

**ARTICLE 9**  
**REVIEW AND APPROVAL PROCEDURES**

Section 9.1	Common Review and Approval Procedures
Section 9.2	Text Amendments
Section 9.3	Rezoning
Section 9.4	Special Uses
Section 9.5	Certificate Of Zoning Compliance
Section 9.6	Site Plans
Section 9.7	Appeals and Variances
Section 9.8	Minor Adjustments and Minor Modifications

**SECTION 9.1**  
**COMMON REVIEW AND APPROVAL PROCEDURES**

Section 9.1.1	Purpose and Intent
Section 9.1.2	Authority to Submit Applications
Section 9.1.3	Form of Applications
Section 9.1.4	Processing Fees
Section 9.1.5	Application Completeness
Section 9.1.6	Pre-Application Conferences
Section 9.1.7	General Notice Requirements For Public Hearings and Evidentiary Hearings
Section 9.1.8	Public and Evidentiary Hearing Procedures
Section 9.1.9	Conditions of Approval
Section 9.1.10	Development Approvals
Section 9.1.11	Notice of Determinations Regarding Development Regulation
Section 9.1.12	Processing Cycles

**Section 9.1.1 Purpose and Intent**

The procedures established in Section 9.1, *Common Review and Approval Procedures*, are intended to be general guidelines, in conjunction with any applicable requirements prescribed by the General Statutes, for establishing the reviewing and approval processes for the various procedures set forth herein.

**Section 9.1.2 Authority to Submit Applications**

- A.** Unless otherwise prescribed by the General Statutes or provided for herein, appeals and applications for Development Approvals shall be submitted by:
1. Per NCGS 160D-403(a), the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for Development Approval for such development as is authorized by the easement;
  2. As provided in Section 9.7 ‘*Appeals and Variances*’ of this Article, a person

aggrieved by an order, requirement, decision or determination made by a public official or employee (hereinafter “official”) charged with enforcing this Ordinance; or

3. The Town’s reviewing and decision-making bodies.

**B.** When an agent submits an application on behalf of a property owner, the agent shall include with the application, a signed authorization from the owner authorizing the agency and the agent’s authority to submit the application.

**C.** When a reviewing or decision-making body initiates action under this Ordinance, it does so without prejudice toward the outcome.

### **Section 9.1.3 Form of Applications**

Applications required under this Article shall be submitted in a form and in such number as required by the Town’s responsible staff person and/or department.

### **Section 9.1.4 Processing Fees**

Applications shall be accompanied with payment of the applicable fee as set forth in the Fee Schedule.

### **Section 9.1.5 Application Completeness**

An application will be considered complete if it is submitted on an approved form together with the information required by this Article. Within five (5) business days after the Town has received an application, the Town Manager shall determine whether the application is complete. If an application is determined to be incomplete, the Town Manager shall provide written notice to the applicant explaining the deficiencies. No further processing of an insufficient application shall occur until the deficiencies are corrected in a future re-submittal. An insufficient application may or may not retain the same processing cycle as determined by the Town Manager.

### **Section 9.1.6 Pre-Application Conferences**

**A.** Before submitting any application to the Town, each applicant is strongly urged to contact the Town to schedule a pre-application conference to discuss the procedures, standards, and regulations required to meet the conditions set forth in this Ordinance.

**B.** A pre-application conference with the Town Manager shall be required for the following approvals:

1. Rezoning (Section 9.3);
2. Major Development (Section 9.5.4);
3. Special Uses (Section 9.4).

### **Section 9.1.7 General Notice Requirements For Public Hearings and Evidentiary**

## **Hearings**

**A. Content of Notices** – Any notice of a Public Hearing or Evidentiary Hearing required by the General Statutes or by this Article, shall comply with the statutory requirements applicable thereto and shall:

1. Identify the date, time, and place of the hearing;
2. Describe the subject property by its street address, Brunswick County Parcel Identification Number (PIN) and nearest cross street;
3. Describe the nature, scope, and purpose of the proposed action;
4. State that interested parties may appear at the hearing and comment on the proposed action; and
5. If applicable, indicate where additional information on the matter may be reviewed.

All notices of hearings shall be posted on the Town's bulletin board.

**B. Published Notice** – Unless otherwise provided for by the General Statutes, the Town Manager shall cause notice of the hearing to be published in a newspaper having general circulation in the area. The notice shall be published once a week for two successive calendar weeks, and shall be published the first time at least ten (10) days and not more than twenty-five (25) days before the date of the hearing. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be included.

**C. Mailed Notice** – Unless otherwise provided for by the General Statutes, the Town Manager shall cause notice of the hearing to be mailed, by first class mail, to: the person or entity whose appeal or application is the subject of the hearing; the owner of the subject property if the owner did not initiate the hearing; and, per NCGS 160D-602(a), the owners of all parcels abutting the subject property; for the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. County tax listings may be relied upon to determine owners of property entitled to mailed notice. The notice shall be deposited in the mail at least ten (10) days but not more than twenty-five (25) days before the date of the hearing. The person or persons mailing such notices shall certify that fact to the respective reviewing or decision-making body.

**D. Posted Notice** – Unless otherwise provided for by the General Statutes, and when the provisions of this Ordinance require posted notice, the Town Manager shall cause notice of the public hearing to be prominently posted on the subject property or on an adjacent street or right-of-way. When multiple parcels are included, posting on each individual parcel is not required provided that a sufficient number of notices are posted to provide reasonable notice to interested persons. The notices shall be posted

on the property at least ten (10) but not more than twenty-five (25) days before the hearing date. Posted notices shall provide contact information for interested parties to obtain information regarding the proposed application. The person posting the notice shall certify that fact to the respective reviewing or decision-making body.

### **Section 9.1.8 Public and Evidentiary Hearing Procedures**

In addition to any requirements provided by either common or codified law, the procedures and requirements set forth in this section shall apply, respectively, to all public and evidentiary hearings required under this Article.

#### **A. Public Hearings**

1. When the Town Manager has determined that an application requiring a public hearing is complete, then he/she shall set the hearing for that matter on the agenda for the appropriate meeting of the reviewing or decision-making board.
2. The Town Manager shall cause notice to be provided for the public hearing as required herein.
3. Any person may appear at the public hearing and comment, individually or as a representative on behalf of an organization, on the proposed matter.
4. Any person intending to appear at and comment during a public hearing shall sign up to speak on a form provided by the Town.
5. Persons appearing at and commenting during a public hearing shall identify themselves and provide their addresses. If appearing on behalf of an organization, then the speaker shall identify the organization and provide its mailing address.
6. The conduct and continuance of public hearings shall be in accordance with the provisions of N.C.G.S. § 160A-81.

**B. Evidentiary Hearings** - When an evidentiary hearing is required by law or by the provisions of this Article, then the procedures of any such evidentiary hearing shall include the following:

1. The administrator or staff shall follow the requirements regarding administrative materials per NCGS 160D-406(c).
2. The decision-making board must conduct a fair and impartial evidentiary hearing for the purpose of gathering competent and sufficient evidence from which it will

determine the facts of a particular case and render a decision on the merits of the subject matter by applying those facts to the applicable provisions of this Ordinance.

3. The party to an evidentiary hearing is the person or entity initiating the action (e.g. appellants; applicants). Persons and entities who could be directly affected by the decision may request to participate in the evidentiary hearing.
4. Per NCGS 160D-406(d) 'Presentation of evidence', the board chair must rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material; such ruling may be appealed to the full board.
5. Per NCGS 160D-406(d) 'Presentation of evidence', must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.
6. The decision-making board is hereby authorized to issue subpoenas compelling testimony and production of evidence deemed necessary for reaching a decision. Service of any such subpoenas shall be in accordance with the provisions of N.C.G.S. § 1A-1, Rule 45. Persons and entities with standing to appeal a quasi-judicial decision under N.C.G.S. 160D-1402(c) may make a written request to the presiding officer of the decision-making board for the issuance of a subpoena and explaining why it is deemed necessary. The presiding officer shall issue requested subpoenas which he/she determines are relevant, reasonable in nature and scope, and not oppressive. The presiding officer shall rule on any motion to quash or modify a subpoena and decisions on subpoenas made by the presiding officer may be appealed to the full board.
7. Witnesses offering testimony shall be put under oath. All of the witnesses offering testimony may be sworn in at one time at the beginning of the evidentiary hearing or each witness may be sworn in as he/she appears to testify. A witness may be affirmed if there is a religious objection to taking an oath. The oath or affirmation shall be administered by the Town Clerk or by the presiding officer of the decision-making board.
8. The parties to an evidentiary hearing may cross-examine witnesses and members of the decision-making board may examine anyone presenting evidence.
9. The party initiating the application or appeal has the burden of presenting sufficient evidence for the decision-making board to find facts and conclude whether the standards and requirements applicable to the subject matter have been met. If the evidence presented is insufficient for this purpose, then that party's

application or appeal shall be denied. If sufficient evidence is presented showing that the applicable standards and requirements have been met, then the initiating party is entitled to a decision in its favor. If the evidence is sufficient but conflicting, then the board must weigh the evidence, determine which facts have been proven, and render its decision based upon those facts.

10. Each critical finding of fact must be proved by substantial, competent and material evidence. The requirement of “competent evidence” shall not preclude reliance by the decision-making board on evidence that would not be admissible under the North Carolina Rules of Evidence if the evidence was admitted without objection or appears sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely on it provided, however, that the admission of and reliance upon any such evidence does not violate any constitutional requirements including those protecting procedural due process rights.
11. Opinion evidence on scientific, technical or other specialized issues (e.g. traffic safety issues, property values and depreciation thereof), unless offered by a properly qualified expert witness, is generally not allowed and shall not be considered by the decision-making board as the basis for any critical finding of fact. “Competent evidence” shall not include opinion testimony of lay witnesses as to any of the following:
  - a. How the use of the subject property in a particular way would affect the value of other property.
  - b. How any increase in vehicular traffic resulting from proposed development would pose a danger to public safety.
  - c. Other matters about which only expert testimony would generally be admissible under the North Carolina Rules of Evidence.
12. Members of the decision-making board shall not discuss a case or gather evidence relevant and material to any case outside of its evidentiary hearing.
13. The decision-making board shall not impose an arbitrary time limit on an evidentiary hearing provided, however, that the presiding officer may limit and prohibit unduly repetitious or irrelevant testimony. The presiding officer may also allow only a single witness representing a group with similar interests to testify on that group’s behalf.
14. Plats, site and sketch plans, maps, photographs and other documentary exhibits presented by witnesses for consideration by the decision-making board become

evidence in the evidentiary hearing and shall be retained by the Town Clerk as part of the record of that case. Each exhibit shall be clearly labeled and numbered as it is presented into evidence.

15. The decision-making board's deliberations shall be conducted in open session and members may not go into closed session to discuss the case.
16. Each quasi-judicial case must be decided on its own merits and prior decisions are not binding upon the decision-making board. However, if a different decision is reached in a case where the fact pattern is similar to a previously decided case, then the written decision shall explain why a different result was reached.
17. The decision-making board shall make findings of fact and apply those facts to the applicable standards of the Ordinance in rendering its decision. The board's decision shall be set forth in writing, signed by the presiding officer, and filed in the Town Clerk's office as provided in Section 9.7.4.A.-C. herein.
18. Once a decision is rendered in any particular quasi-judicial matter, then the matter cannot be reheard unless the Ordinance or conditions on the subject property have substantially changed.
19. The minutes of an evidentiary hearing shall be detailed, identify the witnesses, and provide a complete summary of their testimony. Audio tapes shall be made of the evidentiary hearing and retained by the Town Clerk in the event of an appeal.

#### **Section 9.1.9 Conditions of Approval**

Some procedures set forth in this Article authorize the decision-making boards to impose conditions upon the subject property deemed necessary to reduce or minimize adverse impacts upon other properties or to carry out the general purposes and intents of the Town's Comprehensive Plan and other applicable plans. All conditions shall be appropriate and reasonably related to the impacts of the proposed use or development and in no case shall a condition be less restrictive than the requirements of this Ordinance.

#### **Section 9.1.10 Development Approvals**

- A. **Permit Choice.** Per NCGS 160D-108(b), if an application made in accordance with local regulation is submitted for a Development Approval required pursuant to NCGS 160D and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.

- B. Development Approvals In Writing.** Per NCGS 160-403(a), all Development Approvals shall be in writing.
- C. Duration of Approval.** Duration of Development Approvals shall be as specified in Article 14 ‘*Vested Rights Provisions*’ of this Ordinance.
- D. Development Approvals Run With The Land.** Per NCGS 160-104, unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by Development Approvals made pursuant to NCGS 160D attach to and run with the land.

**Section 9.1.11 Notice of Determinations Regarding Development Regulation**

Per NCGS 160-403(b), determinations of development regulations require that written notice be delivered by personal delivery, electronic mail, or by first-class mail to the owner of the property that is the subject of the determination and to the party who sought the determination.

**Section 9.1.12 Processing Cycles**

The Town Manager shall issue timetables for applications filed and appeals taken under this Article. Processing timetables will be advisory, and failure to meet any such timelines will not, in and of itself, result in denials. Failing to comply with the timetables may, however, result in delayed hearings. Processing timetables may be revised from time to time taking into account the following:

**SECTION 9.2  
TEXT AMENDMENTS**

- Section 9.2.1            Purpose and Scope
- Section 9.2.2            Procedure
- Section 9.2.3            Approval Criteria
- Section 9.2.4            Effect of Decision on Successive Applications

**Section 9.2.1 Purpose and Scope**

The Board may amend the text of this Ordinance in accordance with the procedures set forth in this Section. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person or entity, but only to make those amendments deemed necessary, in light of changed conditions or changes in public policy, to correct errors, clarify regulations, or advance the general welfare.

**Section 9.2.2 Procedure**

- A. Initiation of Amendments and Filing of Applications** – Proposed text amendments may be initiated by any reviewing or decision-making board. Any resident of, or owner of a legal or equitable interest in property located within the Town’s corporate boundaries may submit an application requesting text



amendments in accordance with the provisions set forth herein. If an application from a resident or owner impacts upon that resident or owner's property, then the application shall include the names and addresses of property owners whose properties abut the subject property, including those property owners whose properties would be abutting if there were not an intervening street, road, or other right-of-way.

- B. Town Manager Review, Report, and Recommendation** – The Town Manager shall review the proposed text amendments based on the approval criteria set forth in Section 9.2.3 and the requirements of this Ordinance, and shall distribute the proposed amendments to other reviewers as deemed necessary. Based on this review, the Town Manager shall provide a report to the Planning Board and, subsequently to the Board, for use during the public hearings where the proposed amendments will be reviewed, considered, and acted upon. The report shall include a discussion of all applicable plans and policies and a recommendation regarding whether to approve or deny the proposed amendments.
- C. Public Hearing; Public Notice** – The Planning Board and the Board shall each hold a public hearing on proposed text amendments. Notice of the respective public hearings shall be provided, and the public hearings conducted, as provided in Sections 9.1.7 and 9.1.8.A above.
- D. Review and Recommendation by Planning Board** – Following a public hearing, the Planning Board shall review the proposed text amendments and recommend to the Board whether the proposed amendments should be adopted as submitted, adopted with modifications, rejected, or remanded for further consideration and additional public hearings. The Planning Board shall set forth its recommendation in a written report to be submitted to the Board within thirty (30) days after reviewing the proposed amendments. The written report shall include a statement addressing the consistency of the proposed amendments with the Comprehensive Plan, and any other applicable plan, and may also comment on other matters deemed appropriate provided, however, that a comment by the Planning Board that a proposed text amendment is inconsistent with an officially adopted plan shall not preclude the Board's consideration or approval of the proposed amendments.
- E.** In the event any resident of or property owner within the Town submits a written statement regarding a proposed amendment or modification to or a repeal of any provision of the Ordinance, said statement being submitted to the Town Clerk at least two (2) business days prior to the proposed vote on any such change, the Clerk shall deliver said statement to the Board. In the event the proposed change is the subject of an evidentiary hearing, the Clerk shall provide only the names and addresses of the individuals providing any such written statements and the provision of those names and addresses shall not operate to disqualify any

member of the board from voting on the matter.

**F. Board of Commissioners Action** – Following a public hearing on the proposed text amendments, the Board shall review the reports and recommendations of the Town Manager and the Planning Board and take into consideration any oral and written comments received at the public hearing. Following its consideration of the same, the Board shall, based on the approval criteria of Section 9.2.3, take one of the following actions:

1. Adopt the proposed amendments;
2. Adopt the proposed amendments with modifications;
3. Deny the proposed amendments;
4. Defer the proposed amendments for further consideration and additional public hearings; or
5. Remand the proposed amendments for further review and comment and additional public hearings if required.

When adopting or rejecting proposed amendments, the Board shall approve a written statement describing how its action is consistent with the Comprehensive Plan, and any other applicable plan, and explaining why the Board considers the action taken to be reasonable and in the public interest.

### **Section 9.2.3 Approval Criteria**

In reviewing proposed text amendments, the Town Manager, Planning Board, and Board shall consider the following criteria:

- A.** Whether the proposed amendments correct ambiguities or errors or meet the challenge of some changing condition, trend, or fact;
- B.** Whether the proposed amendments are consistent with the purposes, policies, intent, and provisions of the Comprehensive Plan, and any other applicable plans;
- C.** Whether the proposed amendments promote public health, safety, morals, or welfare; and
- D.** Whether the proposed amendments will result in significantly adverse impacts to the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

### **Section 9.2.4 Effect of Decision on Successive Applications**

- A. Effect of Denial** – No new application for the same or substantially similar text amendments shall be accepted within one (1) year after a denial of the originally proposed text amendments. This waiting period may be waived in an individual case, upon good cause shown, by the affirmative vote of three-fourths (.75) of the members of the Board. For purposes of this section, vacancies on the Board, and members who have been excused from voting on the matter, shall not be considered “members of the Board” for the purpose of calculating this supermajority requirement.
- B. Effect of Approval** – No request to modify approved text amendments shall be considered by the Board within one (1) year after the date of approval except by initiation of the Planning Board or the Board.

## **SECTION 9.3 REZONINGS**

Section 9.3.1	Purpose and Scope
Section 9.3.2	Procedure
Section 9.3.3	Approval Criteria
Section 9.3.4	Waiting Period for Subsequent Applications

### **Section 9.3.1 Purpose and Scope**

The Board may rezone property, *i.e.* amend the classifications of property appearing on the Zoning Map, in accordance with the provisions set forth in this Section. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person or entity, but only to make adjustments to the Zoning Map necessary in light of changed conditions, changes in public policy, or to advance the general welfare.

### **Section 9.3.2 Procedure**

- A. Initiation of Amendments and Filing of Applications** – A rezoning application may be initiated by any reviewing or decision-making board or by any owner, owner’s agent, or prospective vendee of the subject property. When the owner or prospective vendee is a private entity, then the application shall include a written statement identifying the entity and its legal status, and the name and address of each person/entity owning a ten percent (10%) or greater share thereof. When the owner is a publicly-owned entity, then the application shall include a written disclosure statement identifying the entity and its legal status, and the name and address of each person/entity owning a twenty-five percent (25%) or greater share thereof. Unless the proposed rezoning has been initiated by a reviewing or decision-making board, then an application and payment of the required fee shall be submitted to the Town Manager.

An application from an owner or prospective vendee shall include the names and addresses of property owners whose properties abut the subject property; for the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.

- B. Pre-Application Conference** – Before filing an application, a private applicant shall participate in a pre-application conference with the Town Manager (*See* Section 9.1.6).
- C. Town Manager Review, Report and Recommendation** - The Town Manager shall review each rezoning application based on the approval criteria of Section 9.3.3 and the requirements of this Ordinance, and shall distribute the application to other reviewers as deemed necessary. Based on this review, the Town Manager shall provide a report to the Planning Board, and subsequently to the Board, for use during the public hearings where the requested rezoning will be reviewed and acted upon. This report shall include a discussion of all applicable plans and policies, and a recommendation whether to approve or deny the proposed rezoning.
- D. Public Hearing; Public Notice** – The Planning Board and the Board shall hold public hearings on each requested rezoning. Notice of the respective public hearings shall be provided, and the public hearings conducted as provided in Sections 9.1.7 and 9.1.8.A herein.
- E. Review and Recommendation by Planning Board** – Following a public hearing, the Planning Board shall review the rezoning request and recommend to the Board whether the proposed rezoning should be granted, denied, or remanded for further consideration and additional public hearings. The Planning Board shall set forth its recommendation in a written report to be submitted to the Board within thirty (30) days after its review. The written report shall include a statement addressing the consistency of the proposed rezoning with the Comprehensive Plan, and other applicable plans, and may also comment on other matters deemed appropriate provided, however, that a comment by the Planning Board that a proposed rezoning is inconsistent with an officially adopted plan shall not preclude the Board’s consideration or approval of the requested rezoning.
- F. Board of Commissioners Action** – Following a public hearing on the proposed rezoning, the Board shall review the reports and recommendations of the Town Manager and the Planning Board and take into consideration any oral or written comments received during the public hearing. Following such consideration, the Board shall, based on the approval criteria of Section 9.3.3, take one of the following actions:

1. Approve the rezoning;

2. Deny the proposed rezoning; or
3. Remand the proposed rezoning for further consideration and additional public hearings.

When adopting or rejecting a proposed rezoning, the Board shall approve a written statement describing how its action is consistent with the Comprehensive Plan, and with any other applicable plan, and explaining why the Board considers the action taken to be reasonable and in the public interest.

### **Section 9.3.3 Approval Criteria**

In reviewing rezoning requests, the Town Manager, Planning Board, and Board shall consider whether:

1. The requirements of NCGS 160A-384 are met.
2. The proposed rezoning corrects an ambiguity or error or meets the challenge of some changing condition, trend, or fact;
3. The proposed rezoning is consistent with the purposes, policies, intent and provisions of the Comprehensive Plan, and other applicable plans;
4. The Town and other service providers will be able to provide sufficient services to the subject property while maintaining sufficient levels of service to existing development and uses;
5. The proposed rezoning will not result in significantly adverse impacts to the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation;
6. The proposed rezoning will not result in significantly adverse impacts to other properties in the vicinity of the subject property; and
7. The requested zoning classification is suitable for the subject property.

### **Section 9.3.4 Waiting Period for Subsequent Applications**

- A. When a rezoning application has been approved or denied by the Board, no rezoning application covering the same property shall be accepted or considered within twelve (12) months after the date of any such approval or denial. This restriction shall apply regardless of whether the new application is for a different zoning classification than the original application.
- B. The inclusion of additional lot(s) in any new application shall not be permitted when it is evident that the inclusion of the additional lot(s) is for the purpose of avoiding

the restriction set forth in A. above.

- C. The waiting period required by this section may be waived in an individual case, upon good cause shown, by the affirmative vote of three-fourths (.75) of the members of the Board. For purposes of this section, vacancies on the Board, and members thereof who have been excused from voting on the matter, shall not be considered “members of the Board” for purposes of calculating of this supermajority requirement.

## **SECTION 9.4 SPECIAL USES**

Section 9.4.1	Purpose and Applicability
Section 9.4.2	Procedures
Section 9.4.3	Effect of Approval or Denial
Section 9.4.4	Written Decision and Appeal Therefrom

### **Section 9.4.1 Purpose and Applicability**

Special uses are generally compatible with other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts, require additional consideration of their design and use at the proposed location. Such consideration may require the imposition of reasonable conditions ensuring that the special use is appropriate at a particular location. Therefore, any use designated in Article 5 or Article 6 of this Ordinance as a “special use” within a specific zoning district shall not be established without approval by the Board in accordance with the procedures and requirements set forth herein.

### **Section 9.4.2 Procedures**

**A. Pre-Application Conference** – Before submitting an application, a private applicant shall participate in a pre-application conference with the Town Manager (*See* Section 9.1.6).

### **B. Submission of Application and Content Requirements**

1. An application for approval of a special use may be submitted by the owner of the property on which the use is to be located, or by an owner’s agent or prospective vendee who has been specifically authorized in writing by the owner to submit the application, or by a governmental unit.
2. All applications shall include a Site Plan.
3. An application shall include the names and addresses of property owners whose properties abut the subject property, including those property owners whose properties would be abutting if there were not an intervening street, road,

highway, or other right-of-way

4. The application shall be submitted to the Town Manager on an approved form together with the required fee established under the Fee Schedule.
5. In the discretion of the Town Manager, an application may include a traffic impact analysis, produced at the applicant's expense and submitted to the Town Manager no later than four (4) weeks in advance of the Planning Board meeting where the application will be reviewed, for any development which may generate more than one hundred (100) vehicular trips during any peak traffic period.
6. After determining that it is complete, the Town Manager shall transmit the application, together with the plans and other materials pertaining to the application, to, the Planning Board and then the Board.

**C. Town Manager Review, Report, and Recommendation** – The Town Manager shall review each special use application based on the approval criteria of Section 9.4.3, and to ensure compliance with the requirements of this Ordinance. The Town Manager shall distribute the application to other reviewers as deemed necessary. Based on this review, the Town Manager shall provide a report to the Planning Board for use at the public hearing where it will review and comment upon the proposed special use and subsequently to the Board as sworn testimony during the evidentiary hearing where the application will be decided. The report shall include a discussion of all plans, policies, and standards applicable to the proposed use but shall not include a recommendation as to whether the Board should approve or deny the application.

**D. Public Notice** – Notice of the Planning Board and the Board's respective hearings shall be as provided in Section 9.1.7 above.

**E. Public and Evidentiary Hearings** – The Planning Board shall hold a public hearing on the proposed use in accordance with the provisions of Section 9.1.8.A. In considering and acting upon the application, the Board of Commissioners shall conduct an evidentiary hearing in accordance with the provisions of Section 9.1.8.B.

**F. Review and Recommendation by Planning Board** – Following the public hearing, the Planning Board shall review the application and recommend to the Board of Commissioners whether to approve or deny the proposed use or approve it with recommended conditions (in accordance with 160D-702. The Planning Board shall set forth its recommendation in a written report submitted to the Board of Commissioners within thirty (30) days after reviewing the application. The Planning Board's report shall include a statement addressing the consistency of the proposed use with the Comprehensive Plan, and other applicable plans, and may also comment

on other matters deemed appropriate provided, however, that a comment by the Planning Board that a proposed special use is inconsistent with an officially adopted plan shall not preclude consideration or approval of the application by the Board of Commissioners.

**G. Board of Commissioners Action** – The Board of Commissioners shall hold an evidentiary hearing. At the conclusion of the evidentiary hearing, the Board shall render a decision, by a majority vote, on the special use application. For purposes of this section, vacant positions on the Board and members who are disqualified from voting on the matter, shall not be considered “members of the Board” for purposes of calculating the requisite majority. In granting a special use permit, the Board shall find, based on the applicant showing by competent, material, and substantial evidence that:

1. The special use will not materially endanger the public health or safety if located where proposed;
2. The special use meets all required conditions and specifications;
3. The special use will not substantially injure the value of adjoining, abutting, or adjacent properties unless the use is found to constitute a public necessity;
4. The location and character of the special use, if developed according to the application, will be harmonious with the area where it will be located and in general conformity with the Comprehensive Plan and other applicable plans;
5. The special use will not be injurious to the permitted uses and enjoyment of other properties in the vicinity of the subject property;
6. The establishment of the special use will not impede normal, orderly and permitted development and improvement of properties in the vicinity of the subject property;
7. The exterior architectural appeal and functional plan of any proposed special use structure will not be significantly inconsistent with the exterior architectural appeal and functional plan of structures already constructed or being constructed in the vicinity of the subject property or the general character of the subject district;
8. Adequate utilities, access roads, drainage, parking or necessary facilities have been or will be provided; and
9. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion on applicable private and public streets.

#### **Section 9.4.3 Effect of Approval or Denial**



- A. **Conditions** – In conjunction with granting a special use, the Board may impose reasonable and appropriate conditions (in accordance with 160D-702(c)). In the event of failing to comply with any conditions imposed on an approved special use permit, the permit shall immediately become null and void with no effect. As a consequence, no building permits for further construction or CO's and CZC's shall be issued, and all previous structures constructed thereunder shall be regarded as non-conforming structures subject to appropriate enforcement and/or legal relief.

A special use permit shall become null and void if construction or occupancy of the special use is not commenced within twelve (12) months after the effective date of the written decision granting the permit. Extensions of time for approved special use permits may be granted by the Board for good cause shown, provided that an application for any such extension shall be submitted in writing to the Town Manager prior to the expiration of the permit. Although the Board may grant more than one (1) extension of a permit, no single extension shall exceed a period of six (6) months. The Board's decision not to extend a special use permit may be appealed to the Board of Adjustment in accordance with the provisions of Section 9.7, *Appeals and Variances* herein.

- B. **Subsequent Permits and Approvals** – The Board's granting a special use permit authorizes the applicant to obtain permits, approvals and certificates required for the proposed development.
- C. **Transferability of Approval** – An approved special use is not transferable from one property to another but runs with the subject property and is therefore transferable to a successor-in-interest.
- D. **Resubmission of Denied Applications** – When an application for a special use permit is denied by the Board, re-applications involving the same property, or portions of the same property, may not be submitted for a period of one (1) year after the date of the denial. Provided that a previously denied applicant can demonstrate a substantial change in the proposed use or conditions governing the use of the property or in the conditions surrounding the property itself, the Board may waive the one (1) year waiting period by an affirmative vote of three-fourths (.75) of the members of the Board. For purposes of this section, vacancies on the Board, and members thereof who have been excused from voting on the matter, shall not be considered "members of the Board" for purposes of calculating this supermajority requirement.

#### **Section 9.4.4 Written Decision and Appeal Therefrom**

- A. Board decisions on special use applications shall be made in the course of evidentiary hearings, set down in writing, reflect the Board's determination of the contested facts and the application of those facts to the applicable standards, signed by the presiding officer at the evidentiary hearing, and filed with the Town Clerk who shall indicate on the face of the decision, the date upon which it was

filed which shall be the effective date of the decision.

- B.** The Town Clerk shall deliver, by personal delivery, electronic mail, or first-class mail, a copy of the decision to the applicant, property owners, if different from the applicant, and to any other person/entity submitting a written request for a copy prior to the effective of the decision. The Town Clerk shall certify delivery of the decisions.
  
- C.** An approved Special Use Permit is not considered as final until the written decision is signed by the landowner or permit applicant (which ensures that the landowner or permit applicant consents to the conditions of the Special Use Permit, per NCGS 160D-1403.2).
  
- D.** The Board’s decision on a special use application is subject to review by the superior court by proceedings in the nature of certiorari under N.C.G.S. § 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of thirty (30) days after the effective date of the written decision or after a copy thereof is provided in accordance with subsection B above. When first-class mail is used to deliver the decision, then three (3) days shall be added to the time within which to file the petition for review.

## **SECTION 9.5 CERTIFICATE OF ZONING COMPLIANCE**

Section 9.5.1 Certificate Of Zoning Compliance Required

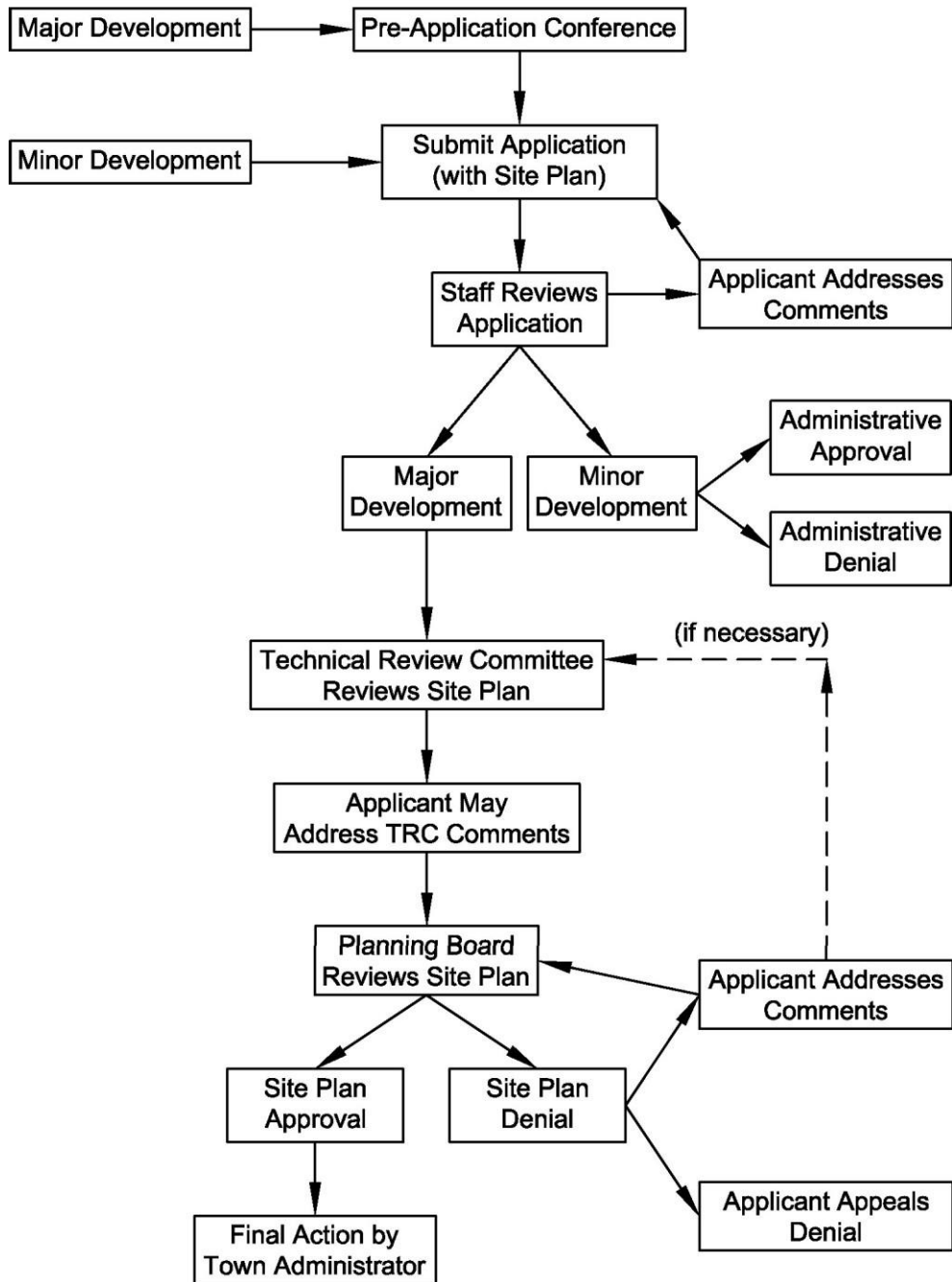
Section 9.5.2 Approval Criteria

Section 9.5.3 Minor Development

Section 9.5.4 Major Development

**Section 9.5.1 Certificate Of Zoning Compliance Required.** It shall be unlawful for any Development to occur until a Certificate of Zoning Compliance (“CZC”) application has been received and approved by the applicable reviewing entity. No building permit or Certificate Of Occupancy (“CO”) shall be issued until the required CZC has been issued by the Town. Any CZC that requires a building permit will ultimately require a CO from Brunswick County Building Inspections.

**Certificate Of Zoning Compliance (CZC) Approval Process Diagram**



**Section 9.5.2 Approval Criteria.** In approving an application, the applicable reviewing entity shall consider the following:

1. Compliance with all applicable requirements of this Ordinance;
2. Agreement with the most recently adopted CAMA Land Use Plan, and any other applicable adopted land use document(s);

### Section 9.5.3 Site Plan, Minor (See Definition of Terms)

- A. Any Minor Development is required to obtain a Certificate Of Zoning Compliance.
- B. **Approval Authority.** The Zoning Code Administrator shall be responsible for approval or denial of CZC applications for Minor Residential Development; however, the Zoning Code Administrator shall have the discretionary authority to utilize the same approval procedure for Major Development.
- C. **Application Requirements.**
  1. **Minor Residential Development.** All applications for Minor Residential Development shall include a Site Plan, unless the Zoning Code Administrator determines that it is not necessary. The Site plan may be hand-drawn. The application and Site Plan shall provide enough detail to enable the Zoning Code Administrator to determine whether or not the requirements of this ordinance are met; most often, this includes (at a minimum) showing setback distances, measured from the property line, to all proposed and existing buildings, which shall meet the setback requirements of Table 5.2 Zoning District Dimensional Requirements.
  2. **Minor Non-Residential Development.**
    - a. Site Plan. All applications for Minor Non-Residential Development shall include a Site Plan, unless the Zoning Code Administrator determines that it is not necessary. The Site Plan shall include all required items on the Site Plan Checklist (see Section 9.6.1 below):
    - b. The existing and intended use of each building or part of building.
    - c. A Landscape Plan shall be required in accordance with Section 10.1.4 '*Plans Required*', unless the Zoning Code Administrator determines that it is not necessary. The Site Plan may be utilized as the Landscape Plan as long as the information is readable and clearly conveyed.
    - d. Tree Protection is required per Section 10.5.
    - e. A Parking Plan shall be required in accordance with Section 11.1.1.M, unless the Zoning Code Administrator determines that it is not

necessary. The Site Plan may be utilized as the Parking Plan as long as the information is readable and clearly conveyed.

#### **D. Approval Procedures**

1. Upon receipt of a *complete* application (see Section 9.1.5), the Zoning Code Administrator, or their designated appointee, shall review the application for conformance with the Ordinance. The Zoning Code Administrator may appoint a professional engineer or professional surveyor to review the application to provide comments for the applicant.
2. The Zoning Code Administrator shall, in writing, approve or deny with reasons within ten (10) days of the decision. If the application is denied, the applicant may make the required changes and submit a revised application, or appeal the denial in accordance with the provisions of Section 9.7 ‘*Appeals and Variances*’.

#### **Section 9.5.4 Site Plan, Major**

**A.** Any Major Development is required to obtain a Certificate Of Zoning Compliance.

**B. Approval Authority.** The Zoning Code Administrator shall be responsible for approval or denial of CZC Applications for Major Development; the Planning Board shall be responsible for approval or denial of the required Site Plan.

1. Exemption. Approved Special Use Permits for Major Development are exempt from following the Major Development approval procedures, but should be approved by the Zoning Code Administrator as is done for Minor Development.

#### **C. Application Requirements.**

1. Site Plan. All applications for Major Development shall include a Site Plan. The Site Plan shall include all required items on the Site Plan Checklist (see Section 9.6.1 below):
2. The existing and intended use of each building or part of building.
3. A Landscape Plan shall be required in accordance with Section 10.1.4 ‘*Plans Required*’, unless the Zoning Code Administrator determines that it is not necessary. The Site Plan may be utilized as the Landscape Plan as long as the information is readable and clearly conveyed.
4. Tree Protection is required per Section 10.5.
5. A Parking Plan shall be required in accordance with Section 11.1.1.M, unless the Zoning Code Administrator determines that it is not necessary. The Site Plan may be utilized as the Parking Plan as long as the information is readable and clearly conveyed
6. In accordance with the most current edition of the NCDOT Policy on Street and Driveway Access to North Carolina Highways, applicants shall either

- a. Provide documentation from NCDOT that a TIA is not required for the proposed project, or
- b. Provide documentation of an NCDOT approved TIA for the proposed project.

provide documentation from NCDOT that a TIS is not required for the proposed project, or (2) provide documentation of an NCDOT approved TIS for the proposed project.

#### **D. Approval Procedures**

1. Upon receipt of a *complete* application (see Section 9.1.5), the Zoning Code Administrator, or their designated appointee, shall review the application for conformance with the Ordinance, including all required items on the Site Plan Checklist (see Section 9.6.1 below). The Zoning Code Administrator may appoint a professional engineer or professional surveyor to review the application to provide comments regarding conformance with the Town's requirements; the costs related thereto shall be charged to the applicant, and the Certificate Of Zoning Compliance shall not be approved until such costs shall have been paid by the applicant. The Zoning Code Administrator shall inform the applicant of any comments found during the review, which the applicant shall address and resubmit for further review.
2. After all comments from the Zoning Code Administrator have been addressed, sixteen (16) copies of the Site Plan (as well as any additional copies which the Zoning Code Administrator determines are necessary) shall be submitted to the Zoning Code Administrator.
3. The Zoning Code Administrator shall submit copies of the application and any accompanying material to other officials and agencies concerned with new development, with a request for their comments within ten (10) business days. The officials and agencies include, but are not limited to:
  - a. Brunswick County Health Services;
  - b. Brunswick County Board of Education;
  - c. The District Engineer, Wilmington Division, of the NCDOT;
  - d. Brunswick County Engineering for Stormwater Review;
  - e. The NC Department of Environmental Quality, Division of Coastal Management, Wilmington Regional Office;
  - f. U.S. Army Corps of Engineers;
  - g. Brunswick Regional Water and Sewer (H2GO);
  - h. Leland Fire/Rescue Department;
  - i. Brunswick County Fire Marshal
  - j. Chief Building Inspector of Brunswick County
4. At the end of the ten (10) day review period by other officials and agencies, the Zoning Code Administrator shall schedule a meeting with the Technical Review Committee to review the Site Plan.
5. The Technical Review Committee shall consist of the Planning Board Chairman, Belville Board of Commissioners representative, and, if deemed appropriate, a professional engineer or surveyor who shall provide comments on technical data; the costs related thereto shall be charged to the applicant, and the Certificate Of Zoning Compliance shall not be approved until such costs shall have been paid by the applicant.

6. The TRC shall provide comments regarding the technical aspects of the proposed Major Development. The Zoning Code Administrator shall prepare a staff report based on the comments provided by the Technical Review Committee. The staff report and recommendations shall be forwarded to the Planning Board for review and final action.
7. The applicant may address comments from the TRC prior to the review by the Planning Board.
8. The Planning Board shall review the Site Plan at or before its next regularly scheduled meeting which follows at least sixteen (16) days after the TRC meeting. The Planning Board will hold a public hearing prior to approving or denying the Site Plan. Before taking action on a Site Plan, the Planning Board shall consider the recommendations of the Technical Review Committee.
9. The Planning Board shall, in writing, approve or deny with reasons within ten (10) days of its decision.
  - a. If the Planning Board approves the Site Plan, it shall retain one (1) copy of the plan for its minutes and return one (1) copy of the plan, to the applicant.
  - b. If the Planning Board denies the Site Plan, it shall retain one (1) copy of the plan for its minutes, and return one (1) copy of the plan and written notice of the reasons for denial to the applicant.
  - c. If the Site Plan is denied, the applicant may make the required changes and submit a revised Site Plan, or appeal the denial in accordance with the provisions of Section 9.7 herein. During the meeting at which the public hearing is held, the Planning Board shall also determine if such a revised Site Plan shall be reviewed by the TRC.
10. Upon Site Plan approval by the Planning Board, the Town Manager shall take final action to approve or deny the CZC application.

**Section 9.5.5 Duration of Validity.** An approved Certificate Of Zoning Compliance shall remain valid for a period of two years from the date of approval. After the initial two year period, construction or development activity must be actively pursued to maintain validity.

## **SECTION 9.6 SITE PLANS**

**Section 9.6.1 Site Plan Checklist.** For all applications and circumstances that require a Site Plan per this Ordinance, the Site Plan shall contain the following:

### **A. General Information:**

1. Name and address of property owner
2. Name of property, if available



3. Name, address, registration number, and seal of the licensed North Carolina professional land surveyor(s) and/or the licensed North Carolina professional engineer(s)
4. Location (including county, state, and township)
5. A vicinity map showing proposed development and surrounding area
6. A scale of drawing in feet per inch listed in words or figures, as well as a bar graph
7. North arrow and orientation
8. Existing property lines within the proposed development and on adjoining properties
9. The names of owners of adjoining properties
10. Existing easement lines within the proposed development
11. Proposed easement lines
12. Minimum building setback lines
13. Corporate limits, township boundaries, county lines if within the proposed development
14. The exact location of the flood hazard zones from the community's Flood Insurance Rate Maps (FIRM)
15. Base Flood Elevation (BFE) data, if available
16. Surveyed delineation of wetlands<sup>1</sup>
17. Boundaries of applicable Areas of Environmental Concern in accordance with the State Guidelines for AECs (15 NCAC 7H) pursuant to the Coastal Area Management Act of 1974
18. Existing buildings or other structures, watercourses, railroads, bridges, culverts, storm drains, both on the land to be subdivided and land within 100 feet
19. Wooded areas, marshes, swamps, rock outcrops, ponds or lakes, streams or streambeds, and any other natural features affecting the site
20. Waters Classified by the NC Division of Water Resources, DEQ
21. Riding trails
22. Natural buffers
23. Pedestrian or bicycle paths
24. Parks and recreation areas with specific type indicated
25. School sites
26. Areas to be dedicated to or reserved for public use
27. Areas to be used for purposes other than residential with the purpose of each stated
28. The future ownership (dedication or reservation for public use to governmental body, for owners to duty constituted homeowners' association, or for tenants remaining in developer's ownership) of recreation and open space lands
29. The name and location of any property or buildings within the proposed development or within any contiguous property that is located on the U.S. Department of Interior's National Register of Historic Places

---

<sup>1</sup> Shall indicate approval by U.S. Army Corps Of Engineers  
Article 9 - Review And Approval Procedures  
Amended 2022-8-22

30. The accurate locations and descriptions of all monuments, markers, and control points
31. Proposed buildings
32. Existing and proposed topography

**B. The following data concerning streets:**

33. Existing rights of way (locations and dimensions) within the proposed development as well as on adjoining properties
34. Pavement widths
35. Existing street names

**C. The plans for utility layouts including:**

36. Public sanitary sewers
37. Storm sewers
38. Other drainage facilities, (if any)
39. Water distribution lines
40. Illustrating connections to existing systems, showing line sizes, the location of fire hydrants, blow offs, manholes, force mains, and valves.
41. Plans for connection to public water supply and public sewer systems, if any.

**D. Site calculations including:**

42. Acreage in parks and recreation

**E. Additional Information:**

43. Evidence that the design of all subdivision streets (private and public) is in accordance with the requirements of the most current edition of the North Carolina Department of Transportation Subdivision Roads Minimum Construction Standards (SRMCS), which shall include, but is not limited to, the following:
  - a. The soil test used to determine the pavement design (in accordance with the SRMCS 'Minimum Design and Construction Criteria For Subdivision Roads' section, subpart E 'Pavement Designs');
  - b. any plans, drawings, and/or details of the street design.
44. Any other information considered by either the applicant or the applicable reviewing entity to be pertinent and necessary for review.

**Section 9.6.2 Modifications To An Approved Site Plan**

- A. Limited changes to an approved Site Plan may be approved by the Zoning Code Administrator. In granting such approval, the Zoning Code Administrator may consult with other agencies listed in Section 9.5.4.D.3. Administrative approval

of limited modifications shall not have the effect of extending the period of Site Plan validity.

Significant changes to an approved Site Plan, including but not limited to any increase in unit density, any decrease in area or change in configuration to open space, change in use of open space, reduction in landscape or screening buffers, elimination of sidewalks, change in street dedication (public or private), or alteration to street interconnectivity between phases of development or adjoining properties, shall be resubmitted for review and approval as a new application.

## **SECTION 9.7 APPEALS AND VARIANCES**

Section 9.7.1	Purpose and Scope
Section 9.7.2	Powers and Duties
Section 9.7.3	Evidentiary Hearing and Voting
Section 9.7.4	Written Decision and Appeal Therefrom

### **Section 9.7.1 Purpose and Scope**

The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by an official charged with enforcing the Ordinance and applications for variances. The Board of Adjustment shall also hear and decide appeals of Board decisions not extending a special use permit as provided in Section 9.4.3.A. above. For the purposes of Section 9.4.3.A appeals, the Town Manager shall be deemed as the official making the decision appealed from.

### **Section 9.7.2 Powers and Duties**

**A. Appeals** – Appeals shall be heard and decided in accordance with the following provisions:

1. The official making the decision shall give written notice of the same to the owner of the subject property and to the party who sought the decision if different from the owner. The notice shall be delivered by personal delivery, electronic mail, or first-class mail.
2. The Town and those persons or entities having standing under N.C.G.S. § 160D-1402(c) may appeal the decision by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds on which the appeal is based and shall include the names and addresses of property owners whose properties abut the subject property, including those property owners whose properties would be abutting if there were not an intervening street, road, highway, or other right-of-way.

3. The appellant shall have thirty (30) days from receipt of the official's written notice within which to file the appeal. All other persons or entities with standing to appeal shall have thirty (30) days from receipt of actual or constructive notice of the decision within which to appeal. For purposes of this section only, "constructive notice" shall include the type of notice described in N.C.G.S. § 160D-405(d).
4. Within seven (7) calendar days after the date on which the appeal was filed, the official shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the appealed action was taken. The official shall provide the appellant, and the owner of the property if different from the appellant, with a copy of the record.
5. Per, 160D-405(f), appealing an enforcement order, including a Notice of Violation, stays enforcement of the action appealed from and accrual of any fines assessed 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 development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
6. In the event enforcement proceedings are not stayed, then the appellant may file a written request for an expedited hearing with the official and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after the request for an expedited hearing is filed.
7. Notice of the Board of Adjustment evidentiary hearing shall be as provided in Section 9.1.7. above.
8. Appeals of decisions granting a permit or affirming a proposed use as being consistent with the Ordinance shall not stay further review of an application for permits or permissions to use that property provided, however, that the appellant may request, and the Board of Adjustment may grant, a stay of final decisions on permit applications affected by the appeal.
9. Per NCGS 160D-406(e), the official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness.
10. If the Town or any party to the appeal is unduly prejudiced by the presentation of matters at the evidentiary hearing which were not presented in the notice of appeal, then the Board of Adjustment shall continue the evidentiary hearing for a

reasonable amount of time.

11. The Board of Adjustment may modify, reverse or affirm, wholly or partly, the decision being appealed from, the board having all of the powers of the decision-making official.
12. Appeal hearings shall be based on the transmitted record, a copy of which shall be admitted as a numbered exhibit at the start of the hearing by the official testifying under oath.

**B. Variances** – When unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall vary the provisions of this Ordinance in accordance with the following procedures:

1. Filing an application for a variance with the Town Clerk on an approved form together with the required fee under the Fee Schedule. A complete application shall include the following:
  - a. A small scale map or plan showing the location of the subject property with respect to existing streets, adjacent and abutting parcels, including those separated from the subject property by a street or right-of-way, the owners of the abutting parcels, and the zoning classifications of the adjacent and abutting parcels, and other significant features within and contiguous to the subject property.
  - b. The names and addresses of property owners whose properties abut the subject property, including those property owners whose properties would be abutting if there were not an intervening street, road, or other right-of-way.
  - c. If the applicant is not the owner of the subject property, then the application shall include a writing from the owner specifically authorizing the applicant to submit the application. A resolution authorizing the filing of a variance application is required if the subject property is owned by a corporation or other legally organized entity.
2. Upon submission of a complete application, the Town Manager shall fix a time for the evidentiary hearing before the Board of Adjustment and provide notice of the evidentiary hearing as provided in Section 9.1.7. herein.
3. The Board of Adjustment shall grant a variance upon the applicant's showing, by competent, material, and substantial evidence, all of the following:
  - a. Unnecessary hardship would result from the strict application of

the Ordinance provided, however, that it shall not be necessary to show that in the absence of the variance, no reasonable use could be made of the property.

- b. The hardship is the result of conditions unique to the property such as location, size, or topography. Hardships resulting from personal circumstances or from conditions common to the general location or to the general public may not be the basis for granting a variance.
  - c. The hardship is not the result of actions taken by the applicant or property owners provided, however, that the act of purchasing property with knowledge that circumstances exist which may justify granting a variance shall not be regarded as a self-created hardship.
  - d. The requested variance is consistent with the policy, purpose, and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
4. In granting a variance, the Board of Adjustment may impose appropriate conditions provided that those conditions are reasonably related to the variance.
  5. No change in permitted uses under the Ordinance may be authorized by a variance.

### **Section 9.7.3 Evidentiary Hearing and Voting**

- A. Evidentiary Hearing** – The Board of Adjustment shall conduct evidentiary hearings on appeals and applications for variances in accordance with the provisions of Section 9.1.8.B. herein.
- B. Voting**– The concurring vote of four-fifths (4/5ths) of the members of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide appeals and any other quasi-judicial matter. Vacant positions on the board and members who are disqualified from voting on the matter shall not be considered members for purposes of calculating the requisite majority.

### **Section 9.7.4 Written Decision and Appeal Therefrom**

- A.** Decisions by the Board of Adjustment on appeals and variances shall be made in the course of evidentiary hearings, set down in writing, reflect the board’s determination of the contested facts and the application of those facts to the applicable standards, signed by the presiding officer at the evidentiary hearing, and filed with the Town

Clerk who shall indicate on the face of the decision, the date upon which it was filed which shall be the effective date of the decision.

- B. The Town Clerk shall deliver, by personal delivery, electronic mail, or first-class mail, a copy of the decision to the appellant or applicant, the property owners if different from the appellant or applicant, and to any other person/entity submitting a written request for a copy prior to the effective date of the written decision. The Town Clerk shall certify delivery of the decisions.
  
- C. Every quasi-judicial decision by the Board of Adjustment is subject to review by the superior court by proceedings in the nature of certiorari under N.C.G.S. § 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of thirty (30) days after the effective date of the written decision or after a copy thereof is provided in accordance with subsection B above. When first-class mail is used to deliver the decision, then three (3) days shall be added to the time within which to file the petition.

**SECTION 9.8  
MINOR ADJUSTMENTS AND MINOR MODIFICATIONS**

- Section 9.8.1 Purpose and Scope
- Section 9.8.2 Provisions From Which Minor Adjustments and Minor Modifications are Allowed
- Section 9.8.3 Procedure
- Section 9.8.4 Effect of Approval or Denial

**Section 9.8.1 Purpose and Scope**

The Minor Adjustment and Minor Modification processes are intended to provide limited relief from the requirements of this Ordinance in those cases where a minor reduction of specific dimensional requirements and/or zoning district standards is determined to have no impact on the health, safety, or welfare of abutting and nearby property owners.

**Section 9.8.2 Provisions From Which Minor Adjustments and Minor Modifications are Allowed**

- A. **Minor Adjustments to Development and Zoning District Standards.** Prior to a Development Approval, a property owner, or that owner’s authorized representative, may apply for a Minor Adjustment to the development and zoning district standards of this Zoning Ordinance (except for Variances), as described in this Section. The following standards may be adjusted:

**Table 9.1 ‘Standards That May Be Adjusted’**

#	Standard That May Be Adjusted	Section Reference
---	-------------------------------	-------------------

1	Building Setback Requirements	Table 5.2 ‘Zoning District Dimensional Requirements’
2	Min. lot size for detached single family dwelling	Table 5.2 ‘Zoning District Dimensional Requirements’
3	Min. lot size for duplexes	Table 5.2 ‘Zoning District Dimensional Requirements’
4	Maximum density (except for Special Uses)	Table 5.2 ‘Zoning District Dimensional Requirements’
5	Minimum lot frontage	Table 5.2 ‘Zoning District Dimensional Requirements’
6	Minimum lot width	Table 5.2 ‘Zoning District Dimensional Requirements’
7	Minimum building separation	Table 5.2 ‘Zoning District Dimensional Requirements’
8	Height of fence or wall	Section 6.3.14
9	Number of parking spaces that require asphalt / concrete / ‘alternative paving material’	Section 11.1.1.E/F
10	Required number of off-street parking spaces	Table 11.2 ‘Off-Street Parking Schedule’
11	Size (sign face area) of any sign regulated by Section 12.12	Section 12.12
12	Buffer placement, width, and plantings	Section 10.2

and such standards may be adjusted according to the following table:

**Table 9.2 ‘Minor Adjustments Allowed’**

Type of Development	Applicable Approval Authority	Adjustment Allowed
Major Development	Planning Board*	Up to 15%
Special Use	Board of Commissioners*	Up to 15%
All types of Development except Major Development and Special Uses	Town Manager	Up to 15%
All types of Development	Board of Adjustment*	Up to 30%

\* Note: The Planning Board, Board of Commissioners, and the Board of Adjustment may approve a Minor Adjustment allowed under this section only if it finds, after conducting an evidentiary hearing, that the adjustment advances the goals and purposes of this Ordinance, is determined to have no impact on the health, safety, or welfare of abutting and nearby property owners, and relieves practical difficulties in developing a site; in determining if “practical difficulty” exists, the factors set forth in Section 9.7.2.B.3 (regarding approval criteria for Variances) shall be considered.



**B. Minor Modifications to Development Approvals (after a Development Approval has been issued).** A property owner, or that owner's authorized representative, may apply for a Minor Modification to a Development Approval as described in this Section; per 160D-403(d), a Major Modification, which is a modification that isn't a Minor Modification per this Section, must follow the same development review and approval process required for issuance of the original Development Approval.

1. **Minor Modifications to Development Approvals that were originally approved administratively.** Minor Modifications, which are not deemed as Major Modifications by the Town Manager, may be authorized by the Town Manager at his or her discretion. Minor Modifications in this category include:

- a. Minor field alterations to accommodate physical site conditions, including the relocation of buildings provided that the buildings still meet setback requirements.
- b. Changes to the amount or layout of parking, provided that the amount of parking spaces meets the requirements of Table 11.2 '*Off-Street Parking Schedule*'.
- c. The Minor Adjustments allowed by the Town Manager per Table 9.1 'Standards That May Be Adjusted' and Table 9.2 'Minor Adjustments Allowed'.

2. **Minor Modifications to Development Approvals that were originally Board-approved.**

- a. Minor Modifications to Major Development (originally approved by Planning Board) include the following:
  - (1) By Town Manager
    - (a) Minor field alterations to accommodate physical site conditions, including the relocation of buildings provided that the buildings still meet setback requirements.
    - (b) Changes to the amount or layout of parking, provided that the amount of parking spaces meets the requirements of Table 11.2 '*Off-Street Parking Schedule*'.
  - (2) By Planning Board
    - (a) The Minor Adjustments allowed by the Planning Board per Table 9.1 'Standards That May Be Adjusted' and Table 9.2 'Minor Adjustments Allowed'.

b. Minor Modifications to Special Use Permits (originally reviewed by Planning Board and approved by Board Of Commissioners) include the following:

(1) By Town Manager

- (a) Minor field alterations to accommodate physical site conditions, including the relocation of buildings provided that the buildings still meet setback requirements.
- (b) Changes to the amount or layout of parking provided that amount of parking spaces meets the requirements of Table 11.2 ‘*Off-Street Parking Schedule*’.

(2) By Board Of Commissioners

- (a) The Minor Adjustments allowed by the Board of Commissioners per Table 9.1 ‘Standards That May Be Adjusted’ and Table 9.2 ‘Minor Adjustments Allowed’.

3. Exceptions. Per NCGS 160D-705, in no circumstance shall a modification to a Special Use Permit be granted that results in a change in uses permitted or the density of overall development permitted.

### **Section 9.8.3 Procedure**

An applicant for a Minor Adjustment/Modification shall submit, on a form approved by the Town, an application for a Minor Adjustment/Modification along with payment of the fee established by the Fee Schedule and all supporting information and documents required therein to the Town Clerk.

### **Section 9.8.4 Effect of Approval or Denial**

- A. Subsequent Permits and Approvals** – Approval of a Minor Adjustment authorizes the applicant to obtain a CZC and any other subsequent permits, approvals, and certificates which may be required for the proposed development or use. All orders, decisions, determinations, and interpretations made by the administrative officers under those procedures shall be consistent with the Minor Adjustment.
- B. Transferability of Approval** – Minor Adjustments and Minor Modifications are not transferable from one (1) property to another, but are transferable to a successor-in-interest to the property.
- C. Resubmission of Denied Applications** – No application for approval of a Minor Adjustment or Minor Modification shall be accepted by the Town Clerk that is identical or substantially similar to an application that has been denied by the Applicable Approval Authority within the previous year provided, however, that there shall be no waiting period for identical or substantially similar applications filed as variances in accordance with the provisions of Section 9.7, *Appeals and Variances*,

of this Article.