

Chapter 15. DEVELOPMENT PROCESS

15.1 Purpose and Intent

In order to establish an orderly process to develop land within the jurisdiction of the Town of Knightdale consistent with standard development practices and terminology, it is the purpose of this Chapter to provide a clear and comprehensible development process that is fair and equitable to all interests, including the petitioners, affected neighbors, Town staff and related agencies, the Land Use Review Board and the Town Council. The intent of this Chapter is as follows:

- To ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Ordinance;
- To ensure that development is in a manner generally harmonious with surrounding properties and without the endangerment of the health, safety, and general welfare of existing, prospective, or future owners; users; surrounding and adjoining properties and the public; and
- To provide for the adequate and efficient provision of facilities and/or infrastructure, and the dedication of land, rights-of-way and easements, so as not to burden the fiscal resources of the Town. This includes the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces and other provisions required for the public good of the Town of Knightdale.

The Knightdale Town Council shall adopt from time to time a review schedule for application and processing and a schedule of fees as specified in this Ordinance.

A. General Applicability

The provisions of this Chapter shall be applicable to all development activity under the jurisdiction of the Town of Knightdale. No building, sign or other structure (except as otherwise provided for in this Ordinance) shall be erected, moved, extended, enlarged or structurally altered, nor shall the use conducted within the building change, nor shall any excavation or filling of any lot for the construction of any building be commenced, nor shall any change in the use of a property be commenced until the Administrator has issued an applicable permit for such work. The issuance of a Zoning Compliance Permit is subject to the required development review process as applicable for the development petition.

B. Project and Subdivision Names

Project and subdivision names shall be assigned by the developer subject to the approval by resolution of the Knightdale Town Council.

C. Completeness Review

1. **Authorized Representative:** Applications for permits or subdivision plat approval will be accepted only from persons having the legal authority to take action in accord with the permit or subdivision plat approval. These persons shall include owners of property, lessees of property, contract purchasers or agents of such persons. The Administrator shall require an applicant to submit evidence of his authority to submit an application.
2. **Applications to be Complete before Processing:** No application shall be accepted by the Administrator unless it contains all of the information that is

necessary for the permit-issuing authority to determine whether or not the development, if completed as proposed, will comply with all of the requirements of this Chapter. Applications which are not complete shall be returned forthwith to the applicant with a notation of deficiencies in the application.

3. **Preliminary Review of Application:** Upon receipt of a formal application, the Administrator shall review the application and confer with the applicant to ensure that he/she understands the interpretation of the applicable requirements of this Chapter, that he/she has submitted all of the information he intends to submit and that the application represents precisely and completely what he/she proposes to do.

D. Public Notification Requirements

Notification of all public hearings shall be as follows:

1. **Newspaper Notice:** A notice shall be published in a newspaper having general circulation in the Town once a week for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than 25 days prior to the date established for the hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
2. **Sign to be Posted:** A prominent sign shall be posted on the subject property(ies) beginning not less than ten (10) days nor more than 25 days prior to the date established for the hearing. Such notice shall state a phone number to contact during business hours for additional information. The sign shall remain until after the decision-making authority has rendered its final decision.
3. **First-Class Mail Notification:** A notice of the proposed action shall be sent by first class mail from the Administrator to the affected property owner and to all contiguous property owners within 200 feet.
4. **Alternate Notification for Re-zoning more than 50 Properties:** First-class mailed notification shall not be required when the zoning reclassification action directly affects more than 50 properties owned by a total of at least 50 different property owners. In this case, the Town shall publish once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area with a map showing the boundaries of the area affected by the proposed re-zoning. The map shall not be less than one-half ($\frac{1}{2}$) of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the Town's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this Section. The person or persons mailing the notices shall certify to the Town Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town shall post one (1) or more prominent signs on or immediately adjacent to the subject property area reasonably calculated to give public notice of the proposed re-zoning.

E. Modification of Application at Hearing

In response to questions or comments from persons appearing at the hearing or to questions or comments from the Town Council or LURB, the applicant may offer to modify the application, including the submitted plans and specifications. Unless

modifications are deemed to be so substantial or extensive that the board may not reasonably be expected to perceive the nature and impact of the modifications without having revised plans submitted, the board may approve an application with a condition that the permit shall not be issued until plans reflecting the agreed upon modifications are submitted to the Administrator.

F. Written Decision

Any decision made by the Town Council or the LURB regarding an appeal, variance, Special Use Permit, Special Use Permit modification, Zoning Map Amendment or Zoning Text Amendment shall be reduced to writing and served upon the applicant and all other persons who make a written request for a copy. The written decision shall include:

- a statement of the ultimate disposition of the case by the board;
- findings and conclusions of the board;
- supporting reasons or facts; and
- other information deemed appropriate.

15.2 Administrative Permit Procedures-General Provisions

A. Permit Not Required

Notwithstanding any other provisions of this Ordinance, a Zoning Compliance Permit is not required for the following uses and/or activities:

1. Street construction or repair by NCDOT or the Town of Knightdale.
2. Grading or paving of driveways or pedestrian walkways entirely on private property.
3. Electric power, telephone, telegraph, cable television, gas, water and sewer lines; wires or pipes, together with supporting poles or structures located within a public right-of-way for maintenance or non-development-related capital expansions.
4. Specific signs exempted in Chapter 12.
5. Mailboxes, newspaper boxes, walls, fences, birdhouses, flag poles, pump covers and doghouses.

B. Waiver of Certain Application Requirements

The Administrator may waive certain application requirements if he/she determines that the submission of a Development Plan in accordance with Chapter 16 would serve no useful purpose.

1. Signs.
2. Interior alterations and renovations requiring a Town of Knightdale building permit which do not alter the footprint or height of an otherwise conforming use and/or structure such as AC/HVAC, re-roofing, steps and siding, except in a designated Historic District, etc.
3. Accessory structures for all building types.
4. Any enlargement of a principal building by less than 20 percent of its existing size, provided such enlargement will not result in site or landscaping improvements or the expansion of parking areas.
5. A change in principal use where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics.

C. Application for Permit Approval Required: Upon receipt of a complete application, the Administrator shall approve, approve with conditions or deny the application. Applications that are denied shall have the reasons for denial, in writing, attached to the application.

All Zoning Compliance Permits shall be issued in the name of the property owner, shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority.

D. Expiration of Permit: Any Zoning Compliance Permit issued in accordance with this Ordinance will lapse and become invalid unless the work for which it was issued is started within six (6) months of the date of issue, or if the work authorized by it is suspended or abandoned for a period of at least one (1) year. For the purposes of this

Section, the term “work” shall be defined as substantial expenditures in good faith toward the fulfillment of a valid government permit.

- E. Compliance and Violations:** Zoning Compliance Permits issued on the basis of dimensional plans approved by the Administrator authorize only the use, arrangement and construction set forth in such approved plans and applications. Use, arrangement or construction which differs from that authorized by the Zoning Compliance Permit shall be deemed a violation of this Ordinance and shall be subject to civil penalties as specified in Chapter 18.
- F. Right of Appeal:** If a request for a Zoning Compliance Permit is disapproved, or if a ruling of the Administrator is questioned, any aggrieved party may appeal such ruling to the Land Use Review Board in accordance with Section 15.11.
- G. Certificate of Occupancy:** No structure shall be erected, moved, structurally altered, used or occupied until a Certificate of Occupancy has been issued by the Town of Knightdale. Any Certificate of Occupancy issued shall state that the structure or portion of a structure is in compliance with the information stated on the Zoning Compliance Permit, with all applicable provisions of this Ordinance, and has received final inspections approval for compliance with the N.C. Building Code

A record of all certificates of occupancy shall be kept on file in the office of the Town of Knightdale and copies shall be furnished, on request, to all interested parties. If a Certificate of Occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant. Where certain infrastructure elements have not been installed (i.e. landscaping due to time of year), a temporary certificate may issued by the Administrator.

H. Modification of Dimensional Standards

- 1. The Administrator is authorized to approve requests that deviate from required setbacks set forth in this Ordinance by up to ten (10) percent of the required setbacks or 24 inches, whichever is greater, upon determination that one or more of the following conditions exists:
 - a. There are site or structural conditions that preclude strict adherence to the setback requirements, including but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
 - b. The part of the proposed structure that would encroach into the minimum setback area is less than 50 percent of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).
 - c. The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety Ordinance, flood hazard reduction, Americans with Disabilities Act standard or other public safety Ordinance requirements.

- d. The proposed structure will allow the preservation of significant existing vegetation.
 - e. A good faith error was made in the location of a building foundation not exceeding one (1) foot due to either field construction or survey error.
- 2. The authority given to the Administrator to grant such modification shall be construed to be permissive and not mandatory, and the Administrator may decline to make such modification. In the event this occurs, the applicant shall have the right to submit an application to the Land Use Review Board to grant a variance to these requirements.
 - 3. Nothing in this section shall be construed as limiting the Administrator's duties and rights under this Chapter, or an applicant's right to appeal the decision of the Administrator to the Land Use Review Board.

I. Administrative Permits Requiring a Master Plan

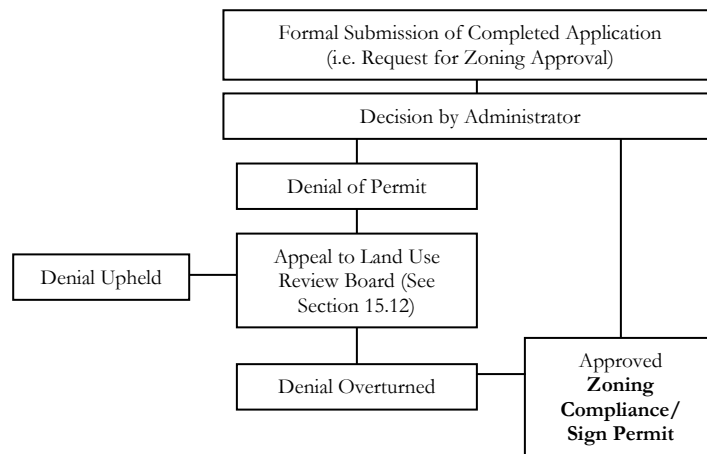
- 1. Within 90 days from the submittal of a Master Plan application, the TRC shall review the Site Plan (Section 15.5) or Major Subdivision Plan (Section 15.8), the comments and recommendations of the Administrator, and the necessary criteria for Master Plan Requirements as laid out in Section 16.5. The TRC shall either approve or deny the Master Plan application within this time period unless the applicant has caused additional delay by failing to provide necessary or accurate information. Failure to act by the TRC within the described time period shall be deemed a denial.
- 2. The TRC may defer the decision on the Master Plan application to the Town Council when any two members (voting or non-voting) deem that one or more of the necessary criteria for Master Plan Requirements may not be met by the proposed plan. In such event, the Town Council shall proceed as set forth in Section 15.2(I)(4) below.
- 3. Once the TRC takes action, the reasons for the denial, approval or deferral to the Council shall be stated in the record of action on the Master Plan application.
- 4. The applicant or any aggrieved party with standing may appeal any decision of the TRC to the Town Council as laid out in Section 15.11.

15.3 Zoning Compliance/Sign Permits

A. **Applicability:** A Zoning Compliance Permit is required for the approval of all applications for single-family homes, signs, and all other development applications not otherwise covered by other procedures in this Chapter.

B. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4)	Administrator	Permit Issued -or- Denial and Request for Resubmission	Land Use Review Board



15.4 Floodplain Development Permits

- A. **Applicability:** A Floodplain Development Permit with an accompanying Elevation Certificate shall be submitted for any proposed development within 100 feet of a flood hazard area. Floodplain Development Permits shall be approved by the Administrator.

No structure or land shall be located, extended, converted or structurally altered without full compliance with the term of this Chapter and Section 6.6. In addition to those federal, state and local government agency approvals, the applicant must also be in compliance with the Wake County Soil Erosion and Sedimentation Control Ordinance, as amended.

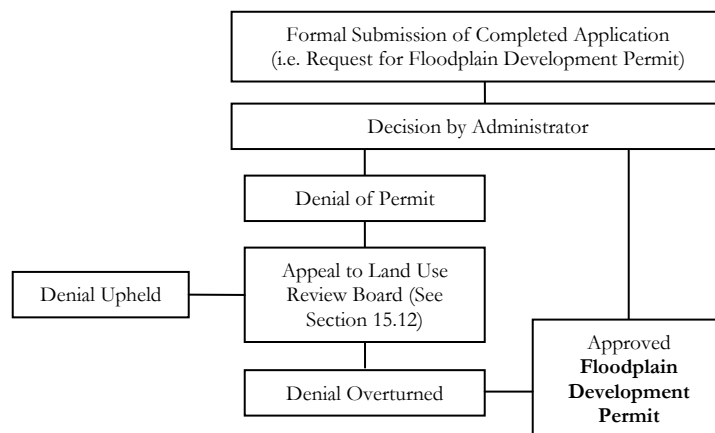
Any activity which differs from that authorized by the Floodplain Development Permit shall be deemed a violation of this Ordinance and shall be subject to civil penalties as specified in Chapter 18.

- B. **Required Procedure for Floodplain Development Approval:**

Upon receipt of a completed application, the Administrator shall approve, approve with conditions or deny the application. Applications that are denied shall have the reasons for denial, in writing, attached to the application.

Review will specifically verify the actual elevation (in relation to mean sea level) of the lowest floor (including basement) and the actual elevation to which the new or substantially improved buildings have been flood-proofed. Certification from the property owner's or developer's Project Engineer or Surveyor must accompany this application.

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Floodplain Development Permits (16.3)	Administrator	Floodplain Development Permit Issued -or- Denial and Request for Resubmission	Land Use Review Board

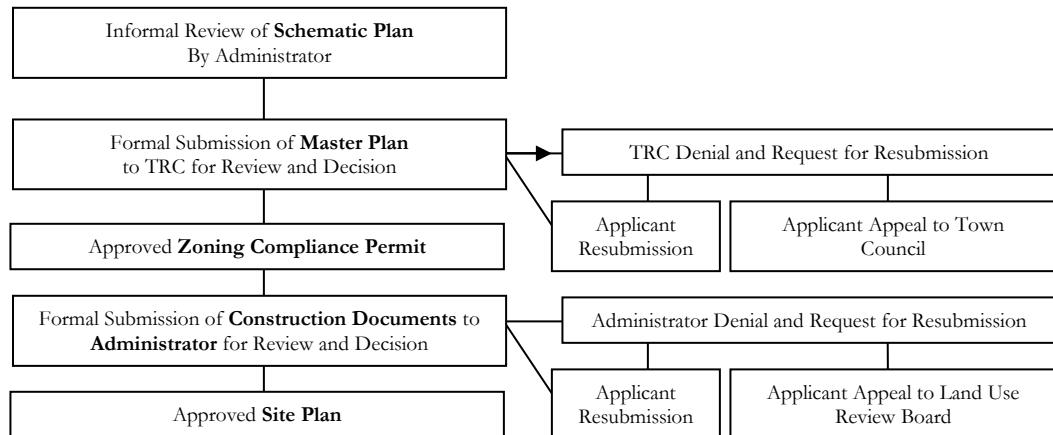


15.5 Site Plans

A. **Applicability:** A Site Plan is a development application for an individual building or buildings on previously platted lots.

B. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2)	Administrator	For Non-Binding Review Only	n/a
Master Plan (16.5) w/Environmental Survey (16.2)	Technical Review Committee (TRC)	Review for Completeness & Ordinance Compliance Zoning Compliance Permit Issued -or- Denial and Request for Resubmission	Town Council
Construction Documents (16.6) w/Environmental Survey (16.2)	Administrator	Review for Completeness & Ordinance Compliance Site Plan released for construction -or- Denial and Request for Resubmission	Land Use Review Board



15.6 Subdivision Procedures - General Provisions

A. Notice to Proceed with Construction Activity: Only after receiving Final Plat approval for a Family/Minor Subdivision or Preliminary Plat approval for Major Subdivisions as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin tree clearing, grading, soil erosion and infrastructure construction for the development.

B. Preliminary Plats:

1. **Approval Duration:** Approved Preliminary Plats are valid for one (1) year from the date of approval by the Town of Knightdale. Reasonable and necessary extensions may be granted at the Town Council's sole discretion if a written request by the developer is made to the Town Council 45 days prior to the one (1) year anniversary of Preliminary Plat approval. A one (1) year extension may be granted from the date when the approved Preliminary Plat would otherwise expire. Upon expiration of approval prior to Final Plat approval and recordation, a new application for subdivision will be required in accordance with the process before development can re-commence.
2. **Multiple Phases Not Approved:** Approval of a Preliminary Plat constituting an individual phase of a multi-phase project which has not been entirely approved, does not constitute approval by the Town of any remaining phases. For approved Preliminary Plats consisting of multiple phases, only the phase that is to be developed for sale immediately shall be submitted for Final Plat approval.
3. **Infrastructure Required within One Year:** All required infrastructure improvements for the Preliminary Plat shall be in place within one (1) year of issuance of a Zoning Compliance Permit unless the improvement has been guaranteed in accordance with Section 17.5. If circumstances beyond the control of the developer do not allow for the commencement of the required work within the one (1) year period, or the size of the phase is such that one (1) year is insufficient time to commence all required work, then the developer may file a written request for an extension with the Technical Review Committee no later than 45 days prior to the one (1) year anniversary of Zoning Compliance Permit approval by the Town as provided above. If infrastructure work is not commenced within one (1) year and/or no extension request is filed with the Technical Review Committee and approved, Zoning Compliance Permit approval becomes null and void on the day of the one (1) year anniversary and a new application will be required.

C. Final Plats:

1. **Review Period:** The developer shall initiate the final subdivision plat approval process by submitting the Final Plat and copies of any required surety or improvement guarantees (as specified in Section 17.5) to the Administrator or other departments as required. The Administrator will then have 45 calendar days to approve or deny the Final Plat. During the review period, the Administrator will confirm the accuracy of the Final Plat. If substantial errors are found, including inconsistencies with the approved Preliminary Plat, the Final Plat shall not be approved and the review period suspended until the applicant has corrected such errors. A list of the needed corrections shall be provided to the applicant. Any conditions placed by the Town on the approval

of the Final Plat shall be addressed by the developer within 45 days. Failure of the developer to meet the 45 day response period shall cause the conditional approval of the Town to be null and void. Once complete, the Final Plat shall be approved or denied by the Administrator within 30 calendar days of the date of final completed submission.

2. **Improvements Required:** The Final Plat shall constitute all portions of the approved Preliminary Plat. No Final Plat shall be approved unless and until the developer has installed in that area all improvements required by this Ordinance or has posted any required improvement guarantees approved by the Town Council and prescribed by this Ordinance in Section 17.5.
3. **Plats to be Recorded:** Approved Final Plats must be filed by the applicant for recording with the Wake County Register of Deeds within 30 days of the date of approval by the Administrator; otherwise, such approval shall be null and void. After recordation, the developer shall provide prints (number to be determined by the Administrator) of the registered plat to the Town for distribution to the various state and local government agencies and public utilities along with one (1) certified mylar copy for permanent file in the Planning Department.

D. Exempt Plats:

1. **Applicability:** An Exempt Plat involves the dedication of easements or rights-of-way, or meets the standards for exempt plats as stated in G.S. 160A-376(a)(1)-(4) which include recombination plats.
2. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance Plat Issued or Denial and Request for Resubmission	Land Use Review Board

A Sketch Plan and review is not required, but can be scheduled with the Planning Department if it is desired.

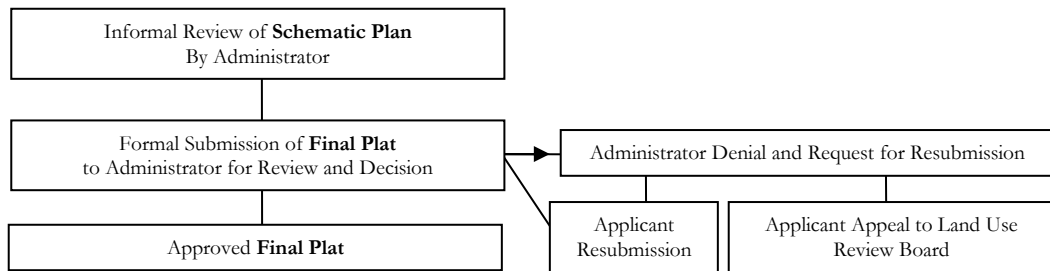
15.7 Minor Subdivisions/Family Subdivisions

A. Applicability: A Minor Subdivision is a subdivision of land:

- Involving not more than four (4) lots fronting on an existing approved street; and
- Not involving any new street or prospectively requiring any new street for access to interior property; and
- Not requiring extension of public sewage or water lines to serve properties at the rear; and
- Creating no new or residual parcels not conforming to the requirements of these regulations and related ordinances;
- Family Subdivisions (See 15.7.C below for special provisions)

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2)	Administrator	For Non-Binding Review Only	n/a
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance Final Plat Issued -or- Denial and Request for Resubmission	Land Use Review Board



C. Family Subdivisions:

1. **Intent and Applicability:** The purpose of a family subdivision is to allow the creation of lots from larger tracts where lots are conveyed to or developed for building purposes by members of the lineal family. The request for family subdivision approval shall be filed by submitting an application for family subdivision to the Administrator.
 - a. The applicant must satisfy to the Land Use Administrator that such subdivision is in fact a “family subdivision” by submitting a statement in the form outlined by the submittal application. The deed for each lot in a family subdivision must contain an express statement that the conveyance is a conveyance of a lot within a family subdivision and must contain an express grant of a public or private right of way to a public street.

- b. No person may utilize the ‘family subdivision’ section for the purposes of evading the requirements of any applicable provisions of this chapter. In the event that a person is found to have used this section for purposes other than a ‘family subdivision’, then such person may be required to comply with any and all requirements for a major or minor subdivision. In addition, abuse of this section will be deemed a violation of this chapter and may be subject the violator to any and all applicable penalties.
- c. A family subdivision shall be defined as the division of land into not more than five parcels (or lots) from the original tract as it existed on January 1, 2000 for the purpose of conveying the resultant parcels or lots to the grantee or grantees who are in any degree of lineal kinship to the grantor.

2. Limitations

- a. The original tract as it existed on January 1, 2000 must be a minimum of 10 acres. A plat of the original tract is required to be on file with the Administrator so that the department can determine the number of lots subdivided.
- b. Only lineal family members acting personally or through their legal representatives, including but not limited to, estate executors, trustees, attorneys-in-fact or legal guardians, can be grantees of the land from the grantor as stated in the definition of family subdivision. Any immediate transfer of land from the grantee to a non-lineal family member is considered a violation, which is subject to any and all penalties, including the requirement of the subdivision to come into compliance with any or all minor or major subdivision requirements.

3. Minimum Family Subdivision Standards:

- a. All lots proposed under the family subdivision section shall conform to the zoning requirements of the zoning district in which the subdivision is located, including, but not limited to, minimum lot size and width.
- b. All lots proposed for subdivision, including the original tract, shall front on a dedicated private or public right of way of at least 50 feet in width which connects to a public street. The final plat is required to show this right of way.
- c. All lots proposed for subdivision, including the original tract, shall front on a street built to the following standards:
 - (1) If determined by the Town to be a logical location for a street, a 50 foot public or private right of way is required.
 - (2) If determined by the Town to be an area where the future street location is not determined a 50 foot private easement or right of way is required.
 - (3) All access streets shall be constructed to a minimum NCDOT standard with base course, but are not required to be constructed with pavement, curb, gutter or sidewalk.
 - (4) A note is to be added to the plat that maintenance is to be the responsibility of all adjacent property owners of said right of way and unimproved street. A maintenance agreement is required to be

recorded at the Wake County Register of Deeds and approved by the Town Attorney.

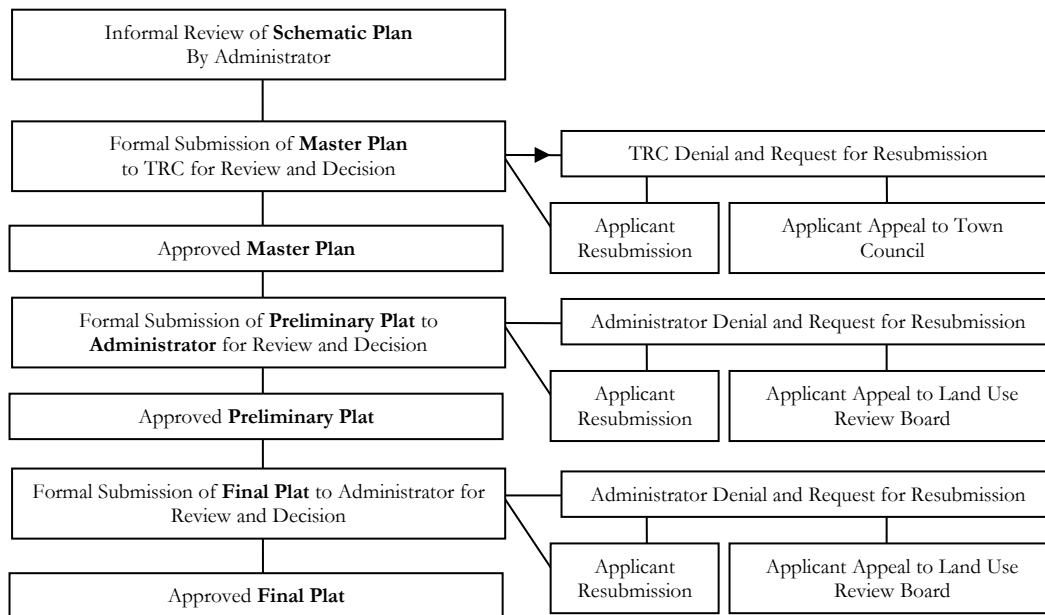
- d. If any lot proposed by the family subdivision is within 300 feet from the public water line and/or public sewer system, the lot shall connect to the public water system and/or public sewer system if a residence is proposed. A voluntary annexation petition is required to be submitted if connecting to Town water and/or sewer.
- e. Family subdivision lots shall not be exempt from paying development fees as outlined in the Town's Fee Schedule. The subdivider shall be responsible for payment to the Town of all fees and charges required by the Town including, but not limited to, the costs of permits, inspections, utility taps, and acreage fees, at such times as payments are specified under the various codes, fee schedules, or resolutions of the Town.
- f. Family subdivision lots fronting on an existing public street, which is identified as a thoroughfare or collector street as identified on the Town's Thoroughfare and Collector Street Plan and which are not currently constructed to the ultimate cross section shall not be required to build the street to the standard section and shall not be required to pay a fee in lieu of such street construction, but shall be required to dedicate the ultimate required right-of-way.
- g. Where a planned NCDOT or Town of Knightdale street is located within the boundaries of the family subdivision land, a reservation of the right of way is required to be shown on the plat to reserve the land for the future street.
- h. The grantor and grantee certify that the purpose of the family subdivision is not to circumvent the provisions of this Ordinance.

15.8 Major Subdivisions

A. Applicability: A Major Subdivision is a subdivision of land that exceeds the minimum thresholds for Exception Plats, Minor Subdivisions.

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2)	Administrator	For Non-Binding Review Only	n/a
Master Plan (16.5) w/Environmental Survey (16.2)	Technical Review Committee (TRC)	Review for Completeness & Ordinance Compliance with Master Plan Approved -or- Denial and Request for Resubmission	Town Council
Preliminary Plat (16.6) w/Environmental Survey (16.2)	Administrator	Review for Completeness & Ordinance Compliance with Preliminary Plat Issued -or- Denial and Request for Resubmission	Land Use Review Board
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance with Final Plat Issued -or- Denial and Request for Resubmission	Land Use Review Board



15.9 Quasi-Judicial Procedures – General Provisions

- A. Purpose:** This Section provides for the discretionary evaluation of certain applications by requiring that certain decisions be made using a quasi-judicial procedure with the right of the parties to offer evidence, have sworn testimony and have findings of fact supported by competent, substantial and material evidence. Specifically, these quasi-judicial procedures are applied to Administrative Appeals, Design Exceptions, Variances and Special Use Permits.
- B. Judicial Appeals:** Every quasi-judicial decision of the Land Use Review Board or the Town Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the decision of the Council is filed in the office of the Town Clerk, or after a written copy is delivered to every aggrieved party who has filed a written request for such copy with the Administrator at the time of the hearing of the case by the Town Council, whichever is later.

15.10 Design Exceptions

- A. Applicability:** In order to accommodate innovative planning or design ideas for development in any District, the Design Exception process has been created to offer flexibility in the administration of the design provisions of this Ordinance (Chapters 5-12).
- B. Procedure:** A petition for a Design Exception may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf or a person having a written contractual interest in the affected property upon the submission of a completed application in accordance with the application schedule adopted by the Land Use Review Board.
 - 1. The Land Use Review Board may grant a Design Exception based on any of the following qualifications:
 - a. Because of a specific recognized architectural style either present or proposed, the provisions enumerated in Chapter 5 preclude their appropriate detailing; or
 - b. Changes in technology, building materials, and/or construction techniques make adherence to the stated details impractical or infeasible; or
 - c. The building design presented is worthy of architectural merit and deserves recognition; or
 - d. The historic qualities of the building, due to variations in construction technique and applications, are inconsistent with the general vernacular.
 - 2. The Land Use Review Board in granting a Design Exception may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a Design Exception is granted, shall be deemed a violation of this Ordinance and shall be subject to civil penalty as prescribed in Chapter 18 of this Ordinance.

15.11 Administrative Appeals

- A. Applicability:** The LURB shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Administrator and apply such interpretation to particular fact situations. The Town Council shall hear and decide appeals from and review any order, requirement, decision, or interpretation made by the TRC and apply such interpretation to particular fact situations.
- B. Applicant with Standing:** An appeal may be made by any aggrieved party or by any officer, department or board of the Town of Knightdale who has received a ruling from the Administrator or Technical Review Committee upon the submission of a completed application. An appeal to the LURB shall be made within 10 days of the decision, order, determination or interpretation made by the Administrator. Likewise, an appeal to the Town Council shall be made within 10 days of the decision, order, determination or interpretation made by the TRC. An appeal must be placed on the appropriate board agenda within 30 days of filing. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his/her opinion will cause imminent peril to life or property, or that because the violation charges is transitory in nature, a stay would seriously interfere with the enforcement of the Ordinance. In that event, proceedings shall not be stayed except by a restraining order which may be granted by the LURB (Administrator Appeals), Town Council (TRC Appeals), or by a judicial court of law.
- C. Board Powers and Responsibilities:** The LURB or Town Council may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed. The LURB or Town Council shall have all the powers of the Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal. For appeals concerning administrative permits requiring a Master Plan, the Town Council must make the following findings in order to approve the Master Plan:
1. The plan is consistent with Comprehensive Plan goals and objectives and all other Town Council adopted development policies.
 2. The plan complies with all applicable requirements of this Ordinance, including but not limited to the development and design standards of Chapters 4 and 5 as well as the dedication and improvements provisions of Chapter 17.
 3. The plan adequately protects other adjacent or nearby property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
 4. The plan provides harmony and unity with the development of adjacent and nearby properties;
 5. The plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; and
 6. The plan provides safe ingress and egress for emergency services.
- D. Supermajority Required:** The concurrent supermajority vote of four-fifths (4/5) of the board's voting members shall be necessary to make an interpretation of the Ordinance, reverse any order, requirement, decision or determination of the Administrator or TRC. In all matters coming before the LURB or Town Council, the applicant shall have the burden of providing clear, competent and material evidence in

support of the application. All decisions of the LURB or Town Council shall be in writing and filed with the Administrator.

15.12 Variances

- A. Applicability:** When practical difficulties, special conditions or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Land Use Review Board shall have the power to vary or modify any of the regulations or provisions of this Ordinance.
- B. Applicant with Standing:** A petition for a variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf or a person having a written contractual interest in the affected property upon the submission of a completed application. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his/her opinion will cause imminent peril to life or property, or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that event, proceedings shall not be stayed except by a restraining order which may be granted by the Land Use Review Board, Town Council or by a judicial court of law.
- C. Flood Damage Protection Variance Procedures**
1. Variances may be issued for:
 - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure
 - b. Functionally dependant facilities as defined in Chapter 19 provided provisions of Section 15.12(D)(6) and (7) have been satisfied, and such facilities are protected by methods that minimize flood damages.
 - c. Any other type of development, provided it meets the requirements stated in this section.
 2. In passing upon variances, the LURB shall consider all technical evaluations, all relevant factors, and all standards specified in other sections of this ordinance including:
 - a. the danger that materials may be swept onto other lands to the injury of others;
 - b. the danger to life and property due to flooding or erosion damage;
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. the importance of the services provided by the proposed facility to the community;
 - e. the necessity to the facility of a waterfront location, where applicable;
 - f. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- g. the compatibility of the proposed use with existing and anticipated development;
 - h. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - k. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
3. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
 4. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
 5. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations or ordinances.
 6. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 7. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 8. Variances shall only be issued prior to development permit approval.

D. Required Findings of Fact: The Land Use Review Board may only grant a variance having first held a public hearing on the matter and having made the following determinations:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance; and
2. That the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
3. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done; and
4. That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.
5. That if the applicant complies with the provisions of this Ordinance, can secure no reasonable return from nor make any reasonable use of the property.

Flood Damage Protection Variances shall only be issued upon the additional findings of fact:

6. A showing of good and sufficient cause; and
7. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

Variances to the minimum distance between adult establishments shall only be issued upon the additional findings of fact:

8. The proposed use will not be injurious to property or improvements in the affected area; and
9. The proposed use will not enlarge or encourage the development of a blighted condition within an area; and
10. The permitting of an adult establishment in the area will not be contrary to any governmental program of neighborhood conservation, rehabilitation, improvement or revitalization.

E. Items Not Cause for Variance:

- The citing of other nonconforming or conforming uses of land or structures in the same or other Districts.
- The request for a particular use expressly, or by inference, prohibited in the District involved.
- Economic hardship or the fact that property may be utilized more profitably with a variance.

F. Board May Apply Conditions to Motion: The Land Use Review Board in granting a variance may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Chapter 18.

G. Supermajority Required for Decision: The concurrent supermajority vote of four-fifths (4/5) of the voting members of the Land Use Review Board shall be necessary to grant a variance. In all matters coming before the Land Use Review Board, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. All decisions of the Land Use Review Board shall be in writing and filed with the Administrator.

H. Time for Decision: The Land Use Review Board shall hold a public hearing on an application no later than 60 days after a complete application has been filed with the Administrator. The Land Use Review Board shall decide on the matter which was presented at the public hearing within 31 days of the close of the public hearing.

I. Time Limit on Approval: If an application for a variance is approved by the Land Use Review Board, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the variance or (ii) develop any other use listed as a "permitted use" for the District in which it is located.

Unless otherwise authorized by the Land Use Review Board and included in its decision to grant a variance, an order of the Land Use Review Board in granting a variance shall expire if a building permit or Certificate of Occupancy (for a use for which a building permit is not required) has not been obtained within one (1) year from the date of its decision.

- J. Re-hearings:** An application for a re-hearing shall be made in the same manner as provided for an original hearing within a period of 15 days after the date of the Land Use Review Board's decision. In addition, specific information to enable the Land Use Review Board to determine whether or not there has been a substantial change in facts, evidence or conditions in the case, shall be presented in writing or graphically. A re-hearing shall be denied by the Land Use Review Board if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Land Use Review Board to consider holding such a re-hearing. Approval of said consideration shall, however, require an affirmative vote of at least four-fifths (4/5) of the voting members. In the event that the Land Use Review Board finds that a re-hearing is warranted, it shall proceed as in the original hearing except that the application fee shall be waived.
- K. Effect of Denial/Time to Resubmit:** Upon the denial of an original application, or upon the denial of an application from which a re-hearing has been conducted, a similar application may not be filed for a period of one (1) year after the date of denial of the original application.

15.13 Special Use Permits

A. Purpose: Special uses are generally compatible with the land uses permitted by right in a District, but which require individual review of their location, design and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given District.

B. General Requirements:

1. Only those uses enumerated as required Special Use Permits in a District may be authorized by the Town Council.
2. The evaluation and approval of the Special Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact:
 - a. The use meets all required principles and specifications of the UDO and any adopted land use plans, is in harmony with the general purpose and intent and preserves its spirit; and
 - b. The proposed plan as submitted and approved will be visually and functionally compatible with the surrounding area; and
 - c. The public health, safety and welfare will be assured to not substantially injure the value of adjoining property and associated uses if located where proposed.
3. In approving an application for a Special Use Permit, the Town Council may attach fair and reasonable conditions which support the required Findings of Fact. The Town Council may not require the landowner to waive a vested right as a condition of the Special Use Permit approval. The burden of proof of producing evidence to support these Findings of Fact and to overcome any challenges that approval of the plan would be contrary to one or more of these Findings of Fact shall rest entirely with the applicant or landowner.

C. Procedures:

The applicant shall meet with the Administrator prior to the submission of an application. Following this meeting, the applicant may submit a complete application for consideration on the next regularly scheduled LURB agenda in accordance with the submittal schedule adopted by the Technical Review Committee.

1. The processing of a Special Use Permit shall be conducted by the Town Council. During the public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against the Special Use Permit application shall be presented and will be considered in formulating the Findings of Fact required for a decision.
2. The Town Council may attach reasonable and appropriate conditions on the location, nature and extent of the proposed use. The applicant shall have up to 30 calendar days to consider and respond to any additional requirements prior to approval or denial by the Town Council.

- D. Effect of Approval:** If an application is approved, the Special Use Permit that is established and all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plan and conditions. The applicant must record at the Wake County Register of Deeds office the approved Special Use Permit and submit a copy to the Town.
- E. Substantial Changes:** Any substantial change to a Special Use Permit that results in the increase of the intensity, density or character of the use shall be approved or denied by the Town Council as an amended Special Use Permit. Minor field alterations or minor revisions to approved Special Use Permits may be approved by the Administrator if the Special Use still meets the intent of the standards established with the original approval.
- F. Rescission of Special Use Permits:**
1. **In General:**
 - a. The applicant must secure a valid building permit within a 12 month period from date of approval of the Special Use Permit unless otherwise specified.
 - b. If such project is not complete, and a valid building permit is not in place at the end of the 12 month period, the Administrator shall notify the applicant of either such finding. Within 30 days of said notification, the Administrator shall make a recommendation concerning the rescission of the Special Use Permit to the Town Council. The Town Council may then rescind the special use, or extend the Special Use Permit for a specified period of time.
 2. **Adult Establishments:** The Town Council may rescind a Special Use Permit after notice and hearing upon one (1) or more of the following grounds:
 - a. Failure to comply with the additional standards specified in Section 3.3A; or
 - b. Operating an establishment disruptive of peace and good order as evidenced by lack of sufficient on-premises security and specifically by a conviction of a criminal offense, a material element of which occurred on the premises of the adult establishment; or
 - c. Excessive criminal activity on or near the premises if the Town Council finds that the operation of the adult establishment is related to such criminal activity or attracts transients or other persons who have been involved or are likely to be involved in such criminal activity.

G. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/ Environmental Survey (16.2)	Administrator	For Non-Binding Review Only	n/a
Special Use Permit w/ Master Plan (16.5)	Administrator	Review submittal procedures and requirements Review for completeness & Ordinance compliance. Issue Staff Report	n/a
	Town Council	Public hearing	n/a
	Land Use Review Board	Review and recommendation of Special Use Permit application	n/a
	Town Council	Approval of Special Use Permit – or – Denial and Request for Rehearing	Superior Court



15.14 Legislative Procedures – General Provisions

- A. Purpose:** The purpose of this Section is to establish uniform procedures for processing matters requiring a legislative approval process.
- B. Protest Petitions**
1. In case of protest against an amendment—a petition duly signed by (i) the owners of 20 percent (20%) or more of the area of the lots included in such proposed change or (ii) five percent (5%) of those immediately adjacent either in the rear or on either side extending 100 feet there from or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots—such amendment shall not become effective except by a favorable vote of a three-fourths (3/4) super majority of all the members of the Town Council rather than by majority decision.
 2. No protest against any proposed amendment shall be valid or effective unless it is in the form of a written petition actually bearing the signatures of the required number of property owners and stating that the signers do protest the proposed change or amendment. All such petitions shall be filed in the office of the Town Clerk for validation at not less than two (2) full working days before the date of the meeting at which the Town Council first opens the public hearing.
- C. Town Council Decision:** If no comments have been received from the LURB within 30 days of referral from the Town Council, the Council may proceed with consideration of the proposed zoning amendment. Once the public hearing has been conducted, the Town Council shall render a decision on the proposed zoning amendment.
1. **Required Compliance with Comprehensive Plans:** Zoning regulations and amendments shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Town Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The LURB shall have advised and commented on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The LURB shall have provided a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the LURB, but a comment by the LURB that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council.
 2. A decision concerning a petition for re-zoning shall be as follows:
 - a. Grant the re-zoning as requested; or,
 - b. Grant the re-zoning with a reduction in the area requested; or,
 - c. Grant the re-zoning to a more restrictive general zoning district; or,
 - d. Grant the re-zoning with a combination of b and c above; or,
 - e. Deny the application.

3. A decision concerning the petition to amend the text of this Ordinance shall be as follows:
 - a. Adoption of the amendment as written; or,
 - b. Adoption of the amendment as revised by the Land Use Review Board; or,
 - c. Rejection of the amendment.

D. Re-hearing

1. An application for a re-hearing shall be made in the same manner as provided for an original hearing within a period of 15 days after the date of the Town Council decision.
2. Specific information to enable the Town Council to determine whether or not there has been a substantial change in facts, evidence or conditions in the case, shall be presented in writing or graphically.
3. A re-hearing shall be denied by the Town Council if, in its judgment, such change in facts, evidence or conditions have not been proven.
4. A public hearing shall not be required to be held by the Town Council to consider holding such a re-hearing. Approval of said consideration shall, however, require an affirmative vote of at least four-fifths (4/5) of the voting members. In the event that the Town Council finds that a re-hearing is warranted, it shall then proceed as in the original hearing except that the application fee shall be waived.
5. Upon the denial of an original application, or upon the denial of an application from which a re-hearing has been conducted, a similar application may not be filed for a period of one (1) year after the date of denial of the original application.

E. Appeals: Every legislative decision of the Town Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the decision of the Council is filed in the office of the Town Clerk, or after a written copy is delivered to every aggrieved party who has filed a written request for such copy with the Administrator at the time of the hearing of the case by the Town Council, whichever is later.

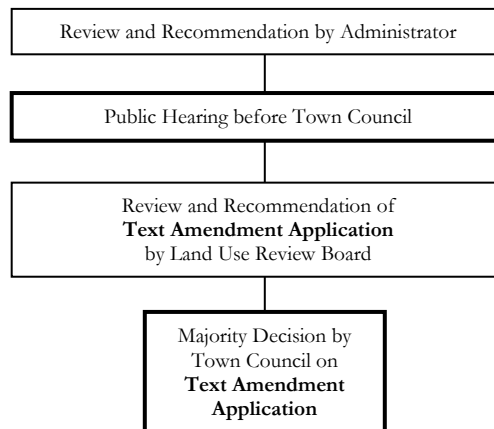
F. Application Withdrawal

1. The petitioner may withdraw his/her application before submission of the public notice to the newspaper announcing the public hearing.
2. After submission of such notice, an application may be withdrawn at the discretion of the Land Use Review Board or Town Council at the public hearing.
3. No more than two (2) withdrawals may occur on the same parcel or portion of land within a one (1) year period.
4. No application shall be filed on the same parcel or portion of land within a one (1) year period after the date of the second withdrawal.

15.15 Text Amendments

- A. **Purpose:** The purpose of this Section is to establish uniform procedures for amending the text of the Ordinance.
- B. **Application Required:** An amendment to the text of this UDO may be initiated by the Town Council, the Land Use Review Board, the Administrator or any private citizen by filing an application with the Administrator.
- C. **Procedure:**

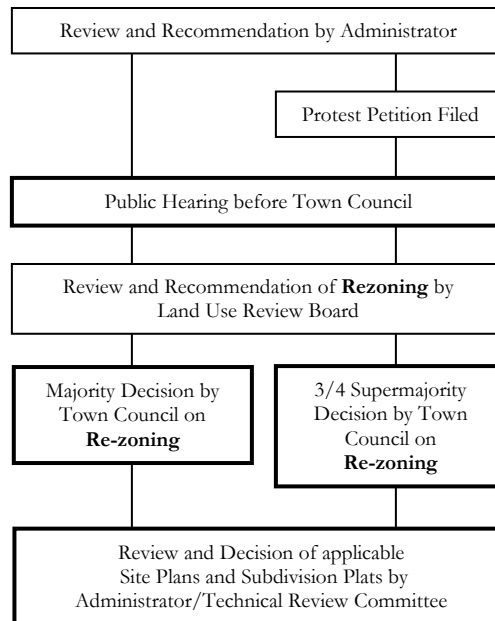
APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Text Amendment	Administrator	Review submittal procedures and requirements Review for completeness & Ordinance compliance. Issue Staff Report	n/a
	Town Council	Public hearing	n/a
	Land Use Review Board	Review and recommendation of Text Amendment application	n/a
	Town Council	Text Amendment Adoption – or – Denial and Request for Rehearing	Superior Court



15.16 Map Amendments (Re-zonings)

- A. **Purpose:** The purpose of this Section is to establish uniform procedures for amending the zoning classification of land as shown on the Official Zoning Map.
- B. **Application Required:** An amendment to the Official Zoning Map may be initiated by the Town Council, the Land Use Review Board, the Administrator or any private citizen by filing an application with the Administrator.
- C. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Map Amendments	Administrator	Review submittal procedures and requirements Review for completeness & Ordinance compliance. Issue Staff Report	n/a
	Town Council	Public hearing	n/a
	Land Use Review Board	Review and recommendation of Re-zoning application	n/a
	Town Council	Grant Re-zoning – or – Denial and Request for Rehearing	Superior Court



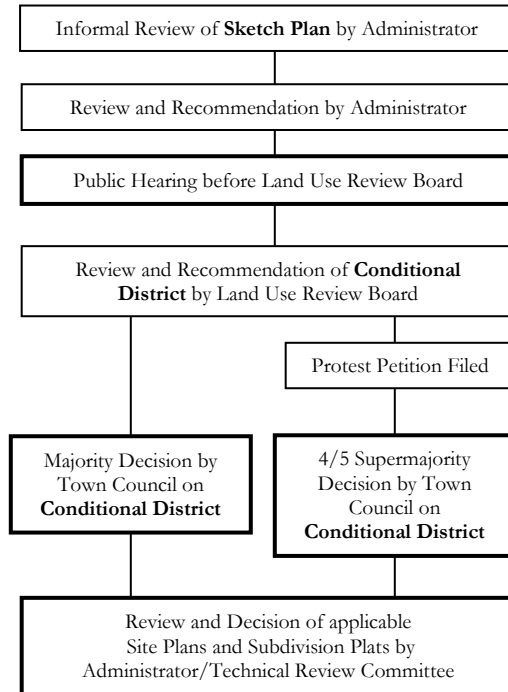
15.17 Conditional Districts

- A. Purpose:** The purpose of Conditional Districts is to provide a procedure for the re-zoning of property based upon the recognition that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. This process affords a degree of certainty in land use decisions not possible when re-zoning to a general category allowing many different uses.
- B. General Requirements:**
- 1. Applicant:** Conditional District classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included.
 - 2. Standards of Corresponding General District to be Met:** All standards and requirements of the corresponding General District shall be met, except to the extent that the conditions imposed are more restrictive than those standards. However, when a Conditional District is a requirement of Section 2.3(C), petitioners may also ask that certain standards identified be decreased. Within an approved Conditional District, no use shall be permitted except pursuant to the conditions imposed on the Conditional District in the approval of the re-zoning.
 - 3. Content of Application:** The Master Plan, as a site specific Conditional Zoning Plan, is itself a condition of the Conditional District re-zoning. In addition to the Master Plan, the applicant shall provide the exact land use classifications proposed for the Conditional District. Such use classifications may be selected from any of the uses, whether permitted by right or special use, allowed in the General District upon which the Conditional District is based. Uses not otherwise permitted within the General District shall not be permitted within the Conditional District.
 - 4. Fair and Reasonable Conditions:** At the request of the applicant, the Land Use Review Board may recommend and the Town Council may attach reasonable and appropriate conditions including but not limited to the location, nature, hours of operation and extent of the proposed use. The applicant will have a reasonable opportunity to consider and agree to any additional requirements proposed by either the Land Use Review Board or the Town Council prior to final action.
 - 5. Decisions:** Decisions by the Town Council shall be by majority vote, unless a valid Protest Petition in accordance with Section 15.14(B) has been filed, in which case a four-fifths (4/5) supermajority vote shall be required for approval.
- C. Substantial Changes:** Any substantial change to a Master Plan that results in a net increase to the number of lots or to the heated floor area shall be reviewed by the Land Use Review Board and approved or denied by the Town Council as an amended Conditional District.
- D. Rescission of Conditional Districts:** The Applicant must secure a valid building or construction permit(s) within a 12 month period from date of approval of the Conditional District unless otherwise specified. If such project is not complete and a valid building or construction permit is not in place at the end of the 12 month period, the Administrator shall notify the applicant of either such finding. Within 60 days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional District to the Town Council. The Town Council may then rescind

the Conditional District or extend the life of the Conditional District for a specified period of time.

E. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/ Environmental Survey (16.2)	Administrator	For Non-Binding Review Only	n/a
Re-zoning w/Master Plan (16.5)	Administrator	Review submittal procedures and requirements Review for completeness & Ordinance compliance. Issue Staff Report	n/a
	Land Use Review Board	Public hearing	n/a
	Land Use Review Board	Review and recommendation of Conditional District application	n/a
	Town Council	Grant Conditional District - or - Denial and Request for Re-hearing	Superior Court



15.18 Vested Rights

- A. General Procedures:** Pursuant to G.S.160A-385.1 and notwithstanding any other provision or amendment, a landowner may apply for approval of a Site-Specific Development Plan as defined in the statute that shall entitle said landowner to develop property in accordance with the previously approved plan.

All requests for Vested Rights shall be accompanied by a copy of the approved Site-Specific Development Plan (Master Plan) in accordance with the provisions of this Chapter. A request to extend Vested Rights to a previously approved Site-Specific Development Plan shall be reviewed and approved by the Town Council after notice and public hearing.

- B. Town Council Action:** The Town Council shall determine whether or not to grant or establish a Vested Right after the review and consideration of the Land Use Review Board. The Town Council may not require the landowner to waive his Vested Right as a condition of development approval. The Town Council may approve the Vested Rights for a period greater than two (2) years where it is found that due to (i) the sizing and phasing of the development; (ii) the level of investment; (iii) the need for the development; (iv) economic cycles; or (v) due to market conditions, building permits for all phases of the development cannot be secured within two years. The maximum vesting term that may be extended may not exceed five (5) years from the date of plan approval of the site.

- C. Effect of Approval of Vesting:** The effect of the Town Council approving a vested plan shall be to vest such site plan for a period of two (2) years to five (5) years as approved by the Town Council from the date of approval.

A Vested Right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the approved Site-Specific Development Plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the previously granted or established Vested Right.

A Vested Right, once established shall preclude any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property in accordance with the approved Site-Specific Development Plan, except under the following conditions where such rights are terminated and revoked:

1. The affected landowner provides written consent to the Town of his/her desire to terminate the Vested Right; or,
2. The Town determines, after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,
3. Compensation is made by the Town to the landowner for all costs, expenses and other losses incurred, including but not limited to: all fees paid in consideration of financing; and all architectural, planning, marketing, legal and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
4. The Town determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or

made material misrepresentations which made a difference in the approval by the Town Council of the plan; or,

5. Upon the enactment of a State or Federal law or regulations which precludes development as shown in plan. In such case the Town may, after having advertised and conducted a public hearing, modify the affected provisions upon a finding that this change in State or Federal law has a fundamental effect on the plan.

Once a Vested Right is granted to a particular plan, nothing in this Section shall preclude the Town from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.

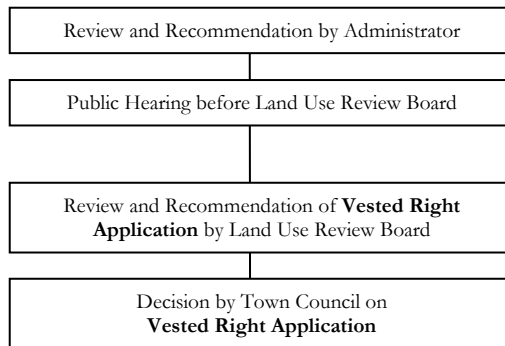
The establishment of a Vested Right on a piece of property for a Site-Specific Development Plan shall not preclude the Town from establishing and enforcing on the property any additional regulations (adopted during the time the Vested Right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.

- D. Establishment of Common Law Vesting Plans:** Previously approved Site-Specific Development Plans shall be reviewed for compliance and consistency and subsequently approved by the Administrator or designee in accordance with the provisions of this Chapter, providing the proposed Construction Documents for the Site Plan or Subdivision do not deviate from, and is subdivided/developed in accordance with the previously approved Site-Specific Development Plan. Substantial financial investment must be determined and a good faith effort made to develop proportionate to the approved statutory vested plan.

- E. Revocation or Expiration of a Vested Right:** The Vested Right, resulting from the approval of a Site-Specific Development Plan, may be revoked by the Town Council if the Town Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of this Ordinance. As prescribed under the provisions of G.S.160A-385.1, the Vested Right shall otherwise expire at the end of the approval period established by the Town Council. A building permit issued by the permit-issuing authority pursuant to G.S. 160A-417 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the Vested Right period has not otherwise expired.

F. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Vested Right Application w/Master Plan (16.5)	Administrator	Review submittal procedures and requirements Review for completeness & Ordinance compliance. Issue Staff Report	n/a
	Land Use Review Board	Public hearing	n/a
	Land Use Review Board	Review and recommendation of Vested Right Application	n/a
	Town Council	Grant Vested Right Application - or - Denial and Request for Re-hearing	Superior Court



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