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Section 3.1 General

Purpose. The purpose of this section is to provide for the efficient, reasonable, and impartial administration and enforcement of this Code, and establish a procedure for compliance with this Code.

Complete Application Required. To initiate review by the Town, a complete application must be submitted. A complete application consists of a completed application form, all supporting material required including, but not limited to, site plans, building elevations, detailed drawings, plus all applicable fees. If the application process requires multiple copies of materials, all copies must be submitted for the application to be considered complete.

Application Waivers. The Zoning Administrator has the authority to waive any application requirement where providing that information is deemed unnecessary or impractical due to the type of use or scale of proposal. In the event such a waiver is granted by the Zoning Administrator, a substantive explanation for the waiver, provided by the Administrator, shall accompany the application through the review and approval process and must be made a part of the permanent record. Any application item waived by the Zoning Administrator subject to an advisory, legislative, or quasi-judicial approval process may be overturned by any of the public bodies involved in the review and approval process for such application.

Fees. Fees are established by the Board of Commissioners. A current fee schedule can be found on the town's website. Application fees are non-refundable.

Initiation of Request. Unless otherwise specified for a particular request, all applications for consideration under this Code must be initiated by the affected property owner(s) or the affected property owner's authorized agent as witnessed by a signed affidavit submitted as part of the request.

Burden of Proof. The burden to prove intent and compliance with this Code rests fully on the applicant or property owner. If the Town determines that additional information is needed, beyond that required as part of a standard application, inspection, or enforcement process, such additional information must be submitted prior to full review and action in favor of the applicant or property owner.

Applicant Required to be Present. The applicant, or their authorized agent, must be present at any meeting required by this chapter. Failure to appear may be grounds for disapproval of any request.

Withdrawal of An Application. An applicant may withdraw their application at any time by giving written notice to the Zoning Administrator. However, any withdrawal of an application, after public notice has been given as required, shall have the effect of denial of the petition.

Effect of Denial. When the Board of Commissioners denies an application or an application is withdrawn for an amendment or special use permit, the Board shall not consider the same or similar application for a period of one year. The Zoning Administrator shall determine if a subsequent application is dissimilar enough to the initial application to move through the process again.

Files and Records. A record of all zoning actions shall be kept on file in the Planning Department. Such records may be kept electronically and available for inspection online or maintained in paper form and available for review during normal business hours at the department's offices. Copies may be furnished, upon request. Reimbursement for the cost of providing electronic or paper copies may be required by the Town prior to release in accordance with the adopted fee schedule. Unusual or excessive requests will be subject to review and determination by the Zoning Administrator with consultation from the Town Attorney.

Section 3.1.1. Types of Decisions.

The processes and procedures required for various decision-making in the proper administration and enforcement of this Code are described in the table on the following page.

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Approval Type	Decision Type	Decision Maker	Approximate Review Time
Administrative Permits	Administrative	Zoning Administrator	30 days or less – plot plan review 2-3 months – construction document plan review
Vested Rights Claim	Administrative	Zoning Administrator	30 days or less
Minor & Exempt subdivision review and approval	Administrative	Zoning Administrator	30 days or less
Zoning Text Amendment	Legislative	Board of Commissioners	2-3 months
Zoning Map Amendment	Legislative	Board of Commissioners	2-3 months
Conditional Zoning	Legislative	Board of Commissioners	5 months
Major subdivision preliminary plat approval	Legislative	Planning Board	2-3 months
Special Use Permit	Quasi-judicial	Board of Commissioners	2-5 months
Appeals and Variances	Quasi-judicial	Board of Adjustment	1-2 months

* *Actual review time varies depending on the complexity of the request.*

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Section 3.1.2. Statutory Vested Rights

A. ***Establishment of a vested right; duration.*** Amendments to this Code shall not be applicable or enforceable, in regards to any of the following types of approvals listed below. These approvals are granted in accordance with the requirements of this Code for the time limit specified, unless specifically excepted from its provisions within this section.

1. ***Zoning permits.*** A zoning permit expires six months after issuance unless work under the permit has commenced or, once started, is discontinued for a period of 12 months. However,a zoning permit shall not expire or be revoked because of the running of time while a vested right under this section exists.

2. ***Site-specific vesting plans.*** The type of approvals that constitute site-specific vesting plans under this Code are special use permits and conditional zoning site plans. An approved vesting plan shall be valid for a period of two years unless an extension is expressly granted by the Town as a result of an approved amendment or modification to the site-specific plan. However, if conditional zoning approval includes a multi-phased development plan, the site plan for that development shall be valid for a period of seven years. A multi-phased development plan shall mean a development containing 25 acres or more that is intended for construction to occur in more than one phase and is subject to a master plan with committed elements showing the type and intensity of use of each phase.

3. ***Variances.*** A variance shall not constitute a site-specific vesting plan. Approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.

4. ***Other local approvals.*** Any other vested right obtained under this Code not specifically mentioned in this section shall expire one year after the effective date, if the work authorized by the approval has not been substantially commenced.

B. ***Effective date.*** A vested right shall begin on the effective date of local approval or such other date as the Town Board of Commissioners may stipulate in its approval provided the effective date occurs earlier than the issuance of a permit.

C. ***Effect of expiration.*** No work or activity authorized by an expired development approval establishing the vested right shall thereafter be performed until a new development approval has been granted.

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D. ***Amendments to site-specific vesting plans.*** An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town in one of the following ways.

1. Any substantial modification must be reviewed and approved in the same manner as the original approval. If expressly approved by the Town Board of Commissioners, an extension to the vested rights period may be granted concurrently with the substantial modification approval.

2. Minor modifications may be approved by staff, as authorized by this Code. No extension of the vested rights period shall be granted as part of a minor modification.

E. ***Continuing review.*** Following approval or conditional approval of a statutory vested right, the Town may make subsequent reviews and require subsequent 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.

F. ***Conditions and forfeiture.*** A site-specific vesting plan may be approved with terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, but failure to abide by the agreed upon terms and conditions will result in a forfeiture of vested rights.

G. ***Revocation.*** The Town may revoke development approval and any associated statutory vested right for failure to comply with applicable terms and conditions or other applicable local development regulations that apply to the development in accordance with the procedures established in this Chapter.

H. ***Exceptions.***

1. Once established in accordance with this section, a vested right precludes any zoning action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except when any of the conditions stipulated in N.C.G.S. 160D-108(f) are present.

2. The establishment of a vested right through approval of a site-specific vesting plan shall not preclude the application of overlay zoning or other development regulation that imposes additional requirements but does not affect the allowable type or intensity of use, or the application of ordinances or regulations that are general in nature and are applicable to all property subject to development regulation by the Town. Otherwise, applicable new regulations shall become effective with respect to property that is subject to a vested right established under this chapter upon the expiration or termination of the vested rights period.

3. The establishment of a vested right under this chapter shall not preclude, change, or impair the authority of the Town to adopt and enforce development regulation provisions governing nonconforming situations or uses.

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I. ***Rights and Assigns.*** A vested right obtained under this chapter is not a personal right but shall attach to and run with the applicable property regardless of ownership.

Section 3.2 Administrative Decisions

Section 3.2.1 Vested Rights Claim

Any person who believes a past action or approval has granted them a statutory or common law vested right may submit their claim, along with substantial proof to the Zoning Administrator. The Zoning Administrator shall make an initial determination as to the existence of the right. This determination may be appealed to the Board of Adjustment or pursued as a civil action in accordance with procedures established by N.C.G.S. 160D-405.

Section 3.2.2 Administrative Permits

A. ***Permit required.*** No land shall be excavated, filled, paved, used, or occupied and no building hereafter structurally altered, erected, moved, used, or its use changed until a permit has been issued by the Zoning Administrator stating that the requested activity complies with the provisions of this Code.

B. ***Conformity required.*** No permit shall be issued except in conformity with the provisions of this Code.

C. ***Types of permits.*** Administrative permits include all permits and approvals pertaining to zoning, subdivision, engineering, transportation, stormwater, erosion control, floodplain, and other similar permits required by the Town to assist Staff with the day-to-day administration of this Code. This term does not pertain to permits required by the Waxhaw Building Inspections Division for compliance with the State of North Carolina Building Code. A complete list of permits required by this Code and requirements for application submittal is available from the Planning and Development Services Departments.

D. ***Application required.*** A complete application is required prior to any review or decision regarding a permit request. A complete application is one that includes all materials required for submittal, with all applicable fees, along with sufficient information to determine the intent to fully comply with all applicable requirements of this Code.

E. ***Plot plan review.***

1. ***Required.*** No administrative permit shall be issued for construction on a single-family detached lot without completion of a plot plan review. This requirement includes accessory structures and additions to single-family detached housing.

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2. ***Contents.*** The plot plan shall be a survey of the lot depicting the proposed building or structure, all proposed setbacks, and the percentage of impervious surface to be constructed on the lot. The requirement for a survey as part of the plot plan review may be waived by the Zoning Administrator if they determine there is enough information to deem a survey unnecessary. In cases where a survey is not required, a legible plan must still be submitted for review.

F. ***Construction document plan review.***

1. ***Required.*** No administrative permit shall be issued for single-family attached, multi-family, mixed-use, and non-residential development or re-development without the completion of a construction document plan review.

2. ***Contents.*** The applicant shall submit plans that are signed and sealed by a professional engineer licensed in the State of North Carolina for construction document plan review. If deemed warranted by the Town Engineer, a Traffic Impact Analysis (TIA) will be required as part of a construction document plan review. A TIA must be conducted according to the standards of the Town's adopted TIA ordinance.

3. ***Technical Review Committee (TRC) comments.*** Staff shall distribute the construction document plans to the TRC for review and comment. Construction document plans will be approved once the applicant meets all requirements of this Code as determined by the Zoning Administrator from the TRC review. Construction document plans must be administratively approved prior to commencement of work on the site.

G. ***Certificate of Compliance.*** No structure or land hereafter erected, altered, or changed in use shall be used or occupied until the Zoning Administrator has issued a certificate of compliance. Whereas issuance of a zoning permit indicates an applicant has successfully proven the intent to comply with this Code, a certificate of compliance is intended to indicate that, on its date of issuance, following any change or alteration, the property does comply to the best of the Zoning Administrator's knowledge. The certificate of compliance shall state that the building or portion of a building complies with the provisions of this Code, and with the information stated on the zoning permit. A certificate of compliance may be issued only after written application for same has been made in which the applicant must state that the building or structure erected or altered or changed complies in all respects with this code and the permit previously issued.

H. ***Expiration of Administrative Permit for Uses Allowed by Right.*** Any administrative permit shall become invalid unless the work authorized is substantially begun within a period of one year from the date of issuance of the permit. Once a permit has expired, construction on the location in question cannot proceed until a new permit is issued.

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Section 3.2.3 Subdivision Plat Review and Approval

See Chapter 5 for detail on subdivision plat submittal, review, and approval.

Section 3.3 Legislative Decisions

Section 3.3.1 General Procedures.

A. ***Pre-Application meeting required***. A pre-application meeting is required for all legislative decision requests. The purpose of the pre-application meeting is to allow staff to gather information about the project proposal and its merits and to inform the potential applicant on the requirements and processes. No application will be processed without completing a pre-application meeting.

B. ***Neighborhood meeting required.*** A neighborhood meeting is required as part of all conditional zoning district and special use permit requests. Such meeting shall occur prior to any recommendation by the Planning Staff and at least 30 days prior to the Planning Board meeting. The neighborhood meeting is designed to provide an opportunity for community involvement from parties that may have interest in the conditional zoning or special use permit request, such as adjoining property owners and nearby businesses.

1. Neighborhood meeting structure. A neighborhood meeting is intended to solicit participation and input from interested parties on the proposed change.

   a. The applicant shall provide an agenda, schedule, location, and list of participants such as landscape architects, engineers, and planners to answer questions from citizens and service providers (e.g. NCDOT, local utilities, DENR) for the project in cooperation with the Planning Staff.

   b. All meetings shall be held at the proposed development site or in close proximity to the proposed development within the Waxhaw municipal limits. The applicant shall hold a minimum of one neighborhood meeting, unless additional meetings are necessary as determined by the Zoning Administrator.

      i. The applicant is responsible for all costs associated with the neighborhood meeting, including, but not limited to, notification requirements and venue rental. Notice of Public Involvement Meetings shall at a minimum, be given as follows:

         01. A notice shall be sent by the applicant by first class mail to the owners of all properties that lie within 300 feet from the exterior boundaries of the proposed development;

         02. The notice shall include the date, time, and location of the meeting and a brief description of the project, current and proposed zoning of the property, and site and vicinity maps;

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03. The notice shall be sent at least 10 days but not more than 25 days prior to the neighborhood meeting. Proof of mailings shall be provided to the Town of Waxhaw either by submitting a notarized photocopy of the postmarked envelopes to be mailed or sending the notices certified mail and providing copies of the return receipts to the Town; and

04. A Neighborhood Meeting notification sign shall be posted by the applicant in a conspicuous place on the property not less than 10 days prior to the Neighborhood Meeting. The sign shall indicate date, time, and location(s) of the neighborhood meeting.

ii. The neighborhood meeting shall cover the following topics:

01. Introduction of the meeting organizer and their support staff,

02. Description of the proposed project,

03. Input from attendees on the proposed project, and

04. Explanation of how comments made at the neighborhood meeting will be used moving forward.

iii. The applicant will provide the Town a written summary of the neighborhood meeting which, at minimum, must include all the following information:

01. A copy of the mailed notice of the neighborhood meeting;

02. An attendance list;

03. A summary of merits, issues, questions, concerns, and any other feedback from the meeting;

04. A detailed summary of the applicant's response to the feedback; and

05. Site plan revisions based on the feedback.

Section 3.3.2 Amendment Procedures

A. ***General Procedures.***

1. ***Statement of consistency and reasonableness.*** When adopting or rejecting any amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with adopted plans. In addition, a brief statement of reasonableness shall be approved by the Board. The statement of consistency and reasonableness may consider, among other factors:

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a. The size, physical conditions, and other attributes of any area to be rezoned,

b. The benefits and detriments to the landowners, the neighbors, and the surrounding community,

c. The relationship between the current actual and permissible development and the types of development that would be permissible under the proposed amendment,

d. Why the action taken is in the public interest,

e. Any changes in conditions warranting the amendment.

The statement of consistency and reasonableness may be approved as a single statement. If the Board of Commissioners approves an amendment that is inconsistent with adopted plans, those plans shall be considered as revised by the amendment.

2. ***Amendment initiation.*** Amendments may be initiated by any one of the following entities. Anyone else having a substantial interest in the code may petition the Board of Commissioners to request that they initiate an amendment.

   a. The Board of Commissioners

   b. The Planning Board

   c. Planning Staff

   d. Property owner(s) or authorized agent(s) of the owner

3. ***Planning Board inaction.*** If the Planning Board does not make a recommendation within 30 days of their consideration of said amendment, then the Board of Commissioners may act on the amendment without a Planning Board recommendation.

4. ***Continuation of Planning Board consideration.*** The Planning Board reserves the right to continue their consideration of an amendment to a subsequent meeting, date and time certain, if they determine that additional information is needed. However, the subsequent meeting must be less than 30 days after their initial consideration of the amendment as required by state law unless agreed to in person by the applicant at the meeting at which the continuation is announced and incorporated into the written record.

5. ***Public hearing.*** The Board of Commissioners shall conduct a public hearing to give interested parties the opportunity to speak for or against the amendment. The public hearing shall be conducted and notice of the hearing shall be in conformity with the requirements of NCGS 160D.

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6. ***Board of Commissioners' action.*** After the public hearing has been conducted, the Board of Commissioners shall approve or deny the application for the amendment either at the same meeting as the public hearing was conducted or at the next regularly scheduled Board meeting.

   a. The Board of Commissioners may revise a proposed text amendment if they determine such action is appropriate based on their review, the Planning Board's recommendation, and Planning staff's analysis. If the Board of Commissioner's wish to revise the proposed text amendment, the applicant must agree to the revision prior to their vote. However, any significant change to the request may require additional notice and public hearing.

   b. The Board of Commissioners may revise a proposed conditional zoning district if they determine such action is appropriate based on their review, the Planning Board's recommendation, and Planning staff's analysis. If the Board of Commissioner's wish to revise the proposed conditional zoning district, the applicant must agree to the revision prior to their vote. However, any significant change to the request may require additional notice and public hearing.

   c. The Board of Commissioners reserves the right to continue their consideration of an amendment to a subsequent meeting, date and time certain, if they determine there is additional information needed, or if the public hearing must be extended due to a large number in attendance, or if additional information is needed.

Text Amendment Procedure

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Section 3.3.3 Zoning Map Amendments

A. Applications for zoning map amendments to this Code shall be in writing and filed with the Zoning Administrator. Applications will be considered complete only if the following conditions are met:

   1. Applicable fees are paid according the adopted fee schedule

   2. Application is filled out and signed

   3. A pre-application meeting has been completed

B. ***Additional application requirements.*** Applicants must provide a list of all property owners adjoining the proposed map amendment. Adjoining shall mean all parcels that physically touch the subject parcel(s) as well as parcels that would physically touch the subject parcel(s) if not separated from the subject property by a street, railroad, or other transportation corridor.

C. ***Large-scale rezonings.*** For a large-scale rezoning, optional notice requirements consistent with G.S. 160D-202 (b) will be followed. A large-scale rezoning is one which involves more than 50 properties owned by at least 50 different property owners.

D. Completed applications must be received a minimum of 30 days prior to the Planning Board meeting. The Planning Board shall consider the application for the map amendment and make a recommendation to approve or deny the map amendment. The recommendation shall be forwarded to the Board of Commissioners for their review and approval.

Section 3.3.4 Zoning Text Amendments

A. Applications for zoning text amendments to this Code shall be in writing and filed with the Zoning Administrator. Applications will be considered complete only if the following conditions are met:

   1. Applicable fees are paid according the adopted fee schedule

   2. Application is filled out and signed

   3. A pre-application meeting has been completed

   4. The proposed text to be amended accompanies the application

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B. Completed applications must be received a minimum of 30 days prior to the Planning Board meeting. The Planning Board shall consider the application for the text amendment and make a recommendation to approve or deny the text amendment. As part of their recommendation, the Planning Board may revise the proposed text amendment if they determine appropriate based on their review and Planning staff's analysis on the text amendment. If the Planning Board wishes to revise the proposed text amendment, the applicant must agree to the revised language prior to their vote on the recommendation. The recommendation shall be forwarded to the Board of Commissioners for their review and approval.

Section 3.3.4 Conditional Zoning Districts

A. ***Purpose.*** Conditional zoning districts are map amendments. They are reserved for situations where a particular use or mix of uses, when properly planned and sited, may be appropriate for a specific site, but where the general district has insufficient standards to mitigate site-specific impacts on surrounding properties and infrastructure. Conditional district zoning is not intended for use in securing early or speculative reclassification of property.

B. ***Potential uses restricted.*** Uses which may be considered for a conditional zoning district are restricted to those uses permitted in the corresponding general zoning district.

C. ***Application required***. Conditional zoning districts are established on a case-by-case basis and only in response to a petition by all owners of the property included in the application. No other entity may initiate a conditional district rezoning.

D. ***Additional procedures required.*** In addition to the general procedures required for zoning amendments (Section 3.3.2) and for zoning map amendments (Section 3.3.3), a request for rezoning to a conditional zoning district is also subject to the following specific procedures and considerations

1. ***Certain additional approvals may be unnecessary.*** A conditional zoning district approval will preclude an applicant from having to obtain a special use permit if the conditional zoning district application as approved by the Board of Commissioners includes uses that are classified as a special use in the Table of Permitted Uses and the board determines that sufficient evidence presented by the detailed review of the applicant permits as required for such permits. Additionally, a conditional zoning district approval may preclude an applicant from having to obtain a preliminary plan approval for a major subdivision if the level of site detail is sufficient for review and approval.

2. ***Deadline for submission of application.*** Completed applications must be received a minimum of 90 days prior to the Planning Board meeting.

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3. ***Conditions may be applied.*** Specific conditions may be proposed by the applicant or the Town, but only those conditions mutually agreed to by the applicant and the Town may be incorporated into an approval. Conditions imposed shall be limited to those that address conformity of the development and use of the site to this Code, potential impacts of the proposed rezoning on adjacent and nearby properties, public facilities, and infrastructure, and conformity with adopted plans. The applicant must agree to these conditions in writing. If the applicant is unable to submit a written agreement at the meeting prior to approval, approval of a conditional zoning district request will be conditioned on receipt of such written agreement within 15 days from the date of approval. Failure to submit the written agreement in the time required will render the rezoning null and void. The form of the written agreement is subject to Town approval.

4. ***Site plan required.*** Applications for a conditional zoning district shall be accompanied by a site plan. This site plan shall be reviewed within the 90-day time frame prior to Planning Board review. Planning staff shall distribute the site plan to the Technical Review Committee for review and comment if the Planning Department deems necessary. The following information shall be provided on a site plan for conditional zoning district review.

   a. Name, address, email, and phone number of the property owner(s) (or their agent(s) and the tax parcel number of the property.

   b. A boundary survey and vicinity map showing the property's total acreage; zoning district(s); general location in relation to adjoining streets, railroads and/or waterways; and date, graphic scale, and north arrow.

   c. Existing and proposed topography at two-foot contour intervals or less on the site and within 300 feet of the site boundary.

   d. The owner's names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.

   e. Proposed use of all land and buildings or structures including the number of residential units (if applicable).

   f. Proposed number and location of all buildings or structures and their approximate area and their approximate exterior dimensions, to include the height of all structures.

   g. A description of all screening and landscaping required by this Code and any additional screening and landscaping proposed by the applicant.

   h. All existing easements, reservations, and rights-of-way.

   i. Proposed phasing, if any, and approximate completion time for each phase.

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j. Delineation of areas within the regulatory floodplain as shown on the official Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps.

k. Traffic, parking, and circulation plans showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, both existing and proposed.

l. Typical building elevation drawings proposed for the development that depicts exterior features and characteristics of the buildings consistent with Chapter 6 (Site Design and Architectural Standards), if applicable. Such drawings shall also depict the relationship such buildings will have with the streetscape.

m. Proposed number, type, design, and location of signs. The Zoning Administrator may require a master signage plan depending on the size and complexity of the proposed development.

5. ***Traffic impact analysis.*** A Traffic Impact Analysis (TIA) is required, if warranted by the Town Engineer as part of the site plan review process for a conditional zoning district. A TIA must be conducted according to the standards of the Town's adopted TIA ordinance.

6. ***Conditional zoning district site plan validity.*** In accordance with NCGS 160D-108, an approved site plan as part of a conditional zoning district application shall be valid for a period of two years. If a conditional zoning district application includes a multi-phased development plan, the site plan shall be valid for a period of
seven years.

7. ***Minor modifications.*** Minor modifications to an approved conditional zoning district site plan can be made by the Zoning Administrator as follows.

a. Only changes that are minor in nature and do not significantly alter the site plan or conditions will be considered. Minor modifications shall not include a change in use or density and shall not confer an extension to a vested right.

b. Any request for an administrative amendment shall be in writing, signed by the property owner, and shall detail the requested change.

c. The applicant must provide any additional information requested by the Zoning Administrator.

d. The applicable fee for administrative review, if any, must accompany the request as required by the current Town of Waxhaw fee schedule.

e. Any decision by the Zoning Administrator to approve or deny a request for an administrative amendment must be in writing and must state the grounds for

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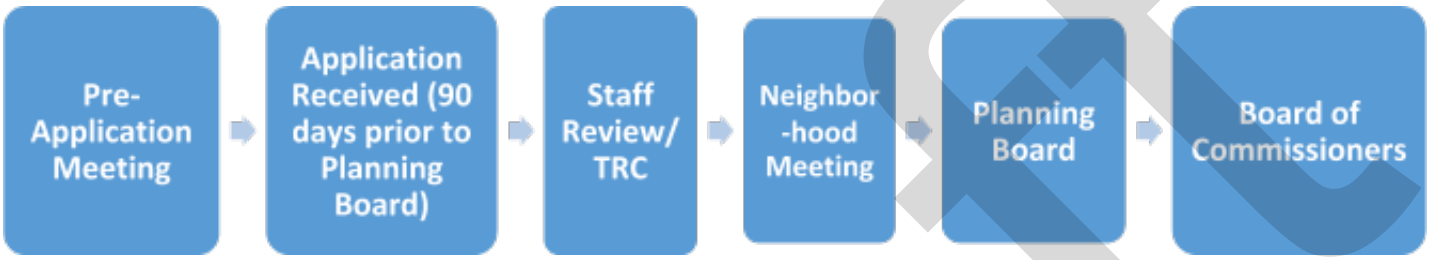
approval or denial.

f. If the proposed alterations do not meet the criteria herein or if the alterations are denied by the Zoning Administrator the applicant must apply for a new conditional zoning district.

Conditional District Rezoning Proce-



Section 3.4 Special Use Permits

A land use designated as a Special Use in the Table of Permitted Uses must meet the following permitting procedures.

Section. 3.4.1. Review Process

A. ***Application Deadline.*** Completed applications must be received by the Zoning Administrator a minimum of 90 days prior to the Planning Board meeting if a site plan is required. Completed applications must be received a minimum of 30 days prior to the Planning Board meeting if a site plan is not required.

B. ***Planning Board Action.*** The Planning Board shall consider the application for the special use permit and make a recommendation to approve or deny the special use permit. The Planning Board must not conduct a formal evidentiary hearing but must conduct an informal preliminary discussion of the special use permit request. The recommendation shall be forwarded to the Board of Commissioners for their review and approval.

C. ***Planning Board Inaction.*** If the Planning Board cannot make a recommendation within 30 days of their consideration of said special use permit the Board of Commissioners may act on the special use permit without a Planning Board recommendation.

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D. ***Continuation of Planning Board Consideration.*** The Planning Board reserves the right to continue the consideration of a special use permit to a subsequent meeting, date and time certain, if they determine that additional information is needed. However, the subsequent meeting must be less than 30 days after their initial consideration of the special use permit in accordance with state law unless agreed to in person by the applicant at the meeting at which the continuation is announced and incorporated into the written record.

E. ***Public Hearing.*** The Board of Commissioners shall conduct a public hearing to give interested parties the opportunity to speak for or against the special use permit. The public hearing shall be conducted and notice of the hearing made in accordance with the requirements of NCGS 160D.

Section. 3.4.2. Quasi-judicial Hearing Required

The public hearing for a special use permit shall be quasi-judicial in nature, requiring the applicant and other interested parties to present competent, substantial, and factual evidence related to the required conclusions.

A. The Board of Commissioners must make all the following conclusions to grant approval of a special use permit.

1. The proposed use will not materially endanger the public health or safety.

2. The proposed use will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.

3. The proposed use will not substantially injure the value of adjoining property.

4. The proposed use will be in harmony with the area in which it is located.

B. The applicant bears the burden of presenting sufficient factual evidence to allow the Board to reasonably make the necessary conclusions.

C. After the public hearing has been conducted, the Board of Commissioners shall approve or deny the application for the special use permit either at the same meeting as the public hearing was conducted or at the next regularly scheduled Board meeting. The Board's decision shall be based on the evidence presented.

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D. Specific conditions may be proposed by the applicant or the Town, but only those conditions mutually agreed to by the applicant and the Town and authorized by NCGS 106D-705 may be incorporated into an approval. Conditions imposed shall be limited to those that address conformity of the development and use of the site to this Code, potential impacts of the proposed permit on adjacent and nearby properties, public facilities, and infrastructure, and conformity with adopted plans. The applicant must agree to these conditions in writing. If the applicant is unable to submit a written agreement at the meeting prior to approval, approval of a special use permit request will be conditioned on receipt of such written agreement within 15 days from the date of approval. Failure to submit the written agreement within the time required will render the permit null and void. The form of the written agreement is subject to Town approval.

E. The Board of Commissioners reserves the right to continue the consideration of a special use permit to a subsequent meeting, date and time certain, if they determine additional information is needed or the public hearing must be extended based on the number in attendance.

Section. 3.4.3 Decisions

The Board of Commissioners shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Mayor or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Zoning Administrator. 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 Zoning Administrator shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

Section. 3.4.4. Information Required

Applications for a special use permit shall be accompanied by sufficient information to allow the Town to determine intent, impacts, and compliance with this Code and adopted plans.

A. ***Site Plan.*** Site plans shall depict the same information required for the conditional zoning district site plan requirements in Section 3.3.4. In some cases, a site plan may not be required such as when a use designated as a special use is intended to occupy a space in an existing building or leasable space. The Zoning Administrator shall determine whether a site plan is appropriate for the special use permit request. The Zoning Administrator may distribute the site plan to the Technical Review Committee for review and comment if it is deemed necessary for adequate review.

C. ***Traffic Impact Analysis.*** A Traffic Impact Analysis (TIA) is required, if deemed warranted by the Town Engineer, as part of the site plan review process for a special use permit. A TIA must be conducted according to the standards of the Town's adopted TIA ordinance.

Section. 3.4.5. Minor Modifications.

Minor modifications to an approved special use permit site plan may be considered by the Zoning Administrator.

A. Only changes that are minor in nature and do not significantly alter the site plan or conditions will be considered. Minor modifications shall not include a change in use or density and shall not confer an extension to a vested right.

B. Any request for an administrative amendment shall be in writing, signed by the property owner, and shall detail the requested change.

C. The applicant must provide any additional information requested by the Zoning Administrator.

D. The applicable fee for administrative review, if any, as required by the current Town of Waxhaw fee schedule must accompany the written request.

E. Any decision by the Zoning Administrator to approve or deny a request for an administrative amendment must be in writing and must state the grounds for approval or denial.

F. If the proposed alterations do not meet the criteria herein or if the alterations are denied by the Zoning Administrator, then the applicant must apply for a new special use permit.

Section. 3.4.6. Judicial Review

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within 30 days after the decision is effective or after a written copy of the decision is provided in accordance with Section 3.4.3, whichever is later.

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Conditional District Rezoning Proce-

Section 3.5 Withdrawal of Applications

An applicant may withdraw his/her application at any time for a zoning text amendment, zoning map amendment, conditional zoning district, or special use permit by written notice to the Administrator. However, any withdrawal of an application after the giving of the first public notice as required shall be considered a denial of the petition. An applicant shall remain liable for any and all fees and costs regardless of withdrawal.

Section 3.6 Effect of Denial on Subsequent Applications

When the Board of Commissioners denies an application or an application is withdrawn for a zoning text amendment, zoning map amendment, conditional zoning district, or special use permit; the Board of Commissioners shall not consider the same or similar application for a period of 1 year. The Administrator shall determine if a subsequent application is dissimilar enough to the initial application to move through the process again.

Section 3.7 Appeals and Variances

Section 3.7.1 General Procedures for Board of Adjustment Hearings

A. ***General Requirements.*** In conducting its business, the Board of Adjustment shall follow all procedures set forth in NCGS 160D-406 and its adopted Rules of Procedure. In carrying out these procedures, the Board may administer oaths to witnesses, issue subpoenas, and weigh the evidence presented. The Board may also continue the consideration of request to a subsequent meeting, date and time certain, if they determine additional information is needed or the public hearing must be extended based on the number in attendance.

B. ***Voting.*** A concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A simple majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

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C. ***Decisions.*** The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the Zoning Administrator. 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 Zoning Administrator shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

D. ***Judicial Review.*** Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within 30 days after the decision is effective or after a written copy of the decision is given in accordance with Section 3.7.2, whichever is later. Waxhaw fee schedule must accompany the written request.

Section 3.7.2 Appeals

A. ***Appeal of staff decision***. The Board of Adjustment may hear and decide appeals, where it is alleged there is error in any final order, requirements, decisions, or determinations made by the Zoning Administrator.

B. ***Process.*** Any person who is aggrieved by the Zoning Administrator's decision may make an appeal. An appeal to the Board of Adjustment shall be filed within 30 days of receipt of the decision, order, determination, or interpretation made by the Administrator. Appeals to the Board of Adjustment shall be filed with the Town Clerk and shall state the grounds for appeal.

C. ***Board of Adjustment hearing for appeals.*** The Zoning Administrator shall transmit all documents and exhibits constituting the record upon which the action appealed is taken, to the Board of Adjustment and to the appellant and the property owner. The Board of Adjustment shall meet to consider the appeal within a reasonable amount of time to give Planning staff the ability to prepare information for the Board and for the public noticing requirements be met.

D. ***Effect of appeal.*** An appeal stays enforcement of the action appealed from and accrual of any fines assessed unless the Zoning Administrator certifies to the Board of Adjustment in an affidavit that a stay would cause imminent peril to life or property, or if a stay would seriously interfere with the enforcement of the ordinance due to the transitory nature of the violation. In that case, enforcement proceedings shall not be stayed except by restraining order. If enforcement is not stayed, the appellant may request an expedited hearing as provided in NCGS 160D-405(f).

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E. ***Attendance required***. The official who made the decision, or their successor if that official is no longer employed, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing to another date.

F. ***Decision***. The Board of Adjustment may, by a majority vote of the Board, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination of the Zoning Administrator, and may direct the issuance of a Zoning Permit. A motion to uphold the decision and deny the appeal may also be made.

Section 3.7.3 Variances

A. ***Required Findings.*** When unnecessary hardships would result from carrying out the strict letter of a regulation in this Code, the Board of Adjustment may vary any of the provisions of the zoning regulation upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the Code. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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.

5. No change in permitted uses will be authorized by the variance.

B. ***Conditions.*** In granting a variance, the Board of Adjustment may attach appropriate conditions to any variance, provided that the conditions are reasonably related to the variance.

C. ***Time.*** A variance, once granted, shall continue indefinitely unless otherwise specified at the time granted.

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E. ***Violation.*** Departure from or violation of any of those conditions or safeguards shall be deemed a violation of this Code, and shall be subject to the penalties, as provided in this Chapter.

Section 3.8 Violations

Section 3.8.1 Violators

Any of the following persons may be held jointly or individually accountable for violating the provisions of this Code.

A. Any owner of property upon which a violation of this Code occurs.

B. Any architect, engineer, builder, contractor, agent , or any other person who knowingly participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Code.

C. Any tenant or occupant who has control over, or responsibility for, the use or development of the subject property.

Section 3.8.2 Types of Violations

Any of the following shall be a violation of this Code subject to the enforcement remedies and penalties provided in this Chapter and state law.

A. ***Development without approvals or permits.*** This includes any action to engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Code without all required development approvals permits, certificates, or other form of authorization set forth in this Code.

B. ***Development inconsistent with approvals or permits.*** This includes any action to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form or authorization granted for such activity.

C. ***Submitting false or incomplete information.*** This includes knowingly submitting false or incomplete information either by writing, such as in an application, or in testimony regarding a permit or a request or item before a board.

D. ***Acts of omission.*** This includes the omission of any term, variance, modification, condition, or qualification placed by the Board of Commissioners, Planning Board, Board of Adjustment, or administrative staff upon any required plan, permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

E. ***Use in violation.*** This includes any use of land or structures in violation of this Code

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as well as any action to reconstruct, alter, or convert any structure to allow such illegal use.

F. ***Failure to act.*** This includes failing to comply with any lawful order related to this Code issued by the Zoning Administrator. Failing to comply also means disobeying, omitting, neglecting, or refusing to comply with or resisting the enforcement of any provision.

G. ***Transferring lots in an unapproved subdivision.*** This includes any person who, being the owner or agent of the owner of any land located within the Town of Waxhaw, thereafter subdivides their land in violation of this Code or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the provisions of this Code.

H. ***Damage to required postings.*** This includes obscuring, obstructing, removing, or destroying any notice required to be posted or otherwise given under this Code.

Section 3.8.3 Violations Continued

Any of the following persons may be held jointly or individually accountable for violating the provisions of this Code.

A. Nothing in this Code will be interpreted to prohibit the continuation of previous enforcement actions undertaken by the Town under previously valid ordinances and laws.

B. The adoption of this Code does not affect nor prevent pending or future prosecution of or action to abate violations of previous regulations.

Section 3.8.4 Initiation of Enforcement Action

Any of the following persons may be held jointly or individually accountable for violating the provisions of this Code.

A. Complaints.

1. Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file a written complaint with the Zoning Administrator. The written complaint must clearly state the alleged violation. The Zoning Administrator shall record the complaint.

2. Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file an anonymous complaint with the Zoning Administrator.

3. Suspected violations of this Code may be referred to the Zoning Administrator for investigation by any town official by any means.

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B. Duty to act. If, in the course of other duties, the Zoning Administrator is made aware of a violation or suspected violation, the officer has a duty to investigate and take action as needed and warranted by this Code regardless of whether or not a complaint has been filed.

Section 3.8.5 Inspection and Investigation

In order to determine violations of this Code, the Zoning Administrator shall have the following rights and powers.

A. ***Inspections.*** Upon presentation of proper credentials, with consent of the owner or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of code compliance, or other enforcement action required by this Code.

B. ***Investigations.*** To conduct such investigations as they may reasonably deem necessary to carry out their duties as prescribed in this Code and, for this purpose, to enter at reasonable times upon any public or private property with the consent of the owner for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Code.

C. ***Supporting documentation***. To require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Code.

Section 3.8.6 Notice of Violation

When any condition in violation of this Code is found to exist, the Zoning Administrator or designee shall issue a notice of violation to the person responsible for the violation and to the owner of the premises with an order to abate or remove the violation within 30 days. The notice shall be in writing, include a description of the premises sufficient for identification, set forth the violation, and state that if the violation is not corrected as directed the Town may proceed with any and all applicable enforcement remedies permitted by this Code and state law. Any owner or occupant who has received a notice of violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment. Service of the notice shall be by any one of the following methods.

A. By delivery to any owner personally or by leaving the notice at the usual residence of the owner with a family member who is over the age of 16 years.

B. Delivery of an electronic copy to the owner if electronic mail address is known.

C. By depositing the notice, postage paid, in the USPS addressed to the owner at their last known address.

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D. By posting and keeping posted for 30 days a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be otherwise served.

Section 3.8.7 Remedies Are Cumulative

A. ***Development approval revocation.*** Development approvals may be revoked by the Town by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any state law delegated to the local government for enforcement purposes in lieu of the state; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable state or local law may also be revoked. The revocation of a development approval by a staff member may be appealed to the Board of Adjustment.

B. ***Stop work orders***. Whenever a structure or any part of a structure is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this Code, the Zoning Administrator may order the specific part of the work that is in violation, or would be in violation when the work is completed, to be stopped immediately. The stop work order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work.

C. ***Stop use orders.*** Whenever a structure or part of a structure is being used in violation of this Code, the Zoning Administrator may order the use to be immediately stopped.

D. ***Civil penalties.*** If the owner of any property fails to comply with the notice given pursuant to this chapter, the owner shall be subject to a civil penalty in the amount of $100.00. Each day a violation continues shall be a separate offense subject to this penalty.

E. ***Abatement.*** The Zoning Administrator may have the violation described in the notice summarily abated, removed, or otherwise corrected if the condition is dangerous or prejudicial to the public health or public safety. All expenses incurred by the Town shall be chargeable to and paid by the owner of the property. If the expense is not paid, the Town may place lien on the land or premises where the violation occurred, and the lien shall have the same priority and be collected as unpaid ad valorum taxes.

F. ***Criminal penalties.*** Any person who knowingly or willfully violates any provision of this Code shall have committed misdemeanor pursuant to NCGS 14-4.

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G. ***Injunction.*** Enforcement of the provisions of this code may also be achieved by injunction. When a violation occurs, the Zoning Administrator may, either before or after the institution of other authorized actions, apply to the appropriate division of the general court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

H. ***Equitable remedy.*** The Zoning Administrator may apply to a court of competent jurisdiction for any appropriate equitable remedy to enforce the provisions of this code. The court shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

I. ***Forfeiture and confiscation of signs.*** Any sign installed or placed on public property, except in compliance with these regulations, will be subject to forfeiture to the public and confiscation. The Town has the right to remove and dispose of such signs without notice and to recover from the sign owner, or person who placed the sign, the full costs of sign removal and disposal.

J. ***Other remedies and enforcement powers.*** The Town may seek such other remedies and use other enforcement powers as allowed by law.

Section 3.8.7 Remedies

A. The remedies and enforcement powers established in this Code are cumulative and the Town may exercise them in any order or combination.

B. Each day a violation continues shall be considered to be a separate and distinct offense.

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