

CHAPTER 1. GENERAL PROVISIONS

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Chapter 1 – General Provisions

1.1 OFFICIAL TITLE

This ordinance shall be officially known as the “Unified Development Ordinance of the Town of Wallace, North Carolina” and may be referred to as the “Unified Development Ordinance” or “this ordinance” or the “UDO.”

1.2 EFFECTIVE DATE

This UDO was adopted on November 14, 2013 and became effective on November 15, 2013.

1.3 AUTHORITY

A. GENERAL AUTHORITY

This Ordinance consolidates the Town’s zoning and subdivision regulatory authority and is adopted pursuant to the authority contained in Chapter 160A; Chapter 143, Article 21 (Part 6) and Article 33C; and Chapter 136, Article 3A; of the North Carolina General Statutes; and the Town of Wallace Charter, as amended.

B. REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.4 GENERAL PURPOSE AND INTENT

This UDO is adopted to preserve, protect, and promote the public health, safety, and general welfare of residents and businesses in the Town. More specifically, this UDO is adopted to achieve the following objectives:

- A. Implement the policies and goals contained within officially adopted plans, including the Comprehensive Land Use Plan;
- B. Improve the built environment and human habitat;
- C. Conserve and protect the Town’s natural beauty and setting, including trees and cultural and historic resources;
- D. Ensure that new development conserves energy, land, and natural resources;
- E. Encourage environmentally responsible development practices;
- F. Promote development patterns that support safe, effective, and multi-modal transportation options, including auto, pedestrian, and bicycle and therefore minimize vehicle traffic by providing for a mixture of land uses, walkability, and compact community form;
- G. Provide neighborhoods with a variety of housing types to serve the needs of a diverse population;
- H. Promote the greater health benefits of a pedestrian-oriented environment;
- I. Reinforce the character and quality of neighborhoods;
- J. Remove barriers and provide incentives for walkable projects;
- K. Protect and promote appropriately located commercial and industrial activities in order to preserve and strengthen the Town’s economic base;
- L. Ensure that adequate facilities are constructed to serve new development;
- M. Provide for orderly growth and development of suitable neighborhoods with adequate transportation networks, drainage and utilities and appropriate building sites;
- N. Save unnecessary expenditures of funds by requiring the proper initial construction of transportation networks, sidewalks, drainage facilities and utilities; and
- O. Provide land records for the convenience of the public and for better identification and permanent location of real estate boundaries.

1.5 APPLICABILITY AND JURISDICTION

A. GENERAL APPLICABILITY

This UDO applies to all land, buildings, structures, and uses located within the corporate limits and the extraterritorial jurisdiction of the Town of Wallace, North Carolina. To the extent allowed by law, the provisions of this UDO applies to all land, buildings, structures, and uses owned, leased, or otherwise controlled by any district, County, State, or Federal government agencies.

B. REQUIRED CONFORMANCE TO PROVISIONS

Except as otherwise specifically provided in this Ordinance, no land or structure shall hereafter be used or occupied, and no excavation, removal of soil, clearing of a site, or placing of fill shall take place on lands contemplated for development, no land shall be subdivided, and no structure, or part thereof, shall be constructed, erected, altered, renovated, or moved, except in compliance with all of the applicable provisions of this Ordinance.

1.6 RELATIONSHIP TO THE COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan serves as the basic policy guide for development under this UDO. The policies and action items of the Comprehensive Plan may be amended from time to time to meet the changing requirements of the Town in accordance with the standards and procedures in *Section 2.8, COMPREHENSIVE PLAN*.

1.7 RELATIONSHIP WITH OTHER LAWS

A. PRIVATE PROPERTY RIGHTS

Neither this Ordinance, nor any material included herein by reference nor material used for the administration of this Ordinance, are intended to, nor do they take any property, property right, nor property use, nor convert any of these to public use except by due process of law.

B. CONFLICTS WITH OTHER LAWS, ORDINANCES OR REGULATIONS

1. If any provisions of this UDO are inconsistent with similar provisions of State or Federal law, the more restrictive provision shall control, to the extent permitted by law.
2. Conflicts and duplications among portions of this UDO shall be resolved in favor of the more stringent regulation.
3. The adoption of this Ordinance shall have the following effect upon violations of the previous ordinance that existed on the effective date of this Ordinance:

C. CONFLICTS WITH PRIOR ORDINANCES

If the circumstances that constituted the violation under the previous ordinance do not constitute a violation under this Ordinance, then no further punitive or corrective action shall be taken with respect to the previous violation.

1. If the situation that constituted the violation under the previous ordinance continues to constitute a violation under this Ordinance, then appropriate corrective or punitive action may be taken under this Ordinance.
2. If a non-conforming situation or condition was created under the previous ordinance and that non-conforming situation or condition resulted in a violation of that ordinance, and the violation consisted of the failure to correct or terminate the non-conforming situation when required to do so under the previous Ordinance, and under the new Ordinance the situation or condition is still not permissible, then passage of the new Ordinance shall not prevent appropriate enforcement action to require the termination of the non-conforming situation, even if termination of the non-conforming situation would not be required under this Ordinance.

1.8 SEVERABILITY

It is expressly declared that this UDO and each section, subsection, sentence, and phrase would have been adopted regardless of whether one or more other portions of the UDO are declared invalid or unconstitutional.

- A. If any section, subsection, sentence, or phrase of this UDO is held to be invalid or unconstitutional by a court of competent jurisdiction for any reason, the remaining portions of this UDO shall not be affected.
- B. If any court of competent jurisdiction invalidates the application of any provision of this UDO, then such judgment shall not affect the application of that provision to any other building, structure, or use not specifically included in that judgment.

1.9 ZONING MAP

A. GENERALLY

The Official Zoning Map designates the location and boundaries of the various base zoning and overlay zoning districts established in this Ordinance. The Official Zoning Map shall be kept on file in the Planning Department and is available for public inspection during normal business hours. The original official version of the map shall be certified by the Planning Director. It may be kept in either hardcopy or digital form. It shall be the final authority as to the status of the current zoning district classification of land in the town, and shall only be amended in accordance with this Ordinance. In accordance with N.C. Gen. Stat. § 160A-22, the Town Clerk shall certify the Official Zoning Map for use as evidence in a court of law.

B. INCORPORATED BY REFERENCE

The Official Zoning Map, and all the notations thereon, is incorporated herein by reference and made part of this Ordinance.

C. ZONING CLASSIFICATION OF LANDS ADDED TO JURISDICTION

1. TOWN BOARD DETERMINATION

The Town Council shall determine the zoning designation of lands added to the town's jurisdiction through annexation or through extensions of the Town's extraterritorial jurisdiction at the time such lands are added based on the following factors: The land's designation on adopted plans addressing the town's growth and development;

- (a) The land's current land use;
- (b) The existence of a previously-approved site or subdivision plan;
- (c) The character of adjacent lands;
- (d) Current county zoning classifications, if applicable;
- (e) Landowner requests; and
- (f) Other factors considered relevant at the time of the annexation.

2. RELATIONSHIP TO VOLUNTARY ANNEXATION REQUESTS

Where an area is proposed to be added to the town's jurisdiction through a landowner's petition for voluntary annexation, the landowner may submit an application for a Zoning Map Amendment (See *Section 3.6 UNIFIED DEVELOPMENT ORDINANCE, COMPREHENSIVE LAND USE PLAN, AND COMPREHENSIVE PLAN AMENDMENTS*) requesting a specific zoning district classification along with the annexation petition. In such a case, the public hearing for the Zoning Map Amendment application may be held concurrently with any public hearing required for the annexation.

3. RELATIONSHIP TO INVOLUNTARY ANNEXATION

Where an area is proposed to be added to the town's jurisdiction through the involuntary annexation process, a landowner may submit an application for a Zoning Map Amendment (See *Section 3.6 UNIFIED DEVELOPMENT ORDINANCE, COMPREHENSIVE LAND USE PLAN, AND COMPREHENSIVE PLAN AMENDMENTS*) requesting a specific zoning district classification.

D. INTERPRETATION OF OFFICIAL ZONING MAP BOUNDARIES

- 1. The Planning Director shall be responsible for interpretations of the Official Zoning Map in accordance with the following requirements:

- (a) Boundaries shown as approximately following a utility line or a street, alley, railroad, or other public access way shall be interpreted as following the centerline of the right-of-way or easement for the utility line or access way.
 - (b) Boundaries shown as approximately following a property line shall be interpreted as following the property line as it existed when the boundary was established. If a subsequent minor adjustment (such as from settlement of a boundary dispute or overlap) results in the property line moving ten feet or less, the zoning boundary shall be interpreted as moving with the property line.
 - (c) Boundaries shown as approximately following a river, stream, canal, lake, or other watercourse shall be interpreted as following the centerline of the watercourse as it actually exists, and as moving with that centerline to the extent the watercourse moves as a result of natural processes (flooding, erosion, sedimentation, etc.).
 - (d) Boundaries shown as approximately following established municipal corporate limits or other political boundaries shall be interpreted as following the corporate limits or boundary as they existed when the boundary was established.
 - (e) Boundaries shown parallel to or as extensions of features indicated in this subsection shall be interpreted as such.
2. If the specific location of a depicted boundary cannot be determined from notations on the Official Zoning Map or application of the above standards, it shall be determined by using the map's scale to determine the boundary's distance from other features shown on the map.
 3. Where the actual locations of existing physical or natural features vary from that shown on the Official Zoning Map, or in other circumstances not covered by this subsection, the Planning Director shall have the authority to interpret the district boundaries. Appeals of the Planning Director's decision shall be reviewed by the Board of Adjustment in accordance with *Section 3.10, APPEAL*.

E. CHANGES TO OFFICIAL ZONING MAP

Changes made in zoning district boundaries, including requests for a rezoning, or other matters portrayed on the Official Zoning Map shall be made in accordance with the provisions of *Section 3.6* of this Ordinance. Changes shall be entered on the Official Zoning Map by the Planning Director promptly after the amendment is approved by the Town Council. Where the ordinance enacting a zoning district boundary change contains wording explaining or clarifying the location of the new boundary, the Planning Director may enter on the Official Zoning Map notations reflecting the ordinance wording. The Planning Director shall maintain copies of superseded versions of the Official Zoning Map for historical reference.

1.10 TRANSITIONAL PROVISIONS

A. VIOLATIONS CONTINUE

Subject to the specific provisions of *Section 1.7* above, any violation of the previous zoning regulations or subdivision regulations shall continue to be a violation under this Ordinance and any other applicable ordinances, laws, or statutes. Violations of this Ordinance shall be subject to the penalties set forth in *Section 9, ENFORCEMENT*, and any other applicable ordinances, laws, or statutes, unless the development complies with the express terms of this Ordinance or the other ordinances, laws, or statutes.

B. COMPLETE APPLICATIONS

1. Any development application submitted and accepted as complete before effective date, but still pending final action as of that date, shall be reviewed and decided in accordance with the regulations in effect when the application was accepted. No application shall be considered complete unless and until the entire application fee has been paid in accordance with the current fee schedule. To the extent such an application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of *Section 7, NONCONFORMITIES*.

2. Completed applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time the application is accepted as complete. If a development is approved, but does not commence and continue within the required time frames, it shall expire and future development of the property shall be subject to the requirements of this Ordinance.
3. An applicant with a pending complete application accepted before effective date may opt to have the proposed development reviewed and decided under the standards of this Ordinance by withdrawing the pending application and submitting a new application in accordance with the standards of this Ordinance.

C. APPROVED APPLICATIONS

Any development approval granted before the effective date of this Ordinance shall remain valid until their expiration date. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of approval and the development standards in effect at the time of approval, provided the permit or approval is valid and has not expired. If the prior approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development application for the site shall be subject to the procedures and standards of this Ordinance. To the extent, a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of *Section 7, NONCONFORMITIES*.

D. NONCONFORMITIES

If any use, structure, lot, or sign legally existed on the effective date, but does not fully comply with the standards of this Ordinance, then that use, structure, lot, or sign shall be considered nonconforming under this Ordinance and shall be controlled by the provisions of *Section 7, NONCONFORMITIES*.

1.11 VESTED RIGHTS

A. ESTABLISHMENT

A vested right pursuant to N.C. Gen. Stat. § 160A-385.1 shall be deemed established with respect to real property subject to the Town of Wallace zoning jurisdiction upon approval by the permit-issuing authority of a site specific development plan or phased development plan following notice and public hearing as required by this Ordinance. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable types or intensity of uses, or the application of ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new or amended regulations shall become effective with respect to property that is subject to a site specific or phased development plan upon the expiration or termination of the vested right in accordance with this chapter.

B. SITE-SPECIFIC AND PHASED DEVELOPMENT PLANS

1. PHASED DEVELOPMENT PLAN

“Phased Development Plan” means a plan of land development which has been submitted to the Town by a landowner for phased development describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of land but with a lesser degree of certainty than any plan determined by the Town to be a Site Specific Development Plan. A “Master Plan” is a type of Phased Development Plan. Approval of a Master Plan pursuant to *Section 3.7* of this Ordinance shall trigger a vested right. A Phased Development Plan shall be deemed approved upon the effective date of the permit issuing authority’s action.

2. SITE SPECIFIC DEVELOPMENT PLAN

“Site Specific Development Plan” means a plan of land development submitted to the town by a landowner that describes with reasonable certainty the type and intensity of use for a specific parcel or parcels of land. The following types of applications constitute a Site Specific Development Plan:

A Special Use Permit pursuant to *Section 3.8* of this Ordinance

- (a) To qualify as a Site Specific Development Plan, the plan submitted, shall include the following information: total acreage of the site; approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of all proposed buildings and other structures (including roads and parking facilities); maximum gross floor areas and impervious surface; and the infrastructure on the site, including water, sewer, roads, and pedestrian walkways.
- (b) The permit-issuing authority may approve a Site Specific Development Plan upon such terms as may be reasonably necessary to protect the public health, safety, and welfare. The specific requirements of other sections of this Ordinance shall be the presumptive minimum standards which applicants must meet; however, the permit issuing authorities may waive or modify those minimum requirements upon (i) the applicant's specific, written request for a waiver or modification and (ii) the presentation of satisfactory, competent evidence by the applicant demonstrating that the applicant's proposal otherwise satisfies or meets the need the minimum standard to be waived or modified was intended to address.

C. VESTED RIGHT

1. "Vested right" means the right to undertake and complete the development and use of property under terms and conditions of an approved building permit, or an approved site specific or phased development plan, including any amendments thereto. Conditional approval of a site specific or phased development plan shall result in a vested right, although failure to abide by such terms and conditions will result in forfeiture thereof.
2. A variance shall not constitute a site specific or phased development plan, and a site specific or phased development plan with a condition that a variance be obtained shall not confer a vested right unless the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific or phased development plan.

D. DURATION AND TERMINATION OF STATUTORY VESTED RIGHTS

1. An approved Site Specific Development Plan which has been vested as provided for in this section shall remain vested for a period of two (2) years from the date of approval. This vesting shall not be extended by any amendments or modifications to a Site Specific Development Plan unless the property owner (or authorized agent) requests an extension in writing, and the permit-issuing authority approves such extension.
2. An approved Phased Development Plan which has been vested as provided for in this section shall remain vested for a period of five (5) years. The developer or landowner must submit a site specific development plan for approval with respect to each phase in order to obtain final development approval for such phase. This vesting shall not be extended by any amendments or modifications to a Phased Development Plan unless the property owner (or authorized agent) requests an extension in writing, and permit-issuing authority approves such extension.
3. Following approval or conditional approval of a Site Specific or Phased Development Plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town from revoking the original approval for failure to comply with applicable terms and conditions of approval or this Ordinance. Upon revocation, the vesting of rights provided for under this section shall be terminated.

4. A property owner who claims a common law vested right for a property may request the Planning Director to acknowledge in writing the existence of common law vested rights for the property.

E. EXCEPTIONS

Subject to *Section 1.11(D), DURATION AND TERMINATION OF STATUTORY VESTED RIGHTS* of this Ordinance, a vested right, once established as provided for in this section, precludes any zoning action by the town which would change, alter, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development or phased development plan, except:

- (a) With written consent of the affected landowner;
- (b) Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- (c) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (d) Upon finding, by ordinance after notice and public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the town of the site specific or phased development plan; or
- (e) Upon enactment or promulgation of a state or federal law or regulation which precluded development as contemplated in the site specific development plan, in which case the Town may modify the affected provisions, upon finding that the change in the state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.