

ARTICLE IX. ADMINISTRATION.

9-1. The Staff.

(A) *The zoning enforcement officer.*

(1) The position of zoning enforcement officer is hereby authorized, and it shall be his duty to enforce and administer the provisions of this ordinance.

(2) If a ruling of the zoning enforcement officer is questioned, the aggrieved party or parties may appeal such ruling to the board of adjustment.

9-2. The Boards.

(A) *The planning board.* A Planning Board is hereby established as provided in Section 106D-301 of the General Statutes of North Carolina

(1) Every proposed amendment, supplement, change modification or repeal to this ordinance shall be referred to the planning board for its recommendation and report, provided that no proposal shall be considered by the planning board within ten working days from filing of the proposal with the zoning enforcement officer. This requirement may be waived by a unanimous vote of the planning board membership present at the meeting.

(2) Failure of the planning board to make its recommendation for a period of forty-five days after the amendment has been referred to it shall require that the request be forwarded to the town council without a recommendation.

(3) The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the town council that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

(4) The Planning Board shall keep minutes of its proceedings (G.S. 160D-308). Additionally, all Planning Board members, before entering their duties, must take an oath of office (G.S. 160D-309). Members of the Planning Board shall not vote on advisory or legislative decisions regarding a development regulation where the outcome of the matter being considered is likely to have a direct, substantial, and readily identifiable financial impact on the member. A Planning Board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship (G.S. 160D-109)

(5) The Planning Board shall consist of five (5) regular members and two (2) alternates. Two ETJ members shall be required as one regular and one alternate, equal representation ratio will be required. (The population estimates for this calculation shall be updated no less frequently than after each decennial census.) (G.S. 160D -307), and have been duly appointed by the Town Board.

(B) *Conflicts of interest.*

No member of town council or any appointed board shall vote on any zoning map or text amendment request where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(C) *The board of adjustment.*

(1) *Establishment.*

a) A board of adjustment is hereby established. Said board shall consist of five members and two alternates. One ETJ member shall be a regular member and one from the ETJ. Members of the board shall be appointed by the town council. ETJ members shall be appointed by the County Commissioners upon request of the Town. Initial terms of office shall be as follows: one member appointed for a term of one year; two members appointed for terms of two years; and three members appointed for terms of three years. Upon completion of the initial term of office for each member, all additional appointments to vacancies on the board shall be for three year terms. The members of the board of adjustment shall be residents of the town. Board of Zoning Adjustment shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision (G.S. 160D-406). Members of the Board of Zoning Adjustments shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.¹² (G.S. 160D-109(d), (e), (f)).

b) The town council shall also appoint two alternate members to serve on the board of adjustment in the absence, for any cause, of any regular member. Such alternate members shall be appointed for three year terms, provided, however, that in the case of the first appointment of alternate members, one shall be appointed for a three year term and one shall be appointed for a two year term. Such alternate members, while attending all regular or special meetings of the board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.

(2) *Proceedings of the board of adjustment.*

a) The board shall elect a chairman and vice-chairman from among its members, who in turn will appoint a secretary and such other subordinates as may be authorized by the town council. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official action.

b) The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the zoning enforcement officer, or to decide in favor of the applicant any matter on which it is required to pass under the zoning ordinance or to effect any variation in such ordinance. A simple majority shall rule on all other matters. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

c) Oaths. The chair of the Board or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while

under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

d) An appeal to the Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

1. Any person, who has standing, or the county, pursuant to 160D-1402, may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail.

3. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

4. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date of the hearing if they were in attendance of the decision making board hearing.

5. The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

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

7. Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

8. The official who made the decision 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. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.

9. When hearing an appeal pursuant to 160D-1402 in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in 160D-1402(j).

10. The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

f) VariANCES. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

g) A member of the board of adjustment shall not participate in or vote on any quasi judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(3) *Powers and duties.*

a) The board shall have the power to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this ordinance.

b) The board may interpret zoning maps, pass upon disputed questions of lot lines or district boundary lines, and hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

c) The board shall have the power to grant variances from the terms of this ordinance according to the standards and procedures prescribed herein.

d) The board shall have the power to grant special use permits for certain uses as specified in the table of uses.

e) The board shall have the power to grant special exception permits for certain uses as a major waiver from one or more of the development standards required by this ordinance

f) The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(D) *The town council.*

The town council shall have the following duties related to this ordinance:

(1) To review and from time-to-time initiate changes to this ordinance.

- (2) To decide upon any application or request for amendment to this ordinance or the zoning maps.
- (3) To take any other action not delegated to the planning board or board of adjustment as the town council may deem desirable and necessary to implement the provisions of this ordinance.
- (E) *Conflicts of interest.*

No member of town council or any appointed board shall vote on any zoning map or text amendment request where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

9-3. Permits.

- (A) *Permit required.*

A certificate of compliance, issued by the zoning enforcement officer, is required in advance of:

- (1) Occupancy or use of a building hereafter erected, altered, or changed.
- (2) A change of use of any building or land.
- (3) A non-conforming use created by the passage and subsequent amendments to this ordinance. The owner of such non-conforming use shall obtain a certificate of compliance within thirty days of the date of said passage or amendments.
- (4) A certificate of compliance, either for the whole or a part of a building, shall be applied for coincident with the application for a zoning clearance and shall be issued within ten days after the erection or structural alteration of such building, or part, shall have been completed in conformity with the provisions of this ordinance.
- (5) A certificate of compliance shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of compliance is denied, the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning enforcement officer, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

- (B) *Issuance of zoning compliance certificate.*

No building, sign or other structure shall be erected, moved, extended or enlarged, or structurally altered, nor shall any excavation or filling of any lot for the construction of any building be commenced until the zoning enforcement officer or his designated agent has issued a certificate of zoning compliance for such work. Every person obtaining a certificate of zoning compliance hereunder shall pay a fee as approved by the town council. Administrator shall issue a zoning permit when the regulations of this ordinance have been followed, or to refuse to issue the same in the event of noncompliance. Written notice of such determination therefore shall be given to the applicant and property owner (G.S. 160D-403(b)), the administrative officer may provide their determination in print or electronic form; if electronic form is used then it must be protected from further editing (G.S. 160D-403(a)).

- (C) *Application for certificate of zoning compliance.*

Each application to the zoning enforcement officer for a certificate of zoning compliance shall be accompanied by plot plans showing:

- (1) The actual dimensions of the lot to be built upon;
 - (2) The size of the building to be erected;
 - (3) The location of the building on the lot;
 - (4) The location of existing structures on the lot, if any;
 - (5) The number of dwelling units the building is designed to accommodate; and
 - (6) Such other information as may be essential for determining whether the provisions of this ordinance are being observed.
- (D) *Expiration of a certificate of zoning compliance.*

Any certificate of zoning compliance issued shall expire and be canceled unless the work authorized by it shall have begun within six months of its date of issue, or if the work authorized by it is suspended or abandoned for a period of one year. Written notice thereof shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until another zoning clearance has been obtained.

9-4. Design Review.

- (A) *Permitting procedure.*

Any application for design approval shall include architectural renderings, building elevations, site plans, and landscaping plans with sufficient detail thereon for the approving authority to determine compliance with all of the standards of this ordinance. Furthermore, the applicant shall be required to provide any and all additional information deemed by such authority as necessary to determine compliance with these standards prior to permit issuance. Failure to submit all necessary information shall be grounds for permit denial.

- (B) *Waiver of architectural and site design requirements.*

In order to encourage creative design, to avoid undue hardship, and to expedite the zoning approval process for developments within the town, a waiver of any of the architectural or site design requirements contained within this ordinance may be approved as follows.

- (1) *Minor waiver.*

The zoning administrator is authorized to grant a minor waiver from the standards of this section subject to the following:

a) Any request for a waiver of a standard set forth in the section including, but not necessarily limited to, height requirements and limitation, yard requirements, parking requirements, screening or buffer requirements, planting requirements, ratio requirements, density requirements, spacing requirements, and landscaping material, building design, and parking lot layout shall be granted only after the applicant has demonstrated that:

- 1) The deviation was a result of unique conditions of the property; or
- 2) The deviation will result in a project that is at least equal to or better than what would be accomplished under the strict application of this section.

- b) Before granting a minor waiver the zoning administrator shall reasonably determine that granting the waiver:
 - 1) Does not and will not violate the spirit and intent of the section; and
 - 2) Does not and will not adversely affect the rights of other property owners in any material manner.
- c) A minor waiver may not deviate by more than ten percent from any of the measurable standards of this section.
- d) The authority given to the zoning administrator to grant such waivers shall be construed to be permissive and not mandatory and the zoning administrator may decline to make such waiver. In the event this occurs, the applicant shall have the right to request a special exception permit from the board of adjustment granting a major waiver to these requirements.
- e) Nothing in this section shall be construed as limiting the zoning administrator's duties and rights under this section, or an applicant's right to appeal the decision of the zoning administrator to the board of adjustment.

(2) *Major waiver.*

The board of adjustment is authorized to grant a major waiver from the standards of this ordinance through the issuance of a special exception permit. Application and issuance of such permits shall be governed as follows.

a) *Applicants.*

A request for a special exception permit will be considered only if requested by the owner of the property in question or an authorized agent of the property owner.

b) *Applications.*

Applications for all special exception permits or amendments to any approved special exception permit must be filed with the zoning administrator. Applications which are not complete shall be returned to the applicant, with a notation of the deficiencies in the application. A complete application will include all of the following:

- 1) A completed application form signed by all of the property owners of the property or land proposed for the permit, or a completed application form signed by the developer along with an affidavit signed by all property owners giving the applicant the permission to pursue the permit and to bind the property to the proposal and to conditions which the board might impose.
- 2) A complete explanation of the purpose and extent of the requested waiver including sealed site plans and architectural renderings when applicable or requested by the zoning administrator or the board of adjustment.
- 3) Documentation containing facts which will be used to support the petition, including but not limited to deed restrictions, proposed homeowners association documents, and statements from adjacent property owners (where applicable).
- 4) All appropriate fees.
- 5) A complete listing of all owners of adjacent property, their addresses, and tax identification numbers.

6) Any other information deemed by the zoning administrator or the board of adjustment to be necessary for sufficient review of the application.

c) *Staff review.*

All applications for a special exception permit shall be reviewed by the zoning administrator prior to board of adjustment review. The zoning administrator shall determine the number of copies to be submitted by the petitioner to ensure that there are sufficient copies to send to the board, the technical review committee, and all other appropriate agencies for review and comment. The applicant shall submit a completed application no later than fifteen working days prior to the board meeting at which the petition is to be heard. If the application is found to be incomplete, the developer shall be notified and the petition rejected.

d) *Cooperation.*

The developer is strongly encouraged to work closely with staff and neighboring property owners before and during the application and review process to minimize delays and address concerns which may arise.

e) *Board review.*

The board of adjustment shall review the application for a waiver in the context of the spirit and intent of the requirements of this section; existing, proposed, and planned development in the immediate area; similar properties and situations in other areas of the town's jurisdiction; and all other applicable regulations affecting the property.

f) *Required general findings.*

No special exception permit shall be approved by the board of adjustment unless the following general findings of fact are made concerning the proposed special use:

1) The proposed development represents a design in site and/or architecture which will result in a development that is equivalent to or superior to that achievable under the applicable regulations;

2) The proposed development will be compatible with and will not substantially injure the value of adjoining property;

3) The proposed development is consistent with the intent of this section.

g) *Withdrawal or amendment of a special exception permit application.*

An application for a special exception permit may be withdrawn or amended as follows:

1) A petition filed according to this section may be withdrawn by the petitioner at any time up to the scheduling of the date of the public hearing on the petition.

2) If the petitioner wishes to withdraw the petition after the scheduling of the public hearing, the petitioner may file a request to withdraw with the zoning administrator. On the date scheduled for the hearing, the board of adjustment may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the zoning administrator no later than three weeks prior to the scheduled public hearing date. No changes to

the petition shall be accepted in the intervening weeks prior to the public hearing. No changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, board of adjustment and other interested parties may be presented at the hearing and considered by the board of adjustment during their deliberations.

4) If the board of adjustment deems any amendment to be a substantial change to the petition, it shall defer action on the petition for thirty days to allow interested parties the opportunity to comment on the amendment to the petition.

5) If the board of adjustment deems any amendment to be an intensification of the petition, it shall call for a new public hearing.

h) *Hearing.*

1) A special exception permit hearing will be conducted as a quasi-judicial hearing before the board of adjustment.

2) The applicant has the burden of producing competent, material, and substantial evidence in support of the application.

i) *Decision.*

In considering an application for a special exception permit, the board of adjustment may attach reasonable and appropriate conditions and safeguards to the location, nature, and extent of the proposed use and its relation to surrounding property, for the purpose of insuring that the conditions of permit approval will be complied with and any potentially injurious effect of the special use on adjoining properties, the character of the neighborhood, or the health, safety, and general welfare of the community will be minimized. Such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, intensity of site development, the timing of development, and other matters the board of adjustment may find appropriate or the applicant may propose. The applicant will have a reasonable opportunity to consider and respond to any additional conditions or requirements prior to final action by the board of adjustment.

j) *Effect of approval.*

An approved application for a special exception permit and all conditions which may be attached thereto are binding on the property.

k) *Subdivisions.*

Approval of applications involving major subdivisions of land, as defined in the Town of Richfield subdivision regulations, shall be contingent upon preliminary plat approval by the planning board. Approval of the plat shall allow the applicant to proceed with the development as approved within the permit.

l) *Amendment to an approved special exception permit.*

1) Any change to a development approved by special exception permit shall require an amendment to the special exception permit by the board of adjustment.

2) The owner of property which is subject to an approved special exception permit may petition for an amendment of the special exception permit and accompanying conditions by following the procedures applicable to initiation of new special exception permits.

3) Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original special exception permit, any plans or conditions which were a part of the original special exception permit, and the present standards and requirements in this section.

m) *Appeals.*

Any petition for review by superior court shall be filed with the clerk of superior court within thirty days after a written copy of the decision of the board of adjustment is filed in the office of the zoning administrator or is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later.

n) *Revocation of a special exception permit.*

1) A special exception permit may be revoked by the board of adjustment if it determines that the applicant is exceeding the authority granted by the permit or fails to meet the conditions attached thereto.

2) Action to revoke a permit shall be taken by the board of adjustment after receiving a request from staff. Such a request shall be in writing and shall declare that the applicant and all property owners within the development, as recorded at the register of deeds office, have been notified at least ten days before the meeting of the pending action and the date, time, and place of the board of adjustment meeting at which the request will be made. Said applicant and property owners shall have the right to appear before the board of adjustment at said meeting and show cause why the board of adjustment should not revoke the permit. Notification shall be deemed given when written notice is sent by first class mail to the property owner at the address shown on the most recent property tax records and one or more signs are posted in prominent locations on the subject site reasonably calculated to give notice of the action.

o) *Expiration of a special exception permit.*

1) Approval of a special exception permit shall confer upon the developer all vested rights as set forth in this section.

2) In order for a special exception permit to remain in effect for a particular development, a valid building permit must be issued for construction within the time period vested. If at any time after this date, construction has not been completed and no valid building permits are outstanding for construction within the development, the special exception permit shall expire. No further construction may occur within the development until a new special exception permit has been issued by the board of adjustment. Application for a new special exception permit shall follow the procedures outlined in this section.

9-5. Special Use Permits.

(A) *Permit required.*

No zoning or building permit shall be issued until a special use permit for the requested use has been approved by the board of adjustment.

(B) *Applicants.*

A request for a special use permit will be considered only if requested by the owner of the property in question or an authorized agent of the property owner.

(C) *Applications.*

Applications for all special use permits or amendments to any approved special use permit must be filed with the zoning administrator. Applications which are not complete shall be returned to the applicant, with a notation of the deficiencies in the application. The zoning administrator has the authority to waive any application requirements where the type of use or scale of proposal makes that information unnecessary or impractical. A complete application will include all of the following:

- (1) A completed application form signed by all of the property owners of the area proposed for the permit, or a completed application form signed by the developer along with an affidavit signed by all property owners giving the applicant the permission to pursue the permit and to bind the property to the proposal and to conditions which the town council might impose.
- (2) A complete explanation of the proposed use(s) of the property.
- (3) A major development site plan.
- (4) A preliminary subdivision plat which meets all of the requirements of the subdivision ordinance when subdivision of the land is proposed.
- (5) Documentation containing facts which will be used to support the petition, including but not limited to deed restrictions, letter of sufficiency regarding public water and sewer, proposed homeowners association documents, and appropriate county and state approvals.
- (6) All appropriate fees.
- (7) A complete listing of all owners of adjacent property, their addresses, and tax identification numbers.
- (8) A synopsis or overview of the project, including information relevant to use, density, lot layout, housing type, planned amenities, and the like.
- (9) Any other information deemed by the zoning administrator to be necessary for sufficient review of the application.

(D) *Staff review.*

(1) *Sketch plan.*

Prior to submission of the complete application, all subdivision developers are required to submit a sketch plan for staff review. Preparation and review of the sketch plan shall conform to the requirements of the Town of Richfield subdivision regulations.

(2) *Applications.*

All applications for special use permit shall be reviewed by the zoning administrator and the technical review committee prior to board of adjustment review. The zoning administrator shall determine the number of copies to be submitted by the applicant to ensure that there are sufficient copies to send to the town council, the technical review committee, and all other appropriate agencies for review and comment. The applicant shall submit a completed application no later than fifteen working days prior to the town council meeting at which the application is to be heard. If the application is found to be incomplete or the development is found to be in conflict with the requirements of this section, the developer shall be notified and the application rejected.

(3) *Cooperation.*

The developer is strongly encouraged to work closely with staff and neighboring property owners before and during the application and review process to minimize delays and address concerns which may arise in the review process.

(E) *Board of adjustment action.*

(1) *Review.*

The board of adjustment shall review the application to determine compliance with this ordinance and all applicable regulations within the town's planning jurisdiction.

(2) *Required findings.*

No special use permit shall be approved by the board of adjustment unless the following general findings of fact are made concerning the proposed special use:

- a) The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the plan submitted.
- b) The use complies with all regulations and standards of this ordinance.
- c) The use will not substantially injure the value of adjoining property or the use is a public necessity.
- d) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located.
- e) Public water and sewer service are available in adequate capacity, if needed.
- f) That the proposed use will not be in conflict with but will further the objectives of the most detailed plan adopted for the area in which it is located.

(F) *Withdrawal or amendment of a special use permit application.*

An application for a special use permit may be withdrawn or amended as follows:

- (1) A petition filed according to this section may be withdrawn by the petitioner at any time up to the scheduling of the date of the public hearing on the petition.
- (2) If the petitioner wishes to withdraw the petition after the scheduling of the public hearing, the petitioner may file a request to withdraw with the zoning administrator. On the date scheduled for the hearing, the board of adjustment may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.
- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the zoning administrator no later than three weeks prior to the scheduled public hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public hearing. No changes to the petition shall be made at the hearing, except that changes proposed by the petitioner, board of adjustment and other interested parties may be presented at the hearing and considered by the board of adjustment during their deliberations.

(4) If the board of adjustment deems any amendment to be a substantial change to the petition, it shall defer action on the petition for thirty days to allow interested parties the opportunity to comment on the amendment to the petition.

(5) If the board of adjustment deems any amendment to be an intensification of the petition, it shall call for a new public hearing.

(G) *Hearing.*

(1) A special use permit hearing will be conducted as a quasi-judicial hearing before the board of adjustment.

(2) The applicant has the burden of producing competent, material, and substantial evidence establishing that:

a) The proposed special use will comply with all of the lot, size, yard, and other standards of this ordinance except as may be amended through an approved variance or special exception permit.

b) The proposed special use will comply with all general and specific standards required by the appropriate section of this ordinance for the issuance of a special use permit for this use.

(H) *Decision.*

In considering an application for a special use permit, the board of adjustment may attach reasonable and appropriate conditions and safeguards to the location, nature, and extent of the proposed use and its relationship to surrounding property, for the purpose of insuring that the conditions of permit approval will be complied with and any potentially injurious effect of the special use on adjoining properties, the character of the neighborhood, or the health, safety, and general welfare of the community will be minimized. Such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, intensity of site development, the timing of development, and other matters the board of adjustment may find appropriate or the applicant may propose. The applicant will have a reasonable opportunity to consider and respond to any additional conditions or requirements prior to final action by the board of adjustment.

(I) *Effect of approval.*

An approved application for a special use permit and all conditions which may be attached to the approval are binding on the property. All subsequent development and use of the property shall be in conformance with the special use permit and all plans, specifications, and conditions unless such are amended or the permit terminated by the board of adjustment.

(J) *Subdivisions.*

Approval of applications involving major subdivisions of land, as defined in the Town of Richfield subdivision regulations, shall be contingent upon preliminary plat approval by the planning board. Approval of the plat shall allow the applicant to proceed with the development as approved within the permit.

(K) *Effect of denial.*

(1) If an application for a special use permit is denied by the board of adjustment, a reapplication for that special use on that property shall not be made within one year of the date of denial.

(2) The board of adjustment may allow re-submission of the application within the one-year restricted period, however, if it determines that, since the date of action on the prior application, one of the following criteria has been met:

a) The town council has adopted a new or amended plan for the area that changes public policy regarding how the subject property and/or the general area affected by the special use permit should be developed; or

b) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the type and intensity of development which would be allowed under the proposed special use permit; or

c) There has been a substantial change in conditions or circumstances, outside the control of the applicant, which justifies waiver of the one-year restriction on resubmission of a special use permit application for the property; this shall not include a change in the ownership of the subject property nor a change in the scale or features of the development proposed in the prior application.

(L) *Amendment to an approved special use permit.*

(1) Any major change to a development approved by special use permit shall require an amendment to the special use permit by the board of adjustment. Any proposed change in use, increase in density or intensity, decrease in open space and common recreational facilities, substantial change in the location of uses or streets from what is shown on the approved plans, any change in a condition imposed on the use by the board of adjustment, or any other change the zoning administrator determines is significant shall be deemed a major change requiring an amendment to the special use permit. Factors to be considered by the zoning administrator in determining if a change is substantial include, but are not limited to, the extent of the change, the expected impact on adjacent properties, and the impact on offsite streets and other public infrastructure. Otherwise, minor changes to a permit may be approved by the zoning administrator.

(2) The owner of property which is subject to an approved special use permit may petition for an amendment of the special use permit and accompanying conditions by following the procedures applicable to initiation of new special use permits.

(3) Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original special use permit, any plans or conditions which were a part of the original special use permit, and the present standards and requirements in this zoning ordinance.

(M) *Appeals.*

Any person who has standing under G.S. § 160D-1-2 or the town may appeal a decision to the Board of Zoning Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D-4-3(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service (G.S. 160D-405(d)).

(N) *Recognition of previously approved conditional/special use permits.*

Conditional or special use permits which have been previously granted by the board of adjustment of the Town of Richfield and conditional or special use permits previously granted by Stanly County will be recognized for building permit and other administrative purposes during the period of time the project was

vested by the ordinance under which it was approved. After the vesting period, if construction of the development has not begun or there is no valid building permit in effect for the property, the conditional or special use permit will be considered null and void.

(O) *Revocation of a special use permit.*

(1) If at any time the zoning administrator determines that construction inconsistent with the approved special use permit is occurring within the development, he shall cause to be issued a stop work order on such construction, and he shall notify the responsible parties of the violation who will immediately cease and desist further work on the project. If the nonconforming construction is not brought into compliance with the permit or the applicant has not filed an appeal with the board of adjustment within thirty days, the zoning administrator may initiate a revocation of the special use permit. The zoning administrator may also act to suspend the issuance of any additional building permits within the development if he has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of nonconformance.

(2) If the nonconformance involves a completed, unoccupied building, no certificate of occupancy shall be granted for such building until the violation is corrected. If the nonconformance involves initial construction or provision of any of the public facilities, open space, required landscaping, or similar common features of the approved permit, no building permits or certificates of occupancy will be issued within the development until the violation is corrected or a new special use permit has been granted by the board of adjustment.

(3) Action to revoke a permit shall be taken by the board of adjustment after receiving a request from staff. Such a request shall be in writing and shall declare that the applicant and all property owners within the development, as recorded at the register of deeds office, have been notified at least ten days before the meeting of the pending action and the date, time, and place of the board of adjustment meeting at which the request will be made. Said applicant and property owners shall have the right to appear before the board of adjustment at said meeting and show cause why the board of adjustment should not revoke the permit. Notification shall be deemed given when written notice is sent by first class mail to the property owner at the address shown on the most recent property tax records and one or more signs are posted in prominent locations on the subject site reasonably calculated to give notice of the action.

(P) *Expiration of a special use permit.*

(1) Approval of a special use permit shall confer upon the developer all vested rights as set forth in this ordinance.

(2) In order for a special exception use permit to remain in effect for a particular development, a valid building permit must be issued for construction within the time period vested. If at any time after this date, construction has not been completed and no valid building permits are outstanding for construction within the development, the special use permit shall expire. No further construction may occur within the development until a new special use permit has been issued by the board of adjustment. Application for a new special use permit shall follow the procedures outlined in this section.

9-6. Site Development Plan Requirements.

(A) *Major site development plans shall include:*

(1) *Location map.*

May be drawn on the same sheet as the survey and features map at a scale of 1" = 2,000', indicating the location of the site, in three copies and showing:

- a) The site and ownership of adjacent lots or tracts of land;
- b) The intersection of at least two public streets nearest the property and the names of all public ways, opened or unopened, clearly indicated;
- c) North arrow;
- d) Title block shall contain the following information:
 - 1) Site plan name; and
 - 2) Name and address of owner and petitioner.

(2) *Survey map of site.*

May be combined with a features map, submit one copy indicating bearing and distances of the boundaries of the site prepared by a registered engineer or surveyor licensed to practice in North Carolina and contain his seal.

(3) *Existing features map.*

May be combined with the survey map, to show all existing features of the site plan plus all land within twenty-five feet of the site at the scale of not smaller than 1" = 100', unless approved by the zoning officer, showing:

- a) Rights-of-way and easements, utilities on, over and under the site (including storm drains, pipes and catch basins), if applicable;
- b) All existing structures including walls, fences, and other manmade features of the site;
- c) Topography shown at not greater than five foot contour intervals;
- d) Streams, floodway boundaries, delineation of the 100 year flood plain elevation, ponds, lakes, wooded areas and other natural features;
- e) Driveways, drives, walk-ways, and curb-cuts;
- f) Proposed roadway improvements, if any, serving the site shall be provided;
- g) Any other necessary information requested by the zoning officer for site plan review;
- h) Title block shall contain the following information:

- 1) Site plan name;
 - 2) Name and address of architect, land planner, landscape architect, engineer or surveyor who prepared the map;
 - 3) Date survey was made; and
 - 4) Scale, date and north arrow.
- (4) Development plan map of the site at a scale of no smaller than 1" = 100' (at the same scale as the existing features map) showing:
- a) Proposed finished grade at no greater than five contour intervals;
 - b) Natural features to be left undisturbed and/or landscaped areas or buffers to be created.
 - c) Proposed drainage;
 - d) Proposed location of utilities;
 - e) Proposed location of public streets and private drives, including rights-of-way and pavement widths, curb-cuts, pedestrian ways and other paths, proposed parking and loading areas;
 - f) Location of structures, fences, walls, signs, plantings, exterior lighting, and solid waste disposal facilities;
 - g) Number of proposed dwelling units by type, size and proposed ownership;
 - h) Total acreage, acreage of building coverage, acreage in common open space, acreage (square footage) in roads, and acreage suitable for active recreational use shall be shown, indicating proposed use thereof. Common open spaces as computed shall not include streets, drives, parking or loading areas;
 - i) Height of buildings;
 - j) Other information deemed necessary by the zoning administrator for site plan review; and
 - k) Title block containing:
 - 1) Site plan name;
 - 2) Name and address of architect, land planner, engineer, or surveyor;
 - 3) Scale, date and north arrow.

(B) For property to be developed in sections or phased, detailed site plans containing the above information need not be submitted for the entire property. However, conceptual or schematic plans shall be submitted in order to show the relationship of the section under review to the entire project.

9-7 (Reserved)

9-8 (Reserved)

9-9 Amendments.

Zoning regulations and restrictions, zoning district boundaries, may from time to time be amended, supplemented, changed, modified or repealed, in the following manner:

The Planning Board or the Town Board may, on their own motion, institute an application for a change in the text or a change in the zoning map, provided that the Planning Board be allowed at least 30 days for review of any proposed amendment. [G.S.160D-604] In addition, any interested person may submit an application for a change in the text or map of this Land Development Ordinance. The Zoning Administrator shall be responsible for entering amendments to the Official Zoning Map. Entries shall be made within five (5) working days of the date of passage of amendments.

(A) Each entry of amendments must be authenticated by the Zoning Administrator and shall maintain a record of the nature and date of each amendment entry.

(B) Changes to the Official Zoning Map, other than those authorized by duty approved amendments to this Ordinance, shall not be made and be considered a violation of this Ordinance.

(C) Amendments to the Zoning Ordinance which result in the change in classification of any piece of land shall become effective immediately upon the enactment of such amendment.

(D) For amendments to the Official Zoning Map, notice shall be sent to not only immediate neighbors but to properties separated by street, railroad, or other transportation corridor. Notice will be posted between twenty-five (25) to ten (10) days prior to hearing in accordance with G.S. 160-601.

(E) Conditional Zoning Districts- Where the regulations and restrictions applicable within a zoning district permitting a proposed use are inadequate to ensure the compatibility of a proposed development with the immediately surrounding neighborhood in accordance with the principles of this Ordinance and applicable adopted plans, the property owner may apply for rezoning to a conditional zoning-district bearing the same designation as a standard zoning district but subject to additional conditions e.g. CD-BG, CD-IG. All regulations which apply to a general use zoning district also apply to the companion conditional zoning district. All other regulations, which may be offered by the property owner and approved by the Governing Body as a part of the rezoning process shall also apply.

General Requirements

Conditional zoning-application. The conditional zoning district application shall be considered only upon request by the property owner(s). The owners(s) may specify the use(s) of the property and shall propose conditions to ensure compatibility between the development and the surrounding neighborhood. A site plan is required for any development pursuant to a conditional zoning district request in the same manner as other development plans required by this ordinance. Corresponding zoning district shall be met, except to the extent that the conditions imposed are more restrictive than the district standards.

Conditions.

A Conditional Zoning shall specify the uses which are permitted on the property to one or more use(s) otherwise permitted in the zone. specific development plan may further specify the location on the property of the proposed use The rezoning and the site-, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and street addresses, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters agreed to zone in the rezoning. In rezoning to a conditional zoning district, the applicant shall have a reasonable opportunity to consider and respond to any conditions proposed by the governing body before final action. Evidence of the applicant's agreement shall be documented by the applicant's signature on the conditions adopted by the governing body.

The signed conditions shall be retained by the Town and a copy provided to the applicant.

(F) General Zoning Districts Procedures- Applications for rezoning to a general zoning district (e.g. R-10 to NB, etc.) shall be processed, considered and voted upon in the same manner as that required under 160D.

(G) *Application for a text amendment.*

A petition for amendment to the text of this ordinance shall consist of:

- (1) A completed application form.
- (2) A written justification for the requested amendment including consistency of the proposal with town planning policies.
- (3) All appropriate fees.
- (4) Any other information deemed necessary by the zoning administrator or review board.

(H) *Application for a map amendment.*

(1) If the proposed amendment would require a change in the zoning map, an accurate diagram shall be submitted to the zoning administrator of the property proposed for rezoning showing:

- a) All property lines with dimensions including north arrow;
- b) Adjoining streets with rights-of-way and paving widths;
- c) The location of all structures, the use of all land;
- d) Zoning classification of all abutting zoning districts; and
- e) A statement regarding the changing conditions, if any, in the area or in the town generally, that makes the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.

(2) At least seven days prior to the time that any petition to change the zoning map is considered by the planning board, the property sought to be rezoned shall be posted with a sign giving notice that said petition is pending; provided, however, that this provision is an accommodation to the public and failure to post shall not invalidate any action with regard to the petition. In the event said petition involves several properties, or property not adjoining a state maintained road, the zoning enforcement officer shall post signs where, in his opinion, notice would best be given to the public.

(3) Protest petitions may be allowed as prescribed in GS 160D-603, et. seq.

(4) A petition for amendment to the zoning map shall consist of:

- a) A completed application form.

- b) A list of adjoining properties including tax parcel numbers and the name and address of each owner. For the purposes of this section, adjoining property owners shall include owners of properties lying within 100 feet of the subject property if located across a public or private street.
- c) A map of the parcel and its relationship to the general area in which it is located.
- d) All appropriate fees.
- e) A statement prepared by the applicant analyzing the reasonableness of the proposed rezoning.
- f) Any other information deemed necessary by the zoning administrator or review board.

g) Every proposed amendment, supplement, change, modification or repeal to this chapter shall be referred to the planning and zoning commission for its recommendation and report (G.S. 160D-604(c), (e)). The owner of affected parcels of land, and the owners of all parcels of land abutting that parcel of land, shall be mailed a notice of the hearing on a proposed zoning map amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor. Additionally, the town shall prominently post a notice of the public hearing on the site proposed for rezoning the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within twenty-five days prior to the hearing until 10 days prior to the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the town shall post sufficient notices to provide reasonable notice to interested persons (G.S. 160D-602).

h) Plan consistency. When adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Council, that at the time of action on the amendment, the Town Council was aware of and considered the planning board’s recommendations and any relevant portions of an adopted comprehensive plan. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-6-2(b), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(I) Conditional district rezonings.

(1) Initiation.

The reclassification of property to a conditional district rezoning may be initiated only by the property owner(s), or an agent authorized by affidavit to act on the owner’s behalf.

(2) Petition.

A request for rezoning to a conditional district rezoning shall include an official petition consisting of the following:

- a) A completed application form.

- b) A list of adjoining properties including tax parcel numbers and the name and address of each owner. For the purposes of this section, adjoining property owners shall include owners of properties lying within one hundred feet of the subject property if located across a public or private street.
- c) A map of the parcel and its relationship to the general area in which it is located.
- d) All appropriate fees.
- e) A Level 2 site plan.
- f) A written description or notation on the map explaining the proposed use(s) of all land and structures, including the number of residential units or the total square footage of any nonresidential development.
- g) Any other information deemed necessary by the zoning administrator or review board.

(3) *Conditions.*

Prior to the action on the proposed amendment (which may also include a period after the public hearing) any planning board or town council member (or any group of members not comprising a majority of such board) may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal. The specifics of the plan may be negotiated to address community issues or concerns and to ensure that the spirit and intent of this ordinance are preserved. During the public hearing, the town council may suggest additional features to be included or reflected in the proposal prior to taking action on the request. Specific conditions applicable to the district may be proposed by the petitioner or the town, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to town ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

(4) *When development has not begun within three years.*

The property owner shall commence construction in accordance with the approved development plan within three years after the rezoning. If the planning board determines that construction has not commenced in accordance with the plan within such a time period, it may, at its discretion, recommend to the town council that the town rezone the property to an appropriate general-use zoning district.

(J) *Copies.*

The zoning administrator shall determine the number of copies of each petition and other required documentation to be submitted by the petitioner so that copies may be circulated to all appropriate staff, agencies, and boards for review and comment.

(K) *Withdrawal or amendment of petition.*

(1) A petition filed according to this section may be withdrawn by the petitioner at any time up to the scheduling, by the town council, of the date of the public hearing on the petition.

(2) If the petitioner wishes to withdraw the petition after the scheduling of the public hearing, the petitioner may file a request to withdraw with the town clerk. On the date scheduled for the hearing, the

town council may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

(3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the zoning administrator no later than three weeks prior to the scheduled public hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public hearing. No changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, planning board, town council, and other interested parties may be presented at the hearing and considered by the planning board and town council during their deliberations.

(4) If the town council deems any amendment to be a substantial change to the petition, it shall defer action on the petition for thirty days to allow interested parties the opportunity to comment on the amendment to the petition.

(5) If the town council deems any amendment to be an intensification of the petition, it shall call a new public hearing.

(L) *(Reserved)*

(M) *Hearing.*

(1) The town council may refuse to call for a public hearing on any petition for amendment to the zoning text or zoning map if, in the town council's opinion, such petition lacks merit.

(2) Notice of public hearings required under these regulations shall be in accordance with the North Carolina General Statutes.

(3) Notice of any request for a change in the zoning map shall state that the planning board and town council may consider the application of any of the zoning districts to the property, not just the classification requested.

(4) *Conduct of public hearing.*

a) No amendment shall be adopted until after the town council has held a public hearing on the proposed amendment.

b) The hearing shall be conducted in accordance with rules and procedures established by the mayor and town council.

c) When presenting a petition for the reclassification of property to a general-use district, as opposed to a conditional zoning district, the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development site design, except for those which would apply to any use or development site design permitted in the requested district.

(M) *Recommendation and decision.*

(1) No proposed amendment shall be approved unless it is first submitted to the planning board for a recommendation. If the planning board does not make a recommendation to approve, approve with conditions, deny, or defer a decision on the proposed amendment within thirty-one calendar days after the petition has been referred to it, then the planning board shall be considered to have recommended deferral for

additional deliberation. The petition, along with the recommendation of the planning board, shall be placed on the agenda of the town council at its next regular zoning meeting.

(2) The town council, after receiving the recommendation of the planning board, shall within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications. (G.S 16D-604)

(3) In considering any petition to reclassify property the planning board in its recommendation and the town council in its decision shall consider all of the following:

a) Whether the proposed reclassification is consistent with the purposes, goals, objectives, and policies of adopted plans for the area.

b) Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property.

c) The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, hospitals and medical services, schools, stormwater drainage systems, water supplies, and wastewater and refuse disposal.

d) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.

(4) When considering a petition to reclassify property to a general-use district, the planning board and the town council shall not evaluate the petition based on any specific proposal for the use of the property or design of the site.

(5) In approving an amendment to reclassify property to a general-use district or, with the consent of the petitioner, to a conditional district, the town council may change the existing classification of the property, or any part of the property covered by the petition, to the classification requested or to any other classification or classifications permitted by this ordinance.

(6) The town council may modify any proposed text amendment upon adoption of an ordinance enacting the amendment, without the withdrawal or modification of the petition or further public hearings, when, in the opinion of the town council, such a change would not require a separate public hearing.

(N) *Effect of the denial of a petition.*

(1) A petition for the reclassification of property that has been denied in whole or in part shall not be re-submitted within one year of the date of the town council's action on the original petition.

(2) The town council may, however, allow re-submission of a petition within the one-year restricted period if it determines that, since the date of action on the prior petition, one of the following criteria has been met:

a) There has been a similar change in the zoning district classification of an adjacent property.

b) The town council has adopted a new or amended plan for the area that changes public policy regarding how the property affected by the amendment should be developed.

c) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the intensity of development allowed under the proposed classification.

d) There has been a substantial change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one-year restriction on a new petition. This shall not include a change in the ownership of the subject property nor, in the case of a petition for reclassification to a conditional or overlay district, a change in the scale or features of the development proposed in the prior petition.

9-10. Enforcement.

(A) *Remedies.*

(1) *Enforcement by a zoning enforcement officer.*

a) It shall be the duty of the zoning enforcement officer to initiate proceedings for the enforcement of these regulations.

b) If the zoning enforcement officer discovers a violation of these regulations, the zoning enforcement officer shall notify the violator, and give the violator a specified time to correct the violation. If the violation continues or is not corrected, the zoning enforcement officer shall initiate proceedings for enforcement as described in this section. A notice of the violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud (160D-404(a)).

(2) *General enforcement provisions.*

The provisions of this section may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section. If a person continues to fail to comply with a particular provision of these regulations after the imposition of any one type of penalty, the person shall continue to remain subject to the remedies prescribed by this section for the continued violation of the particular provision of these regulations, the zoning enforcement officer, or any persons who would be damaged by such violation may institute an a citation to secure injunctions and abatement orders to further ensure compliance with the zoning ordinance, or take any other appropriate action to prevent such violation in accordance with N.C. General Statute provisions. Each day's continuing violation shall be a separate and distinct offense and may be subject to any one, all, or a combination of the remedies authorized and prescribed by this section. In addition to the other remedies cited in this article for the enforcement of its provisions, and pursuant to N.C. General Statute 160D-404 and Statute 160D-1129(k), the regulations and standards of this article may be enforced through the issuance of civil penalties by the Administrator or Town Board.

If a violation is repeated within a two-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this section. A repeat violation is one which is identical to or reasonably similar to a previous violation for which the town has issued a notice of violation or civil citation.

(3) *Criminal penalties.*

Violation of this ordinance shall not subject the offender to criminal penalties.

(4) *Citations.*

a) The zoning enforcement officer is empowered to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of these regulations. A violator shall be deemed to

include the owner of the premises, the agent of the owner authorized to be responsible for the premises or the occupant of the premises. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the premises each has a duty to maintain the premises in compliance with these regulations. A citation shall not be issued to a non-occupant owner, agent or occupant for those premises unless there has been written notification to the owner, agent, or occupant, or mailed to the last known mailing address as shown by public records, or by making other reasonable efforts to communicate the existence to the violation to the owner, agent or occupant.

b) The initial citation for each violation shall be \$50. The issuance of a second citation for any violation that has not been corrected shall be in the amount of \$200 upon the date of issuance, \$500 for the third citation and \$500 thereafter. Any unpaid citations and delinquency charges shall be cumulative, and shall subject the violator to a possible civil penalty to be recovered in a civil action in the nature of debt. The citations may be delivered in person to the violator(s) or, the citation may be mailed, certified return receipt requested.

c) The citations shall direct the violator to make payment at the town finance officer within fifteen days of the date of the citation or alternatively pay the citation by mail. If the violator does not make such payment or does not mail the citation and payment within fifteen days from the date of issuance, a delinquency charge of \$10 shall be added to the amount shown on the citation or criminal summons may be filed if the citation and delinquency charge is not paid within fifteen days from the date of the delinquency. Further, the citation shall state that the violation is a continuing violation, and additional citations may be issued.

(B) *Civil judicial remedies.*

(1) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of these regulations, the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violations, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. The General Court of Justice shall have jurisdiction to issue such orders as may be appropriate.

(2) If the zoning ordinance makes unlawful a condition existing upon or use made of real property, then the zoning ordinance may be enforced by injunction and order of abatement and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs, the town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commending the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

(3) In addition to an injunction, the court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed, or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all cost of the proceedings, and posing a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard, and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(C) *Remedies: "Stop Orders"*.

(1) Whenever any building or structure is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, in a manner that endangers life or property or in substantial violation of this ordinance, the zoning enforcement officer may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. This stop order shall be in writing, directed to the person doing the work, and shall state the specific work conditions under which the work may be resumed. The owner or builder may appeal from a stop order to the mayor within a period of five days after the order is issued.

(2) Notice of appeal shall be given in writing to the mayor, with a copy to the zoning enforcement officer. The mayor shall promptly conduct a hearing at which the appellant and the zoning enforcement officer shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the mayor on an appeal no further work shall take place in violation of a stop order. Violation of a stop work order shall constitute a misdemeanor.

9-11. Moratoria

(A) The Town may adopt temporary moratoria on any development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-601. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160D-1108 is outstanding, to any project for which a special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160D-108.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the Town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the Town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the Town and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the Town shall have taken all reasonable and feasible steps proposed to be taken by the Town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the Town shall have the burden of showing compliance with the procedural requirements of this subsection. [G.S. 160D-107 (D)]