

# Administration

## 15.1 PURPOSE AND INTENT

In order to establish an orderly process to develop land within the jurisdiction of the Town of Wake Forest 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 Commissioners.

## 15.2 GENERAL PROVISIONS & APPLICABILITY

The provisions of this chapter shall be applicable to all development activity under the jurisdiction of the Town of Wake Forest.

### 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 timbering, clearing and grubbing, 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 FEES & INSPECTIONS

- A. The Town of Wake Forest Board of Commissioners is authorized to establish fees to be charged by the town for the administration of the regulations in this ordinance. The town shall adopt as part of their annual budgeting process, a schedule of fees for applications and processing for permits as specified in this ordinance.
- B. Agents and officials of the town are authorized to inspect land-disturbing activities to ensure compliance with this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in approved development plans are being appropriately followed. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
- C. No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of the Town while that person is inspecting or attempting to inspect a land-disturbing activity.
- D. The Town shall also have the power to require written statements or filing reports under oath, with respect to pertinent questions relating to the land disturbing activity.

### 15.2.3 DEVELOPMENT REVIEW PROCESS

See Appendix A – Typical Development Review Process Chart for more information regarding the timing of required applications/approvals.

## 15.2.4 PERMIT/PROCESS TYPE

Permit/ Process Type	Section	Permit/ Process Type*	Reviewing Agency	Public Notice (15.3)	Approving Agency	Appeal Process	Permit Validity Period	Permit Extension
Development Permit	15.6.1	Administrative	Admin	N/A	Admin	BOA	1 year	1 year
Temporary Use Permit	15.6.2	Administrative	Admin	N/A	Admin	BOA	See 4.7	See 4.7
Certificate of Completion	15.6.3	Administrative	Admin	N/A	Admin	BOA	N/A	N/A
Modification of Setbacks	15.6.4	Administrative	Admin	N/A	Admin	BOA	N/A	N/A
Tree Clearing Permit	15.7.1	Administrative	Admin	N/A	Admin	BOA	1 year	Re-submit
Land Disturbance Permit	15.7.2	Administrative	Admin	N/A	Admin	BOA	2 years	1 year
Floodplain Development Permit	15.7.3	Administrative	Admin	N/A	Admin	BOA	1 year	Re-submit
Site Master Plan (Minor)	15.8.1	Administrative	Admin/TRC	N/A	Admin	BOA	2 years	1 year
Site Master Plan (Major)	15.8.2	Quasi-Judicial	Admin/TRC, & PB	Levels 1, 2, 4 & 5	BOC	Superior Court	2 years	1 year
Site Construction Plan	15.8.3	Administrative	Admin/TRC	N/A	Admin/TRC	BOA	2 years	1 year
Architectural Design Review (Minor)	15.8.4	Administrative	Admin	N/A	Admin	DRB	1 year	N/A
Architectural Design Review (Major)	15.8.5	Quasi-Judicial	Admin	Levels 1, 2, 4 & 5	DRB	Superior Court	1 year	6 months
Subdivision (Minor)	15.9.1	Administrative	Admin/TRC	N/A	Admin	BOA	30 days to file Plat	Re-submit
Subdivision Master Plan/TND (Major)	15.9.2	Quasi-Judicial	Admin/TRC, & PB	Levels 1, 2, 4 & 5	BOC	Superior Court	2 years	1 year
Subdivision Construction Plan (Major)	15.9.3	Administrative	Admin/TRC	N/A	Admin/TRC	BOA	2 years	1 year
Final Plat (Major/Minor Subdivisions & Site Plans)	15.9.4	Administrative	Admin/TRC	N/A	Admin	BOA	30 days to file Plat	Re-submit
Special Use Permit	15.10	Quasi-Judicial	PB	Levels 1, 2, 4 & 5	BOC	Superior Court	2 years	1 year
Designation of Historic Landmarks/Districts	15.11.1	Legislative	HPC	Levels 1, 2 & 3	BOC	Superior Court	N/A	N/A
Certificate of Appropriateness – Minor Works	15.11.2	Administrative	Admin	N/A	Admin	HPC	1 year	1 year
Certificate of Appropriateness – Major Works	15.11.3	Quasi-Judicial	Admin	Levels 1 & 3	HPC	BOA	1 year	1 year
Certificate of Appropriateness – Demolition of Historic Structures	15.11.4	Quasi-Judicial	Admin	Levels 1 & 3	HPC	BOA	1 year	1 year
Appeal of Administrative Decision	15.12	Quasi-Judicial	BOA	Levels 1 & 2	BOA	Superior Court	30 days to Appeal	N/A
Variance	15.13	Quasi-Judicial	BOA	Levels 1, 2 & 4	BOA	Superior Court	30 days to Appeal	N/A
Text Amendment	15.14	Legislative	PB	Levels 1 & 2	BOC	Superior Court	N/A	N/A
Map Amendment (Rezoning)	15.14	Legislative	PB	Levels 1, 2, 3, 4 & 5	BOC	Superior Court	N/A	N/A
Conditional District	15.15	Legislative	PB	Levels 1, 2, 3, 4 & 5	BOC	Superior Court	May be rescinded after 2 years	N/A
Planned Unit Development	15.16	Legislative	PB	Levels 1, 2, 3, 4 & 5	BOC	Superior Court	May be rescinded after 2 years	N/A
Vested Right	15.17	Legislative	PB	Levels 1 & 4	BOC	None	2 years or up to 5 years	N/A

*Admin – Administrator (14.1) | BOC – Board of Commissioners (14.2) | TRC – Technical Review Committee (14.3) | PB – Planning Board (14.4) | BOA – Board of Adjustment (14.5) | HPC – Historic Preservation Commission (14.6) | DRB – Design Review Board (14.7) | Superior Court of North Carolina*

*\*All Legislative and Quasi-Judicial Permit/Process Types shall require a public hearing according to the provisions outlined in this chapter for each process.*

### 15.2.5 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, in accordance with the appropriate development permit checklist, to decide whether or not the development as proposed will comply with the requirements of this ordinance. The Administrator will prepare and disseminate appropriate checklists for use by applicants in their submission. These checklists are part of the Wake Forest Specifications Manual and are made a part of this ordinance by reference.
- 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 Administrator 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.

### 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.

#### 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 2 successive weeks. The first publication shall appear no less than 10 days or more than 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.

#### 15.3.3 LEVEL 3 – NOTIFICATION TO AFFECTED PROPERTY OWNERS

- A. Mailed Notice:** The 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 postmarked at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard.
- B. Published Notice – Full Community Notification:** As an alternative, to the mailed notice requirements in the above paragraph, the town may elect to serve notice through a full community notification for pending actions that affect at least 50 properties with at least 50 different property owners. The town shall publish notice of the hearing/meeting in a newspaper of general circulation in the town. Two

advertisements shall be published in separate calendar weeks. 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.

- C. Posted Notice:** In addition to providing mailed notice or published notice, as required in paragraphs A and B above, a sign shall be placed in a prominent location 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 to contact for additional information.
- D. Additional Requirements for Third Party Re-Zonings:** 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 Commissioners 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 that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. 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 owners of property within 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 postmarked at least 10 but not more 25 days prior to the date of 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.

#### **15.3.5 LEVEL 5 – NEIGHBORHOOD MEETING**

The applicant shall conduct a neighborhood meeting where required prior to any public hearing or review by an approving board or commission. This meeting will allow the applicant to explain the proposed project and to be informed of the concerns of the neighborhood and surrounding property owners. A meeting notice shall be sent to property owners and Home Owner's Associations within 100' of the proposed development. The notice shall be sent by first class mail and be postmarked at least 10 but not more than 25 days prior to the date of the neighborhood meeting. A copy of the notice shall also be sent to the Planning Department. The letter shall contain a summary of the proposed development, the applicant's contact information, the date, time and location of the meeting. The location of the neighborhood meeting should be held within a reasonable distance of the proposed project. The meeting shall be held at a reasonable time giving the nearby property owners an opportunity to attend. A summary of the meeting in the form of meeting notes or minutes along with a list and contact information for all attendees shall be submitted to the approving board or commission for their review at all subsequent approvals hearings. If no public hearing is required as part of the application review, the meeting summary shall be submitted to the Administrator as part of their technical review.

**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 Application Checklists in the Manual of Specifications, Standards and Design are intended to provide further guidance to applicants as to the necessary level of detail for certain permit/process types. Permits/processes for which additional detail is included in these Application Checklists are marked with an asterisk (\*) in the table below.

Permit/ Process Type	Section	PUD Concept Plan (15.4.8)	Existing Conditions Map (15.4.1)	Sketch Plan (15.4.2)	Master Plan (15.4.3)	Construction Plans (15.4.4)	As-Built Drawings (15.4.5)	Final Plat (15.4.6)	Building Elevations (15.4.7)
Development Permit *	15.6.1			X(a)					
Temporary Use Permit	15.6.2			X(a)					
Certificate of Completion	15.6.3	See Administrator							
Modification of Setbacks	15.6.4			X					
Tree Clearing Permit *	15.7.1		X(a)			X			
Land Disturbance Permit*	15.7.2		X			X			
Floodplain Development Permit *	15.7.3		X(a)			X	X		
Stormwater Permit *	15.7.4		X(a)			X	X		
Site Master Plan (Minor) *	15.8.1		X		X				
Site Master Plan (Major) *	15.8.2		X		X				
Site Construction Plan *	15.8.3		X			X	X(a)		
Architectural Design Review (Minor) *	15.8.4			X(a)					X
Architectural Design Review (Major) *	15.8.5			X(a)					X
Subdivision (Minor) *	15.9.1							X	
Subdivision Master Plan (Major) *	15.9.1		X	X	X				
Subdivision Construction Plan (Major) *	15.9.2		X			X	X(a)		
Final Plat (Major/Minor Subdivisions & Site Plans) *	15.9.3						X(a)	X	
Special Use Permit	15.10		X(a)		X				
Designation of Historic Landmarks/Districts	15.11.1		X	X					
Certificate of Appropriateness (Minor Works)	15.11.2			X					X(a)
Certificate of Appropriateness (Major Works)	15.11.3			X					X (a)
Certificate of Appropriateness (Demolition of Historic Structures)	15.11.4		X	X	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	X(a)	X				
Planned Unit Development	15.16	X	X				X	X	
Vested Right	15.17			X(a)	X				

\*Additional detail provided in the MSSD Application Checklists

X - Required | X(a) - as needed

### 15.4.1 EXISTING CONDITIONS MAP

An existing conditions map is intended to identify existing developed conditions and natural features including, but not limited to, the following:

#### A. Existing Developed Conditions of Property

1. Rights of way
2. Existing structures with built year & historical significance;
3. Cemeteries;
4. Bridges or culverts;
5. Utilities (water & sewer, drainage, storm water, electrical, cable, fiber optics, etc.);
6. Driveways & curb cuts;
7. Sidewalks, surface parking & loading areas;
8. Public and private streets with pavement width;
9. Any known contaminated soils or hazardous materials;
10. Existing & proposed easements including but not limited to, electric, water, sewer, storm, drainage, private streets, gas, or other service related easements including location, width & purpose.

#### B. Existing Natural Features of Property

1. Forest stands or trees of a uniform size and species;
2. Specimen trees of varying sizes and species, particularly free standing or open-grown or field grown trees;
3. Previously documented rare or protected species' habitats.
4. Riparian & watershed boundaries/buffers, wetlands, watercourses with name and direction of flow;
5. State & federal reports regarding wetlands and stream buffer delineations;
6. Special flood hazard areas;
7. Wood line & vegetation type with location of all specimen trees;
8. Soils map;
9. Existing contour lines at a minimum of 2 foot contour intervals.

- C. Identification of the above features on a site prior to the advanced preparation of development plans enables the reasonable and practical planned preservation of existing and environmentally sensitive areas. This requirement provides the town and the applicant the ability to evaluate the proposed development in order to preserve vegetation, to improve the appearance of the development proposed and to encourage the use of the existing forest and tree canopy, specimen trees, and significant vegetation to satisfy the requirements of this ordinance.

### 15.4.2 SKETCH PLAN

The Sketch Plan shall show in simple sketch form the shape and dimensions of the lot on which the proposed building or use is to be constructed or conducted; proposed layout of existing and proposed streets, existing or proposed lot(s) layout, building(s)

location and size, nature of land use, parking areas and means of ingress/egress, environmental conditions (i.e. Special Flood Hazard, wetlands, etc.); 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 Unified Development Ordinance Completion (15.6.3), 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 (for Site Plans) or 1 inch = 200 feet (for Subdivisions) unless otherwise authorized by the Administrator.

#### **15.4.3 MASTER PLAN**

The Master Plan 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, except that horizontal water and sewer locations shall be indicated as required by the City of Raleigh Public Utilities Department. All plans shall be submitted at a scale not less than 1 inch = 50 feet (for Site Plans) or 1 inch = 200 feet (for Subdivisions) unless otherwise authorized by the Administrator.

#### **15.4.4 CONSTRUCTION PLANS**

Construction Plans shall constitute a full and complete set of engineered drawings necessary for final permitting and construction. All plans shall be submitted at a scale not less than 1 inch = 50 feet unless otherwise authorized by the Administrator. All streets, utilities, and stormwater, and other infrastructure systems shall be designed and constructed in accordance with the adopted Town of Wake Forest Manual of Specifications, Standards and Design (MSSD) and City of Raleigh Public Utilities Department requirements where applicable.

#### **15.4.5 AS-BUILT DRAWINGS**

The “as built” plans shall show the final design specifications for all public infrastructure. For stormwater infrastructure this shall include, but is not limited to, the as-built basin volumes, slopes, inverts and tops of stormwater pipes, manholes, catch basins, BMP’s installed, and a notarized operation and maintenance agreement for BMP’s. The designer of the infrastructure shall certify, under seal, that the installed infrastructure is in substantial 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 professional 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 NCGC 47-30. The final plat shall constitute an accurate survey of the entire phase as shown on the approved plan 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 3 drawings from different perspectives that will show how the building fits into the context of the block.

#### 15.4.8 PUD CONCEPT PLAN

The PUD Concept Plan shall accompany a Planned Unit Development (PUD) (see Section 2.7.) rezoning request. The application for the Planned Unit Development held and maintained by the Planning Department will contain a detailed checklist for the PUD Concept Plan. Generally, the concept plan shall include the following:

##### A. Planned Unit Development Intent and Compatibility Statement

A written statement must be submitted that includes a description of the relationship of the Planned Unit Development to the surrounding land uses and the uses within the development to each other, the compatibility of the request with the Town of Wake Forest Comprehensive Plan maps and objectives, and any other supporting information regarding the request. The statement shall demonstrate how the flexibility granted through the PUD will result in a higher quality development.

##### B. Detailed District Criteria

In accordance with UDO Section 2.7 and PUD application, each PUD Concept Plan shall specify development standards applicable to each permitted use in the PUD and contain the following:

1. Vicinity Map;
2. Perimeter Boundary & Topographic Survey;
3. Existing Conditions Map (see Section 15.4.1 B. for required components);
4. Land Use Map;
5. Vehicular & Pedestrian Circulation Plan;
6. Utility Access & Connection Plan;
7. Buffers, Open Space & Recreation Facilities Plan; and
8. A Table summarizing the sections of the UDO that will be varied in the PUD.

##### C. Traffic Impact Analysis (see Section 6.11)

A Traffic Impact Analysis (TIA) shall be required with all concept plans submittals to verify that there are adequate transportation facilities for the proposed development. This report must be submitted, reviewed, and approved prior to the project going to the Planning Board and the Board of Commissioners.

### 15.5 GENERAL REQUIREMENTS FOR QUASI-JUDICIAL HEARINGS AND DECISIONS

A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative determinations. In accordance with G.S. 160A-393, decisions on the approval of site plans and subdivisions are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the application based on 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 QUASI-JUDICIAL HEARINGS

- ##### 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. Conflicts of Interest:** A member of the decision-making board shall not participate in or vote on a quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- C. All Participants to be Sworn In:** All participants in the public hearing shall be duly sworn in prior to the submission of any testimony.
- D. Competent Evidence Required:** All decisions shall be based on competent 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.
- E. 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 of the decision-making body's findings, inferences, or conclusions. In addition such decision shall not be:

- A.** In violation of constitutional provisions, including those protecting procedural due process rights.
- B.** In excess of the statutory authority conferred upon the town 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.
- E.** Unsupported by substantial competent and material evidence in view of the entire record.
- F.** Arbitrary and capricious.

### 15.5.3 RECORD OF DECISION

- A.** The following shall become part of the official record of decision:
  1. Documents and exhibits submitted to the decision-making board

2. 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.

## 15.6 ADMINISTRATIVE PERMITS

### 15.6.1 DEVELOPMENT PERMIT

A development permit indicates compliance with the provisions of the unified development ordinance and shall be required for the construction or development of any new use within the land development jurisdiction of the Town of Wake Forest, and any other site improvement as indicated in the UDO. In addition to new uses, a development permit shall be required for expansions of existing uses, changes of use, any uses permitted with special conditions (Chapter 3) and any signage requiring a permit (Chapter 11).

- 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 Development 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 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.
- E. Public Notification:** N/A
- 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 Development Permit, the applicant shall have one 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 render the compliance void. Upon issuance of a building permit, the Development Permit 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 Development Permit and any subsequent building permits.
- H. Permit Extension:** The Administrator may grant 2 extensions of this time period of up to 6 months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.
- 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 4.7 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 Compliance:** 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:** N/A
- 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 4.7
- H. Permit Extension:** See Section 4.7

### 15.6.3 CERTIFICATE OF COMPLETION

Issuance of a certificate of completion 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 Wake Forest. Certificates of completion insure that a completed development project has complied with all the applicable requirements of this ordinance and all other applicable federal, state and local regulations. Certificates of completion must be signed by 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 Compliance:** Upon receipt of the request for a certificate of completion, the Administrator shall inspect the project site for compliance with the approved site plan or subdivision plan and the applicable standards of this ordinance. The applicant shall be notified of any deficiencies in the building(s) or site that prevents the issuance of the certificate of completion or the certificate shall be issued.
- E. Public Notification:** N/A
- 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 SETBACKS

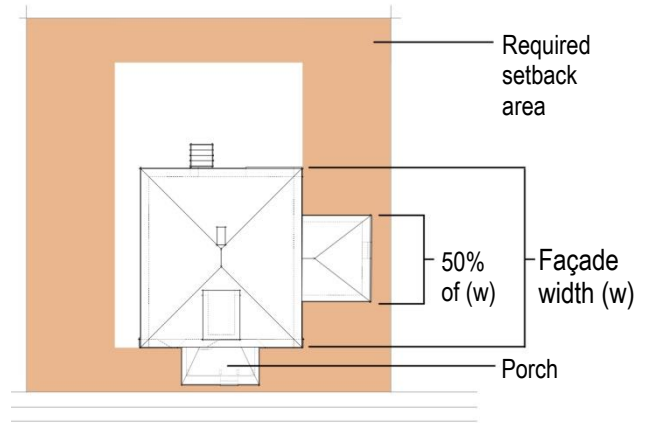
In keeping with the purpose of these regulations to accomplish coordinated, balanced, and harmonious development in a manner which will best promote the health, safety, and general welfare while avoiding undue and unnecessary hardships, on approval by the Town Manager, the Administrator is authorized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

- A. Process Types:** Administrative
- B. Pre-Application Procedure:** Not required

**C. Required Application Information:** Sketch Plan (15.4.2) and any other relevant information to demonstrate undue and unnecessary hardship.

**D. Conditions for Modification of Setbacks:** Requests for deviation from required setbacks set forth in this ordinance by up to 10% 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 error or survey oversight.



**E. 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.

**F. 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 15.13. 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 Board of Adjustment.

**G. Public Notification:** N/A

**H. Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.

**I. Permit Validity:** N/A

**J. Permit Extension:** N/A

## 15.7 ENVIRONMENTAL PROTECTION PERMITS

### 15.7.1 TREE CLEARING PERMIT

Pursuant to NCGS 160A-458.5(c)(1), prior to the commencement of any vegetation clearing or removal on any undeveloped property, the owner (or authorized agent) of such property must obtain a Tree Clearing Permit or demonstrate exemption from the requirements of this section as provided for in Section 15.7.1.A, below. For the purposes of the section, “undeveloped properties” shall include any property within the town’s jurisdiction that is not subject to an approved site and/or subdivision plan.

- A. Exemptions:** A Tree Clearing Permit shall not be required for the activities listed below.
1. Normal forestry activities taking place on property that is taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the North Carolina General Statutes, and provided such activities are accomplished in compliance with this ordinance.
  2. Properties with a town-approved site and/or subdivision plan, provided such plan has not expired and that any clearing or vegetation removal is done in strict accordance with the approved site and/or subdivision plan.
  3. The removal of vegetation by public or private agencies within the lines of any public street rights-of-way, utility easements, or other town property, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to preserve or enhance the symmetry and beauty of such town property.
  4. The town-initiated or approved removal of any vegetation which is in an unsafe condition, constitutes a nuisance or noxious weed, or which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, stream or conveyance channels, or other public improvements, or vegetation which is infected with any injurious fungus, insect, or other pest.
  5. The removal of vegetation on a lot of record, less than 5 acres in size and zoned and/or used for residential purposes, provided such vegetation is not a portion of a required streetyard or other required riparian or landscaping buffer.
- B. Process Type:** Administrative
- C. Permit Required Before Any Land Disturbing Activity:** No such land-disturbing activity shall take place until plans for vegetation clearing activity have been reviewed and approved in accordance with the procedures set forth below.
- D. Pre-Application Procedure:** Applicants are encouraged to meet with the Administrator prior to submitting an application for a Tree Clearing Permit. 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.
- E. Required Application Information:** Existing Conditions Map (15.4.1), Sketch Plan (15.4.2) (may be waived by Administrator as appropriate) & Construction Plans (15.4.4) (may be waived by Administrator as appropriate).
- F. Determination of Compliance:** Following submittal of the application 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 30 days of receipt of the application.

- G. Public Notification:** N/A
- H. Appeals:** Appeals of the decision of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12 within 30 days after receipt of written notice of disapproval or conditional approval that is unsatisfactory to the applicant.
- I. Permit Validity:** An approved Tree Clearing Permit shall be valid for a period of not more than one year.
- J. Permit Extension:** Renewal of an expired Tree Clearing 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. Any significant changes to the plan must be re-submitted and re-reviewed.

### 15.7.2 LAND DISTURBANCE PERMIT (EROSION AND SEDIMENTATION CONTROL)

A Land Disturbance Permit is required to assure that land-disturbing activity undertaken in the Town of Wake Forest does not result in accelerated erosion and sedimentation. No 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. Pre-Application Procedure:** Prior to applying for a land disturbance 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.
- C. Required Application Information:** Existing Conditions Map (15.4.1) & Construction Plans (15.4.4)
- D. Determination of Compliance:** Following submittal of a soil erosion and sedimentation control plan and accompanying data, the application shall be reviewed by the Town of Wake Forest Department of Engineering for compliance with the requirements of this ordinance. Provided the plan is complete, applications shall be reviewed and acted upon by the staff and notice given the applicant within 30 days of receipt of the application. Any plan submitted for a land-disturbing activity for which the North Carolina Environmental Policy Act requires an environmental document must be deemed incomplete until a complete environmental document is available for review. The Administrator must promptly notify the person submitting the plan that the 30 day time limit for review of the plan will not begin until a complete environmental document is available for review. Denial of the application must specifically state in writing the reasons for denial. Subsequent plan revisions shall be reviewed and acted upon by the staff and notice given the applicant within 15 days of receipt of the revision. If an application has been disapproved, the applicant has 12 months to submit revised plans addressing the reasons for disapproval or the plan is deemed null and void.
- E. Other Disapprovals:** The Town shall disapprove erosion and sedimentation control plans (part of construction plans) if implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission (State) to protect riparian buffers along surface waters. The Town may disapprove

the plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received a notice of violation of a plan previously approved by the Town pursuant to this Ordinance and has not complied with the notice within the time specified in the notice.
2. Has failed to pay a civil penalty assessed pursuant to this Ordinance by the time the payment is due.
3. Has been convicted of a misdemeanor pursuant to NCGS 113A-64(b) or any provision outlined in this Ordinance pursuant to this article.

**F. Public Notification:** N/A

**G. Appeals:** Appeals of the decision of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12 within 15 days after receipt of written notice of disapproval or conditional approval that is unsatisfactory to the applicant. Appeals of 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 land disturbance permit is not completed within 2 years following the date of issuance of the land disturbance permit, the land disturbance permit shall be deemed expired.

**I. Permit Extension:** Permits may be renewed in one year increments until the project is complete. The appropriate renewal fees shall apply. Any significant changes to the plan must be re-submitted and re-reviewed.

### 15.7.3 FLOODPLAIN DEVELOPMENT PERMITS

No approval shall be granted for construction in an area designated as a Special Flood Hazard Area by the flood insurance rate maps, as provided by the Federal Emergency Management Agency without the issuance of a floodplain development permit. Because Special Flood Hazard Areas are determined by FEMA and State requirements, if activities are permitted in Special Flood Hazard Areas at the State or Federal level, then they are exempt from the requirements of this section.

**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.

**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:** Existing Conditions Map (15.4.1) (may be waived by Administrator as appropriate), Construction Plans (15.4.4), & As-Built Drawings – upon completion (15.4.5)

**E. Additional Information Required for Floodplain Development Permits:** The following specific items/information shall be presented to the Administrator in an application for a floodplain development permit:

1. **Plan Information Requirements**

- a.** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
  - i.** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
  - ii.** The boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 12.4.1.C, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Area;
  - iii.** Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 12.4.1.C;
  - iv.** The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 12.4.1.C;
  - v.** The Base Flood Elevation (BFE) or Future Conditions Flood Elevation where provided as set forth in Section 12.4.1.C;
  - vi.** The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
  - vii.** Certification of the plot plan by a registered land surveyor or professional engineer.
- b.** Proposed elevation and method thereof, of all development within a special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:
  - i.** Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - ii.** Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or X (Future) will be flood-proofed; and
  - iii.** Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
- c.** If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
- d.** A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
  - i.** The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
  - ii.** Openings to facilitate equalization of hydrostatic flood forces on walls, when solid foundation perimeter walls are used in Zones A, AE and X (future);
- e.** Usage details of any enclosed areas below the regulatory flood protection elevation.



- f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- g. Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.).
- h. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable.
- i. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

## 2. Certification Requirements

### a. Elevation Certificates

- i. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
  - ii. All residential dwellings to be constructed in or within 10 feet (linear) of the Special Flood Hazard Area and Future Conditions Flood Hazard Areas will be required to have the footing pinned by a professional land surveyor prior to construction. In addition, a survey will be required at the foundation and flooring system inspection showing the elevations at the corners of the dwelling unit.
  - iii. A final as-built Elevation Certificate (FEMA Form 81-31) along with a final registered survey of the property is required after construction is completed and prior to Certificate of Completion/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Completion/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Completion/Occupancy.
- b. **Floodproofing Certificate:** If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design

elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Completion/Occupancy.

- c. If a manufactured home is placed within Zone A, AE or X (Future) and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section 12.4.2.B.3.
  - d. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
3. **Certification Exemptions:** The following structures, if located within Zone A, AE or X (Future), are exempt from the elevation/floodproofing certification requirements specified above:
- a. Recreational Vehicles meeting requirements of Section 12.4.2.B.5; and
  - b. Accessory Structures less than 150 square feet meeting requirements of Section 12.4.2.B.6.
- F. **Determination of Compliance:** 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 30 days of receipt of the application. An approved Floodplain/Watershed Development Permit shall include the following information:
1. A description of the development to be permitted under the floodplain development permit.
  2. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Section 12.4.1.C.
  3. The regulatory flood protection elevation required for the reference level and all attendant utilities.
  4. The regulatory flood protection elevation required for the protection of all public utilities.
  5. All certification submittal requirements with timelines.
  6. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
  7. The flood openings requirements, if in Zones A, AE or X (Future)
- G. **Public Notification:** N/A (Except as required by State or Federal Agencies)

- H. Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.
- I. Permit Validity:** Floodplain development permits shall be valid for one year. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.
- J. 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.

## 15.8 SITE PLANS/DESIGN REVIEW

### 15.8.1 SITE MASTER PLAN (MINOR)

- A. Applicability:** The Minor Site Plan process shall apply to development applications which include less than 100 residential dwelling units and which do not require an Enhanced Transportation Impact Analysis according to Section 6.11.1.
- B. Process Type:** Administrative.
- 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:** Existing Conditions Map (15.4.1) & Master Plan (15.4.3).
- E. Determination of Compliance:** Once an application is deemed complete by the Administrator, the Administrator and Technical Review Committee shall review the application and approve, deny, or approve with conditions the Minor Site Plan based on compliance with the standards contained in this ordinance. All decisions shall be in writing. Following an approval or approval with conditions, the applicant shall be directed to proceed to the preparation of a Site Construction Plan (15.8.2). If the Administrator disapproves or approves conditionally the plan, the reasons for such action shall be stated in writing by the Administrator, and the applicant may make changes and submit a revised plan for consideration in accordance with the procedures set forth in this section.
- F. Public Notification:** None required.
- G. Appeals:** Appeals of the decisions of the Administrator or TRC shall be heard by the Board of Adjustment in accordance with Section 15.12.
- H. Permit Validity:** Approval of a Site Master Plan shall be valid for 2 years from the date of approval. A Site Construction Plan shall be presented for approval prior to the end of this 2 year period.
- I. Permit Extension:** The Administrator may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant. If an extension is denied, or a Site Construction Plan is not presented for approval within a granted extension period, the applicant may reapply for a Site Master Plan using the same process as if the application was being considered for the first time.

**15.8.2 SITE MASTER PLAN (MAJOR)**

- A. Applicability:** The Major Site Plan process shall apply to all development applications which include 100 or more residential dwelling units and to all development applications which require an Enhanced Transportation Impact Analysis according to Section 6.11.
- B. Process Type:** Quasi-Judicial (See also 15.5)
- C. Permit Required Before Any Land Disturbing Activity:** No such land-disturbing activity shall take place until a Site Master Plan has been approved.
- D. Pre-Application Procedure:** It is required that every applicant for a Site Master Plan permit 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 plans 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 Master Plan.
- E. Required Application Information:** Existing Conditions Map (15.4.1) & Master Plan (15.4.3).
- F. Determination of Compliance:** The Technical Review Committee shall review the plan to ensure that it is complete. The Administrator shall prepare a report and recommendation on the application, and schedule the matter for a joint public hearing before the Planning Board and Board of Commissioners at the next available, regularly scheduled meeting.
- G. Public Notification:** Level 1, 2, 4 & 5 required.
- H. Public Hearing:** The Planning Board and Board of Commissioners shall hold a joint public hearing on the proposal. The applicant and other property owners likely to be affected by the application shall be given an opportunity to be heard.
- I. Delivery of Planning Board Recommendation:** If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the matter and refer it to the Board of Commissioners for their consideration at their regularly scheduled meeting directly following the public hearing. If the Planning Board determines that further deliberation on the matter is required, the Planning Board shall deliver its recommendation to the Board of Commissioners within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of its first consideration on the matter, the Board of Commissioners shall proceed in its consideration of the matter without a recommendation from the Planning Board.
- J. Decisions/Findings of Fact:** The Board of Commissioners shall approve, deny or approve with conditions the Site Master Plan. No Site Master Plan approval shall be granted unless it complies with the following findings of fact:
  - 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;
  - 3. There exists adequate infrastructure (transportation and utilities) to support the plan as proposed; and

4. The plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
- K. Review Period:** The Board of Commissioners shall take action (approve, deny, or approve with conditions) within 65 days of the delivery of the Planning Board recommendation. Should the Board of Commissioners fail to act on the Site Master Plan within the prescribed period, the application shall be considered approved.
- L. Decisions:** If the Board of Commissioners approves the Site Master Plan, the applicant will be directed to proceed to the preparation of a Site Construction Plan (15.8.2). If the Board of Commissioners disapproves or approves conditionally the plan, the reasons for such action shall be stated in writing by the Administrator and entered in the records of the Board, and the applicant may make changes and submit a revised plan for consideration in accordance with the procedures set forth in this section.
- M. Appeals:** An appeal from the decision of the Board of Commissioners regarding a Site Master Plan may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.
- N. Permit Validity:** Approval of a Site Master Plan shall be valid for 2 years from the date of approval. A Site Construction Plan shall be presented for approval prior to the end of this 2 year period.
- O. Permit Extension:** The Board of Commissioners may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant. If an extension is denied, or a Site Construction Plan is not presented for approval within a granted extension period, the applicant may reapply for a Site Master Plan using the same process as if the application was being considered for the first time
- P. Substantial Changes:** Any substantial change to a Site Master Plan (Major) as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners. The following changes to a Site Master Plan (Major) shall require approval by the Board of Commissioners:
1. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  2. Modification of special performance criteria, design standards, or other requirements specified by the Site Master Plan (Major)
  3. When there is an increase in the total number of residential dwelling units originally authorized by the approved Site Master Plan (Major).
  4. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Board of Commissioners. Changes of less than 10 percent may be approved by the Administrator.

5. Any change which alters the basic development concept of the Site Master Plan (Major).

### 15.8.3 SITE CONSTRUCTION PLAN

- A. **Process Type:** Administrative
- B. **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.
- C. **Required Application Information:** Existing Conditions Map (15.4.1), Construction Plans (15.4.4) & As-Built Drawings (15.4.5) (may be waived by Administrator as appropriate).
- D. **Determination of Compliance:** The Site Construction Plan shall be reviewed by the Technical Review Committee for compliance with the requirements of this chapter and for conformity with the approved Site Master Plan, if applicable. Provided the application is complete, applications shall be reviewed by the committee and written review comments will be given to the applicant within 45 days of receipt of the Site Construction Plan.
- E. **Public Notification:** N/A
- F. **Appeals:** Appeals of decisions of a member of the Technical Review Committee shall be heard by the Board of Adjustment in accordance with Section 15.12. An appeal must be made in writing by the applicant within 30 days of the receipt of the committee member's comments.
- G. **Permit Validity:** Approval of a Site Construction Plan shall be valid for 2 years from the date of approval. A Final Plat (See Section 15.9.4) shall be recorded prior to the end of this 2 year period.
- H. **Permit Extension:** The Administrator may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

### 15.8.4 ARCHITECTURAL DESIGN REVIEW (MINOR)

- A. **Applicability:** Any application not reviewed by the Design Review Board, as outlined in Section 15.8.5.A, will be reviewed by the Administrator for architectural design compliance with the standards of this ordinance.
- B. **Process Types:** Administrative
- 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:** Sketch Plan (15.4.2) (may be waived by Administrator as appropriate) & Building Elevations for Design Review (15.4.7).
- 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:** N/A

- G. Appeals:** Appeals of the decisions of the Administrator shall be heard by the Design Review Board in accordance with the procedures set out for Major Architectural Design Review in Section 15.8.5.A through 15.8.5.L.
- H. Permit Validity:** Upon the approval of the application, the applicant shall have one year to obtain a building permit. Failure to secure building permits 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 approval and any subsequent building permits.
- I. Permit Extension:** N/A.

**15.8.5 ARCHITECTURAL DESIGN REVIEW (MAJOR)**

- A. Applicability:** The Major Architectural Design Review process shall apply to the subject district and the associated threshold as specified below:

DISTRICT	THRESHOLD
All Districts	a. Non-residential development ≥ 10,000 square feet in gross floor area (shall not apply to UR, RMX, NMX, UMX, RA-HC, PUD) b. All civic/institutional projects, per Section 5.4 (excluding recreation centers ≤ 2,500 square feet and any expansion or addition to an existing recreation facility)
RA-HC District (not in a Historic Overlay District)	All development ≥ 6,000 square feet in gross floor area
UR, RMX, NMX, or UMX	All mixed use or non-residential projects
GR10, ICD, UR, RMX, RA-HC, NMX, UMX	All multifamily projects containing ≥ 8 multifamily units
PUD	≥ 50,000 square feet of non-residential (including civic and institutional) ≥ 125 multifamily units

- B. Process Types:** Quasi-Judicial (See also 15.5)
- 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:** Sketch Plan (15.4.2) (may be waived by Administrator as appropriate) & Building Elevations for Design Review (15.4.7)
- E. Determination of Compliance:** 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 Design Review Board.
- F. Public Notification:** Levels 1, 2 & 4 required. Level 5 optional.
- G. Public Hearing:** The Design Review 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 Design Review Board may approve, deny or approve with conditions the application. The application shall not be approved unless it complies with the following findings of fact:
  1. The proposed plan is consistent with the adopted plans/policies of the Town and complies with all applicable requirements of this ordinance;

2. The proposed plan 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; and
  3. The proposed plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
- I. Review Period by Design Review Board:** Applications for Major Design Review shall be acted upon by the Design Review Board (approved, approved with conditions or denied) within 60 days if its first consideration on the matter, 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 Design Review Board and the applicant.
- J. Appeals:** An appeal from the decision of the Design Review Board regarding a Major Design Review application may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.
- K. Permit Validity:** Upon the approval of the application, the applicant shall have one year to obtain a building permit. Failure to secure building permits for the permitted work within this time shall render the compliance void.
- L. Permit Extension:** The Administrator may grant a single extension of this time period of up to 6 months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

## 15.9 SUBDIVISIONS

### 15.9.1 SUBDIVISION (MINOR)

- A. Applicability:** The minor subdivision review process is required for those divisions of land into 3 or fewer lots which do not require dedication of public utilities and/or public streets (See Chapter 6: Subdivision and Infrastructure Standards). No more than 2 minor subdivisions of the same parent tract may be accepted for processing or approval as a minor subdivision within any 5 year period. Lots created as a result of a minor subdivision approval shall not be subdivided again through a minor subdivision process for a period of 5 years from the date of approval. Such re-subdivisions must go through the major subdivision process as outlined in Sections 15.9.2 through 15.9.4.
- B. Process Types:** Administrative
- C. Pre-Application Procedure:** It is required that every applicant for a Minor Subdivision meet with the Administrator prior to the submittal of an application. The purpose of this meeting 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 meeting. 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.

- D. Required Application Information:** Final Plat (15.4.6) by a professional land surveyor
- E. Determination of Compliance:** Once an application is submitted and deemed complete, the Administrator shall review the application and approve or deny it based on compliance with the land development standards contained in this ordinance within 30 working days of its submittal.
- F. Public Notification:** N/A
- G. Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12. An appeal must be made in writing by the applicant within 30 days of the receipt of the Administrator's decision.
- H. 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 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 Wake County.
- I. Permit Extension:** N/A

#### 15.9.2 SUBDIVISION MASTER PLAN/TND (MAJOR)

- A. Applicability:** The Subdivision Master Plan review process is required for those divisions of land into 4 or more lots, or which require dedication of public utilities and/or public streets (See Chapter 6: Subdivision and Infrastructure Standards).
- B. Process Types:** Quasi-Judicial (See also 15.5)
- C. Permit Required Before Any Land Disturbing Activity:** No such land-disturbing activity shall take place until a Subdivision Master Plan has been approved.
- D. Pre-Application Procedure:** It is required that every applicant for a Subdivision Master Plan permit meet with the Administrator prior to the submittal of an application. The purpose of this meeting is to provide clarification and assistance in the preparation and submission of plats for approval. It is required that the applicant provide a Sketch Plan (15.4.2) to the Administrator at least 7 days prior to or at the pre-application meeting.
- E. Required Application Information:** Existing Conditions Map (15.4.1), Sketch Plan (15.4.2) & Master Plan (15.4.3).
- F. Determination of Compliance:** The Technical Review Committee shall review the plan to ensure that it is complete. The Administrator shall prepare a report and recommendation on the application, and schedule the matter for a joint public hearing before the Planning Board and Board of Commissioners at the next available, regularly scheduled meeting.
- G. Public Notification:** Level 1, 2, 4 & 5 required.
- H. Public Hearing:** The Planning Board and Board of Commissioners shall hold a joint public 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. Delivery of Planning Board Recommendation:** If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the matter and refer it to the Board of Commissioners for their consideration at their regularly scheduled meeting directly following the public hearing. If the Planning Board determines that further deliberation on the matter is required, the Planning Board shall deliver its recommendation to the Board of Commissioners within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of its first consideration on the matter, the Board of Commissioners shall proceed in its consideration of the matter without a recommendation from the Planning Board.
- J. Decisions/Findings of Fact:** The Board of Commissioners shall approve, deny or approve with conditions the Subdivision Master Plan. No Subdivision Master Plan approval shall be granted unless it complies with the following findings of fact:
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;
  3. There exists adequate infrastructure (transportation and utilities) to support the plan as proposed; and
  4. The plan will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
- K. Review Period:** The Board of Commissioners shall take action (approve, deny, or approve with conditions) within 65 days of the delivery of the Planning Board recommendation. Should the Board of Commissioners fail to act on the Subdivision Master Plan within the prescribed period, the application shall be considered approved.
- L. Decisions:** If the Board of Commissioners approves the Subdivision Master Plan, the applicant will be directed to proceed to the preparation of a Subdivision Construction Plan (15.8.2). If the Board of Commissioners disapproves or approves conditionally the plan, the reasons for such action shall be stated in writing by the Administrator and entered in the records of the Board, and the applicant may make changes and submit a revised plan for consideration in accordance with the procedures set forth in this section.
- M. Appeals:** An appeal from the decision of the Board of Commissioners regarding a Subdivision Master Plan may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.
- N. Permit Validity:** Approval of a Subdivision Master Plan shall be valid for 2 years from the date of approval. Subdivisions may be phased according to a schedule established by the applicant. If the approved Subdivision Master Plan provides for multiple phases within the subdivision, a Subdivision Construction Plan approval for any one phase shall extend the Subdivision Master Plan approval for all other phases for a period of 2 years from the date of the Subdivision Construction Plan approval for that phase. If a Subdivision Construction Plan approval has not been

obtained prior to the end of this 2 year period, the Subdivision Master Plan approval shall become void.

- O. Permit Extension:** The Board of Commissioners may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.
- P. Substantial Changes:** Any substantial change to a Subdivision Master Plan/TND (Major) as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended a Subdivision Master Plan/TND (Major). The following changes to a Subdivision Master Plan/TND (Major) shall require approval by the Board of Commissioners:
  - 1. Modification of special performance criteria, design standards, or other requirements specified by the Subdivision Master Plan/TND (Major).
  - 2. A change in land use or development type beyond that permitted by the approved Subdivision Master Plan/TND (Major).
  - 3. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  - 4. When there is an increase in the total number of residential dwelling units originally authorized by the approved Subdivision Master Plan/TND (Major).
  - 5. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Board of Commissioners. Changes of less than 10 percent may be approved by the Administrator.
  - 6. Any change which alters the basic development concept of the Subdivision Master Plan/TND (Major).

### 15.9.3 SUBDIVISION CONSTRUCTION PLAN (MAJOR)

- A. Process Type:** Administrative
- B. 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.
- C. Required Application Information:** Existing Conditions Map (15.4.1) & Construction Plans (15.4.4)
- D. Determination of Compliance:** The Subdivision Construction Plan shall be reviewed by the Technical Review Committee for compliance with the requirements of this chapter and for conformity with the approved Subdivision Master Plan. Provided the application is complete, applications shall be reviewed and acted upon by the committee and notice given the applicant within 30 days of receipt of the subdivision construction plan.
- E. Public Notification:** N/A
- F. Appeals:** Appeals of a decision of a member of the Technical Review Committee shall be heard by the Board of Adjustment in accordance with Section 15.12. An appeal must be made in writing by the applicant within 30 days of the receipt of the committee's decision.

- G. Phasing:** Subdivision Construction Plans for phased subdivisions shall be reviewed and recorded individually in accordance with the schedule presented by the applicant during the Subdivision Master Plan approval.
- H. Permit Validity:** Approval of a Subdivision Construction Plan shall be valid for 2 years from the date of approval. A Final Plat shall be recorded prior to the end of this 2-year period.
- I. Permit Extension:** The Administrator may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

#### 15.9.4 FINAL PLAT (MAJOR/MINOR SUBDIVISIONS & SITE PLANS)

- 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 approved (unless financially guaranteed), the applicant shall certify that the completed project is in substantial accordance with the approved plans and designs, and shall submit actual “as built” plans (15.4.5) for all public infrastructure after final construction is completed.
- D. Required Application Information:** As-Built Drawings (15.4.5) & Final Plat (15.4.6) by a professional land surveyor.
- E. Determination of Compliance:** The Final Plat shall be reviewed by the Administrator for compliance with the requirements of this chapter and, in the case of major subdivisions, for conformity with the approved Subdivision Construction Plan. Provided the application is complete, applications shall be reviewed and acted upon by the committee and notice given the applicant within 30 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 Commissioners at their next meeting.
- F. Public Notification:** N/A
- G. Appeals:** Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12. An appeal must be made in writing by the applicant within 30 days of the receipt of the Administrator’s 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 Wake Forest, 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 Commissioners 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 Subdivision Construction Plan approval.

- J. Permit Validity:** Final plats that have been granted approval must be recorded within 30 days following approval or the approval becomes invalid. No lots in a subdivision shall be sold prior to approval by the town and recording of the Final Plat for the subdivision.
- K. Permit Extension:** None.

## 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 2.3 & Chapter 3.

### 15.10.1 APPLICATION PROCEDURES

- A. Process Type:** Quasi-Judicial (See also 15.5)
- 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 Existing Conditions Map (15.4.1) (may be waived by Administrator as appropriate) and Master Plan (15.4.3). 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 Compliance:** 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 BY PLANNING BOARD

- A. Public Notification (Prior to Planning Board):** Level 1, 2, 4 & 5 required.
- B. Review by Planning Board:** The Planning Board shall conduct a public hearing, either jointly with the Board of Commissioners or in a separate hearing. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. Following the hearing, the Planning Board shall make a recommendation to the Board of Commissioners regarding whether to approve, deny or approve with conditions the Special Use Permit.
- C. Delivery of Planning Board Recommendation:** If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the matter and refer it to the Board of Commissioners for their consideration at their regularly scheduled meeting directly following the public hearing. If the Planning Board determines that further deliberation on the matter is required, the Planning Board shall deliver its recommendation to the Board of Commissioners within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of its first consideration on the matter, the Board of

Commissioners shall proceed in its consideration of the matter without a recommendation from the Planning Board.

### 15.10.3 CONSIDERATION BY BOARD OF COMMISSIONERS

- A. Public Notification:** If a separate public hearing is held for the Board of Commissioners to receive the Planning Board recommendation and/or deliberate on the Special Use Permit application, the same public notification procedures shall be followed as are required for the Planning Board hearing on the matter. (See Section 15.10.2.A)
- B. Consideration by the Board of Commissioners:** Following receipt of a recommendation from the Planning Board, or after 45 days from the Planning Board hearing if no recommendation is received, the Board of Commissioners shall conduct a public hearing on the matter. Upon reviewing all of the pertinent information, the Board of Commissioners may approve, deny or approve with conditions the Special Use Permit.
- C. Review Period:** The Board of Commissioners shall take action (approve, deny, or approve with conditions) within 65 days of the public hearing on the matter. Should the Board of Commissioners fail to act on the Special Use Permit application within the prescribed period, the application shall be considered approved.
- D. Findings of Fact:** In addition to determining that the application meets all other requirements of this ordinance (no variances are permitted) the Board of Commissioners must find the following in order to grant approval of a Special Use Permit:
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. The proposed use will not cause undue traffic congestion or create a traffic hazard.
  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.
  6. The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety or general welfare.
  7. The proposed use will not substantially injure the value of adjoining or abutting property.
  8. The proposed use is consistent with the officially adopted plans and policies of the town.
- D. Additional Standards for Special Uses in Floodplain Hazard Areas:** Applications for Special Use Permits in the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall be subject to the following additional standards of review:
1. The Board of Commissioners shall determine the specific flood or erosion hazard of the site and shall evaluate the suitability of the proposed use in relation to the flood hazard.

2. In passing upon such applications, the Board of Commissioners shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance and:
  - a. The danger that material may be swept onto other lands to the injury of others.
  - b. The danger to life and property due to flooding or erosion damage.
  - c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions
  - d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - e. The importance of the services provided by the proposed facility to the community.
  - f. The necessity to the facility of a waterfront location, where applicable.
  - g. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - h. The compatibility for the proposed use with existing development anticipated in the foreseeable future.
  - i. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
  - j. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - k. 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.
  - l. 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.

**E. Additional Conditions:** The Board of Commissioners 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.

#### 15.10.4 EFFECT OF DECISIONS

- A. Appeals:** An appeal from the decision of the Board of Commissioners regarding a Special Use Permit application may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.
- B. Permit Validity:** Special Uses that have been granted approval must begin site development within 2 years following approval or the approval becomes invalid.

- C. Permit Extension:** The Board of Commissioners may grant 1 extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.
- D. Substantial Changes:** Any substantial change to a Special Use Permit as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended a Special Use Permit. The following changes to a Special Use Permit shall require approval by the Board of Commissioners:
1. Modification of special performance criteria, design standards, or other requirements specified by the Special Use Permit.
  2. A change in land use or development type beyond that permitted by the approved Special Use Permit.
  3. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  4. When there is an increase in the total number of residential dwelling units originally authorized by the approved Special Use Permit.
  5. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Board of Commissioners. Changes of less than 10 percent may be approved by the Administrator.
  6. Any change which alters the basic development concept of the Special Use Permit.

## 15.11 HISTORIC PRESERVATION

The historical heritage of the Town of Wake Forest is a valuable and important asset. By listing and regulating historic districts and landmarks, acquiring historic properties, and imposing delays in the demolition of historic structures, the Town of Wake Forest seeks:

- To safeguard the heritage of the town by preserving districts and landmarks therein that embody the special character of the Town and important elements of its culture, history, architectural history, or pre-history; and
- To promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the town, the County and the State as a whole; and
- To preserve property values and promote the general welfare of its citizens.

### 15.11.1 DESIGNATION OF HISTORIC LANDMARKS/HISTORIC DISTRICTS

Upon complying with the required designation procedures set forth herein, the Board of Commissioners may adopt and from time to time amend or repeal an ordinance designating one or more local historic landmarks and/or districts. No property shall be recommended for designation as a landmark or included in a historic district unless it is deemed and found by the Historic Preservation Commission, hereafter referred to as the HPC, to be of special significance in terms of its historical, pre-historical, architectural or cultural importance, and to possess integrity of design, setting, location, 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 HPC shall maintain an inventory of properties of historical, architectural, pre-historical and cultural significance within the land development jurisdiction of the town.
- C. Applicants:** An application for the designation of property or properties as a historic landmark or district may be submitted by any of the following:
1. The Historic Preservation Commission (HPC),
  2. The Board of Commissioners,
  3. The Planning Board,
  4. The Planning Department, and/or
  5. Any resident within the land use jurisdiction of the town.
- D. Required Application Information:** Each application for designation as a historic landmark or district shall contain, at a minimum an Application and a Sketch Plan (15.4.2) that describes the boundaries of the proposed landmark or district and its particular historical, pre-historical, architectural or cultural significance.
- E. Opportunity for Comment from the North Carolina State Historic Preservation Office (SHPO)**
1. Once a complete application is submitted, the Administrator shall prepare a report on the historic, architectural, pre-historical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such report and application shall be forwarded to the SHPO.
  2. The State Historic Preservation Office shall 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 SHPO does not submit its comments to the HPC within 30 days following receipt by the department of the report, the Historic Preservation Commission and the Board of Commissioners shall be relieved of any responsibility to consider such comments.
- F. Creation of Ordinance for Designation**
1. Once a potential landmark or district has been identified, the Administrator shall draft an ordinance for the designation of said property as an official local historic landmark or district.
  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.
- G. Public Notification:** Level 1, 2 &3 required. Level 5 optional.
- H. Public Hearing and Decision by the Board of Commissioners:** The HPC and the Board of Commissioners shall hold a joint public hearing (or separate public hearings) on the proposed ordinance. Following the public hearing(s), the Board of Commissioners may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

**I. 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 applicant in the offices of the Register of Deeds and the Tax Supervisor of Wake County.
3. 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.
4. A third copy of the ordinance and any amendments thereto shall be given to the building inspector for the town.
5. The fact that a building, structure, site or area has been designated a landmark shall be clearly indicated on all tax maps maintained by Wake County for such period as the designation remains in effect.
6. 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.
7. 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.

**15.11.2 CERTIFICATE OF APPROPRIATENESS – MINOR WORKS (MINOR COA)**

- A. Applicability:** Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or historic district as a whole.
- B. Process Type:** Administrative
- C. Pre-Application Meeting:** No pre-application conference is required prior to applying for a Minor COA. 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:** Sketch Plan (15.4.2) and Building Elevations for Design Review (15.4.7) (each 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 standards contained in this chapter and in any applicable Historic District Standards.
- F. Public Notification:** N/A
- G. Appeals:** Appeals of the decisions of the Administrator shall be heard by the HPC (15.11.3 below).
- H. Permit Validity:** One year
- I. Permit Extension:** The Administrator may grant one extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

**15.11.3 CERTIFICATE OF APPROPRIATENESS – MAJOR WORKS (MAJOR COA)**

- A. Applicability:** Any exterior change that does not qualify for a Minor COA according to the provisions of Section 15.11.2.A.
- B. Process Type:** Quasi-Judicial (See also 15.5)
- C. Pre-Application Meeting:** It shall be the policy of the HPC, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that a sub-committee of the commission or Town Staff 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 Historic District Design Standards, 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 or staff, 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.
- D. Required Application Information:** Each application for a Major Certificate of Appropriateness shall contain a Sketch Plan (15.4.2), Building Elevations and/or Existing Condition Photographs, and Proposed Materials for Design Review (15.4.7) (each 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 and the Historic District Design Standards shall also be provided.
- E. Determination of Compliance:** 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 HPC.
- F. Public Notification:** Level 1 & 3 required.
- G. Public Hearing:** The HPC 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. HPC Review:** Following the public hearing the HPC may approve, deny or approve with conditions the application for a Major COA. No Major COA shall be granted unless the HPC finds that the application complies with the Secretary of Interior's Standards for Rehabilitation and the Wake Forest Historic District Design Standards.
- I. 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 property.
- J. Review Period by HPC:** Applications for COA's shall be acted upon within 180 days after a complete application is filed, 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 HPC and the applicant.
- K. Appeals:** According to the provisions of NCGS 160A – 400.9(e), an appeal from the decision of the Historic Preservation Commission regarding a Major Certificate of Appropriateness application may be made in the nature of certiorari by an aggrieved party to the Board of Adjustment in accordance with Section 15.12 of this ordinance within 30 days of the decision of the commission.
- L. Permit Validity:** One year
- M. Permit Extension:** The Administrator may grant one extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the

extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

#### 15.11.4 CERTIFICATE OF APPROPRIATENESS – DEMOLITION OF HISTORIC STRUCTURES

- A. Applicability and Authority:** A COA, approved and issued by the HPC subject to the provisions below, is required prior to the demolition, removal or destruction of any of the following historic structures:
1. **Locally Designated Historic Structures:** All locally designated historic landmarks or properties within a historic district pursuant to the authority granted in NCGS 160A-440.14, and
  2. **Other Historic Structures:** All other historic structures located within the corporate limits and extraterritorial jurisdiction of the Town of Wake Forest pursuant to the authority granted in Session Law 2007-66, House Bill 827 ratified June 7, 2007 by the General Assembly of the State of North Carolina. Such structures shall include those which are:
    - a. Designated as a State or national landmark;
    - b. Individually listed in the National Register of Historic Places;
    - c. Individually identified as a contributing structure in a historic district listed in the National Register of Historic Places;
    - d. Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
    - e. Individually listed in the State inventory of historic places;
    - f. Individually listed in the county Register of Historic Places; or,
    - g. Individually listed in the Town of Wake Forest local inventory of historic places, as per Section 15.11.1.B above.
- B. Process Type:** Quasi-Judicial (See also 15.5)
- C. Pre-Application Meeting:** 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:** Each application shall contain a Sketch Plan (15.4.2) designating the extent of the proposed demolition, removal or destruction of historic structures.
- E. Determination of Compliance – Locally Designated Historic Structures:** For applications regarding “locally designated historic structures” as outlined in Section 15.11.4.A.1 above, the Administrator shall review the application to ensure that it is complete and schedule the matter for a public hearing before the HPC.
- F. Determination of Compliance – Other Historic Structures:** For applications regarding “other historic structures” as outlined in Section 15.11.4.A.2 above, the Administrator shall review the application to ensure that it is complete and assign a Demolition Approval System Score (DASS) as described below. If, according to the DASS table below, a Certificate of Appropriateness is required to authorize the demolition, removal or destruction of a designated landmark or a building, structure or site within a historic district, the Administrator shall schedule the matter for a public hearing before the HPC.

**Demolition Approval System Score (DASS)**

DASS Tier	Criteria for Assignment of Tier Category*	Required Action
Tier 1	<ul style="list-style-type: none"> <li>• Appears on the Historic Building Survey Map of the town; OR</li> <li>• Located in an area on the state study list as a potential historic district</li> </ul>	Staff shall determine if property is located in an area that is a potential historic district or if the property is a potential for listing on the state study list. If either is true an application for a COA shall be filed by the applicant for review by the HPC. The HPC shall grant a COA authorizing demolition or may order a delay of up to 365 days before demolition may commence. If neither is true (i.e. the site is not in a potential historic district and is not a potential for listing on the state study list) no COA is required and the demolition may proceed without delay.
Tier 2	<ul style="list-style-type: none"> <li>• Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a district preliminarily determined by the Secretary to qualify as a registered historic district; OR</li> <li>• Designated as “non-contributing” in a National Register historic district; OR</li> <li>• Individually listed in the state study list; OR</li> <li>• Individually listed in any county or local inventory of historic buildings or sites</li> </ul>	An application for a COA shall be filed by the applicant for review by the HPC. The HPC shall grant a COA authorizing demolition or may order a delay of up to 365 days before demolition may commence.
Tier 3	<ul style="list-style-type: none"> <li>• Individually designated landmark; OR</li> <li>• Individually listed in National Register; OR</li> <li>• Designated as “contributing” in a National Register historic district</li> </ul>	An application for a COA shall be filed by the applicant for review by the HPC. The HPC shall grant a COA authorizing demolition or may order a delay of up to 365 days before demolition may commence. (A Tier 3 DASS score will likely result in an automatic delay of 365 days.)
None	<ul style="list-style-type: none"> <li>• None of the above criteria apply.</li> </ul>	No delay of demolition. No COA required.

\* A property shall be classified in the highest Tier Category for which it meets the criteria.

**G. Public Notification:** Level 1 & 3 required.

**H. Public Hearing:** The HPC 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. HPC Review – Locally Designated Historic Structures:** An application for a Certificate of Appropriateness authorizing the demolition, removal or destruction of a “locally designated historic structure,” as outlined in Section 15.11.4.A.1 above, may not be denied or delayed except as provided below:

1. The effective date of such a certificate may be delayed for up to 365 days from the date of approval. The period of delay should be reduced by the HPC 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 HPC shall negotiate with the owner in an effort to find a means of preserving the building, structure or site.
3. If the HPC 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 HPC 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 Commissioners, 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 365 days after the Board of Commissioners takes final action on the designation.

5. An application for a Major 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 HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.
- J. HPC Review – Other Historic Structures:** An application for a COA authorizing the demolition, removal or destruction of “other historic structures” as outlined in Section 15.11.4.A.2 above, shall be evaluated by the HPC based on 4 standards which will be weighed using a point scale of 0 to 2, where 0 means that the structure does not meet the standard, 1 means the structure moderately meets the standard, and 2 means the structure significantly meets the standard. A total score of 4 or greater will result issuance of a COA with an order for delay of demolition for 365 days from the date in the COA. A total score of less than 4 may result in the issuance of a COA with a delay of less than 365 days or no delay of demolition. The standards are as follows:
1. **Architectural Integrity**
    - a. The structure has maintained the integrity of its original architectural form.
    - b. Changes made to the structure over 50 years ago have gained historic significance.
  2. **Architectural Style**
    - a. The structure has a distinctive architectural style.
    - b. It has superior craftsmanship.
    - c. The structure is the last or oldest example of a certain building type.
    - d. It is one of a cluster of buildings that are significant as a group.
  3. **Cultural Significance:** The structure is culturally significant due to factors such as its historic use, an event, a person, a builder, or an architect associated with the structure.
  4. **Structural Integrity**
    - a. The structure will be given a score of 2 points for structural integrity unless the applicant has provided an engineer's report stating otherwise.
    - b. Said report will be paid for by the applicant using a structural engineer recommended by the SHPO.
    - c. The structural components – roof, wall, floor, and foundation systems will each have a value of ½ point.
    - d. If the report states that a system is structurally unsound the score of 2 will be reduced by ½ point per system rated at 50% or more unsound.
- K. HPC Decision and Findings of Fact:** The action on an application must be supported by specific findings of fact indicating the extent to which the application meets the provisions above. The HPC may choose to include previous documented time spent in the search for an alternative to demolition, such as moving the structure, as part of any required delay of demolition.

- L. Review Period by HPC:** Applications for COA shall be acted upon within 180 days after a complete application is filed, 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 HPC and the applicant.
- M. Immediate Demolition – Other Historic Structures:** For applications regarding “other historic structures” as outlined in Section 15.11.4.A.2 above, the applicant may avoid a delay in demolition imposed by the HPC if the State Building Inspector orders the immediate demolition of the structure, or if the applicant makes a claim of unsafe conditions according to the following provisions.
1. Any application for demolition of a Tier 2 or 3 structure must include documentation as to the condition of the property to support a claim of unsafe conditions.
  2. This documentation shall be in the form of a report from a structural engineer recommended by the SHPO and paid for by the applicant. This report shall specifically address the roof, wall, floor, and foundation systems rated as a percentage structurally unsound.
  3. If the structure to be demolished is an accessory structure, a similar report from the town building inspector may be submitted for the engineer’s report although the HPC may require that the applicant return with an engineer’s report at the applicant’s expense.
  4. The HPC may also require an engineer’s report for any Tier 1 property at their discretion and at the applicant’s expense based on the considerations of the specific site.
  5. A structure found to be unsafe shall not automatically be issued a COA with no delay of demolition. The COA may be issued with a delay of demolition and an order for stabilization or shoring in order to avoid demolition by neglect.
- N. Salvage of Materials – Other Historic Structures:** For applications regarding “other historic structures” as outlined in Section 15.11.4.A.2 above, the applicant shall make all materials available to salvagers prior to demolition according to the provisions below.
1. Such materials may be sold to a salvage company or any other interested party, donated to “Habitat for Humanity” or similar organizations, given away to individuals, businesses, or other organizations, or any combination thereof.
  2. The applicant must publically advertise, at least two weeks prior, a date and time for any interested materials salvager or other interested parties to visit the building to be demolished and arrange to acquire any desired salvage materials. The requirement of advertising may be waived by staff or the HPC when the salvage is handled in another acceptable manner or the potential salvage is of minimal value.
  3. The applicant shall time the collection of materials in a logical manner, such as doors, windows, fireplace surrounds and mantels, cabinets, fixtures, etc will be collected prior to wood flooring, although carpets could be collected early.
  4. At the time the salvaged materials are collected the applicant or his agent must be on site to assure that materials are not damaged in the acquisition of other materials.
- O. Appeals:** According to the provisions of NCGS 160A – 400.9(e), an appeal from the decision of the HPC regarding a Major Certificate of Appropriateness application may be made by an aggrieved party in the nature of certiorari to the

Board of Adjustment in accordance with Section 15.12 of this ordinance within 30 days of the decision of the commission.

- P. Permit Validity:** One year
- Q. Permit Extension:** The Administrator may grant one extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

## 15.12 APPEALS OF ADMINISTRATIVE DECISIONS

### 15.12.1 APPLICABILITY

This process is hereby established to provide an appeal process for the following:

- A.** Parties aggrieved by any order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance, and,
- B.** Parties aggrieved by the decision of the HPC regarding Major COA according to the appellate procedure outlined in NCGS 160A – 400.9(e).

### 15.12.2 FILING PROCEDURES

- A. Process Types:** Quasi-Judicial (See also 15.5)
- B. Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent), or by any officer, department or board of the town, to the Board of Adjustment. Such an appeal shall be made within 30 days of the receipt by such aggrieved party of the written notice of decision from the Administrator, or in the case of an office, department or board of the town, within 30 days of the filing of the written notice with the Town Clerk.
- 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 or preliminary injunction granted by the Superior Court of Wake County in accordance with Rule 65 of the North Carolina Rules of Civil Procedure.
- D. Required Appeal Application Information:** Such relevant information as may reasonably allow the Board of Adjustment to understand the basis for the applicant's appeal. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.
- E. Public Notification:** Level 1 & 2 required.

### 15.12.3 FORMAL REVIEW

- A.** Upon receiving the application, the Board of Adjustment 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 of Adjustment shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. It shall take a 4/5ths vote of the Board of Adjustment to reverse or modify the contested action.



- C. The Board of Adjustment, 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.
- D. The decision of the Board of Adjustment 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 of Adjustment, which must be delivered to parties of interest by certified mail.

#### 15.12.4 APPEALS

- A. Any appeal from a decision of the Board of Adjustment may be made by an aggrieved party and shall be made to the Superior Court of Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.
- B. Any appeal from a decision relating to sedimentation and erosion control shall be made to the North Carolina Sedimentation Control Commission.

### 15.13 VARIANCES

#### 15.13.1 APPLICABILITY

- 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. **Sufficient Grounds for Variance:** It is not intended that variances be granted solely 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, although such factors can be taken into consideration.
- 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 any state code unless otherwise authorized by laws and regulations.

#### 15.13.2 FILING PROCEDURES

- A. **Process Types:** Quasi-Judicial (See also 15.5)
- 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 purpose of this conference is to provide additional information regarding the review process and assistance in the preparation of the application.

- 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, 2 & 4 required.
- F. **Determination of Compliance:** 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 a quasi-judicial 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; approve the application; or approve the application with additional conditions. A concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance.
3. A decision by the Board of Adjustment shall be made within 45 days of the date of the hearing.
4. Any approval or denial of the request shall be accompanied by written findings of fact supporting the conclusion that the variance meets or does not meet each of the standards set forth below.

#### B. Standard of Review: The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:

1. Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant of the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.

#### C. Additional Standards for Floodplain, Watershed and Stormwater Regulation Variance Requests: Variances from the standards set forth in this ordinance for flood damage prevention, watershed protection and stormwater regulation may be granted subject to the following additional provisions:

1. 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.
2. Variances shall only be issued upon:
  - a. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  - b. A showing of good and sufficient cause;
  - c. A determination that failure to grant the variance would result in exceptional hardship; and,
  - d. A determination that the granting of a variance will not result in a substantial increase in 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.
3. 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:
  - a. The danger that material may be swept onto other lands to the injury of others.
  - b. The danger to life and property due to flooding or erosion damage.
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - d. The importance of the services provided by the proposed facility to the community.
  - e. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - f. The compatibility of the proposed use with existing and anticipated development.
  - g. The relationship of the proposed use to the land development plan and flood damage prevention program for that area.
  - h. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - i. 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.
  - j. 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.
4. 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 such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. 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.

- D. Additional Conditions:** 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 of Adjustment 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 ordinance. Such conditions and safeguards must be reasonably related to the condition or circumstance that gives rise to the need for a variance.

#### 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 Wake County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court within 30 days after the decision of the Board is filed with the Town Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

### 15.14 TEXT AMENDMENTS AND MAP AMENDMENTS (REZONINGS)

The Board of Commissioners may from time to time amend any part of the text of this ordinance or amend the Zoning 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:
1. The Board of Commissioners,
  2. The Planning Board,
  3. The Planning Department, and/or
  4. Any resident or property owner 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 zoning 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 Compliance:** 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.

#### 15.14.2 REVIEW BY PLANNING BOARD

- A. Public Notification (Prior to Planning Board):** Level 1, 2 & 4, as defined in Section 15.3, are required for all amendments to the UDO. Level 3 is required for

all map amendments (rezonings) that involve a specific parcel of land. Such actions include, but are not limited to, map amendments (rezonings), amendments to zoning district boundaries, and the application of new overlay zones. A Level 5 notification is required for Map Amendments.

- B. Level 3 Notification for Large Scale Amendments:** If the land development map amendment includes 50 or more properties, owned by at least 50 different property owners, the town may elect to utilize the expanded published notice provisions found in NCGS 160A-384, as outlined in Section 15.3.3.B of this chapter.
- C. Public Hearing:** The Planning Board shall conduct a public hearing, either jointly with the Board of Commissioners or in a separate hearing, and receive public input on the proposed amendment. Following the hearing to receive public input on the amendment, the Planning Board shall make a recommendation to the Board of Commissioners regarding whether to approve or deny each proposed amendment.
- D. Delivery of Planning Board Recommendation:** If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the matter and refer it to the Board of Commissioners for their consideration at their regularly scheduled meeting directly following the public hearing. If the Planning Board determines that further deliberation on the matter is required, the Planning Board shall deliver its recommendation to the Board of Commissioners within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of its first consideration on the matter, the Board of Commissioners shall proceed in its consideration of the matter without a recommendation from the Planning Board.
- E. Effect of Planning Board Recommendation**
  - 1. Recommendation for Approval:** If the Planning Board makes a favorable recommendation, the matter shall proceed to a public hearing before the Board of Commissioners.
  - 2. Recommendation for Denial:** If the Planning Board makes a negative recommendation, the petitioner may, within 45 days of the Planning Board's decision, request that a public hearing be held by the Board of Commissioners on the matter. This appeal process does not apply to amendments initiated by the Board of Commissioners or planning department. These amendments go immediately to the Board of Commissioners following a recommendation by the Planning Board.
  - 3. Effect of Recommendation for Denial:** A 3/4 majority vote by the Board of Commissioners shall be required to amend this ordinance when the Planning Board recommends against such amendment.

### 15.14.3 CITIZEN COMMENTS

- A. Written Statement of Citizen Concern:** If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to this ordinance to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Board of Commissioners. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160A-388, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and provisions of such names and addresses to all members of the Board of Commissioners shall not disqualify any member of the Board of Commissioners from voting.

- B. Withdrawal of Written Statement:** Any resident or property owner who submits a written statement of citizen concern may withdraw their written statement any time prior to the meeting at which the item will be considered.

#### 15.14.4 CONSIDERATION BY BOARD OF COMMISSIONERS

- A. Public Notification:** If a separate public hearing is held for the Board of Commissioners to hear public input, receive the Planning Board recommendation, and/or deliberate on the map or text amendment, the same public notification procedures shall be followed as are required for the Planning Board hearing on the matter. (See Sections 15.14.2.A through 15.14.2.C)
- B. Consideration by the Board of Commissioners:** Following receipt of a recommendation from the Planning Board, or after 45 days from the Planning Board hearing if no recommendation is received, the Board of Commissioners shall conduct a public hearing on the matter. Upon reviewing all of the pertinent information, the Board of Commissioners may:
1. Adopt the proposed amendment.
  2. Adopt the proposed amendment with modifications.
  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. 160A-383, all such amendments shall be made in accordance with the Community 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. When adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with the adopted comprehensive plan and explaining why the Board of Commissioners considers the action taken to be reasonable and in the public interest.

#### 15.14.6 WAITING PERIOD FOR SUBSEQUENT APPLICATIONS

- A.** After an application for an amendment has been approved or denied by the Board of Commissioners, there shall be a 6 month waiting period before an application shall be considered on the same issue.
- B.** This waiting period may be waived by the Board of Commissioners (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 (CD) (see Section 2.6) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Commissioners in accordance with G.S. 160A-382. 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. Process Types:** Legislative

- B. 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 in the specific Conditional District request. A Conditional District 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 Conditional District shall be owned or otherwise under the legal control of the applicant for a Conditional District. The applicant shall be legally capable of providing a commitment to the town that the Conditional District development will comply with all documents, plans, standards and conditions ultimately approved by the town.
- C. Fair and Reasonable Conditions:** 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 Commissioners and the applicant may mutually agree to additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this section, and to preserve public welfare, and justice. The provisions of the Conditional District 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 Commissioners (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 Commissioners prior to final action. In accordance with G.S. 160A-382(b)
- D. Content of Application:** A Conditional District shall consist of the Existing Conditions Map (15.4.1), a Sketch Plan (15.4.2) (may be waived by Administrator as appropriate), 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 Commissioners. The Conditional District Master Plan, is a site specific that is a condition of the Conditional District rezoning. In addition to those items required for Master Plans in Section 15.4.3, a Conditional District Master Plan shall, at a minimum, illustrate the following:
1. The underlying zoning districts and a full list of proposed uses consistent in character with those zoning districts. Such use classifications may be selected from any of the uses, whether permitted, by right or with supplemental standards, 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;
  2. 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 and impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
  4. A proposed development schedule if the project is to be phased.

**E. Exception for Conditional Districts with Use Limitations Only:** If an applicant proposes a Conditional District which meets the following criteria, no Conditional District Master Plan shall be required in the application:

1. The only proposed deviation in use from the underlying zoning is to impose additional limitations on the uses that will be allowed in the Conditional District.
2. No other deviations from the standards of the underlying zoning are proposed in the Conditional District.

### 15.15.2 FORMAL REVIEW

- A. Public Notification: (Prior to Planning Board):** Level 1, 2, 3, 4 & 5 required.
- B. Procedure:** The procedure for approval of a Conditional District shall follow the procedure for review of Text & Map Amendments (Rezoning) as outlined in Sections 15.14.2 through 15.14.7.

### 15.15.3 EFFECT OF APPROVAL/CHANGES

The applicant may proceed with development only after approval of the Conditional District Master Plan by the Board of Commissioners, followed by approval of any necessary Site Plans or Subdivision Plats, except that all subsequent approvals shall be completed by the Administrator. The development and use of all land within the Conditional District shall be in keeping with the approved Master Plan and all applicable provisions therein.

- A. Final Approval by Stages:** If so reflected on the Master Plan, the Board of Commissioners may allow the phasing of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable Conditional District Master Plan.
- B. Substantial Changes:** Any substantial change to a Master Plan as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended Conditional District. The following changes to a Conditional District Master Plan shall require approval by the Board of Commissioners:
1. Land area being added or removed from the Conditional District.
  2. Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
  3. A change in land use or development type beyond that permitted by the approved Conditional District Master Plan.
  4. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  5. When there is an increase in the total number of residential dwelling units originally authorized by the approved Conditional District Master Plan.
  6. When the total floor area of a commercial or industrial classification is increased more than 10% beyond the total floor area last approved by Board of Commissioners. Changes of less than 10 percent may be approved by the Administrator.
  7. Any change which alters the basic development concept of the Conditional District Master Plan.



8. **Other Changes:** All other changes to a Conditional District Master Plan shall receive approval from the Board of Adjustment.
- C. **Rescission of Conditional Districts:** The Applicant shall secure a valid building or construction permit(s) within 2 years from date of approval of the Conditional District unless otherwise specified. If such project is not complete or a valid building or construction permit is not in place at the end of the 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 Commissioners. The Board of Commissioners 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 PLANNED UNIT DEVELOPMENT (PUD)

Planned Unit Development (PUD) districts (see Section 2.7) are districts that permit variations to allow flexibility to creatively plan a site specific, high quality overall development of their land that is not possible through the strict application of the minimum standards of the Ordinance and are approved in a legislative procedure by the Board of Commissioners in accordance with G.S. 160A-382. Planned Unit Developments 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.

### 15.16.1 GENERAL APPLICABILITY

- A. Before any development shall be designated as a Planned Unit Development (PUD) District on the Official Zoning District Map, it shall receive approval pursuant to the terms of this Section and Sec. 2.7 Planned Unit Developments.
- B. A Planned Unit Development (PUD) designation may be established on any land located in the Town and its ETJ that complies with all of the applicable standards of this Section.

### 15.16.2 APPLICATION PROCEDURES

- A. **Process Types:** Legislative
- B. **Applicant and Property:** Planned Unit Development classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included in the specific Planned Unit Development request. A Planned Unit Development 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 Planned Unit Development shall be owned or otherwise under the legal control of the applicant for a Planned Unit Development. The applicant shall be legally capable of providing a commitment to the town that the Planned Unit Development will comply with all documents, plans, standards and conditions ultimately approved by the town.
- C. **Fair and Reasonable Conditions:** Within an approved Planned Unit Development, no use shall be permitted except pursuant to the conditions imposed by the applicant on the Planned Unit Development in the approval of the zoning map change. The Board of Commissioners and the applicant may mutually agree to additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this section, and to preserve public welfare, and justice. The provisions of the Planned Unit Development Concept 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 Commissioners (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 Commissioners prior to final action. In accordance with G.S. 160A-382(b)

**D. Content of Application:** A Planned Unit Development shall consist of the Existing Conditions Map (15.4.1), and Concept Plan (15.4.4); as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the Board of Commissioners. The Concept Plan is a site-specific plan that is a condition of the Planned Unit Development zoning map change. A Planned Unit Development Concept Plan shall, at a minimum, illustrate the following:

1. The underlying zoning district or overlay district uses and requirements shall not apply to the Planned Unit Development unless explicitly incorporated into the standards of the PUD Plan.
2. 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 and impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
4. A proposed development schedule if the project is to be phased.

### 15.16.3 FORMAL REVIEW

- A. Public Notification: (Prior to Planning Board):** Level 1, 2, 3, 4 & 5 required.
- B. Procedure:** The procedure for approval of a Planned Unit Development shall follow the procedure for review of Text & Map Amendments (Rezoning) as outlined in Sections 15.14.2 through 15.14.7.

### 15.16.4 EFFECT OF APPROVAL/CHANGES

The applicant may proceed with development only after approval of the Planned Unit Development Concept Plan by the Board of Commissioners, followed by any necessary approvals typically required of this ordinance. The development and use of all land within the Planned Unit Development shall be in keeping with the approved Concept Plan and all applicable provisions therein.

- A. Final Approval by Stages:** If indicated on the PUD Concept Plan, the Board of Commissioners may allow the phasing of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable Planned Unit Development Concept Plan.
- B. Substantial Changes:** Any substantial change to a PUD Concept Plan as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended Planned Unit Development. The following changes to a Planned Unit Development Concept Plan shall require approval by the Board of

Commissioners:

1. Land area being added or removed from the Planned Unit Development.
  2. Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
  3. A change in land use or development type beyond that permitted by the approved Planned Unit Development Concept Plan.
  4. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
  5. When there is an increase in the total number of residential dwelling units originally authorized by the approved Planned Unit Development Concept Plan beyond ten (10) percent or ten (10) dwelling units, whichever is less. Changes of less than ten (10) percent may be approved by the Administrator.
  6. When the total floor area of a commercial or industrial classification is increased more than ten (10) percent beyond the total floor area last approved by Board of Commissioners. Changes of less than ten (10) percent may be approved by the Administrator.
  7. Any change which alters the basic development concept of the Planned Unit Development Concept Plan.
  8. **Other Changes:** All other changes to a Planned Unit Development Concept Plan shall receive approval from the Board of Commissioners.
- C. Planned Unit Development Concept Plan Expiration:** The Applicant shall secure a valid building or construction permit(s) within five (5) years from date of approval of the Planned Unit Development unless otherwise specified. If such project is not complete or a valid building permit is not in place at the end of the five (5) year period, the Administrator shall notify the applicant of either such finding and a new TIA shall be required as well as an updated PUD Concept Plan must be submitted. The Administrator shall make a recommendation concerning the extension of the Planned Unit Development to the Board of Commissioners. The Board of Commissioners may then rescind the Planned Unit Development, or extend the life of the Planned Unit Development for a specified period of time. The rescission of a Planned Unit Development shall follow the same procedure as was needed for approval.



## 15.17 VESTED RIGHT

### 15.17.1 PURPOSE AND APPLICABILITY

The zoning vested right is a right which must be requested by the applicant at the time of submittal and is established pursuant to NCGS 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. Obtaining a zoning permit or subdivision construction plan approval through the vested rights procedure gives the applicant the right to start construction of the development as approved and an additional 2 years, or up to 5 years to begin and/or complete work as appropriate.

### 15.17.2 VESTED RIGHT PROCEDURES

- A. Process Type:** Legislative
- B. Pre-Application Procedure:** The applicant shall meet with the Administrator prior to submitting an application to inquire about specific zoning requirements and obtain the proper application forms. The applicant shall be advised of all necessary information and requirements of the vested rights procedure.
- C. Required Application Information:** Sketch Plan (15.4.2) (may be waived by Administrator as appropriate) and Master Plan (15.4.3)
- D. Determination of Compliance:** The Administrator shall review the application and accompanying site plan for compliance with the requirements of this chapter and other applicable regulations and schedule the matter for a public hearing before the Board of Commissioners.
- E. Public Notification:** Level 1 & 4 required.
- F. Public Hearing:** The Planning Board and Board of Commissioners shall hold a joint public 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. Delivery of Planning Board Recommendation:** If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the matter and refer it to the Board of Commissioners for their consideration at their regularly scheduled meeting directly following the public hearing. If the Planning Board determines that further deliberation on the matter is required, the Planning Board shall deliver its recommendation to the Board of Commissioners within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of its first consideration on the matter, the Board of Commissioners shall proceed in its consideration of the matter without a recommendation from the Planning Board.
- H. Board of Commissioners Decision:** Following a public hearing, the Board of Commissioners shall take one of the following actions:
  - 1. Approve the vested rights request. The Administrator is then directed to issue a vested rights zoning permit.
  - 2. Approve the vested rights request subject to conditions which are necessary to protect the public health, safety and welfare. The Administrator is then directed to issue the vested rights zoning permit subject to the changes in the site plan to be made by the developer.

3. Table the vested rights request pending the submittal of additional information.
4. Deny the vested rights request.

I. **Appeals:** None

**15.17.3 VESTED RIGHT DURATION – EFFECT OF APPROVAL**

- A. **Maximum Term:** A zoning right that has been vested as provided in this section shall remain vested for a period of 2 years, or up to 5 years as approved by the Board of Commissioners.
- B. **Building Permit/Preliminary Plan Required:** Upon issuance of a building permit/preliminary plan approval, the expiration provisions for those permits shall apply, except that they shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding. A zoning vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
- C. **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.
- D. **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 development plan. In such a case the Board of Commissioners 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.
- E. **Shall Run with the Property:** A zoning vested right is not a personal right but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.
- F. **Vested Right 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 ordinance.