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## **CHAPTER 15 - ADMINISTRATION**

### **15.1 Purpose and Intent.**

In order to establish an orderly process to develop land within the jurisdiction of the Town of Waynesville consistent with standard development practices and terminology it is the purpose of this Chapter to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, Town staff and related agencies, and the Board of Aldermen.

### **15.2 General Provisions and Applicability.**

The provisions of this Chapter shall be applicable to all development activity under the jurisdiction of the Town of Waynesville.

#### **15.2.1 No Construction to Commence without Permit.**

No land shall be used or occupied and no structures shall be erected, moved, extended, or enlarged, nor shall any excavation or filling of any lot for the construction of any building be initiated until the Administrator has issued an appropriate permit which will certify that the proposed work is in conformity with the provisions of this ordinance.

#### **15.2.2 Fee Schedule.**

The Town shall adopt as part of their annual budgeting process, a schedule of fees for application and processing as specified in this Ordinance.

**15.2.3 Permit/Process Type.**

Permit/ Process Type	Section	Permit/Process Type	Reviewing Agency	Public Notification (15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
Certificate of LDS Compliance	15.6.1	Administrative	Admin.	None	Admin.	BOA	12 months	Re-submit
Temporary Use Permit	15.6.2	Administrative	Admin.	None	Admin.	BOA	See 4.6	n/a
Certificate of Occupancy	15.6.3	Administrative	Admin.	None	Admin.	BOA	n/a	n/a
Modification of Dimensional Standards	15.6.4	Administrative	Admin.	None	Admin.	BOA	n/a	n/a
Grading Permit	15.7.1	Administrative	Admin.	None	Admin.	BOA	12 months	Re-submit
Floodplain Development Permit	15.7.2	Administrative	Admin.	None	Admin.	BOA	12 months	Re-submit
Stormwater Permit	15.7.3	Administrative	Admin.	None	Admin.	BOA	12 months	Re-submit
Site Plan/Design Review (Minor)	15.8.1	Administrative	Admin.	None	Admin.	BOA	2 years	Up to 3 years max.*
Site Plan/Design Review (Major)	15.8.2	Administrative	Admin.	1,2,4	Planning Board	Superior Court	2 years	Up to 3 years max.*
Subdivision (Minor)	15.9.1	Administrative	Admin.	None	Admin.	Superior Court**	30 days to file plat	Re-submit
Subdivision (Major)	See 15.9.2, 15.9.3, and 15.9.4							
Subdivision (Major)- Preliminary Plat	15.9.3	Administrative	Admin.	1,2,4	Planning Board	Superior Court**	2 years to final plat	Up to 3 years max.*
Subdivision (Major)- Final Plat	15.9.4	Administrative	Admin.	None	Admin.	Superior Court**	30 days to file plat	Re-submit
Special Use Permit	15.10	Quasi-Judicial	Planning Board	1,2,3,5	Planning Board	Superior Court	2 years	Up to 3 years max.*

<b>Designation of Historic Landmarks/Districts</b>	15.11.1	Legislative	HPC	1,2,3	Board of Aldermen	Superior Court	n/a	n/a
<b>Certificate of Appropriateness (Minor)</b>	15.11.2	Administrative	Admin.	None	Admin.	HPC	12 months	Re-submit
<b>Certificate of Appropriateness (Major)</b>	15.11.3	Quasi-Judicial	Admin.	1,2,3,4	HPC	BOA	12 months	Re-submit
<b>Appeal of Administrative Decision</b>	15.12	Quasi-Judicial	BOA	1,3,4	BOA	Superior Court	30 days to Appeal	n/a
<b>Variance</b>	15.13	Quasi-Judicial	BOA	1,3,4	BOA	Superior Court	30 days to Appeal	n/a
<b>Text Amendment</b>	15.14	Legislative	Planning Board	1,2,3	Board of Aldermen	Superior Court	n/a	n/a
<b>Map Amendment (Rezoning)</b>	15.14	Legislative	Planning Board	1,2,3,4	Board of Aldermen	Superior Court	n/a	n/a
<b>Conditional District</b>	15.15	Legislative	Planning Board	1,2,5	Board of Aldermen	Superior Court	2 years	Up to 3 years max.*

\* See Section 15.16.3

\*\* 160D-1403(b)

Admin—Administrator (14.1) / Board of Aldermen (14.2) / BOA—Board of Adjustment (14.4) / HPC—Historic Preservation Commission (14.5) / Superior Court of North Carolina

#### 15.2.4 Completeness Review.

- A. **Sufficiency to be Determined by Administrator:** All applications shall be sufficient for processing before the Administrator is required to review the application. An application shall be sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of this ordinance.
- B. **Application Information:** The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case.
- C. **Evidence of Authority:** The Director may require an applicant to present evidence of authority to submit the application.
- D. **Application Deadline:** Applications sufficient for processing shall be submitted to the Administrator in accordance with the published calendar schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

( Ord. of 5-27-2014(2) )

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### 15.2.5 Administrative Modifications and Substantial Changes.

- A. **General.** The Administrator can approve administrative minor modifications for conditional districts (160D-703(b)), special use permits (160D-705(c)), and administrative development approvals (160D-403(d)).
- B. **Minor Modification:** A minor administrative modification is a non-substantial change to the approved plan that may include but is not limited to: relocation of a bus stop, moving landscaping around, reduction in the number of parking spaces, reduction in the number of units/lots, building elevation changes, increasing vegetative buffer or the number of trees, etc.
- C. **Unique Property Attributes.** A minor modification may also be allowed to provide relief from a unique physical attribute of the property not known at the time of initial approval. The applicant will need to provide evidence of why relief is needed.
- D. **Substantial Changes.** Any substantial change to a Master Plan or Plat (for major site plans and major subdivisions) as noted below shall be reviewed by the Planning Board. Any substantial change to a Conditional District as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Aldermen as an amended Conditional District:
  - An increase in impervious surface.
  - A change in land use or development type beyond that permitted by the approved Master Plan or Plat.
  - The introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  - Change in density: when there is an increase in the total number of residential dwelling units originally authorized by the approved Master Plan or Plat.
  - An increase of the total floor area of a commercial or industrial classification by more than 10 percent beyond the total floor area last approved by Board of Aldermen.
  - Any decrease in the setbacks greater than 10% from the originally approved Master Plan or Plat.
- E. **Variance.** Minor and major modifications require the project to stay in compliance with the Land Development Standards and any other applicable laws. Some modifications may require a variance procedure as found in Section 15.13 Variances.

### 15.3 Public Notification.

The following procedures have been established for development applications/petitions that require notification of the public prior to consideration and/or approval.

#### 15.3.1 Level 1—Sunshine List.

A notice of the pending application/meeting shall be posted in a prominent location in Town Hall and on the Town's web site and a notice of such meeting shall be mailed, e-mailed, or delivered to each person and media provider that has filed a written request for notice with the Town Clerk. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. Notices shall be distributed by email. Non-media members of this list shall be charged an annual fee (as set in the fee schedule) to receive all notices by mail. Members of this distribution list must renew their participation in this distribution on an annual basis.

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**15.3.2 Level 2—General Notice in Newspaper.**

A notice shall be published in a newspaper of general circulation in the town once a week for two (2) successive weeks. The first publication shall appear no less than ten (10) days or more than twenty-five (25) days prior to the date fixed for the public hearing. The notice shall include the time, place and date of the hearing/meeting and include a description of the property and the nature of the proposal. All Level 2 notices shall also include a Level 1 notice.

**15.3.3 Level 3—Notification to Affected Property Owners.**

The applicant and owners of all property affected by a pending action (e.g., new overlay district) shall be notified of the hearing/meeting by first class mail. Such notification shall be deposited in the mail at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information. Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the Board of Aldermen that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The applicant shall certify to the Board of Aldermen that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. (For Third Party Rezoning: If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply.)

**15.3.4 Level 4—Notification to Adjacent Property Owners.**

The applicant and owners of property within one hundred (100) feet on all sides of the subject property (not including street rights-of-way that are less than 100 feet in width) shall be notified of the hearing/meeting by first class mail. Such notification shall be deposited in the mail at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard.

**15.3.5 Level 5—Notification to Property Owners in Close Proximity.**

The applicant and owners of property within five hundred (500) feet on all sides of the subject property shall be notified of the hearing/meeting by first class mail. Such notification shall be deposited in the mail at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard.

**15.3.6 Level 6—Full Community Notification.**

The town may elect to either make a Level 3 notification or as an alternative elect to publish notice of the hearing/meeting provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail.

**15.3.7 Neighborhood Meeting.**

A neighborhood meeting is mandatory for development projects of 8 or more lots/units or where required prior to any public hearing or review by a board or commission. This meeting will allow the applicant to explain the proposed project and to be informed of the concerns of the neighborhood. When an applicant is required to conduct a neighborhood meeting, a summary of the meeting in the form of meeting notes or

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minutes along with a list and contact information for all attendees shall be submitted to the Planning Board for their review. ( Ord. of 5-27-2014(2) ; Ord. No. O-01-15 , § 11, 1-27-2015)

#### **15.4 Application Requirements.**

The following general standards for various applications have been identified as a means to create a hierarchy of submissions for various permits and procedures. It is the expressed intent of this ordinance to limit the required information to only that data/information that is necessary to render an informed decision by the reviewing agency at a particular stage. In this manner, the town has determined that it is both inappropriate and unnecessary to require a full set of architectural or engineering drawings for review by the various review and decision-making boards unless the application is such that a specific level of detail is necessary (e.g., floodplain/stormwater variance). The Administrator shall determine the requirements of the building permits.

Permit/Process Type	Section	Environmental Survey (15.4.1)	Sketch Plan (15.4.2)	Master Plan (15.4.3)	Construction Documents (15.4.4)	Preliminary Plat (15.4.4)	As-Built Drawings (15.4.5)	Final Plat (15.4.6)	Building Elevations (15.4.7)
Certificate of LDS Compliance	15.6.1		X(a)						
Temporary Use Permit	15.6.2		X(a)						
Certificate of Occupancy	15.6.3	See Administrator							
Modification of Dimensional Standards	15.6.4		X						
Grading Permit	15.7.1	X(a)			X				
Floodplain Development Permit	15.7.2	X(a)			X		X		
Stormwater Permit	15.7.3	X(a)			X		X		
Site Plan/Design Review (Minor)	15.8.1	X(a)			X				X (a)
Site Plan/Design Review (Major)	15.8.2	X		X	X (a)				X (a)
Subdivision (Minor)	15.9.1							X	
Subdivision (Major)—Preliminary Plat	15.9.3	X				X			
Subdivision (Major)—Final Plat	15.9.4						X	X	
Special Use Permit	15.10	X(a)		X					X (a)
Designation of Historic Landmarks/Districts	15.11.1								
Certificate of Appropriateness (Minor)	15.11.2		X (a)						X (a)
Certificate of Appropriateness (Major)	15.11.3		X (a)						X (a)
Appeal of Administrative Decision	15.12	See Administrator							
Variance	15.13	See Administrator							
Text Amendment	15.14	See Administrator							
Map Amendment (Rezoning)	15.14	See Administrator							
Conditional District	15.15	X(a)		X					

X—Required

X(a)—As needed

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#### 15.4.1 Environmental Survey.

An environmental survey is intended to identify natural features, environmentally sensitive areas, forest stands, existing watercourses, and previously documented endangered species habitats, identification of existing trees, understory vegetation, wetlands, perennial streams, floodplains, and topographical features on a site prior to the advanced preparation of development plans. The survey enables the reasonable and practical planned preservation of existing and environmentally sensitive areas. It is the requirement that readily available spatial data, including GIS information, floodplain and floodway designation, wetlands delineation, and topography, be provided in addition to identified natural features.

Environmental Survey **must** include **Natural Resources Inventory**, which is:

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description must include a discussion of soil conditions and soil types, forest cover, geologic features, topography, delineated wetlands, perennial and intermittent streams, native vegetative areas on the site, boundaries of existing predominant vegetation, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

#### 15.4.2 Sketch Plan.

The Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings, civic spaces and other features in relation to existing conditions based upon the size of the tract proposed for development. Sketch Plans shall be reviewed as binding documents for Certificates of Land Development Standards Compliance (Zoning Permits), but shall be used for non-binding review for all other development application processes in which a Sketch Plan is required. All plans shall be submitted at a scale not less than 1 inch = 50 feet, and in digital and paper format, unless otherwise authorized by the Administrator.

#### 15.4.3 Master Plan Requirements.

The Master Plan for a minor or major site plan review is intended to provide a detailed two-dimensional drawing that illustrates all of the required site features including buildings, parking areas, streets locations, street sections, rights-of-way, property lines and setbacks, required or proposed watercourse buffers, site landscaping and lighting (in conceptual form), and all related development calculations (e.g., density, proposed building areas, number of parking spaces, estimate impervious surface) in sufficient detail to show compliance with this ordinance. Detailed engineering drawings such as subsurface utilities (e.g., water and sewer) and on-site stormwater facilities are not required for Master Plans. All plans shall be submitted at a scale not less than 1 inch = 50 feet, and in digital and paper format, unless otherwise authorized by the Administrator.

#### 15.4.4 Construction Documents/Preliminary Plat.

**Construction Documents:** A full and complete set of engineered drawings is necessary for a building permit and construction. All streets, utilities, and stormwater, and other infrastructure systems shall be designed and constructed in accordance with the specifications of the Town's Public Services Department. Construction documents shall be submitted at a scale not less than 1 inch = 50 feet, unless otherwise authorized by the Administrator.

**Preliminary Plat:** The preliminary plat for a subdivision that shall be prepared by a registered surveyor or engineer and shall show the following:

1. The location of existing and platted property lines, streets, buildings, watercourses, railroads, transmission lines, sewers, bridges, culverts, and drainpipes, water mains, city limit lines, and any public utility easements.



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2. Boundaries of tract shown with bearings, distances, and closures.
  3. Wooded areas, wetlands, and any other physical conditions within the site.
  4. Boundary of floodplain, floodway within the site as provided in the most current FIRM.
  5. The location (layout) of any proposed streets, rights-of-way, pavement widths, and approximate grades, sidewalks, greenways, or trails within the subdivision.
  6. The location (layout) of proposed utilities (sewer, water, gas, electricity), showing connections to existing systems or location plans for individual water supply, sewage disposal, storm drainage, location of proposed hydrants, and the like.
  7. Proposed lot lines, lot and block number, approximate dimensions, and acreage for each lot.
  8. Proposed location and acreage of civic space and open areas, if required.
  9. Proposed location and acreage of designated stormwater management areas if required.
  10. Proposed minimum building setback lines.
  11. Title, date, north point, and graphic scale.
  12. Name of owner, surveyor/engineer.
  13. Total number of lots.
  14. Sketch vicinity map showing relationship between subdivision and surrounding area.

A preliminary plat shall be submitted at a scale not less than 1 inch = 200 feet, unless otherwise authorized by the Administrator.

If a project falls under the Town of Waynesville Stormwater Ordinance, **the Stormwater Management System Concept Plan** is required. The Plan can be a written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

#### **15.4.5 As-Built Drawings.**

The "as built" plans shall show the final design specifications for all public infrastructure. The designer of the infrastructure shall certify, under seal, that the installed infrastructure is in compliance with the approved plans and designs and with the requirements of this ordinance. A final inspection and approval by the Administrator shall occur before the release of any performance securities.

#### **15.4.6 Final Plat.**

The final plat shall be prepared by a registered land surveyor, licensed to practice in the State of North Carolina and shall be drawn to a scale no less than 1 inch = 100 feet, and shall meet the requirements of the Haywood County Register of Deeds Office. The final plat shall constitute an accurate survey of the entire phase as shown on the approved preliminary plat and shall include all the relevant notes and certifications.

#### **15.4.7 Building Elevations for Design Review.**

In order to reasonably evaluate the building, it is necessary to submit scaled drawings of each elevation visible from a public street or civic space. These drawings should be in color and should accurately represent the building heights, floor levels, and building materials. In addition, the Administrator may require up to three drawings from different perspectives that will show how the building fits into the context of the block.

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## 15.5 General Requirements for Evidentiary Hearings and Quasi-Judicial Decisions.

A quasi-judicial decision is a decision involving the finding of facts regarding a specific application of an ordinance and that requires the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include, but are not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. In accordance with G.S. 160D-1-2, -1402, decisions are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board. As a result the following standard procedures shall be incorporated as appropriate.

### 15.5.1 Standards for Conduct of Evidentiary Hearings.

An evidentiary hearing is a hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by an ordinance.

- A. **Contact with Decision-Making Board Members:** Contact with any members of a decision-making board prior to the public hearing by any individual regarding the matter is prohibited.
- B. **All Participants to be Sworn In:** All participants in the public hearing shall be duly sworn in prior to the submission of any testimony by the Chair or Clerk to the Board/Commission.
- C. **Competent Evidence Required:** All decisions shall be based on competent, material, and substantial evidence entered in as part of the record. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
  - 1. The use of property in a particular way would affect the value of other property.
  - 2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
  - 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- D. **Cross-Examination Permitted:** The cross-examination of witnesses submitting testimony shall be permitted upon request.

### 15.5.2 Standards for Decisions.

Each decision-making board under the provisions of this section shall ensure that the rights of petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

- A. In violation of constitutional provisions, including those protecting procedural due process rights.
- B. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.
- C. Inconsistent with applicable procedures specified by statute or ordinance.
- D. Affected by other error of law.

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- E. Unsupported by substantial competent evidence in view of the entire record.
  - F. Arbitrary or capricious.

### **15.5.3 Record of Decision.**

- A. The following shall become part of the official record of decision:
  - Documents and exhibits submitted to the decision-making board.
  - Meeting minutes.
- B. **Transcript of Audio/Video of Meetings:** Any party may request, at their expense, a transcript of the proceedings from any recorded audio/video.
- C. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based on 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 Clerk to the Board. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision become effective. The Administrator shall certify that proper notice has been made.

(Ord. of 5-27-2014(2) )

## **15.6 Administrative Permits.**

### **15.6.1 Certificates of Land Development Standards (LDS) Compliance.**

A certificate of land development standards compliance shall be required for the construction or development of any new use within the land development jurisdiction of the Town of Waynesville. In addition to new uses, a certificate of land development standards compliance shall be required for expansions of existing uses, changes of use, and any uses permitted with special conditions (Chapter 3).

- A. **Process Type:** Administrative.
- B. **Pre-Application Procedure:** No meeting is required but applicants are encouraged to call or visit the Administrator prior to requesting a Certificate of Land Development Standards Compliance to determine what information is required for the application.
- C. **Required Application Information:** Sketch Plan (15.4.2) and any other relevant information to show compliance (may be waived by Administrator as appropriate).
- D. **Determination of Conformity:** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the land development standards contained in this ordinance.
- E. **Public Notification:** None required.
- F. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
- G. **Permit Validity:** Upon the approval of the Certificate of Land Development Standards Compliance, the applicant shall have one (1) year to obtain a building permit or otherwise begin the permitted use. Failure to secure building permits for the permitted work within this time shall

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render the compliance void. Upon issuance of a building permit, the certificate of land development standards compliance shall remain valid as long as a valid building permit exists for the project. Any change to the approved plans that has not been authorized by the Administrator shall invalidate the certificate of land development standards compliance and any subsequent building permits.

- H. **Permit Extension:** Renewal of an expired certificate shall require the same application procedure as the initial permit. No further development activity shall be performed until the new certificate is issued.
- I. **Limitation on Administrative Discretion:** The Administrator has no discretion to modify any requirements found in Chapter 3.

#### 15.6.2 Temporary Use Permit.

A Temporary Use Permit is required for uses permitted in accordance with Section 4.6 prior to the commencement of any use or activity.

- A. **Process Types:** Administrative.
- B. **Pre-Application Procedure:** No meeting is required but applicants are encouraged to call or visit the Administrator prior to requesting a Temporary Use Permit to determine what information is required for the application.
- C. **Required Application Information:** Sketch Plan (15.4.2) and any other relevant information to show compliance (may be waived by Administrator as appropriate).
- D. **Determination of Conformity:** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve, approve it with conditions, or deny it based on compliance with the land development standards contained in this ordinance.
- E. **Public Notification:** None required.
- F. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
- G. **Permit Validity:** See Section 4.6.
- H. **Permit Extension:** See Section 4.6.

#### 15.6.3 Certificate of Occupancy.

Issuance of a certificate of occupancy shall be required prior to the occupancy or use of any new construction and re-occupancy or re-use of any renovation/rehabilitation in the Town of Waynesville. Certificates of occupancy insure that a completed development project has complied with all the applicable requirements of the North Carolina Building Code and all other applicable federal, state and local regulations. Certificates of occupancy must be signed by building inspections staff and the Administrator to certify compliance with applicable regulations.

- A. **Process Type:** Administrative.
- B. **Pre-Application Procedure:** Not required.
- C. **Required Application Information:** None.
- D. **Determination of Conformity:** Upon receipt of the request for a certificate of occupancy, the building official and Administrator shall inspect the project site for compliance with the approved site plan or subdivision plat and the applicable standards of this chapter and the North Carolina State Building Code. The applicant shall be notified of any deficiencies in the building(s) or site that prevents the issuance of the certificate of occupancy or the certificate shall be issued.

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- E. **Public Notification:** None required.
  - F. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
  - G. **Permit Validity:** n/a.
  - H. **Permit Extension:** n/a.

#### 15.6.4 Administrative Modification of Dimensional Standards.

In keeping with the purpose of these regulations to accomplish coordinated, balanced, and harmonious development in a manner which will best promote the health, safety, and general welfare while avoiding undue and unnecessary hardships, on approval by the Town Manager, the Administrator is authorized to approve certain requests for deviation from dimensional standards.

- A. **Process Types:** Administrative.
- B. **Conditions for Modification of Standards:** Requested for the deviation from required setbacks set forth in this Ordinance by up to 10 percent of the required setbacks or 24 inches, whichever is greater, may be considered upon determination that one or more of the following conditions exists:
  1. There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
  2. The part of the proposed structure that would encroach into the minimum setback area is less than 50% of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).
  3. The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.
  4. The proposed structure will allow the preservation of significant existing vegetation.
  5. A good faith error was made in the location of a building foundation not exceeding 1 foot due to either field construction or survey error.
- C. **All Decisions to be in Writing:** Prior to rendering a decision, the Administrator shall notify the Town Manager in writing of any minor deviation for approval.
- D. **Administrative Authority is Permissive Only:** The authority given to the Administrator to grant such modification shall be construed to be permissive and not mandatory and the Administrator may decline to make such modification. In the event this occurs, the applicant shall have the right to submit an application to the Board of Adjustment to grant a variance to these requirements in accordance with Section 15.12. Nothing in this section shall be construed as limiting the Administrator's duties and rights under this Chapter, or an applicant's right to appeal the decision of the Administrator to the Zoning Board of Adjustment.

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## 15.7 Environmental Protection Permits.

### 15.7.1 Grading Permit (Sedimentation and Erosion Control).

To assure that land-disturbing activity undertaken in the Town of Waynesville does not result in accelerated erosion and sedimentation, no such land-disturbing activity shall take place until plans for controlling erosion associated with the activity have been reviewed and approved in accordance with the procedures set forth below.

- A. **Process Type:** Administrative.
- B. **Permit Required Before Any Land-Disturbing Activity:** No such land-disturbing activity shall take place until plans for controlling erosion associated with the activity have been reviewed and approved in accordance with the procedures set forth below.
- C. **Pre-Application Procedure:** Prior to applying for a grading permit and submitting plans, the applicant is required to meet with the Administrator. The purpose of this meeting is to discuss the project, the proposed land development strategies, and to answer questions of the applicant regarding the application and schedules for review.
- D. **Required Application Information:** Environmental Survey (15.4.1) and Construction Documents (15.4.4) (may be waived by Administrator as appropriate).
- E. **Determination of Conformity:** Following submittal of the application and accompanying data, the information shall be reviewed by the Administrator for compliance with the requirements of this ordinance. Provided the application is complete, applications shall be reviewed and acted upon by the staff and notice given the applicant within thirty (30) days of receipt of the application.
- F. **Public Notification:** None required.
- G. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12 within fifteen (15) days after receipt of written notice of disapproval or conditional approval that is unsatisfactory to the applicant. Appeals from the decision of the Board of Adjustment may be taken to the North Carolina Sedimentation Control Commission as provided in NCGS 113A-61(c).
- H. **Permit Validity:** When work under a grading permit is substantially commenced within one (1) year following the date of issuance of the grading permit, the grading permit shall be deemed expired.
- I. **Permit Extension:** Renewal of an expired grading permit shall require the same application procedure as the initial permit. No further grading is to be performed until the new permit is issued.

### 15.7.2 Floodplain Development Permits.

No approval shall be granted for construction in an area designated as a flood hazard area by the by the flood insurance rate maps, as provided by the Federal Emergency Management Agency without the issuance of a floodplain development permit.

- A. **Process Types:** Administrative.
- B. **Permit Required Before Any Land-Disturbing Activity:** No such land-disturbing activity shall take place in areas designated as Special Flood Hazard areas until plans associated with the activity have been reviewed and approved in accordance with the procedures set forth below.

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- C. **Pre-Application Procedure:** Applicants are encouraged to meet with the Administrator prior to submitting an application for development in the designated flood hazard area. The purpose of this meeting is to discuss the project, the proposed design strategies, and to answer questions of the applicant regarding the application and schedules for review.
  - D. **Required Application Information:** Environmental Survey (15.4.1) and Construction Documents (15.4.4) (may be waived by Administrator as appropriate).
  - E. **Determination of Conformity:** Following submittal of the application and accompanying data, the information shall be reviewed by the Administrator for compliance with the requirements of this ordinance. Provided the application is complete, applications shall be reviewed and acted upon by the staff and notice given the applicant within thirty (30) days of receipt of the application.
  - F. **Public Notification:** None required.
  - G. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
  - H. **Permit Validity:** Floodplain development permits shall be valid for one (1) year. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.
  - I. **Permit Extension:** Renewal of an expired floodplain development permit shall require the same application procedure as the initial permit. No further development activity is to be performed until the new permit is issued.

### 15.7.3 Stormwater Permits.

To ensure that development in the town does not result in increased stormwater runoff which adversely impacts adjacent property, no development to which this ordinance applies, shall be commenced without the issuance of a Stormwater Permit, which is a part of the building permit, unless specified otherwise by the Administrator.

- A. **Process Types:** Administrative.
- B. **Pre-Application Procedure:** Applicants are encouraged to meet with the Administrator prior to submitting an application for development. This pre-submittal meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:
  - Existing conditions/proposed site plans
  - Natural resources inventory
  - Stormwater management system concept plan
- C. **Required Application Information:** Environmental Survey, which **must** include Natural Resources Inventory (15.4.1) and Construction Documents that **must** include Stormwater Management System Concept Plan (15.4.4) (may be waived by Administrator as appropriate).
- D. **Determination of Conformity:** If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Administrator shall approve the application. The Administrator may impose conditions of approval as needed to ensure compliance with the

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Stormwater Ordinance and this section. The conditions shall be included as part of the approval. If the Administrator finds that the application fails to comply with the standards of this section, the Administrator shall notify the applicant in writing, and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application. A complete revised application shall be reviewed by the Administrator after its re-submittal and shall be approved, approved with conditions or disapproved. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required.

- E. **As-Built Plans and Final Approval:** Upon completion of a project and before a certificate of occupancy is granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.
- F. **Public Notification:** None required.
- G. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
- H. **Permit Validity:** When a stormwater permit is issued in association with a project requiring a building permit, the stormwater permit shall expire upon the expiration or revocation of the building permit. When a stormwater permit is issued for a project that does not require a building permit, the stormwater permit shall expire if work is not initiated within twelve (12) months of the date of issuance of the permit.
- I. **Permit Extension:** Renewal of an expired stormwater permit shall require the same application procedure as the initial permit. No further development activity is to be performed until the new permit is issued.

## 15.8 Site Plans/Design Review.

### 15.8.1 Site Plan/Design Review (Minor).

- A. **Applicability:**
  - Single-family and duplexes
  - Multi-Family Development with less than 8 units
  - All Districts Except BD: Non-residential development or expansion less than 10,000 square feet in gross floor area
  - BD District: All development less than 6,000 square feet in gross floor area (not in a Historic Overlay District)
- B. **Process Types:** Administrative.



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- C. **Pre-Application Procedure:** No meeting is required but applicants are encouraged to call or visit the Administrator to determine what information is required for the application.
  - D. **Required Application Information:** Environmental Survey (15.4.1), Construction Documents (15.4.4) and Building Elevations for Design Review (15.4.6) (may be waived by Administrator as appropriate).
  - E. **Determination of Compliance:** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the land development standards contained in this ordinance.
  - F. **Public Notification:** None required.
  - G. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
  - H. **Permit Validity:** Upon the approval of the Minor Site Plan, the applicant shall have two (2) years to obtain a building permit. Failure to secure building permits for the permitted work within this time shall render the compliance void. Any change to the approved plans that has not been authorized by the Administrator shall invalidate the Minor Site Plan and any subsequent building permits.
  - I. **Permit Extension:** Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to: the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval. No further development activity shall be performed until the extension approval is issued.

#### **15.8.2 Site Plan/Design Review (Major).**

- A. **Applicability:**
  - All Districts Except BD: Non-residential development or expansion 10,000 square feet or greater in gross floor area
  - BD District: All development 6,000 square feet or greater in gross floor area (not in a Historic Overlay District - already covered by 15.11)
  - All mixed-use or non-residential projects in the RL, RM, NR, or UR Districts
  - Multi-Family Development with 8 or more units
- B. **Process Types:** Administrative.
- C. **Pre-Application Procedure:** It is required that every applicant for a Major Site Plan meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. It is recommended that the applicant provide a sketch plan (15.4.2) to the Administrator prior to or at the pre-application conference. The provision of a sketch plan will allow the Administrator an opportunity to review the proposal before the applicant expends funds on the preparation of a detailed Site Plan.
- D. **Required Application Information:** Environmental Survey (15.4.1), Master Plan (15.4.3) and Building Elevations (15.4.7) (may be waived by Administrator as appropriate) - Construction Documents (15.4.4) shall be submitted after Planning Board approval.

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- E. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.
  - F. **Public Notification:** Level 1, 2 and 4.
  - G. **Neighborhood Meeting (15.3.7):** See section 15.3.7.
  - H. **Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
  - I. **Decisions/Findings of Fact:** Following the public hearing the Planning Board may approve, deny, or approve with conditions the application for a Major Site Plan. No Major Site Plan shall be approved unless the Planning Board finds each of the following facts to be true:
    - 1. The plan is consistent with the adopted plans and policies of the Town;
    - 2. The plan complies with all applicable requirements of this ordinance; and
    - 3. The plan has infrastructure as required by the ordinance to support the plan as proposed;
  - J. **Review Period by Planning Board:** Applications for Major Site Plans shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed approved and a permit shall be issued. An extension of time may be granted by mutual consent of the Planning Board and the applicant.
  - K. **Appeals:** An appeal from the decision of the Planning Board regarding a Major Site Plan request may be made by an aggrieved party and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court no later than thirty (30) days after the applicant receives the written copy of the decision of the Planning Board.
  - L. **Permit Validity:** Upon the approval of the Major Site Plan, the applicant shall have two (2) years to obtain a building permit.
  - M. **Permit Extension:** Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval. No further development activity shall be performed until the new approval is issued.

## 15.9 Subdivisions.

### 15.9.1 Minor Subdivisions.

The minor subdivision review process is required for those divisions of land into seven (7) or fewer lots which do not require dedication of public utilities and/or public streets.

- A. **Process Types:** Administrative.
- B. **Pre-Application Procedure:** It is required that every applicant for a Minor Subdivision meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. It is recommended that the applicant provide a sketch plan (15.4.2) to the

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Administrator prior to or at the pre-application conference. The provision of a sketch plan will allow the Administrator an opportunity to review the proposal before the applicant expends funds on the preparation of a detailed Minor Subdivision Plan.

- C. **Required Application Information:** Final Plat (15.4.6) by a registered land surveyor.
- D. **Determination of Compliance:** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the land development standards contained in this ordinance within thirty (30) working days of its submittal.
- E. **Public Notification:** None required.
- F. **Appeals:** Notwithstanding the provisions of section 15.12.2 below, when an applicant disagrees with the decision of the Administrator, the applicant may, within thirty (30) days after the receipt of the decision in writing, request that the application be forwarded to the Planning Board for determination at the next regularly scheduled meeting of the Board. The request must be made in writing and delivered to the Town Clerk. Appeals of the decision of the Planning Board shall be made to the Superior Court of Haywood County. Such an appeal must be made in writing within thirty (30) days of the receipt of the decision by the property owner.
- G. **Permit Validity:** Upon approval of a plat for a minor subdivision, said plat shall be signed in the appropriate place by the Administrator and the owner(s). Minor subdivision plats that have been granted approval shall be recorded within thirty (30) days following approval or the approval becomes invalid. A plat for minor subdivision must be recorded in the office of the Register of Deeds of Haywood County. No lots shall be sold prior to approval by the town and the recording of the plat for the subdivision.
- H. **Permit Extension:** None.
- I. The minor subdivision process is not intended to permit the avoidance of improvements, infrastructure or other standards imposed for major subdivisions. Therefore, when an application for minor subdivision approval is made by an applicant who has previously obtained minor subdivision approval for an adjacent parcel of land in the previous two years, the application shall be treated as an application for, and conform to the requirements of, a major subdivision set forth below.

#### 15.9.2 Major Subdivisions.

The major subdivision review process is required for those divisions of land into eight (8) or more lots or which require dedication of public utilities and/or public streets.

- A. **Process Types:** Administrative.
- B. **Pre-Application Procedure:** It is required that every applicant for a Major Subdivision meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. It is recommended that the applicant provide a sketch plan (15.4.2) and Environmental Survey (15.4.1) to the Administrator prior to or at the pre-application conference. The provision of a sketch plan will allow the Administrator an opportunity to review the proposal before the applicant expends funds on the preparation of a detailed Subdivision Plan.
- C. **Required Application Information:** Environmental Survey (15.4.1) and Preliminary Plat.
- D. **Preliminary Plat Approval:** The Planning Board shall review and either approve or deny the major subdivision applicant's preliminary plat in accordance with the procedure set forth in section

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15.9.3 below. Engineering, including a compliant Stormwater Plan (12.5) and Construction Documents (15.4.4) shall be submitted after Planning Board review.

- E. **Final Plat:** Once all infrastructure improvements are installed or financially guaranteed as required by Section 6.13 below, the Final Plat shall be presented for approval in accordance with Section 15.9.4 below.

**15.9.3 Preliminary Plats for Major Subdivision.**

- A. **Process Types:** Administrative.
- B. **Permit Required Before Any Land-Disturbing Activity:** No land-disturbing activity shall take place until a Preliminary Plat has been approved.
- C. **Required Application Information:** Environmental Survey (15.4.1) and Preliminary Plat (15.4.4) prepared by a registered land surveyor, licensed landscape architect or licensed engineer.
- D. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.
- E. **Public Notification:** None required.
- F. **Neighborhood Meeting (15.3.7):** See section 15.3.7.
- G. **Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
- H. **Decisions/Findings of Fact:** Following the public hearing the board may approve, deny or approve with conditions the application for a Major Subdivision. No Major Subdivision shall be approved unless the commission finds each of the following facts to be true:
  - 1. The plan is consistent with the adopted plans and policies of the Town;
  - 2. The plan complies with all applicable requirements of this ordinance; and
  - 3. The plan has infrastructure as required by the ordinance to support the plan as proposed.
- I. **Substantial Changes:** Substantial Changes from the approved preliminary plat shall require additional review by the Planning Board. Substantial changes shall include redesign of streets, increasing the number of lots, altering the design of more than twenty (20) percent of the lots, and/or reducing the number of lots by twenty (20) percent. All other changes shall be considered minor modifications subject to review by the Administrator.
- J. **Appeals.** An appeal of the decision to approve or deny a Preliminary Plat or a substantial change to an approved Preliminary Plat may be made by an aggrieved party to the Superior Court of Haywood County no later than thirty (30) days after the applicant receives the written copy of the decision.
- K. **Permit Validity:** Unless substantial work has commenced or a building permit has been obtained, approval of a preliminary plat expires two (2) years from the date such approval was granted.
- L. **Permit Extension:** The applicant may apply for an extension of the approval period. The Planning Board may approve an extension of the time required to file the final plat up to a total of five (5) years from the date the initial application was approved where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other

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considerations. No further development activity shall be performed until the new approval is issued.

#### 15.9.4 Final Plat for Major Subdivision.

- A. **Process Types:** Administrative.
- B. **Improvements to Be Installed or Guaranteed:** All required infrastructure improvements shall be either installed or financially guaranteed in accordance with Section 6.12.
- C. **As-Builts Required:** Upon completion of a project, and before a Final Plat shall be granted (unless financially guaranteed), the applicant shall certify that the completed project is in accordance with the approved plans and designs, and shall submit actual "as built" plans (15.4.6) for all public infrastructure after final construction is completed. No certificate of occupancy shall be granted without completed as-built plans.
- D. **Required Application Information:** Final Plat (15.4.6) by a registered land surveyor.
- E. **Determination of Conformity:** The Final Plat of a major subdivision shall be reviewed by the Administrator for compliance with the requirements of this chapter and for conformity with the approved Preliminary Plat. Provided the application is complete, applications shall be reviewed and acted upon by the staff and notice given the applicant within ten (10) days of receipt of the Final Plat. If the Administrator has not completed review in this time period, the applicant may seek final approval from the Board of Aldermen at their next meeting.
- F. **Public Notification:** None required.
- G. **Appeals:** An appeal of the decision to approve or deny a Final Plat or to approve or deny a substantial change to an approved Preliminary Plat may be made by an aggrieved party to the Superior Court of Haywood County no later than thirty (30) days after the applicant receives the written copy of the decision.
- H. **Effect of Approval:** The approval of a Final Plat does not constitute acceptance for maintenance or other purposes of improvements in rights-of-way, such as utility lines, street paving, drainage facilities or sidewalks. Such improvements, when located within the corporate limits of the Town of Waynesville, may be accepted only by action of the town following inspection and approval. Land designated as public open space or a park on a plat shall be considered to be offered for dedication, but not accepted until the Board of Aldermen has by expressed action done so.
- I. **Phasing:** Final plats for phased subdivisions shall be recorded in accordance with the schedule presented by the applicant during the Major Subdivision Plan/Preliminary Plat approval.
- J. **Permit Validity:** Final plats for major subdivisions must be recorded within thirty (30) days following approval or the approval becomes invalid. No lots shall be sold prior to approval by the town and recording of the Final Plat for the subdivision.
- K. **Permit Extension:** Re-submit.

#### 15.9.5 Alternative Subdivision Designs.

- Cottage Development and Conservation Subdivision are alternative subdivision designs that must follow all applicable review processes and standards of the Waynesville Land Development Standards.
- They shall be exempt from minimum lot size requirements. Under no circumstances, however, shall the gross density of a conservation or cottage subdivision exceed the density of the district in which it is located.
- Setbacks for structures in a cottage or conservation subdivision shall be measured along the perimeter of the parent tract, and the setbacks between the structures shall be guided by the NC Building and Fire Codes.

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**A. Cottage Development.**

**Cottage** - a detached single-family or two-family residence constructed to specific design standards and arranged around common open space as a part of a cottage development.

**Cottage Development**- a development of 3 or more structures (commercial or dwellings of single family or duplex design) arranged with common open space, often with shared parking, driveways, and other amenities. A cottage development may also include commercial and/or mixed-use units as a part of Planned Unit Development (PUD), as permitted by the zoning district.

**The following standards apply:**

1. The courtyard shall enhance the aesthetics and character of the development through the provision of consolidated and easily accessible open space.
2. Cottages may be built on individual lots or have a common form of ownership.
3. The term cottage **does not** include manufactured, tiny homes on wheels, campers, RVs, or other recreational vehicles. Manufactured home parks or RV parks are not considered cottage developments for the purpose of this ordinance. All cottages must be built to the NC Building Code standards.
4. Cottages are subject to all standards of the Town of Waynesville Land Development Standards based on the size of the development (stormwater, parking, landscaping, lights, civic space, etc.) and all standards of the zoning district (building height, density, etc.).
5. Minimum size of foundation, rooms, bathrooms, ceiling height, separation between buildings, and other building dimensions are subject to applicable NC Building and Fire Codes.

**B. Conservation Subdivision Development.**

**Purpose** The purpose and intent of this section is to provide developers with an option of additional development flexibility to build on smaller lots when additional open space set- asides are provided in order to protect existing topography, mountain ecology, and scenic views of the Town of Waynesville.

**Authority:** For the purpose of this ordinance, the Administrator means the Development Services Director or his/her designee.

**Applicability** The conservation subdivision standards shall apply as an option to all divisions of a parent parcel of 2 acres or more.

**Development Standards:**

1. **Conserved Areas and Native Vegetation.**
  - a) To qualify as a Conservation Subdivision under these provisions, at least 50% of the total acreage of the site shall be set aside as an open space or preserve. Impervious surfaces and areas designated for active recreation, such as tennis courts, volleyball courts, ball fields, golf courses, etc., must be excluded from the minimum 50%.
  - b) **Native plants existing on the pre-development shall be minimally disturbed**, and native plants occurring naturally on the site shall be also incorporated into post-construction landscaping of the common areas. Post-construction landscaping shall be consistent with the preserved areas. See requirements for Environmental Survey and Natural Resources Inventory in LDS Section 15.4.1.

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## 2. Priority Conservation Areas:

- a) The Special Flood Hazard Area (SHFA, including 100-year floodplain and floodway) and riparian zones of streams;
- b) Existing landslide tracks;
- c) Slopes over 30% in a contiguous area;
- d) Wetlands that meet the definition used by the Army Corps of Engineers, pursuant to the Clean Water Act;
- e) Archaeological and historic sites;
- f) Boundaries of public lands;
- g) Scenic views;
- h) Populations of endangered or threatened species.

## 3. Ownership of Conservation Areas.

Open spaces shall be owned and managed by a land trust or homeowner's association, subject to compliance with the provisions of this section and the following requirements:

- a) Unless maintenance is assigned by a conservation or land trust, the homeowner's association shall be responsible for maintenance and taxes on the open space within the Conservation Subdivision.
- b) Ownership, restrictive covenants, and maintenance of the conservation areas must be submitted to the Administrator for approval, then referenced on the final plat and recorded in the Haywood County Register of Deeds after final approval of the subdivision. Maintenance of the conservation areas may include but is not limited to invasive weed cutting, removal of trash, debris, dead tree, plant materials and brush.
- c) Certain lands designated as conservation areas, such as greenways and preserves, may be dedicated to the Town. If offered by the landowner, the Board of Aldermen shall determine whether that land is appropriate for dedication to the Town.
- d) The homeowner's association shall not be dissolved, unless the conservation area is first deeded to another entity, such as land trust.

## 4. Conservation and Development Plan.

Prior to review of a conservation subdivision by the Planning Board, an applicant shall have a conservation and development plan for the land reviewed by the Administrator for completeness in accordance with the following steps:

**Step 1- Site analysis map.** The applicant shall prepare a site analysis map that analyzes existing conditions both on the land proposed for the development and land within 500 feet of the perimeter of the site and submit the site analysis map to the Administrator. It is the intent of this section that the information required to be presented in the site analysis map be produced from existing sources and maps to ensure the process is economical for the applicant.

Site analysis map shall include the following information as well as any additional information necessary for site assessment and requested by the Administrator:

- Topography (including steep slopes)
- Wetlands
- Predominant vegetation
- Soil types
- Streams

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The developer may, although not required at this stage of the pre-application process, submit a full Environmental Survey as specified in section 15.4.1, as it will be required later in the process for a major subdivision.

**Step 2- Site inspection.** After receipt of the site analysis map, the Administrator shall schedule a site inspection of the land with the applicant and others that the Administrator deems necessary (such as emergency services and public services). The applicant or the applicant's representative shall attend the site inspection with Town staff members. The purpose of this site visit is to:

- a) Familiarize the staff with the existing site conditions and features of the site;
- b) Identify potential site development issues, including the best location for the development;
- c) Provide an opportunity to discuss site development concepts, including the general layout of conservation areas and potential locations for proposed structures, utilities, streets, and other development features. Comments made by staff during the site inspection shall be interpreted as only being suggestive. No official decision on the conservation and development plan shall be made during the site inspection.

**Step 3- Conservation and development plan.** Based on the site analysis map and the information obtained during the site inspection, the applicant shall prepare a conservation and development plan. The conservation and development plan shall include the following:

- a) The site analysis map;
- b) A conservation and development areas map that depicts areas intended for conservation and areas intended for development; and
- c) A preliminary site plan, showing proposed site development, including the approximate locations of utilities, streets, other development features, buffers (if applicable), and lot lines in the proposed development area;
- d) Environmental Survey, which must include Natural Resources Inventory, as specified in section 15.4.1.
- e) A preliminary stormwater analysis indicating pre-development and proposed post-development pervious to impervious ratios and stormwater management areas.

**Step 4- Technical review by Town Staff.**

**Step 5- Review & decision by the Administrator.** If a conservation and development plan application is approved for completeness by the Administrator, the applicant shall file an application for a subdivision approval.

## **15.10 Special Use Permits (SUP).**

Special uses are land uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district. Applications requiring a Special Use Permit are noted in Section 2.4 and Chapter 3.

### **15.10.1 Application Procedures.**

- A. **Process Type:** Quasi-Judicial (See also 15.4).



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- B. **Pre-Application Meeting:** Every applicant for a Special Use Permit is required to meet with the Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
  - C. **Required Application Information:** An application for a Special Use Permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Each application for a Special Use Permit shall contain, at a minimum, an Environmental Survey (15.4.1), Master Plan (15.4.3) and Building Elevations for Design Review (15.4.7) (may be waived by Administrator as appropriate). Other information necessary to show that the use or structure complies with the standards set forth in this ordinance shall also be provided.
  - D. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.

#### 15.10.2 Review Process.

- A. **Public Notification:** Level 1, 2 and 5.
- B. **Neighborhood Meeting (15.3.7):** See section 15.3.7.
- C. **Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
- D. **Planning Board Review:** Following the public hearing the Planning Board may approve, deny or approve with conditions the application for a Special Use Permit within thirty-two (32) days of the date of the public hearing.
- E. **Findings of Fact:** In addition to determining that the application meets all other requirements of this ordinance (no variances are permitted) the Planning Board must find the following:
  1. The proposed special use conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site.
  2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.
  3. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use.
  4. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
  5. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the land development district.
  6. The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety or general welfare.
- F. **Additional Conditions:** The Planning Board may place conditions on the use as part of the approval to assure that mitigation measures are associated with the use. The conditions shall become part of the Special Use Permit approval and shall be included in the final site plan application.

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### 15.10.3 Effect of Decisions.

- A. **Appeals:** An appeal from the decision of the Planning Board regarding a Special Use Permit application may be made by an aggrieved party and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition to the Superior County shall be filed with the court no later than thirty (30) days after the applicant receives the written copy of the decision of the Planning Board.
- B. **Permit Validity:** two (2) years to obtain building permit. Such permit shall remain valid as long as a valid building permit exists for the project.
- C. **Permit Extension:** The applicant may apply for an extension of the approval period. The Planning Board may approve an extension of the time required to file the final plat up to a total of five (5) years from the date the initial application was approved where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. No further development activity shall be performed until the new approval is issued.

### 15.11 Historic Preservation.

#### 15.11.1 Designation of Historic Landmarks/Historic Districts.

Upon complying with the required landmark designation procedures set forth herein, the Board of Aldermen may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, pre-historical, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

- A. **Process Type:** Legislative.
- B. **Inventory of Possible Landmarks:** As a guide for the identification and evaluation of landmarks, the Historic Preservation Commission shall maintain an inventory of properties of historical, architectural, pre-historical and cultural significance within the land development jurisdiction of the town.
- C. **Creation of Ordinance for Designation:**
  - 1. Once a potential landmark has been identified, the Administrator shall draft an ordinance for the designation of said property as an official historic landmark.
  - 2. The ordinance shall describe the property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or pre-historical value, including the land area of the property so designated and any other information the governing board deems necessary.
  - 3. For each building, structure, site, area or object so designated as a landmark, the ordinance shall require that the waiting period set forth in this ordinance be observed prior to its demolition.
- D. **Opportunity for Comment from the State of North Carolina:**
  - 1. Once the ordinance is drafted, the Historic Preservation Commission shall make or cause to be made an investigation and report on the historic, architectural, pre-historical, educational or cultural significance of each building, structure, site, area or object

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proposed for designation or acquisition. Such report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

2. The Department of Cultural Resources, acting through the State Historic Preservation Officer, or his or her designee, shall either upon request of the Department or at the initiative of the commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark. All comments will be provided in writing. If the department does not submit its comments to the Historic Preservation Commission within thirty (30) days following receipt by the department of the report, the commission and the Board of Aldermen shall be relieved of any responsibility to consider such comments.

E. **Public Notification:** Level 1, 2 and 3.

F. **Neighborhood Meeting (15.3.7):** Optional.

G. **Public Hearing and Decision by the Board of Aldermen:** The Historic Preservation Commission and the Board of Aldermen shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Following the public hearing(s), the Board of Aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

H. **Post-Adoption Procedures:**

1. Upon adoption of the ordinance the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits.
2. One copy of the ordinance and all amendments thereto shall be filed by the Administrator in the office of the Register of Deeds of Haywood County.
3. Each landmark shall be indexed according to the name of the owner of the property in the grantor and grantee indexes in the Register of Deeds office and the commission shall pay a reasonable fee for filing and indexing.
4. A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Town Clerk and be made available for public inspection at any reasonable time.
5. A third copy of the ordinance and any amendments thereto shall be given to the building inspector for the Town.
6. The fact that a building, structure, site or area has been designated a landmark shall be clearly indicated on all tax maps maintained by Haywood County for such period as the designation remains in effect.
7. Upon the adoption of the landmark ordinance or any amendments thereto, it is the duty of the Historic Preservation Commission to give notice thereof to the tax supervisor of Haywood County.
8. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.
9. A suitable sign for each property designated as a landmark may be placed on the property at the owner's consent; otherwise, a sign may be placed on a nearby right-of-way.

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**15.11.2 Certification of Appropriateness—Minor Works for Local Landmarks and Local Historic Districts.**

- A. **Applicability:** Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the local landmark property and/or locally designated historic district as a whole.
- B. **Process Type:** Administrative.
- C. **Pre-Application Meeting:** No pre-application conference is required prior to applying for a certificate of appropriateness. Applicants are strongly encouraged to call or visit the Administrator prior to submitting an application to determine what information is required for the application.
- D. **Required Application Information:** None.
- E. **Determination of Conformity:** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the standards contained in this chapter and in any applicable Design Review Guidelines or other standards that may apply.
- F. **Public Notification:** None required.
- G. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Historic Preservation Commission 15.11.3 below.
- H. **Reserved.**
- I. **Permit Validity:** one (1) year.
- J. **Permit Extension:** Re-submit.

**15.11.3 Certification of Appropriateness- Major Works for Local Landmarks and Local Historic Districts.**

- A. **Process Type:** Quasi-Judicial (See also 15.4).
- B. **Pre-Application Meeting:** It shall be the policy of the Historic Preservation Commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a sub-committee of the commission shall be available to meet with persons involved in planned or pending applications in order to advise them informally, at an early stage in the development process. This advice shall be on the commission's Design Review Guidelines or other standards that may apply, the nature of the area where the proposed project will take place and other relevant factors. In giving such advice, the members of the sub-committee, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any member of the sub-committee at such an informal meeting shall not be considered official or binding upon the commission.
- C. **Required Application Information:** Each application for a certificate of appropriateness shall contain all information required on the application. Other information necessary to show that the use or structure complies with the standards set forth in this ordinance shall also be provided.
- D. **Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Historic Preservation Commission.
- E. **Public Notification:** Level 1, 2 and 4.

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- F. **Public Hearing:** The Historic Preservation Commission shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
- G. **Commission Review:** Following the public hearing the commission may approve, deny or approve with conditions the application for a Certificate of Appropriateness. No Certificate of Appropriateness shall be granted unless the commission finds that the application complies with the principles of the Design Review Guidelines adopted by the commission for review of changes and new construction.
- H. **Findings of Fact:** The action on an application must be supported by specific findings of fact indicating the extent to which the application is or is not congruous with the special character of the historic district or landmark.
- I. **Delay in Demolition of Local Landmarks and Buildings within Local Historic Districts:** An application for a certificate of appropriateness authorizing the demolition, removal or destruction of a designated local landmark or a building, structure or site within a local historic district may not be denied except as provided below:
1. The effective date of such a certificate may be delayed for up to three hundred and sixty-five (365) days from the date of approval. The period of delay should be reduced by the Historic Preservation Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay.
  2. During the delay period the commission shall negotiate with the owner in an effort to find a means of preserving the building, structure or site.
  3. If the Historic Preservation Commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.
  4. If the Historic Preservation Commission has voted to recommend the designation of a landmark or the designation of an area as a historic district, and final designation has not been made by the board of aldermen, the demolition or destruction of any building, structure or site in the proposed district or of the designated landmark may be delayed by the commission for up to one hundred and eighty (180) days or until the Board of Aldermen takes final action on the designation, whichever occurs first.
  5. The Board of Aldermen may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.
  6. An application for a certificate of appropriateness authorizing the demolition of a building, structure or site determined by the State of North Carolina's Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.
- J. **Review Period by Commission:** Applications for Certificates of Appropriateness shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed approved and a certificate shall be issued. An extension of time may be granted by mutual consent of the commission and the applicant.

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- K. **Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment (15.12).
  - L. **Permit Validity:** one (1) year
  - M. **Permit Extension:** Re-submit.

## 15.12 Appeals of Administrative Decisions.

### 15.12.1 Applicability.

This process is hereby established to provide an appeal process for parties aggrieved by any order, requirement, decision or determination, other than the decision to approve or deny a minor subdivision plat, made by an administrative officer charged with enforcing the provisions of this ordinance. For appeals of decisions regarding minor subdivision plats, see 15.9.1(F).

### 15.12.2 Filing Procedures.

- A. **Process Types:** Quasi-Judicial.
- B. **Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the town. Such an appeal shall be made to the Town Clerk within thirty (30) days of the receipt of the written notice of decision from the town.
- C. **Stay of Proceedings:** The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order granted by the Superior Court of Haywood County on notice to the administrative official from whom the appeal is taken with due cause shown. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of the permit applications or building permits affected by the issue being appealed.
- D. **Required Application Information:** All information relevant to describing the applicant's appeal to the Board of Adjustment. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision. The Administrator shall provide a copy of this information to the appellant and to the owner of the property that is the subject of the appeal.
- E. **Public Notification:** Level 1, 3, and 4 (160D-406).

### 15.12.3 Formal Review.

- A. Upon receiving the application, the Board shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent at the hearing.
- B. After conducting the public hearing, the Board shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question.
- C. The Board, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.

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- D. The decision of the Board must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.
  - E. The Administrator making the decision being appealed shall be present at the hearing as a witness.
  - F. 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.

#### **15.12.4 Appeals.**

- A. Any appeal from a decision of the Board of Adjustment may be made by an aggrieved part and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition shall be filed no later than thirty (30) days after the applicant receives a written copy of the decision of the Board of Adjustment.
- B. Any appeal from a decision relating to sedimentation and erosion control shall be made to the North Carolina Sedimentation Control Commission. Any such appeal shall be filed no later than fifteen (15) days after the applicant receives a written copy of the decision of the Board of Adjustment.

( Ord. of 5-27-2014(2) )

#### **15.13 Variances.**

##### **15.13.1 Purpose/Limitations.**

- A. **Purpose:** The variance process administered by the Board of Adjustment is intended to provide limited relief from the requirements of this ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this ordinance.
- B. **Financial Hardship Not Sufficient Ground for Variance:** It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this ordinance may impose on property owners in general or to increase the profitability of a proposed development.
- C. **Use Variances Not Permitted:** In no event shall the Board of Adjustment grant a variance which would allow the establishment of a use which is not otherwise allowed in a land development district or which would change the land development district classification or the district boundary of the property in question.
- D. **Authority Limited to this Ordinance/Conflicts with other Laws Prohibited:** In no event shall the Board of Adjustment grant a variance which would conflict with the North Carolina State Building Code or any other state code unless otherwise authorized by laws and regulations.

##### **15.13.2 Filing Procedures.**

- A. **Process Types:** Quasi-Judicial (See also 15.4).
- B. **Pre-Application Procedure:** Every applicant for a variance is strongly encouraged to meet with the planning department in a pre-application conference prior to the submittal of a request for a variance. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.

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- C. **Filing Procedure:** An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.
  - D. **Required Application Information:** All information relevant to describing the applicant's request to the Board of Adjustment.
  - E. **Public Notification:** Level 1, 3, and 4 (160D-406).
  - F. **Determination of Completeness:** Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the board of adjustment. The Administrator shall prepare a staff report regarding the submitted variance application.

### 15.13.3 Formal Review.

#### A. **Action by the Board of Adjustment:**

1. Upon receipt of the request for a variance from the Administrator, the board of adjustment shall hold an evidentiary hearing on the request.
2. After conducting the hearing, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the application.
3. A decision by the Board of Adjustment shall be made within thirty-two (32) days of the date of the hearing.
4. Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in Section 15.13.3.B.1 below. Standards for floodplain development regulation variances are set forth in Section 15.13.3.B.2.
5. Any applicant to whom a variance from the floodplain development regulations is granted shall be given written notice. This notice shall specify the difference between the base flood elevation and the elevation to which the structure is to be built and contain a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions. Variances records shall be provided to the Federal Emergency Management Agency upon request.

#### B. **Standard of Review:**

1. **General Variance Requests:** The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:
  - a. That there are unnecessary hardships in the way of carrying out the strict letter of this chapter.
  - b. Reserved.
  - c. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.
  - d. That the special conditions and circumstances do not result from the actions of the applicant. 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.



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- e. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
  - f. That the variance is the minimum necessary to afford relief.
  - g. That the public safety and welfare have been assured and substantial justice has been done.

**2. Floodplain Development Regulation Variance Requests:**

- a. Variances from the standards set forth in this ordinance for flood damage prevention may be granted. The town must notify the North Carolina Secretary of Crime Control and Public Safety at least thirty (30) days prior to granting the variance.
- b. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result or when the variance will make the structure in violation of other federal, state or local laws.
- c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Variances shall only be issued upon: a showing of good and sufficient cause; a determination that failure to grant the variance would result in exceptional hardship; and, a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
- e. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:
  - i. The danger that material may be swept onto other lands to the injury of others.
  - ii. The danger to life and property due to flooding or erosion damage.
  - iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - iv. The importance of the services provided by the proposed facility to the community.
  - v. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - vi. The compatibility of the proposed use with existing and anticipated development.
  - vii. The relationship of the proposed use to the land development plan and flood damage prevention program for that area.
  - viii. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - ix. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

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- x. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

3. **Additional Conditions:**

- a. In granting any variance, the Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the purposes and objectives of this ordinance. The board may also attach conditions in order to reduce or minimize any injurious effect of such variance upon other property in the neighborhood and to ensure compliance with other terms of this chapter.

**15.13.4 Appeals.**

An appeal from the decision of the Board of Adjustment regarding a variance request may be made by an aggrieved party and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition to the Superior County shall be filed with the court no later than thirty (30) days after the applicant receives the written copy of the decision of the Board of Adjustment.

( Ord. of 5-27-2014(2) )

**15.14 Map and Text Amendments.**

The Board of Aldermen may from time to time amend any part of the text of this ordinance or amend the Land Development Map of the town.

**15.14.1 Application Procedures.**

- A. **Process Types:** Legislative.
- B. **Applicants:** Map or text amendments may be submitted by any of the following:
  - The Board of Aldermen.
  - The Planning Board.
  - The Board of Adjustment.
  - The Planning Department.
  - Any owner of property within the land use jurisdiction of the town.
- C. **Pre-Application Procedure:** Before filing a petition of an amendment, an applicant (if an owner requesting a map amendment) shall meet with the Administrator to discuss the proposed amendment or request and to become more familiar with the applicable requirements and approval procedures of the town.
- D. **Content of Application:** A petition for an amendment to the town's official land development map or text shall be filed on a form provided by the Administrator. Such a petition shall contain all the information required on the form and must be determined to be complete by the Administrator prior to advancing it through the review process.
- E. **Determination of Completeness:** Staff shall review an application for amendment to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the Planning Board. The Administrator shall prepare a staff report and recommendation on the matter.

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#### 15.14.2 Review By Planning Board.

- A. **Public Notification (Prior to Planning Board):** Level 1, 2, 3 and 4.
- B. **Neighborhood Meeting (15.3.7):** Optional.
- C. **Additional Public Notification for Large Scale Amendments:** If the land development map amendment directly affects more than fifty (50) properties, owned by at least fifty (50) different property owners the Town may elect to utilize a Level 6 notification. When this occurs, the town may use the expanded published notice provisions found in the North Carolina General Statutes at Section 160D-601.
- D. **Review by Planning Board:** The Planning Board shall conduct a public hearing and receive public input on the proposed amendment and shall make recommendations to the Board of Aldermen regarding whether to approve or deny each proposed amendment within sixty-four (64) days of its first consideration on the matter.
  - 1. **Recommendation for Approval:** If the Planning Board makes a favorable recommendation, the matter shall be scheduled a public hearing before the Board of Aldermen.
  - 2. **Recommendation for Denial:** If the Planning Board makes a negative recommendation, the petitioner may, within thirty (30) days after written notification from the town clerk, request that a public hearing be held by the Board of Aldermen on the matter. This appeal process does not apply to amendments initiated by the Board of Aldermen or planning department. These amendments go immediately to the Board following a recommendation by the Planning Board.

#### 15.14.3 Public Comment.

Zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting (160D-603).

#### 15.14.4 Consideration by Board of Aldermen.

- A. **Public Notification (Prior to Planning Board):** Level 1, 2, 3 and 4.
- B. **Additional Public Notification for Large Scale Amendments:** If the land development map amendment directly affects more than fifty (50) properties, owned by at least fifty (50) different property owners the Town may elect to utilize a Level 6 notification. When this occurs, the town may use the expanded published notice provisions found in the North Carolina General Statutes at Section 160D-601.
- C. **Consideration by the Board of Aldermen:** Following receipt of a recommendation or appeal of a proposed amendment, the Board of Aldermen shall conduct a public hearing on the matter. Upon reviewing all of the pertinent information, the Board of Aldermen may:
  - 1. Adopt the proposed amendment.
  - 2. Adopt the proposed amendment with modifications.

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3. Reject the proposed amendment.
  4. Refer the proposed amendment back to the Planning Board for further consideration.

#### **15.14.5 Plan Consistency.**

In accordance with G.S. 160D-604(d); -605(a); -701, all such amendments shall be made in accordance with the Comprehensive Land Use Plan and any other officially adopted applicable plan. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. Prior to adopting or rejecting any zoning amendment, the Board of Aldermen shall adopt a statement describing whether its action is consistent with the adopted comprehensive plan and explaining why the Board of Aldermen considers the action taken to be reasonable and in the public interest.

#### **15.14.6 Waiting Period for Subsequent Applications.**

- A. When an application for an amendment has been approved or denied by the Board of Aldermen, no application shall be considered on the same issue within the next twelve (12) months after approval or denial.
- B. This waiting period may be waived by the Board of Aldermen (three-fourths vote required) if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.

### **15.15 Conditional Districts (CD).**

Conditional Districts (Section 2.6) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Aldermen in accordance with G.S. 160D. Conditional Districts provide for orderly and flexible development under the general policies of this Ordinance without the constraints of some of the prescribed standards guiding by-right development. This Conditional District may be used in any district but is not intended to relieve hardships that would otherwise be handled using a variance procedure.

#### **15.15.1 Application Procedures.**

- A. **Applicant and Property:** Conditional District classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included. A CD shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. "Unified control" means that all land to be included within a CD shall be owned or otherwise under the legal control of the person or legal entity which has applied for a Conditional District. Such person or entity shall be legally capable of providing a commitment to the town that the CD development will comply with all documents, plans, standards and conditions ultimately approved by the town.
- B. **Standards of District to be Met:** Within an approved Conditional District, no use shall be permitted except pursuant to the conditions imposed by the applicant on the Conditional District in the approval of the rezoning. The Board of Aldermen may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare, and justice.
- C. **Content of Application:** A Conditional District shall consist of the Environmental Survey (15.4.1) and Master Plan (15.4.3); as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the Board of Aldermen. The Master Plan, as a site specific Conditional Zoning Plan, is itself a condition of the Conditional District rezoning. The Master Plan shall, at a minimum consist of the following:

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1. The overall boundary and area of the district, including underlying zoning districts;
  2. The general location, orientation and size of principal structures and associated parking areas; landscape and buffer areas; open space areas; the location, size and general treatment of environmentally sensitive areas; the general location and size of existing and proposed water mains and sewer trunk lines required to service the development; and general traffic routes (external and internal) to and from the development with major access points identified;
  3. Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios or impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
  4. Full list of proposed uses consistent in character with the underlying zoning district. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the Conditional District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional District;
  5. A proposed development schedule if the project is to be phased.

#### **15.15.2 Formal Review.**

- A. **Procedure:** The procedure for approval shall follow the procedure outlined in Section 15.14, Text and Map Amendments (Rezoning).
- B. **Reviewing Agency:** The Planning Board shall review the Conditional District application and shall make a recommendation relevant to the following: Uses proposed, compatibility with surrounding property, area impacts and adequate facilities, infrastructure, etc., building and site design, immediate context and compatibility, etc.
- C. **Decisions:** Decisions by the Board of Commissioners shall be by majority vote, unless a valid Protest Petition in accordance with Section 15.14.3 has been filed, in which case, a three-fourths majority vote of eligible members shall be required for approval.
- D. **Fair and Reasonable Conditions:** The provisions of the CD Master Plan shall replace all conflicting development regulations set forth in this Ordinance which would otherwise apply to the development site. The Planning Board may recommend and the Board of Aldermen (with mutual approval of the applicant) may attach reasonable and appropriate conditions including, but not limited to, the location, nature, hours of operation, and extent of the proposed use(s). Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to this Ordinance and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site. The applicant will have a reasonable opportunity to consider and respond to any conditions and site-specific standards proposed by either the Planning Board or the Board of Aldermen prior to final action. In accordance with G.S. 160D.
- E. **Additional Review:** Site Plans and Subdivisions that implement approved CD Master Plans shall be approved by the Administrator and are not subject to the procedures of Section 15.8.2 or 15.9.2.

#### **15.15.3 Effect of Approval/Changes.**

- A. For modifications to an approved Master Plan see Section 15.2.5
- B. **Rescission of Conditional Districts:** The Applicant shall secure a valid building or construction permit(s) within two (2) years from date of approval of the Conditional District unless otherwise

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specified. If such project is not complete or a valid building or construction permit is not in place at the end of the two (2) year period, the Administrator shall notify the applicant of either such finding. Within 60 calendar days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional District to the Board of Aldermen. The Board of Aldermen may then rescind the Conditional District, or extend the life of the Conditional District for a specified period of time. The rescission of a Conditional District shall follow the same procedure as was needed for approval.

## **15.16 Permit Choice and Vested Rights.**

### **15.16.1 Permit Choice.**

- If an applicant submits a complete application for a development permit or approval and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose whether the application will be judged under the previously existing or modified rule (160D-108(b)).
- When a development requires the issuance of multiple permits, the applicant may, for a period of up to 18 months, choose for each permit whether to proceed under the rule that existed at the time of application for the initial permit or under a modified rule.
- For the purposes of this subsection, an erosion and sedimentation control permit or a sign permit do not count as an initial application for a development permit.

### **15.16.2 Vested Rights: Generally.**

- A. Pursuant to NC G.S. 160D-108, a zoning vested right is the right to undertake and complete the development and use of property as it was approved despite a subsequent change in applicable regulation. If the development regulation changes after the application has been approved, the project may continue under the old rule as initially approved.
- B. A statutory vested right is established when:
  - 1. A site-specific vesting plan is approved; or
  - 2. A final plat is approved for the initial phase of a multi-phase development; or
  - 3. A development agreement is approved pursuant to NC G.S. Chapter 160D, Article 10; or
  - 4. When a development permit has been issued for all other types of development.

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### 15.16.3 Vested Right Terms.

#### A. Duration:

Type of Permit/Right	Term
Building Permit	6 months
Development Approval	12 months
Site-Specific Vesting Plan	2-5 years
Multi-Phase Development	7 years from first site plan approval
Development agreement	Per agreement negotiated pursuant to NCGS 160D, Article 10
Development discontinuation	2 years

A vested right for a site-specific vesting plan remains vested for a period of 2 years from the date of the first development approval or permit issued for the site. Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval.

**B.** A development permit or approval expires and the vested rights terminate at the time specified in subsection A, unless the work authorized by the permit has substantially commenced. For the purpose of this section, the **substantial commencement** of work shall be determined by the Administrator based on any of the following:

1. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis that has not been discontinued for longer than 30 days; or
2. The development has created substantial on-site infrastructure; or
3. The development has received and maintained a valid building permit.

**C.** Pursuant to NC G.S. 160D-108, even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.

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#### 15.16.4 Definitions:

For the purpose of this section, the following definitions apply:

- A. Development-** as defined in Section 17.4 of this ordinance
- B. Development permit-** an administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:
  - 1. Zoning permits.
  - 2. Site plan approvals.
  - 3. Special use permits.
  - 4. Variances.
  - 5. Certificates of appropriateness.
  - 6. Plat approvals.
  - 7. Development agreements.
  - 8. Building permits.
  - 9. Subdivision of land.
  - 10. State agency permits for development.
  - 11. Driveway permits.
  - 12. Erosion and sedimentation control permits (NC G.S. 143-755(e)(1)).
- C. Multi-phase development-** a development containing 25 acres or more that is both of the following:
  - 1. Submitted for development permit approval to occur in more than one phase
  - 2. Subject to a master development plan with committed elements showing the type and intensity of use of each phase (NC G.S. 160D-108(j)).
- D. Site-specific vesting plans-** for the purposes of this chapter, the following types of development approvals are site-specific vested plans:
  - 1. Any development for which a special use permit is required;
  - 2. Major subdivisions;
  - 3. Major and minor site plans;
  - 4. Conditional zoning.

#### 15.16.5. Relevant provisions:

- A. Run with the Property:** A zoning vested right is not a personal right but shall attach to and run with the applicable property. All successors to the original landowner may exercise such right under the same conditions and for the same time that the original applicant could have exercised such right.
- B. Town May Terminate Vested Rights Early:** The town may terminate the zoning vested rights upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of all financing and all architectural, legal and other fees incurred after approval by the town.
- C. Not Exclusive:** Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this chapter.
- D. Hazard:** The town may terminate the zoning vested right if it determines after a public hearing that natural or man-made hazards are on or in the immediate vicinity of the property, and if not corrected, these hazards would pose a serious threat to the public health, safety, and welfare.



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- E. State or Federal Regulation Not Bound by Vested Right:** The zoning vested right may be terminated upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site-specific vesting plan. In such a case the Board of Aldermen may, by ordinance, after notice and a hearing, modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

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