

ARTICLE 3: DEVELOPMENT REVIEW PROCEDURES

Section 3.1 Administrative Permit Procedures

Section 3.1.1 Zoning, Sign, Special Use Permits and Conditional Use Permits

A. Permit required

No person shall undertake any development activity subject to this Ordinance except in accordance with and pursuant to the following permits: (1) zoning permit or sign permit issued by the Zoning Administrator, (2) Special Use Permit issued by the Board of Adjustment, or (3) a Conditional Use Permit issued by the Board of Commissioners.

B. Review Required

Zoning permits, sign permits, Special Use Permits or Conditional Use Permits are issued under this Ordinance only when a review of the application submitted, including the appropriate site plan, indicates that the proposed development will comply with the provisions of this Ordinance if completed as proposed. Such application and plans as approved, including modifications, are incorporated in any permit issued, and except as otherwise provided herein, all development shall occur strictly in accordance with such approved application and plan.

C. Permit Exemptions

1. Zoning Permit Exemptions:
 - a. Farm buildings, other than a residence or other uses listed in Table of Uses, used for bona fide farm purposes;
 - b. Any accessory building with a building dimension of 12 feet or less; and,
 - c. Facilities, appurtenances, etc., other than buildings, of a public utility, electric, gas, or telephone membership corporation.
2. Sign Permit Exemptions – No sign permit shall be required for signs specifically exempted by Section 10.2.7 in Article 10.

D. Application Procedures

1. All applications shall be submitted by the owner of the property or authorized agent of said owner on a form and in numbers as required by the Town of Elm City. The Zoning Administrator may waive submission of required elements of information when, in his/her opinion, such information is otherwise available or is not necessary in the review of the application. Likewise, the Zoning Administrator may waive submission of a site plan if, in his/her judgment, it is determined that it is not necessary to complete the review of the permit application.

2. Each application for a Zoning Permit for a single-family or two-family dwelling on a single lot shall be accompanied by a plot plan in duplicate, drawn to scale with dimension labeled, one (1) copy of which shall be returned to the Owner upon approval. The plan shall show the following:
 - a. The shape and dimensions of the lot on which the proposed building or use is to be erected or conducted, and acreage or square footage of lot as taken from plat or deed;
 - b. The name of the owner, date prepared, scale used, tax map and parcel reference, plat book or deed book reference, address of property with township, county, and state, and north arrow for orientation;
 - c. The location of the said lot with respect to adjacent rights-of-way;
 - d. The shape, dimensions, and location of all buildings, existing and proposed, on the said lot;
 - e. The nature of the proposed use of the building or land, including the extent and location of the use, on the said lot;
 - f. Zoning district(s) within the property and on adjacent properties;
 - g. Location of floodplain boundaries or other environmental constraints as set forth in Article 9 and where applicable;
 - h. The location and dimensions of off-street parking and the means of ingress and egress to such space; and
 - i. Any other information that the Zoning Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.

3. Each zoning permit application for developments (other than the single-family or two-family referenced in Section 3.1.1.D.2 above) and all Special Use Permit and Conditional Use Permit applications shall be accompanied with a site plan with information as required below. No new or amended plan shall be required if an adequate site plan is already on file and provided there is no change in the required off-street parking, loading, or stacking requirements. Site plans shall show proposed changes in existing natural features, existing man-made features, and existing legal features and shall show the new features. Site plans shall contain the following information, where applicable:
 - a. The plans shall include a location map that shows the location of the site in broad context to the neighborhood and major street(s).
 - b. Site plans shall be drawn to scale, using such a scale that all features required to be shown on the plans are readily discernible. Very large developments may require that plans show the development in sections to accomplish this objective without resorting to plans that are so large as to be cumbersome, or the objective may be accomplished by using different plans or plans drawn to different scales to illustrate different features. In all cases, the permit-issuing authority shall make the final determination whether the plans submitted are drawn to the appropriate scale, but the applicant for a conditional or Special Use Permit relies in the first instance on the recommendations of the Zoning Administrator.

- c. Development site plans should show on the first page the following information: name of owner or applicant; name of development (if any); north arrow; legend; and scale.
- d. Development site plans shall show all existing natural, man-made, and legal features on the lot where the development is to take place, including but not limited to those listed below. In addition, the plans shall also show those features indicated below by italics that are located within fifty (50) feet in any direction of the lot where the development is to take place, and shall specify (by reference to the Table of Use or otherwise) the use made of adjoining properties.

Existing natural features:

- i. Tree line of wooded areas.
- ii. Orchards or other agricultural groves by common or scientific name.
- iii. Streams, ponds, drainage ditches, swamps, boundaries of floodways, and floodplains.
- iv. Base flood elevation data, if applicable.
- v. Contour lines (shown as dotted lines) with no larger than two foot contour intervals. Proposed contour lines shall be shown as solid lines if resulting in earth movement.

Existing man-made features:

- i. Vehicle accommodation areas (including parking areas, loading areas and circulation areas (see Article 7), all designated by surface material and showing the layout of existing parking spaces and direction of travel lanes, aisles, or driveways.
- ii. Streets, private roads, sidewalks, and other walkways, all designated by surface material.
- iii. Curbs, gutters, curb inlets and curb cuts, and drainage grates.
- iv. Other storm water or drainage facilities, including manholes, pipes and drainage ditches.
- v. Underground utility lines, including water (including fire hydrants), sewer, electric power, telephone, gas, cable television.
- vi. Buildings, structures and signs (including dimensions of each).
- vii. Location of exterior freestanding light fixtures.
- viii. Location of dumpsters.
- ix. Location of adjacent and opposing driveways.
- x. Use of adjacent and opposing properties.

Existing legal features:

- i. Zoning of the property, including zoning district lines where applicable.
- ii. Property lines (with dimensions identified).
- iii. Street right-of-way lines.

iv. Utility or other easement lines.

- e. All development plans for a Conditional Use Permit for a Planned Development shall also include all information that demonstrates that the standards set forth in Section 6.5 of Article 6 have been addressed.
- f. All plans for a Conditional Use Permit for development within a Planned Village Development (PVD) District shall also demonstrate compliance with all standards set forth in Section 11.4 in Article 11.

E. Right of Appeal

If the zoning permit is denied, the applicant may appeal the action of the Zoning Administrator to the Board of Adjustment as provided for herein. Such appeal shall be made within thirty (30) days of such permit denial.

F. Conditional Approval

If the site plan is granted conditional approval, the applicant shall revise and resubmit the site plan. The Zoning Administrator shall review the revised site plan and, if it meets all the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. If the site plan is not revised within 60 days to meet the approval conditions, or the applicant notifies the Zoning Administrator that he/she is unwilling to revise the site plan, it shall be deemed denied.

G. Permit Issuance

The Zoning Administrator shall issue the zoning permit unless he/she finds, after reviewing the application and consulting with the applicant, that: (1) the requested use is not within his/her authority according to the Table of Uses; or (2) the application is incomplete; or (3) if completed as proposed in the application, the development will not comply with one or more of the requirements of this Ordinance. The Zoning Administrator shall issue the zoning permit unless he/she finds, after reviewing the application and consulting with the applicant, that: (1) the requested sign is not in compliance with the requirements of Article 10 Section 2 (Signs), or (2) the application is incomplete.

H. Permit Issuance Authorizes Commencement of Activity

The issuance of a zoning or sign permit, Special Use Permit or Conditional Use Permit for a Planned Development authorizes the recipient to commence the activity resulting in a change in use of the land, or (subject to obtaining a building permit) to commence work to construct, erect, move, or substantially alter buildings or other substantial and relevant structures. However, except in those cases (due to weather conditions or other factors beyond the control of the recipient or additional requirements are imposed or offered) where a performance bond is posted, where a

Planned Village Development is proposed, or where a development is to be constructed in phases, the intended use may not be commenced and no building may be occupied until all the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a Special Use Permit or Conditional Use Permit have been complied with.

I. Inspections and Investigations

The Zoning Administrator shall have the right, upon presentation of proper credentials or inspection warrant (if necessary), to enter on any premises within the planning jurisdiction of the Town of Elm City at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action. The Zoning Administrator shall have the power to conduct such investigation as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property to investigate and inspect the sites of any complaints or alleged violations of this Ordinance.

Section 3.2 Subdivision Plat Review Procedures

Section 3.2.1 Plat shall be required on any Subdivision of Land

Pursuant to N.C. General Statutes 160A-372, a final plat shall be prepared, approved and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place.

Section 3.2.2 Approval Prerequisite to Plat Recordation

Pursuant to N.C. General Statutes 160A-373, no final plat of a subdivision within the jurisdiction of the Town of Elm City, as established in Article 1, Section 1.3 of this Ordinance shall be recorded by the Register of Deeds of Wilson County until it has been approved by the Elm City Board of Commissioners as provided herein. To secure such approval of a final plat, the subdivider shall follow the procedures established in this section.

Section 3.2.3 Major and Minor Subdivisions Defined

A minor subdivision is defined as a subdivision involving five (5) or less lots fronting on an existing, approved public street(s), not requiring any new public or private streets, roads, or other easements for vehicles (except access easements as defined and permitted by this Ordinance), no right-of-way dedication, and no public water or sewer extension. Not more than a total of five (5) lots may be created out of one tract during a five (5) year period using the minor subdivision approval process. Any other subdivision is defined as a major subdivision.

Section 3.2.4 Sketch Plan

A. Submission

The developer may submit a sketch design plan prior to submitting the preliminary plat of major subdivision. Sketch design plans are optional, but are encouraged where a tract or contiguous tracts is/are planned to be developed in future phases.

B. Purpose

The purpose of the sketch plan is to show general road and lot layout, as well as, other pertinent factors to allow for review, discussion, and approval of the road system and development pattern. This process would be beneficial for all parties when a second phase, after an initial minor subdivision, would result in the creation of road right-of-way to an interior reserved or residual section or multiple phases of a major subdivision are planned.

C. Sketch Plan Submission Procedure

The subdivider shall submit to the Town's Subdivision Administrator no less than 25 days prior to the regularly scheduled Planning Board meeting at which time the plan will be considered, 11 copies of the proposed sketch plan prepared in accordance with the requirements listed below. An application for subdivision review shall accompany the sketch plans.

D. Sketch Plan Contents

The proposed sketch plan shall be prepared by a registered land surveyor or engineer licensed to render said service in the State of North Carolina and shall depict the items listed in Section 11.2.25 (Required Information) in Article 11.

E. Technical Review

Upon receipt of the requisite copies of the proposed sketch plan, the Subdivision Administrator shall schedule a meeting of the Technical Review Committee (TRC) to review the sketch plan. The Technical Review Committee shall consist of, but not limited to NC Department of Transportation (NCDOT), Soil and Water Conservation, and Environmental Health. Following the review by the TRC, the Subdivision Administrator shall forward the findings and recommendations to the Planning Board and the applicant at least 3 days prior to the Planning Board meeting. If the Subdivision Administrator or TRC determine that the sketch plan is incomplete, the Subdivision Administrator shall notify the applicant of the deficiencies. Sketch plans shall not be forwarded to the Planning Board until all deficiencies have been corrected.

F. Planning Board Review and Approval

The Subdivision Administrator shall forward the plat along with technical review recommendation(s) to the Planning Board for review and consideration for recommendation. The Planning Board shall review said plat and the recommendations of the Subdivision Administrator and technical review agencies, if applicable, and make a recommendation to the Board of Commissioners for approval, approval with conditions, or disapproval. The Subdivision Administrator or the Planning Board Chairperson shall state the recommendations of the Planning Board in writing as a report to the Board of Commissioners with a copy submitted to the subdivider. When recommending disapproval or conditional approval, the Planning Board should reference specific sections of this Ordinance as part of the explanation.

G. Board of Commissioners Review and Approval

The Board of Commissioners shall review the sketch plan and the findings and recommendations of the Planning Board and other reports or recommendations and shall approve, approve with conditions, or disapprove the sketch plan as presented as follows.

1. If the Board of Commissioners grants the conditional approval of the sketch plan, the conditions and reasons thereof shall be stated in writing.
2. If the Board of Commissioners disapproves the sketch plan, the reasons for disapproval shall be stated in writing and reference shall be made to the specific section(s) of this Ordinance with which the plan does not comply.
3. If the Board of Commissioners approves the sketch plan, the subdivider is authorized to proceed with the preparation of preliminary plat. A sketch plan shall be valid for twelve (12) months from the date approved by the Board of Commissioners. An approved sketch plan may remain valid for a second year if a preliminary plat for at least one phase with an interior road (depicting construction of at least 400 ft.) is submitted prior to the expiration of the original twelve-month sketch plan period. The preliminary plat must then be approved, improvements completed, and the final plat recorded within the subsequent year. Preliminary plats submitted after the expiration of the sketch plan shall be approved in accordance with the preliminary plat approval requirements of Article 3, Section 3.2.6.A.

Section 3.2.5 Minor Subdivision Review Procedures

The process and requirements for procuring minor subdivision plat approval are as follows:

A. Submission

The subdivider shall submit to the Subdivision Administrator at least eleven (11)

waterproof ink prints of the final plat of a size that will be acceptable to the Wilson County Register of Deeds Office for recording purposes. In addition, one original and 10 photocopies of the Town application along with the appropriate administrative fee shall accompany the plats.

B. Technical Review

The Subdivision Administrator shall distribute a copy of the plat and application to a representative of Environmental Health, Soil and Water Conservation Service, NCDOT, and any other agency deemed appropriate and necessary by the Subdivision Administrator, who will request comments and/or recommendations to be returned from the technical review agencies. If the Subdivision Administrator or any of the technical review agencies determines that the plat is incomplete regarding items necessary to review said plat or additional information is needed, the Subdivision Administrator shall notify the applicant of the deficiencies or additional information. The review process will not be completed until all deficiencies have been corrected.

C. Plat Contents

The proposed final plat shall be prepared by a registered land surveyor, architect or engineer licensed to render said service in the State of North Carolina at a scale of no less than one (1) inch to one hundred (100) feet and shall depict the plat contents and certificates listed in Section 11.2.25 (Required Information) in Article 11.

D. Planning Board Review

The Subdivision Administrator shall forward the plat along with technical review recommendation(s) to the Planning Board for review and consideration for recommendation. The Planning Board shall review said plat and the recommendations of the Subdivision Administrator and technical review agencies, if applicable, and make a recommendation to the Board of Commissioners for approval, approval with conditions, or disapproval. The Subdivision Administrator or the Planning Board Chairperson shall state the recommendations of the Planning Board in writing as a report to the Board of Commissioners with a copy submitted to the subdivider. When recommending disapproval or conditional approval, the Planning Board should reference specific sections of this Ordinance as part of the explanation.

E. Board of Commissioners Review and Approval

The Subdivision Administrator shall, on behalf of the Planning Board, forward the plat and recommendation to the Board of Commissioners for review and consideration for approval. If the Board of Commissioners disapproves the plat, the subdivider/applicant shall be furnished with a written statement of the reasons citing section(s) of the Ordinance with which the plat does not comply. If the plat is

approved, the Minor Plat Approval certification on the face of the plat shall be signed when all final corrections, if applicable and all pertinent certificate signatures are completed, after which the Mayor is authorized to sign the Certificate of Minor Plat Approval.

Section 3.2.6 Major Subdivision - Preliminary Plat Review Procedures

A major subdivision involves the division of a tract(s) of land into six (6) or more lots each being ten (10) acres or less in size or more than two (2) lots requiring a new or expanded public or private road(s) or access easement for access to interior property, or requiring extension of a public sewer or water line. For every major subdivision within the territorial jurisdiction established by Section 1.1.3 of this Ordinance, the subdivider shall submit a preliminary plat which shall be reviewed and approved in accordance with the procedures in this Ordinance before any construction or installation of improvements may begin. The process and requirements for procuring preliminary plat approval for a major subdivision are as follows:

A. Conformance with Sketch Plan

If the subdivider/developer has submitted a sketch plan, the preliminary plat shall conform substantially to the approved sketch plan. If the submitted preliminary plat deviates in its overall design from the approved sketch, or if the applicant requests a waiver from any of the standards of this Ordinance, the Subdivision Administrator shall schedule the preliminary plat to be reviewed again by the Technical Review Committee prior to submission to the Planning Board. If the preliminary plat is submitted after the expiration of the sketch plan, the sketch plan shall be resubmitted for re-approval along with the preliminary plat.

B. Development in Stages

In the event that a subdivision is to be developed in stages, a preliminary plat is required for the entire development showing any applicable phases or stages. A final plat may be submitted for each stage.

C. Submission Requirements

The subdivider shall submit to the Subdivision Administrator no less than twenty-five (25) working days prior to the regularly scheduled Planning Board meeting at which time the plat will be considered at least eleven (11) waterproof prints of a size that will be acceptable to the Wilson County Register of Deeds Office for recording purposes. In addition, an original and ten (10) photocopies of the Town application for subdivision review shall accompany the plats along with the required administrative fee.

D. Plat Contents

The proposed preliminary plat shall be prepared by a registered land surveyor, architect or engineer licensed to render said service in the State of North Carolina at a scale of no less than one (1) inch to one hundred (100) feet. If all lots are greater than 5 acres, one (1) inch to two hundred (200) feet may be used. Said plat shall depict the plat contents and certificates listed in Section 11.2.25 (Required Information) in Article 11. Whenever the nature of the proposed development requires additional information or documents, said information or documents shall be provided at the time of submission of the plat or upon request by the Administrator. The list of the other possible information or documents that may be required as also listed in Section 11.2.25 (Required Information) in Article 11.

E. Technical Review

The Subdivision Administrator shall distribute copies of the preliminary plat and application of the proposed major subdivision to various agencies for their review. These agencies will include Wilson County Environmental Health, Soil and Water Conservation, North Carolina Department of Transportation, and any other agency deemed appropriate and necessary by the Subdivision Administrator.

1. Subdivision Administrator shall request the return of comments and recommendations from the reviewing agencies. If the Subdivision Administrator or any of the technical review agencies determines that the preliminary plat is incomplete on the necessary information to review the plat at this stage, the Subdivision Administrator shall notify the applicant of the deficiencies. The review process will not be completed until all deficiencies have been corrected and re-submitted.
2. The Subdivision Administrator may request a meeting of a representative from each of the review agencies to serve as the Technical Review Committee (TRC) to submit and discuss comments. The TRC will assist the Subdivision Administrator to develop recommendations pertaining to the approval, approval with conditions, or disapproval of the plat. The recommendation(s) shall be stated in writing with copies to the applicant and the Planning Board.
3. The Subdivision Administrator with the approval of the Board of Commissioners may appoint an engineer to review the preliminary plat for correctness and conformity with this ordinance and in comparison with the approved subdivision sketch plan, charging the costs, not to exceed \$2,500, to the subdivider.

F. Planning Board Review

The Subdivision Administrator shall forward the preliminary plat along with recommendations to the Planning Board at its next regularly scheduled meeting for review and consideration concurrently with any documents received from County or State reviewing agencies.

1. Upon considering any input and/or recommendations received in connection with the proposed subdivision in addition to any comments that the subdivider may provide, the Planning Board shall recommend approval, conditional approval, or disapproval to the Board of Commissioners.
2. All decisions shall be stated and issued in writing with conditions, reasons, and references to specific section(s) of the regulations, depending on the type of decision, in its recommendation to the Board of Commissioners. The Subdivision Administrator or the Planning Board Chairperson shall state the recommendations of the Planning Board in writing as a report to the Board of Commissioners with a copy submitted to the subdivider. When recommending disapproval or conditional approval, the Planning Board should reference specific sections of this Ordinance as part of the explanation.

G. Board of Commissioners Review

Upon considering any input and/or recommendations received in connection with the proposed subdivision in addition to any comments that the subdivider may provide, the Board of Commissioners shall recommend approval, conditional approval, or disapproval of the plat. Written notice will be given to the subdivider/applicant.

1. If approval is granted, written confirmation shall be made on two copies of the preliminary plat. One copy of the approved preliminary plat shall be returned to the applicant. Approval of the preliminary plat is authorization for the applicant to proceed with the construction of the necessary improvements, but not to transfer lots.
2. Preliminary plat approval shall be valid for a period of 24 months from the date of approval of the plat by the Board of Commissioners, unless a longer time period is permitted under the vested rights provisions of this Ordinance. Preliminary plats whose approval has elapsed shall be resubmitted as a preliminary plat in accordance with provisions of this Section.

Section 3.2.7 Major Subdivision – Final Plat Review Procedures

A. Preparation of Final Plat

Upon approval of the preliminary plat by the Board of Commissioners, the subdivider may proceed with the preparation of the final plat, and the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this Ordinance. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this Ordinance or guaranteed their installation as provided herein. No final plat will be accepted for review unless it complies with the required improvement and guarantee standards of this Ordinance. The final plat shall constitute only that portion of the approved preliminary plat which the subdivider proposes to develop and record at that time;

such portion shall conform to all requirements of this Ordinance.

B. Conformance with Preliminary Plat

The final plat shall conform substantially to the approved preliminary plat. If the submitted final plat deviates in its overall design from the approved preliminary plat, or if the applicant requests a waiver from any of the standards of this regulation, the Subdivision Administrator shall schedule the final plat to be reviewed by the Technical Review Committee and Planning Board. Such review shall follow the same review and approval procedures set forth in Section 3.2.6 for preliminary plats.

C. Submission Procedure

The subdivider shall submit the final plat, so titled, to the Subdivision Administrator no less than twenty-five (25) working days to the regularly scheduled Planning Board meeting. The final plat for the first stage of the subdivision shall be submitted not more than twenty-four (24) months after the date on which the preliminary plat was approved by the Board of Commissioners; otherwise such approval shall be null and void, unless a written extension of the time limit is granted by the Board of Commissioners on or before the twenty-fourth (24) month anniversary of the approval. At least eight (8) copies of the final plat shall be submitted; two (2) of these shall be on reproducible material (the original will be returned to the subdivider for recording); three (3) shall be black or blue line paper prints. Material and drawing medium for the original shall be in accordance with the requirements of the Wilson County Register of Deeds.

D. Registered Surveyor, Engineer, or Architect

A Registered Land Surveyor, Engineer, or Architect currently licensed and registered in the State of North Carolina shall prepare the final plat. The final plat shall conform to the provisions for plats, subdivisions and mapping requirements set forth in N.C. General Statutes 47-30 and 39-32.3.

E. Plat Size and Scale

The final plat shall be of a size suitable for recording with the Wilson County Register of Deeds and shall be at a scale of not smaller than one (1) inch equals one hundred (100) or two hundred (200) feet if all lots are greater than 5 acres in size. Maps may be placed on more than one (1) sheet with appropriate match lines.

F. Final Plat Contents

The final plat shall contain the information as listed in Section 11.2.25 (Required Information) in Section 11.

G. Documents and Written Information in Addition to Plat

Whenever the nature of the proposed development requires additional information or documents, such documents or information shall be provided at the time of submission of the plat or upon request of the Administrator. The list of the other possible information or documents that may be required as also listed in Section 11.2.25 (Required Information) in Article 11.

H. Subdivision Administrator Review and Inspection

The Subdivision Administrator shall review the final plat information and request reports or verification from appropriate Technical Review Committee agencies, if necessary. The verifications will include sufficient information to determine that all proposed and required improvements have been installed. If the plat contains deviations or deficiencies, the applicant/subdivider will be notified in order to make adjustments or corrections. The Subdivision Administrator with the approval of the Board of Commissioners may appoint an engineer to certify the final plat against the subdivision's preliminary plat and actual layout for correctness, charging the costs not to exceed \$2,500 to the subdivider. If the required improvements are not complete, the applicant/subdivider may choose to use the bond or other guarantees, in accordance to Article 3, Section 3.2.8.C to satisfy the completion requirement. The Subdivision Administrator shall place the plat on the agenda of the Planning Board and prepare to make a recommendation on approval or disapproval.

I. Planning Board Review

The Subdivision Administrator shall submit the final plat and inspection report to the Planning Board. The Planning Board shall recommend approval, conditional approval, or disapproval to the Board of Commissioners. All decisions shall be stated and issued in writing with conditions, reasons, and references to specific section(s) of the regulations, depending on the type of decision, be included in its recommendation to the Board of Commissioners. The Subdivision Administrator or the Planning Board Chairperson shall state the recommendations of the Planning Board in writing as a report to the Board of Commissioners with a copy submitted to the subdivider. When recommending disapproval or conditional approval, the Planning Board should reference specific sections of this Ordinance as part of the explanation.

J. Board of Commissioners Review and Approval

The Board of Commissioners shall review the final plat along with the Planning Board's recommendation, Subdivision Administrator's report from the Technical Review Committee, and the inspection report on the completion of the required improvements. Approval of said plat will not be given unless all required improvements are either completed or the Bonding Requirements of Article 3, Section 3.2.8 have been met. Approval of the final plat shall authorize the Mayor to

sign the Certificate of Final Plat Approval after all corrections, if applicable, and all pertinent certificate signatures are completed.

Section 3.2.8 Improvement Guarantees Requirements

A. Improvement Guarantees

In the event that the required improvements have not been completed prior to the submission of the final plat, the developer shall guarantee the completion of the required improvements in a subdivision by means of a bond with surety or other guarantees satisfactory to the Board of Commissioners in an amount equal to one hundred and fifty (150) percent of the estimated cost of the required improvements, whereby improvements may be made and utilities installed within a reasonable period of time as agreed upon by the developer and Board of Commissioners. (See also Section 11.2.27 in Article 11)

B. Administration

Upon submission of the final plat, the Subdivision Administrator shall forward her/his recommendations relative to the amount of the guarantee to the Board of Commissioners for final action. When the required improvements have been completed, the developer shall notify the Subdivision Administrator. The Subdivision Administrator shall request comments relative to those improvements from the North Carolina Department of Transportation, or any other pertinent agency, which will notify the Subdivision Administrator that the improvements have been installed to its satisfaction. The Subdivision Administrator shall request in writing to the Board of Commissioners to release the bond or funds from escrow.

C. Financial Guarantees

In lieu of the completion, installation, and dedication of all improvements prior to final plat approval, the Town may enter into an agreement with the subdivider whereby the subdivider shall complete all required improvements. Once the subdivider signs said agreement and the security required herein is provided, the final plat may be approved if all other requirements of this Ordinance are met. To secure this agreement, the subdivider shall provide any or a combination of the following guarantees to cover the costs of the uncompleted improvements:

1. Surety Performance Bond(s)

- a. The developer shall obtain a surety bond from a surety bonding company authorized to issue said bonds in North Carolina.
- b. The bond shall be payable to Town of Elm City and shall be in an amount equal to one hundred and fifty (150) percent of the entire estimated cost, as approved by the Town, of installing all uncompleted improvements. Developers must submit a request for bonding including a detailed construction cost estimate upon submission of the final plat.

- c. The bond amount and term shall be as approved by the Board of Commissioners upon recommendation of the NCDOT and other consultants as deemed necessary.
 - d. The Town Attorney shall review the submitted bond and make a recommendation regarding its sufficiency to the Board of Commissioners. The developer shall bear the cost of this expense.
2. Cash or Equivalent Security
- a. The developer shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the Town or in escrow with a financial institution. The amount of deposit shall be equal to 150 percent of the entire estimated cost, as approved by the Town, of installing all uncompleted improvements.
 - b. If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the Town an agreement between the financial institution and the developer guaranteeing the following:
 - i. That said escrow account shall be held in trust until released by the Town and may not be used or pledged by the developer in any other matter during the term of the escrow; and
 - ii. That in case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification by the Town, immediately pay the funds deemed necessary by the Town to complete the improvements, up to the full balance of the escrow amount, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.
3. The Town Attorney shall review all instruments and make a recommendation regarding their sufficiency to the Board of Commissioners. The subdivider shall bear the expense of this review and opinion.

D. Duration of Financial Guarantees

1. The duration of a financial guarantee shall be of a reasonable period to allow for completion and acceptance of improvements. In no case shall the duration of the financial guarantee for improvements exceed one year. (See also Section 11.2.27)
2. All developments whose improvements are not completed and accepted fourteen days prior to the expiration of the financial guarantee shall be considered to be in default. Said guarantee may be extended with the consent of the Town, if such extension takes place prior to default. (See also Section 11.2.27)

E. Default

Upon default, the surety bonding company or the financial institution holding the escrow account shall, if requested by the Town, pay all or any portion of the bond or

escrow fund to the Town up to the amount deemed necessary by the Town to complete the improvements. Upon payment, the Town shall expend such funds or portion thereof to complete all or any portion of the required improvements. The Town shall return any funds not spent in completing the improvements. Default on a project does not release the developer from liability and responsibility for completion of the improvements.

F. Release of Guarantee Security

The Town may release a portion or all of any security posted as the improvements are completed and approved by the Town.

Section 3.2.9 Recordation of Final Plats

A. Plat Approval Contingent Upon Recordation

Approval of a final plat, either minor or major, is contingent upon the plat being recorded by the subdivider or developer in the Wilson County Office of the Register of Deeds within 60 days after the approval date of the final plat. Failure to record the approved plat within the specified 60-day period shall render the plat null and void.

B. Dedication of Final Plats

1. Rights-of-Way and Easements

- a. The approval and recordation of a final plat does constitute an offer to dedicate but does not constitute dedication to and acceptance for maintenance responsibility by the Town or Elm City or the public for any public road, alley, or utility or drainage easement or other land donations shown on such plat. Improvements within such rights-of-way or easements, such as utility lines, road paving, drainage facilities, or sidewalks may, however, be accepted for maintenance by the North Carolina Department of Transportation, the Town of Elm City, or by the private utility provider upon compliance with applicable NCDOT, Town of Elm City standards in this Ordinance, and/or private utility provider guidelines and standards. NCDOT's standards include the NCDOT current Division of Highways Board of Transportation Subdivision Roads Minimum Construction Standards and NCDOT Traditional Neighborhood Development (TND) Guidelines.
- b. Notwithstanding the above and within the corporate limits of the Town of Elm City, the Board of Commissioners may require and accept the dedication of street rights-of-ways, street construction thereon, and any easements as shown on the final plat and approved as part of the final plat approval at a board meeting, provided that:
 - i. At least 20 percent of the lots bordering the street must be individually owned.

- ii. There must be at least two occupied residences for each one-tenth of a mile or street and a minimum of four (4) occupied homes for a street less than two-tenths of a mile in length.
- iii. A cul-de-sac must be fully constructed, serve at least four platted lots, and have four occupied homes that abut a road with a minimum of two homes with primary access to the cul-de-sac.
- iv. Subdivision Access Roads must provide ingress and egress for at least five occupied residences for roads less than one mile in length and an average of five occupied residences per mile for roads over one mile in length.

Otherwise the owner of the property remains responsible for street maintenance and upkeep and acceptance of such street by the Town of Elm City shall be delayed until such time as the above criteria are met.

2. The standards for the street rights-of-way and/or easements and any construction there on shall be governed by the standards set forth in Section 11.2.6 in Article 11. All dedications shall be acknowledged on the final plat with space provided for the signature for the Town of Elm City to acknowledge acceptance of such dedication. Where acceptance of street dedication by the Town of Elm City is delayed in order for the above criteria in Section 3.2.9.B.1 to be met, the recorded plat shall note that the subdivider is responsible for street maintenance until such time as the Town of Elm City accepts the dedication. Once the criteria in Section 3.2.9.B.1 has been met and upon acceptance of the dedication by the Town of Elm City at a Board of Commissioner's meeting, a revised plat shall be submitted for approval and recordation purposes with space provided for the signature for the Town of Elm City to acknowledge acceptance of such dedication.
 - a. Within the Elm City Extraterritorial Jurisdiction (ETJ), all street rights-of-way and easements shall be in accord with the NCDOT standards with street construction in accord with NCDOT standards. Within the ETJ the developer of the subdivision shall be responsible for maintaining the street rights-of-way, easements and any construction there on until such time as DOT accepts dedication and assumes responsibility for such maintenance.
 - c. All other rights-of-ways and easements, including those with construction there on shall be subject to dedication to the appropriate governing authority, including the Town of Elm City as appropriate and approved by the Town of Elm City.
3. Open Space
 - a. Land designated as public open space or dedicated for open space in accord with Article 8, Section 8.1 and shown on a final plat shall be considered to be offered for dedication until the Town officially accepts such offer. The offer may be accepted by the Town through:
 - i. Express action by the Board of Commissioners
 - ii. Express action by an administrative officer designated and authorized by the Board of Commissioners, or

- iii. Conveyance of fee simple marketable title (unencumbered financially and environmentally) of the property to the Town at the time of final plat recordation.
- iv. Easement for the purpose of public use
- b. Until such dedication has been accepted, land so offered may be used for open space purposes by the owner or by the homeowners' association. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use.
- c. The developer shall be responsible for the maintenance and liability of all facilities and improvements until an offer of dedication is accepted.

Section 3.2.10 Permits

Unless otherwise provided in this Ordinance, upon recordation of the final plat, the applicant/subdivider shall be eligible to apply for building and any other permits required by other regulations, if the roads are determined by the Subdivision Administrator to be in a passable condition. No zoning permit shall be issued until all improvements are complete and approved. A printed copy of the recorded final plat shall be submitted by the subdivider to the Subdivision Administrator prior to the zoning permit request.

Section 3.2.11 Re-subdivision Procedures

For any re-platting or re-subdivision of land, the same procedure, rules, and regulations shall apply as prescribed herein for the original subdivision except that lot sizes may be varied on the original approved plat after recording, provided that (1) no lot or tract of land shall be created or sold that is smaller than the size shown on the previously approved plat; (2) drainage, easements or rights-of-way shall not be changed; (3) street alignment and block sizes shall not be changed; (4) the property lines between the back of the lot shall not be changed; (5) the rear portion of lots shall not be subdivided from the front part; (6) the character of the area shall be maintained.

Section 3.2.12 Vacation of Plats and Recombination of Land

A. When Allowed

Any plat or any part of any plat may be vacated by the owner at any time before the sale of any lot in the subdivision by a written instrument to which a copy of such plat shall be attached, declaring the same to be vacated.

B. Approval

Such an instrument shall be approved by the same agencies as approved the final plat. The governing body may reject any such instrument, which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys.

C. Recordation

Such an instrument shall be executed, acknowledged, or approved and recorded and filed in the same manner as a final plat; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in the streets, alleys, and public grounds, and all dedications laid out or described in such plat.

D. Vacation After Lot Sales

When lots have been sold, the plat may be vacated in the manner provided in Sections 3.2.12. A - C provided that all owners of the lots in such plat join in the execution of such writing.

Section 3.3 Quasi-Judicial Procedures

Section 3.3.1 Applicability

A. Appeals

An appeal by any person aggrieved by a final order, interpretation, or decision of the Zoning Administrator of the Town may be taken to the Board of Adjustment. The Zoning Administrator shall transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken.

B. Vested Rights

The Board of Adjustment is authorized to hear and decide on zoning permits or Special Use Permits with Vested Rights in accordance with Section 3.5 of this Ordinance.

C. Variances

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and certain other stated provisions of this Ordinance that will not be contrary to the public interest or the spirit of this Ordinance where, owing to special conditions, a strict enforcement of the provisions of this Ordinance would result in unnecessary physical hardship to the property owner.

D. Special Use Permits

The Board of Adjustment is authorized to grant in particular cases, subject to appropriate conditions and safeguards, permits for special uses as authorized by the Table of Uses. Both general and special conditions as provided by this Ordinance must be met. In addition, in the interest of the public welfare and protection, the Board may require additional safeguards and conditions.

Section 3.3.2 Written Application and Required Information

A. Application

Every applicant for a variance and Special Use Permit shall complete a written application provided by the Zoning Administrator. Every application for a variance or a Special Use Permit shall contain plans that locate the development site and graphically demonstrate existing and proposed natural, man-made, and legal features on and near the site in question. The requirements for the site plan of a Special Use Permit application are outlined in Section 3.1.1.D.3 of this Article. The minimum graphic representations of a variance application shall comply with the requirements listed under Section 3.1.1.D.2. The applicant may provide additional information to help present his/her case.

B. Other information

In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such information shall be provided. The following is a representative list of types of information or documents that may be requested:

1. Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a property owner.
2. Certifications from the appropriate agencies that proposed utility systems are or will be adequate to handle the proposed development and that all necessary easements have been provided.
3. Legal documentation establishing homeowners associations or other legal entities responsible for control over required common areas and facilities.
4. Bonds, letters of credit, or other surety devices.
5. Complete documentation justifying any requested deviation from specific requirements established by this section as presumptively satisfying design standards.
6. Written evidence of permission to use satellite parking spaces under the control of a person other than the developer when such spaces are allowed pursuant to Section 7.3.7 in Article 7.
7. Written evidence of good faith efforts to acquire satellite parking under the circumstances set forth in Section 7.3.7 in Article 7.
8. Time schedules for completion of phases in staged development.

9. The environmental impact of a development, including its effect on historically significant or ecologically fragile or important areas and its impact on pedestrian or traffic safety or congestion.
- C. With respect to all plans and other documents required by this section, the developer shall submit the number of copies (not to exceed fifteen) that the administrator deems necessary to expedite the review process and to provide necessary permanent records.

Section 3.3.3 Power and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and duties:

A. Appeals.

1. An appeal from the decision of the Zoning Administrator may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within thirty (30) days of the Zoning Administrator's decision by filing with the Zoning Administrator a written application of appeal specifying the grounds thereof. The application will include an administrative fee as established by the Board of Commissioners. The Zoning Administrator shall forthwith transmit to the Board copies of all papers constituting the record upon which the action appealed from was taken. The Board shall refuse to consider an appeal or application previously denied, if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application. The Board of Adjustment may, so long as such action is in conformity with the rest of this Ordinance, reverse or affirm wholly or partly or may modify the order, requirement, division, or determination as it deems ought to be made.
2. An appeal stays all legal proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal has been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and/or property, or that, because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator, on due cause shown.

B. Zoning Compliance Certificate with Vested Rights.

To hear and decide on zoning permit with Vested Rights in accordance with Section 3.5 in Article 3 of this Ordinance. A written application, along with an administrative fee, shall be used to describe and apply for a vested rights determination.

C. Variances.

To authorize upon appeal in specific cases such variances from the terms of the Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, provided that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Such variance shall not be granted in an individual case unless and until the Board of Adjustment makes affirmative findings after the following steps:

1. A written application (including an administrative fee as established by the Board of Commissioners) is submitted demonstrating that there are practical difficulties or unnecessary hardships resulting from carrying out the strict letter of this Ordinance, based on the following:
 - a. If after compliance with the provisions of the Ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property;
 - b. The hardship results from the application of the Ordinance;
 - c. The hardship is suffered by the applicants' property;
 - d. The hardship is not a result of the applicant's own actions; and,
 - e. The hardship is peculiar to the applicant's property.
2. A public hearing is held, with notice given pursuant to Section 3.3.4. A person may appear in person or by agent or attorney.
3. The Board makes a finding that the requirements of subsection (1) of this section have been met by the applicant for a variance.
3. The Board shall further make findings that the variance to be granted is the minimum variance and that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
4. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards when made a part of the terms under which the variance is granted shall be deemed a violation of the Ordinance, punishable according to the provisions of Article 14.
5. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in such district.

D. Special Use Permits

To grant in particular cases, and subject to appropriate conditions and safeguards, permits for special uses as authorized by the Table of Uses. The Board shall not grant a Special Use Permit unless and until:

1. A written application for a Special Use Permit is submitted indicating the section of this Ordinance under which the Special Use Permit is sought. The application will include an administrative fee as established by the Board of Commissioners.
2. A public hearing is held, with notice given pursuant to Section 3.3.4. A person may appear in person or by agent or attorney.
3. The Board finds that the circumstances of the particular application and the use of which the Special Use Permit is sought will meet the following general standards that must be satisfied and every case involving a Special Use Permit:
 - a. That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved,
 - b. That the use meets all required conditions and specifications,
 - c. That the use will not substantially injure the value of adjoining or abutting property, and,
 - d. That the location and character of the use, if developed according to the plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Town of Elm City and its environs.
4. The Board shall apply other specific standards, as provided for all or certain uses, in accordance to the requirements of this ordinance.
5. The Board may place any protective restrictions and requirements it deems necessary on any Special Use Permit granted.
6. If at any time after a Special Use Permit has been issued for any special use, the Board finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a Special Use Permit, the holder of the permit shall be notified of said violation by the Zoning Administrator along with an order to immediately terminate the use of such operation found to be in violation. The holder of said permit may appeal the order to cease the above operation to the Board of Adjustment within thirty (30) days; otherwise, the permit will be considered terminated. If a Special Use Permit is terminated for any reason, it may be reinstated only after the steps listed above in subsections 1 through 5 of this section has been met.
7. Unless otherwise determined by the Board of Adjustment, an approved Special Use Permit shall normally be reviewed for renewal every two (2) years. The Board may establish more or less frequent (or removal of) review and renewal

requirements for a particular Special Use Permit, depending upon and justified based upon the characteristics of the use and its impact on surrounding properties.

Section 3.3.4 Notice of Hearing

The Zoning Administrator shall give notice of any hearing required by Section 3.4.5 as follows:

- A. Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than eighteen (18) days before the hearing.
- B. Notice shall be given to neighboring property owners by mailing a written notice not later than ten days before the hearing to those persons who have listed for taxation of real property and portion of which is located within six hundred (600) feet of the lot that is the subject of the application or appeal. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted not less than eight (8) working days prior to the hearing.
- C. Before conducting a public hearing to consider an appeal or the issuance or granting of a Special Use Permit or a variance, notice of the public hearing shall be given at least ten (10) days before the hearing in a newspaper having general circulation in the area. The said notice shall be published not less than ten (10) days or more than twenty five (25) days before such public hearing. No further notice of a continued hearing is required.
- D. The notice required by this Section shall state the date, time, and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
- E. In case of a continued hearing, a mailed notice shall be sent to the appellant or applicant and all parties to the case.

Section 3.3.5 Appeals from the Board of Adjustment

Every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Wilson County by proceedings in the nature of certiorari. The petition for the writ of certiorari must be filed with the Wilson County clerk of court within 30 days after the later of the following occurrences:

- A. A written copy of the Board's decision has been filed in the office of the Zoning Administrator; and

- B. A written copy of the Board's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filled a written request for such copy at the hearing of the case. A copy of the writ of certiorari shall be served upon the Town of Elm City.

Section 3.4 Legislative Procedures

Section 3.4.1 Amendments in General

The Board of Commissioners may amend, supplement or change the Zoning Ordinance text and zoning district lines and designations according to the following procedure. It is the intent of this Ordinance that the applicant for rezoning to any district shall be prohibited from offering any testimony or evidence concerning the specific manner in which he/she intends to use or develop the property. The Board of Commissioners and Planning Board shall not consider any representation made by the applicant as to how the property will be used. Each Board shall only consider the entire possible range of uses permitted within the requested zoning classification.

Section 3.4.2 Initiation of Amendments

- A. The Board of Commissioners, Planning Board, Board of Adjustment, or Town Administration may request an amendment to this Ordinance. An appropriate ordinance amendment shall be drafted and presented to the Planning Board for review and recommendation to the Board of Commissioners.
- B. Any person or organization may petition the Board of Commissioners to amend this Ordinance. The request shall be filed with the Zoning Administrator in the form of an application (along with an administrative fee as established by the Board of Commissioners) as provided by the Town, and shall include, at least the following among the information deemed relevant by the Zoning Administrator:
 - 1. The name, address, and phone number of the applicant;
 - 2. A metes and bounds description and a scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
 - 3. A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this Ordinance.
- C. Petitions for amendments shall be submitted to the Zoning Administrator at least twenty-five (25) days prior to the date of the Planning Board meeting at which the petition will be reviewed. Upon receipt of a properly completed application or amendment request, the Zoning Administrator shall submit the request to the Planning Board for review and recommendation to the Board of Commissioners.

Section 3.4.3 Planning Board Review and Recommendation

- A. Upon receipt of a petition for an amendment, the Zoning Administrator shall forward the request to the Planning Board for its consideration.
- B. The Planning Board shall review the proposed amendment, along with Zoning Administrator recommendations and any comments received from applicable reviewing departments and agencies, and submit its recommendation to the Board of Commissioners. The Planning Board shall either recommend in favor of an amendment or in opposition to said amendment by simple majority vote of those present and voting. The Board may also propose conditions to their recommendation. A tie vote on a proposal shall be considered to be in opposition to such amendment.
- C. The Planning Board shall have sixty (60) days from the initial consideration within which to submit its recommendation. Due to circumstances where additional information or time for review is required, the Board of Commissioners, upon written request (including an estimate of the additional time required) from the Planning Board, may grant the Planning Board additional time for consideration. Failure of the Planning Board to submit its recommendation within this time period shall constitute a favorable recommendation.

Section 3.4.4 Board of Commissioners Review and Adoption

- A. Upon receipt of a recommendation from the Planning Board, the Zoning Administrator shall present any proposed amendments to the Board of Commissioners at its next regular scheduled meeting, following Planning Board action. The Zoning Administrator shall transmit to the Board of Commissioners the Planning Board's record of action on the proposed amendment.
- B. The public notice required for the public hearing shall be in accordance with Section 3.4.5. The Board of Commissioners shall decide whether or not to schedule a public hearing on the proposed amendment based on the Planning Board's recommendation and the Board of Commissioners' consideration. If Board of Commissioners refuses to schedule a public hearing the amendment application/petition is summarily denied. If the Board of Commissioners agrees to schedule a public hearing, the public notice required for the public hearing shall be in accordance with Section 3.4.5.
- C. At the conclusion of a public hearing on the proposed amendment, the Board of Commissioners may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- D. If the Planning Board has not provided a recommendation within the timeframe specified in Section 35.03, the Board of Commissioners need not await the

recommendation of the Planning Board before taking action on a proposed amendment nor is the Board of Commissioners bound by any recommendations of the Planning Board presented to it at the time it takes action on a proposed amendment.

- E. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- F. Voting on amendments to this Article shall proceed in the same manner as other ordinances. In the case of a protest petition for a change to the Zoning Map, the number of favorable votes by the Board of Commissioners will be in accordance to Section 3.4.7.
- G. Decisions by the Board of Commissioners on amendment requests shall be filed in the offices of the Zoning Administrator and Town Clerk.

Section 3.4.5 Public Hearing Requirements

- A. No proposed amendment that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such amendment.
- B. The Clerk to the Board shall publish a notice of the public hearing on any amendment to the provisions of this Ordinance once a week for two successive weeks in a newspaper having general circulation in the Town. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the public hearing. In computing this period, the date of publication shall not be counted but the date of the public hearing shall be.
- C. With respect to map amendments, the Zoning Administrator shall provide first-class mail notice of the public hearing to the owners of record for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties within 600 feet of the property rezoned by the amendment. The Zoning Administrator may take any other action deemed to be useful or appropriate to give notice of the public hearing.
- D. The notice required in Subsection C above will not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. In this instance, the town may elect, in lieu of the mail notice specified in Subsection C, to publish once a week for four successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed zoning map amendment and that explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of North Carolina General Statutes 160A-364. The advertisement shall not be less than one-half of a newspaper page in size. The

advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside 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 North Carolina General Statutes 160A-384 (b). The person or persons mailing the notices shall certify to the Board of Commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud.

- E. The notice required or authorized by this Section shall:
1. State the date, time, and place of the public hearing;
 2. Summarize the nature and character of the proposed change;
 3. If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
 4. State that the full text of the amendment can be obtained from the Clerk to the Board;
 5. State that substantial changes in the proposed amendment may be made following the public hearing;
- F. The person or persons mailing notices to adjoining property owners, as defined in Subsection C and/or D above, shall certify to the Board of Commissioners that fact.
- G. The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Council's intention that no failure to comply with any of the notice provisions (except those required by the North Carolina General Statutes) shall render any amendment invalid.

Section 3.4.6 Ultimate Issue before Board of Commissioners on Amendments

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare of the community. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the presiding officer and excluded from consideration. When considering proposed map amendments:

- A. The Board of Commissioners shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Board of Commissioners shall consider whether the entire range of permitted

uses in the requested classification is more appropriate than the range of uses in the existing classification.

- B. The Board of Commissioners shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

Section 3.4.7 Protests to Zoning District Changes

- A. If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the membership of the Board of Commissioners.
- B. To invoke the three-fourths vote requirement, the petition must:
 - 1. Be signed by the owners of twenty percent or more either of (i) the lots included in a proposed change, or (ii) the lots within 100 feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending 100 feet from the road frontage of such opposite lots.
 - 2. Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
 - 3. Be received by the Town Clerk in sufficient time to allow the town at least two normal working days, excluding Saturday, Sunday, and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
 - 4. Be on a form provided by the Town Clerk and contain all the information requested on this form.
- C. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Ordinance as a result of annexation or otherwise.

Section 3.4.8 Withdrawal of Amendment Petition

The petitioner shall have the right to withdraw, in writing, an amendment petition/application at any time prior to a final decision by the Board of Commissioners. However, petitions that have been withdrawn shall be reconsidered only as a new petition and shall adhere to the submission and review requirements of this Division. Fees for withdrawn cases shall not be refundable.

Section 3.4.9 Petition Re-submittal

If an amendment petition is denied by the Board of Commissioners, the Zoning Administrator shall not accept a rezoning petition similar to that denied for the same property or a portion of the property within one year of the Board's action, except that the Zoning Administrator may accept for submission to the Planning Board a new rezoning petition within the one year period if the Zoning Administrator determines that:

- A. There has been a significant change in the zoning district classification of an adjacent property(ies);
- B. A new or updated land use plan that changes public policy regarding the property or its neighborhood is adopted by the town;
- C. Public facilities such as roads, water lines, sewer lines, or other infrastructure are constructed or expanded to serve the property and enable the proposed development to be accommodated; or
- D. There has been some other significant change, other than a change in ownership of the property, which might justify waiving the one-year restriction on submitting a new petition.

Section 3.4.10 Notification of Decision

Within five working days of any action by the Board of Commissioners on an amendment petition/application, notice of such action shall be sent by first-class mail to the petitioner and any other persons who have indicated to the Zoning Administrator, in writing, that they would like the decision mailed to them.

Section 3.4.11 Judicial Review

The decisions regarding the adoption, amendment, and repeal of this Zoning Ordinance can be challenged in court by persons who have a specific personal interest or standing in the decision and whose legal interests are directly and adversely affected by the decision. Said challenge to a Zoning Ordinance decision must be filed within two months of the date of the decision as provided in North Carolina General Statutes 1-54.1.

Section 3.5 Vested Rights

Section 3.5.1 Purpose

The purpose of this article is to implement the provisions of North Carolina General Statutes 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific development plan.

- A. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.
- B. These provisions recognize the concept of vested right, which provide the right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan.

Section 3.5.2 Definitions

Unless otherwise specifically provided or unless clearly required by the context, the following terms shall have the meaning indicated, when used in this article:

A. Landowner

A landowner is any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

B. Property

Property is any real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.

C. Approval Authority

Approval authority is the Board of Commissioners, Zoning Administrator, or the Board of Adjustment, which ever is designated as being authorized to grant the specific land use permit that constitutes a site-specific development plan.

D. Site-Specific Development Plan

A site-specific development plan is a plan which has been submitted to the Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of any of the following plans or approvals: a planned development plan, a subdivision plat, a Special Use Permit, Conditional Use Permit or any other land use approval designation as may be utilized by the Town. Unless otherwise expressly provided by the Town, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed building, structures, and other improvements; the approximate dimensions, including height, of the proposed

buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A document that requests such vesting shall be submitted by the developed, property owner or subdivider at the time of approval of a site specific plan. However, designation of a vesting point shall not be earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specific parcel or parcels of property may constitute a site specific development plan.

E. Vested Right

Vested rights mean the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

F. Phased Development Plan

A phased development plan is a plan which has been submitted to the Town by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the Town to be a site specific development plan.

Section 3.5.3 Establishment of a Zoning Vested Right

A. When Established

A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the permit issuing authority (Board of Commissioners, Zoning Administrator, or Board of Adjustment) of a site specific development plan, following notice and public hearing. Such 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 site specific development plan or phased development plan including any amendments thereto.

B. Conditions of Approval

The permit issuing authority may approve a site-specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in forfeiture of vested rights.

C. Variance Requirement

Notwithstanding paragraphs Sections 3.5.3.A and B above, approval of a site-specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

D. Date of Approval

A site-specific development plan shall be deemed approved upon the effective date of the approval authority's action relating thereto.

E. Application of Overlay Zoning

The establishment of a zoning vested right shall not preclude the application of overlay zoning that impose additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the Town. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific development plan upon the expiration or termination of the vested right in accordance with this article.

F. Vested Rights Attached to Property

A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

Section 3.5.4 Approval Procedures and Approval Authority

A. Application Process

Except as otherwise provided in this section, an application (Special Use Permit, subdivision plat, planned development, rezoning) for site-specific development plan approval shall be processed in accordance with the appropriate procedures established by the Town of Elm City Unified Development Ordinance and shall be considered by the designated approval authority for the specific type of land use permit for which application is made.

B. Request to Board of Commissioners

Notwithstanding the provisions of Section 3.5.4.A above, if the authority to issue a particular land use permit has been delegated to the Zoning Administrator, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Commissioners or the Board of Adjustment, as appropriate, following notice and a public hearing as provided in the applicable section of this ordinance.

C. Form of Written Request

In order for a zoning vested right to be established upon approval of a site-specific development plan, the applicant must indicate at the time of application that a zoning vested right is being sought. This can be done by letter or a statement on the site plan.

D. Certification of Approval

Each map, plat, site plan, or other document evidencing a site-specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under North Carolina General Statutes 160A-385.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

E. Exemptions

Following approval or conditional approval of a site-specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

F. Revocation

Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the land use ordinance.

Section 3.5.5 Duration

A. Duration and Extension

A zoning right that has been vested as provided in this article shall remain vested for a period of two years. This vesting may be extended by any amendment or modification to a site-specific development plan approved by the original approval authority.

B. Additional extension

Notwithstanding the provisions of Section 3.5.5.A the Town may provide that rights be vested for a period exceeding two years, but not exceeding five years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sole discretion of the Town.

C. Phased development

Notwithstanding the provisions of Sections 3.5.5.A and B above, the Town may provide by ordinance that approval of a phased development plan shall vest the zoning classification(s) so approved for a period up to but not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The Town still may require the landowner to submit a site specific development plan for approval by the Town with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification(s). The Town may require the completion of certain aspects of initial or preceding phase(s) as a condition of vesting subsequent phase(s). Nothing in this section shall be construed to require the Town to adopt an ordinance providing for vesting of rights upon approval of a phased development.

D. Subsequent reviews

Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the Zoning Ordinance.

E. Relationship to building permit

Upon issuance of a building permit, the expiration provisions of North Carolina General Statutes 160A-418 and the revocation provision of North Carolina General Statutes 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running out of the time while a zoning vested right under this section is outstanding. Any vested right time period approved shall have its vested point or beginning date of vestige established prior to issuance of the building permit for the site specific development plan for which vested rights are requested.

Section 3.5.6 Termination

A zoning right that has been vested as provided in this article shall terminate:

- A. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- B. With the written consent of the affected landowner;
- C. Upon findings by the appropriate approval authority, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of

the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plans;

- D. Upon payment of the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid.
- E. Compensation shall not include any diminution in the value of the property, which is caused by such action;
- F. Upon findings by the approval authority, after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
- G. Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify, after notice and a hearing, the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan.

Section 3.5.7 Limitations

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to North Carolina General Statutes 160A-385.1.

Section 3.6 Voluntary Annexation and Extension of Utilities

- A. Where a development or use desires the Town of Elm City's water and/or sewer, voluntary annexation shall be required, depending upon the ability and capacity of the Town of Elm City to provide the necessary public services to the annexed area of development as determined by the Board of Commissioners.
- B. Where a proposed development, except for a single lot, single family residential use, is in a reasonable distance of the Town of Elm City's water and/or sewer services so that the owner of the property can reasonably extend these services to serve the development, voluntary annexation shall be required and/or the services shall be extended by the owner of the property to serve the property, unless exempted by the Board of Commissioners for extenuating circumstances, including need for oversize lines, unreasonable distance for extension, Elm City Capital Improvement Plan to serve the area at some point, timing of service extension considerations, or type of development to be served. For purposes of this section, economic hardship is not considered an extenuating circumstance. The Board of Commissioners may also

decide to assist in the extension when larger capacity lines are required with the owner of the property paying for only the portion required to serve the property proposed for development.

- C. Where a proposed development abuts the existing corporate limits, voluntary annexation shall be required depending upon the ability and capacity of the Town of Elm City to provide the necessary public services to the annexed area of development as determined by the Board of Commissioners.
- D. A request for required voluntary annexation as set forth above shall be filed with the Town of Elm City on petition for annexation forms provided by the Town. When applicable, such petition shall accompany any request for rezoning, site plan approval or subdivision approval. A petition for annexation filed with the Town under North Carolina General Statutes 160A-31 or North Carolina General Statutes 160A-58.1 shall also contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under North Carolina General Statutes 160A-385.1 or North Carolina General Statutes 153A-344.1. A statement that declares that no zoning vested right has been established under North Carolina General Statutes 160A-385.1 or North Carolina General Statutes 153A-344.1, or the failure to sign a statement declaring whether or not zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.