

Article III.
Administration

3.1 The Staff.

(A) *The Planning Director.* The Planning Director shall have the following powers and duties to be carried out in accordance with these regulations, which include but are not limited to:

- (1) To serve as staff to the Town Board, the Planning Board, and the Board of Adjustment with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, amendments to the zoning maps and comprehensive plan, appeals, variances, permit requests, and any other matters brought before them under this article.

- (2) To maintain the text of these regulations and the zoning maps.

- (3) To maintain development review files and other public records related to the administration and enforcement of these regulations.

- (4) To review applications for zoning permits filed under these regulations.

- (5) To recommend and comment on proposed amendments to these regulations and to the zoning maps.

- (6) To establish such rules of procedure and permit application forms as are necessary and proper for the administration of their responsibilities under these regulations.

- (7) To determine street classifications not otherwise specified on the adopted Town of North Wilkesboro Thoroughfare Plan.

- (8) To administer the water supply watershed protection regulations contained herein, including the following additional duties:
 - a) To serve as staff to the Board of Adjustment when it is serving in its capacity as the watershed review board.
 - b) To submit copies of all amendments upon adoption to the supervisor of the classification and standards group, water quality section, division of water quality.
 - c) To keep records of variances granted to the watershed regulations. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
 - d) To keep records of the Town's utilization of the 10/70 Provision, including any acreage allocated by Wilkes County to North Wilkesboro. Such records shall include the total acres of non-critical area eligible to be developed under the 10/70 Provision, and individual records for each project showing the following information: location, acres, site plan, use, and total allocation of the 10/70.

e) To monitor land use activities in the watershed to identify situations that may threaten water quality. The Zoning Administrator shall report these situations to the agency with direct regulatory responsibility for these activities.

(B) *The Zoning Administrator.* The Zoning Administrator is charged with enforcing the provisions of the zoning regulations as set out herein. If the Zoning Administrator shall find that any of the provisions of this article are being violated, he shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering that necessary actions be taken to correct the deficiency. He shall:

- a) order discontinuances of illegal uses of land, buildings, or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes; and discontinuance of any illegal work being done; and shall
- b) take any other action authorized by this article to insure its compliance. The Zoning Administrator shall be designated by the Town Manager.

(C) *The Technical Advisory Committee.* The Technical Advisory Committee shall be appointed by the Planning Director and shall meet when needed to discuss land use issues and to review development proposals. The recommendations of the committee shall be forwarded to review boards by the Planning Director for their consideration in making decisions regarding rezonings, conditional use permits and any other issue related to land use and development as governed by this article within the zoning jurisdiction of the town.

(D) *The Town Manager.* The Town Manager shall appoint the Planning Director and the Zoning Administrator and shall have the authority to exercise any and all duties and authorities assigned to such.

3.2 The Boards.

(A) *The Planning Board.* The Planning Board shall have the duties prescribed by the Town Board of the Town of North Wilkesboro. In summary, those duties related to this article include, but may not be limited to, the following:

- (1) To review and from time to time initiate changes to this article.
- (2) To review and make recommendations on applications for changes to this article or the zoning maps.
- (3) To review and make recommendations on any permit application to be heard by the Town Board.
- (4) To update and recommend changes to the Town's Comprehensive Plan.

(B) *The Board of Adjustment.*

(1) *Establishment.* The Board of Adjustment of the Town of North Wilkesboro shall consist of seven members; five regular members and two alternates. Five members shall be appointed by the Town Board. Two extraterritorial members shall be appointed by the Board of Commissioners of Wilkes County. From this total, the Town Board shall appoint two alternate members.

(2) *Powers and duties.* The Board of Adjustment shall have the following powers and duties:

- a) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Planning Director, Building Inspector, or Zoning Administrator in the administration and enforcement of this article.
- b) To grant variances from the terms of this article according to the standards and procedures prescribed herein.
- c) To grant conditional use permits.

(3) *Members from within the town limits.* The Town Board shall appoint each member and alternate for a term of three years. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be June 30th of the year in which said term is to expire and the term of office of the succeeding member shall begin on July 1st. If the original members are appointed such that their terms of office begin prior to July 1st, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent that original members shall serve terms of one to three years plus a period of time between their initial appointments and June 30th of the year of their initial appointment. A member shall be eligible for reappointment at the end of his expired term for any position on the board for which he is qualified. For purposes of this article, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment, and also to members and alternates appointed to newly created seats upon any expansion of the Board of Adjustment.

(4) *Extraterritorial members.* Extraterritorial members shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the June 30th of the year in which said term is to expire and the term of office of the succeeding member shall begin on July 1st; provided further that if the original members are appointed such that their terms of office begin prior to July 1st, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the Board of Commissioners of Wilkes County.

(5) *Meetings.* All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. The board may adopt rules of procedure. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board, all of which shall become a part of the public record. In addition, all records of

variance appeals and conditional use permits shall be filed at the Wilkes County Register of Deeds regarding the applicant's property.

(6) *Quorum.* No final action shall be taken on any matter unless a quorum is present. For the purposes of granting variances, appeals, and permits, a quorum shall be 4/5ths of the sitting members of the board. For the purposes of conducting other business related to the function of the board, such as adopting or amending rules of procedure or approving the agenda, all regular and alternate members may vote.

(7) *Re-hearings and appeals from a decision of the Board of Adjustment.*

a) *Rehearing.* An application for a rehearing shall be made in the same manner as provided for an original appeal within a period of thirty days after the board's decision has been filed with the town clerk or his/her designee. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions of the case, shall be presented in writing or graphically. The board shall deny a rehearing, if, in its judgment, such change in facts, evidence or conditions has not been proven. In the event that the board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as for the original hearing.

b) *Waiting period required.* Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has been conducted, whichever is applicable, a similar application may not be filed for a period of one year after the date of denial of the original application.

c) *Appeals.* Any person or persons, jointly or severally, aggrieved by any decision of the board may, within thirty days after the board's decision, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the board shall be subject to review by superior court proceedings in the nature of certiorari as provided by law.

(C) *The Board of Commissioners.* The Town Board of commissioners shall have the following duties related to this article:

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

(2) To decide upon any application or request for amendment to this article or the zoning maps.

(3) To take any other action not delegated to the Planning Board or Board of Adjustment as the board may deem desirable and necessary to implement the provisions of this article.

3.3 Permits.

(A) *Permit required.* No building or land shall hereafter be used or occupied and no building or structure shall be erected, expanded or moved until a zoning permit as required by this article

shall have been issued. The form and content of such permit, when not expressly set out in this article, shall be determined by the Zoning Administrator and may include any information required for the applicant to demonstrate an intent to comply with the zoning regulations. Zoning permit forms shall be available at the Planning and Inspections office.

(B) *Permit type.* Permits shall be required for any use by right, unless specifically exempted by this article and/or conditional or special uses.

(C) *Expiration of permit.* Any zoning permit issued by the Zoning Administrator shall become null and void after a period of one year from the date of issuance of the permit unless a valid building permit has been issued for the work authorized by the permit or, if a building permit is not required, substantial work has not begun. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.

(D) *Condition of approval.* Zoning permits issued on the basis of site plans, architectural renderings, landscaping plans, and other information submitted as part of the zoning permit application process authorize only the use, arrangement, construction, and change set forth in such approved plans and applications. Use, arrangement, construction, or change that differs from that authorized by the permit shall be deemed a violation of this article.

(E) *Right of appeal.* If a request for a zoning permit from the Zoning Administrator is disapproved or if a ruling of the Zoning Administrator is questioned, the aggrieved party may appeal such ruling to the Board of Adjustment in accordance with Section 3.5.

(F) *Site plan required.*

(a) *Requirement.* Prior to approval and issuance of a zoning permit for any new structure or expansion to an existing structure permitted under this chapter and any new impervious coverage on any lot (excluding single family detached residential) in a designated water supply watershed, all applicants shall be required to submit a site plan as outlined below. All site plans must be reviewed by staff and found to meet submission requirements before any application for a zoning permit is deemed to be complete.

(b) *Single Family Residential Structures.* The site plan shall show the approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines as required. This type of site plan may be drawn by the applicant and does not require an engineer, surveyor, or landscape architect's seal unless such development appears to lie wholly or in part within a federally designated floodplain or a required watershed buffer area.

(c) *All uses except single family residential structures, signs, flags, and similar structures.*

(1) The site plan shall show:

(a) The approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines and distances from other structures.

(b) Adjacent streets and street right-of ways.

- (c) Adjacent property lines, owners, uses, and zoning districts.
- (d) The location of any federally designated floodplain.
- (e) The location of any required watershed buffer area.
- (f) The location of all existing and proposed public easements.
- (g) The location of any proposed parking and loading and screening which may be required by this section.

(2) These site plans must be sealed by a registered engineer, surveyor, architect or landscape architect licensed to practice in the State of North Carolina.

(3) The Planning Director, at his/her discretion may waive the site plan requirements in F(c) above.

(d) All new development on vacant lots or change in land use on existing lots shall be required to submit the following in addition to the site plan outlined in Section 3.3(F)(c)(1) above:

(1) Landscape Plan Requirements

Landscape plans shall clearly demonstrate conformance to the intent of all applicable sections of this Title. Landscape plans shall be submitted at a scale of 1"=30' or other appropriate scale acceptable to the Administrator, and shall include:

- (a) Planting plan showing location, quantity, and type of proposed plantings including existing trees to remain and new trees as required by Section 9.2 (C) and 9.7.
- (b) Planting schedule listing all plant materials by botanical name, common name, quantity, and size at installation.
- (c) All horizontal landscape construction such as walls, drives, decks, terraces, and other features shall be labeled according to material and finish with spot elevations.
- (d) All vertical landscape construction such as walls, fences, raised decks, shelters, light standards, signs, flagpoles, trellises, seats, mailboxes, etc. shall be labeled sufficiently to indicate size, materials, and general appearance.
- (e) For any proposed irrigation, outline performance specifications, and show extent of coverage, and location of rain sensor.
- (f) In an effort to conserve water, landscape plans which utilize existing vegetation, native plants, drought-tolerant ornamental plants, and limited lawn areas are encouraged.
- (g) Plant names indicated on drawings shall comply with "Standardized Plant Names", copyright 1942, by American Joint Committee on Horticultural Nomenclature.
- (h) Plants shall comply with sizing and grading standards of the latest edition of "American Standard for Nursery Stock".

(2) Site Lighting Plan Requirements

Site lighting plans shall clearly demonstrate conformance to Article VIII Section 8.6 A-D. Site lighting plans shall be submitted at a scale of 1"=30' or other appropriate scale acceptable to the Administrator, and shall include:

- (a) Location and mounting information for each light;
- (b) Illumination calculations showing light levels in foot candles at points located on a 10-foot on center grid;
- (c) A fixture schedule listing fixture design, type of lamp, and wattage of each fixture; and
- (d) Manufacturer's photometric data for each type of light fixture.

(G) *Other requirements.* In addition to information required in this subsection, other information or documents deemed relevant by the Zoning Administrator or review board shall be required, such as evidence of approval of sedimentation and erosion control plans, prior to issuance of a zoning permit.

(H) *Permits for uses by right and uses with conditions.* A permit for a use by right and a use with conditions shall be obtained from the Zoning Administrator. Applications for a permit shall be made on a form provided by the Zoning Administrator.

(I) *Permits for conditional uses.* Permits for conditional uses shall be obtained from the Board of Adjustment. Applications for a conditional use permit shall be made on a form provided by the Zoning Administrator.

(J) *Permits for special uses.* Permits for special uses shall be obtained from the Town Board. Applications for a special use permit shall be made on a form provided by the Town Clerk.

(K) *Amendments to and Modification of Permits*

(a) Insignificant deviations from zoning or special use permits are permissible and the Zoning Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. Insignificant deviations may not exceed ten percent (10%) of any measurable standard.

(b) Minor modifications to zoning or conditional use permits are permissible with the approval of the permit issuing authority. Minor modifications are those that do not significantly change the essential character of the use or activity that has been previously authorized. If such requests are required to be acted upon by the Board of Adjustment, new conditions may be imposed in accordance with Section 3.4 (H). 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.

(c) Major changes to zoning or special use permits will be processed as new applications. Major changes are those that significantly change the essential character of the use or activity that has been previously authorized.

(d) The Zoning Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c). The determination of the Zoning Administrator shall constitute the final decision of the town and is not appealable when the determination falls within category (b) or (c) above.

3.4 Conditional Use Permits.

(A) *Permit required.* No zoning or building permit shall be issued until the Board of Adjustment has approved a conditional use permit for the requested use.

(B) *Applicants.* A request for a conditional 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 conditional use permits or amendments to any approved conditional 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 board might impose.
- (2) A complete explanation of the proposed use(s) of the property.
- (3) A site plan as specified in Section 3.3(F).
- (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 North Wilkesboro Subdivision Regulations.

(2) *Applications.* The Zoning Administrator and the technical review committee prior to Board of Adjustment review shall review all applications for a conditional use permit. The Zoning Administrator shall determine the number of copies to be submitted by the applicant to insure 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 seven working days prior to the board 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 article and all applicable regulations within the town's planning jurisdiction.

(2) *Required general findings.* No conditional use permit shall be approved by the Board of Adjustment unless the following general findings of fact are made concerning the proposed conditional 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 article.
- 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 the objectives of the most detailed plan adopted for the area in which it is located.

(F) *Withdrawal or amendment of a conditional use permit application.* An application for a conditional use permit may be withdrawn or amended as follows:

(1) A petitioner may withdraw the petition filed according to this article 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 two 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 conditional 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 conditional use will comply with all of the lot, size, yard, and other standards of this article, except as may be amended through an approved variance.

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

(H) Decision. In considering an application for a conditional 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 conditional 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 conditional 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 conditional 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 North Wilkesboro 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 the Board of Adjustment denies an application for a conditional use permit, a reapplication for that conditional 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 Board 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 conditional 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 conditional 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 conditional 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 conditional use permit.*

(1) Any major change to a development approved by conditional use permit shall require an amendment to the conditional 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 conditional 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, the Zoning Administrator may approve minor changes to a permit.

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

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

(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) *Recognition of previously approved conditional use permits.*

Conditional use permits which have been previously granted by the Board of Adjustment of the Town of North Wilkesboro and conditional use permits previously granted by the Wilkes County Board of Adjustment 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 conditional use permit.*

(1) If at any time the Zoning Administrator determines that construction inconsistent with the approved conditional 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 conditional 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 anew 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 conditional use permit.*

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

(2) In order for a conditional 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 conditional use permit shall expire. No further construction may occur within the development until the Board of Adjustment has issued a new conditional use permit. Application for a new special use permit shall follow the procedures outlined in this article.

3.5 Appeals.

(A) The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by the Planning Director, Building Inspector, or Zoning Administrator pertaining to this article.

(B) An appeal may be taken by any person aggrieved by any order, requirement, decision or determination made by the Planning Director, Building Inspector, or Zoning Administrator. An appeal to the Board of Adjustment shall be made within thirty days of the order, requirement, decision, or determination made by the Zoning Administrator.

(C) An appeal, specifying the grounds thereof, shall be filed with the Planning Director on a form provided by the Planning Director. Once an appeal is filed, the Planning Director shall forthwith transmit all paper with reference to the case to the Board of Adjustment.

(D) The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination with reference to the appeal.

3.6 Variances.

(A) When unnecessary hardships would result from carrying out the strict letter of this article, the Board of Adjustment shall vary any of the provisions of this article relating to the use, construction or alteration of buildings or structures or the use of the land, except those

specifically related to water supply watershed requirements, so the spirit of the article shall be observed, public safety and welfare secured, and substantial justice done. For variances to the requirements of a water supply Watershed Overlay District, see Article VI, Section 6.5(B)(P).

(B) Anyone requesting a variance shall file such with the Zoning Administrator on a form provided by the Zoning Administrator. Applications shall be filed at least ten days prior to the Board of Adjustment meeting at which it will be heard. After filing, the request shall be heard at the next available Board of Adjustment meeting.

(C) The Board of Adjustment, in considering an application for a variance, shall give due consideration to the following:

(1) No nonconforming use of land or structures in the same district, and no permitted use of land or structures in other districts shall be considered grounds for the granting of a variance.

(2) The request for a variance for a use that is expressly, or by inference, prohibited in the district involved shall not be granted.

(3) The fact that property may be utilized more profitably will not be considered in granting a variance

(D) The Board of Adjustment, before granting a variance, shall make all of the following findings:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article. This shall be construed to mean:

- (a) If the property owner complies with the provisions of the ordinance, he can secure no reasonable return from;
- (b) The hardship results from the application of the requirements of the ordinance;
- (c) The hardship is suffered by the applicant's property;
- (d) The hardship is not the result of the applicant's own actions;
- (e) The hardship is peculiar to the applicant's property.

(2) That the variance is in harmony with the general purpose and intent of the Zoning Ordinance and preserves its spirit.

(3) That in granting of the variance, the public safety is secured and substantial justice is achieved.

(4) That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of land or structures.

(E) The Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this article.

3.7 Amendments.

(A) *Authority.* The Town Board shall have the authority to amend the zoning text and maps as follows, except that amendments to this text which affect one or more watershed requirements, shall also follow the procedures outlined in Section 5.5(C) for amendments.

(B) *Initiation.* Any amendment to the zoning text or map, except for the classification of property to a conditional district, may be initiated by:

(1) The Town Board or the Planning Board.

(2) The property owner(s), upon filing an official petition including a complete application.

(3) A petitioner other than a board or property owner.

(C) *Application for a text amendment.* A petition for amendment to the text of this article 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.

(D) *Application for a map amendment.* A petition for amendment to the zoning map shall consist of:

(1) A completed application form.

(2) 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 public or private street.

(3) A map of the parcel and its relationship to the general area in which it is located.

(4) All appropriate fees.

(5) Any other information deemed necessary by the Zoning Administrator or review board.

(E) *Conditional district rezoning.*

(1) *Initiation.* Only the property owner(s) may initiate the classification of property to a conditional district, or an agent authorized by affidavit to act on the owner's behalf. The developer is strongly encouraged to work closely with staff and/or Zoning Administrator

and neighboring property owners before and during the application and review process to minimize delays and address concerns that may arise.

(2) *Petition.* A request for rezoning to a conditional district 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 site plan as outlined in Section 3.3(F).
- f) A written description or notation on the map explaining the proposed use of all land and structures, including the number of residential units, permitted uses, yard requirements or the total square footage of any nonresidential development and planned amenities.
- g) A preliminary subdivision plat that meets all of the requirements of the subdivision ordinance, including type and quantity for submission, where subdivision of land is proposed.
- h) Any other information deemed necessary by the Zoning Administrator or review board.

(3) *Conditions placed on modifications or changes of conditional district rezoning.*

Changes: The following changes and/or modifications to a Conditional District ordinance and site plan require consideration and approval by the Town Board. All other changes and/or modifications require consideration and approval by the Planning Director. However, if in the judgment of the Planning Director, the requested changes and/or modifications alter the basic development concept, the Planning Director may require concurrent approval by the Planning Board and Town Board.

1. Land area being added or removed from the Conditional District.
2. Modification of special performance criteria, design standards, or other requirements specified by the Conditional District ordinance.
3. A change in land use or development type beyond that permitted by the Conditional District ordinance.
4. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
5. When there is an increase in the total number of residential dwelling units originally authorized by the Conditional District ordinance.
6. When the total floor area of a commercial or industrial classification is increased more than ten percent (10%) beyond the total floor area originally authorized by the Conditional District ordinance.

7. When the Town Board mandates their consideration and approval, as a conditional of approval, if any change or variation is proposed to the Conditional District site plan and Conditional District ordinance.

(4) *Additional Requirements for Planned Developments.* In addition, the following must be submitted prior to the public hearing for PD-CD rezonings:

- a) Evidence of unified control of the area of the proposed district.
- b) Statement of agreement of all present owners and their successors in title to proceed with the proposed development according to regulations in effect when the map amendment creating the PD district is established. This statement shall be filed at the Wilkes County Register of Deeds on the subject property after approval is made for the amendment. All costs associated with filing shall be at the owner's expense.
- c) Statement of agreement of all present owners and their successors in title to provide bonds, dedications, guarantees, agreements, contracts and deed restrictions acceptable to the Town Board of Commissioners for completion of the development according to approved plans and for continuing operation and maintenance of areas and facilities not provided at public expense and such dedications, contributions or guarantees as required for public facilities and services. This statement shall be filed at the Wilkes County Register of Deeds on the subject property after approval is made for the amendment. All costs associated with filing shall be at the owner's expense.
- d) Statement of agreement of all present owners to bind future successors in title to any commitments made under (b) and (c) above.
- e) Detailed proposals in accordance with (b) and (c) above as a basis for specific modification of applicable regulations where such modification is intended to serve public purposes.

(5) *Conditions.* Prior to the action on the proposed amendment (which may also include a period after the public hearing) any Planning Board or Town Board 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 insure that the spirit and intent of this article are preserved. During the public hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.

(6) *When development not begun within three years.* The property owner shall commence construction in accordance with the approved development plan within two years after the rezoning. If the Planning Board determines that construction has not commenced in

accordance with the plan within such time period, it may, at its discretion, recommend to the Town Board that the town rezone the property to an appropriate general-use zoning district.

(F) *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.

(G) *Withdrawal or amendment of petition.*

(1) A petition filed according to this article may be withdrawn by the petitioner at any time up to the scheduling, by the Town Board, 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 Board 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 Board, and other interested parties may be presented at the hearing and considered by the Planning Board and Town Board during their deliberations.

(4) If the Town Board 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 Board deems any amendment to be an intensification of the petition, it shall call a new public hearing.

(H) *Hearing.*

(1) The Town Board may refuse to call for a public hearing on any petition for amendment to the zoning text or zoning map if, in the board'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 Board 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 Board 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 Board.
 - 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.

(I) *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 Board at its next regular zoning meeting.

(2) The Town Board, 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.

(3) The Planning Board shall include, in its written recommendation and report to the Town Board, comments on the consistency of the proposed change with the adopted Comprehensive Plan and with any other relevant plans that have been adopted by the Town Board.

(4) The Town Board shall include in making its decision, comments on the consistency of the requested change to the adopted Comprehensive Plan.

(5) Both boards in their recommendations and/or decisions 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.

(6) When considering a petition to reclassify property to a general use district, the Planning Board and the Town Board shall not evaluate the petition based on any specific proposal for the use of the property or design of the site.

(7) 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 Board 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 article.

(8) The Town Board may modify any proposed text amendment upon withdrawal or modification of the petition or further public hearings, when, in the opinion of the board, such a change would not require a separate public hearing.

(J) *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 Board's action on the original petition.

(2) The Town Board 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 Board 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.