

ARTICLE 4 DEVELOPMENT APPROVALS

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4.01 Development Approvals

4.01.01 Approval Required

- A.** Use of property, including intensity of use, may not be initiated or substantially changed, nor may any land disturbing activities commence, nor may signs, buildings or other structures be constructed, erected, moved, demolished, or substantially repaired, altered or renovated, except in accordance with and pursuant to the issuance of a valid development approval.
1. Undeveloped property may not be subject to land-disturbing activities except pursuant to and in accordance with a valid development approval authorizing a major subdivision, a permitted use, or the construction of one or more structures on the property.
 2. Demolition of an existing building is not permitted except in accordance with and pursuant to the issuance of a valid development approval for new (replacement) construction; provided, that this provision shall not apply in the case of (1) demolition of accessory structures, or (2) demolition of a structure where the owner has established to the satisfaction of the Administrator that such is required for the public safety, health, or welfare, and that land-disturbing activities will be limited to the minimum reasonable extent necessary for the demolition.
- B.** Property may not be subdivided except in accordance with and pursuant to the issuance of a valid development approval.

- C. Physical improvements to land to be subdivided may commence upon preliminary plat approval and the issuance of a valid zoning permit authorizing such work.
- D. No development approval shall be issued within:
 - 1. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which development approval is sought; or
 - 2. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which development approval is sought and the harvest was a willful violation of the Town regulations.

4.01.02 Process Overview:

- A. Development approvals needed to authorize a proposed development, will be issued under this Ordinance only after a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Plans and applications which are approved are incorporated into any permit issued, as are representations made by the applicant, and except as otherwise provided in Section 4.16, all development shall occur strictly in accordance with such approved plans, applications, and representations.
 - 1. For purposes of this Ordinance, unless the context clearly indicates otherwise and without altering the scope of any regulatory authority granted by statute or local act, the term “development” means any of the following:
 - a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
 - b. The excavation, grading, filling, clearing, or alteration of land.
 - c. The subdivision of land as defined in G.S. 160D-802.
 - d. The initiation of or substantial change in the use of land or the intensity of use of land
 - 2. Revisions that affect the design or capacity of any stormwater system shall require prior written approval by the Town.
- B. Applications shall be submitted in accordance with section 4.05.01 and the requirements listed in Appendix A.
- C. All permits/approvals shall be issued in the name of the applicant, and shall identify the property involved, and the proposed use. The permit shall incorporate by reference the plans submitted and representations made, and shall recite any special conditions or requirements imposed by the permit issuing authority.

(Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

4.02 Who May Submit Applications

4.02.01 An application will be accepted only from a person having the legal authority to take action in accordance with the development approval.

- A. Applications for development approval may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- B. When a person other than the owner of the property applies for a development approval, the application must be accompanied by the written approval of the property owner or other proof of authority.
- C. No application may be accepted on behalf of a non-human entity unless it is registered and in good standing with the North Carolina Secretary of State, or such other authority as legally mandated.
- D. When an application involves development on multiple properties owned by multiple owners, it must be accompanied by proof of authority or permission of all owners.
- E. Property owners, or their agents or assigns, are responsible for ensuring that provisions of this UDO are adhered to; including activities contracted for, or performed by those under their employ.

4.02.02 The Administrator shall require an applicant to submit evidence of authority to submit the application in accordance with Subsection 4.02.01.

(Ord. PL04727-050721, 07-01-2021)

4.03 Staff Consultation Before Formal Application

4.03.01 Even if not required, to minimize development planning costs, avoid misunderstandings or misinterpretations, and ensure compliance with the requirements of this Ordinance, a pre-application consultation between the applicant and Staff is strongly encouraged.

4.03.02 A pre-application consultation is mandatory prior to following submittals:

- A. Special Use Permit
- B. Variance
- C. Major Subdivision Preliminary Plat Approval
- D. Zoning Map Amendment
- E. Certificate of Appropriateness for Major Work

4.03.03 Upon request or as mandated, the Administrator shall meet with the applicant as soon as feasible to review the proposed application.

(Ord. PL04727-050721, 07-01-2021)

4.04 Applications

4.04.01 Application Submittals:

A. Preliminary review for completeness of application. An application shall not be accepted for review and shall not trigger the permit choice provision of Subsection 4.05.03(B) unless it is complete. Within 10 days of submission, the Administrator shall review an application for completeness and the application shall be found to be complete if it meets all of the following requirements:

1. An application form provided by the Administrator is fully completed with all plans and other documents and information required pursuant to Appendix A included or attached, except as otherwise directed by the Administrator pursuant to 4.05.02(A);
2. The application includes such other plans, documents, or information as the Administrator may require following a pre-application conference regarding a site-specific plan;
3. A Traffic Impact Analysis is submitted if such is required or requested pursuant to this section;
4. The application is signed by a person with lawful and documented authority to submit the application;
5. All required fees are paid; and
6. The application, supporting documentation, and fees are delivered to the Administrator in the medium (e.g., electronic and/or paper) required by the Administrator.

B. A non-refundable fee may be assessed by the Administrator for preliminary review of the completeness of an application.

C. If an application is incomplete, it shall be rejected with comments, as appropriate, by the Administrator. Any resubmittal of the application shall be reviewed and processed as a new application. Accordingly, any such application shall be considered submitted on the date of the resubmittal and considered for completeness pursuant to Subsection 4.05.01(A) above.

4.04.02 The Administrator shall require the submission of all information necessary for the permit issuing authority to decide whether the development, if completed as proposed, will comply with all of the requirements of this Ordinance and all other duly adopted requirements of the Town.

A. The presumption established by this Ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this Section.

1. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case.
 2. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.
- B.** In this Ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more appendices to this Ordinance. It is not always necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information, in the judgment of the Administrator, to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this Ordinance and all other duly adopted requirements of the Town.
1. However, whenever this Ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article 12.
- C. Traffic Impact Analysis:** In addition to the information included in Appendix A, certain developments may by, virtue of size, location or configuration of access points to the public road system, be required to have a traffic impact analysis performed. In those instances, where a traffic impact analysis is required by the Administrator, the study must be completed and submitted in order for the application to be considered complete. A traffic impact analysis may be required when any of the following conditions exist:
1. The development proposes to have an access to the public road system within 100' of the STOP bar of any traffic control signal; or
 2. The development proposes to have an access to the public road system within 200' of the STOP bar of any traffic control signal and based upon Institute of Transportation Engineers (ITE) trip generation rates is projected to generate eighty (80) or more exiting trips during any one (1) hour period of any day; or
 3. The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500'; or
 4. The development proposes access onto a public road that does not have a paved width of at least eighteen feet (18'); or

5. The development proposes access to a public road that currently operates at a level of service of D or less and based upon ITE trip generation rates is projected to generate 1,500 weekday trips; or
6. The Administrator or Public Works Director determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system; or determines that there are safety concerns with the driveway location and design.

If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system; the applicant may be required to complete those improvements in connection with the project as a condition of the development approval. Unless an agreement is executed by the Town in which the time for the improvement is specified the improvement shall be completed prior to issuance of a certificate of occupancy. The fact that the obligation to construct lies with the applicant does not preclude the Town from entering into an agreement to participate if that will be in the interest of the Town.

(Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

4.05 Processing of Applications

4.05.01 Upon submission of a complete application, the Administrator shall review the application for compliance with this Ordinance and any other requirements of the Town.

4.05.02 Permit Choice:

- A.** Following submission of a complete application for a development permit, if this unified development ordinance is amended between the time a complete application was submitted and the time a development permit decision is made, the applicant may choose which adopted version of the ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application.
- B.** Where multiple development permits are required to complete a development project, the development permit applicant may choose the version of this ordinance applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection (B), an erosion and sedimentation control permit or a sign permit is not an initial development permit.
- C.** For purposes of this section 4.05.02, except as provide at subsection (B) or otherwise provided by law, “development permit” means an administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:
 1. Zoning permits.

2. Site plan approvals.
3. Special use permits.
4. Variances.
5. Certificates of appropriateness.
6. Plat approvals.
7. Development agreements.
8. Building permits.
9. Subdivision of land.
10. State agency permits for development.
11. Driveway permits.
12. Erosion and sedimentation control permits.
13. Sign permit.

4.05.03 Applications Requiring Hearings: The Administrator shall place an application on the agenda of the appropriate Board or Commission as soon as feasible after the applicant has provided all information requested by the Administrator or the applicant, in writing, refuses to provide requested information and demands the application be forwarded to the appropriate Board or Commission for action.

- A. If the Administrator believes that the application is incomplete, the Administrator shall recommend to the appropriate Board or commission that the application be denied on that basis, and shall provide detailed information to the appropriate Board or commission as to the elements, supplemental documentation or materials which the Administrator believes are lacking.

4.05.04 Discontinued Applications: An application shall be deemed withdrawn if:

- A. Processing of the application is placed on hold at the request of the applicant for a period of six consecutive months or more, or
- B. The applicant fails for a period of six or more consecutive months to fully respond to any written request by the Administrator for additional information or for changes to be made to the development plan to comply with requirements of this UDO. Any such written request made by the Administrator shall provide notice to the applicant that a response is required within 6 months or the application will be deemed withdrawn.

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018; Ord. PL02338-030719, 050919; Ord. PL04196-090820, 07-01-2021; Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

4.06 Applications to be Processed Expeditiously

4.06.01 The Town shall make reasonable efforts to process applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance and all other duly adopted requirements of the Town.

(Ord. PL02338-03072019, 05-09-2019; Ord. PL04727-050721, 07-01-2021)

4.07 Zoning Permits

4.07.01 Upon review of an application for a zoning permit and all duly-requested supplemental documentation, the Administrator shall issue the zoning permit only upon concluding that:

- A.** The requested permit is within the Administrator’s jurisdiction, and
- B.** If completed as proposed in the application, the development will comply with the requirements of this Ordinance and any other duly adopted requirements of the Town.

4.07.02 The permit is issued when the earlier of the following takes place:

- A.** A copy of the fully executed permit is delivered to the applicant; or,
- B.** The applicant has been notified that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions.
- C.** For purposes of this Section, delivery is accomplished when a notice or permit is hand-delivered to the applicant or his representative or three (3) days after the notice of permit is deposited in the U.S. Mail, addressed to the applicant or his representative at the address provided on the application.

4.07.03 A proposed development which otherwise is allowable by right but has extraordinary impacts as defined herein shall require a special use permit and shall be processed accordingly.

4.07.04 A proposed development has an extraordinary impact if the Administrator determines:

- A.** Applicable firefighting or law enforcement capabilities are inadequate to serve the development as proposed, or
- B.** The proposed development will have a substantial, negative impact on an environmentally sensitive area as defined by the U.S. Environmental Protection Agency or the N.C. Department of Natural Resources.
- C.** The proposed development will have a substantial, negative impact on adjacent properties and the provisions of the Ordinance designed to address those impacts are clearly inadequate.

4.07.05 Should the Administrator exercise the Administrator’s authority pursuant to this Section, the Board shall not deny the special use permit unless it cannot craft conditions which satisfactorily mitigate the substantial, negative impacts.

4.07.06 Inspections:

- A. Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State law, this Ordinance, other applicable Town regulations, and the terms of the approval.
- B. In exercising this power, staff are authorized to enter any premises within the town limits at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

4.07.07 It shall be unlawful to deviate from the approved Zoning Permit unless the Administrator has provided written approval for the requested modification.

4.07.08 Zoning Permit Extension

- A. Unless expressly prohibited, the Administrator may extend a zoning permit for a period up to six (6) months if the Administrator concludes that:
 - 1. The permit has not yet expired, and
 - 2. The permit recipient has proceeded with due diligence and in good faith, and
 - 3. Applicable regulations have not changed so substantially as to warrant a new application.
- B. Permit extensions are not allowed for temporary zoning permits unless explicitly authorized.
- C. Successive extensions may be granted for periods up to six (6) months upon the same findings.

4.07.09 Expiration of Zoning Permits

- A. Except as specifically provided otherwise in this section, in sections 4.13 or 4.14 or elsewhere in this ordinance, or by other applicable law, zoning permits shall expire 12 months after issuance unless development authorized by such permit has substantially commenced. If, after development is substantially commenced, development is discontinued for a period of 12 months, the zoning permit shall immediately expire.
- B. **Site-specific development plans.** After development approved pursuant to a site-specific development plan is substantially commenced, a zoning permit shall immediately expire if development work is intentionally and voluntarily discontinued for 24 consecutive months.

- C. Development shall be considered “substantially commenced” only if substantial on-site construction has been undertaken relative to the total project cost of construction. Development shall not be considered “substantially commenced” if less than ten percent (10%) of the total cost of all on-site clearing, grading, excavation, construction, erection and alteration authorized by such permit has been completed. Activities that take place or expenses incurred prior to approval of the zoning permit authorizing the development shall not be taken into account in determining whether development has “substantially commenced.”
- D. A permit shall not expire or be revoked because of the running of time while a vested right under section 4.14 is outstanding.

(Ord. 20140384, 08-18-2014; Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

4.08 Final Certifications

- A. Issuance of the following certificates shall be required prior to the occupancy or use of any new construction and re-occupancy or re-use of any renovation/rehabilitation in the Town of Boone. The certificates ensure that a completed development has complied with all the applicable development approvals for that particular development.
 1. **Certificate of Compliance:** A Certificate of Compliance certifies compliance with applicable building, mechanical, plumbing, electrical, fire protection or gas codes. It does not alone authorize occupancy or use of any building, structure or land.
 2. **Certificate of Occupancy:** A Certificate of Occupancy may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Occupancy certifies compliance of a building with all applicable requirements of the UDO and other relevant State and local laws. No building may be occupied or used until a Certificate of Occupancy is issued. A Certificate of Occupancy is inclusive of a Certificate of Zoning Compliance and a Certificate of Compliance.
 3. **Certificate of Zoning Completion:** A Certificate of Zoning Completion may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Completion certifies compliance with the development approval.

(Ord. PL04727-050721, 07-01-2021)

4.09 Special Use Permits and Major Subdivision Preliminary Plat Approval

- 4.09.01 Special Use Permit:** A special use permit must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.
- 4.09.02 Major Subdivision Preliminary Plat Approval:** A major subdivision preliminary plat must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.

4.10 Uses Previously Approved by Conditional Use Permit

4.10.01 Amendments and modifications to uses currently subject to the terms and conditions of a previously approved conditional use permit, except those issued with conditional use zoning approvals, will be processed subject to the provisions of Section 4.16 dealing amendments and modifications to special use permits or major subdivision preliminary plat approvals.

4.11 Variances

4.11.01 A variance must be approved by the Board of Adjustment according to the procedures set forth in Article 6.

4.12 Performance Guarantees

4.12.01 Improvement Guarantees: In cases when, because of weather conditions or other factors beyond the control of the permit recipient or applicant, exclusive of financial hardship, it would be unreasonable to require the permit recipient to comply with all of the requirements of this Ordinance before commencing the intended use of the property or occupying any buildings or selling any lots in a subdivision, the Administrator may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this Ordinance are concerned) subject to a performance guarantee agreement with the applicant in accordance with the following standards:

- A.** The applicant shall agree to complete all required improvements within a specified period of time, not to exceed one year.
- B. Financial Guarantee Type.** To secure this agreement, the developer must provide one or more of the following financial guarantees to cover the costs of the uncompleted improvements:
 - 1. Cash, Letter of Credit, or Equivalent Security**
 - a. The developer must deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value with the Town.
 - 2. Surety Bond**
 - a. The developer must obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
 - b. The bond must be payable to the Town and must be in an amount covering the entire probable cost of installing all uncompleted improvements, as approved by the Town.
- C. Amount.** The amount of the performance guarantee shall be in an amount of not less than one hundred twenty-five percent (125%) of the reasonably estimated cost of completion. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements.

- D. Once the agreement is signed by the applicant and the required financial guarantee is provided, the final plat may be approved or the Certificate of Occupancy may be issued if all other requirements of this ordinance are met.
- E. **Release.** The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement that the improvements for which the performance guarantee is being required are complete. The Town shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to the Town's acceptance. When required improvements that are secured by a bond are completed to the specifications of the Town, or are accepted by the Town, if subject to its acceptance, upon request by the developer, the local government shall timely provide written acknowledgement that the required improvements have been completed.
- F. The developer shall have the option to post one type of a performance guarantee as provided for in this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.
- G. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

4.12.02 Warranty Against Defects

- A. Upon completion of construction of all improvements intended for public dedication, the developer shall request a warranty inspection. Once all the improvements are deemed acceptable by the Public Works Director and pass the warranty inspection, the developer shall submit the following to the Administrator:
 - 1. A set of as-built drawings,
 - 2. An engineer's certification that all improvements have been constructed in accordance with the Town's requirements.
 - 3. A written warranty against defects which shall guarantee the material and workmanship of required improvements for a period of not less than one year from the date of such acceptance.
 - 4. A financial guarantee payable to the town equal to at least 100% of the cost of the installation of such improvements as determined by the Public Work Director. Such financial guarantee shall be in a form as provided for in Subsection 4.13.03 above.
- B. Upon acceptance of the improvements by the town, a 1-year warranty period shall commence. During the 1-year warranty period, the developer shall repair any defects that occur. For the purposes of this section, the term "defects" refers to any condition in the dedicated improvements that requires the town to make repairs to such improvements over and above the normal amount of maintenance that they normally would require.
- C. At the end of the one-year warranty period, the developer shall request a final inspection. Upon successful completion of all warranty items, the developer shall be

released from maintenance responsibilities for the warranted construction and the financial guarantee shall be released in accordance with Subsection 4.12.01(E) above.

(Ord. 20140384, 08-18-2014; Ord. PL04727-050721, 07-01-2021)

4.13 Vested Rights for Certain Approvals

4.13.01 A vested right shall be deemed established upon proper and lawful approval of a site-specific vesting plan for a special use permit, major subdivision, or Conditional District.

4.13.02 **Duration:** Except as provided for in Subsection 4.13.02(C), a right that has been vested as provided for in this Ordinance shall remain vested for a period of two years.

A. This vesting shall not be extended by 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. A site-specific vesting plan shall be deemed approved upon the effective date of the approval authority's action or Ordinance relating thereto.

C. The permit-issuing authority may provide that rights vest for a period of time exceeding two (2) years but not exceeding five (5) years, inclusive of all amendments, modifications and phasing, where warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, the level of investment, the need for 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 development plan is approved or modified.

D. Approval shall vest for seven years for a multi-phased development of at least 25 acres' subject to a master development plan with committed elements showing the type and intensity of use of each phase.

4.13.03 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 and intensity of use, or Ordinances or regulations that are general in nature and are applicable to all property subject to regulation by the Town, including, but not limited to building, fire, plumbing, electrical and mechanical codes.

A. Applicable new or amended regulations shall only 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 Ordinance.

4.13.04 A vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such rights while applicable.

4.13.05 **Termination/Expiration:** A right that has been vested as provided for in this Ordinance shall terminate and automatically expire:

- A.** At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, or
- B.** With written consent of the affected landowner, or
- C.** With respect to development with vesting periods of 2 years or more, if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, or
- D.** Upon findings by the permit-issuing authority, by Ordinance after notice and public 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 contemplated in the site-specific development plan, or
- E.** Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action, or
- F.** Upon findings after notice and an 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 approval authority of the vested right, or
- G.** Upon enactment or promulgation of a State or federal law or regulation that precludes the development subject to the vested right, in which case the approval authority shall modify the affected provisions, upon finding that the change in state or federal law has a fundamental and retroactive effect on the development, after notice and a public hearing.
- H.** Upon a failure by the permit holder to abide such terms and conditions as have been attached to the approval or otherwise required by this Ordinance.

4.13.06 Nothing in this Section is intended or shall be deemed to create any vested right other than those established pursuant to N.C. Gen. Stat. §160D-108.

4.13.07 Any petition for voluntary annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any vested right with respect to the property subject to the petition has been established under G.S.160D-108. A statement that declares that no vested right has been established, or the failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018; Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

4.14 Effect of Development Approval on Successors

4.14.01 Development approvals authorize the applicant to develop and use land and structures in a particular way. Such approvals are transferable. However, so long as the land or structures or any portion thereof authorized by a development approval continues to be used for the purposes for which the development approvals was granted, then:

- A.** No person (including successors and assigns of the person who obtained the approval) may make use of the land or structures except in accordance with all the terms and requirements of that development approval, and
- B.** The terms and requirements of the development approval run with the land and are binding on successors in interest.

(Ord. PL04727-050721, 07-01-2021)

4.15 Modification of Development Approvals

4.15.01 After a development approval has been issued, no deviations from the terms of the development approval shall be made until written approval of proposed changes or deviations has been obtained.

4.15.02 A development approval with vested rights pursuant to NC Gen. Stat. 160D-108 may be modified pursuant to the provisions of this section. The proposed modification of a development approval authorizing a development or phase of development that has been completed shall be considered only as a new application.

4.15.03 Minor modifications to any development approval issued pursuant to this Ordinance are permissible and the Administrator may authorize such minor modifications subject to the following:

- A.** A modification is minor if, whether taken alone or together with other proposed modifications, it has no material (i.e., important, essential, and relevant) negative impact on any one or more neighboring properties or on the general public. In addition, in no case may a minor modification:
 - 1. Exceed ten percent (10%) of any measurable standard; or
 - 2. Change the approved use(s); or
 - 3. Change the density of the overall development; or
 - 4. Modify a feature of an application which was central to the deliberations of the permit-issuing authority; or
 - 5. Modify an express condition imposed by the permit-issuing authority.
- B.** The Administrator shall determine whether or not a proposed modification, whether taken alone or together with other proposed modifications, is minor. With respect to permits authorized by the Board of Adjustment or Town Council, in the event of doubt the proposed modification shall not be considered minor.

- C.** An applicant requesting approval of one or more minor modifications shall submit a written request for such approval to the Administrator.
 - 1. The request shall identify the proposed changes.
 - 2. The request shall be processed in accordance with Section 4.05.
 - 3. Approval of all changes shall be in writing.

4.15.04 All proposed modifications of a development approval that are determined by the Administrator not to be minor are considered substantial modifications and must be reviewed and approved permit-issuing in the same manner as the original approval.

4.15.05 If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification.

(PL02632-060518, 09-19-2019; Ord. PL04727-050721, 07-01-2021)

4.16 Maintenance of Common Areas, Improvements, and Facilities

4.16.01 The recipient of any zoning, special use permit, preliminary or final plat approval, his successors and assigns, shall be responsible for maintaining all common areas, improvements, or facilities required by this Ordinance or any development permit issued in accordance with its provisions, except and until those common areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority.

- A.** As illustration, private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended in accordance with Town Codes, and required vegetation and trees used for screening, landscaping, or shading must be properly maintained or replaced if they die or are destroyed.

4.16.02 A permit holder may create a property owners' association or similar legal entity (association) to succeed to its responsibilities under this Section, so long as such association is established in accordance with Appendix A.

(Ord. PL04727-050721, 07-01-2021)

4.17 Design and Other Professionals

4.17.01 All professionals associated with an application shall be competent for the task undertaken, and licensed by and in good standing with the appropriate licensing Board in the State of North Carolina.

- A.** If problems with the project are encountered that result from the failure by a design professional to properly discharge his responsibilities, the Town may initiate appropriate action(s) including filing a complaint with the appropriate licensing Board and refusing to accept certifications regarding analysis of design or construction from the individual or firm.
- 4.17.02** If a geotechnical engineer performs a subsurface investigation, that engineer shall review the plans and specifications prior to submittal to the Town. A report of this review shall be submitted to the Town along with the permit application.
- 4.17.03** If retaining walls are required, and a geotechnical engineer has performed a subsurface investigation, the design professional shall provide a statement that the report on the subsurface investigation was reviewed and recommendations incorporated into the design.
- A.** The design professional shall also require the geotechnical engineer to prepare a global slope stability analysis of the retaining walls.
- B.** The global slope stability analysis shall be submitted with the plans for the retaining walls.
- 4.17.04** Whenever the Administrator is considering and reviewing an application which involves data or representations within the exclusive purview of a professional in a particular field, the Administrator may demand a certified statement from an appropriate professional confirming that the data or representations are accurate and meet the requirements of this Ordinance.
- 4.17.05** Whenever the Administrator considered and reviewed an application which involved data or representations within the exclusive purview of a professional in a particular field, the Administrator shall require a certified statement from an appropriate professional confirming that the work was completed in compliance with the approved plans.
- 4.17.06** The Administrator shall require verification that plant material was installed by a landscape contractor registered in the State of North Carolina.
- 4.18 Project Manager**
- 4.18.01** In order to provide adequate coordination of the various design professionals on all development projects, every project shall designate and identify a project manager.
- A.** Single-family and two-family projects involving less than ½ acre of land disturbing activity or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity are exempt from this requirement.
- 4.18.02** The project manager shall be responsible for coordination of all design and construction monitoring activities related to the project. This shall include, but not be limited to:
- A.** Coordination of design, including ensuring that adequate consideration is given in the design of recommendations made by professionals who performed preliminary exploration of site conditions, and

- B.** Monitoring of construction, and
- C.** Ensuring all final certifications indicating that the project was constructed in compliance with the approved design documents are completed.

4.18.03 Prior to issuance of a Certificate of Occupancy the project manager shall submit a certification that the project was constructed in accordance with the approved plans and specifications.

- A.** Attached to the project manager's final certification shall be all the certifications required from the design and other professionals as described in Section 4.18.

(Ord. PL04727-050721, 07-01-2021)