

CHAPTER 3. ADMINISTRATIVE PROCEDURES

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Chapter 3 – Administrative Procedures

3.1 ADMINISTRATIVE MANUAL

The Town of Wallace’s Administrative Manual, provides information relevant to the day-to-day use of this Ordinance. The Manual provides guidance in the use of this Ordinance, consolidates information on the development review processes, and explains review procedures and requirements. References to the Administrative Manual are made in this Ordinance. This Manual is not an ordinance and can be updated by staff on an as needed basis, including updating fees when they are changed by the Town Council or changing application schedules and deadlines as workloads change. It is intended to supplement, and not as a substitute for, this Ordinance.

3.2 COMMON REVIEW PROCEDURES

A. COMPLETE APPLICATIONS

All applications for any approval required by this Ordinance must be complete. Planning Staff will establish application deadlines to allow time to review applications for completeness before continuing the application process. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application and a date by which the information must be submitted to maintain the review schedule. No application will be considered complete until all fees required by the Town’s fee schedule have been paid in full. Application Packets including application deadlines, submittal requirements, and application forms can be found in the Administrative Manual.

1. COMPLETENESS REVIEW

Upon receipt of an application, the Planning Director shall determine if the application is complete. A complete application is one that:

- (a) Contains all information and materials established by the Planning Director as required for submittal of the particular type of application;
- (b) Is in the form established by the Planning Director as required for submittal of the particular type of application;
- (c) Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive standards of this Ordinance; and
- (d) Is accompanied by the fee established for the particular type of application.

B. EXPEDITIOUS REVIEW

Town shall make every reasonable effort to process applications expeditiously, consistent with the need to ensure that all development conforms to the requirements of this chapter.

C. FEES

Filing fees for all development approvals pursuant to this ordinance shall be established by the Fee Schedule adopted by the Town Council. The fee schedule can be found in the Administrative Manual.

D. AUTHORITY TO FILE

Applications for any approval or permit required by this Ordinance must be signed by the property owner, a designated owner’s agent, or a contract purchaser of a property with authorization of the property owner. Written proof of authority must be submitted with every application.

3.3 COMPREHENSIVE REVIEW OF CHAPTER

The Planning Board shall, from time to time, but not less frequently than every five (5) years, examine the provisions of this Ordinance and the location of Zoning District boundary lines, and shall submit a report to the Town Council recommending changes and amendments, if any, which are desirable in the interest of public health, safety, and general welfare, mindful of the intent expressed in *Section 1.4, GENERAL PURPOSE AND INTENT*.

3.4 TYPOGRAPHICAL ERRORS

Typographical errors, spelling changes, numerical reference errors, errors in section or page numbering or other purely non-substantive editorial changes may be corrected by the Planning Director without formal adoption by the Town Council provided that such corrections do not change the meaning of the Ordinance. Any correction made pursuant to this section shall be reported in writing to the Town Council and made a part of the Board's regular meeting minutes.

3.5 CREATION OF NEW LOTS/DIVISION OF LAND

A. REVIEW REQUIRED

Subsequent to the effective date of this Ordinance, no land within the Town of Wallace planning jurisdiction shall be subdivided, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the Duplin County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

B. THE REVIEW REQUIRED IS DETERMINED BY THE NUMBER OF NEW LOTS TO BE CREATED AS FOLLOWS:

1. EXEMPT PLATS: Staff review, must meet standards in *Section 3.5(C), EXEMPT PLATS* below.
2. MINOR SUBDIVISIONS: Staff review to create 4 or fewer lots.
3. MAJOR SUBDIVISIONS: Special Use Permit review by Planning and Town Councils to create 5 or more lots.
4. CONSERVATION SUBDIVISIONS: Special Use Permit review by Planning and Town Councils to create 20 or more lots, but less than 100 lots with reduced lot sizes and additional open space

C. EXEMPT PLATS

1. Property owners or their authorized agents must present a paper or recordable map to the Planning Department for determination of whether the action created by the recording of the map meets the Ordinance standards to be exempt.
2. If the proposal meets the exemptions listed in this Ordinance or in N.C. Gen. Stat. § 160A-376, the Planning Director shall sign an exemption note on the face of the recordable map before it is recorded.
3. In addition to the divisions of land identified in N.C. Gen. Stat. § 160A-376(a)(1) through (4), the following divisions of land shall not be included within the definition of the term "subdivision" and shall not be subject to this Ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a utility pump station; (2) the recordation of a plot of lots created by deeds recorded in the Duplin County Registry prior to March 13, 1978; (3) the creation of a lot to be conveyed to the Town or to a non-profit entity for the purpose of creating public parks or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose, (4) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use, and (5) the recordation of a plat consistent with *Section 7.3(C), MULTIPLE DETACHED DWELLINGS ON A SINGLE PARCEL*.
4. If the proposal does not meet the exemptions, the Planning Director shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.

D. MINOR SUBDIVISION

Property owners or agents must present a paper map to the Planning Department to review any division of land into 4 or fewer lots from a single tract of land in any five (5) year period. Such a division may only be approved by staff if no new public road is necessary to create the lots. If a new public road is proposed as part of the project, the Planning Director shall refer the request to the Technical Review Committee (TRC) for final review and approval. If

no public or private road right of way or construction is part of the proposal, the Planning Director may approve the minor subdivision by signing the approval certificate on the recordable map.

The application will be processed according to the procedure details in *Section 5.2(RR), SUBDIVISIONS, MINOR*.

E. MAJOR SUBDIVISIONS

Divisions of land resulting in the creation of five (5) or more new lots from a single tract of land in any five (5) year period shall require a Special Use Permit, with review criteria as set forth in *Section 5.2(QQ), SUBDIVISIONS, MAJOR*.

1. SKETCH PLAN

Prior to submitting a Special Use Permit application, the applicant shall submit a sketch design plan, the elements of which are discussed in the Administrative Manual. In reviewing the proposal the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

2. SPECIAL USE PERMIT REQUIRED

The preliminary plan will be processed according to the Special Use Permit procedure and details found in *Section 3.8*.

F. CONSERVATION SUBDIVISIONS (SECTION 10.2 FOR DEFINITION)

Divisions of land into twenty (20) or more new lots from a single tract of land in any five (5) year period, with special features as set forth in *Section 5.2(PP)* for Conservation Subdivisions, shall require a Special Use Permit.

1. SKETCH PLAN

Prior to submitting a preliminary plat, the applicant shall submit to a sketch design plan, the elements of which are discussed in the Administrative Manual. In reviewing the proposal, the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

2. SPECIAL USE PERMIT REQUIRED

The preliminary plan will be processed according to the Special Use Permit procedure and details found in *Section 3.8*.

3.6 UNIFIED DEVELOPMENT ORDINANCE, COMPREHENSIVE LAND USE PLAN, AND COMPREHENSIVE PLAN AMENDMENTS

A. INTENT

It is the intent of this section to set forth the procedures for amending this Ordinance, including the Official Zoning Map, as well as the Comprehensive Land Use Plan. Amendments shall be made by formal action of the Town Council. All proposed amendments shall be referred to the Planning Board for its consideration and recommendation. In no case shall final action be taken to amend this Ordinance until a duly advertised public hearing is held.

B. GENERAL STANDARDS/FINDINGS OF FACT

Before amending this Ordinance or the Official Zoning Map, the Town Council must find, after conducting the process below, that the request is not inconsistent with the adopted Comprehensive Plan for the Town of Wallace.

Amending the Official Zoning Map (Rezoning) is a matter committed to the legislative discretion of the Town Council. In determining whether to adopt a proposed amendment, the Town Council shall consider and weigh the relevance of the following factors:

1. The extent to which the proposed amendment is consistent with all applicable Town-adopted plans;
2. The extent to which there are changed conditions that require an amendment;
3. The extent to which the proposed amendment addresses a demonstrated community need;
4. The extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and is the appropriate zoning district for the land;
5. The extent to which the proposed amendment would result in a logical and orderly development pattern, or deviate from logical and orderly development patterns;
6. The extent to which the proposed amendment would encourage premature development;
7. The extent to which the proposed amendment would result in strip or ribbon commercial development;
8. The extent to which the proposed amendment would result in the creation of an isolated zoning district unrelated to or incompatible with adjacent and surrounding zoning districts;
9. The extent to which the proposed amendment would result in significant adverse impacts on the property values of surrounding lands; and
10. The extent to which the proposed amendment would result in significantly adverse environmental impacts , including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

C. AUTHORITY TO APPLY

1. AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE

Subject to the limitations of the foregoing statement of intent, an amendment to this Ordinance, including the Official Zoning Map, may be initiated by:

- (a) The Town Council on its own motion;
- (b) The Planning Board;
- (c) The Board of Adjustment;
- (d) Planning Director
- (e) Any person or agency

2. AMENDMENTS TO THE COMPREHENSIVE LAND USE PLAN

Any property owner or other person or entity establishing a sufficient legal interest in a parcel may apply to amend the Comprehensive Land Use Plan designation on the parcel. Any advisory board of the town may request the Planning Board or Town Council to sponsor an amendment to the Comprehensive Land Use Plan related to the duties and authority of the advisory board.

D. PRE-APPLICATION

Applicants seeking to amend the Official Zoning Map shall, before submitting an application for a Zoning Map Amendment, participate in a pre-application meeting with the Planning Director to ensure the application does not require additional, parallel reviews for Land Use Plan amendments.

E. APPLICATION REQUIREMENTS

Applicants shall refer to the Administrative Manual for the requirements for a complete application to amend this Ordinance, the Official Zoning Map, the Comprehensive Land Use Plan, or the Comprehensive Plan.

F. STAFF REVIEW

Upon receipt of an application to amend this Ordinance, the Official Zoning Map, the Comprehensive Land Use Plan, or the Comprehensive Plan, the Planning Director shall first determine if the application is complete (including the submission of the required application fee).

Applications which are not complete, or which otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant with a notation by the Planning Director of the deficiencies in the application. Once the application is deemed complete, it will be placed on the next available public hearing agenda.

G. PLANNING BOARD RECOMMENDATION

The Planning Board shall within thirty (30) days after notification of an application hold a meeting to discuss, prepare, and submit for the Town Council a recommendation concerning the application.

H. PUBLIC HEARING

The Town Council shall hear applications for amendments to these documents at a Public Hearing. The Town Council, in its discretion, shall schedule the date and time for public hearings on applications.

1. NOTICE OF PUBLIC HEARING

All notices required under this Ordinance shall comply with the North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance, comply with the following.

(a) Published Notice

Notice of each public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the Town, stating the time and place of such hearing and the substance of the proposed amendment, in accordance with the provisions of N.C. Gen. Stat. § 160A-364. This notice shall appear in said newspaper for two (2) successive weeks prior to the public hearing, the first publication not less than ten (10) days nor more than twenty-five (25) days prior to the hearing.

(b) Mailed Notice

In the case of a proposed Zoning Map amendment, in addition to the public notice requirement established in *Section 3.6(G)(1)(a)* above, the Planning Director shall give notice by first class mail to owner of the subject property and to the owners of all parcels any part of which lies within five hundred (500) feet of the property boundaries of the subject property. The Planning Director shall certify to the Town Council that such notice was given. If the hearing involves a Zoning Map amendment, any mailed notice shall indicate the availability of protest petition process.

(c) Posted Notice

In the case of a proposed Zoning Map amendment, the Planning Director shall post notice on the subject property(ies) notice of the time, date, and location of the public hearing, and a summary of the requested amendment in a form established by the Planning Director, at least ten (10) days before the date fixed for public hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. The posted notice shall remain in place until after a final decision is rendered on the application. The posted notice shall be placed in a manner to provide visibility from the public right-of-way. The applicant shall ensure that the posted notice is maintained on the land until completion of the public hearing on the application.

2. POST-HEARING PROCESS

The public hearing on an amendment to this Ordinance, the Zoning Map, or the Comprehensive Land Use Plan, is formally closed by a motion and vote of the Council members present at the hearing.

I. TOWN COUNCIL ACTION

The Town Council shall not take action on the proposed amendment until thirty (30) days after the date the Planning Board was notified of the application or until the Planning Board makes its recommendation, whichever comes first.

J. FORMALIZING THE OUTCOME

The Town Council's action on a proposed amendment shall be in the form of an ordinance amending the applicable document. An amendment is effective immediately, unless some other effective date is specified in the amending ordinance.

The applicant shall receive written notice of the Town Council's decision on the application, including a copy of the Ordinance adopted by the Town Council if the application is approved, within 30 days of the effective date of the ordinance.

K. APPEAL

Text and map amendments are legislative actions of the Town Council. Any person seeking to challenge the validity of any amendment to this Ordinance may challenge such amendment by filing an appropriate action in the Duplin County Superior Court within the time established by N.C. Gen. Stat. § 160A-364.1.

L. EFFECT OF DENIAL OR WITHDRAWAL

An applicant may withdraw his or her application for an amendment at any time by written notice to the Planning Director. When the Town Council shall have acted upon an application or the application shall have been withdrawn after the first notice of the public hearing thereon, the Town shall not accept another application for the same or similar text or Official Zoning Map amendment, affecting the same property or a portion of it, until the expiration of a one (1) year period, extending from the date of action or withdrawal. The Town Council may on its own motion, however, initiate an amendment of this nature prior to the expiration of the one (1) year period.

M. VESTING

Amendments to this Ordinance, the Zoning Map, or the Comprehensive Land Use Plan do not qualify as site specific development plans and do not establish statutory vested rights.

N. DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION

Text and map amendments enacted by the Town Council are legislative actions and are not subject to deviations, modifications, revocation, or expiration except through specific action to further amend these documents.

O. PROTEST PETITIONS

Applications for amendments to the Official Zoning map are subject to protest as set forth in N.C. Gen. Stat. § 160A-385 and 386.

3.7 MASTER PLAN

A. INTENT

The intent of the Master Plan review is to establish a process limited to Special Use Zoning Districts for considering requests for approval of significant, large or multi-phase projects which may include complex infrastructure improvements, and/or variety of different uses, and/or a variety of different lot or parcel sizes, and/or other features not ordinarily easily addressed in other processes available under this Ordinance. An approved Master Plan provides a framework within which a large project can proceed to more specific plans for all, or one or more smaller portions of, the property included in the Master Plan. An approved Master Plan provides the authorization to install infrastructure only, not the construction of buildings or parking. Typically, a site specific development plan shall be submitted for review and approval of phases or component parts of an approved Master Plan.

B. APPLICABILITY

An application for a Master Plan may only be filed with an application for rezoning to a special use district for a unified project involving at least twenty (20) acres of land or for the remainder of a site seeking a special use permit involving at least five (5) acres of land.

C. GENERAL STANDARDS/FINDINGS OF FACT

The Town Council shall not approve a Special Use Permit application unless it makes each of the following findings concerning the proposal:

1. The proposal meets the intent of the zoning district being requested;
2. The proposal meets the application criteria for the zoning district being requested; and
3. The proposal contains sufficient detail to guide future Special Use Permit applications that will generally be able to comply with provisions of this Ordinance

D. PROCESS

A Master Plan application shall be processed concurrently with a rezoning request for a Special Use District, and shall be reviewed in accordance with the procedures established by this Ordinance for Zoning Map amendments (*Section 3.6*). The Planning Board shall make separate recommendations on the rezoning request and the Master Plan. The Town Council shall take separate action on the rezoning request and the Master Plan. If the Town Council denies the rezoning request, the Master Plan application is rendered moot and no further Town Council action is required. Action to approve or deny a Master Plan shall be by resolution and may include reasonable conditions.

E. MASTER PLAN AND VESTED RIGHTS

Approval of a Master Plan establishes a vested right for development of the property consistent with the approved Master Plan, and remains valid for five years.

F. MODIFICATIONS

A Master Plan may be modified through specific Town Council action, following the Zoning Map amendment process, upon the application of the property owner or authorized representative as specified in *Section 3.6(N), DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION*. Town Council approval of a Special Use Permit that is inconsistent with an approved Master Plan shall be considered to be an amendment to the Master Plan.

G. REVOCATION

An approved Master Plan may be revoked upon action by the Town Council, after notice to the property owner, if the Town Council finds that conditions of approval have not been or are not being satisfied, or that material representations made in the application materials are false or misleading.

H. EXPIRATION OF VESTED RIGHT

The vested right associated with an approved Master Plan shall expire after the period established upon approval as set forth in *Section 3.7(E), MASTER PLAN AND VESTED RIGHTS* unless improvements have been made to the property in reliance on the approval sufficient to establish common law vested rights. An approved Master Plan that is timely pursued and constructed by the applicant or successors runs with the land.

3.8 SPECIAL USE PERMIT

A. INTENT

Special Uses because of their inherent nature, extent of development, or external effects, require special care in the control of their location, design and methods of operation, in order to insure protection of the public health, safety and welfare. It is the intent of this section to set forth the information to be submitted with applications for Special Use Permits and to state the standards by which each application shall be judged.

The criteria and procedures established in this section are intended to ensure that the design and construction of site elements include appropriate consideration of the relationship and balance among site elements, the relationship of the proposed development to natural features and neighboring developments, access and circulation systems, mitigation of erosion and sedimentation, mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring development and streets, and mitigation of traffic impacts.

B. APPLICABILITY

An application for a Special Use Permit (SUP) may be submitted when the use is designated Special Use in the Permitted Use Table or in compliance with an approved Master Plan in a Special Use district.

If a Special Use Permit application is submitted simultaneously with a rezoning request to a Special Use District, hearings on both matters shall be held concurrently. The Town Council must act on the rezoning request before it may act on the Special Use Permit application. If the rezoning request is denied, the Special Use Permit application is moot, and no Board action is required on such request.

C. GENERAL STANDARDS/FINDINGS OF FACT

The Town Council shall not approve an application for a Special Use permit unless it makes each of the following findings concerning the proposed special use:

1. That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
2. That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Chapters 4, 5 and 6 and all applicable regulations;
3. That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and
4. That the use or development confirms with the general plans for the physical development of the Town as embodied in the Town's Comprehensive Plan.

D. APPLYING THE ORDINANCE TO DETERMINE COMPLIANCE WITH STANDARDS TO MAKE FINDINGS OF FACT

1. All of the requirements in this ordinance apply to applications for Special Use Permits.
2. Certain uses require specialized information, which are contained in *Section 5, USE STANDARDS*. To the extent that any person applies for a Special Use Permit not specifically listed in *Section 5*, the requirements in *Section 5.2(VV), USE REQUIRING SPECIAL USE PERMITS BASED ON THE SIZE, INTENSITY, OR LOCATION OF THE USE* shall apply.
3. As Special Uses may have unique characteristics that may not be adequately addressed with development standards for routine uses, an applicant may request a waiver to any provision in *Section 6* (excluding *Section 6.20, STORMWATER ORDINANCE*), together with an explanation of why the waiver or modification is appropriate, including testimony as to why the proposed solution included in the application is equal or superior to the result achieved through the strict application of the provisions in *Section 6*. The Planning Director, Technical Review Committee, and Planning Board may offer recommendations to the Town Council regarding any requested waiver or modification and the sufficiency of the evidence in support of granting the waiver or modification. Any approval of a Special Use Permit shall specifically detail any and all waiver(s) or modification(s) granted to the applicant.

E. SPECIALIZED INFORMATION AND FINDINGS REQUIRED FOR ALL SPECIAL USE PERMITS

1. The Town of Wallace recognizes that the Special Use Permit process affords the town and applicant a unique opportunity to cooperate and encourage development that is mutually beneficial. The Town requires applicants for Special Use Permits to provide additional information and amenities within their projects to offset the possible waiver of strict ordinance compliance and to recognize the impacts of sizable or unique developments can have on quality of life for Wallace residents. All applicants for Special Use Permits shall include information about the following in their submittals and shall address how their proposal satisfies each of the findings of fact in *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*:
2. Applicants shall indicate a preferred green building or sustainable building rating system for their project and indicate the performance level they intend to meet for the development site or structures in their application materials.
3. Applicants shall indicate their expected water use for the daily operations of their site upon completion. Projects will be required to demonstrate water saving or reuse measures that will be employed. (show baseline & their use)
4. Applicants proposing 20 or more dwelling units shall indicate the provisions they intend to make in support of maintaining the diversity of housing types and housing price points in Wallace.

E. PROCEDURE

1. AUTHORITY TO APPLY

Applications for special use permits may be made by the owner of the property or the owners authorized representative (including but not limited to a contract purchaser of the property, provided that such contract purchaser or other authorized representative produces evidence of authority to proceed with the application)

2. PRE-APPLICATION

Applicants are encouraged to meet with Planning Director staff before filing a Special Use Permit application to review specific permit and application requirements.

3. APPLICATION REQUIREMENTS

Special Use Permit applications shall be filed with the Planning Director.

The Planning Director shall prescribe the form(s) on which applications are made. Application requirements and necessary submittals are set forth in the Administrative Manual.

4. STAFF REVIEW

Upon receipt of a Special Use Permit application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, it shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case.

In preparing its analysis, the Planning Director shall refer a Special Use Permit application to the next available Technical Review Committee meeting to facilitate the outside agency review and collection of comments.

F. BURDEN OF PRESENTING EVIDENCE

The burden of presenting a complete application shall at all times be upon the applicant. However, unless the Planning Director informs the applicant at or before the hearing on the application that, and in what way, the application is incomplete, and offers the applicant an opportunity to complete the application, the application shall be presumed to be complete.

Once a completed application has been submitted, the burden of presenting evidence to the permit-issuing board sufficient to allow the permit-issuing board to conclude that the application should be denied for any reasons stated in *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*, shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any other reasons set for in *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*, rests on the party or parties urging the requested permit should be denied.

G. TECHNICAL REVIEW COMMITTEE

The Technical Review Committee shall review all applications for Special Use Permits, and make a recommendation on each such application, which recommendation may include recommended conditions of approval.

H. PLANNING BOARD REVIEW AND RECOMMENDATION

The Planning Board shall within thirty (30) days after notification of an application hold a meeting to discuss, prepare, and submit for the Town Council a recommendation concerning the application.

I. PUBLIC HEARING

After notice in accordance with *Section 3.8(I)(1), NOTICE OF PUBLIC HEARING*, is given the Town Council shall hold a public hearing on the application. The Town Council, in its discretion, schedules the date and time for a public hearing for a Special Use Permit application.

The public hearing on a Special Use Permit application shall be a quasi-judicial hearing open to the public. At the hearing, the applicant and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions. Reasonable and equitable limitations may be placed on the presentation of evidence and arguments, and the cross-examination of witnesses, so that the application may be heard without undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

When the applicant presents substantial and competent evidence that the proposed development will satisfy the general standards established by *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*, above and will conform to all specific provisions applicable to that particular special use as established by this Ordinance, persons opposed to the application shall have the burden of presenting substantial and competent evidence contrary to the applicant's evidence or substantial and competent evidence that the proposed development will violate one or more of the general standards set forth in *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*, or any of the specific standards for the particular special use established by this Ordinance. If no such evidence is submitted, the applicant shall be granted the permit. If substantial and competent evidence in opposition to the application is submitted, the applicant shall have the burden of overcoming that evidence with further evidence of his/her own.

A record of the proceedings of the hearing shall be made and shall include all application materials and documentary evidence presented at the hearing.

1. NOTICE OF PUBLIC HEARING

Notice of the public hearing on a Special Use Permit application shall be given once a week for two (2) consecutive calendar weeks in a newspaper of general circulation in Duplin County. The notice shall be published the first time not less than ten (10) days no more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Written notice shall be sent to all adjacent property owners not less than ten (10) days before the hearing date. Adjacent property owners are those whose property lies within five hundred (500) feet of the affected property and whose names and addresses are currently listed in the county tax records.

2. POST-HEARING PROCESS

The public hearing on a Special Use Permit application is formally closed by a motion and vote of the Board members present at the hearing. The Planning Director shall prepare a recommendation following the Public Hearing to be submitted to the Town Council.

3. TOWN COUNCIL ACTION

The Town Council shall not consider the approval of the Special Use Permit until thirty (30) days after the date the Planning Board was notified of the application or until the Planning Board makes its recommendation, whichever comes first.

The Town Council shall review the record of the public hearing, the Technical Review Committee's recommendation, the Planning Board's recommendation, and the Planning staff's report and shall take action on the application based on findings of fact as to the determinations required in *Section 3.8(C), GENERAL STANDARDS/FINDINGS OF FACT*, and the applicable standards for the specific special use as established by this Ordinance. All findings shall be based on competent evidence presented at the public hearings.

The Town Council may impose such reasonable conditions upon approval of a SUP as will afford protection of the public health, safety, and general welfare, ensure that substantial justice is done, and equitable treatment provided.

All conditions of approval shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Town Council denies the permit, the reasons for its action shall be recorded in the minutes of the meeting.

J. FORMALIZING THE OUTCOME

The Planning Director shall cause notice of the disposition of the application to be delivered by certified mail to the applicant and any party who has filed a written request for a copy with the Planning Director at the time of the hearing, and shall cause a copy of the decision to be filed in the Planning Director.

In the case of approval or approval with conditions, the staff shall issue the Special Use Permit in accordance with the action of the Town Council and the applicant shall record it in the office of the Duplin County Register of Deeds within ten (10) days of receipt. No Special Use Permit will be effective, and no further permits or approvals for the development may be issued, until the Special Use Permit has been filed with the Register of Deeds. A copy of the Special Use Permit, with proof of filing with the Duplin County Register of Deeds, shall be delivered to the Planning Director within ninety (90) days after the Special Use Permit is issued to the applicant.

Any construction authorized by a Special Use Permit must receive construction drawing approval and a Zoning Compliance Permit as detailed in *Section 3.13, ZONING COMPLIANCE PERMITS*.

K. APPEAL

An aggrieved party may appeal a decision by the Town Council on an application for a Special Use Permit to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N. C. Gen. Stat. § 160A-388(e2).

L. EFFECT OF DENIAL OR WITHDRAWAL

When the Town Council shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in *Section 3.8(l), NOTICE OF PUBLIC HEARING*, the Planning staff shall not accept another application for the same or similar Special Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

M. VESTING

A vested right pursuant to *Section 1.11, VESTED RIGHTS* is established by the issuance of a Special Use Permit pursuant to this section.

N. DEVIATIONS

After a Special Use Permit has been approved, the Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the Town Council but the Planning Director shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Town Council. If the Planning Director is uncertain whether a requested deviation is a "minor change" or a "modification", it shall be treated as a modification and referred to the Town Council for review and approval.

O. CRITERIA USED FOR DETERMINATION

The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification:

1. Any change in a specific condition imposed during the approval of a Special Use Permit shall constitute a modification.
2. A substantial change in use or enlargement by greater than ten (10) percent of an authorized use shall constitute a modification.
3. A ten (10) percent or greater increase in intensity of use shall constitute a modification. An increase in the number of dwelling units is an example of an increase in intensity of use.
4. An increase of intensity of less than ten (10) percent may be considered a minor change if the Planning Director finds that the development, as changed or modified, will continue to be in general conformance with the approved Special Use Permit.
5. Structural alterations which significantly affect the basic size, form, style, ornamentation, and/or character of buildings shown on an approved plan or described in the applicant's narrative shall be considered a modification.
6. Substantial change in the amount and/or location of open space, recreation facilities or landscape screening shall constitute a modification. Changes to signage which increase the number of signs, or increase the sign face area, beyond that approved as part of the Special Use permit process shall be considered modifications.
7. Any change in parking areas resulting in an increase or reduction of ten (10) percent or more in number of spaces shall constitute a modification.
8. Substantial change in pedestrian and/or vehicular access or circulation patterns shall constitute a modification.
9. Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval shall constitute a modification.
10. Substantial change in the location or extent of street and utility improvements or rights-of-way, including water, sewer, and storm drainage facilities, which would result in a different level of service than was represented to the Town Council during the public hearing process, shall constitute a modification.
11. Any combination of minor changes that in the determination of the Planning Director are, taken together, substantial in nature.

P. REVIEW OF RECORD REQUIRED

The Planning Director shall, before deciding whether a proposed change to a special use is a minor change or modification, review the record of the proceedings of the original Special Use Permit approval. The Planning Director’s decision shall be based upon the applicant’s request, a review of the record of the original request, and the Planning Director’s findings under the criteria of *Section 3.8(O), CRITERIA USED FOR DETERMINATION*.

Q. ACTION REQUIRED ON PROPOSED MINOR CHANGES

If the Planning Director determines that the proposed action is a minor change, he/she shall state its findings in writing to the applicant. The applicant shall file with the Planning Director’s an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning staff shall file the amended site plan or written statement with the originally approved site plan.

R. ACTION REQUIRED ON PROPOSED MODIFICATIONS

If the Planning Director determines that the proposed action is a modification, he shall require the applicant to submit a request for modification of the approved Special Use Permit. The applicant shall provide an amended site plan and written narrative outlining the specific changes requested. The Planning Director shall submit the request to the Town Council. If the Town Council finds the modification substantial in its impact, or wishes to have additional public input, it may set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a request for a modification of an approved SUP shall be held in conformity with the requirements of *Section 3.8(I), PUBLIC HEARING*. The Town Council may approve, approve with conditions or disapprove the application for a modification. The Planning Director shall file the Town Council’s action as an amendment to the original application.

S. REVOCATION

The Town Council may revoke a Special Use Permit if it finds that any one, or more, of the following conditions:

1. That any governmental license or permit required for the activity authorized by a Special Use Permit has not been obtained or has been terminated; or
2. That any of the applicable requirements of this Ordinance or any conditions attached to the Special Use Permit, or modification thereof, have been violated.

The Town Council may consider reapplication for a Special Use Permit on property on which a previous permit has expired pursuant to *Section 3.8(T), EXPIRATION* or has been revoked under this section, provided that all of the standards which are set forth in this Ordinance are met.

T. EXPIRATION

An approved Special Use Permit expires 24 months from the date of approval if the Zoning Permit has not been issued for the project unless an extension of the expiration date has been granted by the Town Council. Extensions may be in the form of a longer expiration time approved with the initial Special Use Permit, or a separate request made in writing before the expiration of the standard 24 months.

3.9 VARIANCE

A. INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers requests for relief relating to the requirements of this Ordinance. Nothing in this section shall be construed to authorize the Board of Adjustment to permit a use in a district where that use is neither a permitted, nor Special Use.

B. APPLICABILITY

When a property owner claims that he or she cannot make reasonable use of their property if they are required to comply with the dimensional standards established by this Ordinance, such as but not limited to setback requirements, minimum lot width requirements, minimum lot area requirements and maximum height

requirements, they may seek a variance from such requirement. Only the Board of Adjustment has authority to grant such variances, and then only upon application of established legal standard as set forth in this Ordinance.

C. GENERAL STANDARDS/FINDINGS OF FACT

A Variance application shall be approved only upon a finding that all of the following standards are met:

1. Strict application of the Ordinance requirements results in practical difficulties or unnecessary hardships; and
2. Any practical difficulties or unnecessary hardships result from unique circumstances related to the land, and are not the result of the actions of the landowner; and
3. The Variance is the minimum action that will make possible a reasonable use of land or structures; and
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.

D. INSUFFICIENT JUSTIFICATION FOR VARIANCE

The following do not constitute grounds for a Variance:

1. The existence of other nonconforming or conforming uses of land or structures in the same or other districts;
2. The request for a particular use expressly, or by inference, prohibited in the district; or
3. Economic hardship or the fact that property may be utilized more profitably with a Variance.

E. SUBSEQUENT DEVELOPMENT

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance and/or any other applicable regulations. The granting of a Variance does not constitute and shall not be deemed to constitute a forecast that the development receiving a Variance will receive any other required approval.

F. PROCEDURE

1. APPLICATION REQUIREMENTS

The application requirements, checklists, and timeline are provided in the ADMINISTRATIVE MANUAL.

2. STAFF REVIEW

Upon receipt of a variance application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, it shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Comprehensive Land Use Plan, any other adopted plans, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case. The Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

3. PUBLIC HEARING

Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application.

4. NOTICE OF PUBLIC HEARING

Notification of hearings on variance applications shall be provided in the same manner as hearings on Special Use Permit applications as detailed in *Section 3.8(H)(1), Notice of Public Hearing*.

5. PUBLIC HEARING

Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application. After close of the hearing, the Board of Adjustment shall consider the

application, relevant support materials, and any testimony or evidence given at the hearing and included in the record. The Board of Adjustment shall take one of the following actions, based on the standards in *Section 3.8(C)(1) through 3.8(C)(4), GENERAL STANDARDS/FINDINGS OF FACT*:

- (a) Approve the application as submitted;
- (b) Approve the application subject to conditions; or
- (c) Deny the application.

The affirmative vote of at least four-fifths (4/5) of the members of the Board of Adjustment who are eligible to vote is required to grant a variance.

G. FORMALIZING THE OUTCOME

The applicant shall receive a written notification of the outcome or final decision by the Board of Adjustment at the conclusion of the review process. The date of this written notice will initiate the appeal time frame for the decision. The applicant will also be required to record a notice of the Variance, which will be provided by the Planning Director, with the Duplin County Register of Deeds in.

H. APPEAL

An aggrieved person may appeal a decision by the Board of Adjustment on an application for a Variance to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N.C. Gen. Stat. § 160A-388(e2).

I. MODIFICATIONS

A Variance may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

J. EXPIRATION

Variance approval shall automatically expire if the applicant does not record the Variance with the Duplin County Register of Deeds within thirty (30) days after the date the Variance is approved. Except where required as a prerequisite for a Site Plan associated with new development, an approved and recorded Variance shall run with the land. In cases where a Variance is a prerequisite to site plan approval, failure of an applicant to apply for a Zoning Compliance Permit and commence construction within one year of receiving Variance approval shall automatically render the decision of the Board of Adjustment null and void. Such time period shall not be extended with transfer of ownership.

3.10 APPEAL

A. INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers appeals from any order, requirement, decision or determination made by the Planning Director, Technical Review Committee or Historic District Commission, concerning the enforcement of this Ordinance.

B. APPLICABILITY

The Board of Adjustment shall hear an appeal taken by any aggrieved person regarding a decision or determination made by the Planning Director, the Technical Review Committee, or the Historic District Commission, concerning the enforcement of this, within the times provided by this Ordinance.

C. GENERAL STANDARDS

In deciding appeals, the Board of Adjustment may hear those arguments based upon an allegedly improper or erroneous interpretation of the ordinance. The Board of Adjustment will:

1. Interpret the meaning of parts of this Ordinance, and
2. Apply the Ordinance provisions to particular fact situations in the application.

D. PROCEDURE

1. APPEAL REQUIREMENTS

The appeal requirements, checklists, and time for filing an appeal are provided in the Administrative Manual. Unless another time is specifically established by this Ordinance, appeals shall be filed within thirty (30) days of the date of the determination being appealed.

2. STAFF REVIEW

Upon receipt of an appeal, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, it shall notify the appellant in writing of the reasons for such determination. The Planning Director shall prepare a staff report detailing the situation involved in the appeal. If the appeal involves the action of the Historic District Commission, minutes of the relevant Historic District Commission meeting shall be included in the materials provided to the Board of Adjustment. Once a complete application has been received, the Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

3. PUBLIC HEARING

Following receipt of the appeal from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the appeal.

4. NOTICE OF PUBLIC HEARING

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), and the Planning Director, the Technical Review Committee, or the Historic District Commission (as appropriate).

5. PUBLIC HEARING

Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application. After close of the hearing, the Board of Adjustment shall consider the application, relevant support materials, and any testimony or evidence given at the hearing and included in the record. The Board of Adjustment shall take one of the following actions:

- (a) Affirm, wholly or partly, the determination being appealed;
- (b) Reverse, wholly or partly, the determination being appealed; or
- (c) Modify the determination which is being appealed.

The Board of Adjustment may include direction to the appealed entity for how it should carry out the direction from the Board.

The affirmative vote of at least four-fifths (4/5) of the members of the Board of Adjustment who are eligible to vote is required to grant an appeal (overturn a determination).

E. FORMALIZING THE OUTCOME

The Board of Adjustment's decision on the appeal shall be reduced to writing and transmitted to the appellant by first class mail.

F. APPEAL

An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N.C. Gen. Stat. § 160A-388(e2).

G. EXPIRATION

The decision on an appeal before the Board of Adjustment, if attached to a development approval, shall run with the approval period of that permit or approval.

3.11 CERTIFICATE OF APPROPRIATENESS

A. INTENT

As authorized by NC Gen. Stat. § 160A-400.1 et seq, the Town has established an historic overlay district, the purpose and intent of which is to protect the historic and culturally important and significant structures located in the historic district. Consistent with N.C. Gen. Stat. § 160A-400.9, the erection, alteration and improvement of the exterior features of buildings and structures in the historic district may not be undertaken until after an application for a Certificate of Appropriateness for the work has been submitted to and approved by the Historic District Commission.

B. APPLICABILITY

Within the Historic District it shall be unlawful to begin construction, moving, demolition, alteration, or restoration of any structure or site until a Certificate of Appropriateness has been issued.

C. STANDARDS OF EVALUATION

The Commission, in deliberating upon an application, shall consider, among other things, the general scale, design, arrangement, texture, material, and color of the building, structure, or site in question and the relation of such factors to similar features of buildings in the immediate vicinity or buildings of a similar architectural style or age in the Historic District.

The Commission shall not consider the interior arrangement, nor shall it make any requirements except for the purpose of preventing developments which are obviously incongruous to the historic character of the Historic District.

To provide reasonable standards to assist the Commission in its review of design and to guide and limit the discretion of the Commission, the report entitled "Wallace Historic District Commission Guidelines," as adopted by the Town Council, is hereby adopted and incorporated by reference as part of this Ordinance to guide the review of applications for Certificates of Appropriateness.

D. CERTAIN CHANGES NOT PROHIBITED

Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any architectural feature in the Historic District which does not involve a change in design, material, color, or other appearance nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the County Building Inspector shall certify to the Commission is required for the public safety because of an unsafe or dangerous condition.

E. PROCEDURE

1. AUTHORITY TO APPLY

The owner of property in the Historic District, or his/her authorized representative may apply to the Planning Director for a Certificate of Appropriateness for their property.

2. PRE-APPLICATION

Applicants for certificates of appropriateness are encouraged to schedule and participate in a pre-application conference with the Planning Director staff to review the proposal for the property and the Wallace Historic District Commission Guidelines.

3. APPLICATION REQUIREMENTS

Applications for certificates of appropriateness shall be filed with the Planning Director. The forms for such applications and other submittal requirements shall be as set forth in the Administrative Manual. No application shall be accepted by the Planning Director unless it complies with all submittal requirements of this Ordinance, including payment of the applicable fee. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

F. DELAY IN DEMOLITION

An application for Certificate of Appropriateness authorizing the demolition, destruction, or relocation of a building, structure, or site within the Historic District may not be denied except as provided in *Section 3.11(F)(4)*. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section maybe reduced by the Commission based upon a finding that the property owner would suffer extreme hardship or be permanently deprived of beneficial use of or a reasonable return from such property by virtue of the delay.

1. During such period the Commission may negotiate with the owner and with other parties in an effort to find a means of preserving the building or site. If the Commission finds that a building or site within the District has no special significance or value toward maintaining the character of the District, it may waive all or part of such period and authorize earlier demolition or removal.
2. If the Commission or Planning Board has voted to recommend the designation of an area as an historic district and final designation has not been made by the Town Council, the demolition or destruction of any building, site, or structure located in the proposed district may be delayed up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.
3. The Town Council may enact an Ordinance to prevent the demolition by neglect of any building or structure within the Historic District. Such Ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.
4. An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

G. STAFF REVIEW

1. ACTION REQUIRED ON PROPOSED MINOR WORKS

The applicant shall file with the Planning Director a written statement outlining in detail the minor works(s) proposed. If the Planning Director determines that the work proposed in an application for a Certificate of Appropriateness is a minor work, such determination shall be made in written findings. The Planning Director shall file this statement in the Zoning Office.

H. PUBLIC HEARING

The Commission is not required to conduct public hearings on applications for certificates of appropriateness. However, all meetings of the Commission are public meetings, notice of which shall be provided as otherwise required by law. In cases where the Commission deems it appropriate, a public hearing shall be held concerning an

application, and notice of such hearing shall be given in the same manner as Special Use Permits established in *Section 3.8*.

I. HISTORIC DISTRICT COMMISSION ACTION

The Commission may approve, approve with conditions, or deny an application for a Certificate of Appropriateness. The Commission shall review the record of the meeting or hearing and the application and make its decision on the application based on the standards of evaluation listed in *Section 3.11(C), STANDARDS OF EVALUATION*.

In cases where a property requesting a Certificate of Appropriateness is encumbered with a Preservation Easement or Agreement regarding the exterior of the structure, the concurrence of the Preservation Easement holder shall be submitted with the application materials so that it is determined complete. The decision of the Commission shall be binding on the property owner and Preservation Easement/Agreement holder equally.

J. IMPOSED CONDITIONS

The Commission may impose such reasonable conditions upon approval of a Certificate of Appropriateness as will afford protection of the public health, safety, and general welfare; insure that substantial justice is done; and equitable treatment provided. Such conditions shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Commission denies the Certificate, the reasons for its action shall be recorded in the minutes of the meeting and a copy sent to the applicant by certified mail, return receipt requested.

K. NOTICE OF DECISION AND ISSUANCE OF CERTIFICATE OF APPROPRIATENESS

Upon approval, approval subject to conditions, or denial of any application, the Commission shall forthwith transmit a report to the Planning Director stating its decision, and cause a copy of the decision to be transmitted to the applicant.

The Planning Director shall periodically inspect the construction or alteration, and immediately report to the Commission any work not in accordance with the Certificate.

All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date that a complete application for a Certificate of Appropriateness is filed, unless an extension of time is agreed to by the applicant.

L. APPEAL

A decision of the Commission on an application for a Certificate of Appropriateness may be appealed to the Board of Adjustment by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in *Section 3.11(K)*, whichever is later. Such appeals to the Board of Adjustment are in the nature of certiorari and the Board of Adjustment shall determine such appeals based on the record generated before the Commission. Any appeal from a decision of the Board of Adjustment shall be heard by the Duplin County Superior Court, and shall be filed in the time prescribed in N.C. Gen. Stat. § 160A-388(e2).

M. EXPIRATION

A Certificate of Appropriateness approved pursuant to this section shall expire one year after the date of approval if the work authorized by the approval has not begun, unless the time is extended by the Commission. The process for extending approvals is addressed in the Rules of Procedure for the Historic District Commission.

3.12 SITE PLAN REVIEW

A. INTENT

It is the intent of this section to address the specific conditions and standards of evaluation for the review of site plans.

B. APPLICABILITY

Site Plan review is the general term used to describe review of projects other than (a) the construction of single family dwellings on lots zoned for single family uses and (b) uses requiring a Special Use Permit.

The Site Plan Review process is applicable only to proposed development involving the disturbance of 3 acres or less and or involving the construction of new structures or additions consisting of 10,000 square feet or less of gross floor area in any general purpose zoning district. Projects that exceed this threshold are required to pursue a Special Use Permit in accordance with the standards and provisions established by Section 3.8, Special Use Permit, of this Ordinance.

C. GENERAL STANDARDS/FINDINGS OF FACT

The following specific standards shall apply to the review of a site plan:

1. The use is a permitted use according to the Use Table for the district in which the property is situated.
2. The lot area satisfies the minimum requirement for the district, or, if legal nonconforming, is of sufficient size that all required parking, access, yard areas, and buffers are provided without any variance to the stated standards of the Unified Development Ordinance.
3. A fire protection plan has been reviewed and approved in writing by the Fire Marshal.
4. A utility plan has been approved in writing by the Public Works Director and does not require improvement of any existing systems by the Town of Wallace.
5. A landscaping plan which meets the requirements of this Ordinance has been submitted.
6. The proposed exterior lighting plan and signs meet all the requirements of this Ordinance.
7. Driveways meet requirements for restricting access to the property and design standards for safety and storm water control.
8. The parking layout meets the minimum standards of this Ordinance and controls storm water runoff onto streets and adjacent properties.
9. Grading, storm drainage, and soil erosion control plans have been approved in writing by the Public Works Director or consulting Engineer as appropriate.
10. The location, buffers, and/or screening, and construction specifications for any required or proposed trash containers meet the minimum requirements of this Ordinance.
11. The site plan shows the location of and distance to any structures within one hundred (100) feet of the lot for which the site plan application is submitted. The site plan must show all other significant physical features within one hundred (100) of the lot boundary.
12. A traffic impact analysis (TIA), if required, demonstrates that the proposed site development will not cause a reduction in the Level of Service (LOS) at any intersection studied in the TIA, or that any measurable reduction in LOS has been or will be mitigated by site plan design features.

D. PROCEDURE

1. AUTHORITY TO APPLY

The owner of any property, or their authorized representative, may apply to the Planning Director for site plan approval.

2. PRE-APPLICATION CONFERENCE

Before submitting an application for site plan approval, the applicant shall first meet with the Planning Director to review the proposed plan and the requirements of this Ordinance.

E. APPLICATION REQUIREMENTS

The Planning Director shall provide forms for applications for site plan approval, which shall be submitted by the applicant. Applicants for site plan approval shall submit all information required to be submitted with Special Use Permit applications as set forth in *Section 3.8(E)(3), APPLICATION REQUIREMENTS* and in the *ADMINISTRATIVE MANUAL*, and any additional information needed to demonstrate and support compliance with the standards of evaluation. No application shall be accepted as complete unless accompanied by all required fees as set forth in the Schedule of Fees.

F. REVIEW PROCESS

1. The Planning Director shall review and, if the site plan submitted otherwise meets all of the standards of this Ordinance, approve site plans for uses permitted as of right where
 - (a) less than 1 acre of land will be disturbed by the proposed development,
 - (b) no new structure consists of more than 2,500 square feet of gross floor area, and/or
 - (c) no addition to an existing structure consists of more than 5,000 square feet of gross floor area.
2. The Technical Review Committee shall review, and, if the site plan submitted otherwise meets all of the standards established in this Ordinance, approve site plans for uses permitted as of right where
 - (a) 1 or more acres, but less than 3 acres, of land will be disturbed by the proposed development, and/or
 - (b) new structure(s) consist of more than 2,500 square feet and less than 10,000 square feet of gross floor area , and/or
 - (c) additions to an existing structure consist of between 5000 square feet and 10,000 square feet of gross floor area.
3. The Planning Director and the Technical Review Committee shall each have the authority to refer a site plan to the Technical Review Committee or the Town Council, as appropriate, if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral.
4. If a Site Plan is denied for lack of compliance with provisions in Section 6 of this Ordinance, the applicant shall have the option to file an appeal with the Board of Adjustment consistent with *Section 3.12(H), Appeal*. The Board of Adjustment may apply its authority to grant waivers of provisions in *Section 6* during its review of an appeal of this type.

G. DECISIONS ON SITE PLAN APPLICATIONS

The Planning Director and/or the Technical Review Committee shall have the authority to approve site plans, or to deny site plan approval on the grounds that:

1. The site plan submitted fails to comply with any specific requirements of this Ordinance;
2. The site plan submitted fails to adequately protect residentially zoned property, or property in a residential use;
or
3. The site plan submitted fails to provide safe conditions for pedestrians or motorists. All such decisions shall be made in writing, and the written decision shall be filed with the Planning Director and sent to the applicant by first class mail.

H. APPEAL

A decision of the Planning Director or Technical Review Committee on an application for a Site Plan Review may be appealed to the Board of Adjustment by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in Section 3.12(G), Decisions on Site Plan Applications whichever is later.

I. VESTING

No statutory vested right is established by approval of a site plan except in the case of a site plan approved by the Town Council following the special use permit process.

J. MODIFICATIONS

Approval of modifications can be made to the approved Site Plan by applying the procedures and criteria found in *Sections 3.8(P), ACTIONS REQUIRED OF PROPOSED MINOR CHANGES* and *3.8(Q), ACTIONS REQUIRED ON PROPOSED MODIFICATIONS OF THIS ORDINANCE*.

K. REVOCATION

Site Plan Approval may be revoked by the issuing authority following the same procedure and applying the same criteria as established for revocation of special use permits in *Section 3.8(R), REVOCATION*.

L. EXPIRATION

Site plan approval expires twenty-four (24) months from the date of approval if a Zoning Compliance Permit has not been issued for the project.

3.13 ZONING COMPLIANCE PERMIT

A. INTENT

The intent of the Zoning Compliance Permit is to provide written documentation of the completion of the development review processes under this Ordinance. This permit is a prerequisite to securing a Duplin County Building Permit. A Zoning Compliance Permit documents a project’s compliance with this Ordinance and with the Administrative Manual without regard to any contractual or other arrangements (including, but not limited to restrictive covenants) among private parties which may also affect the use of the property.

B. APPLICABILITY

It shall be unlawful to begin construction, place, or move any structure (including signs) or to begin to grade or excavate for immediate construction until the Planning Director has issued for such work a Zoning Compliance Permit. A Zoning Compliance Permit signifies a determination that the site plan, building specifications and the intended use of such structure conform in all respects to the provisions of this Ordinance.

Also, it shall be unlawful to change the type of use or type of occupancy of any building, or to alter or extend any use of any lot on which there is a non-conforming use, until the Planning Director has issued for such intended use a Zoning Compliance Permit, including a determination that the proposed use conforms in all respects to the provisions of this Ordinance.

C. GENERAL STANDARDS/FINDINGS OF FACT

The application materials, as specified in the Administrative Manual, when taken together provide sufficient evidence for the Planning Director to conclude that the project, with reasonable conditions, will comply with the provisions of this ordinance and the Administrative Manual.

D. PROCEDURE

If the proposed excavation, construction, relocating, alteration, or use of land as set forth in the application is in conformity with the provisions of this Ordinance, the Planning Director shall issue a Zoning Compliance Permit; however,

1. Issuance of a Zoning Compliance Permit shall in no case be construed as waiving any provision of this Ordinance.
2. Under no circumstances is the Planning Director permitted to vary the terms of this Ordinance, deviate from the apparent meaning of any clause, standard, or regulation contained in this Ordinance, or otherwise afford special treatment to any person making application to excavate, construct, move, alter, or use either buildings, structures, or land.

3. Under no circumstances is the Planning Director permitted to make any changes to this Ordinance.
4. The Planning Director shall issue a Stop Work Order if a project is found to be under construction without a Zoning Compliance Permit, if a Zoning Compliance Permit is revoked in accordance with Section 3.13(K), Revocation, or if work being undertaken is contrary to this Ordinance or any permit issued pursuant to this Ordinance.

E. FORMALIZING THE OUTCOME

The Planning Director shall issue a permit when the applicable provisions of this Ordinance are satisfied.

If an application for such a permit is not approved, the Planning Director shall state in writing the reason(s) for such denial.

F. APPEAL

Persons aggrieved by a decision or a determination made by the Planning Director may appeal that action to the Board of Adjustment, following the procedures established in *Section 3.10, APPEAL*.

G. VESTING

The issuance of a Zoning Compliance Permit does confer a statutory vested right unless permit is revoked according to *Section 3.13(H), DEVIATIONS*, as described below or if permit is revoked for any other reason.

H. DEVIATIONS

If a site inspection reveals work undertaken does not comply with conditions and specifications of an approved Zoning Compliance Permit, the approved permit may be revoked or a stop work ordered issued. Such stop work order shall remain in effect until the Planning Director determines that the work is in compliance with the provisions of this Ordinance and the Administrative Manual.

I. MODIFICATIONS

A Zoning Compliance Permit may be modified at the request of the applicant at any time before it expires. Such modification must comply with all provisions of this ordinance and the Administrative Manual. All modifications must be documented in writing.

J. REVOCATION

The Planning Director shall revoke a Zoning Compliance Permit if it is found to be issued in violation of any provisions of this Ordinance, or if the conditions stated on the permit are not satisfied.

K. EXPIRATION

A Zoning Compliance Permit shall be valid for 12 months from the date of issuance. In the case that the Zoning Compliance Permit authorizes a construction project that takes more than 12 months to complete, the permit shall be valid so long as the Duplin County Building Permit for the project remains active and unexpired.

3.14 CONDITIONAL REZONING

A. AUTHORITY

The Town may establish zoning districts by means of conditional zoning in accordance with G.S. 160A-382.

B. PURPOSE

In cases where the standards of a general (base) zoning district are inadequate to ensure that development allowed by the district will conform to the Town's adopted plans or to appropriately address the impacts expected to be generated by such development, a landowner may apply for a Conditional Rezoning. Such rezoning establishes a conditional zoning district that is equivalent to the general (base) zoning district, but subject to additional conditions or restrictions that the applicant and the Town mutually agree are necessary to ensure conformance to

adopted plans and adequately address expected development impacts. The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish conditional zoning districts.

C. INITIATION

In accordance with the North Carolina General Statutes, an application for a Conditional Rezoning may be initiated only by the owner(s) or a duly authorized representative of the property owner of all the property included in the proposed conditional zoning district.

D. PROCEDURE

1. BASIC PROCEDURES

(a) Except as modified by *Section 3.14(D)(2)-(10)* below, procedures and requirements for the submission, completeness determination, review, recommendation, hearing, and decision on applications are as established in *Section 3.2, COMMON REVIEW PROCEDURES*.

(b) Specific steps to be completed before any Public Hearing on the application include:

- i. Pre-Application Conference with Town Staff
- ii. Informational Meeting with area residents and property owners
- iii. Submittal of complete application
- iv. Staff Review and Report on the complete application

2. PRE-APPLICATION CONFERENCE ON SITE PREFERRED

For conditional rezoning requests, the pre-application conference required shall include a meeting with the Town Staff, preferably on-site, to discuss a Sketch Plan of the proposed development conditions and to identify possible unique situations that should be incorporated into the Sketch Plan prior to filing for rezoning.

3. INFORMATIONAL MEETING REQUIRED

After the Pre-Application Conference, but before the submittal of a formal application, an Informational Meeting shall be held in accordance with the requirements set forth in the ADMINISTRATIVE MANUAL.

4. APPLICATION TO INCLUDE CONDITIONS FOR DEVELOPMENT

The application shall include a Sketch Plan that depicts the conditions upon which the property will be developed, including the general configuration and relationship of the principal elements, including uses, general building types, density/intensity, resource protection, pedestrian and vehicular circulation, stormwater management, and open space. The application shall include mapped and written conditions proposed by the applicant consistent with the provisions of *Section 3.14(D)(9), CONDITIONS OF APPROVAL*.

5. APPLICATION MAY INCLUDE VESTED RIGHTS REQUEST

The applicant may request approval of the application to establish a vested right in accordance with Section 160A-385.1 of the North Carolina General Statutes. Concurrent with the application for a conditional rezoning, the application shall include a written request for such a vested right and a plan that shows at least the information specified by the North Carolina General Statute definition of a site-specific development plan.

6. REVIEW AND STAFF REPORT BY PLANNING DIRECTOR

Before review by the Planning Board the application shall be reviewed by the Planning Director, who may suggest revisions to the proposed conditions, consistent with the provisions of *Section 3.14(D)(9), CONDITIONS OF APPROVAL*. Only those revisions agreed to in writing by the applicant shall be incorporated into the application and may be reflected in the Staff Report.

7. REVIEW AND RECOMMENDATION BY PLANNING BOARD

(a) Following staff review, the Planning Board shall conduct a hearing on the application. After close of the hearing, the Planning Board will make a decision based upon the application, consistency with the Comprehensive Plan, relevant support materials, the staff report, and any comments given by the

public. Upon making a decision, the Planning Board, by a majority vote of a quorum present, shall adopt a written recommendation for one of the following actions, based on the standards in *Section 3.14(F), CONDITIONAL REZONING STANDARDS*:

- i. Approval of the application subject to the conditions included in the application;
- ii. Approval of the application subject to any revised or additional conditions agreed to by the applicant, in writing;
- iii. Denial of the application; or
- iv. Continuance of the hearing.

(b) As part of its review of the application, the Planning Board may suggest revisions to the proposed conditions, consistent with the provisions of *Section 3.14(D)(9), CONDITIONS OF APPROVAL*. Only those revisions agreed to in writing by the applicant shall be incorporated into the application.

(c) In making its recommendation, the Planning Board shall adopt a written Statement of Consistency and Reasonableness that:

- i. describes whether the decision is consistent with all Town-adopted plans that are applicable; and
- ii. explains why the decision is reasonable and in the public interest.

8. PUBLIC HEARING, REVIEW, AND DECISION BY TOWN COUNCIL

(a) Following staff review and receipt of the Planning Board's recommendation, the Town Council shall conduct a standard, legislative public hearing on the application in accordance with *ADMINISTRATIVE MANUAL* for Public Notification and Standard Public Hearing Procedures. After close of the hearing, the Town Council shall consider the application, consistency with the Comprehensive Plan, relevant support materials, the staff report, the Planning Board recommendation, and any comments given by the public.

(b) As part of its review of the application, the Town Council shall review the proposed conditions and may suggest revisions to the proposed conditions, consistent with the provisions of *Section 3.14(D)(9), CONDITIONS OF APPROVAL*.

(c) The Town Council, by a majority vote of a quorum present or any supermajority vote required in accordance with *Section 3.14(E), PROTEST PETITIONS*, shall take one of the following actions based on the Map Amendment (Rezoning) Standards:

- i. Approval of the application subject to the conditions included in the application;
- ii. Approval of the application subject to any revised or additional conditions agreed to by the applicant, in writing;
- iii. Denial of the application; or
- iv. Remand of the application back to the Planning Board for further consideration during a standard public hearing notice;
- v. Continuance of the hearing

(d) Regardless of its decision on the proposed amendment, the Town Council will render a decision based upon a Statement of Consistency and Reasonableness that:

- i. describes whether the decision is consistent with all Town-adopted plans that are applicable; and
- ii. explains why the decision is reasonable and in the public interest

9. CONDITIONS OF APPROVAL

(a) Only conditions mutually agreed to by the owners of the property to be rezoned and the Town may be applied to a conditional rezoning district

- (b) Conditions shall be limited to those that address conformance of development and use of the site with Town regulations and adopted plans and that address the impacts reasonably expected to be generated by the development or use of the site
- (c) Conditions may be in the form of text or of plans and maps
- (d) No condition shall be less restrictive than the standards of the parallel general use (base) zoning district, any applicable overlay zoning district standard, or other applicable requirement of this Ordinance.

10. EXPIRATION

- (a) If no application for approval of a Subdivision Preliminary Plat or Site Plan (Major or Minor) for any part of the rezoned land is submitted with two years after approval of the Conditional Rezoning, the Planning Director shall initiate a Map Amendment (Rezoning) application to rezone the land back to its prior zoning classification or any other base zoning classification determined to be appropriate. A change in ownership of the land shall not affect this time period. However, this period may be approved for up to five (5) years under relevant circumstances as provided for in *Section 3.14(D)(10)(b)* below.
- (b) For some developments, Town Council may provide that the expiration period under *Section 3.14(D)(10)(a)* may exceed two (2) years but shall not exceed five (5) years, as warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. Such a determination shall be in the sound discretion of the Town Council. As a condition of approval when an extended expiration period is requested, the Town may require the applicant to submit a phased development plan.
- (c) Upon written request submitted at least thirty (30) days before expiration of the timeframe provided for in *Section 3.14(D)(10)(b)* above, and upon a showing of good cause, the Planning Director may grant one (1) extension not to exceed six (6) months for the applicant to submit required development applications.

E. PROTEST PETITIONS

An application for Conditional Rezoning shall be subject to the protest petition provisions applicable to all Zoning Map Amendments (Rezoning).

F. CONDITIONAL REZONING STANDARDS

Review of and the decision on a Conditional Rezoning application shall be subject to the Map Amendment (Rezoning) Standards

G. EFFECT OF APPROVAL

Lands rezoned to a conditional zoning district shall be subject to the standards applicable to the parallel general use (base) zoning district, as modified by the more restrictive conditions proposed by the applicant and approved by the Town Council. The applicant shall record the restrictive conditions of approval with the Register of Deeds. These standards and modifying conditions are binding on the land as an amendment to this Ordinance and the Official Zoning Map. The applicant may apply for and obtain subsequent development permits and approvals only in accordance with the approved conditions and appropriate procedures and standards set forth in this Ordinance.

H. MINOR DEVIATIONS FROM CONDITIONS

1. Subsequent plans and permits for development within the Conditional Zoning District may include minor deviations from the approved conditions, provided such deviations are limited to changes addressing technical considerations that could not reasonably be anticipated during the Conditional Rezoning review process or any other change that has no material effect on the character of the approved conditional zoning district or any of its approved terms and conditions. The following shall constitute examples of minor deviations:
 - (a) Floor plan revisions internal to the structure
 - (b) Minor shifts in building size or location; and
 - (c) Facility design modifications for amenities and the like
2. Changes that materially affect the basic configuration or intent of approved conditions are not considered minor deviations, and shall be amendments that may only be considered in accordance with the procedure used to establish the conditional zoning district

I. DESIGNATION ON OFFICIAL ZONING MAP

Designation of a conditional zoning district on the Official Zoning Map shall bear the same designation as the parallel general use (base) zoning district but shall also include the suffix "C" along with the case number approving the Conditional Rezoning.

3.15 ANNEXATION

A. AUTHORITY

Authority is given to the town under Article 4A of the North Carolina General Statutes more specifically G.S. 160A-31 (voluntary contiguous annexation) and G.S. 160A-58.1 (voluntary satellite annexation).

B. APPLICABILITY

Voluntary annexation is a mutual agreement that results when the owners of one or more parcels of property and the town agree that the town will annex those parcels.

1. All voluntary annexation petitions shall be submitted and reviewed in accordance with the policy included in the Administrative Manual. The Town Council has discretion as to whether it annexes any property. The voluntary annexation petition shall include all the property within the parcel or parcels and may not subdivide parcels.
2. For properties located within the Town's extraterritorial jurisdiction, if a rezoning application is submitted with the annexation petition, the rezoning and annexation shall be processed and approved simultaneously. For properties located outside the Town's extraterritorial jurisdiction, the annexation petition must be approved prior to the rezoning application.
3. If a site and/or subdivision plan or other development plan is submitted with the annexation petition, the decision-making body responsible for approving the site and/or subdivision plan may not approve the plan until the annexation has been approved.
4. All proposals to connect to the Town's water and/or sanitary sewer system shall be required to submit a petition for annexation into the Town's corporate boundaries at the time an application for rezoning or site and/or subdivision plan or other development plan approval is filed with the Town.

C. VOLUNTARY CONTIGUOUS ANNEXATION

For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.

Procedures for Voluntary Contiguous Annexation are set forth in G.S. 160A-31.

D. VOLUNTARY SATELLITE ANNEXATION

For the purposes of this section, an area shall be deemed “satellite” if, at the time of the petition is submitted, such area does not qualify as contiguous area under *Section 3.15(C), VOLUNTARY CONTIGUOUS ANNEXATION* above.

1. FIVE STANDARDS

The five standards a satellite annexation must meet are set out in G.S. 160A-58.1(b) as follows:

- (a) Some part of the annexation area must be within three miles of the annexing city’s primary corporate limits.
- (b) No point in the annexation area may be closer to the primary corporate limits of another city that to the primary corporate limits of the annexing city.
- (c) The annexing city must be able to provide the same services to the annexation area that it provides to areas within its primary corporate limits.
- (d) If the area is a subdivision, the entire subdivision must be annexed.
- (e) The total area of a city’s satellites may not exceed ten (10) percent of the area within its primary corporate limits.

The Town of Wallace through local acts are exempt from Section 3.15(D)(1)(d) and (e).

2. PROCEDURES

Procedures for Voluntary Contiguous Annexation are set forth beginning in G.S. 160A-58.

E. PETITION FOR ANNEXATION

The petition for annexation is located in the Administrative Manual. Review process follows guidelines as set forth in the Administration Manual.

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