permit applicant to “choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit.” That language—“the version of each”—seems to allow the applicant to choose different versions for different regulations (old stormwater and new zoning).

What constitutes a six-month delay in proceeding under a permit? If no publicly observable action is taken on a permit, but the developer's experts are working on or studying a plan, can a delay be found?

Part I amends G.S. 143-755(b1) with details about the six-month delay: “If a permit application is placed on hold at the request of the applicant for a period of six consecutive months or more, or the applicant fails to respond to comments or provide additional information reasonably requested by the local or State government for a period of six consecutive months or more, the application review shall be discontinued and the development regulations in effect at the time permit processing is resumed shall be applied to the application.”

How does the permit choice change affect town policies like engineering specs vs. development ordinances?

If the engineering specifications are regulations applicable to a development permit (or development approval), then permit choice will likely apply. Part I amends G.S. 160D-108(e) to state that “where multiple local development permits are required to complete a development project, . . . the development permit applicant [may] choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit.”

How, and to what extent, is it necessary to codify the Vested Rights and Permit Choice provisions of the legislation into the ordinance? Also, is there discretion in the type of process the town can require an applicant to go through in order to pursue or request these?

While a local government may choose not to update its local ordinances to codify the vested rights and permit choice provisions of Chapter 160D as updated by S.L. 2020-25, the updated state statutes include some important policy options that the local government may want to consider. These include specifying what development approvals constitute site-specific development plans, and how long these approvals are valid for, defining when an application is complete and eligible for the provisions of the Permit Choice rule, defining when a development project has “substantially commenced” and therefore maintains its vested right, and setting standards for granting permit extensions to allow for appropriate extensions that would not negatively impact the community.

Local government can determine the details of the process for applicants to request a determination on Vested Rights and Permit Choice, as long as they comply with all applicable statutory requirements. For example, the statutes prohibit local governments from requiring applicants to wait for final action on a proposed ordinance change before advancing their proposed project through the development review process.

B. Vested Rights

Do development permits (including zoning permits) now stay in effect for 1 year?

Chapter 160D sets the default duration of development approvals at one year. However, S.L. 2020-25 clarifies that a local government may specify that some or all designated local approvals are valid for more than one year. In addition, a local government can establish a longer approval period by designating certain development approvals as site-specific vesting plans (see G.S. 160D-108.1).

Who can make a determination on vested rights? Staff, a board, courts, other?

All of the above. A person claiming a common law or statutory vested right may seek an administrative determination by submitting evidence to the zoning administrator or other authorized official and requesting a determination or permit to proceed. One critical question for some vesting determinations is whether work has substantially commenced. This is a fact-specific inquiry. There is no state standard for that determination, but case law concerning common law vested rights provides a useful guide. As with other determinations, the vested rights determination may be appealed to the board of adjustment and then to superior court pursuant to G.S. 160A-405. Such appeals are reviewed de novo.

In lieu of seeking an administrative determination, the person claiming vested rights may bring an original civil action under G.S. 160D-405(c).

Can an owner seek a vesting determination from staff and if they don't like the decision then seek a vesting determination from courts?

Yes. The owner could appeal the staff decision to the board of adjustment or bring an original civil action in court.

Can a preliminary subdivision plat be a site-specific vesting plan?

Yes. As outlined at G.S. 160D-108(d)(3), the local ordinance must specify what counts as a site-specific vesting plan for the jurisdiction. The statute offers the following as permits that might count as site specific vesting plans: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by a local government. If the local ordinance does not specify site specific vesting plans, then any development approval counts as such.

Are building code expiration dates changed as far as 6 months to begin work and 1 year between inspections?

No. The prior law is re-codified to G.S. 160D-1111 and maintains the prior provisions. Building permits expire after six months. After commencement of work, the permit expires after 12 months of discontinuation if work.

XI. Judicial Review

If someone files an original civil action against a jurisdiction and loses, are they responsible for the jurisdiction's attorneys' fees?

No.

In the new section providing for attorney's fees if a municipality does not follow "case law," is there additional guidance? For example, if there are differing opinions by the Court of Appeals and the Supreme Court has not weighed in, what is the risk? What about trial court opinions/decisions?

The new rule on attorneys' fees outlined in Part I requires that the court must award attorneys' fees if the local government "violated a statute or case law setting forth unambiguous limits on its authority." Notably, *unambiguous* is defined to mean "that the limits of authority are not reasonably susceptible to multiple constructions." If there are conflicting opinions from the Court of Appeals, there would be ambiguity in the case law. As such, there would not be mandatory attorneys' fees. If, however, the Court of Appeals or Supreme Court has issued a clear decision squarely deciding a point of law, if a local government acts in direct contradiction to that clear decision, the local government would risk paying attorneys' fees to an individual challenging that rule.

Preliminary
160D Ordinance Changes

1. Change statutory references from 160A to 160D
2. Change conditional uses to special uses
3. Align definitions with state law/regulation: building, dwelling, dwelling unit, bedroom, and sleeping unit. **§153.004**
4. Incorporate new staff conflict of interest standards into ordinance
5. Each board member must take oath of office (160D-309)
 - a. BOA **§153.105**
 - b. PB **§153.085(B)??**
 - c. DRB? **§153.125**
6. NOVs must be issued in conformance with statutory procedures **§153.086 or §153.093**
 - a. 153.086(C)(1) - add “by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity” and/or “the person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud”. 160D-404 (a)
7. Add language regarding revocation of development approvals? 160D-404(f); “the local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing”.
8. MAY allow administrative minor modification of special use permits, other development approvals; if allowed, must define minor modification. Add language?
9. S.L. 2019-79 (160D Chapter 8) – subdivision performance guarantees. Add language to cover the following?
 - a. Type of guarantee at election of the developer.
 - b. Duration of one year unless developer determines longer duration required
10. Add minimum housing language? 160D-1201
11. Adopt comprehensive plan by July 1, 2022 by same procedures as legislative decisions.
12. Define notice requirements for legislative decisions: include properties separated from streets, railroads, other transportation corridors **§153.010 (F)(2)(a)**
13. Zoning map amendments MAY require applicant to notify neighbors and hold community meeting? **§153.010**
14. Planning Board must consider any plan adopted when making a comment on plan consistency
 - a. Add language?
 - b. Land use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation/open space plans.
 - c. Noted as part of the process; not necessarily ordinance update requirement
15. Consistency statement. Governing board statement for text and map amendments: 160D-605 “...the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan”. Add language?

- a. May meet requirement without formal adoption if minutes reflect that the board was fully aware of and considered the plan
16. Adopt a statement of reasonableness for zoning map amendments, in addition to consistency statement. May be used for text amendments. Add language?
- a. Statement may consider, among other factors: size, physical conditions, and other attributes; benefits and detriments to landowners, neighbors; relationship between current actual and permissible development on tract and development that would be permissible under proposed amendment; why action taken was in public interest; any changed conditions warranting the amendment.
 - b. Consistency and reasonableness statements can be approved as single statement.
17. Add language regarding solar panels specifically? 160D-914

STAFF MEMORANDUM

Planning Commission Meeting – March 25, 2021



Non-Mandated Changes to Zoning Ordinance

Introduction

As discussed previously, the Town will be required to make many changes as part of the 160D project. The Commission may also wish to make recommendations to the Board of Commissioners regarding other potential, non-mandated amendments. Town staff has found several instances that need to be changed for clarification purposes. It is prudent to consider potential changes while the ordinances are under review.

Recommendation

My recommendation is that the Commission members review the existing ordinance over the course of the next month and identify any areas in need of clarification or improvement. As we convene next month, these points of clarification will be reviewed in detail that is more specific. Note, this is not necessarily meant to be a substantive review; that substantive ordinance work will occur during the comprehensive plan development portion of this project.

Example

Current Ordinance Verbiage

§ 153.034 LAND DISTURBANCE AND SEDIMENTATION CONTROL.

(A) Land disturbance becoming landscaping. Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval prior to commencing such activity in a public service district, any land-disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

From my review of the Zoning Ordinance and based on the “run-on” nature of this paragraph, I believe the paragraph should read in the following manner (note two changes marked in red).

§ 153.034 LAND DISTURBANCE AND SEDIMENTATION CONTROL.

(A) Land disturbance becoming landscaping. Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval. **P**rior to commencing such activity in a

public service district, any land-disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

The intent of the ordinance seems clear that a landscaping plan is required for any grading or land-disturbing activity on more than 20% of a property (regardless of its zoning). By separating these sentences, it is now clear that public service districts require a greater threshold of landscaping plan review for *any* percentage of property disturbed. This is the type of non-mandated amendment that can be made during this time.

STAFF MEMORANDUM

Planning Commission Meeting – March 25, 2021



Planning Commission Schedule for Review & Implementation

Review Schedule

Over the course of the next few months, the Planning Commission will review the existing ordinance with respect to 160D changes and conformity. The schedule below lays out the proposed meeting dates/times for this work.

Thursday, April 22 - 5pm – Initial Review and Discussion

Thursday, May 27 - 5pm – Final Review and Recommendation to Board of Commissioners

Thursday, June 24 (5pm - if necessary) – Additional Review and Recommendation, if necessary

By May 27, my hope is the Commission is able to offer a final recommendation to the Board of Commissioners in order for them to adopt the revised ordinance at their June 2021 meeting. If this does not work, we will plan to reconvene in June to review the ordinances in an effort to make a final recommendation.