

# ARTICLE 9. DEVELOPMENT REVIEW

## §9.1. Summary of Review Authority

The following table summarizes review and approval authority under this UDO.

	Technical Review Committee	Director	Historic Committee	Board of Adjustment	Planning Board	Board of Commissioners	
	<b>TRC</b>	<b>DIR</b>	<b>HC</b>	<b>BOA</b>	<b>PB</b>	<b>BOC</b>	
Text Amendment		Review			<review>	<decision>	§9.3
Rezoning		Review			<review>	<decision>	§9.4
Planned Development Review	Review	Review			<review>	<decision>	§9.5
Minor Plat Review		Decision					§9.6
Family Plat Review		Decision					§9.6
Preliminary Plat Review		Review				<decision>	§9.6
Final Plat Review	Review	Decision					§9.6
Minor Site Plan Review		Decision					§9.7
Major Site Plan Review	Review	Review			Review	Decision	§9.7
Traffic Impact Analysis		Decision					§9.8
Zoning Permit		Decision					§9.9
Special Use Review		Review				<decision>	§9.11
Certificate of Appropriateness		Review	Decision				§9.12
Temporary Use Permit		Decision					§9.13
Sign Permit		Decision					§9.14
Common Signage Plan		Decision					§9.15
Floodplain Development Permit		Decision					§9.16
Floodplain Development Permit Variance		Review		Decision			§9.16
Written Interpretation		Decision					§9.17
Variance		Review		<decision>			§9.18
Administrative Appeal				<decision>			§9.19
Vested Right		Review				<decision>	§9.20
				<public hearing required>			

## §9.2. Common Review Procedures

### §9.2.1. Pre-application Conference

- A. Before submitting an application for development approval, each applicant may schedule a pre-application conference with the Director to discuss the procedures, standards and regulations required for development approval in accordance with this UDO.
- B. A pre-application conference with the Director shall be required for the following:
  1. Rezoning (§9.4);
  2. Planned development review (§9.5);
  3. Subdivision review (§9.6);
  4. Site plan review (§9.7);
  5. Traffic impact analysis (§9.8); and
  6. Special use review (§9.10).

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**Application Requirements****§9.2.2. Application Requirements****A. Forms**

Applications required under this UDO shall be submitted on forms and in such numbers as required by the Director.

**B. Fees**

1. All applications and associated fees shall be filed with the Director.
2. Filing fees shall be adopted by resolution of the Board of Commissioners from time to time to defray the actual cost of processing the application.
3. An applicant who has paid the appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to its distribution for review shall be entitled to a refund of the amount paid minus a processing fee upon written request to the Director. Once review has begun, no refund shall be available.

**C. Completeness Review**

1. All applications shall be sufficient for processing before the Director is required to review the application.
2. An application shall be sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of this UDO.
3. 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. The applicant may rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
4. Once the application has been determined sufficient for processing, copies of the application shall be referred by the Director to the appropriate reviewing entities.
5. The Director may require an applicant to present evidence of authority to submit the application.
6. If an applicant is a corporate entity (corporation, LLC, LLP, general partnership or other), the application shall include a certificate of good standing from the applicant's jurisdiction of incorporation. If an applicant is a corporate entity registered in a jurisdiction other than North Carolina, the applicant shall obtain and provide proof that it has obtained a certificate of authority to transact business in North Carolina prior to undertaking any development work.

**D. Application Deadline**

Applications sufficient for processing shall be submitted to the Director in accordance with the published calendar schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

### **E. Staff Consultation after Application Submitted**

1. Upon receipt of an application sufficient for processing, the Director shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this UDO; that the applicant has submitted all of the information they intend to submit; and that the application represents precisely and completely what the applicant proposes.
2. Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed on the agenda of the appropriate review board in accordance with standard procedures. However, if the Director believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate reviewing entity.

### **F. Concurrent Applications**

1. If approved by the Director, applications for development approvals may be filed and reviewed concurrently. Any application that also requires a variance shall not be eligible for final approval until the variance has been granted.
2. Applications submitted concurrently are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

## **§9.2.3. Notice and Public Hearings**

### **A. Summary of Notice Required**

Notice shall be required for applications for approval as shown below.

	<b>Published</b>	<b>Mailed</b>	<b>Posted</b>	
Text Amendment	■			§9.3
Rezoning	■	■	■	§9.4
Planned Development Review	■	■	■	§9.5
Preliminary Plat	■	■	■	§9.6
Major Site Plan	■	■	■	§9.7
Special use review	■	■	■	§9.11
Variance	■	■	■	§9.18
Zoning Vested Right	■	■	■	§9.20

### **B. Public Notice Requirements**

#### **1. Published Notice**

Where published notice is required, a distinctive advertisement shall be placed by the County in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

#### **2. Posted Notice (Sign)**

Where posted notice is required, a sign shall be posted by the County not less than ten days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public road.

#### **3. Mailed Notice**

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## Notice and Public Hearings

- (a) Where mailed notice is required, the County shall notify by first-class mail (at the last addresses listed for such owners in the County tax records) the applicant and the owners of all properties that lie within 660 feet of any portion of the property(s) in question.
- (b) The notice shall be mailed at least ten but not more than 25 days prior to the date of the public hearing.
- (c) Mailed notice under this section shall not be required if a rezoning (including a planned development rezoning) directly affects more than 50 properties owned by a total of at least 50 different property owners, and the County elects to use the following expanded notice requirements:
  - (1) Published notice of the hearing shall be provided as set forth in paragraph 1 above. The advertisement shall not be less than one-half of a newspaper in size.
  - (2) Mailed notice of the hearing shall be provided (as set forth in paragraphs (a) and (b) above) to all property owners who reside outside of the newspaper's circulation area.

### 4. Content of Notice

The notice listed above shall contain the following specific information:

#### (a) Published or Mailed Notice

A published or mailed notice shall provide at least the following:

- (1) Parcel identification number;
- (2) The address of the subject property (if available);
- (3) The general location of the land that is the subject of the application, which may include, a location map;
- (4) A description of the action requested;
- (5) Where a rezoning is proposed, the current and proposed districts;
- (6) The time, date and location of the public hearing;
- (7) A phone number to contact the County; and
- (8) A statement that interested parties may appear at the public hearing.

#### (b) Posted Notice

Required posted notices shall indicate the following:

- (1) A case number;
- (2) Type of action; and
- (3) A phone number to contact the County.

### C. Constructive Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

#### §9.2.4. Required Hearings

A public hearing shall be required for development review as shown below. Where a public hearing is required before both the Planning Board and the Board of Commissioners, such hearings shall be held concurrently and chaired by the Chairman of the Board of Commissioners, unless otherwise determined by the Chairman of the Board of Commissioners.

	Board of Adjustment	Planning Board	Board of Commissioners	
	BOA	PB	BOC	
Text Amendment		■	■	\$9.3
Rezoning	■	■	■	\$9.4
Planned Development Review	■	■	■	\$9.5
Preliminary Plat			■	\$9.6
Special Use Review			■	\$9.11
Variance	■			\$9.18

#### §9.2.5. Decisions

Unless specifically provided elsewhere, all decisions on land use changes, including rezonings, shall require an affirmative vote. Tie votes shall be considered denials of any requested change.

#### §9.2.6. Notice of Decision

Within 14 days after a decision is made, a copy of the decision shall be sent to the applicant and filed with the Director, where it shall be available for public inspection during regular office hours.

#### §9.2.7. Withdrawal of Application

- A. An applicant may withdraw an application at any time, by filing a statement of withdrawal with the Director.
- B. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence, by the estate's lawful personal representative.
- C. The Director may withdraw applications due to failure of the applicant to submit required information within 90 days of the initial request.
- D. An applicant may postpone a scheduled public hearing once per application for up to 90 days after the date the first public hearing was scheduled to occur, after which the Director may withdraw the application.

**Applicability****§9.3. Text Amendment****§9.3.1. Applicability**

- A. Amendments to the text of this UDO shall be made in accordance with the provisions of this section.
- B. The Board of Commissioners shall consider amendments to the text of this UDO, as may be required from time to time.

**§9.3.2. Initiation of Amendment**

A request to amend the text of this UDO may be initiated by the Board of Commissioners, Board of Adjustment, Planning Board, Director, or the general public.

**§9.3.3. Application Requirements**

Applications for a text amendment shall be submitted in accordance with §9.2.2, Application Requirements.

**§9.3.4. Notice and Public Hearings**

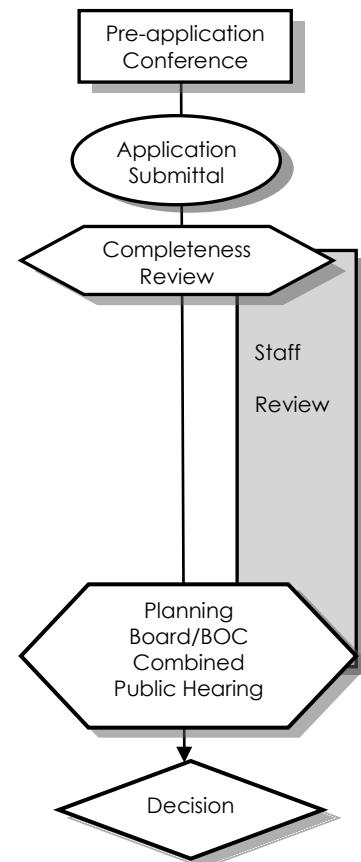
The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**§9.3.5. Action by Director**

- A. The Director shall draft the appropriate amendment and prepare a staff report that reviews the proposed text amendment request.
- B. Following completion of technical review by staff, the Director shall forward the completed request and any related materials to the Planning Board for a recommendation.

**§9.3.6. Action by Planning Board**

- A. When conducting a review of a proposed text amendment, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the request without the Planning Board's recommendation.

**Text Amendment**

**B.** Following Planning Board review, the Director shall forward the completed request and any related materials, including the Planning Board recommendation (if applicable), to the Board of Commissioners for final action.

#### **§9.3.7. Action by Board of Commissioners**

- A.** Before taking action on a text amendment, the Board of Commissioners shall consider the recommendations of the Planning Board and Director.
- B.** The Board of Commissioners may approve the amendment, deny the amendment, or send the amendment back to the Planning Board for additional consideration.
- C.** When adopting or rejecting any text amendment, the Board of Commissioners shall approved a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining the reasonableness of the proposed amendment.

#### **§9.3.8. Approval Criteria**

- A.** In evaluating any proposed amendment of the text of this UDO, the Planning Board and the Board of Commissioners shall consider the following:
  - 1.** The extent to which the proposed text amendment is consistent with the remainder of the UDO, including, specifically, any purpose and intent statements;
  - 2.** The extent to which the proposed text amendment represents a new idea not considered in the existing UDO, or represents a revision necessitated by changing circumstances over time;
  - 3.** Whether or not the proposed text amendment corrects an error in the UDO; and
  - 4.** Whether or not the proposed text amendment revises the UDO to comply with State or Federal statutes or case law.
- B.** In deciding whether to adopt a proposed text amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with the adopted plans and policies of the County and the specific intent of this UDO.

#### **§9.3.9. Appeal to Court**

Any decision by the Board of Commissioners may be appealed in accordance with G.S. § 160D-1401 and 160D-1405(b). An action challenging the validity of a text amendment shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the text amendment.

**Applicability****§9.4. Rezoning****§9.4.1. Applicability**

- A. Amendments to the Zoning Map shall be made in accordance with the provisions of this section. The Board of Commissioners shall consider amendments to the Zoning Map, as may be required from time to time.
- B. Rezonings should correspond with the boundary lines of existing platted lots or parcels. Where the boundaries of a rezoning request stop short of an exterior property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of this UDO.
- C. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, prior to advertisement of the public hearing, the rezoning shall be expanded to include all property necessary to meet zoning requirements.

**§9.4.2. Initiation of Amendment**

A request for a rezoning may be initiated by the Board of Commissioners, the Planning Board, or the Director. An owner of land within the jurisdiction of the County (or a duly authorized agent or representative) may petition the Board of Commissioners for a rezoning.

**§9.4.3. Pre-application Conference**

All applicants petitioning for a rezoning shall schedule a pre-application conference with the Director in accordance with §9.2.1.

**§9.4.4. Application Requirements**

All applications for a rezoning shall be submitted in accordance with §9.2.2, Application Requirements.

**§9.4.5. Notice and Public Hearings**

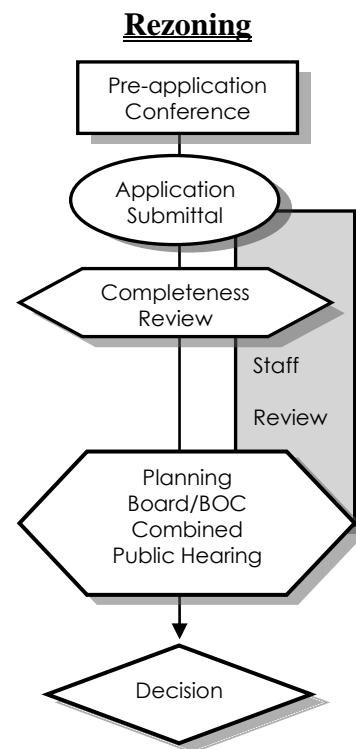
The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**§9.4.6. Action by Director**

The Director shall prepare a staff report that reviews the rezoning request in accordance with the adopted plans and policies of the County and the general requirements of this UDO. Following completion of technical review by staff, the Director shall forward the completed request and any related materials to the Planning Board.

**§9.4.7. Action by Planning Board**

- A. The Planning Board shall make a recommendation on the rezoning request to the Board of Commissioners. The Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has



been adopted and other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If no such recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the request without the Planning Board's recommendation.

**B.** Following Planning Board review, the Director shall forward the completed rezoning request and any related materials, including the Planning Board recommendation, to the Board of Commissioners for final action.

#### **§9.4.8. Action by Board of Commissioners**

**A.** Before taking action on a rezoning, the Board of Commissioners shall consider the recommendations of the Planning Board and Director.

**B.** The Board of Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.

**C.** When adopting or denying any map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining the reasonableness of the proposed amendment. The statement of reasonableness may consider, among other factors; (i) the size, physical conditions, and other attributes of any area proposed to be rezoned; the benefits and detriments to the landowners, neighbors, and the surrounding community; (ii) the relationship between the current actual and permissible development and the development permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending the future land use plan map in the approved plan and no additional request or application for a plan amendment shall be required.

#### **§9.4.9. Modification of Application**

An applicant in a zoning matter may reduce the geographic scope and or propose a district of lower density or intensity from that requested in the application by filing a statement of modification with the Director.

#### **§9.4.10. Appeal to Court**

Any decision by the Board of Commissioners may be appealed in accordance with G.S. §160D-1401 and 160D-1405(a). A cause of action as to the validity of any ordinance amending the zoning map shall accrue upon adoption of such ordinance and shall be brought within sixty days as provided in G.S. §1-54.1.

**Applicability****§9.5. Planned Development Review****§9.5.1. Applicability**

- A. Planned development review shall occur in accordance with the provisions of this section.
- B. The Board of Commissioners shall consider planned development rezonings, as may be required from time to time.
- C. All requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, prior to advertisement of the public hearing, the rezoning shall be expanded to include all property necessary to meet zoning requirements.
- D. All subdivisions with 50 or more dwelling units or lots shall be processed as a planned development.

**§9.5.2.****Initiation of Amendment**

An owner of land within the jurisdiction of the County (or a duly authorized agent or representative) may petition the Board of Commissioners for planned development rezoning.

**§9.5.3.****Pre-application Conference**

All applicants petitioning for planned development rezoning shall schedule a pre-application conference with the Director in accordance with §9.2.1.

**§9.5.4.****Community Involvement Meeting (CIM)**

After the pre-application conference and prior to final acceptance of an application by the Director, all applicants petitioning for planned development rezoning shall hold a community involvement meeting in accordance with the following requirements:

- A. Only the initial application for planned development review shall require a CIM. Subsequent applications for subdivision or site plan review do not require further CIMs.
- B. The purpose of the CIM shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments.
- C. The applicant shall provide notice by mail in accordance with paragraph §9.2.3.B.3. The notice shall be mailed at least ten days but not more than 25 days prior to the date of the CIM.
- D. The applicant shall prepare and submit to the Director detailed minutes that outlines attendance, major points discussed, and any agreements reached between the parties involved.

**Planned Development Review**



- E. Following the CIM, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. One or more revised copies of the application shall be submitted to the Director for review. No additional fee shall be required to be paid for making such changes provided the Director receives the revised application within 30 days following the CIM. If a revised application is not received during said 30 day period, the Director shall review the original application submitted.
- F. The Director may develop administrative rules pertaining to any additional requirements for the conduct of the meeting.

#### **§9.5.5. Application Requirements**

- A. Concurrent with a request for planned development rezoning, an applicant shall submit a master plan to govern the development and maintenance of the land within the planned development. The master plan shall be prepared by a design professional.
- B. All applications for planned development rezoning shall be submitted in accordance with §9.2.2, Application Requirements.
- C. A master plan which meets the requirements for submittal of a preliminary plat may be approved as the master plan for the development and the preliminary plat concurrently.
- D. A traffic impact analysis may be required if the proposed planned development meets the thresholds established in §9.8, Traffic Impact Analysis.

#### **§9.5.6. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

#### **§9.5.7. Action by Director**

- A. Upon submission of a completed application, the Director shall schedule the master plan for review by the Technical Review Committee. The Technical Review Committee shall review the master plan for consistency with the requirements of this UDO.
- B. Upon completion of the technical review, the Director may meet with the applicant to discuss any changes in development design.
- C. The Director shall prepare a staff report that reviews the application in accordance with comments provided by the Technical Review Committee, in accordance with the adopted plans and policies of the County, and the general requirements of this UDO. The report, master plan and any related application materials shall be forwarded to the Planning Board.

#### **§9.5.8. Action by Planning Board**

- A. The Planning Board shall make a recommendation on the planned development request to the Board of Commissioners. The Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed

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Action by Board of Commissioners

appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

- B.** The Planning Board's recommendation shall include a written statement to the Board of Commissioners describing whether its recommendation is consistent with the adopted plans and policies of the County. If no written recommendation is received from the Planning Board within 30 days of referral of the request to the Planning Board, the Board of Commissioners may proceed in its consideration of the application without the Planning Board's recommendation.
- C.** Following Planning Board review, the Director shall forward the completed planned development request and any related materials, including the Planning Board recommendation (if applicable), to the Board of Commissioners for final action.

**§9.5.9. Action by Board of Commissioners**

- A.** Before taking action on a planned development rezoning, the Board of Commissioners shall consider the recommendations of the Planning Board and Director. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.
- B.** The Board of Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.
- C.** When adopting or denying any rezoning, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and explaining the reasonableness of the proposed amendment. The statement of reasonableness may consider, among other factors; (i) the size, physical conditions, and other attributes of any area proposed to be rezoned; the benefits and detriments to the landowners, neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development and the development permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending the future land use plan map in the approved plan and no additional request or application for a plan amendment shall be required.

**§9.5.10. Master Plan Approval Criteria**

The master plan review shall include and the applicant shall be responsible for successfully addressing the following:

- A.** Compliance with §2.4.9, Planned Development Districts Standards, and all other applicable requirements of this UDO;
- B.** Conformance of the proposal with the stated purpose of the requested planned development district;
- C.** Compatibility of the proposed development with the adjacent community;
- D.** The quality of design intended for each component of the project and the ability of the overall development plan to ensure a unified, cohesive environment at full build-out;
- E.** Compatible relationships between each component of the overall project;
- F.** Self-sufficiency of each phase of the overall project and phase schedule;
- G.** Documentation that the proposed infrastructure improvements accommodate the additional impacts caused by the development, or documentation to assure that the development, as proposed, will not overtax the existing public infrastructure systems;
- H.** The fiscal impact of the proposal and the proposed financing of required improvements;
- I.** The success of the proposal in providing adequate pedestrian and bicycle links within the development and with the adjacent community;
- J.** The effectiveness with which the proposal protects and preserves the ecologically sensitive areas within the development; and
- K.** Other conditions deemed necessary by the Board of County Commissioners for the success of the project.

#### **§9.5.11. Action after Approval**

- A.** Upon approval of a planned development rezoning by the Board of Commissioners and on recordation of the notice of approved the master plan, the district is deemed established. All documents (including the approved master plan) shall be an integral part of the approved proposal.
- B.** The approved planned development and associated master plan shall run with the land and shall be binding on the original applicant as well as any successors, assigns and heirs. Notice of the approved master plan shall be recorded in the Lincoln County Register of Deeds Office and the Zoning Map amended.
- C.** Approval of a planned development rezoning and associated master plan does not constitute site plan approval or subdivision approval (if the property is to be further subdivided), except where the master plan meets the requirements for and is approved as a preliminary plat.
- D.** Property to be further subdivided shall obtain approval in accordance with §§9.6, Subdivision Review. Where a preliminary plat has been approved, the applicant may move forward to provide construction plans and a final plat.
- E.** Property not to be further subdivided shall obtain site plan approval as set forth in §9.7, Site Plan Review.
- F.** Special uses not shown on the approved master plan require approval in accordance with §9.11, Special Use Review.

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**Approved Master Plan Modifications**

**G.** Discretionary uses not shown on the approved master plan require approval in accordance §9.11, Special Use Review.

**§9.5.12. Approved Master Plan Modifications**

**A.** Amendments to an approved master plan, if minor in scope may be approved administratively by the Director. Minor changes shall include:

1. Modifications, up to ten percent, of the original mixture of uses (so long as the minimum and maximum stated are maintained);
2. Minor adjustments to phasing (as long as the quantity of phases remains);
3. The realignment of internal roadways; and
4. Minor changes or adjustments to the sign, lighting and landscape requirements may also be approved administratively by the Director.

**B.** Major modifications shall require resubmittal to the Board of Commissioners. These shall include:

1. The addition of land modifications to the originally approved mixture of uses in excess of ten percent;
2. A change in the number of phases within the development;
3. The addition or deletion of main vehicular entrances serving the development or their relocation; and
4. Major modifications shall also include any proposed revisions that are deemed by the Director to be inconsistent with the adopted plans and policies of the County.

**§9.5.13. Appeal to Court**

Any decision by the Board of Commissioners may be appealed in accordance with G.S. §160D-1401 and 160D-1405(a). A cause of action as to the validity of any ordinance amending the zoning map shall accrue upon adoption of such ordinance and shall be brought within sixty days as provided in G.S. §1-54.1.

## §9.6. Subdivision Review

### §9.6.1. Applicability

Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels, except as expressly exempted below.

### §9.6.2. Actions Exempt from Subdivision Requirements

The following shall not be considered “subdivision” subject to review under this section:

- A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;
- B. The division of land into parcels greater than ten acres where no road right-of-way dedication is involved;
- C. The public acquisition by purchase of strips of land for water or sewer infrastructure or the widening or opening of roads; and
- D. The division of a site in single ownership whose entire area is no greater than two acres into not more than three lots, where no road right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
- E. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

### §9.6.3. No Subdivision without Plat Approval

- A. No person may subdivide land except in accordance with all of the provisions of this UDO. In particular, no subdivision may occur unless and until a final plat of the subdivision has been approved in accordance with the provisions of this section and recorded in the Lincoln County Register of Deeds Office.
- B. The Lincoln County Register of Deeds Office shall not record a plat of any subdivision within the County jurisdiction unless the plat has been approved in accordance with the provisions of this UDO.
- C. Not all divisions of land constitute subdivisions that are subject to regulation under this UDO. However, to ensure that such divisions are in fact exempt from the requirements of this UDO, all plats creating a division of land shall be presented to the Director before recordation in the Lincoln County Registry and the Director shall indicate on the face of the plat that the division is exempt from the provisions of this UDO if that is the case.
- D. No road shall be maintained or accepted by the State, or shall any road lights, water, or sewer be extended to or connected with any subdivision of land, or shall any permit be issued by any administrative agent or department of the County for the construction of any building or other improvements requiring permit, upon any land for which a plat is to be approved, unless and until the requirements set forth in this UDO have been complied with.
- E. There are a variety of requirements for differing levels of resource protection in Article 7, Natural Resource Protection, which must be met prior to the subdivision of land.

**§9.6.4. Delegation of Authority**

The Board of Commissioners delegates review and approval authority for all minor plats and final plats to the Director, with review by the Technical Review Committee.

**§9.6.5. Unlawful to Record Plat without Final Plat Approval**

It shall be unlawful to offer and cause to be recorded any final plat within the jurisdiction of Lincoln County Register of Deeds Office unless the plat bears the endorsement and approval of the Lincoln County Review Officer.

**§9.6.6. Definitions****A. Minor Subdivision**

1. A minor subdivision is a subdivision that does not involve any of the following:
  - (a) Creation of a total of more than 20 lots;
  - (b) Creation of any new roads;
  - (c) Extension of any water and/or sewer lines, other than individual service lines; or
  - (d) Installation of drainage improvements through one or more lots to serve one or more other lots.
2. Minor subdivisions require minor plat review and final plat review.
3. Subdivision of a tract or parcel of land in single ownership meeting the following criteria shall require only final plat review:
  - (a) The tract or parcel to be divided is not exempted under §9.6.2.B;
  - (b) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division;
  - (c) The entire area of the tract or parcel to be divided is greater than five acres;
  - (d) After division, no more than three lots result from the division;
  - (e) After division, all resultant lots comply with all lot dimension requirements;
  - (f) After division, the use of the lots is in compliance with the applicable zoning requirements; and
  - (g) A permanent means of ingress and egress is recorded for each lot.

**B. Major Subdivision**

1. All other divisions of land not exempted in §9.6.2 above or listed in §9.6.6.A above shall be considered major subdivisions.
2. Major subdivisions require preliminary plat approval and final plat approval.

**C. Family Subdivision**

1. Subdivisions involving the creation of lots for residential purposes which are to be deeded only to immediate family members and cannot be resold or deeded for three years shall be exempt from certain procedural and administrative requirements of this UDO. Such subdivisions shall neither be

classified as "minor" or "major" subdivisions but shall adhere to the requirements of §9.6.10 and §9.6.11, Final Plat Review.

2. For purposes of this section "immediate family members" shall be defined to include only: husbands, wives, mothers, fathers, brothers, sisters, children (biological, adopted, or step), grandmothers, grandfathers, grandchildren (biological, adopted, or step), aunts, uncles, nieces, and nephews.

#### **§9.6.7. Pre-application Conference and Sketch Plan**

- A. All applicants seeking subdivision approval shall schedule a pre-application conference with the Director, in accordance with §9.2.1.
- B. At the time of the pre-application conference, applicants shall submit a sketch plan for review by the Director. This plan should, in simple sketch form, show the proposed layout of roads, lots, and other features in relation to existing conditions (see Planning and Inspections Department for specific submittal requirements).
- C. The Director shall make a determination as to which approval process authorized by this section can be used. The Director may require the applicant to submit supplemental information is necessary to make this determination.

### §9.6.8. Minor Plat Review

#### A. Applicability

The procedure for approval of a minor subdivision plat is intended to simplify processing of routine small subdivisions with due regard to protection of the public interest. The difference between the minor and major subdivision processes is that minor subdivisions do not require preliminary plat review.

#### B. Application Requirements

All applications for minor plat review shall be submitted in accordance with §9.2.2, Application Requirements.

#### C. Action by Director

1. Upon submission of a completed application, the Director shall determine whether the plat conforms to the standards of a minor subdivision.
2. If the minor subdivision plat is determined not to be in conformance with the requirements for a minor subdivision, the applicant may proceed with preliminary plat approval.

#### D. Action Following Approval

The approval of a minor plat does not constitute final plat approval. Upon minor plat approval:

1. A final plat shall be submitted in accordance with the requirements of §9.6.11. The final plat shall be recorded in the Lincoln County Register of Deeds Office.
2. The applicant may begin preliminary site work. All site work shall be performed in compliance with the requirements of this UDO, and other applicable regulations of Lincoln County and the State.

#### E. Continuing Validity of Minor Plats

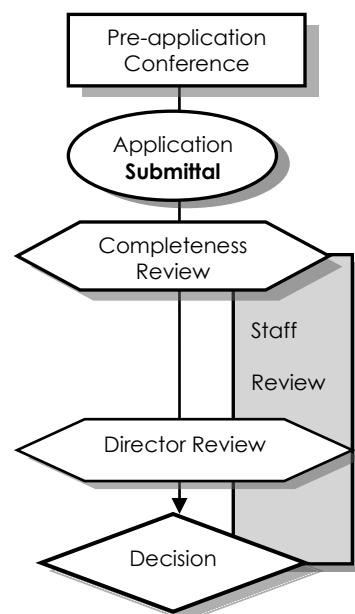
Within 24 months of the date of approval of the minor subdivision plat, the applicant shall submit application for final plat review otherwise the minor subdivision plat shall be null and void.

#### F. Minor Plat Approval Criteria

Minor subdivision plats shall be approved only when the Director finds that all of the following conditions exist:

1. Consistency with the adopted plans and of policies of the County;
2. The plat complies with the standards of Article 5, Subdivision Standards, and any other applicable requirements of this UDO;
3. The plat indicates that all subject lots will have frontage on existing approved roads;

### Minor Plat Review



4. New or residual parcels conform to the requirements of this UDO and other applicable regulations;
5. No new roads are required or are likely to be required for access to interior property;
6. No extension of public sewerage or water lines will be required;
7. The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property; and
8. No waivers from Article 5, Subdivision Standards, have been requested.

## Preliminary Plat Review (Major Subdivisions Only)

**§9.6.9. Preliminary Plat Review (Major Subdivisions Only)****A. Applicability**

A preliminary plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in paragraph §9.6.6 above.

**B. Application Requirements**

1. All applications for preliminary plat review shall be submitted in accordance with §9.2.2, Application Requirements.
2. An application for a waiver from any of the provisions of Article 5, Subdivision Standards, shall be submitted in writing by the applicant at the time the preliminary plat is filed. The application shall state the grounds for the waiver and all the facts relied upon by the applicant.
3. When a subdivision is to be developed in phases, a master plan shall be submitted for the entire development and a preliminary plat shall be submitted for each individual phase. A final plat is submitted for individual phases as each phase is developed. Each new phase shall be developed adjacent to an earlier phase.

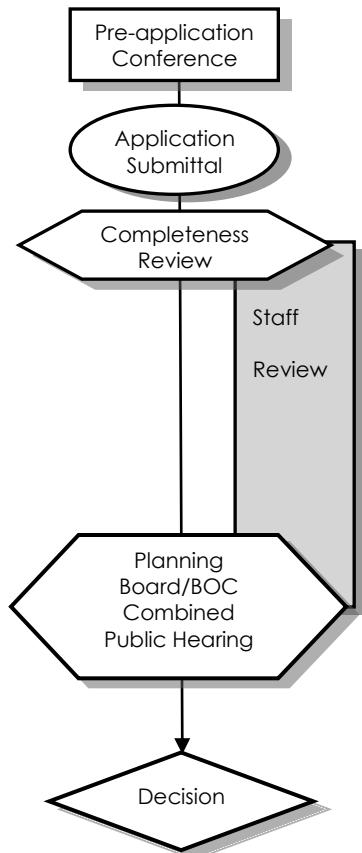
**C. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**D. Action by Director**

1. Upon submission of a completed application, the Director shall review the preliminary plat for consistency with the requirements of this UDO.
2. The following agencies shall be given an opportunity to review the proposed plat as needed:
  - (a) County Superintendent of Schools;
  - (b) County health department;
  - (c) State Department of Transportation District Engineer;
  - (d) Lincoln county natural resource commission (lnrc);
  - (e) State Department of Natural Resources and Community Development; and
  - (f) Other agencies and officials as the Director or Planning Board may deem necessary or desirable.
3. The Director shall prepare a report that reviews the application in accordance with comments provided by the Technical Review Committee, and in accordance with the adopted plans and policies of the County, and the general

**Preliminary Plat Review**



requirements of this UDO. The report, preliminary plat and any related application materials shall be forwarded to the Planning Board.

**E. Reserved****F. Waivers**

Where the Board of Commissioners finds that extraordinary hardships or practical difficulties may result from strict compliance with Article 5, Subdivision Standards, and the intent of this UDO may be served to a greater extent by an alternative proposal, a waiver may be granted. A waiver shall not have the effect of nullifying the intent and purpose of this UDO, and the Board of Commissioners shall not grant a waiver unless the Board of Commissioners makes findings based upon the evidence presented in each case that:

1. The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located;
2. The conditions upon which the request for a waiver are based are unique to the property for which the waiver is sought and are not generally applicable to other property;
3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of this UDO are enforced; and
4. The purpose of the waiver is not based primarily upon financial consideration.
5. In granting a waiver, the Board of Commissioners may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements of this UDO.

**Commentary:** All administrative decisions are subject to appeal pursuant to §9.19.

**G. Action by Board of Commissioners**

1. The preliminary plat shall be considered by the Board of Commissioners in accordance with its rules of procedure and the General Statutes of North Carolina.
2. A quasi-judicial hearing shall be held after due notice has been given to the applicant and the general public. Sworn parties shall be given the opportunity to present evidence, cross-examine other parties, and inspect any documentation, and offer evidence or testimony in rebuttal.
3. Findings of fact shall be made by the Board of Commissioners that are based on sworn evidence or testimony presented at the meeting. Such evidence or testimony must be relevant, material, and competent.
4. No final action shall be deemed to have been given by the Board of Commissioners on the preliminary plat until the Board of Commissioners' written decision on the preliminary plat is delivered to the applicant by the County.
5. The Board of Commissioners may approve the preliminary plat, or deny the preliminary plat.

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**Preliminary Plat Review (Major Subdivisions Only)**

6. If the Board of Commissioners should disapprove the preliminary plat, the reasons for such action shall be given to the applicant.

**H. Findings of Fact Required**

No preliminary plat may be approved by the Board of Commissioners unless all of the following findings are made concerning the subdivision:

1. Consistency with the adopted plans and of policies of the County.
2. The subdivision meets all required specifications of this UDO.
3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.
4. The subdivision design will comply with the requirements of §9.8 and provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

**I. Action Following Approval**

1. Upon preliminary plat approval, the applicant may initiate proceedings to begin site work and installation of improvements. All work shall be performed in compliance with the requirements of Article 5, Subdivision Standards, and other applicable regulations of Lincoln County, and the State.
2. Approval of a preliminary plat does not constitute approval of the final plat. Application for approval of the final (record) plat will be considered only after the requirements for final plat as specified in paragraph §9.6.11 below have been fulfilled and after all other specified conditions have been met.

**J. Continuing Validity of Preliminary Plats**

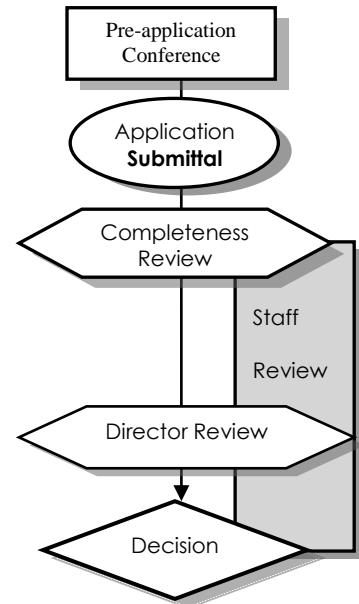
1. Within 24 months of the date of approval of the preliminary plat, the applicant shall submit a final plat for at least one section of the subdivision. Otherwise, the preliminary plat shall be null and void.
2. All sections of an approved preliminary plat must be submitted for final plat approval within three years of preliminary plat approval for a preliminary plat containing up to 100 lots, and within five years for a preliminary plat containing 100 lots or more. Otherwise, the preliminary plat shall be null and void.

### §9.6.10. Family Subdivision Review

#### A. Applicability

1. The procedure for approval of a family subdivision plat is intended to simplify processing of subdivision for the purpose of creating lots for immediate family members with due regard to protection of the public interest.
2. This section shall apply to subdivisions for which the following conditions are met:
  - (a) The owner and grantee certify that the grantee of each lot is the immediate family member of the owner as defined in §9.6.6.C;
  - (b) Each family member, as listed above, shall only be allowed to be deeded one lot per tract of land owned by the grantor. Before any family subdivision plat may be recorded (or picked up for recording), the subdivider shall show copies of the deed(s) granting the land to the family member(s); and
  - (c) The owner and grantee certify that the purpose of the family subdivision is not to circumvent the provisions of this UDO and that none of the lots shall be conveyed to third parties for a period of not less than three years, and that the record plat shall indicate same.
3. Failure of any person to comply with the provisions of subparagraph 2(a) and (b), above, shall be in violation of this UDO, and all of the remedies available in G.S. §153A-123 shall apply.

#### Family Plat Review



#### B. Application Requirements

All applications for family plat review shall be submitted in accordance with §9.2.2, Application Requirements.

#### C. Action by Director

1. Upon submission of a completed application, the Director shall determine whether the plat conforms to the standards of a family subdivision.
2. If the family subdivision plat is determined not to be in conformance with the requirements for a family subdivision, the applicant may proceed with preliminary plat approval.

#### **D. Action Following Approval**

The approval of a family plat does not constitute final plat approval. Upon minor plat approval:

1. A final plat shall be submitted in accordance with the requirements of §9.6.11. The final plat shall be recorded in the Lincoln County Record of Deeds.
2. The applicant may begin preliminary site work. All site work shall be performed in compliance with the requirements of this UDO, and other applicable regulations of Lincoln County and the State.

#### **E. Continuing Validity of Family plats**

Within 24 months of the date of approval of the family subdivision plat, the applicant shall submit a complete application for final plat review otherwise the family subdivision plat shall be null and void.

#### **F. Family Plat Approval Criteria**

Family subdivision plats shall be approved only when the Director finds that all of the following conditions exist:

1. Consistency with the adopted plans and of policies of the County;
2. The plat complies with the standards of Article 5, Subdivision Standards, and any other applicable requirements of this UDO, except:
  - (a) Lots in a family subdivision need not have frontage on public roads;
    - (1) All lots created in a family subdivision must have a minimum of 35 feet of frontage on either a newly created perpetual easement or public right-of-way that has a minimum width of 45 feet or an easement that existed on the effective date of this section (May 14, 1996) provided the pre-existing easement has a minimum easement width of 20 feet, said easement shall provide access to a NCDOT maintained road. Irrespective of this minimum width, the road easement shall be of appropriate width to accommodate the placement of utilities;
    - (2) In no instance may one unpaved private road easement intersect with another unpaved private road easement;
  - (b) All lots must meet or exceed the minimum lot size specified in §7.3, Watershed Protection;
3. New or residual parcels conform to the requirements of this UDO and other applicable regulations;
4. No new roads are required or are likely to be required for access to interior property;
5. No extension of public sewerage or water lines will be required;
6. The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property; and
7. No waivers from Article 5, Subdivision Standards, have been requested.

### §9.6.11. Final Plat Review (Major, Minor and Family Subdivisions)

#### A. Applicability

A final plat shall be required for all subdivision of land in Lincoln County's jurisdiction, except as prescribed in §9.6.2.

#### B. Application Requirements

All applications for final plat review shall be submitted in accordance with §9.2.2, Application Requirements.

#### C. Action by Director

1. Upon submission of a completed application, the Director shall within 30 days review the final plat for consistency with the approved minor subdivision plat, family subdivision plat or approved preliminary plat, as applicable, and the general requirements of this UDO.
2. Upon completion of the technical review, the Director may approve the final plat, deny the final plat, or send the plat back for additional consideration.
3. If the final plat is disapproved by the Director, the reasons for such disapproval shall be stated in writing, specifying the provisions of this UDO with which the final plat does not comply.

#### D. Final Plat Approval Criteria

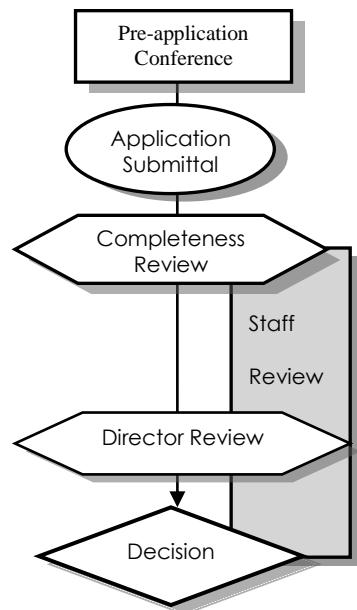
Final plats shall be approved when the following conditions exist:

1. Consistency with the adopted plans and of policies of the County;
2. The plat complies with the approved minor plat, family plat or preliminary plat, as applicable.
3. The plat complies with the standards of Article 5, Subdivision Standards, and the other applicable requirements of this UDO;
4. New and residual parcels will conform to the requirements of this UDO and other applicable regulations;
5. All necessary right-of-way has been offered for reservation or dedication; and
6. All necessary drainage easements have been provided.

#### E. Endorsements on Final Plats

All final plats shall contain the required certificates as indicated in the most recent version of the plat certificate packet on file with the Lincoln County Planning and Inspections Department

#### Final Plat Review



**F. Action after Approval**

1. The applicant shall file the approved final plat with the County Register of Deeds for recording within 20 days after the date of approval.
2. The approval of a final plat shall not be deemed to constitute or affect the acceptance by the County of the dedication of any road or other ground, public utility line, or other public facility shown on the plat. However, the County may, by resolution, accept any dedication made to the public of lands or facilities for roads, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision regulation jurisdiction.
3. Acceptance or dedication of lands or facilities shall not place on the County any duty to open, operate, repair, or maintain any road, utility line, or other land or facility, and the County shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any road or road.

**§9.6.12. Dedication and Improvements**

- A. In the development of any subdivision, the applicant shall be required to dedicate any additional right-of-way necessary to the width required by the County for roads adjoining the property, to install curbs and gutters and pave all roads adjoining the property to NCDOT standards, and to install sidewalks in accordance with the policies and requirements of Article 5, Subdivisions Standards. Such dedication shall be documented in accordance with NCDOT requirements.
- B. The applicant shall bear the costs of the installation of all on-site improvements as required by this UDO, including provision for surface drainage, pavement, landscaping, and utilities. Any applicant required to install or construct off-site improvements pursuant to this section may, with the approval as a condition of subdivision approval, and upon a determination by the Director that such improvements are not necessary or desirable at the time, but will be needed in the future, make a payment in lieu of such improvements or part thereof. The amount of any such payment shall be an amount estimated by the County to be 125 percent of the actual and total installation and construction costs of such improvements. The amount paid for a given improvement shall be considered total and complete payment for the improvements considered, and will preclude any further assessment of the property in the event that the County elects to install such improvements at a later date.

**§9.6.13. Guarantees of Improvements**

Guarantee of improvements shall be made in accordance with §5.10.

**§9.6.14. Inspections of Required Improvements**

Inspections of improvements shall be made in accordance with §5.10.4.

**§9.6.15. Certifications**

All final plats shall contain the required certificates as indicated in the most recent version of the plat certificate packet on file with the Lincoln County Planning and Inspections Department

**§9.6.16. Approved Plat Modifications****A. Minor Modifications****1. Preliminary Plat**

Minor revisions to an approved preliminary plat may be approved by the Director if the revisions are within the scope and intent of the original approval. Such revisions may include but not be limited to:

- (a) Reducing the lot count.
- (b) Modifying phase lines.
- (c) Minor adjustments to lot or road locations.

**2. Final Plat**

A final plat may be rerecorded to:

- (a) Revise or correct dimensions;
- (b) Change road names;
- (c) Add, delete or modify easements or private covenants;
- (d) Change subdivision name; or
- (e) Other minor modifications that are within the scope and intent of the original approval subject to approval of the Director.

**3. Procedures****(a) Preliminary Plat**

- (1) When minor revisions are proposed to an approved preliminary plat, the applicant shall submit a written request to the Director delineating the revisions and requesting authorization for administrative revision.
- (2) The Director shall notify the applicant whether the proposed revision qualifies for minor modification and the basis for the determination. If approved, the final plat may be submitted in accordance with the revisions.
- (3) The Director shall distribute copies of the revised plat to the appropriate agencies.

**(b) Final Plat**

- (1) When minor revisions are proposed to an approved final plat, the applicant shall submit a written request to the Director delineating

the revisions and requesting authorization for administrative revision.

- (2) If the plat has been recorded, the applicant shall submit the recorded plat with a statement describing the revisions made and certificate for the Director's signature and date of signing.
- (3) If the ownership of the subdivision has changed or if any lots have been sold since the previous recording, an owner's and notary's certificates shall be provided on the plat for each current owner.
- (4) In addition to the letter and the revised final plat, the applicant shall submit the required fees to the Director for processing the revised plat.
- (5) The Director shall distribute copies of the recorded final plat to the appropriate agencies.

#### **B. Major Modifications**

Proposed modifications to an approved preliminary plat or final plat not considered minor revisions shall be submitted and processed as new applications in accordance with the provisions of this section.

#### **§9.6.17. Appeal**

Final action on a final plat may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

#### **§9.6.18. Replat or Resubdivision Procedures**

For any replat or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed for an original subdivision. Lot size and configuration may, however, be varied on an approved plat after recording, provided that:

- A. No lot or parcel of land shall be created or sold that does not conform to the minimum standards of the applicable zoning district;
- B. Easements or rights-of-way shall not be changed;
- C. Road alignment and block sizes shall not be changed;
- D. The character of the area shall be maintained;
- E. A recombination of existing parcels may be approved by the Director, subject to the following:
  1. The resultant lots are equal to the standards of this UDO or more closely conform to the minimum lot size standards in this UDO;
  2. The total number of lots is not increased;
  3. All the metes and bounds boundaries of the affected lots are shown;
  4. All lot boundaries changed or eliminated by requested combination are indicated by dashed lines;
  5. The title block contains the word "recombination";
  6. Structures on the affected lots are shown and the requested recombination does not violate yard requirements of the §2.4;

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**Replat or Resubdivision Procedures**

- 7.** The recombination plat is signed by all property owners if either the number of lots is reduced or different owners for different lots are involved in the recombination;
- 8.** The recombination plat is signed and sealed by a registered surveyor;
- 9.** The recombination plat is certified by the Lincoln County Review Officer and the Director; and
- 10.** The recombination plat conforms to NCGS 47-30 and the requirements of this UDO.

## §9.7. Site Plan Review

### §9.7.1. Applicability

- A. All proposed development, except for single-family detached, zero lot line, alley-loaded houses, two-family houses on approved individual lots, shall be subject to the site plan review process.
- B. Temporary uses may require site plan review (see §9.13, Temporary Use Permit).

### §9.7.2. Site Plan Types

There are two types of site plans with differing levels of approval required for each. The criteria for establishing which type of site plan and the corresponding level of approval for each are indicated below.

#### A. Minor Site Plans

##### 1. Applicability

- (a) The following shall be reviewed as a minor site plan:
  - (1) Expansion of existing parking areas up to 105 percent of the maximum number of parking spaces otherwise required;
  - (2) Accessory uses in nonresidential districts involving structures less than 1,200 square feet; and
  - (3) Amenity facilities, park and open area uses in approved subdivisions.
- (b) Projects listed below shall also be reviewed as a minor site plan provided they do not require modification of the standards established in this UDO other than those which the Director may modify administratively; and do not involve the issuance of a special use permit or a conditional district rezoning.
  - (1) Developments, other than those in approved industrial parks, of up to 50,000 square feet of building for nonresidential uses;
  - (2) Expansion of an existing conforming nonresidential structure that would cause it to exceed 50,000 square feet; and
  - (3) Expansion of a previously approved site plan by 5 percent in floor area or number of units.
- (c) Development in approved industrial parks regardless of size should be handled as a minor site plan review.

##### 2. Approval Authority

The Director shall be responsible for approving a minor site plan.

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**Pre-application Conference****B. Major Site Plans****1. Applicability**

Any development requiring site plan review not listed in subsection A, above, as a minor site plan shall be considered a major site plan.

**2. Approval Authority**

The Board of Commissioners shall be responsible for approving all major site plans, including site plans associated with an approved planned development master plan (see paragraph §9.7.5 below) and special use permits (see §9.11).

**§9.7.3. Pre-application Conference**

- A.** All applicants seeking site plan approval shall schedule a pre-application conference with the Director, in accordance with §9.2.1.
- B.** The Director shall make a determination as to which approval process authorized by this section can be used. The Director may require the applicant to submit whatever supplemental information is necessary to make this determination.

#### §9.7.4. Minor Site Plan Review

##### A. Application Requirements

An application for minor site plan approval shall be submitted accordance with §9.2.2, Application Requirements.

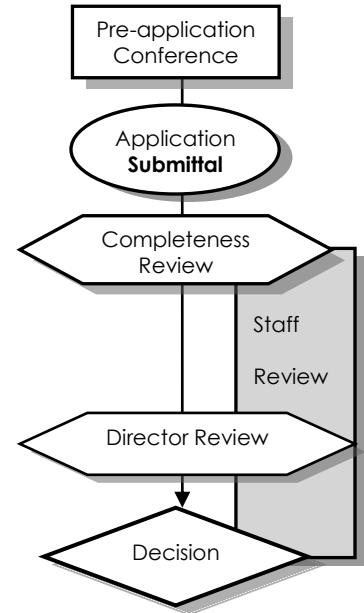
##### B. Action by Director

1. Upon submission of a completed application, the Director shall review the minor site plan for consistency with the requirements of this UDO.
2. After technical review, the Director shall determine whether the minor site plan conforms to the requirements of this UDO.

##### C. Modifications to Approved Minor Site Plans

The Director shall have authority to grant modifications to approved minor site plans in accordance with the provisions of this section or refer the modification to the Technical Review Committee if deemed necessary.

#### Minor Site Plan Review



## Major Site Plan Review

**§9.7.5. Major Site Plan Review****A. Application Requirements**

An application for major site plan approval shall be submitted accordance with §9.2.2, Application Requirements.

**B. Action by Director**

1. Upon submission of a completed application, the Director shall review the major site plan for consistency with the requirements of this UDO.
2. Upon completion of the technical review, the Director shall prepare a report that reviews the application and in accordance with the adopted plans and policies of the County and the general requirements of this UDO. The report, site plan and any related application materials shall be forwarded to the Planning Board.

**C. Action by Planning Board**

1. After considering the Director's comments, the Planning Board shall recommend approval or disapproval of the major site plan, or send the site plan back to the Director for additional consideration.
2. Major site plans requiring revisions shall be returned to the Planning Board within 90 days or the application shall be considered withdrawn. One extension period may be granted by the Planning Board.

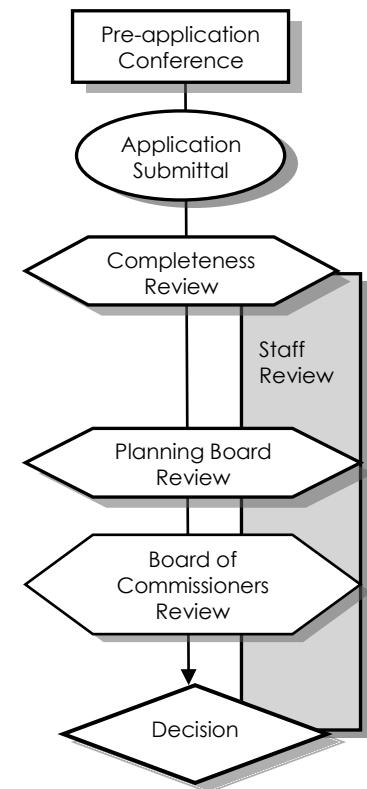
**D. Action by Board of Commissioners**

1. Before taking action on the major site plan, the Board of Commissioners shall consider the recommendations of the Planning Board.
2. The Board of Commissioners may approve the request, deny the request, or send the request back to the Planning Board for additional consideration.

**§9.7.6. Modifications to Approved Major Site Plans****A. Minor Deviations**

If a proposed amendment to a major site plan represents only a minor deviation from the approved site plan, the applicant shall file a written application for such amendment with the Director who shall act upon such application within ten days of its receipt. Minor deviations shall include, but are not limited to, the following:

1. A less than five percent increase in the floor area or number of units, provided that the district maximums of the subject property for which a minor site plan has been submitted, is not exceeded.
2. A less than ten percent decrease in parking spaces, recreation and open space or livability space.

**Major Site Plan Review**

3. The minor relocation of less than 50 feet of any structure, dedicated road, easement or landscape screen in any direction from the location shown on the site plan unless deemed by the Director to significantly alter the approved plan.

#### **B. Substantial Deviations**

If a proposed amendment to a site plan deviates substantially from the approved site plan, the approved site plan shall be amended in accordance with the procedure and standards which governed its approval. Such substantial deviations include the following:

1. A five percent or greater increase in floor area or number of units;
2. A ten percent or greater decrease in parking spaces, recreation and open space or livability space;
3. The relocation of any structure, dedicated road, easement or landscape screen in any direction from the location shown on the major site plan.

#### **§9.7.7. Approval Criteria**

In approving a site plan, the Director and Planning Board shall consider the following:

- A. Consistency with the adopted plans and policies of the County;
- B. Compliance with all applicable requirements of this UDO;
- C. Site design and development intensity is appropriate for and tailored to the unique natural characteristics of the site, such as significant wooded areas, specimen trees, wetlands, steep slopes, and floodplains;
- D. For nonresidential and multi-family/multi-family projects, the site plan displays the location of trash handling, recycling, grease bins, and other waste-related facilities employed in the normal operation of the use;
- E. Adequacy and location of parking areas, pedestrian and vehicular access points;
- F. Compliance with site construction specifications;
- G. Adequacy of stormwater facilities, water supply, sanitary sewer service, fire protection, road signs, and road lighting as evidenced by conformance with department standards, specifications and guidelines;
- H. That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
- I. Compliance with requirements for easements or dedications;
- J. Compliance with any applicable subdivision improvements;
- K. If applicable, compliance with the approved planned development master plan; and
- L. Building design and materials uphold and promote high quality development in the County and are compatible with other uses in the surrounding neighborhood.

#### **§9.7.8. Period of Validity**

An approved site plan shall expire two years from the date of approval unless the proposed development is pursued as set forth below:

- A. A complete building permit application has been submitted and remains valid; or

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**Building Permit/Certificate of Occupancy**

**B.** Where more than one building is to be built, the applicant may submit a series of building permit applications. The first application shall be submitted within two years from the date that site plan approval is granted. Each subsequent application shall be submitted within 180 days from the date of issuance of a certificate of occupancy for the previous building.

**§9.7.9. Building Permit/Certificate of Occupancy**

**A.** No building permit or certificate of occupancy shall be issued until the required site plan of the proposed use or development has been approved by the appropriate County officials.

**B.** In order to secure a vested right for a site plan, the applicant must submit a site-specific development plan in accordance with §9.20.

**§9.7.10. Dedication and Improvements**

**A.** In the development of any property for which a site plan is required in this section, the applicant shall be required to dedicate any additional right-of-way necessary to the width required by the County for roads adjoining the property, to install curbs and gutters and pave all roads adjoining the property to NCDOT standards, and to install sidewalks in accordance with the policies and requirements of Article 5, Subdivisions Standards.

**B.** The applicant shall bear the costs of the installation of all on-site improvements as required by this UDO, including provision for surface drainage, pavement, landscaping, and utilities. Any applicant required to install or construct off-site improvements pursuant to this section may, with the approval of the Director as a condition of site plan approval, and upon a determination by the Director that such improvements are not necessary or desirable at the time, but will be needed in the future, make a payment in lieu of such improvements or part thereof. The amount of any such payment shall be an amount estimated by the County to be the actual and total installation and construction costs of such improvements. The amount paid for a given improvement shall be considered total and complete payment for the improvements considered, and will preclude any further assessment of the property in the event that the County elects to install such improvements at a later date. Full payment shall be made before any building permit or certificate of occupancy is issued for any use shown on the site plan.

**§9.7.11. Guarantees of Improvements**

**A.** Prior to the approval of any site plan or certificate of occupancy, the applicant shall submit a cost estimate and time schedule for installation of each phase of the site improvements.

**B.** The County shall require a contract between the developer and the County and an unconditional financial guarantee for 125 percent of the amount of the required on-site and off-site improvements. This guarantee shall be in the amount determined by the project engineer and approved by the Director. This guarantee shall be in cash, certified check, letter of credit, or be made by a bonding/insurance company authorized to do business in North Carolina. No expiration of the guarantee shall be permitted.

**C.** As each phase of improvements is installed and inspected by the County, the guarantee amount may be reduced by the costs of the installed improvements.

**D.** In the event that the applicant wishes to occupy any building or any portion of any building prior to the completion of the required site improvements, the bond guaranteeing improvements shall be retained by the County until the remaining required improvements are completed.

**E.** The above requirements may be waived by the Director where acceptable guarantees have been made to other governmental entities.

#### **§9.7.12. Inspections of Required Improvements**

Inspections during of site improvements shall be made in accordance with §5.10.4.

#### **§9.7.13. Appeal**

Final action on a major or minor site plan may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

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**Applicability****§9.8. Traffic Impact Analysis****§9.8.1. Applicability**

- A. A traffic impact analysis may be required to be submitted in conjunction with applications for planned development, preliminary plat, major site plan, and special use permit.
- B. Unless exempted in paragraph §9.8.2 below, a traffic impact analysis shall be required for all projects, which can be anticipated to generate at least 100 peak hour trips generated based on the latest edition of the Institute of Transportation Engineers (ITE) *Trip Generation Manual*.

**§9.8.2. Exemptions**

The following projects shall not be required to submit a traffic impact analysis:

- A. Developments approved prior to the effective date of this UDO that have maintained valid planned development master plans, preliminary plats, major site plans or special use permit.
- B. Where approved by the Director, redevelopment of any site on which the additional traffic at peak hour represents an increase of less than 100 trips from the previous development, where the redevelopment is initiated within 12 months of the completion of demolition of the previous project.
- C. Minor site plans.

**Commentary:** 50 peak hour trips per day equates to approximately 50 dwelling units; 12,500 sq. ft. of general commercial space; 40,000 sq. ft. of office space; and 60,000 sq. ft. of industrial.

**§9.8.3. Waiver Authorized**

- A. The Director may waive the requirement to submit a traffic impact analysis. If the Director waives the requirement to submit a traffic impact analysis, the Director shall include the reason for the waiver in the Director's decision or recommendation on the application.
- B. The traffic generated from a proposed development for which the requirement to submit a traffic impact was waived may not endanger the public safety.

**§9.8.4. Pre-application Conference**

- A. All applicants required to submit a traffic impact analysis shall schedule a pre-application conference with the Director, in accordance with §9.2.1.
- B. The Director and the County's consultant, if applicable, shall determine the type and scope of the study during the pre-application conference, which may also involve representatives from other agencies or departments.

**§9.8.5. Application Requirements**

A traffic impact analysis prepared by a professional engineer licensed in the State of North Carolina and approved by Lincoln County shall be submitted in accordance with §9.2.2, Application Requirements. The traffic impact analysis must conform with the requirements of this section. The traffic impact analysis report must describe the study

methodology, the data used, and the study findings and provide recommendations based on the results.

#### §9.8.6. Action by Director

- A. The Director may deny an application if the results of a traffic impact analysis demonstrate that a proposed development may overburden the road system based on impact to the general health, safety and welfare of the citizens of Lincoln County.
- B. The Director will coordinate and consult with NCDOT.
- C. The Director shall deny an application if the traffic impact analysis demonstrates that the project endangers the public safety.

#### §9.8.7. Traffic Study Elements

A letter report or special report shall only include those elements agreed upon in the scoping meeting. A full traffic impact study shall be prepared in accordance with Chapter 5 of the NCDOT Driveway Manuel and include the following elements:

##### A. Existing Condition Survey

###### 1. Road System Description

The road system shall be described including geometric features, lane usage, traffic control, signage, sight distances and adjacent uses and curb cuts.

###### 2. Traffic Volumes

Existing traffic volumes shall be provided for the impact area including both AADT (Average Annual Daily Traffic) and "Design" peak hour volumes. AADT shall be derived from the latest available counts taken by the County or NCDOT. Peak hour volumes shall be obtained from field counts. Data shall be adjusted for daily and seasonal variations.

Turning movement counts for the peak hour shall be provided for critical intersections. Peak hour periods shall be as determined at the scoping meeting.

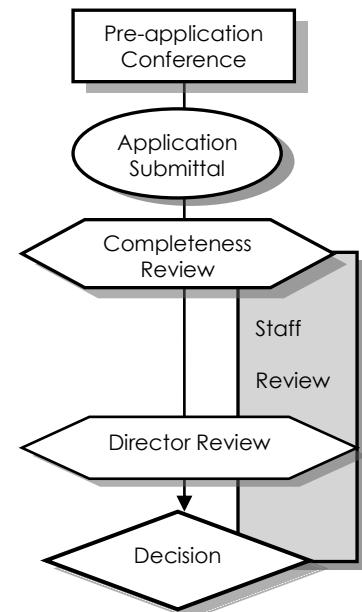
###### 3. Capacity Analysis

Existing capacity of signalized and un-signalized intersections shall be provided.

###### 4. Other

Other items may be required at the discretion of the Director depending upon the type and scale of the project. These may include but are not limited to: queue length analysis, pedestrian counts, accident data, traffic speeds (both 50th and 85th percentile), and stopping sight distances.

#### Traffic Impact Analysis



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**Traffic Study Elements****B. Future without Development**

Capacity analysis is to be provided for opening year and plus 10-year for key intersections (and roadway segments where appropriate) without the development but including any planned developments. The analysis shall be based upon the Highway Capacity Manual or other methodologies approved in advance by the Director.

**C. Future with Development**

1. Projections of the daily and peak hour traffic generation of the project shall be made using the latest edition of the ITE Trip Generation Manual unless the Director determines that locally derived data will provide more accurate forecasts. Data from similar facilities may be used where the information is not available from ITE.
2. The projected trips shall be distributed onto the road network as agreed in the scoping meeting.
3. Capacity analysis for opening year and plus 10-year for key intersections (and roadway segments where appropriate).
4. Special analysis as may be required to determine warrants for signalization, minimum safe sight distances, gap analysis, turning radius requirements, queue length analysis, turning lane length analysis, curb cut locations or similar requirements.

**D. Mitigation Plan**

Where the analysis indicates that the project will create deficiencies in the impact area, improvements shall be recommended which shall include projected cost estimates. The design of improvements shall be in accordance with specifications of the design engineer and approved by the Director and NCDOT. The mitigation plan shall also include any dedications and improvements necessary to comply with the level of service requirements described below. Where the final approval authority for any procedure determines that a mitigation plan is not adequate to address the traffic impacts of the project, it may serve as a basis for denial of the permit or subdivision plat.

**E. Determination of Impact Area**

The Director shall determine the geographic area to be included in a traffic impact analysis and correlate to the size of the project. Identification of the points of access and key roads and intersections to be affected by development of the subject parcel shall be required. Traffic recorder and turning movement assessment locations may also have to be determined.

**F. Level of Service**

The County shall utilize means by which to maintain a minimum Grade "C" level of service for intersections affected by proposed developments through improvements mandated or suggested by traffic impact analyses; technical memoranda required by rezoning cases; and through adherence to level-of-service criteria described as follows:

1. Where proposed development lowers any intersection leg impacted by said development below a Grade "C", the developer will be required to provide those transportation improvements necessary to retain a Grade "C".

2. Where an existing intersection is rated below Grade "C" prior to any proposed development, the developer will be required to maintain existing transportation levels for any/all legs impacted. Final intersection grades shall include the impact of the proposed development.
3. Where a new access or street is proposed, the TIA shall provide a Level of Service analysis for all individual movements where the proposed street(s) intersect an existing street. Intersecting street(s) with movements at an identified Level of Service below Grade "C" shall be deemed to not be in compliance with the established TIA standards.
4. All improvements will be required as conditions of the approval of a rezoning, must meet North Carolina Department of Transportation (NCDOT) standards and be included in the driveway permit issued by the NCDOT Division 12 office. Required improvements must correspond directly to the impact of the development proposal. If right-of-way necessary to complete a required improvement cannot be acquired by the applicant, then the rezoning case will be brought back before the Board of Commissioners for its consideration of the rezoning absent the condition of the specified road improvement originally applied to the rezoning request. The applicant must demonstrate that reasonable efforts to acquire the right-of-way necessary to complete the required improvement were made. The Board of Commissioners shall decide whether or not to approve the rezoning given the inability of the applicant to meet all previously required conditions.

#### **§9.8.8. Application Modification Based on Traffic Analysis**

An applicant may modify an application to minimize the traffic-related effects identified in a traffic impact analysis. Modifications may include:

- A. A reduction in the projected vehicle trips per day;
- B. The dedication of additional right-of-way;
- C. The rerouting of traffic and a proposed access and egress point;
- D. Other modification determined to be necessary.

#### **§9.8.9. Consultants**

The Director may require that an independent consultant be hired by the applicant to perform the required studies, or to review all or part of a study prepared by the applicant's consultant. The cost of the TIA study shall be paid for by the applicant. Consultants to complete the required TIA shall be selected from a list of consultants established and approved by the Board of Commissioners on a biennial basis. Other consultants may be used with the advance written approval of the Board of Commissioners.

#### **§9.8.10. Appeal**

Final action on a TIA may be appealed to the Board of Commissioners. The Board of Commissioners may approve the traffic impact analysis if the Board determines that the applicant has satisfactorily mitigated adverse traffic effects; or additional traffic from the project has an insignificant effect on the County's roads.

#### **§9.8.11. Period of Validity**

A traffic impact analysis shall be valid for a specific site for no more than two years, so long as no significant modifications to the development approved for the site are made.

**Applicability****§9.9. Zoning Permit****§9.9.1. Applicability**

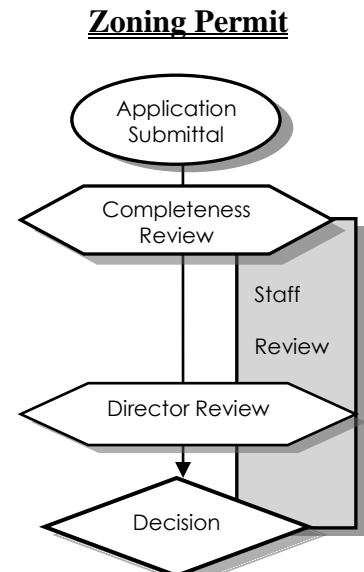
- A. It shall be unlawful to begin moving, constructing, altering, or repairing, except ordinary repairs, of any building or other structure on a site including an accessory structure, until the Director has issued a zoning permit.
- B. It shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, or to extend any use or any lot on which there is a nonconforming use, until the Director has issued a zoning permit for such intended use, including a determination that the proposed use, in all respects, conforms to the provisions of this UDO.
- C. It shall be unlawful to undertake grading, vegetation removal or any other land-disturbing activity of one acre or greater in area until the Director has issued a zoning permit for such work.
- D. In the event of the removal of all or substantially all natural vegetation on a site prior to compliance with the requirements of this section, consideration of any site specific development plan shall be delayed until the existing natural vegetation is restored or for three years, whichever occurs earlier.
- E. This provision shall not be interpreted as applying to or limiting bona fide farm operations as defined by the State of North Carolina, or forestry activity on forestland that is taxed on the basis of its present-use value under Article 12 of Chapter 105 of the General Statutes or forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes (See G.S. § 1160D-921).
- F. No zoning permit is required for permitted temporary uses (see §9.13).

**§9.9.2.****Timing of Application**

In all cases where a building permit is required, application for a zoning permit shall be made concurrently with the application for a building permit. In all other cases, application shall be made before initiating any of the activities that trigger compliance with this section.

**§9.9.3.****Pre-construction Conference**

- A. All applicants uncovering or disturbing more than one acre shall contact the Director at least 48 hours before commencement of the land-disturbing activity and schedule a pre-application conference with the Director, in accordance with §9.2.1. The purpose is to arrange an on-site meeting with the Director or duly authorized representative to review the approved plan and proposed activity.



**B.** Preapplication conferences are not required for uses and activities not addressed by subsection A, above.

#### **§9.9.4. Application Requirements**

All applications for a zoning permit shall be submitted in accordance with §9.2.2, Application Requirements. Such request shall be submitted concurrent with an application for stormwater permit, if applicable.

#### **§9.9.5. Action by Director**

**A.** If the proposed application is in conformity with the provisions of this UDO, and if all applicable permits have been approved by the Lincoln County Soil and Water Conservation Department, the Director shall issue a zoning permit, provided that all of the following conditions shall apply:

- 1.** Issuance of a zoning permit shall in no case be construed as waiving any provisions of this UDO;
- 2.** The Director shall not grant any exceptions to the actual meaning of any clause, standards, or regulation contained in this UDO to any person making application to excavate, construct, move, alter or use buildings, structures or land;
- 3.** The Director shall issue a permit when the imposed conditions of this UDO are complied with by the applicant regardless of whether the use of the permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties; and
- 4.** The zoning permit shall include a determination that plans, specifications and the intended use of such structure and land do, in all respects, conform to the provisions of this UDO. Prior to the issuance of a zoning permit, the Director shall consult with other applicable departments, as necessary.

**B.** If the proposed application is not in conformity with the provisions of this UDO, the Director shall not issue the zoning permit and shall provide in writing the cause of such disapproval to the applicant.

#### **§9.9.6. Review Criteria**

Zoning permits shall be approved where the Director determines that the proposed use or activity is in conformity with the applicable requirements of the UDO, including but not limited to: zoning district regulations of Article 2, general development standards of Article 3, and specific use regulations of Article 4.

#### **§9.9.7. Expiration**

Once a zoning permit has been issued, all activities pursuant to such permit shall be commenced within six months. If the proposed moving, constructing, altering, repairing, or use of land, as set forth in an application for a zoning permit, is discontinued for a period of one year or more, the zoning permit shall lapse and be of no further force and effect.

#### **§9.9.8. Appeal**

Final action on a zoning permit may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

## §9.10. Reserved

## §9.11. Special Use Review

### §9.11.1. Applicability

- A. Special uses within each general use district are uses that may or may not be appropriate in a particular district, depending on the location, the scale or size of the use, or other factors requiring individual review by the Board of Commissioners.
- B. A special use permit shall be required for all special uses as set forth in the Permitted Land Use Table (see §2.2.1). A development comprised of uses regulated by separate rows on the table shall be reviewed using the most restrictive process from among the proposed uses.
- C. Where a use requiring approval as a special use lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to special use review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.
- D. Notwithstanding the provisions of §2.2 to the contrary, land uses owned by Lincoln County shall not be subject to the special use review requirements of this section. Public facilities, major and minor utilities and other land uses owned by Lincoln County shall be considered Permitted Uses.

### §9.11.2. Pre-application Conference

All applicants seeking special use approval shall schedule a pre-application conference with the Director, in accordance with §9.2.1.

### §9.11.3. Application Requirements

- A. Concurrent with a request for a special use permit, an applicant shall submit a site plan for review and approval.
- B. An application for a special use permit shall be submitted in accordance with §9.2.2, Application Requirements.

### §9.11.4. Notice and Public Hearings

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

### §9.11.5. Action by Director

- A. Upon submission of a completed application, the Director shall review the request and associated site plan for consistency with the requirements of this UDO.
- B. Upon completion of the technical review, the Director shall prepare a report that reviews the request in accordance with the adopted plans and policies of the County, and the general requirements of this UDO. The report, site plan and any related application materials shall be forwarded to the Planning Board.

**§9.11.6. Reserved****§9.11.7. Action by Board of Commissioners**

- A. Before taking action on the special use request, the Board of Commissioners shall determine contested facts and make its decision within a reasonable time. Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards.
- B. The Board of Commissioners may approve the request or deny the request. The concurring vote of a majority of the members shall be required to approve a request. For the purposes of this subsection, vacant positions on the board and member who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority.
- C. The written decision shall be signed by the chair or other duly authorized member of the board. The decision is effective upon filing the written decision with the clerk to the board. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

**§9.11.8. Findings of Fact Required**

No special use permit shall be approved unless the following findings are made concerning the application:

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan;
- B. The use meets all required conditions and specifications;
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity;
- D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the approved Land Development Plan for the area in question; and
- E. For SNIA's approved pursuant to §7.3.4.B, §7.3.4.C, and §7.3.4.E, the proposed development shall be found to substantially increase the ad valorem tax base of the County or otherwise significantly promote or expand economic development and/or job opportunities available to Lincoln County residents, or to serve a community purpose such as a place of worship, school, or other community facility.

**§9.11.9. Additional Conditions**

- A. In granting approval of a special use permit, the Board of Commissioners may impose reasonable and appropriate conditions which serve to assure that the required findings are upheld. Such conditions may include, but are not limited to, right-of-way or easement dedication; recreation and open space, or buffer provision; limitation in scale, intensity, or hours of operation; and other reasonable restrictions.

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Modifications to Approved Special Use Permit

- B. Any additional condition approved by the Board of Commissioners shall become a part of the permit and be of equal importance in the responsibility of the applicant or subsequent assigns to adhere to its terms.
- C. Conditions of approval may include a requirement that the applicant submit an annual statement of compliance detailing how the applicant has complied with terms of the permit, including a detailed and specific report on steps taken in the prior year to comply with other applicable local, State and Federal requirements and laws. The Director shall review and approve such annual statement where the applicant is continuing to comply with the applicable requirements of the special use permit. Where the Director determines that the applicant is in violation of any requirement of this UDO or conditions of approval, the Director shall refer the permit to the Board of Commissioners for review.

**§9.11.10. Modifications to Approved Special Use Permit****A. Minor Deviations**

The Director is authorized to approve minor deviations to a special use permit, if such change is not contrary to the approving action of the Board of Commissioners, but shall not have the authority to approve substantial deviations as set forth below.

**B. Substantial Deviations**

Any deviation requiring evidentiary support in addition to that presented at a public hearing on applications for the original permit shall constitute a substantial deviation. Before making a determination as to whether a proposed action is a minor deviation or a substantial deviation, the Director shall review the record of the proceedings on the original application. Substantial deviations shall include the following:

- 1. A change in the boundaries of the approved site;
- 2. A change from the approved use;
- 3. An increase in density of overall development;
- 4. An increase of five percent or more in the number of approved parking spaces, unless the proposed addition is ten or fewer spaces, whether such addition is proposed at one time or over an extended period of time;
- 5. Substantial change in the location of principal or accessory structures;
- 6. Structural alterations significantly affecting the basic size, form; style, ornamentation, and appearance of principal or accessory structures as shown on the approved site plan;
- 7. Substantial changes in pedestrian or vehicular access or circulation; and
- 8. Substantial change in the amount or location of landscape screens.

C. If a proposed amendment deviates substantially from the approved special use permit permit shall be amended in accordance with the procedure and standards which governed its approval.

**§9.11.11. Effect of Decision**

- A. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as specified. The decision of the board

shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice that has been made, and the certificate shall be deemed conclusive in the absence of fraud.

**B.** If the Board of Commissioners votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until 12 months have elapsed from the date of denial. If the Board of Commissioners votes to approve an application, the notice of permit shall be recorded in the Lincoln County Register of Deeds office. This waiting period shall not be applicable where the application for a special use permit is substantially different from the original application. The term "substantially different" as herein applied shall mean:

1. The proposed principal use is a different classification than the use contained in the original application; or
2. The gross floor area of the proposed development is 50 percent or more smaller than contained in the original application.

**C.** The special use permit and additional conditions, if applicable, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs.

#### **§9.11.12. Period of Validity**

**A.** An approved special use permit shall expire two years from the date of approval unless the proposed development is pursued as set forth in one of the following alternatives:

1. A complete building permit application has been submitted and remains valid.
2. Where more than one building is to be built, the applicant may submit a series of building permit applications. The first application shall be submitted within two years from the date approval was granted.

**B.** Once the appropriate permit has been issued, the special use permit shall remain in force unless the use, construction, or activity ceases for a period of 12 consecutive months. In such instance the special use permit shall become void. If a special use is determined by the Director to be void, such determination shall be transmitted in writing to the applicant.

#### **§9.11.13. Building Permit/Certificate of Occupancy**

**A.** No building permit or certificate of occupancy shall be issued until the required site plan of the proposed use or development has been approved by the Board of Commissioners.

**B.** In order to secure a vested right for a site plan, the applicant must submit a site-specific vesting plan in accordance with §9.20.

#### **§9.11.14. Revocation of a Special Use Permit**

**A.** If any conditions of a special use permit or other requirements of this UDO are violated, the County may revoke the permit.

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**Coordination with Variances**

- B.** Revocation may occur after a quasi-judicial hearing is conducted by the Board of Commissioners.
- C.** Upon a four-fifths vote, the Board of Commissioners shall revoke the permit, and notice of such revocation shall be recorded in the Lincoln County Register of Deeds office.
- D.** Violations of conditions of a special use permit shall be considered a violation of this UDO and thereby subject to the provisions of Article 11 Enforcement.

**§9.11.15. Coordination with Variances**

Applications for variances may be submitted concurrently with a request for a special use permit. The special use permit request shall be considered first (including any site plan), and where it is denied, the variance request shall be null and void.

**§9.11.16. Reserved****§9.11.17. Appeal to Court**

Any decision by the Board of Commissioners shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with G.S. 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

## §9.12. Certificate of Appropriateness

### §9.12.1. Applicability

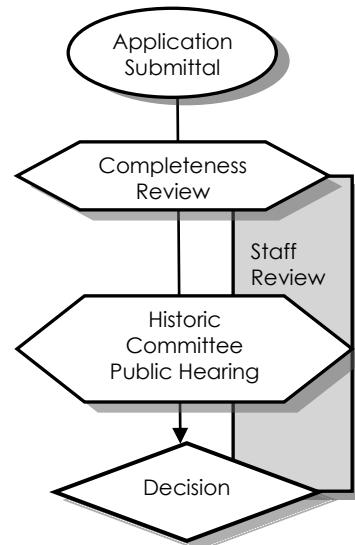
A. No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such landmark or within such district until after an application for a certificate of appropriateness (COA) as to exterior features has been submitted to and approved by the Commission except as provided for in §9.12.12.

B. For the purpose of this section "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, landscaping and natural features, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, materials, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area. Provided, however, a COA shall not be required when the only change in exterior appearance is the painting of existing painted surfaces regardless of the color of paint to be applied.

C. The Commission shall have no jurisdiction over interior arrangement. Notwithstanding subsection (A) of this section, jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provide such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commissioners' jurisdiction over the interior.

D. A COA must be issued by the Historic Commission prior to the issuance of either a zoning or building permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this section. A COA shall be required whether or not a building permit is required. Any building permit, zoning permit or such other permit not issued in conformity with this section shall be invalid.

### Certificate of Appropriateness



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Application Requirements

- E. Lincoln County and all public utility companies shall be required to obtain a COA prior to initiating any changes in the character of road paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or roads owned or franchised by the Lincoln County or public utility companies.
- F. Nothing in this §9.12 shall be construed to prevent:
  - 1. Ordinary maintenance or repair of any exterior architectural feature in the Historic District which does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the Building Inspector or similar official shall certify in writing to the Commission is required by the public safety because of an unsafe or dangerous condition;
  - 2. Property owner from making any use of his property that is not prohibited by other law; or
  - 3. Maintenance or in the event of an emergency, the immediate restoration of any existing ground utility structure without approval of the Commission.

**§9.12.2. Application Requirements**

An application for a certificate of appropriateness shall be submitted in accordance with §9.2.2, Application Requirements.

**§9.12.3. Notice and Public Hearing**

- A. Prior to issuance or denial of a COA, the Commission shall take such action as may reasonably be necessary to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.
- B. Where the Commission deems it necessary, it may hold a public hearing concerning the application. Where the Commission finds a hearing to be necessary, public notice shall be provided in accordance with the requirements of §9.2.3.

**§9.12.4. Action by the Commission**

- A. The Commission shall take action on the application and in doing so shall apply the Review Criteria, contained in §9.12.7.
- B. The Commission's action on the application shall be approval, approval with modifications, or disapproval.
- C. Prior to any action to enforce a landmark or historic district regulation, the Commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and standards not inconsistent with this part to guide the Commission in determining congruity with the special character of the landmark or historic district for new construction, alterations, additions, moving and demolition. The landmark or historic district regulation may provide, subject to prior adoption by the Commission of detailed standards, for the review and approval as an administrative decision of applications for a COA for minor works or activity as defined by the regulation; provided, however, that no application for a COA may be denied without formal action by the Commission other than these administrative decisions on minor works.

- D.** Decisions on COAs are quasi-judicial and shall follow the procedures of G.S. 160D-406. No member or alternate member shall vote on any matter concerning an application for a COA unless that member or alternate shall have been present during the hearing and deliberations concerning said application.
- E.** The Commission shall cause to be entered into the minutes of its meeting the reasons for its actions, whether such action be approval, approval with modifications, or denial.

#### **§9.12.5. Time Limits**

If the Commission fails to take final action upon any application within 60 days after the completed application is submitted to the Director, the application shall be deemed to be approved. The 60 day period may be extended through mutual written agreement between the Commission and the applicant. The extension may be no longer than 30 days and may be renewed.

#### **§9.12.6. Submission of New Application**

If the Commission determines that a COA should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving; unless a period of one year has elapsed since said denial and in such case the same application may be re-submitted.

#### **§9.12.7. Review Criteria**

##### **A. Intent**

- 1.** It is the intention of these regulations to insure, insofar as possible, that buildings or structures in the -HO district shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of same or to impose architectural styles from particular historic periods. In considering new construction, the Commission may encourage contemporary design which is harmonious with the character of the District.
- 2.** In granting a COA, the Historic Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity.

##### **B. Exterior Form and Appearance**

The following criteria shall be considered, when relevant, by the Commission in reviewing applications for a COA. These criteria shall serve as standards to determine whether the construction or alteration as proposed in the application for certificate of appropriateness is compatible to those properties within the -HO district:

- 1.** Lot coverage;
- 2.** Required yard;
- 3.** Building or structure height;

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Review Criteria

(a) Maximum height of all new buildings permitted in the -HO District shall be 35 feet unless the Commission authorizes a height above 35 feet; provided that such authorized height shall not exceed ten percent of the average height of existing adjacent buildings; and

(b) Chimneys, steeples, spires, cupolas and the like, not intended for human occupancy, shall be reviewed on an individual basis and shall be subject to the requirements stipulated by the certificate of appropriateness for that particular project.

4. Spacing of buildings, defined as the distance between adjacent buildings (i.e., the recurrent relationship of building masses to the spaces between them);

5. Exterior building materials, the predominant material shall be brick, stone, stucco, wood siding, or such other material that shall be compatible to those properties within the -HO district;

6. Proportion, shape, positioning, location, pattern and sizes of any elements of windows and other such openings;

7. Surface textures, the predominant texture may be smooth (stucco) or wrought (brick) or horizontal wood siding, or other such texture as shall be compatible to those properties within the -HO district;

8. Roof shapes, forms and materials;

9. Use of local or regional architectural traditions;

10. General form and proportions of buildings and structures, and relationship of any additions to the main structure;

11. Expression of architectural detailing, such as lintels, cornices, brick bond pattern, and foundation materials;

12. Orientation of the building to the road;

13. Scale, determined by the size of the units of construction and architectural details in relation to the size of man and also by the relationship of buildings and structures;

14. Ratio of height to width of the total building façade;

15. Effect of trees and other landscape elements;

16. Appurtenant fixtures and other features such as lighting;

17. Structural condition and soundness;

18. Walls - physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses, building facades, or combinations of these;

19. Color - the predominant color may be that of a natural material or a painted one and shall be compatible to those properties within the -HO district; as used in this paragraph, "compatibility" shall also include original colors of structure, colors which the structure had at any time during which the style(s) of the structure were a prominent style for new construction, or any color schemes generally representative of the original or modified architectural

style(s) of the structure and the neighborhood as determined by historical research;

20. Ground covers plants and other such organic materials and paving, paving block and bricks, and other such materials; and
21. Maintenance of pedestrian scale and orientation as well as provision for safe pedestrian movement.

**C. Interior Arrangement Not Considered**

The Commission shall not consider interior arrangement.

**§9.12.8. Delay in Demolition of Buildings within Historic District**

- A. An application for a certificate of appropriateness authorizing the demolition of a building, structure or site within the -HO district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 360 days from the date of approval.
- B. The maximum period of delay authorized by this section shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.
- C. If the Commission finds that a building or site has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

**§9.12.9. Review of Application by Commission**

As part of its review procedure, the Commission may view the premises and may seek the advice of the North Carolina Department of Cultural Resources or such other expert advice as it may deem necessary under the circumstances.

**§9.12.10. Compliance**

- A. Compliance with the terms of the certificate of appropriateness shall be enforced by the Director. Failure to comply with a certificate of appropriateness shall be a violation of the zoning ordinance.
- B. The discontinuance of work or the lack of progress toward achieving compliance with a certificate of appropriateness for a period of six months shall be deemed as a failure to comply with a certificate of appropriateness. The certificate of appropriateness shall be effective 12 months from the date of issuance by the Director. If all necessary work or progress has not been completed within 60 days of the end of the certificate's time limit, the applicant may apply for an extension from the Commission. Such application must be made 30 days prior to the end of the time limit.
- C. Nothing contained in this section shall prohibit, impair, or limit in any way the power of Lincoln County to prevent the construction, reconstruction, alteration, restoration, or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the Historic District in violation of the provisions of this section. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

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Unsafe or Dangerous Conditions**§9.12.11. Unsafe or Dangerous Conditions**

The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition, shall not be prevented by other applicable -HO district requirements.

**§9.12.12. Minor Work**

- A.** The Director shall have the authority to issue a certificate of appropriateness if an application or inquiry falls under one of the following categories of minor work:
  - 1.** Storm windows (providing color matches window trim);
  - 2.** Normal size television and radio antennas (citizen band and ham operators shall require a certificate of appropriateness issued by the Historic Committee);
  - 3.** Roof and basement ventilators;
  - 4.** Window air conditioning units, or outdoor portions of single or two-family residential central air conditioning or heating units; and
  - 5.** If the Director does not issue a certificate of appropriateness, he shall advise the applicant to make a formal application to the Commission.
- B.** The Director is not required to issue any certificate of appropriateness and may at his discretion refer any matter to the Commission.
- C.** No application for a certificate of appropriateness may be denied without formal action by the Commission.

**§9.12.13. Appeal**

Any appeals of decisions on certificates of appropriateness shall be made to the Superior Court as provided in G.S. 160D-1402.

## §9.13. Temporary Use Review

### §9.13.1. Applicability

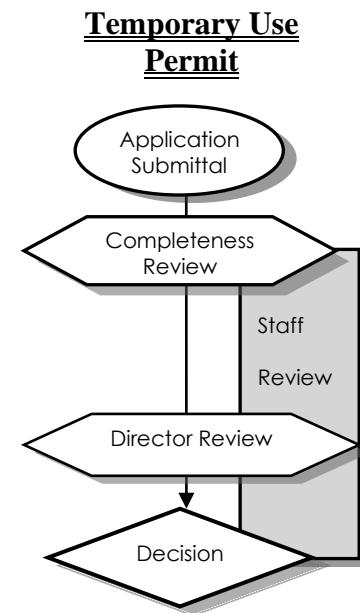
Temporary uses occurring on property outside of the public right-of-way, including those operating for less than 30 days within a one-year time period, shall obtain a temporary use permit from the Planning and Inspections Department that outlines conditions of operations to protect the public, health, safety and welfare subject to the standards of §4.7, Temporary Use Standards.

### §9.13.2. Application Requirements

An application for a temporary use permit shall be submitted in accordance with §9.2.2, Application Requirements.

### §9.13.3. Action by Director

- A. After receiving a complete application, the Director shall have up to 30 days to review the application.
- B. Following completion of the technical review period, the Director shall approve the issuance of a temporary use permit subject to the following:
  - 1. No lighting or electrical service shall be provided without an electrical permit;
  - 2. No temporary use structure shall be erected without a building permit;
  - 3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
  - 4. The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;
  - 5. Written permission of the property owner for the temporary use shall be provided;
  - 6. Adequate parking for temporary shall be provided, and required parking for other uses shall remain available;
  - 7. Adequate traffic control measures shall be provided;
  - 8. Adequate provisions for trash disposal and sanitary facilities shall be provided;
  - 9. When appropriate, adequate provisions for crowd control shall be provided; and
  - 10. No temporary use may be approved on the same site more than two times in any calendar year.



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### Revocation of a Temporary Use Permit

#### **§9.13.4. Revocation of a Temporary Use Permit**

A temporary use permit shall be revoked if the Director finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

#### **§9.13.5. Appeal**

Final action on a temporary use permit may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

## §9.14. Sign Permit

### §9.14.1. Applicability

Except as otherwise provided in §3.9.6, no sign may be erected, located, or altered in any manner until a sign permit, and building permit if necessary, has been secured from the Planning and Inspections Department. The change of copy on a legally constructed sign shall not require a permit unless it is included as part of an approved common signage plan (see §9.15).

**Commentary:** A common signage plan may be required before a sign permit can be issued in some situations (see §9.15.1).

### §9.14.2. Application Requirements

An application for sign permit shall be submitted in accordance with §9.2.2, Application Requirements.

### §9.14.3. Action by Director

Following completion of the technical review period, the Director shall approve the sign permit for any sign, provided the sign meets all requirements of this UDO, and all other applicable electrical and International Building Code requirements.

### §9.14.4. Inspection of Permanent Signs

- A. The applicant shall request an inspection by the appropriate inspector after installation of the signs.
- B. The sign permit shall be null and void if sign installation is not completed within six months or the signs are not in conformance with the approved application.

### §9.14.5. Temporary Sign Permit

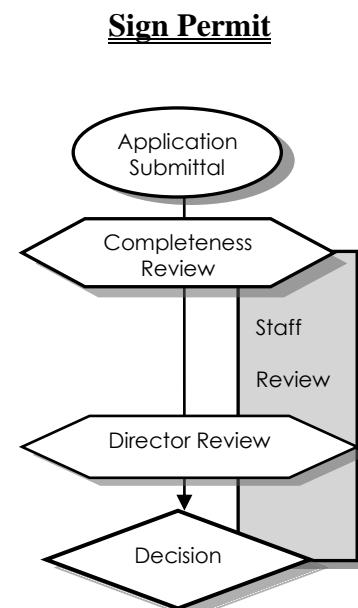
A temporary sign permit shall be issued in accordance with §3.8, Signs. A common signage plan shall not be required for applications for temporary sign permits.

### §9.14.6. Revocation of a Sign Permit

The sign permit shall be revoked if a sign is found to be in violation of the requirements of this UDO, or other applicable electrical and International Building Code requirements.

### §9.14.7. Appeal

Final action on a sign permit may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.



**Applicability****§9.15. Common Signage Plan****§9.15.1. Applicability**

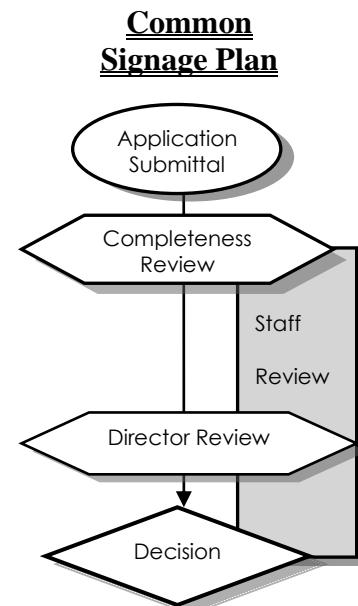
- A. Except as listed in below, the owners or developers of two or more contiguous lots, or any multi-tenant use shall submit a common signage plan for approval as part of the site plan application. Other applicants may voluntarily submit a common signage plan in accordance with the standards of this section. Such developments may increase the amount of signage otherwise permitted by a maximum amount of 25 percent subsequent to approval of the common signage plan.
- B. Applications for temporary sign permits shall not be required to submit an approved common signage plan.

**§9.15.2. Application Requirements**

- A. An application for a common signage plan shall be submitted in accordance with §9.2.2, Application Requirements.
- B. The elements of a common signage plan shall be in accordance with §3.8, Signs. In addition, the applicant shall indicate the standards of consistency of all signs on the subject property with regard to:
  - 1. Color pallet;
  - 2. Letter/graphics style;
  - 3. Location of each sign;
  - 4. Materials used in sign construction;
  - 5. Maximum dimensions and proportion;
  - 6. Limitation in number of free standing signs to one per road frontage; and
  - 7. Other restrictions imposed by the applicant.
- C. Where an application for site plan review is also required, the common signage plan shall be submitted concurrently with the site plan (see §9.7, Site Plan Review).

**§9.15.3. Action by Director**

- A. Following completion of the technical review, the Director shall approve the common signage plan provided the plan meets all requirements of this section.
- B. The Director may allow modifications to the lettering style to accommodate State and Federally registered trademarks (logos) if the Director feels that the intent of the common signage plan requirements is maintained. In allowing modifications, the Director may limit the logo size. The requirements of a common signage plan shall apply to all tenants within a related project, even if the properties have been subdivided.



**§9.15.4. Revisions and Amendments**

- A. Revisions or amendments to the common signage plan shall require documentation from all tenants on the property prior to approval.
- B. It shall be the responsibility of the applicant and/or property owner to enforce the terms of the common signage plan, and a current copy of such plan, including any amendments, must be kept on file in the Planning and Inspections Department.

**§9.15.5. Existing Signs Not Conforming to Common Signage Plan**

If any new or amended common signage plan is filed for a property on which existing signs are located, it shall include a schedule for bringing into conformance, within three years, all signs not conforming to the proposed amended plan or to the requirements of this UDO in effect on the date of submission.

**§9.15.6. Binding Effect**

After approval of a common signage plan, no sign shall be erected, placed, painted, or maintained, except in conformance with such plan, and such plan may be enforced in the same way as any provisions of this UDO. In case of any conflict between the provisions of such a plan and any other provision of this UDO, this UDO shall control.

**§9.15.7. Appeal**

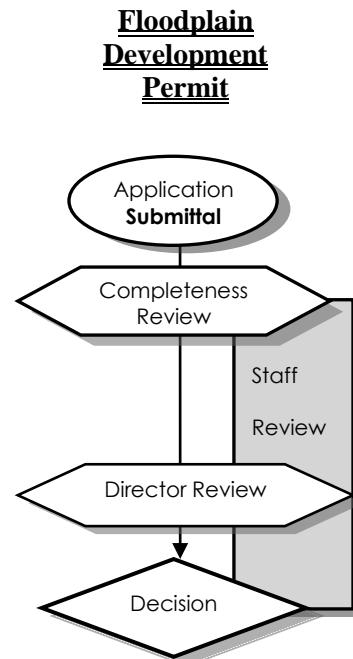
Final action on a common signage plan may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

**Applicability****§9.16. Floodplain Development Permit****§9.16.1. Applicability**

- A. This section shall apply to all Special Flood Hazard Areas within the jurisdiction of Lincoln County and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.
- B. A Floodplain Development Permit shall be required in conformance with the provisions of this section prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of §9.16.2.
- C. No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section and other applicable regulations.

**§9.16.2. Basis for Establishing Special Flood Hazard Areas**

- A. The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Lincoln County dated August 16, 2007, which are adopted by reference and declared to be a part of this section.
- B. The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:
  - 1. Lincoln County Unincorporated Area, dated December 1, 1981.
  - 2. Special Flood Hazard Areas also include those identified by City of Lincolnton in its Flood Damage Prevention Ordinance, dated December 1, 1981, which with accompanying data are adopted by reference and declared to be part of this section.

**§9.16.3. Application**

An application for a floodplain development permit shall be submitted in accordance with §9.2.2, Application Requirements.

**§9.16.4. Permit Requirements**

The Floodplain Development Permit shall include, but not be limited to:

- A. A description of the development to be permitted under the floodplain development permit;
- B. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in §9.16.2;

- C. The regulatory flood protection elevation required for the reference level and all attendant utilities;
- D. The regulatory flood protection elevation required for the protection of all public utilities;
- E. All certification submittal requirements with timelines;
- F. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable;
- G. The flood openings requirements, if in Zones A, AO, AE or A1-30; and
- H. Limitations of below BFE enclosure uses if applicable (i.e., parking, building access and limited storage only).

#### **§9.16.5. Certification Requirements**

##### **A. Elevation Certificates**

- 1. 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 Director a certification of the elevation of the reference level, in relation to mean sea level. The Director 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.
- 2. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Director a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Director shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- 3. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Director a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Director shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/ 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 Compliance/Occupancy.

##### **B. Flood proofing Certificate**

- 1. If nonresidential flood proofing is used to meet the regulatory flood protection elevation requirements, a Flood proofing Certificate (FEMA Form 81-65),

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**Abrogation and General Restrictions**

with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Director a certification of the flood proofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Flood proofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Director shall review the certificate data, the operational plan, and the inspection and maintenance 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 Compliance/Occupancy.

2. If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of §7.4.2.C.2.
3. 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.

**C. Certification Exemptions**

The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/flood proofing certification requirements specified in subsections A and B, above:

1. Recreational vehicles meeting requirements of §7.4.2.F;
2. Temporary structures meeting requirements of §7.4.2.G; and
3. Accessory structures less than 150 square feet meeting requirements of §7.4.2.H.

**§9.16.6. Abrogation and General Restrictions**

This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**§9.16.7. Interpretation**

In the interpretation and application of this section, all provisions shall be considered as minimum requirements; liberally construed in favor of the governing body; and deemed neither to limit nor repeal any other powers granted under State statutes.

**§9.16.8. Warning and Disclaimer of Liability**

The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This section does not imply that land outside the Special Flood Hazard

Areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of Lincoln County or by any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

### **§9.16.9. Corrective Procedure**

#### **A. Violations to Be Corrected**

When the Director finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

#### **B. Actions in Event of Failure to Take Corrective Action**

If the owner of a building or property shall fail to take prompt corrective action, the Director shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating that:

1. The building or property is in violation of the floodplain management regulations;
2. A hearing will be held before the Director at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. Following the hearing, the Director may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

#### **C. Order to Take Corrective Action**

If, upon a hearing held pursuant to the notice prescribed above, the Director shall find that the building or development is in violation of §7.4, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Director finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

### **§9.16.10. Appeal**

Final action on a floodplain development permit may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.

### **§9.16.11. Floodplain Variances**

#### **A. Applicability**

1. The Board of Adjustment as established by §8.3 shall hear and decide requests for variances from the requirements of this section.
2. Floodplain variances may be issued for:
  - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

## Floodplain Variances

- (b) Functionally dependent facilities, if determined to meet the definition as stated in Article 12, provided provisions of §9.16.11.E have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
- (c) Any other type of development provided it meets the requirements of this section.

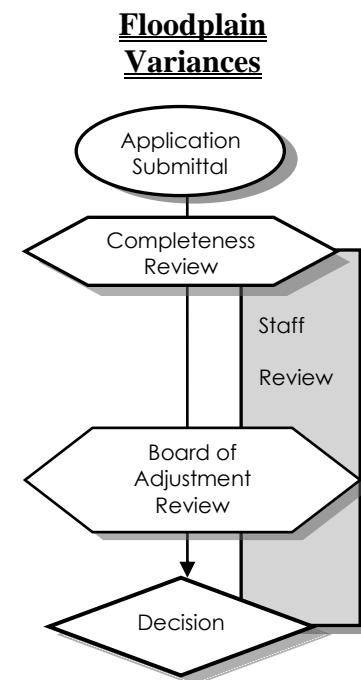
## B. Application

An application for a floodplain development permit shall be submitted in accordance with §9.2.2, Application Requirements. A written report addressing each of the above factors shall be submitted with the application for a variance.

## C. Technical Evaluation, Factors, Standards

In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in section, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location as defined in Article 12 as a functionally dependent facility, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. 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; and
11. 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 roads and bridges.



**D. Criteria for Approval**

1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued prior to development permit approval.
5. Variances shall only be issued upon:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship; and
  - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**E. Conditions of Approval**

Upon consideration of the factors listed above and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this UDO.

**F. Action Following Approval**

1. The Director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
2. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and 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, including justification for their issuance.

**G. Appeal**

Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

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**Applicability****§9.17. Written Interpretation****§9.17.1. Applicability**

When uncertainty exists, the Director, after consultation with other involved staff and County Attorney, shall be authorized to make all interpretations concerning the provisions of this UDO.

**§9.17.2. Application Requirements**

An application for a written interpretation shall be submitted in accordance with §9.2.2, Application Requirements.

**§9.17.3. Action by Director**

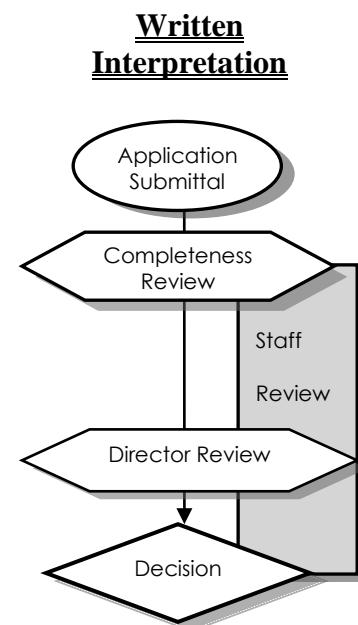
- A. The Director shall review and evaluate the request in accordance with the text of this UDO, the Zoning Map, the adopted plans and policies of the County and any other relevant information.
- B. Following completion of the technical review period, the Director shall render an opinion.
- C. The interpretation shall be provided to the applicant in writing.

**§9.17.4. Official Record**

The Director shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

**§9.17.5. Appeal**

Final action on a written interpretation may be appealed to the Board of Adjustment in accordance with §9.19, Administrative Appeals.



## §9.18. Variance

### §9.18.1. Applicability

- A. The Board of Adjustment may vary certain requirements of this UDO that will not be contrary to the public interest, where, owing to special conditions, a strict application of the provisions of this UDO, will, in an individual case, result in unnecessary hardship. The Board of Adjustment shall ensure that the spirit of this UDO shall be observed, public safety secured, and substantial justice done.
- B. No change in permitted uses may be authorized by variance.

### §9.18.2. Application Requirements

An application for a variance shall be submitted in accordance with §9.2.2, Application Requirements.

### §9.18.3. Notice and Public Hearings

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

### §9.18.4. Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below as well as the burden of persuasion on those issues.

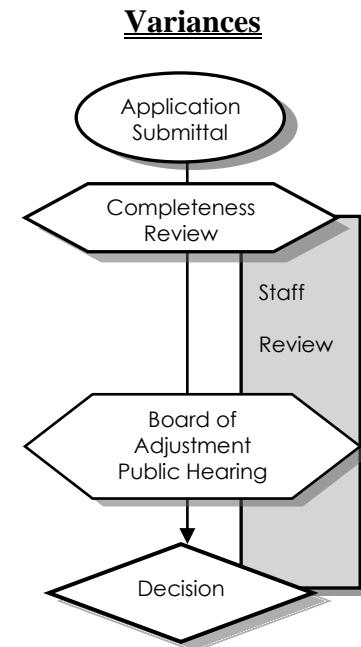
### §9.18.5. Action by Director

The Director shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request.

### §9.18.6. Action by Board of Adjustment

#### A. Procedure

1. The Board of Adjustment may approve the request, deny the request, or continue the request.
2. The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards.
3. If a motion to approve a variance is made, or fails to receive approval by four-fifths of the members eligible to vote, the variance shall be denied.
4. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions which will ensure that the use will be compatible with adjacent properties and will not alter the character of the neighborhood.
5. Conditions may be imposed by the Board of Adjustment regarding the location, character, and other features of the proposed building or use as may



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**Action by Board of Adjustment**

be deemed by the Board of Adjustment to protect property values and general welfare of the neighborhood. Nonconformance with such conditions and safeguards, when part of the terms under which the variance is granted, shall be deemed a violation of this UDO.

6. The presence of other nonconforming or conforming uses of land or structures in the same or other districts shall not be considered grounds for the granting of a variance.
7. The written decision shall be signed by the chair or other duly authorized member of the board. The decision is effective upon filing the written decision with the clerk to the board. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

**B. Findings of Fact**

No variance shall be approved by the Board of Adjustment unless all of the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from 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 or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**C. Watershed Protection Variance**

In addition to the other requirements of this §9.18, petitions for variance to the standards of §7.3, Watershed Protection, shall comply with the following:

**1. Minor Variances**

Minor variances shall include petitions for the reduction of any standard of the §7.3, Watershed Protection, by a factor of less than ten percent, except residential density or impervious surface area.

**2. Major Variances**

- (a) Petitions for the reduction of any standard of the §7.3, Watershed Protection, by a factor of ten percent or more; and
- (b) Petitions to increase residential density or impervious surface area.

### 3. Approval Procedures

- (a) Prior to the Board of Adjustment meeting, the Director shall notify in writing to the clerks of all local governments having jurisdiction within that watershed of the variance being requested. Written responses from any of these local governments shall become a permanent part of the records.
- (b) Minor variances shall be approved by the Board of Adjustment in accordance with paragraphs §9.18.2 through §9.18.6 above.
- (c) Major variances shall comply with paragraphs §9.18.2 through §9.18.6 above except that:
  - (1) A decision by the Board of Adjustment to approve a major variance shall be advisory only. The Director shall, within 30 days, forward a record of the Board of Adjustment hearing, findings, and conclusions to the North Carolina Environmental Management Commission or other appropriate State agency for final decision.
  - (2) The Board of Adjustment may advise approval of a major variance petition upon satisfying the findings of paragraph B above, or upon the finding that significant community economic or social benefit would be derived from the granting of the variance.

#### §9.18.7. Appeal to Court

Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with §9.18.6.A.7. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

**Applicability****§9.19. Administrative Appeals****§9.19.1. Applicability**

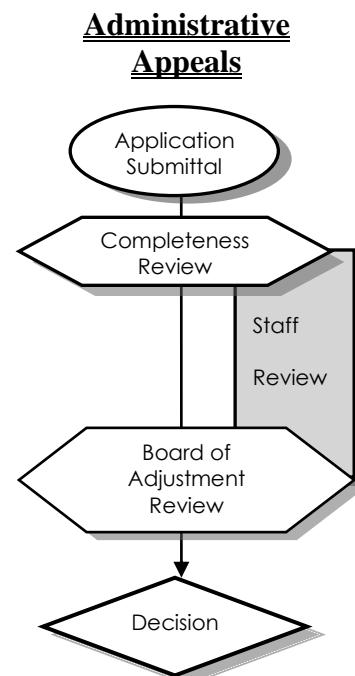
The Board of Adjustment shall hear and decide appeals of decisions of administrative officials charged with enforcement of this UDO. Any person who has standing under G.S. 160D-1402(c) or the County may appeal a decision to the Board of Adjustment. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written decision shall be delivered by personal delivery, electronic mail, or by first-class mail.

**§9.19.2. Application Requirements**

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Director and the Board of Adjustment.
- B. An application for appeal of an administrative decision shall be submitted in accordance with §9.2.2, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Director. The date and time of filing shall be entered on the notice.

**§9.19.3. Deadline for Submission of Application**

The owner or other party shall have 30 days from the receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt of any source of actual or construction notice of the decision within which to file an appeal. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Posting of signs shall not be required.

**§9.19.4. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**§9.19.5. Action by Administrative Official**

The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is

taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner. The official who made the decision shall be present at the hearing at a witness.

#### **§9.19.6. Action by Board of Adjustment**

- A.** The Board of Adjustment may reverse or affirm, wholly or partly, and may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. The board shall determine contested facts and make its decision within a reasonable time. Every decision shall be based upon competent, material, and substantial evidence in the record. Each decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards.
- B.** A motion to reverse, affirm or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C.** If a motion to reverse or modify is not made, or fails to receive approval by a majority of the members, then the appeal shall be denied. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- D.** The written decision shall be signed by the chair or other duly authorized member of the board. The decision is effective upon filing the written decision with the clerk to the board. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

#### **§9.19.7. Effect of Appeal**

- A.** An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this UDO. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this UDO shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

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**Appeal to Court**

**B.** An appeal shall not stop action lawfully approved (including construction activities authorized by a building permit); only actions presumed in violation of this UDO are stayed.

**§9.19.8. Appeal to Court**

Any decision by the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or a written copy thereof is given in accordance with §9.19.6.D. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

## §9.20. Zoning Vested Rights

### §9.20.1. Applicability

- A. The purpose of this section is to implement the provisions of G.S. § 160D-108.1 pursuant to which vested rights are established upon the approval of a site specific vesting plan.
- B. Following approval or conditional approval of a site specific vesting plan, nothing in this UDO shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval; provided that such reviews and approvals are not inconsistent with the original approval.
- C. Nothing in this UDO 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 UDO.

### §9.20.2. Establishment

- A. A vested right is established upon the valid approval, or conditional approval of a site specific vesting plan. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site specific development plan, including any amendments thereto.
- B. The approving authority may approve a site specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare.
- C. Notwithstanding paragraphs A and B above, approval of a site specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- D. A site specific vesting plan shall be deemed approved upon the effective date of the approval authority's decision approving the plan or another date determined upon approval.
- E. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the County, including, but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable, new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this UDO.
- F. A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

### §9.20.3. Application Requirements

An application shall be submitted in accordance with §9.2.2, Application Requirements. In order for a vested right to be established upon approval of a site specific vesting plan, the applicant must indicate, at the time of application, that a vested right is being sought.

**§9.20.4. Notice and Public Hearings**

The County shall hold all required public hearings and give notice in accordance with §9.2.3, Notice and Public Hearings.

**§9.20.5. Action by Director**

The Director shall transmit to the Board of Commissioners an application that includes a request for vested rights.

**§9.20.6. Amendment of Plans**

An approved site specific vesting plan may be amended with the approval of the owner and the approval authority as follows: Any substantial modification must be reviewed and approved in the same manner as the original approval. Minor modifications as defined by this UDO may be approved by the Director.

**§9.20.7. Continuing Review**

Following approval or conditional approval of a statutory vested right, the Director may make subsequent reviews and require approvals by the County to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The County may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable development regulations.

**§9.20.8. Duration and Termination of Vested Right**

- A. A vested right for a site specific vesting plan remains vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to paragraph B below. This vesting shall not be extended to any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- B. Notwithstanding the provisions of paragraph A above, the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in accordance with all relevant circumstances, including, but not limited to, the size of the development, density and intensity of the development, economic cycles and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific vesting plan is approved.
- C. A multi-phased development plan as defined in §12.2.3 is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multiple-phased development.
- D. Upon issuance of a building permit, the expiration provisions of this section and the revocation provisions of G.S. § 160D-1115 and 160-1115 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.
- E. A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

**§9.20.9. Subsequent Changes Prohibited; Exceptions**

A vested right, once established as provided for in this section, precludes any zoning action by the County that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan, except under one or more of the following conditions:

- A. With the written consent of the affected landowner;
- B. Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as was contemplated in the site specific vesting plan;
- C. To the extent that the affected landowner received compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in considerations of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the County, together with interest as provided in the G.S. §160D-106;
- D. Upon findings, by ordinance after notice and a evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Board of Commissioners of the site specific vesting plan; or
- E. Upon the enactment or promulgation of a State or Federal Law or regulation that precludes development as contemplated in the site specific vesting plan, in which case the County may modify the affected provisions, upon a finding that the change in State or Federal Law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

**§9.20.10. Process to Claim Common Law Vested Right**

A person claiming a common law vested right may submit information to substantiate that claim to the Director, who shall make an initial determination as to the existence of the vested right. The decision of the Director may be appealed to the Board of Adjustment. In lieu of seeking a determination or pursuing an appeal to the Board of Adjustment, a person claiming a vested right may bring an original civil action as provided by G.S. §160D-1403.1.

## §9.21. Conditional Zoning

### §9.21.1. Applicability

Pursuant to G.S. § 160D-703(b), the Board of Commissioners may establish by ordinance various conditional zoning districts. Property may be placed in a conditional zoning district only in response to a petition by all owners of the property to be included.

Conditional zoning is a legislative process in which an applicant proposes, and the local government considers, a map amendment that includes additional conditions. A site plan is required and will include within the entitlement process, any mutually agreed upon conditions by the applicant and the Board of County Commissioners.

### §9.21.2. Community Involvement Meeting (CIM)

Prior to final acceptance of an application by the Director, all applicants petitioning for conditional zoning districts shall hold a community involvement meeting (CIM) in accordance with the following requirements:

- A. Only the initial application for conditional zoning districts shall require a CIM. Subsequent applications for subdivision or site plan review do not require further CIMs.
- B. The purpose of the CIM shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments.
- C. The applicant shall provide notice by mail in accordance with §9.2.3.B.C. The notice shall be mailed at least ten days but not more than 25 days prior to the date of the CIM.
- D. The applicant shall prepare and submit to the Director detailed minutes that outlines attendance, major points discussed, and any agreements reached between the parties involved.
- E. Following the CIM, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. One or more revised copies of the application shall be submitted to the Director for review. No additional fee shall be required to be paid for making such changes provided the Director receives the revised application within 30 days following the CIM. If a revised application is not received during said 30 day period, the Director shall review the original application submitted.
- F. The Director may develop administrative rules pertaining to any additional requirements for the conduct of the meeting.

### §9.21.3. Minimum Requirements

All zoning regulations that apply to the general use district are minimum requirements for development within conditional zoning districts.

**§9.21.4. Conditions of Approval**

- A. Specific conditions may be proposed by the petitioner or the County or its agencies, but only those conditions mutually approved by the County and the petitioner may be incorporated into the zoning regulations. Conditions imposed in a conditional zoning district shall be limited to those that address the conformance of the development and use of the site to county ordinances, plans adopted pursuant to G.C. 160D-501, or the impacts reasonably expected to be generated by the development or use of the sites. Unless consented to in writing, the petitioner may not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29), or other unauthorized limitations on development or use of land.
- B. A conditional zoning district may provide for greater but not lesser setbacks than those applicable to the corresponding general use district, and may specify that only one or some of the uses allowed (either on a permitted or a special use basis) in the general use district are allowed in the conditional zoning district.

**§9.21.5. Effect of Approval; Zoning Map Designation**

If a petition for a conditional zoning district is approved, the development and use of the property shall be governed by the UDO requirements applicable to the district's zoning classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map. Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation preceded by the letters CZ (i.e., CZ B-G).

**§9.21.6. Modifications to Conditional Zoning Districts**

- A. Minor changes in a conditional zoning district may be approved by the Director, provided such changes will not:
  1. Alter the basic relationship of the proposed development to adjacent property;
  2. Alter the uses permitted or increase the density or intensity of development; or
  3. Change the boundaries of the approved site.
  4. Substantially change the vehicular access or circulation.
  5. Substantially change the location of principal or accessory structures, or the location or size of open space and recreation facilities.
  6. Significantly alter the basic size, form, style, ornamentation, and appearance of principal and accessory structures as shown on the approved site plan or described in the applicant's narrative.
  7. Substantially reduce the degree or change the location of landscape buffers.

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Modifications to Conditional Zoning Districts

**B.** A major modification in a conditional zoning district shall be subject to approval in accordance with the procedure which governed the district's approval.