

## Article 4 PERMITS

### 4.01 Permits

#### 4.01.01 Permits Required

- A. Property may not be used, altered or changed, nor may clearing, grading, or excavation commence, nor signs, buildings or other structures be constructed, erected, moved or altered except in accordance with and pursuant to the issuance of a valid permit.
- B. Physical improvements to land to be subdivided may commence upon preliminary plat approval and the issuance of a valid zoning permit authorizing such work.
- C. No development permit 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 the permit or 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 the permit or approval is sought and the harvest was a willful violation of the Town regulations.

#### 4.01.02 Process Overview:

- A. Permits 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, “development” shall include the use or occupancy of any land or structure, the construction, erection, alteration or moving of any structure and land disturbing activity.
  - 2. Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Town.
  - 3. Plans shall be submitted in accordance with the requirements listed in Appendix A.
- B. All permits 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.

## **4.02 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled**

**4.02.01** Issuance of a zoning permit authorizes the recipient to commence work designed to use, alter, change, clear, grade, excavate, construct, erect, move, or alter signs, buildings or other structures or to make necessary improvements to a subdivision.

**A.** The intended use may not be commenced, no building may be occupied, no structure may be used, and in the case of subdivisions, no lot may be sold until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a zoning, special use permit, preliminary plat or conditional zoning district approval have been complied with, and the applicant has obtained one or more of the following as required: Certificate of Compliance, Certificate of Occupancy, Certificate of Completion and Certificate of Zoning Compliance.

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 Completion:** A Certificate of Completion may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Completion certifies compliance of a structure other than a building with all applicable requirements of the UDO and other relevant State and local laws. A structure which requires a Certificate of Completion may not be used until the certificate is issued. A Certificate of Completion is inclusive of a Certificate of Zoning Compliance.

4. **Certificate of Zoning Compliance:** A Certificate of Zoning Compliance certifies, when neither a Certificate of Completion nor a Certificate of Occupancy is needed, compliance with all applicable requirements of the UDO and other relevant State and local laws. A Certificate of Zoning Compliance authorizes a use.

**B.** The Administrator shall retain the authority to withhold building or zoning permits and withhold or revoke any Certificate of Compliance, Certificate of Occupancy, Certificate of Completion or Certificate of Zoning Compliance which has been improvidently issued until all relevant requirements of State law and this Ordinance have been met.

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**4.03 Who May Submit Permit Applications**

**4.03.01** An application will be accepted only from a person having the legal authority to take action in accordance with the permit or the subdivision plat approval.

- A. An application shall be made by the owner or the agent of the owner accompanied by proof of agency.
- B. When a person other than the owner of the property applies for a permit or approval including a lessee or a person who has contracted to purchase the property, 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.

**4.03.02** The Administrator shall require an applicant to submit evidence of his authority to submit the application in accordance with Subsection 4.03.01.

**4.04 Staff Consultation Before Formal Application**

**4.04.01** 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.

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

**4.05 Applications**

**4.05.01 Application Submittals:** An application is considered submitted when the:

- A. An application form provided by the Administrator is fully completed with information included or attached which enables the Administrator to discern what approval is being sought, and
- B. The application is signed by a person with lawful and established authority to submit the application, and
- C. all required fees are paid, and
- D. The application is delivered to the Administrator.

**4.05.02 Incomplete Applications:** An application must be completed to the satisfaction of the Administrator and all requested supplemental documentation provided in accordance

with this Section before the permit issuing authority is required to consider the application.

- A.** An application is deemed withdrawn if the applicant does not fully respond to the Administrator’s request(s) for the materials, plans, analyses, etc. (hereafter, “supplemental documentation”), needed to fully evaluate the application for its compliance with the UDO and all other pertinent adopted plans and codes of the Town, in accordance with the following schedule:
1. Within twenty (20) business days of submission of an application, the Administrator shall direct a written list of all supplemental documentation, required by the Ordinance or needed by the Administrator or the reviewer in each other pertinent department to evaluate the application for its compliance with the UDO and all other duly adopted requirements of the Town.
    - a. Said list shall be hand delivered to the applicant, mailed by first class mail or electronic mail to the name and address of the applicant, as they are stated on the application.
    - b. Receipt by the applicant shall be inferred three days after the date of mailing.
  2. Following receipt of the written list, the applicant shall have thirty (30) calendar days to provide all supplemental documentation requested by the Administrator, which shall be considered provided when actually delivered to the Administrator.
    - a. If an applicant fails to timely provide all supplemental documentation, the application shall be deemed withdrawn and no further consideration will be given to it.
  3. Following the timely provision of all supplemental documentation by the applicant, the Administrator may request additional supplemental documentation, using the same method as stated in Subsection 4.05.02(A)(1), and the applicant shall again have thirty (30) calendar days to provide all additional requested information or the application shall be deemed withdrawn.
  4. This process may be repeated until all materials needed by the Administrator or other department reviewer to evaluate the application’s compliance with the requirements of the UDO and all other duly adopted requirements of the Town have been provided.
    - a. There may be no more than a total of three requests for information by the Administrator with respect to any one application;
    - b. At each stage of a series of requests by the Administrator, should an applicant fail to provide all requested information, the application shall be deemed withdrawn and no further consideration will be given to it.
  5. The burden of submitting all materials needed for a full evaluation of an application at all times nevertheless remains upon the applicant.

- B. With respect to applications for which the Board of Adjustment is the permit issuing authority, unless the application has been deemed withdrawn pursuant to this Section, if the applicant demands that the application be scheduled for consideration before the Board, it shall be so scheduled, and the Board shall decide whether the application is complete.

**4.05.03 Application Complete:** Subject to Subsection 4.05.02, an application is complete when it contains all of the information that is 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. 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 issuing a permit. 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.

**4.06 Staff Consultation After Application Submitted**

**4.06.01** Upon receipt of an application and all necessary supplemental documentation and materials, the Administrator shall:

- A. review the application and confer with the applicant regarding Staff's interpretation of the applicable requirements of this Ordinance, and
- B. that the applicant has submitted all of the information that the applicant intends to submit, and
- C. that the application represents precisely and completely what the applicant proposes to do.

**4.06.02 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.
- B. Except for an application for conditional district rezoning, if an application is submitted for zoning approval and the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to Council in connection with an application for an allocation of vested rights to connect to the Town's water or sewer system, the Administrator must treat the application as an application for a special use permit.
  - 1. A "material" difference shall consist of any "minor modification", if the modification relates to a detail or characteristic of the UDO the application which was specifically discussed in the hearing before the Council, or any "major modification."

#### **4.07 Applications to be Processed Expeditiously**

**4.07.01** Recognizing that inordinate delays in acting upon applications may impose unnecessary costs on the applicant, 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.

#### **4.08 Zoning Permits**

**4.08.01** Following the submission of a complete application for a zoning permit including all duly requested supplemental documentation, the Administrator shall issue the zoning permit unless the Administrator concludes that:

- A. The requested permit is not within the Administrator's jurisdiction, or
- B. If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance or any other duly adopted requirements of the Town.

**4.08.02** 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.

**4.08.03** 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.

**4.08.04** 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.

**4.08.05** Should the Administrator exercise his authority pursuant to this Section, the Board shall not deny the permit unless it cannot craft conditions which satisfactorily mitigate the substantial, negative impacts, or it determines that the plan as proposed does not have a substantial negative impact.

**4.08.06** No person shall willfully resist, delay, or obstruct the Planning and Inspections Department, or its duly appointed agent, attempting to inspect a development that has made application for a development permit.

**4.08.07** A condition of approval will be the right to physical inspection of the development. In the enforcement of this Ordinance, Staff may perform random independent inspections of the development to ensure compliance with the approved plan.

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

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**4.08.09** **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.

**4.08.10 Expiration of Zoning Permits**

- A. Zoning permits shall expire automatically if, within one (1) year after the issuance of such permits:
  - 1. The use authorized by such permits has not commenced, or
  - 2. Less than ten percent (10%) of the total cost of all clearing, grading, excavation, construction, erection or alteration authorized by such permits has been completed on the site.
- B. If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one (1) year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4.15.

**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 Variance**

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

**4.12 Authorizing Use, Occupancy, or Sale Before Completion or Dedication of Development**

**4.12.01 Before Completion:** In cases when, because of weather conditions or other factors beyond the control of the permit recipient or applicant for subdivision, 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 the following:

- A. For a subdivision, the applicant must provide a surety bond, irrevocable letter of credit or cash (hereafter, the “performance guarantee”), at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.
- B. For all zoning permits, the applicant must provide an irrevocable letter of credit or cash, at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.
- C. The outstanding requirements to be bonded may not be related to conditions affecting safety; and
- D. All of these outstanding requirements will be fulfilled within a reasonable period not to exceed twelve (12) months.

**4.12.02 Before Dedication, Protection Against Defects**

- A. Whenever occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance guarantee that is posted shall guarantee that any defects in such improvements or facilities that appear within one (1) year after the dedication of such facilities or improvements is accepted shall be corrected.
- B. Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then a performance guarantee shall be posted to guarantee to ensure that all defects in such utilities or improvements that occur within one (1) year after the offer of dedication of such facilities or improvements are corrected.
- C. An engineer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of this Ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.

**4.13 Completing Developments in Phases**

**4.13.01** If a permit authorizes a development to be constructed in phases, the provisions of Sections 4.02 and 4.12 shall apply to each phase as if it were the entire development.

**4.13.02** No phasing shall be approved unless the applicant submits plans that clearly show the various phases of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase.

**4.13.03** If a development that is to be built in phases includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or

tennis courts in a residential development) then, as part of his application for development approval:

- A. the applicant shall submit a proposed schedule for completion of such improvements; and
- B. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit.

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#### **4.14 Vested Rights**

**4.14.01** A vested right shall be deemed established upon the valid approval of a site specific development plan, following notice and public hearing.

**4.14.02** For purposes of these regulations, a site specific development plan shall constitute any one of the following approvals:

- A. A special use permit or major subdivision preliminary plat approval granted by the Board, or
- B. A conditional district rezoning granted by Council.

**4.14.03** **Duration:** Except as provided for in Subsection 4.14.03(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 development 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.

**4.14.04** 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.

**4.14.05** 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.

**4.14.06** **Termination:** A right that has been vested as provided for in this Ordinance shall terminate:

**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.** 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

**D.** 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

**E.** Upon findings by the permit issuing authority, by Ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan, or

**F.** Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority modify the affected provisions, upon finding that the change in state or federal law has a fundamental effect on the plan, by Ordinance after notice and a public hearing.

**G.** 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.

**4.14.07** 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. § 160A-385.1.

**4.14.08** 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. 160A-

385.1 or G.S. 153A-344.1. 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.

**4.15 Effect of Permit on Successors**

**4.15.01** Permits authorize the applicant to develop and use land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof authorized by a permit continues to be used for the purposes for which the permit was granted, then:

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

**4.16 Modification of Permits**

**4.16.01** A permit with vested rights pursuant to NC Gen. Stat. 160A-385.1 may be modified pursuant to the following Sections until such times as a Certificate of Occupancy is issued. Thereafter, any change to a completed development or phase of a development may only be considered on a new application. A new application shall always be determined by the permit issuing authority which approved the site specific development plan.

**4.16.02** Insignificant modifications from zoning, major subdivision preliminary plat approval or special use permits are permissible and the Administrator may authorize such insignificant modifications subject to the following:

- A. A modification is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development; and
- B. Insignificant modifications may not:
  - 1. Exceed ten percent (10%) of any measurable standard; or
  - 2. Change the approved use(s); or
  - 3. Modify a feature of an application which was central to the deliberations of the permit issuing authority; or
  - 4. Modify an express condition of the permit issuing authority.

**4.16.03** Minor modifications to zoning, major subdivision preliminary plat approval or special use permits are permissible with the approval of the permit issuing authority subject to the following:

- A. Minor modifications are those that do not significantly change the essential character of the use(s) or activity that has been previously authorized; and

**B.** If a minor modification is approved, new conditions may be imposed in accordance with Section 4.09.

1. The applicant retains the right to reject such additional conditions by withdrawing his request for a modification and may then proceed in accordance with the previously issued permit.
2. An applicant who elects to withdraw an application for modification must do so prior before the final decision of the permit issuing authority.

**4.16.04** Major modifications to zoning, major subdivision preliminary plat approval or special use permits will be processed as new applications.

**A.** Major modifications are those that change the essential character of the use or activity that has been previously authorized or proposes changes which exceed the limits for minor modifications.

**B.** A proposed change in use, a change in intensity or density exceeding ten percent (10%) of any measurable standard, or a modification to a feature of an application which was central to the approval by the permit issuing authority shall always be considered a major modification.

**4.16.05** The Administrator shall determine whether modifications of permits fall within the categories set forth above in Subsections 4.16.02, 4.16.03, and 4.16.04.

**A.** The determination of the Administrator shall constitute the final decision of the Town and is not appealable.

**4.16.06** An applicant requesting approval of changes shall submit a written request for such approval to the Administrator.

**A.** The request shall identify the proposed changes.

**B.** The request shall be processed in accordance with Section 4.05.

**C.** Approval of all changes shall be in writing.

**4.17 Maintenance of Common Areas, Improvements, and Facilities**

**4.17.01** 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 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.

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**4.17.02** 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.

**4.18 Design and Other Professionals**

**4.18.01** 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.

**4.18.02** 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.

**4.18.03** 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.

**4.18.04** 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.

**4.18.05** 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.

**4.18.06** The Administrator shall require verification that plant material was installed by a landscape contractor registered in the State of North Carolina.

**4.19 Project Manager**

**4.19.01** 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.

**4.19.02** 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.

**4.19.03** 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.