

## Chapter 15. DEVELOPMENT PROCESS

### 15.1 Purpose and Intent

In order 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 LURB and the Town Council; this Chapter establishes guidelines and procedures for the development of land within the jurisdiction of the Town of Knightdale. These guidelines and procedures are specifically intended:

- To ensure that land, parcels, and lots are subdivided in a manner that supports the compliance of future land uses and development with all applicable requirements of this Ordinance;
- To ensure that development is generally harmonious with surrounding properties and does not endanger the health, safety and general welfare of existing, prospective or future owners or users of surrounding and adjoining properties, or of the public; and
- To provide for the adequate and efficient construction of facilities and infrastructure; including but not limited to, buildings, utilities, streets, sidewalks, landscaping and recreational open space; as well as the provision of dedicated land, rights-of-way and easements in such a manner so as not to burden the fiscal resources of the Town.

### 15.2 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 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. Failure to obtain the applicable permit(s) shall be considered a violation of this Ordinance and shall be enforced in accordance with the provisions of Chapter 18.

### 15.3 General Provisions

#### A. Names

1. **Development and Subdivision Names:** shall be assigned by the developer subject to the approval by resolution of the Town Council.
2. **Street Names:** shall be assigned by the developer subject to the approval of both the Town Council and Wake County, and shall adhere to the rules that follow.
  - a. Proposed streets which are continuations of existing streets shall be given the same name.
  - b. New street names shall not duplicate or be phonetically similar to existing street names in Wake County.

#### B. Completeness Review

1. **Authorized Representative:** Applications may only be submitted by persons having the legal authority to take such action, and the Administrator shall require an applicant to provide evidence of said authority to submit the specified application.

2. **Preliminary Review of Application:** Prior to formal submission of an application, the Administrator may review the application and confer with the applicant as appropriate to ensure:
    - a. that the applicant understands the interpretation of the applicable requirements of this Chapter;
    - b. that the applicant has submitted all of the information intended for submission; and
    - c. that the application represents precisely and completely what the applicant proposes to do.
  3. **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.
- C. Neighborhood Meetings:** Where pre-submittal neighborhood meetings are required they shall meet the following criteria:
1. The required neighborhood meeting must be conducted prior to submittal of the application. The meeting may not occur more than 6 months prior to submittal of the application. Notice of the neighborhood meeting must be made by the applicant in accordance with Section 15.3(D)1.b.
  2. The meeting shall be held at a time and place that is generally accessible to neighbors that reside in close proximity to the land subject to the application.
  3. A report of the meeting, made by the applicant, shall be included with the application. The report shall include, a list of those persons and organizations contacted about the neighborhood meeting, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, and a summary of issues discussed at the meeting; including a description of how the applicant propose to respond to neighborhood concerns or changes made as a result of the meeting.
- D. Public Notification Requirements**
1. **In General:** Notification of all public hearings required by this Ordinance shall be as follows:
    - a. **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, as well as the date, time and place at which the hearing is to occur.
    - b. **First-Class Mail Notice:** A notice of the proposed action shall be sent by first class mail, as applicable, from the Administrator to the affected property owner and to all contiguous property owners within 200 feet of the affected property. Person(s) mailing the notices shall certify to the

Town Council that fact, and the certificate(s) shall be deemed conclusive in the absence of fraud.

- c. **Sign Posted:** A prominent sign shall be posted on the subject property(ies), as applicable, beginning not less than ten (10) days nor more than 25 days prior to the date established for the hearing. Such posting shall list a phone number to contact during regular business hours for additional information. The sign shall remain posted until after the decision-making authority has rendered its final decision.

2. **Re-Zoning More than 50 Properties:** When a zoning reclassification action directly affects more than 50 properties owned by a total of at least 50 different property owners, the preceding general public hearing notice requirements may be altered as follows:

- a. **Newspaper Notice:** The Town shall publish a notice 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 (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.
- b. **First-Class Mail 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 subsection "1b" above. Person(s) mailing the notices shall certify to the Town Council that fact, and the certificate(s) shall be deemed conclusive in the absence of fraud.
- c. **Sign(s) Posted:** In addition to the published and mailed notices, 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. These signs shall remain posted until after the decision-making authority has rendered its final decision.

**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.

**E. 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, signed by the board Chair or other duly authorized board member, and served upon the applicant and all other persons who make a written request for a copy. Decisions are deemed as served when delivered in person, or when sent via electronic mail or first-class mail. Unless

otherwise stated, all decisions shall be effective upon filing with the clerk to the board. As applicable, 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.

**F. Compliance and Violations**

Permits are issued on the basis of approved dimensional plans that 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 any permit or approval process enumerated in this Chapter shall be deemed a violation of this Ordinance and shall be subject to civil penalties as specified in Chapter 18.

**G. As-Built Drawings**

Prior to the issuance of a Certificate of Occupancy associated with a Site Development Approval or prior to the acceptance of public infrastructure for maintenance in Major Subdivisions, as-built drawings of all water, sewer and stormwater management facilities illustrating their layouts and connections to existing systems. Such plans shall show all easements and rights-of-way to demonstrate that the facilities are properly placed and shall indicate the locations of all fire hydrants, blow-off valves, manholes, pumps, force mains and gate valves. They shall also show the field location, size, depth and planted vegetation of all stormwater measures, controls and devices. A copy of all as-built pages must be submitted at the same time using the open Portable Document Format (pdf) standard on a Compact Disc (CD) or Digital Versatile Disc (DVD).

## 15.4 Administrative Permits and Approvals

Administrative permits and approvals are those that may typically either be granted by the Administrator or the TRC as enabled by the Town Council.

### A. General Provisions

#### 1. Permit or Approval Not Required

Notwithstanding any other provisions of this Ordinance, including the possibility of zoning violations and penalties (*Chapter 18*), an administrative permit is not required for the following uses and/or activities:

- a. Street construction or repair by NCDOT or the Town of Knightdale.
- b. 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.
- c. Specific signs exempted in Chapter 12.
- d. Mailboxes, newspaper boxes, walls, fences, birdhouses, flag poles, pump covers and doghouses.

#### 2. Review of Applications

- a. **In General:** 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 administrative permits shall:
  - i. Be issued in the name of the property owner;
  - ii. Identify the property involved and the proposed use;
  - iii. Incorporate by reference the plans submitted; and
  - iv. Contain any special conditions or requirements lawfully imposed by the permit-issuing authority.

#### b. Master Plan Applications:

Within 90 days from the submittal of a Master Plan Application, the TRC shall review the Site Development Permit (*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.

The TRC may defer the decision on the Master Plan Application to the Town Council when any two (2) members (*voting or non-voting*) deem that one (1) 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 15.11.

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.

**3. Right of Appeal**

If a request for an administrative permit is denied, or if a ruling of the Administrator or TRC is questioned, any aggrieved party may appeal such ruling to the LURB and Town Council, respectively, in accordance with Section 15.5C.

**4. Certificate of Occupancy**

No structure shall be erected, moved, structurally altered, used or occupied until a Certificate of Occupancy (CO) has been issued by the Town of Knightdale. Any CO issued shall state that the structure or portion of a structure has:

- a. Complied with the information stated on the permit;
- b. Complied with all applicable provisions of this Ordinance; and
- c. Received final inspections approval for compliance with the N.C. Building Code, as applicable.

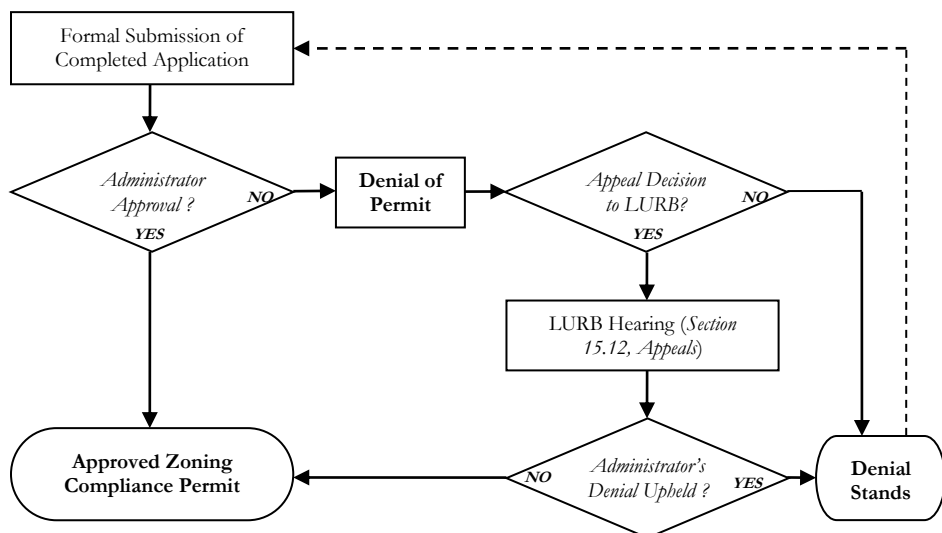
Where certain infrastructure elements have not been installed (*i.e. landscaping due to time of year*), a Temporary CO may be issued by the Administrator (*Section 17.5*).

**B. Zoning Compliance Permits**

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

**2. Procedure:**

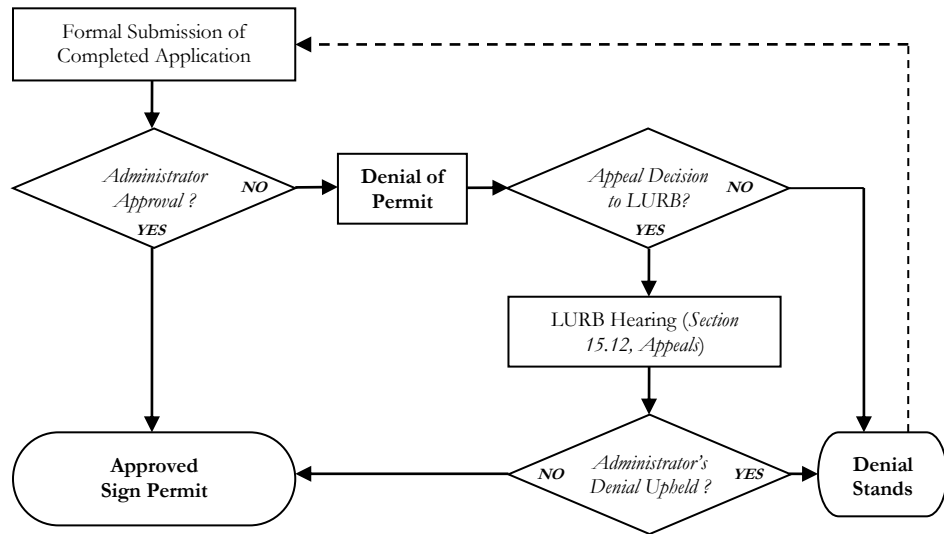
SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
ZCP Application Sketch Plan (16.4) As Needed	Administrator	ZCP Issued -or- Denied	LURB



C. Sign Permits

1. **Applicability:** A Sign Permit (SP) is required for the erection, alteration, construction, re-location, conversion or enlargement of any sign, except as may be provided in Section 12.4.
2. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
SP Application* Sketch Plan (16.4) As Needed  * Note: Commercial Building Permit Application also required for most signs, except for those in which only the sign face is being replaced.	Administrator	SP Issued -or- Denied	LURB



**D. Floodplain Development Permits**

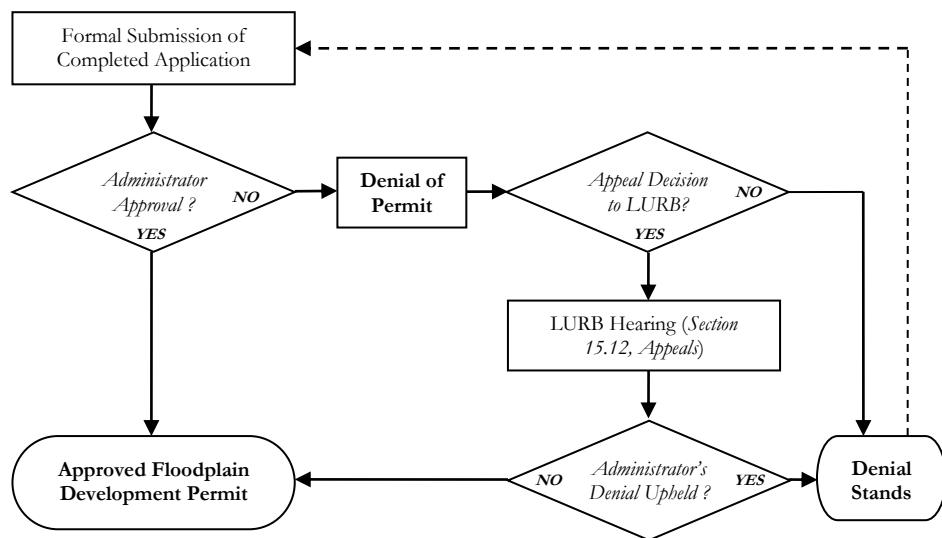
- 1. Applicability:** A Floodplain Development Permit (FDP) with an accompanying Elevation Certificate shall be submitted for any proposed development within 100 feet of a flood hazard area. FDPs shall be approved by the Administrator.

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 FDP shall be deemed a violation of this Ordinance and shall be subject to civil penalties as specified in Chapter 18.

- 2. Procedure:** 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 NC-licensed Professional Engineer or Surveyor must accompany this application.

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
FDP Application (16.3)	Administrator	FDP Issued -or- Denied	LURB

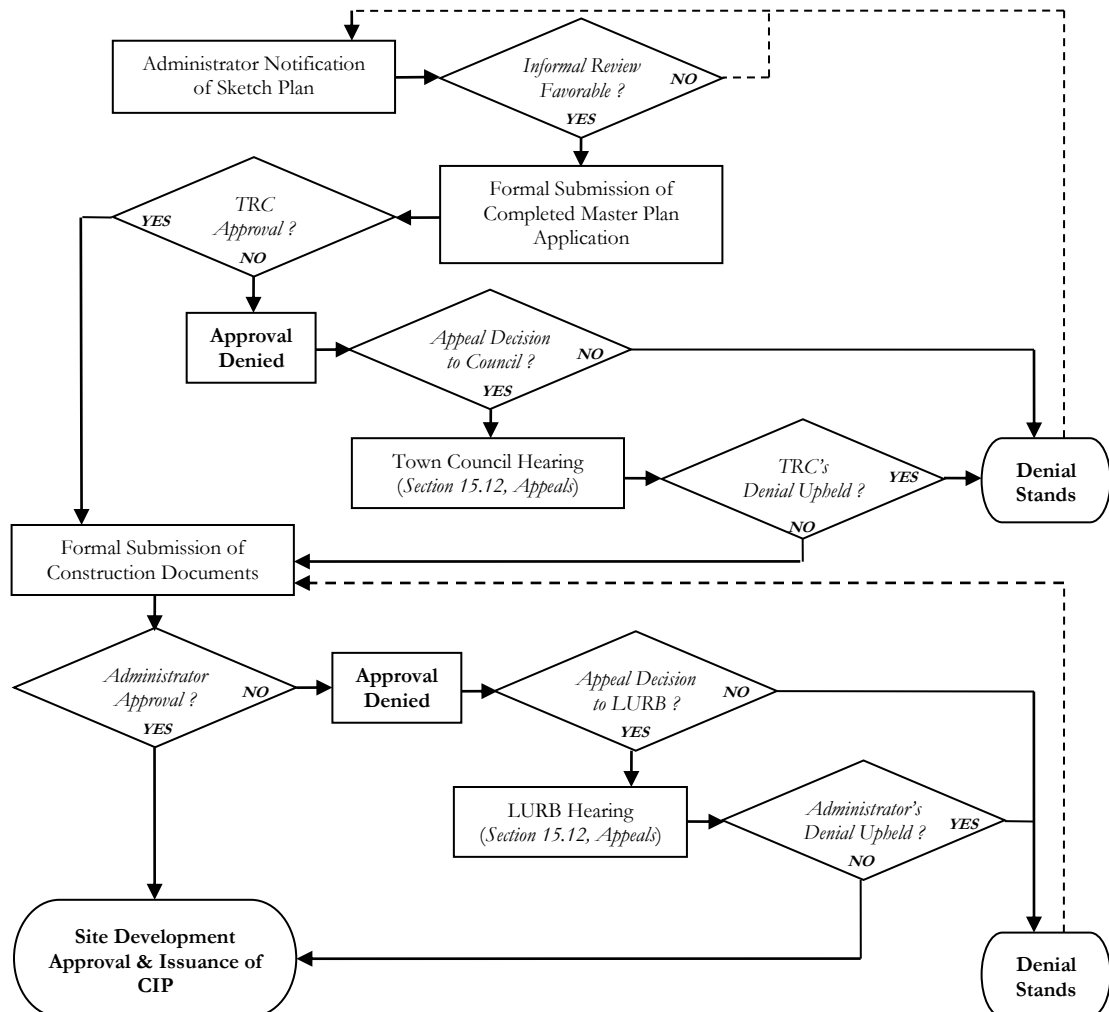




**E. Site Development Approval**

1. **Applicability:** A Site Development Approval (SDA) and associated Construction Improvement Permit (CIP) are required for an individual building or buildings on previously platted lots.
2. **Procedure:** To receive SDA and a CIP, a completed Master Plan Application must be submitted for review.

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Master Plan (16.5) w/Environmental Survey (16.2A)	TRC	Review for Completeness & Ordinance Compliance; Master Plan Approved -or- Denied	Town Council
Construction Documents (16.6) w/Environmental Survey (16.2B)	Administrator	Review for Completeness & Ordinance Compliance; SDA & CIP Issued -or- Denied	LURB



**F. Subdivision Approvals**

1. **Applicability:** Subdivisions shall include all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions is created for the purposes of sale or building development, whether immediate or future, and shall include all division of land involving the dedication of a new street or a change in existing streets.
2. **Exempt Plats:** 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)-(5) which include recombination plats. Exempt plats are reviewed according to the following procedure:

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance; Final Plat Issued <b>-or-</b> Denied	LURB

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

**3. General Provisions**

- a. **Notice to Proceed with Construction Activity:** Only after receiving Final Plat approval for a Family/Minor Subdivision or Construction Document 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. **Construction Documents:**
  - i. **Approval Duration:** Approved Construction Documents 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 1-year anniversary of Construction Document approval. A 1-year extension may be granted from the date when the approved Construction Documents would otherwise expire.
  - ii. **New Application Required:** Should Construction Document approvals expire, a new application for subdivision approval will be required in accordance with the processes outlined within this Chapter before development may re-commence and any Final Plats be approved and/or recorded.
  - iii. **Multiple Phases Not Approved:** Approval of Construction Documents 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.
  - iv. **Infrastructure Required within One (1) Year:** All required infrastructure improvements within the Construction Documents shall be in place within one (1) year of issuance of a CIP unless the improvement has been guaranteed in accordance with Section 17.4.

If circumstances beyond the control of the developer do not allow for the commencement of the required work within the 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 Administrator no later than 45 days prior to the 1-year anniversary of CIP 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 Administrator and approved, CIP approval becomes null and void on the day of the one (1) year anniversary and a new application will be required.

**c. Final Plats:**

- i. 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 17.4*) 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 Construction Documents, 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 and/or conditions shall be provided to the applicant. Any corrections and/or 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.
- ii. Improvements Required:** The Final Plat shall constitute all portions of the approved Construction Documents. 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 17.4.
- iii. 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 and one (1) electronic copy in Portable Document Format (PDF) for permanent file in the Planning Department.

4. **Family Subdivisions:**

- a. **Purpose & Definition:** The specific 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. A family subdivision shall be defined as the division of land into not more than five (5) 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.
- b. **Procedure:** The request for family subdivision approval shall be filed by submitting an application for Final Plat to the Administrator. This application shall include a prescribed statement satisfying the Administrator that such subdivision is in fact a “family subdivision” not meant to circumvent the provisions of this Ordinance, and shall meet the standards of subsection “c” that follows.

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance; Final Plat Issued <del>-or-</del> Denied	LURB

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

c. **Minimum Standards:**

- i. **Parent Tract:** The original tract as it existed on January 1, 2000 must be a minimum of 10 acres, and 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.
- ii. **Conveyance:** 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; may be grantees of the land from the grantor as stated in the definition of family subdivision in subsection “a” above. 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.
- iii. **Deeds:** 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.
- iv. **Zoning Conformity:** 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.
- v. **Street Frontage:** All lots proposed for subdivision, including the original tract, shall front on a dedicated private or public right of way of at least 54 feet in width which connects to a public street. The final plat is required to show this right of way.

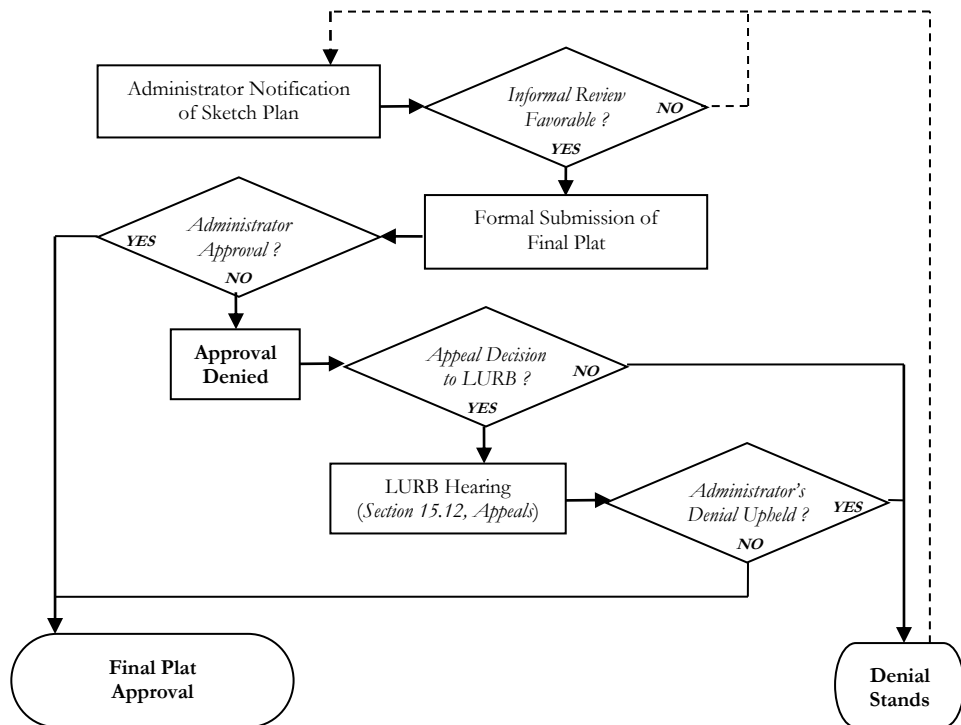
- vi. **Street Standards:** All lots proposed for subdivision, including the original tract, shall front on a street built to the following standards:
  - a) If determined by the Town to be a logical location for a street, a 54-foot public or private right-of-way is required.
  - b) If determined by the Town to be an area where the future street location is not determined a 54-foot private easement or right-of-way is required.
  - c) 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.
  - d) 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.
  
- vii. **Public Utilities:** 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.
  
- viii. **Development Fees:** Family subdivision lots shall 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.
  
- ix. **Additional Right-of-Way Dedication:** Family subdivision lots fronting on an existing public street, which is identified as a thoroughfare or collector street as identified on the Town's Arterial 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.
  
- x. **Right-of-Way Reservation:** 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.

5. **Minor Subdivisions:**

- a. **Purpose & Definition:** Minor subdivisions are those that involve the creation of not more than four (4) lots fronting on an existing approved street; and do not involve any of the following:
  - i. the construction of any new street or prospectively requiring any new street for access to interior property; or
  - ii. the extension of public sewage or water lines to serve properties at the rear; or
  - iii. the creation of any new or residual parcels not conforming to the requirements of these regulations and related ordinances.
  
- b. **Procedure:** The request for a minor subdivision approval shall be filed by submitting an application for Final Plat to the Administrator.
  
- c. **Expedited Review:** Except as regulated above the following subdivisions should be exempt from the sketch plan requirements and may only be required to submit a plat for recordation:
  - i. The tract or parcel to be divided is not exempt under subsection 15.4(F).2 of this ordinance.
  - ii. No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
  - iii. The entire area of the tract or parcel to be divided is greater than five acres.
  - iv. After division, no more than three (3) lots result from the division.
  - v. After division, all resultant lots comply with all of the following:
    - a. Any lot dimension size requirements of the applicable land-use regulations,
    - b. The use of the lots is in conformity with the applicable zoning requirements, and
    - c. A permanent means of ingress and egress is recorded for each lot.

d.

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance; Final Plat Issued <b>-or-</b> Denied	LURB

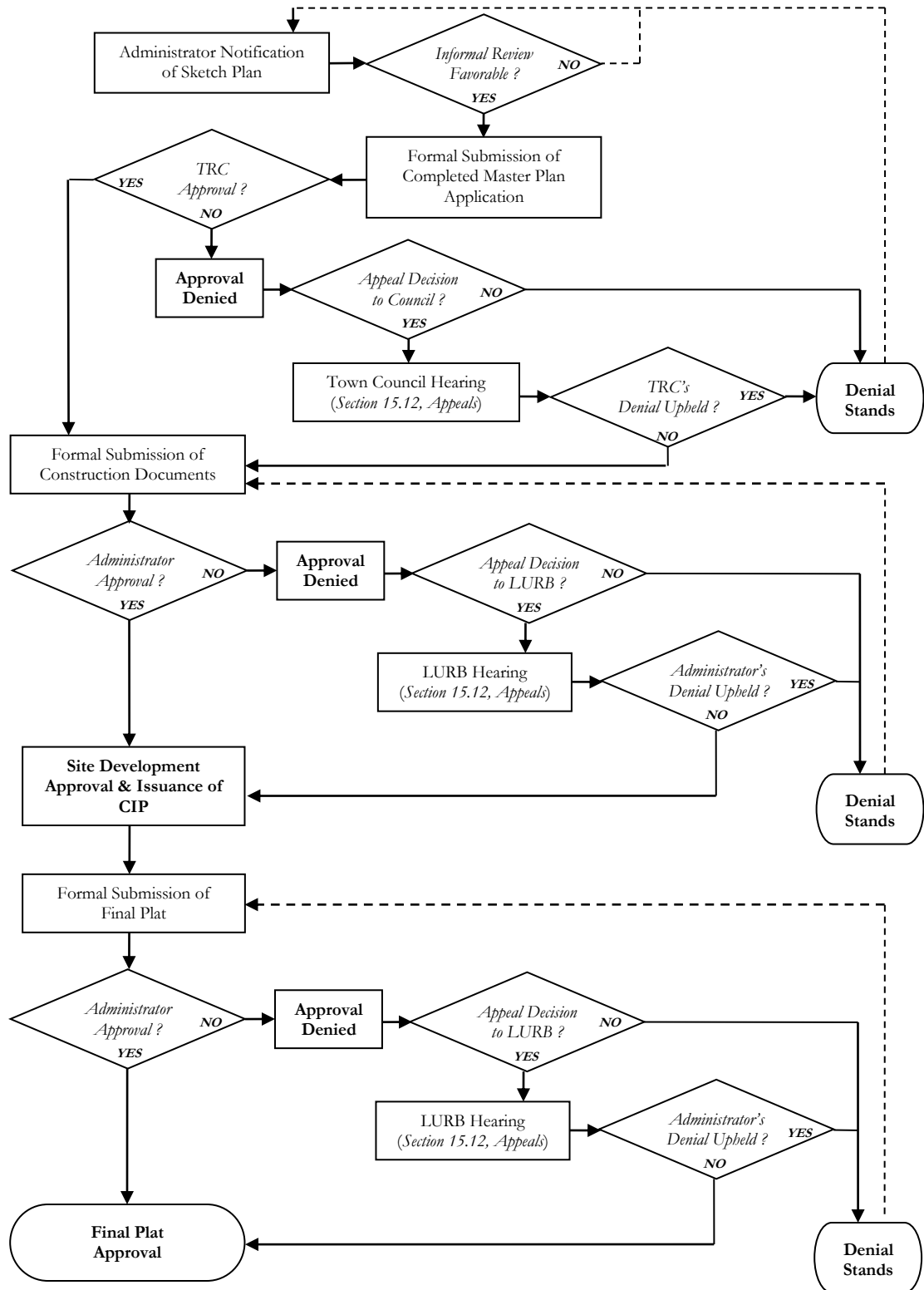


6. Major Subdivisions

- a. **Purpose & Definition:** A Major Subdivision is a subdivision of land that does not meet the definition of an Exempt Plat, Family Subdivision or – Minor Subdivision.
- d. **Procedure:** To receive Major Subdivision approval and a CIP, a completed Master Plan Application must be submitted to the Administrator for review.
- e. **Special Use Permit:** A Special Use Permit granted in accordance with Chapter 15.5(E) is required for any major residential subdivision (5 or more lots) granted after September 21, 2016.

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Master Plan (16.5) w/Environmental Survey (16.2A)	TRC	Review for Completeness & Ordinance Compliance; Master Plan Approved -or- Denied	Town Council
Construction Documents (16.6) w/Environmental Survey (16.2B)	Administrator	Review for Completeness & Ordinance Compliance; CIP Issued -or- Denied	LURB
Final Plat (16.7)	Administrator	Review for Completeness & Ordinance Compliance; Final Plat Issued -or- Denied	LURB





## 15.5 Quasi-Judicial Procedures

This Section provides for the 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.

### A. General Provisions

#### 1. Re-hearings

- a. **Applicability:** 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 LURB or Town Council decision. In addition, specific information to enable the applicable 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.
- b. **Procedure:** A re-hearing shall be denied by the applicable 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 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 applicable board finds that a re-hearing is warranted, it shall proceed as in the original hearing except that the application fee shall be waived.

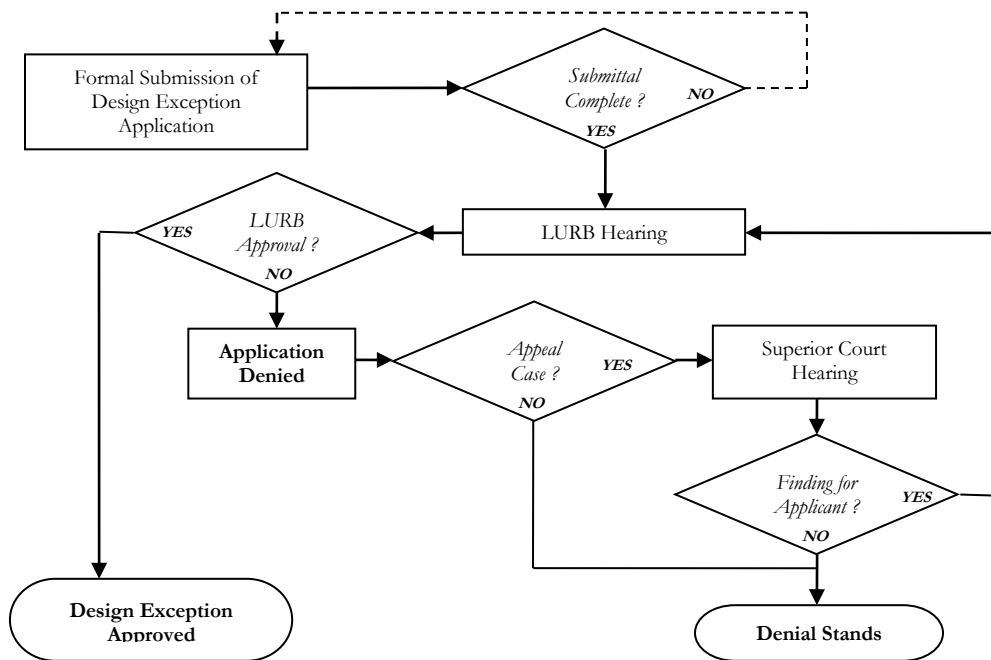
2. **Right of Judicial Appeal:** Every quasi-judicial decision of the LURB or the Town Council shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within 30 days after the effective date of the decision, or after a written copy is served in accordance with the provisions of Section 15.3E, whichever is later. In the event any decision is served via first-class mail, three (3) days shall be added to the allowed time in which to file a petition for review.

### B. Design Exceptions

1. **Applicability:** In order to accommodate innovative planning or design ideas for development in any District, the Design Exception process has been created for the LURB to offer flexibility in the administration of the design provisions of this Ordinance (*Chapters 5-12*). This process 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 LURB.
2. **Decision:** The LURB may grant a Design Exception based on one (1) or more of the following findings:
  - a. The provisions enumerated in Chapter 5 preclude the appropriate detailing of a specific recognized architectural style either present or proposed; 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.
3. **Conditions to Motion:** The LURB 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.
4. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Design Exception Application	Administrator	Review for Completeness & Ordinance Compliance	n/a
	LURB	Public Hearing	Superior Court



**C. Administrative Appeals**

1. **Applicability:** The LURB or Town Council shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Administrator or TRC, respectively, and apply such interpretation to particular fact situations.
2. **Applicant with Standing:** The following persons and entities shall have standing to file an appeal under this section:
  - a. Any person meeting any of the following criteria:
    - i. Has an ownership interest in; a leasehold interest in; or an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed; or
    - ii. Has an option or contract to purchase the property that is the subject of the decision being appealed; or
    - iii. Was an applicant before the decision-making authority whose decision is being appealed.
  - b. Any other person who will suffer special damages as the result of the decision being appealed.
  - c. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one (1) of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of an appeal.
  - d. The LURB or Town Council when it believes the Administrator or TRC, respectively, has been inconsistent with the proper interpretation of the Ordinance.
3. **Filing:** An appeal by the property owner to the appropriate board shall be made within 30 days of receipt of the written notice stating the decision, order, determination or interpretation made by the Administrator or TRC. An appeal by any other person with standing shall be made within 30 days of the receipt of any actual or constructive notice regarding the decision, order, determination or interpretation made by the Administrator or TRC.
  - a. **Timely Hearing and Decision:** An appeal must be placed on the appropriate board agenda within 30 days of filing, and a decision shall be reached within a reasonable amount of time.
  - b. **Enforcement Proceedings Stayed:** The filing of any application stays all enforcement proceedings unless the Administrator certifies by facts stated in an affidavit 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 the enforcement of the Ordinance. In that event, enforcement proceedings shall not be stayed except by a restraining order granted by a judicial court of law.

- **Expedited Hearing:** If enforcement proceedings are not stayed, the appellant may request from the Administrator an expedited hearing, in which case, the LURB shall conduct said hearing within 15 days after such request has been filed.
    - c. **Other Review Proceedings Not Stayed:** Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay further review of an application for permits or permissions to use such property. In said situations, the appellant may request and the LURB may grant a stay of any final decision concerning permit applications or building permits affected by the appeal.
- 4. **Board Powers and Responsibilities:** The appropriate board 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 appropriate board shall have all the powers of the Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal. For appeals of TRC decisions involving administrative permits requiring a Master Plan, the Town Council must make the following findings to overturn the original decision:
  - a. The plan is consistent with Comprehensive Plan goals and objectives and all other Town Council adopted development policies;
  - b. 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 chapters 9 and 17;
  - c. 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;
  - d. The plan provides harmony and unity with the development of adjacent and nearby properties;
  - e. The plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; and
  - f. The plan provides safe ingress and egress for emergency services.
- 5. **Simple Majority Required:** The concurrent simple majority vote of the appropriate board's voting members shall be necessary to make an interpretation of the Ordinance, or reverse any administrative order, requirement, decision or determination. In all matters coming before either board, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

**D. Variances**

**1. Applicability:**

- a. In General:** When unnecessary hardships would result from carrying out the strict letter of this Ordinance and the required findings of fact set forth in Section 15.5D(4)a are made, the LURB shall vary any of the regulations or provisions of this Ordinance.
- b. Flood Damage Protection:** Variances related to Flood Damage Protection may be issued for:
  - i.** 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; or
  - ii.** Functionally dependent 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; or
  - iii.** Any other type of development, provided it meets the requirements stated in this section.
- c. Items Not Cause for Variance:**
  - i.** The request for a particular use expressly, or by inference, prohibited in the District involved.
  - ii.** Hardship resulting from personal circumstances.
  - iii.** Hardship resulting from conditions that are common to the neighborhood or the general public.
  - iv.** Any request that will cause a structure to be in violation of other Federal, State, or local laws, regulations or ordinances.
  - v.** Any request within any designated floodway or non-encroachment area where the variance would result in any increase in flood levels during the base flood discharge.

**2. 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.

**3. Enforcement and Other Proceedings Stayed:** The filing of any application stays all proceedings unless the Administrator certifies by facts stated in an affidavit 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 granted by a judicial court of law.

#### 4. Board Powers and Responsibilities

- a. **Required Findings of Fact:** The LURB, after having held a public hearing on the matter, may grant or deny a variance based on the following:
  - i. **General Required Findings of Fact:** The LURB must make the following determinations of fact for all variance requests:
    - a) Unnecessary hardship would result from the strict application of the Ordinance;
    - b) The identified hardship is the result of conditions peculiar to the property, such as location, size and/or topography;
    - c) The identified hardship did not result from actions taken by the applicant or property owner; and
    - d) The variance is consistent with the spirit, purpose and intent of this Ordinance, such that public safety is secured and substantial justice is achieved.
  - ii. **Flood Damage Prevention:**
    - a) **Specific Procedures:** Variances to flood damage prevention requirements shall only be issued prior to development permit approval. To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, in passing upon variances to flood damage prevention requirements, the LURB shall consider all technical evaluations, all relevant factors and all standards specified in other sections of this Ordinance including:
      - the danger that materials may be swept onto other lands to the injury of others;
      - the danger to life and property due to flooding or erosion damage;
      - the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
      - the importance of the services provided by the proposed facility to the community;
      - the necessity to the facility of a waterfront location, where applicable;
      - the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
      - the compatibility of the proposed use with existing and anticipated development;
      - the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
      - the safety of access to the property in times of flood for ordinary and emergency vehicles;
      - 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

- 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.

Any applicant to whom a variance is granted shall be given written notice specifying the difference between the 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. The Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.

- b) **Additional Required Findings of Fact:** To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, Flood Damage Prevention variances shall only be issued upon the LURB determining the following findings of fact, in addition to those findings enumerated in Section 15.5D(4)a:
  - i) that the variance is the minimum necessary, considering the flood hazard, to afford relief;
  - ii) that there is a showing of good and sufficient cause; and
  - iii) 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.
- iii. **Adult Establishments and Sweepstakes Centers:** To assure that any such variance is consistent with the spirit, purpose and intent of the Ordinance, variances to the minimum distance between adult establishments and/or sweepstakes centers shall only be issued upon the following findings of fact, in addition to those findings enumerated in Section 15.5D(4)a:
  - a) The proposed use will not be injurious to property or improvements in the affected area;
  - b) The proposed use will not enlarge or encourage the development of a blighted condition within an area; and
  - c) The permitting of an adult establishment in the area will not be contrary to any governmental program of neighborhood conservation, rehabilitation, improvement or revitalization.
- b. **Conditions to Motion:** The LURB in granting a variance may impose appropriate conditions and safeguards in conformity with this Ordinance, provided such conditions are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the terms under

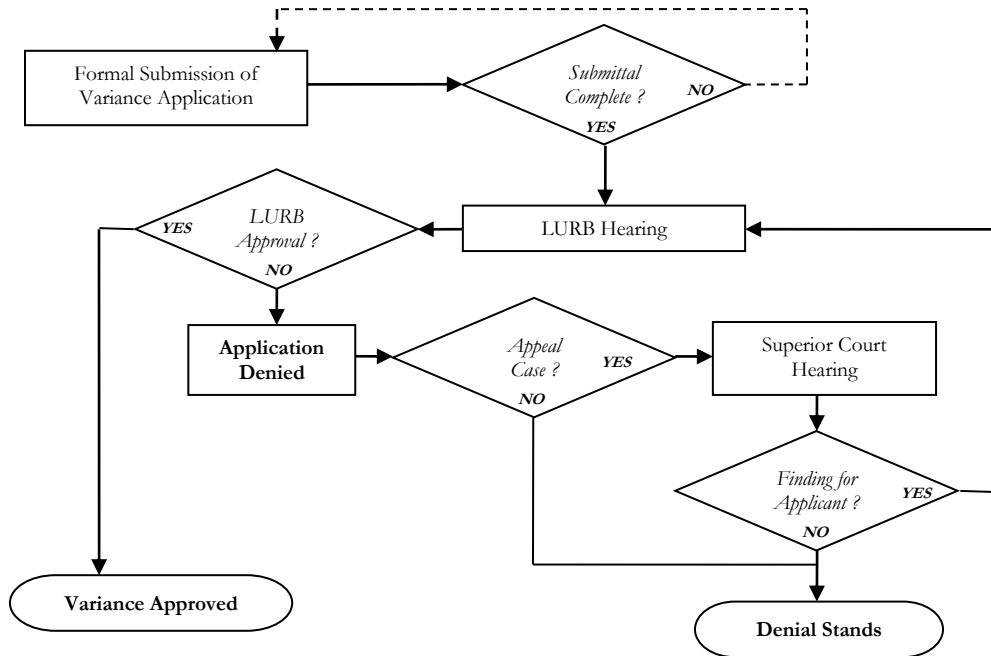


which a variance is granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Chapter 18.

- c. **Supermajority Required for Decision:** The concurrent supermajority vote of four-fifths ( $\frac{4}{5}$ ) of the voting members of the LURB shall be necessary to grant a variance. In all matters coming before the LURB, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.
  - d. **Other Considerations:** It shall not be necessary for the applicant to demonstrate that, in the absence of a variance, no reasonable use can be made of the property. Additionally, the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - e. **Time for Decision:** The LURB shall hold a public hearing on an application no later than 60 days after a complete application has been filed with the Administrator. The LURB shall decide on the matter which was presented at the public hearing within 45 days of the close of the public hearing.
5. **Time Limit on Approval:** If an application for a variance is approved by the LURB, 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 LURB and included in its decision to grant a variance, an order of the LURB in granting a variance shall expire if a building permit or CO (*for a use for which a building permit is not required*) has not been obtained within two (2) years from the date of its decision.
6. **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.

7. Procedure:

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Variance Application	Administrator	Review for Completeness & Ordinance Compliance	n/a
	LURB	Public Hearing	Superior Court



**E. Special Use Permits – Major Residential Subdivisions (5 or more lots)**

1. **Applicability:** A Special Use Permit (SUP) for a major residential subdivision (5 or more lots) allows individual consideration of their location, design, configuration, and/or operation at the particular location proposed in order to mitigate and prepare for potential impacts on the neighborhood and/or town as whole.
2. **Neighborhood Meeting:** A pre-submittal neighborhood meeting is required as outlined in 15.3(C).
3. **Board Powers and Responsibilities:** The processing of a SUP shall conducted by the Town Council. During the public hearing, all parties presenting evidence shall be duly sworn.
  - a. **Required Findings of Fact:** 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. The evaluation and approval of the SUP shall be based upon the sworn testimony and evidence both in favor and against the SUP application presented at the hearing relevant to the following Findings of Fact:
    - i. The proposed special use conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of vegetation on the site.
    - ii. The proposed use will not cause undue traffic congestion or create a traffic hazard.
    - iii. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use.
    - iv. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning districts.
    - v. 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..
    - vi. The application will not substantially injure the value of adjoining or abutting property.
    - vii. The proposal meets all required principles and specification of the UDO, unless excepted, and adopted land use plans, is in harmony with the general purpose and intent and preserves its spirit.
  - b. **Conditions to Motion:** In approving an application for a SUP, the Town Council may attach fair and reasonable conditions on the location, nature and extent of the proposed use which support the required Findings of Fact, including those voluntarily consented to or proposed by the applicant or property owner. The Town Council may not require the landowner to waive a vested right as a condition of the SUP approval. 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.
  - c. **Variation:** The various provisions of Chapters 4-12 may be varied if specifically requested by the petitioner and is substantiated by material competent evidence during the public hearing.

4. **Effect of Approval:** If an application is approved, the SUP 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 SUP and submit a copy of the recorded document(s) to the Town.
5. **Substantial Changes:** Any substantial change to a SUP 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 SUP. Minor field alterations or minor revisions to approved SUPs may be approved by the Administrator if the special use still meets the intent of the standards established with the original approval.
6. **Time Limit on Approval:** The applicant must record a final plat within a 24-month period from date of approval of the SUP unless otherwise specified.
7. **Rescission or Extension of Special Use Permits:** The Town Council may completely rescind or extend for a specified period of time a SUP after notice by the Administrator and subsequent hearing upon one (1) or more of the following grounds:
  - a. The project is not complete or a final plat is not in place at the end of the 24-month approval period; or
  - b. Failure to comply with the additional standards specified in Section 3.3; or
  - c. Substantial change to Local, State, or Federal law that may affect the ability to complete the subdivision as proposed or affects the validity of the Special Use Permit.

8. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APEAL PROCESS
Sketch Plan (16.4) w/ Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Special Use Permit w/ Master Plan (16.5)	Administrator	Review for Completeness & Ordinance Compliance; Issue Staff Report	n/a
	Town Council	Public Hearing; Refer to LURB	n/a
	LURB	Review and Recommendation	n/a
	Town Council	SUP Approved – <b>or</b> – Denied	Superior Court
Construction Documents (16.6) w/Environmental Survey (16.2B)	Administrator	Review for Completeness & Ordinance Compliance; CIP Issued - <b>or</b> - Denied	LURB

F. **Special Use Permits**

1. **Applicability:** A Special Use Permit (SUP) ensures the appropriateness of the use at a particular location within a given District. Special Uses are generally

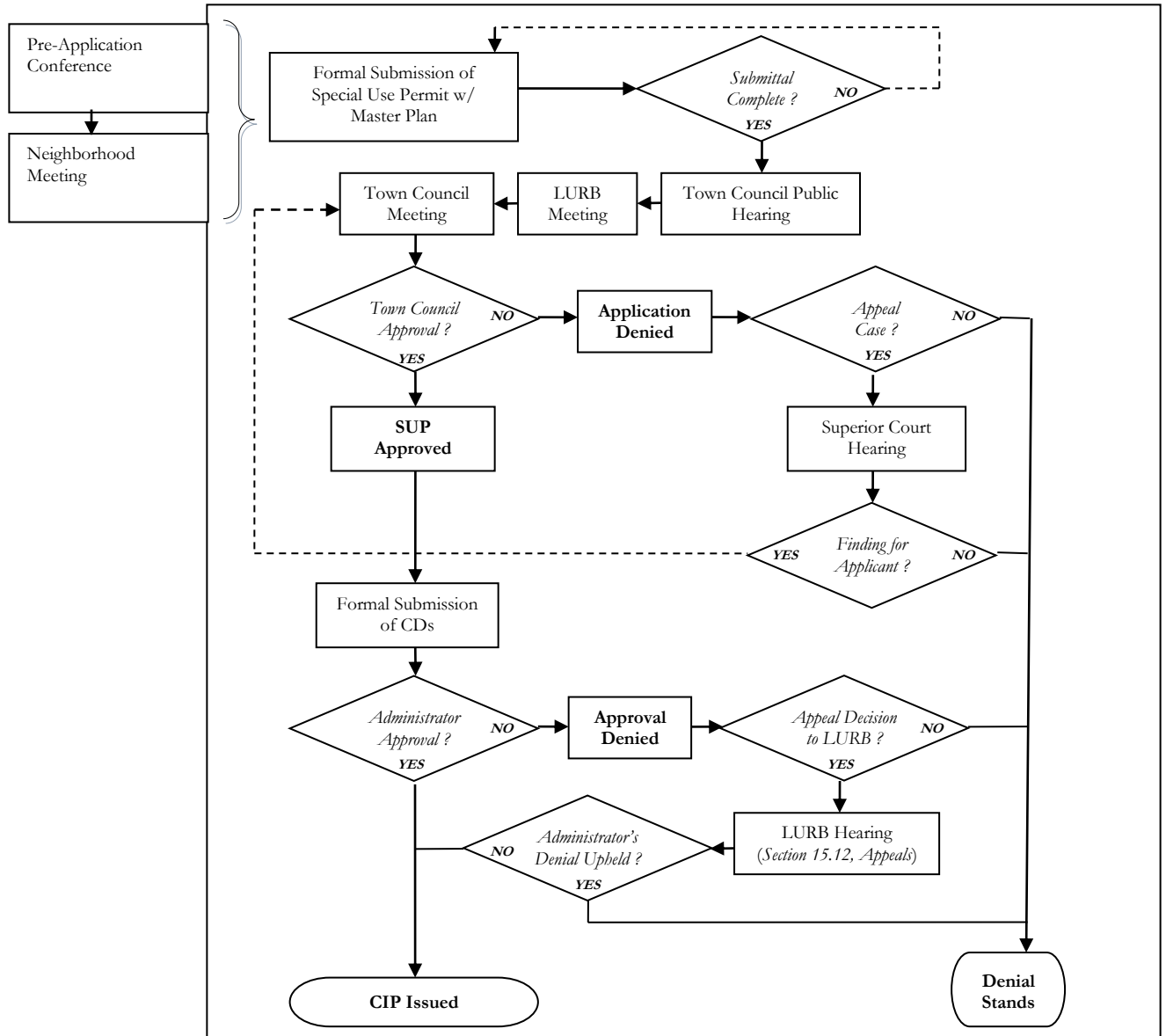
compatible with the land uses permitted by right in a District, but which require individual review of their location, design and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Only those uses enumerated (*Section 2.3C*) as required SUP's in a District may be authorized by the Town Council.

2. **Neighborhood Meeting:** A pre-submittal neighborhood meeting is required as outlined in 15.3(C).
3. **Board Powers and Responsibilities:** The processing of a SUP shall be conducted by the Town Council. During the public hearing, all parties presenting testimony and evidence shall be duly sworn.
  - a. **Required Findings of Fact:** 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. The evaluation and approval of the SUP shall be based upon the sworn testimony and evidence both in favor and against the SUP application presented at the hearing relevant to the following Findings of Fact:
    - i. 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;
    - ii. The proposed plan as submitted and approved will be visually and functionally compatible with the surrounding area; and
    - iii. 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.
  - b. **Conditions to Motion:** In approving an application for a SUP, the Town Council may attach fair and reasonable conditions on the location, nature and extent of the proposed use 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 SUP approval. 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.
4. **Effect of Approval:** If an application is approved, the SUP 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 SUP and submit a copy of the recorded document(s) to the Town.
5. **Substantial Changes:** Any substantial change to a SUP 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 SUP. Minor field alterations or minor revisions to approved SUPs may be approved by the Administrator if the special use still meets the intent of the standards established with the original approval.
6. **Time Limit on Approval:** The applicant must secure a valid building permit within a 24-month period from date of approval of the SUP unless otherwise specified.

7. **Rescission or Extension of Special Use Permits:** The Town Council may completely rescind or extend for a specified period of time a SUP after notice by the Administrator and subsequent hearing upon one (1) or more of the following grounds:
- a. The project is not complete or a valid building permit is not in place at the end of the 24-month approval period; or
  - b. Failure to comply with the additional standards specified in Section 3.3; or
  - c. 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; or
  - d. Excessive criminal activity on or near the premises if the Town Council finds that the operation of the 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.

8. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APEAL PROCESS
Sketch Plan (16.4) w/ Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Special Use Permit w/ Master Plan (16.5)	Administrator	Review for Completeness & Ordinance Compliance; Issue Staff Report	n/a
	Town Council	Public Hearing; Refer to LURB	n/a
	LURB	Review and Recommendation	n/a
	Town Council	SUP Approved – <b>or</b> – Denied	Superior Court
Construction Documents (16.6) w/Environmental Survey (16.2B)	Administrator	Review for Completeness & Ordinance Compliance; CIP Issued - <b>or</b> - Denied	LURB



## 15.6 Legislative Procedures

This Section establishes uniform procedures for processing matters requiring a legislative approval process before the Town Council.

### A. General Provisions

1. **Town Council Decision:** Once the public hearing has been conducted, the Town Council shall refer the matter to the LURB for a recommendation. 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 proposal and render a decision.
2. **Compliance with Comprehensive Plan:** Zoning text and map amendments shall be made in accordance with a comprehensive plan. 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. 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.
3. **Re-hearing**
  - a. **Applicability:** 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. In addition, 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.
  - b. **Procedure:** 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. 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.
4. **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.
5. **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.

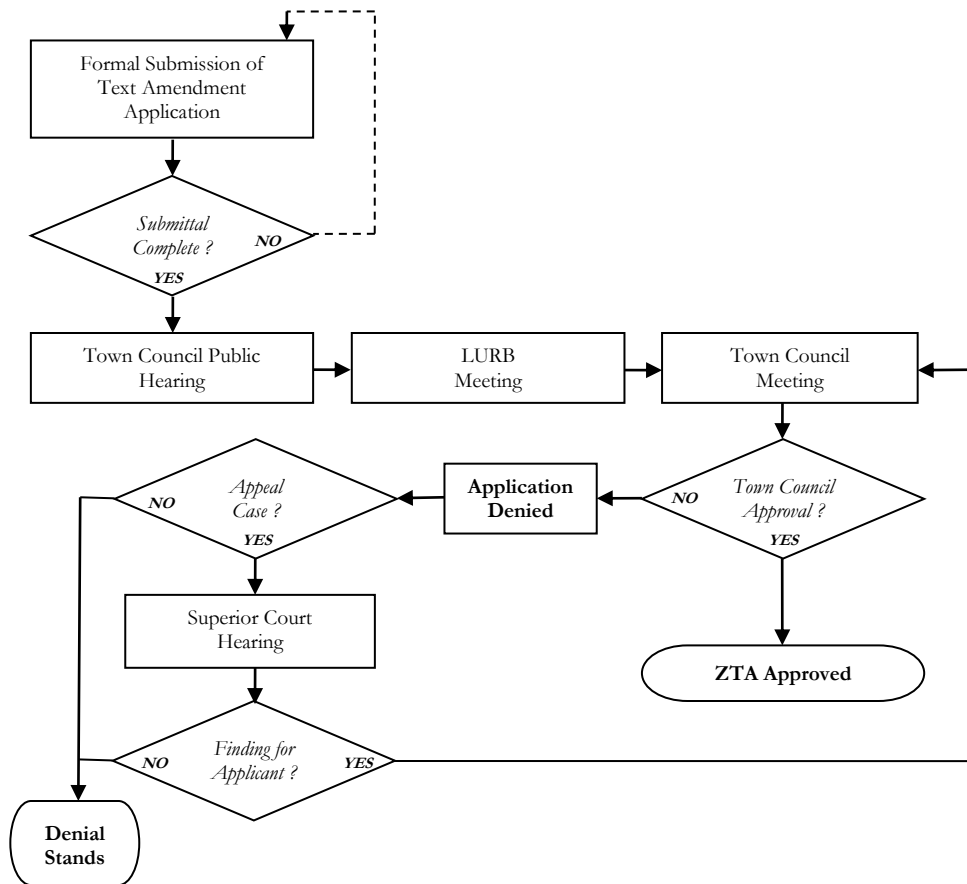
6. **Application Withdrawal:** The applicant may withdraw a legislative application by providing written notice to the Administrator in accordance with the following:
  - a. The petitioner may withdraw his/her application before submission of the public notice to the newspaper announcing the public hearing.
  - b. After submission of such notice, an application may be withdrawn at the discretion of the Town Council at the public hearing.
  - c. No more than two (2) withdrawals may occur on the same parcel or portion of land within a one (1) year period.
  - d. 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.

**B. Zoning Text Amendment**

1. **Applicability:** A zoning text amendment (ZTA) may be initiated by the Town Council, the LURB, the Administrator or any private citizen by filing an application with the Administrator.
2. **Citizen Comments:** In addition to comments provided in person at public hearings and public meetings, any resident or property owner in the town may submit a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two (2) business days prior to proposed vote. If submitted according to the preceding condition, the Town Clerk shall submit said written statements to the Town Council, prior to such hearing.
3. **Decision:** 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 Administrator, LURB or Town Council; or
  - c. Rejection of the amendment.

4. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Text Amendment Application	Administrator	Review for Completeness & Ordinance Compliance. Issue Staff Report	n/a
	Town Council	Public Hearing Refer to LURB	n/a
	LURB	Review and Recommendation	n/a
	Town Council	ZTA Approved – <b>or</b> – Denied	Superior Court

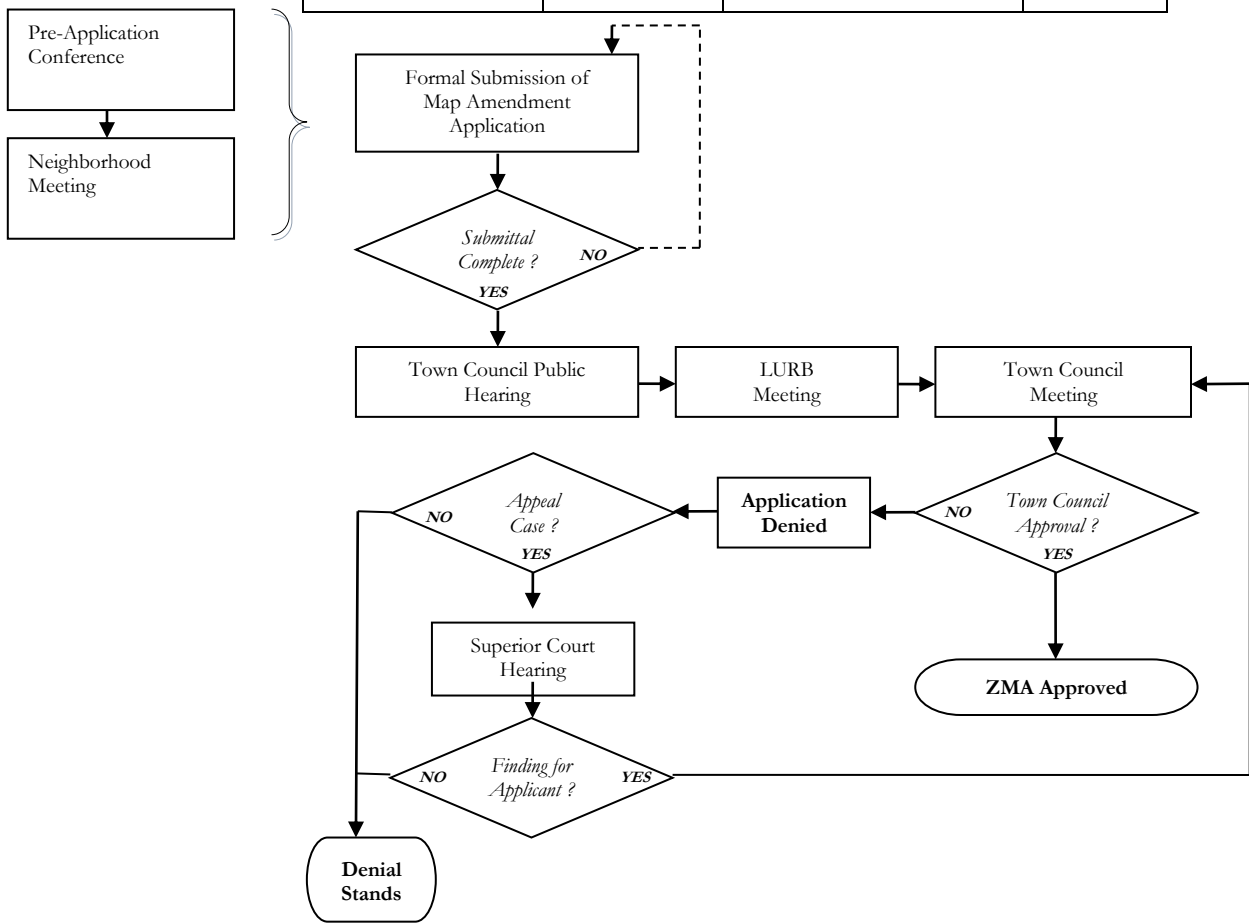


**C. Zoning Map Amendments (Re-zonings)**

1. **Applicability:** An amendment to the Official Zoning Map, or “Zoning Map Amendment” (ZMA) may be initiated by the Town Council, the LURB, the Administrator or any private citizen by filing an application with the Administrator.
2. **Neighborhood Meetings:** A pre-submittal neighborhood meeting is required for all applications for a Zoning Map Amendment as outlined in 15.3(C).
3. **Citizen Comments:** In addition to comments provided in person at public hearings and public meetings, any resident or property owner in the town may submit a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two (2) business days prior to the proposed vote. If submitted according to the preceding condition, the Town Clerk shall submit said written statements to the Town Council, prior to the hearing. If the proposed change is the subject of a quasi-judicial proceeding the clerk shall provide only the names and addresses of the individuals providing written comment.
4. **General Re-zoning**
  - a. **Decision:** A decision concerning a petition for re-zoning shall be as follows:
    - i. Grant the re-zoning as requested; or,
    - ii. Grant the re-zoning with a reduction in the area requested; or,
    - iii. Grant the re-zoning to a more restrictive general zoning district; or,
    - iv. Grant the re-zoning with a combination of “ii” and “iii” above; or,
    - v. Deny the application.

b. Procedure:

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Map Amendment Application	Administrator	Review for Completeness & Ordinance Compliance. Issue Staff Report	n/a
	Town Council	Public Hearing Refer to LURB	n/a
	LURB	Review and Recommendation	n/a
	Town Council	ZMA Approved – or – Denied	Superior Court



**5. Conditional District Re-zoning:** The Conditional District (ZMA-CD) re-zoning process provides 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.

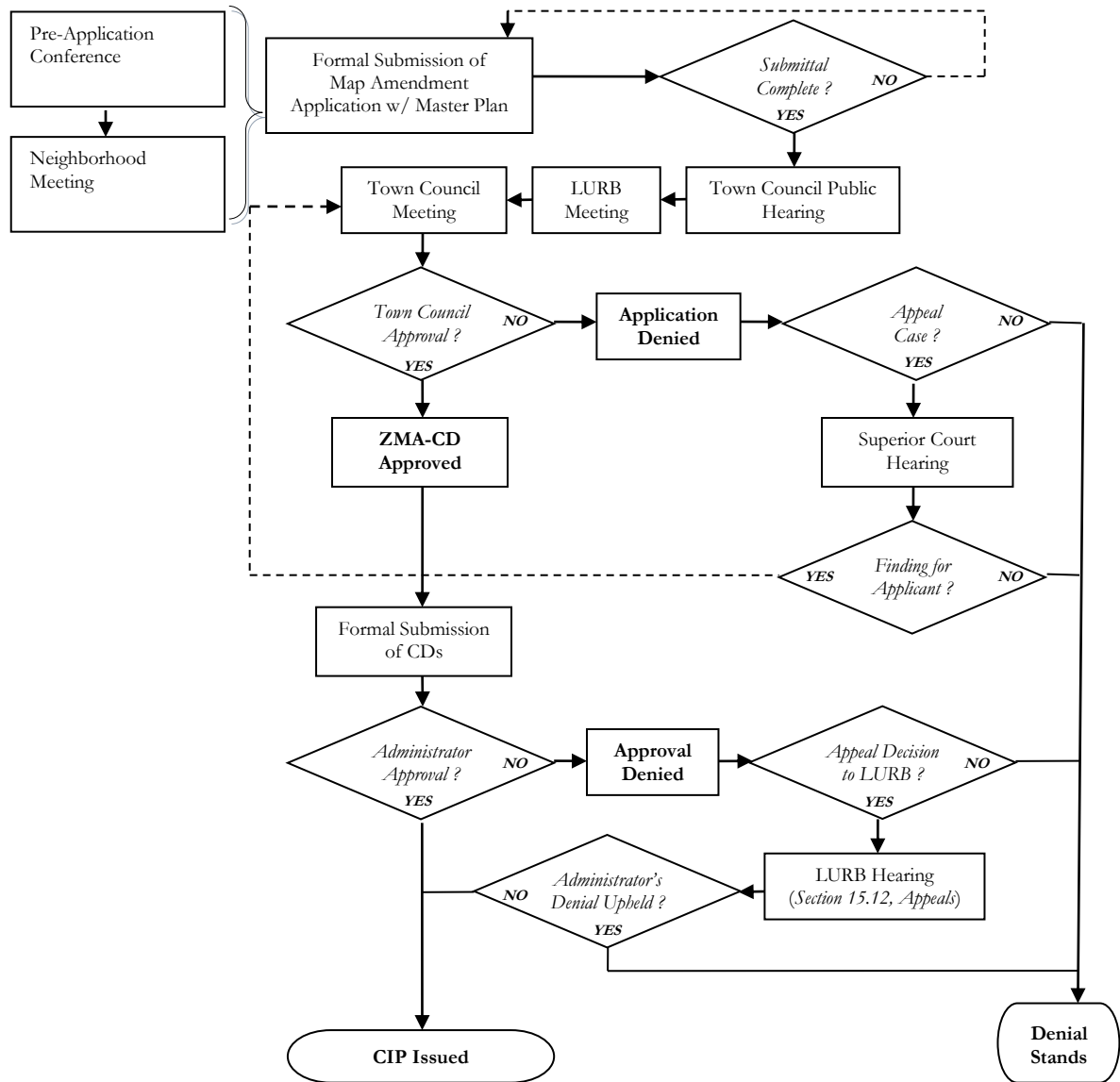
**a. Specific Requirements:**

- i. 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.
  - ii. 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.
  - iii. Content of Application:** The Master Plan, as a site specific Conditional Zoning Plan, is itself a condition of the ZMA-CD. 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.
  - iv. Fair and Reasonable Conditions:** At the request of the applicant, the LURB 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 LURB or the Town Council prior to final action.
- b. 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 LURB and approved or denied by the Town Council as an amended Conditional District.
- c. Time Limit on Approval:** The Applicant must secure a valid building or construction permit(s) within a 24-month period from date of approval of the ZMA-CD unless otherwise specified.
- d. Rescission of Conditional Districts:** If such project is not complete and a valid building or construction permit is not in place at the end of the 24-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 ZMA-CD to the Town

Council. The Town Council may then rescind the ZMA-CD or extend the life of the ZMA-CD for a specified period of time.

e. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.4) w/ Environmental Survey (16.2A)	Administrator	For Non-Binding Review Only	n/a
Map Amendment Application w/Master Plan (16.5)	Administrator	Review for Completeness & Ordinance Compliance. Issue Staff Report	n/a
	Town Council	Public Hearing Refer to LURB	n/a
	LURB	Review and Recommendation	n/a
	Town Council	ZMA-CD Approved - <b>or</b> - Denied	Superior Court
Construction Documents (16.6) w/Environmental Survey (16.2B)	Administrator	Review for Completeness & Ordinance Compliance; CIP Issued - <b>or</b> - Denied	LURB



**D. Vested Rights**

1. **Applicability:** Pursuant to G.S.160A-385.1 and not withstanding any other provision or amendment, a landowner may apply for approval of a Site-Specific Development Plan (*Master Plan*) as defined in the statute that shall entitle said landowner to develop property over a period beyond the original two (2) year approval duration 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.
2. **Board Powers and Responsibilities:** A request to extend Vested Rights to a previously approved Site-Specific Development Plan (*Master Plan*) shall be reviewed and approved by the Town Council after notice and public hearing.
  - a. **Decision:** The Town Council shall determine whether or not to grant or establish a Vested Right after the review and consideration of the LURB. The Town Council may not require the landowner to waive his Vested Right as a condition of development approval.
  - b. **Required Determinations:** The Town Council may approve the Vested Right for a period greater than two (2) years where it is determined 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 the initial two (2) year approval duration period.
  - c. **Time Limit on Vested Right:** The maximum vesting term that may be granted by the Town Council may not exceed five (5) years from the date of original Master Plan approval.
3. **Effect of Approval of Vesting:** 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 (*Master Plan*). 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. 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 (*Master Plan*), except under the conditions in subsection “5” below where such rights are terminated and revoked.
4. **Establishment of Common Law Vesting Plans:** Previously approved Site-Specific Development Plans (*Master 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 CDs for the SDA or Subdivision do not deviate from, and is subdivided/developed in accordance with the previously approved Site-Specific Development Plan (*Master Plan*). Substantial financial investment must be determined and a good faith effort made to develop proportionate to the approved statutory vested plan.



5. **Revocation of Vested Rights:** Once a Vested Right is granted to a particular Master 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. Failure to abide by the terms and conditions placed upon such approval or with any other applicable portion of this Ordinance will result in the forfeiture of the previously granted or established Vested Right. 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. As noted in subsection “3” above, the presence of any of the following conditions shall cause such vested rights to be terminated and revoked:
- a. The affected landowner provides written consent to the Town of his/her desire to terminate the Vested Right;
  - b. 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;
  - c. 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;
  - d. 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
  - e. 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.

6. **Procedure:**

SUBMITTAL REQUIREMENTS	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Vested Right Application w/Master Plan (16.5)	Administrator	Review for Completeness & Ordinance Compliance; Issue Staff Report	n/a
	Town Council	Public Hearing	n/a
	LURB	Review and Recommendation	n/a
	Town Council	Vested Right Approved - or - Denied	Superior Court

