



**Town of Weaverville
Planning and Zoning Board
Remote Electronic Meeting
Tuesday, October 6, 2020, 6:00pm**

Public Meeting via Zoom Meeting:

<https://us02web.zoom.us/j/89273366843> - Meeting ID: 892 7336 6843

Dial +1 301 715 8592 or +1 253 215 8782 - Meeting ID: 892 7336 6843

(see attached notice for more information on how to join meeting)

Agenda

1. Call to Order – Chairman Gary Burge
 - Introduction of New Members
 - Presentation of New Roster
2. Approval of the Agenda
3. Approval of the Minutes from the September 1, 2020 Meeting of the Board
4. Greenwood Park Phase 1 Requested Partial Release of Improvement Guarantee
 - Discussion Related to a Requested Release of a Portion of an Improvement Guarantee for Greenwood Park Phase 1 as per Section 25-83(e)(1)(B)
 - Consideration of a Motion Establishing a Recommendation to Town Council on the Aforementioned Requested Improvement Guarantee Release
5. Discussion Related to the Comprehensive Review of the Subdivision Ordinance and 160D
 - Policy Questions: Definition of Minor Subdivision; Improvement Guarantees; Exactions; Sidewalks, Minor Modifications
 - Organization of General Provisions, Administration, Enforcement and Appeals
6. Any other Business to Come Before the Board
 - November 5th & 10th Meeting Dates
7. Adjournment

**WEAVERVILLE PLANNING AND ZONING BOARD
REMOTE ELECTRONIC MEETING ON OCTOBER 6, 2020**

The State of North Carolina, Buncombe County and the Town of Weaverville have all declared States of Emergency in response to the COVID-19 public health crisis. Because of the risks to the public that would arise from in-person meetings, the Weaverville Planning and Zoning Board's regular meeting on October 6, 2020, will be conducted via remote electronic format.

This NOTICE OF REMOTE ELECTRONIC MEETING is to inform the public that the Weaverville Planning and Zoning Board will hold its regularly scheduled meeting on Tuesday, October 6, 2020, at 6:00 p.m. as an electronic video/audio meeting via Zoom Meeting. A virtual waiting room will be enabled beginning at 5:45 p.m. and the meeting will start at 6:00 p.m. The instructions to access this public meeting are:

To join the meeting by computer, go to this link:

<https://us02web.zoom.us/j/89273366843> . You will first enter the meeting's waiting room.

Shortly before the meeting you will be admitted into the meeting which will start at 6 pm. You may be asked for permission to access your computer's video and audio. If so, click "allow." You will then be asked for the Meeting ID which is: 892 7336 6843

To join the meeting by phone, call: (253)215-8782 or (301)715-8592 . You will then be asked for the Meeting ID which is: 892 7336 6843

For questions or additional assistance in how to participate in this meeting, please contact Planning Director and Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org .

Gary Burge, Chair
Posted: 10/1/2020

| WEAVERVILLE PLANNING AND ZONING BOARD | | | | |
|---|--|-------------------|---------------------|--------------------------|
| Regularly meets 1 st Tuesday of the month at 6 pm in Community Room/Council Chambers at Town Hall | | | | |
| NAME AND POSITION | CONTACT INFORMATION | FIRST APPT | DATE OF APPT | TERM (3 YEARS) |
| Gary Burge Regular Member Chair | 3 High Bluff Drive Weaverville, NC 28787 (cell) 423-0150 garyburge@garyburge.com | 2014 | August 2020 | September 2020 – 2023 |
| Catherine Cordell Regular Member Vice-Chair | 13 Hamburg Drive Weaverville, NC 28787 (cell) 776-7380 cat.cordell7@gmail.com | 2012 | August 2020 | September 2020 – 2023 |
| Steve Warren Regular Member | 3 Duncannon Street Weaverville, NC 28787 704-682-5801/704-807-9899 warren.smw.steve@gmail.com | 2018 | August 2018 | September 2018 – 2021 |
| John Chase Regular Member | 151 South Main Street Weaverville, NC 28787 (cell) 828-337-3366 jchase@medlockengr.com | 2018 | August 2019 | September 2019 – 2022 |
| Rachael Bronson Regular Member | 31 Reynolds Lane Weaverville, NC 28787 843-327-6709/828-229-1838 rachael.bronson@gmail.com | 2019 | September 2020 | September 2020 – 2022 |
| Suzanne Devane Alternate Member | 6 Lakeway Circle Weaverville, NC 28787 773-297-6835 (cell) sdevane@hdresources.net | 2020 | September 2020 | September 2020 – 2021 |
| Bob Pace Alternate Member | 116 Mountain Meadow Circle 919-434-6938 ncstman@gmail.com | 2020 | September 2020 | September 2020 – 2022 |
| Andrew Nagle <i>Non-Voting Town Council Liaison</i> | 300 Aiken Road Weaverville, NC 28787 828-656-3015 x 280 anagle@weavervillenc.org | 2020 | July 2020 | July 2021 |
| James Eller Town Planner | 828-484-7002 (direct line) jeller@weavervillenc.org | | | |
| Jennifer Jackson Town Attorney | 828-442-1858 (cell) jjackson@weavervillenc.org | | | |

TOWN OF WEAVERVILLE
PLANNING AND ZONING BOARD AGENDA ITEM

Date of Meeting: Tuesday, October 6, 2020

Subject: Minutes

Presenter: Planning Director

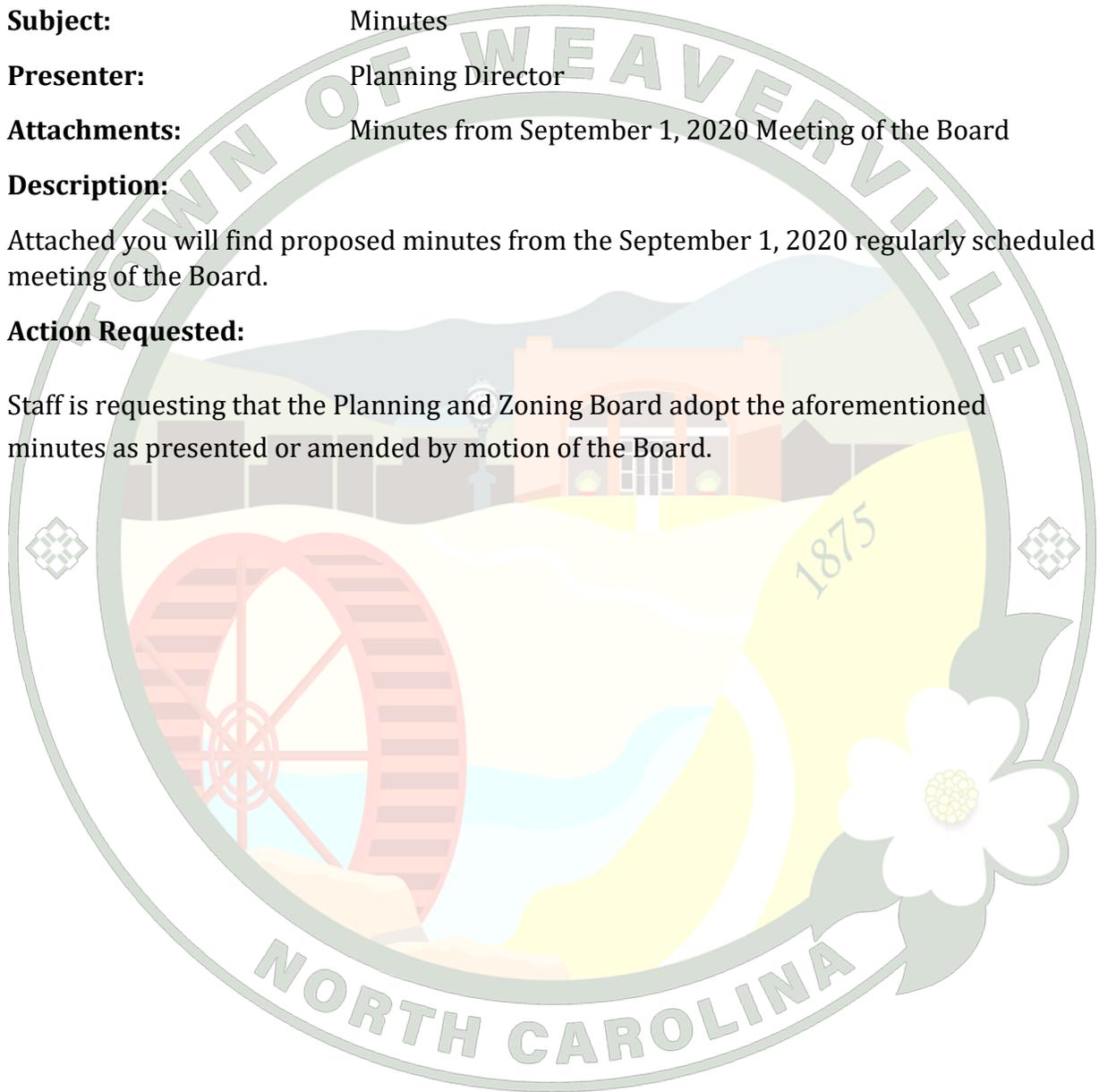
Attachments: Minutes from September 1, 2020 Meeting of the Board

Description:

Attached you will find proposed minutes from the September 1, 2020 regularly scheduled meeting of the Board.

Action Requested:

Staff is requesting that the Planning and Zoning Board adopt the aforementioned minutes as presented or amended by motion of the Board.



Town of Weaverville
Planning and Zoning Board
Minutes – Tuesday, September 1, 2020

The Planning and Zoning Board of the Town of Weaverville met for a regularly scheduled monthly meeting at 6:00pm on Thursday, September 1, 2020 via a remote electronic meeting.

Present: Chair Gary Burge, Vice Chair Catherine Cordell, Board Members John Chase, and Peter Stanz
Alternate Member Rachael Bronson, Town Manager Selena Coffey, Town Attorney Jennifer Jackson and
Planning Director James Eller. Councilmember Nagle and Board Member Warren were absent.

1. Call to Order.

Chair Gary Burge called the meeting to order at 6:00 pm. Upon the meeting coming to order Ms. Jackson noted that it was time for the annual election of officers for the Board. It was noted that alternate member Bronson would be serving as a voting member of the Board in the absence of regular member Warren.

Ms. Cordell motioned for Mr. Burge to continue as chair of the Board. Mr. Stanz seconded and via a roll call vote the motion was passed unanimously. Mr. Burge motioned for Ms. Cordell to continue as vice-chair of the Board. Mr. Chase seconded and via a roll call vote the motion was passed unanimously.

2. Approval of the Agenda.

Upon consensus, Mr. Burge declared the agenda approved.

3. Approval of the Minutes from the August 4, 2020 Meeting of the Board.

Ms. Cordell motioned to approve the minutes as presented. Ms. Bronson seconded and via a roll call vote all voted unanimously.

4. Discussion Related to and Initial Zoning Request of R-3 in Conjunction with a Voluntary Annexation Petition for a Parcel Commonly Known as 24 Reems Creek Road.

Mr. Eller presented the Board with a packet of information related to the proposed voluntary annexation of a property commonly known as 24 Reems Creek Road which was also requesting an initial zoning of R-3. At the request of Chairman Burge, Mr. Eller described the differences of the dimensional requirements between R-2 and R-3 and noted that manufactured housing is permissible within R-3 but not R-2.

5. Consideration of a Motion Establishing a Recommendation to Town Council on the Aforementioned Initial Zoning Request.

Noting the slightly larger minimum lot area and the prohibition on manufactured homes, Mr. Chase motioned to offer a recommendation to Town Council on the initial zoning of the property as R-2 rather than R-3 as desired by the applicant on the voluntary annexation petition. Said recommendation also carried a finding of comprehensive land use plan compliance in that the plan calls for a balance of residential uses and in the best

interest of the public in that the R-2 zoning district would create a contiguity of uses found on some of the surrounding properties. Mr. Stanz seconded and via a roll call vote all voted unanimously.

6. Update on the Recently Adopted Priorities within the Comprehensive Land Use Plan.

Mr. Eller and Ms. Jackson presented the Board with the recently updated priorities within the comprehensive land use plan as recently adopted by Town Council. The priorities were reflective of the recommendation the Board made to Council with no major changes proposed or made prior to adoption.

7. Update on the Structure of the Planning and Zoning Board.

Ms. Jackson noted that Council had elected to have the structure of the Board remain at 5 regular members and two alternate members.

8. Update on the Comprehensive Review of the Subdivision Ordinance.

Mr. Eller noted that staff had continued working on the comprehensive review of the subdivision ordinance and anticipated this topic would be the major topic during the next meeting of the Board.

9. Any Other Business to Come Before the Board.

Mr. Eller noted some recent permitting activity on two parcels of land within town which are subject to previously issued special use permits.

10. Adjournment.

Mr. Burge noted that tonight would be the last meeting for Mr. Stanz who had tendered his resignation from the Board. Mr. Stanz motioned to adjourn. Ms. Cordell seconded and via a roll call vote all voted unanimously.

**Gary Burge, Chairman
Planning and Zoning Board**

ATTEST:

**James W. Eller
Planning Director / Deputy Town Clerk**

TOWN OF WEAVERVILLE
PLANNING AND ZONING BOARD AGENDA ITEM

Date of Meeting: Tuesday, October 6, 2020

Subject: Requested Partial Release of an Improvement Guarantee
Related to Sewer Line Construction within Greenwood Park
Phase 1.

Presenter: Planning Director / Town Attorney

Attachments: Section 25-83(e)(1)(B); Invoice Indicating the Cost of Work for
Portions of the Sewer Line Not Yet Complete

Description:

As the Board is aware, the final plat for phase one of Greenwood Park was approved prior to the required sewer line installation. In these instances an improvement guarantee is required under municipal ordinance and was secured from the property owner. The property owner is now requesting a partial release of these funds being held by the town based upon the amount of work which has been completed.

The attached revised invoice shows that the cost of the remaining work is \$56,164,50. The developer is requesting that the Town retain \$70,205.63 (125% of remaining work) and release the remaining amounts held under the subdivision improvement guarantees.

Section 25-83(e)(1)(B) provides guidance to explore the possible partial release of funds held as an improvement guarantee. Said section of ordinance calls for the advice of the Planning and Zoning Board to be given to Council for their consideration. The Town Engineer, Dale Pennell, is also currently analyzing the request.

Action Requested:

Staff is requesting the advice, if any, the Board would like to forward to Council for their consideration of this request.

Sec. 25-83. - Plat requirements for major subdivisions.

(e) (1) *Improvements guarantee.*

- (A) Unless the construction of all improvements required by this chapter have been totally completed prior to the approval by the town council of a final plat and the recording of the same, the town shall, for the purpose of approving a final plat prior to the completion of construction, require an agreement to complete and a guarantee from the subdivider that construction of required or contemplated improvements will be completed according to the approved specifications of the town at the subdivided expense. Such guarantee may be in the form of: (i) an assignment by the subdivider to the town of a certificate of deposit at a federally insured financial institution; (ii) an official bank check of a federally insured financial institution drawn in favor of the town and deposited with the town clerk; or (iii) cash deposited with the town clerk; or (iv) an irrevocable letter of credit drawn on a federally insured financial institution. Such guarantee shall be in an amount equal to 125 percent of the cost of the construction of the required or contemplated improvements as estimated by the subdivider or his contractors and approved, as to the amount, by the town council. The town manager may allow up to 180 days from the date of the town council approval of the final plat for the subdivider to post the necessary performance guarantee in addition to all other necessary documents. If prior to the expiration of the 180 days, the developer requests a further extension, the town manager may, at his or her discretion, grant an additional 180 days to complete utilities and paving. If all documents and guarantees are not received by the town manager within the 180-day period, the town council's approval of the final plat shall become null and void. All guarantees shall be reviewed by the town attorney and shall be subject to town council approval. Performance guarantees shall be kept by the town until the town council determines that all public and private improvements as required by this chapter have been constructed in accordance with the approved plans except as provided below.
- (B) The town council may release, from time-to-time, a portion of the guarantee as the required improvements are completed. Such partial release shall be upon the petition of the subdivider to the subdivision administrator who must then recommend such partial release of security deposit to the town council with the advice of the planning and zoning board and the advice of the town's consulting engineers. Requested releases shall be facilitated by the subdivision administrator and the town council shall process the requested release and shall release the requested funds within 45 days from the date the request is received by the subdivision administrator unless the town council shall, within such time, deliver to the subdivider, a written list of deficiencies in construction which must be corrected before such petition to release a portion of the guarantee will be granted. The total amount of guarantee required shall not be released until the town council determines that all public and private improvements as required by this chapter have been constructed.

INVOICE

DATE: 9/3/2020

FROM: Gosnell Construction & Utility Co Inc
 1745 Pleasant Grove Rd
 Hendersonville NC 28739
 Phone: 828/891-3100
 Fax: 828/891-3234

TO: Greenwood Park
 ATTN: Bill Dorf

****REVISED****

Job Description: Greenwood Park Phase I

| QUANTITY | DESCRIPTION | UNIT | UNIT PRICE | TOTAL |
|--------------------|---------------------------------------|------|------------|--------------------|
| 1 | Mobilization 100% | LS | \$4,000.00 | \$4,000.00 |
| 1 | Tie into existing manhole 100% | LS | \$2,500.00 | \$2,500.00 |
| 594 | 8" PVC 35% | LF | \$40.00 | \$23,760.00 |
| 3 | Manhole 33% | EA | \$3,500.00 | \$10,500.00 |
| 203 | Pipe bedding 40% | TN | \$40.00 | \$8,120.00 |
| 6 | 4" service 30% | EA | \$650.00 | \$3,900.00 |
| 38.5 | Rock hammer extra | HR | \$250.00 | \$9,625.00 |
| | Subtract 10% retainage | | | -\$6,240.50 |
| Balance due | | | | \$56,164.50 |

TOWN OF WEAVERVILLE
PLANNING AND ZONING BOARD AGENDA ITEM

Date of Meeting: Tuesday, October 6, 2020

Subject: Comprehensive Review of the Subdivision Ordinance and Chapter 160D

Presenter: Planning Director / Town Attorney

Attachments: Portions of the Proposed Subdivision Ordinance; language regarding modifications

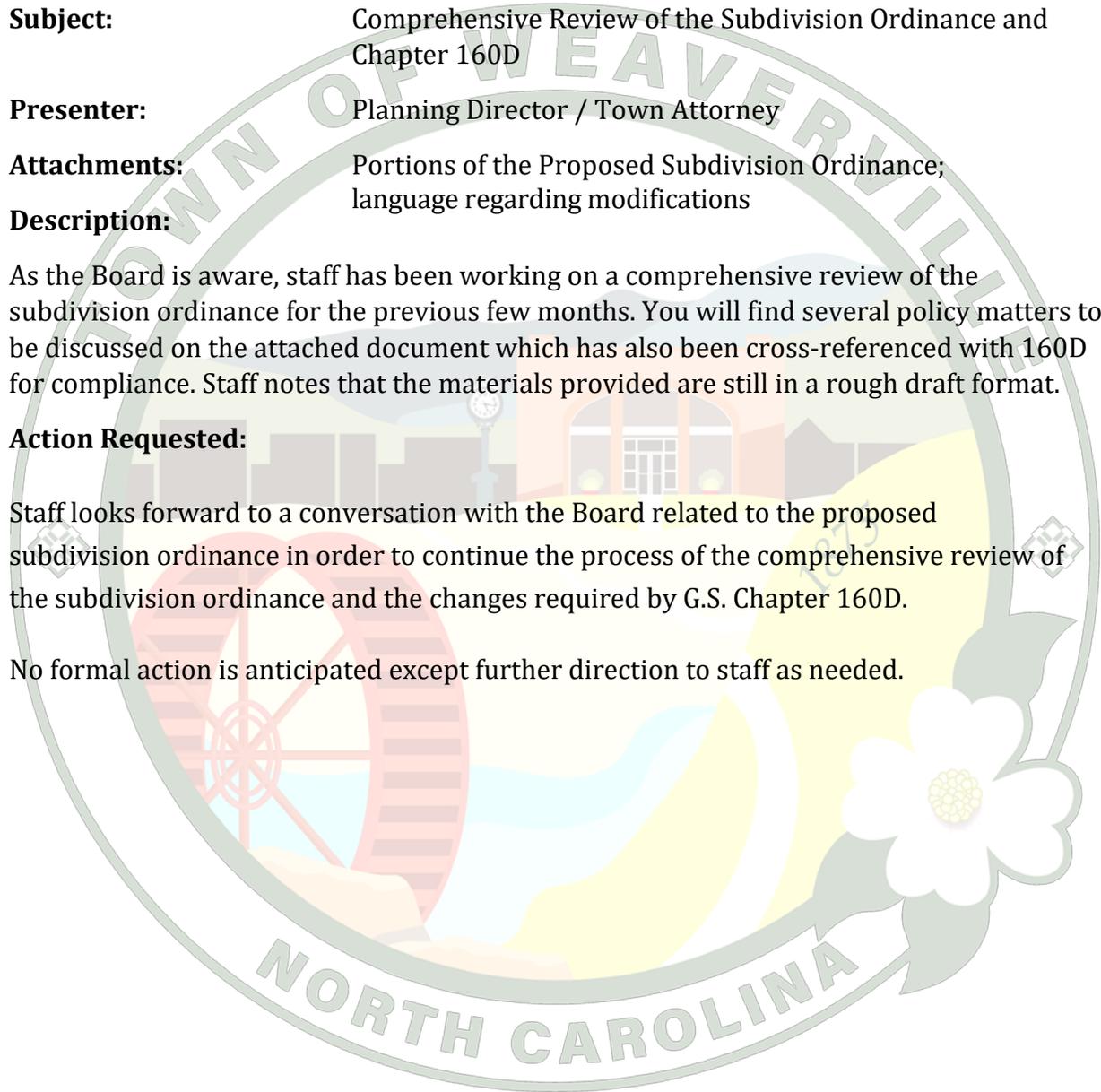
Description:

As the Board is aware, staff has been working on a comprehensive review of the subdivision ordinance for the previous few months. You will find several policy matters to be discussed on the attached document which has also been cross-referenced with 160D for compliance. Staff notes that the materials provided are still in a rough draft format.

Action Requested:

Staff looks forward to a conversation with the Board related to the proposed subdivision ordinance in order to continue the process of the comprehensive review of the subdivision ordinance and the changes required by G.S. Chapter 160D.

No formal action is anticipated except further direction to staff as needed.



Chapter 25 – Subdivisions

Article I. General Provisions

Sec. 25-1. Title.

This chapter shall be known and cited as the subdivision regulations of the Town of Weaverville, North Carolina, and shall be referred to as the “subdivision ordinance.”

Commented [JJ1]: Statutorily required unless specifically noted otherwise; could put much of this in Chapter 20 and make it applicable to Ch 25 and 36

Commented [JJ2]: No change

Sec. 25-2. Authority.

The subdivision regulations contained in this chapter are adopted under the authority and provisions of Chapter 160D of the North Carolina General Statutes, including specifically Article 8.

Commented [JJ3]: Article 8 of Ch. 160D 160D-102(32)

Section 25-3. Applicability.

Subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future), and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to any regulations authorized by this chapter:

Commented [JJ4]: 160D-802; Section (1) through (5) are required, Sections (6) through (9) are optional but consistent with current ordinance. Reference to unified business development was replaced with special use permits and conditional zoning districts.

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in its subdivision regulations.
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets, or for utility easements for water, sewer or other purposes.
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the town as set forth in the zoning ordinance or herein.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
- (6) Special Use Permits and Conditional Zoning Districts, as defined in section 36-5 of the zoning ordinance of the town, which have been approved in accordance with the provisions of said zoning ordinance, and development agreements established pursuant to Article 10 of G.S. Chapter 160D.
- (7) The division of land pursuant to an order of a court of the general court of justice.

**Outline of Subdivision Ordinance Rewrite
September 2020**

- (8) The division of land for cemetery lots or burial plots.
- (9) The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved, providing said division does not cause either property to be in violation of any town ordinance.

Sec. 25-4. Purpose.

The purpose of the subdivision regulations contained in this chapter is to provide for the orderly growth and development of the town, the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities, and the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

Commented [JJ5]: 160D-804(a)

Sec. 25-5. Definitions.

(a) **General provisions concerning definitions and interpretations of certain words** – For the purpose of this chapter, certain words or terms used herein shall be defined as provided in subsection (b) below. Words not defined herein shall have the meaning as set forth in the latest edition of the Merriam-Webster Dictionary. Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular. The word “shall” is always mandatory and the word “may” is discretionary. To the extent that the definitions in subsection (b) below are consistent with the definitions contained in G.S. Chapter 160D, in the event that the statutory definition is amended, the definitions shall be interpreted as to be consistent with the statutory definition until appropriate text amendments can be considered.

Commented [JJ6]: Could put this in Chapter 20 and make it applicable to Chapter 25 and 36. Definitions from Ch 25 are included. Definitions in red are added based on 160D. Full set of definitions from Ch 36 have not been incorporated.

(b) **Specific definitions** – The following definitions shall apply in the administration of this chapter:

Administrative decision means a decision made in the implementation, administrative, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in this chapter or other local government development regulations. These are sometimes referred to as “ministerial decisions” or “administrative determinations.”

Commented [JJ7]: 160D-102(1)

Administrative hearing means a proceeding to gather facts needed to make an administrative decision.

Commented [JJ8]: 160D-102(2)

Berm (or mounded earth) means a mound of earth, sometimes referred to as a “berm”, which shall not be more than four feet higher than the elevation of the surrounding property and with a slope no steeper than one foot of vertical distance for each two feet of horizontal distance, which may be used for buffering or screening purposes. Any mounding of earth located within a required buffer strip must be in conjunction with planting and the mounding of earth in a buffer strip shall not relieve the developer of the requirement of planting said buffer strip as herein specified. The mounding of earth outside of a buffer strip may be permitted without the required planting.

Block means a piece of land bounded on one or more sides by streets or roads.

Bona fide farm purposes means agricultural activities as set forth in G.S. 160D-903.

Commented [JJ9]: 160D-102(3)

Outline of Subdivision Ordinance Rewrite September 2020

Buffer strip means a planted strip of land which shall be a minimum of 20 feet in width and which planting shall be composed of evergreen bushes, trees, and/or shrubs, initially of a height of at least four feet, planted so that at least two rows are provided which shall be planted in a staggered pattern approximately in the center of the buffer strip and which will grow from the initial four-foot height to a height of six feet within five years and which will contain foliage overlaps within six years of planting. Buffer strips must be maintained and inspected annually by the developer with a report of conditions submitted to the town. Such required buffer strip must be at the same grade as the land abutting the land being developed. The planning and zoning board may approve as a buffer strip a previously planted strip of land provided that the existing vegetation is of a height and density that would afford equal or better protection to the adjoining properties as would a newly planted buffer strip as provided for in the foregoing portions of this definition.

Building site means each area on which a single building is to be erected. This shall apply only to a principal use building and shall not include any accessory building.

City – see definition of *Town*.

Comprehensive plan means the comprehensive plan, land use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, and any other plans regarding land use and development that have been officially adopted by the governing body.

Commented [JJ10]: 160D-102(6)

Conditional zoning means a legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

Commented [JJ11]: 160D-102(7)

County means Buncombe County, North Carolina.

Commented [JJ12]: 160D-102(8)

Decision-making board means a governing board, planning board, board of adjustment, or other board assigned to make quasi-judicial decisions under this chapter

Commented [JJ13]: 160D-102(9)

Dedication means a gift or transfer, by the owner of property to the town or to the public of such property or of the right to use such property for a specified purpose or purposes. Since real property rights are involved, dedication shall be made by written instrument, and shall be deemed completed only upon acceptance by the town council, and the recording of the instrument of dedication and the written acceptance by the town council in the Buncombe County Registry of Deeds office.

Determination means a written, final and binding order, requirement, or determination regarding an administrative decision.

Commented [JJ14]: 160D-102(10)

Developer means a person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Commented [JJ15]: 160D-102(11)

Development. Unless the context clearly indicates otherwise, the term means any of the following, but in no way alters the scope of regulatory authority granted by G.S. Chapter 160D:

Commented [JJ16]: 160D-102(12)

(a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of a structure.

(b) The excavation, grading, filling, clearing, or alteration of land.

(c) The subdivision of land as defined in G.S. 160D-802 or this chapter.

(d) The initiation or substantial change in the use of land or the intensity of use of land.

Development approval. An administrative or quasi-judicial approval made pursuant G.S. Chapter 160D that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. Chapter 160D, including plat approvals, permits issued, development agreements entered into, and buildings permits issued.

Commented [JJ17]: 160D-102(13)

Development regulation. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain

Commented [JJ18]: 160D-102(14)

**Outline of Subdivision Ordinance Rewrite
September 2020**

ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to state law, or a local act or charter that regulates land use or development.

Dwelling means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that for purposes of minimum housing code regulations adopted pursuant to Article 12 of G.S. Chapter 160D, it does not include any manufactured homes, mobile homes, or recreational vehicle if used solely for seasonal vacation purpose.

Commented [JJ19]: 160D-102(15)

Easement means a grant by a property owner of an interest in a parcel or strip of land for a specified purpose and use by the public, a public utility, a corporation, or persons, the grant of which shall be by appropriate instrument recorded in the Buncombe County Register of Deeds office.

Evidentiary hearing means a hearing to gather competent, materials, and substantial evidence in order to make findings for a quasi-judicial decisions required by a development regulation adopted under G.S. Chapter 160D.

Commented [JJ20]: 160D-102(16)

Familial relationship – For the purposes of this chapter, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild, and those step, half, and in-law relationships.

Commented [JJ21]: 160D-109(f)

Governing Board means the Town Council of the Town of Weaverville. This term is interchangeable with the terms "board of alderman" and "board of commissioners" and shall mean any governing board without regard to the terminology employed in charters, local acts, other portions of the general statutes, or local customary usage.

Commented [JJ22]: 160D-102(17)

Landowner or owner means the holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

Commented [JJ23]: 160D-102(18)

Legislative decision means the adoption, amendment, or repeal of a regulation under G.S. Chapter 160D or an applicable local act. It also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of G.S. Chapter 160D.

Commented [JJ24]: 160D-102(19)

Legislative hearing means a hearing to solicit public comment on a proposed legislative decision.

Commented [JJ25]: 160D-102(20)

Local government means a city or county, and for purposes of this chapter means specifically the Town of Weaverville, North Carolina.

Commented [JJ26]: 160D-102(22)

Lot means a portion of a subdivision, or any other parcel of land, intended as a unit of transfer of ownership or for development, or both.

Lot of record means a lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of Buncombe County prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.
Lot types:

Lot on corner or corner lot means a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot met at an interior angle of less than 135 degrees.

Interior lot means a lot other than a corner lot which has only one frontage on one street.

Reversed frontage lot means a lot on which the frontage is at right angles or approximately right angles (interior angles less than 135 degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot, or a through lot.

Single-tier lot means a lot which backs upon a limited access highway, a railroad, a physical barrier, or another type of land use and to which access from the rear is usually prohibited.

Outline of Subdivision Ordinance Rewrite September 2020

Lot with double frontage, double frontage lot, or through lot means a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as a double frontage lots.

Manufactured home or mobile home means a structure as defined in G.S. 143-145(7).

Commented [JJ27]: 160D-102(23)

Major thoroughfares consist of interstate, other freeway and expressway links, and major streets that provide for the expeditious movement of volumes of traffic within and through urban areas.

Minor thoroughfares are important streets which perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system by facilitating a minor through traffic movement and which may also serve abutting property.

Official maps or plans means any maps or plans officially adopted by the town council as a guide to the development of the town.

Open space means undeveloped land upon which an obligation has been placed by deed, grant or other dedication to keep such land free from development for a stated period of time except for golf courses, parks, playgrounds, lakes and other similar recreational facilities. Such land may be conveyed to a homeowners association with responsibility for the maintenance thereof.

Person means an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

Commented [JJ28]: 160D-102(24)

Planning and development regulation jurisdiction means the geographic area defined in Part 2 of G.S. Chapter 160D within which a local government may undertake planning and apply the development regulations authorized by G.S. Chapter 160D.

Commented [JJ29]: 160D-102(25)

Planning board means any board or commission established pursuant to G.S. 160D-301; may be referred to as a planning and zoning board.

Commented [JJ30]: 160D-102(26)

Plat means a map or scaled drawing of a parcel of land which shows sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practices.

Commented [JJ31]: Consistent with 160D-804(b)

Preliminary plat means a preliminary plan and map of a tract to be developed by a subdivider/developer giving in sufficient detail the boundaries, streets and lot layout, plans for utilities, land uses, and all other information and data as to allow the subdivision administrator and/or the planning and zoning board to determine compliance with this chapter and the town zoning ordinance.

Private driveway means a roadway serving one or more lots, building sites or other divisions of land, which lots also have public street frontage and which driveway is maintained by a private person or groups of people and which is not intended to be used for public ingress or egress.

Property. All real property subject to land-use regulation by the town. The term includes any improvements or structures customarily regarded as part of real property.

Commented [JJ32]: 160D-102(27)

Public sewerage disposal system means a waste disposal system serving two or more dwellings or business units, or any combination thereof owned or operated by any municipal corporation of the state.

Public water supply means a system for the supply of potable water to two or more dwellings or business units, or to any combination thereof owned or operated by any municipal corporation of the state or any privately owned system.

Quasi-judicial decision means a decision involving the finding of facts regarding a specific application of development regulation and that requires the exercise of discretion when applying the standards of the regulation. Quasi-judicial decisions include but are not limited to decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application

Commented [JJ33]: 160D-102(28)

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complies with one or more generally stated standards requiring discretionary decision on the findings to be made by the decision-making board.

Recreation area or park means an area of land or combination of land and water resources that is developed for active and/or passive recreational pursuits which may have various manmade features that accommodate such activities.

Reservation means a reservation of land does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

Rural roads:

Local road means a rural road serving primarily to provide access to land adjacent to the road and providing travel over relatively short distances used primarily by owners abutting said road.

Major collector means a rural road which serves and connects major intracounty travel corridors and traffic generators and which provides access to the arterial system.

Minor arterial means a rural link in a network joining cities and larger towns and providing intrastate and intercounty service at relatively high overall travel speeds with minimum interference to through movement. This type of network should primarily serve inter town and inter city traffic.

Minor collector means a rural road which provides services to small local communities and links locally important traffic generators with their rural hinterland.

Principal arterial means a rural link in a network of continuous routes serving corridor movements having trip length and travel density characteristics indicative of substantial statewide or interstate travel and existing primarily to serve such traffic. Such a network would consist of interstate routes and other routes designed as principal arterials.

Setback means the required minimum horizontal distance between the building line and the related front, side, or rear property line.

Site plan means a scaled drawing and supporting text showing the relationship between the lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor areas, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities, that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

Commented [JJ34]: 160D-102(29)

Special use permit means a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

Commented [JJ35]: 160D-102(30)

Specific type rural or urban streets:

Alley means a strip of land, owned publicly or privately, set aside primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

Cul-de-sac means a short street having but one end open to traffic and the other end being permanently terminated with a vehicular turnaround provided at the closed end.

Freeway, expressway, or parkway means divided multilane roadway designed to carry large volumes of traffic at relatively high speeds. A freeway is a divided highway providing for continuous flow of vehicles with no direct access to abutting property or streets and with access to selected crossroads provided via connecting ramps. An expressway is a divided highway with full or partial control of access and generally with grade separations at major intersections. A parkway is a highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like developments.

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Frontage road means a local street or road which turns parallel to a fully or partially controlled access or facility and which functions to provide access to adjacent properties.

Local residential street means cul-de-sacs, loop streets less than 2,500 feet in length, or streets less than one mile in length that do not connect thoroughfares, or serve major traffic generators, and which do not collect traffic from more than 100 dwelling units.

Residential collector street means a local access street which serves as a connector street between local residential streets and the thoroughfare system. Residential collector streets typically collect traffic from 100 to 400 dwelling units.

Street, public means a dedicated public right-of-way in which the roadway has been constructed to public standards for vehicular traffic and has been accepted for maintenance by a governmental entity, but does not include alleys.

Street, private means any paved or unpaved area not owned or maintained by a governmental entity, that is meant for the conveyance of vehicular traffic and is not a parking lot, although it may pass through a parking lot and be at times indistinguishable from said parking.

Street, major thoroughfare means major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.

Street, minor thoroughfare means minor thoroughfares perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating a minor through-traffic movement and may also serve abutting property.

Urban streets:

Local street means any street link not part of a higher-order urban system which serves primarily to provide direct access to abutting land and access to higher-order systems.

Subdivision means the division of land for the purpose of sale or development as specified in G.S. 160D-802.

Subdivision, major or major subdivision means any subdivision not defined as a minor subdivision

Subdivision, minor or minor subdivision means a subdivision of land meeting all the following criteria:

- (a) Containing not more than four lots or building sites abutting an existing public street or access easement thereto;
- (b) Not involving the extension of any new public utilities, other than laterals to individual lots;
- (c) Not requiring any new street construction or street right-of-way dedication; and
- (d) Where the use of all of the lots will be for single family residences.

Subdivision regulation means a subdivision regulation authorized by Article 8 of G.S. Chapter 160D.

Town means a municipal subdivision as defined in G.S. 160A-12 and for the purposes of this chapter means specifically the Town of Weaverville, North Carolina.

Vested right means the right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in G.S. 160D-108 or under common law.

Zoning map amendment or rezoning means an amendment to a zoning regulation to change the zoning district that is applied to a specified property or properties. It does not include the initial adoption of a zoning map by a local government or the repeal of a zoning map and re-adoption of a new zoning map for the entire planning and development regulation jurisdiction. It does not include updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district. It does include the initial application of zoning when land is added to the territorial jurisdiction of the local

Commented [JJ36]: 160D-102(31)

Commented [JJ37]: Policy Discussion to determine the definition of a minor subdivision

Commented [JJ38]: 160D-102(32)

Commented [JJ39]: 160D-102(5)

Commented [JJ40]: 160D-102(33)

Commented [JJ41]: 160D-102(34)

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government that has previously adopted zoning regulations. It does include the application of an overlay zoning district or a conditional zoning district.

Zoning regulation means a zoning regulation authorized by Article 7 of G.S. Chapter 160D.

Commented [JJ42]: 160D-102(35)

Sec. 25- __. Vested Rights and Permit Choice.

Commented [JJ43]: 160D-108

- (a) **Findings** – The North Carolina General Assembly has recognized that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly also finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation.
- (b) **Permit choice** – If an application made in accordance with development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development approvals issued by the State and by local governments, including the town. The duration of vested rights created by development approvals are as set forth in G.S. 160D-108(d) and subsection (d) below.
- (c) **Process to claim vested right** – A person claiming a statutory or common law vested right may submit information to substantiate that claim to the subdivision administrator or zoning administrator and staff will make an initial determination as to the existence of the vested right. The administrator’s determination may be appealed under G.S. 160D-405 or Code Section __. On appeal the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-405(c).
- (d) **Types and duration of statutory vested rights** – Except as provided in G.S. 160D-108 and subject to G.S. 160D-108(b) and subsection (b) above, amendments in local development regulations shall not be applicable or enforceable with regard to development that has been permitted or approved pursuant to G.S. Chapter 160D so long as one of the approvals listed in this subsection remains valid and unexpired. Each type of vested right listed below is defined by and is subject to the limitations provided in this section and the cited statutes. Vested rights established under this section are not mutually exclusive. The establishment of a vested right under one subsection does not preclude vesting under one or more other subsections or by common law principles.
 - i. **Six months – Building permits** – Pursuant to G.S. 160D-1109, a building permit expires 6 months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of 12 months after work has commenced.

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- ii. **One year – Other local development approvals** – Pursuant to G.S. 160D-403(c), unless otherwise specified by G.S. 160D-108, other statute, or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval does not affect the duration of a vested right established as a site-specific vesting plan, a multiphase development plan, a development agreement, or vested rights established under common law.
- iii. **Two to five years – Site specific vesting plans** –
 - a. **Duration** – A vested right for a site specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific vesting plan unless expressly provided by the town. The town may provide that rights regarding the site specific vesting plan shall be vested for a period exceeding two year, but not exceeding five years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This determination shall be in the discretion of the town and shall be made following the process specified in subsection (c) below for the particular form of a site specific vesting plan involved.
 - b. **Relation to building permits** – A right vested as provided in this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. 160D-1109 and 160D-1113 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested right under this subsection exists.
 - c. **Requirements for site specific vesting plans** – For the purposes of this section a “site-specific vesting plan” means a plan submitted to a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by a local government. Unless otherwise expressly provided by the town, the plan shall include the approximate

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boundaries of the site, significant topographical and other natural features effecting development of the site; the approximate location on the site of all proposed buildings, 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. What constitutes a site specific vesting plan by the relevant development regulation and the development approval that triggers vesting shall be so identified. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. In the event a local government fails to adopt a regulation setting forth what constitutes a site specific vesting plan, any development approval shall be considered to be a site specific vesting plan. A variance shall not constitute a site-specific vesting plan, and approval of a site specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site specific vesting plan.

- iv. **Seven year – Multi-phase developments** – A multi-phased development shall be vested for the entire development with the zoning regulations, subdivision regulations, and unified development ordinances in place at the time a site plan approval is granted for the initial phase of the multi-phased development. This right shall remain vested for a period of 7 years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, “multi-phased development” means a development containing 100 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.
- v. **Indefinite – Development agreements** – A vested right of reasonable duration may be specified in a development agreement approved under Article 10 of G.S. Chapter 160D.

(e) **Continuing review** – Following approval or conditional approval of a statutory vested right, the town may make subsequent reviews and require 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 the original

Commented [JJ44]: Optional to alter the timing on vesting

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approval. The town may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

(f) Exceptions –

- i. A vested right, once established as provided by subdivisions (iii) and (iv) of subsection (d) above, precludes any zoning action by the town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right.
 - a. With the written consent of the affected landowner;
 - b. Upon findings, after notice and an evidentiary hearing, that natural or man-made hazards on or in the vicinity of the property, if uncorrected, would pose a serious threat to the public health, and safety, and welfare if the project were to proceed as contemplated in the approved vested right;
 - c. To the extent that the affected landowner receives 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 as is provided in G.S. 160D-106. Compensation shall not include any diminution in the value of the property that is caused by such action;
 - d. Upon findings, after notice and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the town of the vested right; or
 - e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the approved vested right, in which case the town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.
- ii. The establishment of a vested right under subdivisions (iii) and (iv) of subsection (d) above shall not preclude the application of overlay zoning or other development regulation that imposes 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 development regulation by the town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property that is subject to a vested

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- right established under this section upon the expiration or termination of the vested rights period provided for in this section.
- iii. Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude, change, or impair the authority of the town to adopt and enforce development regulation provisions governing non-conforming situations or use.

(g) Miscellaneous provisions –

- i. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.
- ii. Nothing in this section shall preclude a judicial determination, based on common law principles or other statutory provisions, that a vested right exists. In a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

Sec. 25-___. Conflicts of Interest.

- (a) **Governing Board** – A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any text or map amendment if the landowner of the property subject to such amendment or the applicant for the amendment is a person with whom the governing board member has a close familial, business, or other associational relationship.
- (b) **Appointed Board** – Members of appointed boards, including the planning and zoning board and the board of adjustment, shall not vote on advisory, administrative or legislative decisions regarding development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any administrative decision or text or map amendment if the landowner of the property subject to such decision or amendment or the applicant for the development approval or amendment is a person with whom the governing board member has a close familial, business, or other associational relationship.
- (c) **Administrative Staff** – No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of the decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person. No staff member shall be financially interested or employed by a business that is financially interested in a development

Commented [JJ45]: 160D-109; could put in Chapter 20 and make it applicable to Ch 25 and 36

Commented [JJ46]: Can designate a specific person, but this allows flexibility while addressing the conflict of interest

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subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member of other individual or an employee of a company contracting with the town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the town as determined by the town.

- (d) **Quasi-Judicial Decision** – A member of any board exercising quasi-judicial functions pursuant to this chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with the affected person, or a financial interest in the outcome of the matter.
- (e) **Resolution of Objection** – If an objection is raised to a member's participation at or prior to the hearing or vote on that matter and the member does not recuse themselves, the remaining members of the board shall by majority vote rule on the objection.
- (f) **Familial Relationship** – For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild, and those step, half, and in-law relationships.

Sec. 25- ____. Development Approvals Run with the Land.

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by these regulations and development approvals made pursuant to this chapter attach to an run with the land.

Commented [JJ47]: 160D-104

Sec. 25- ____. Plat Approval and Recordation Required.

No person shall commence with a subdivision of land without first securing approval from the town. A plat must be prepared, approved, and recorded pursuant to the provisions of these regulations whenever any subdivision of land takes place, unless such subdivision is exempt from these regulations.

Commented [JJ48]: 160D-403, 160D-804(b)

This chapter requires that plats shows sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practices.

Commented [JJ49]: Included in the definition of "plat" and should be copied to or moved to plat requirement sections; good explanation of a plat

Sec. 25- ____. Effect of Plat Approval on Dedication.

In accordance with G.S. 160D-806, the approval of a plat shall not be deemed to constitute or effect the acceptance by the town or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, the town may be resolution accept any dedication made to the public lands or facilities for streets,

Commented [JJ50]: 160D-806

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parks, public utility lines, or other public purposes, when the lands or facilities are located within its planning and development regulation jurisdiction.

Sec. 25- __. Penalties for Transferring Lots in Unapproved Subdivisions

Commented [JJ51]: 160D-807

- (a) Any person who, being the owner or agent of the owner of any land located within the planning and development jurisdiction of the town, thereafter subdivides their land in violation of the subdivision regulation or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such regulation and recorded in the office of the register of deeds for Buncombe County, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulation. Building permits required pursuant to G.S. 160D-1108 may be denied for lots that have been illegally subdivided. In addition to other remedies, the town may institute appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.
- (b) Nothing herein shall prohibit any owner or their agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulation or recorded with the register of deeds, provided the contract does all of the following:
 - i. Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
 - ii. Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
 - iii. Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessee to close any earlier than 5 days after the delivery of a copy of the final recorded plat.
 - iv. Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat,

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during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

- (c) Nothing herein shall prohibit any owner or their agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulation or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings of the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision regulation and recorded with the register of deeds.

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Article II. Minor Subdivisions

Commented [JJ52]: Expedited review allowed by 160D-802(b)

Sec. 25-__. **Definition of Minor Subdivision.**

Commented [JJ53]: Policy question

Sec. 25-__. Limitations on Minor Subdivisions.– can't use minors to avoid major

Sect 25-__. Requirements of Minor Subdivisions.

Zoning Compliance

Utility Provision

Public Water Availability or County Environmental Health

Well Permit

Public Sanitary Sewer Availability or County

Commented [JJ54]: James is checking with MSD on approvals for subdivision to see what they provide as documentation of sewer availability

Environmental Health Septic Permit

Underground Required??

Existing Street Access

Sidewalks – Not Required

Sec. 25-__. Plat Requirements for Minor Subdivisions.

Preliminary Plats – same information as final plat

Final Plats –

Current Zoning Designation

Total Acreage to be Divided

Number of Lots Created

Exterior Lot Boundaries

Utilities

Water

Sewer

Streets

Location

Right of Way Width

Notation of Private or Public

Names

Required plat language

Signature blocks

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All other information required by law of a recordable plat
- All other information for compliance with GS 47-30 as
from time to time may be amended

**Sec. 25-___. Process of Expedited Review and Recordation of Minor
Subdivision Plats**

1. Application and Plat Submission
2. Technical Review Committee Review
3. Plat Revision – if necessary
4. Plat Approval – once found compliant
5. Plat Recordation – within 60 days; recorded plat must
be submitted to Administrator prior to zoning permit
being issued.

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Article III. Major Subdivisions

Sec. 25-___. Definition of Major Subdivision.

Sec. 25-___. Requirements of Major Subdivisions.

Zoning Compliance

Utilities

Public Water Availability or Commitment Letter or

County Environmental Health Well Permit

Public Sanitary Sewer Availability or Commitment Letter

or County Environmental Health Septic Permit

Underground Required??

Street Access

Public Street Commitment for all proposed public streets

Road Maintenance Agreement if private streets are

proposed

Sidewalks

Commented [JJ55]: James is checking with MSD on approvals for subdivision to see what they provide as documentation of sewer availability

Commented [JJ56]: Policy Discussion!! When are sidewalks to be required; exemptions; waivers

Sec. 25-___. Plat Requirements for Major Subdivision Plats.

Preliminary –

All items required for a final plat, or the following:

Title Block – (see GS 47-30(c))

Zoning Designation

Name of Owner

Location

Physical Address

Parcel Identification Number

Date of Plat

Scale

Name of Surveyor

Vicinity Map and Legend (see GS 47-30(f)(10))

North Arrow with Bearings (see GS 47-30(f)(1))

Municipal Boundaries

Topographical Survey with Minimum 5 Foot Contours

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- Total Acreage to be Divided
- Boundary Lines of Entire Area to be Subdivided
- Number of Lots Created
- Boundary Lines of Lots Created
- Existing and Proposed Streets
 - Location
 - Right of Way Width
 - Notation of Private or Public
 - Road Profiles of Proposed Streets
 - Street Names for Proposed Streets
- Existing or Proposed Utility Easements (water and sewer)
- Sanitary Sewer System Layout – prepared by engineer and showing ...
- County Environmental Health Septic System Permit – if public sanitary sewer is not provided
- Water Distribution System Layout – prepared by engineer and showing ...
- County Environmental Health Well Permit – if public water not provided
- Stormwater System Layout – prepared by engineer and showing ...
- Floodplain and watercourses** affecting the property
- Statement regarding other Utilities – Electrical, gas, cable, phone, fiber optic,
- Recreation Areas for Dedication or Reservation

Commented [JJ57]: New requirement – reduces buildable area

Final –

- Current Zoning Designation
- Total Acreage to be Divided
- Number of Lots Created
- Exterior Lot Boundaries
- Utilities
 - Water
 - Sewer

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Streets

Location

Right of Way Width

Notation of Private or Public

Names

Required plat language

Signature blocks

All other information required by law of a recordable plat

- All other information for compliance with GS 47-30 as from time to time may be amended

Commented [JJ58]: Need to look closely at this! What do other jurisdictions require?

Sec. 25-___. Process for Review and Recordation of Major Subdivision Plats.

1. Application and Plat Submission
2. Technical Review Committee Review
3. Plat Revision – if necessary
4. Plat Approval – once found compliant
5. Plat Recordation – within 60 days; recorded plat must be submitted to Administrator prior to zoning permit being issued.

Sec. 25-___. Performance Guarantees.

To assure compliance with these and other development regulation requirements, performance guarantees may be provided by a developer to assure successful completion of required improvements at the time the final plat is recorded. For any specific development, the type of performance guarantee shall be at the election of the person required to give the performance guarantee. For purposes of this section, all of the following shall apply with respect to the performance guarantee:

- (1) The term “performance guarantee” shall mean any of the following forms of guarantee: (a) surety bond issued by any company authorized to do business in the State of North Carolina; (b) letter of credit issued by any financial institution licensed to do business in the State of North Carolina; (c) other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the local government that the improvements for which the performance guarantee is being required is complete. If the improvements are not complete and the current performance guarantee is expiring,

Commented [JJ59]: 160D-804(g)
Policy Discussion!!
Performance guarantees (“improvement guarantees”) are optional and included because current ordinance allows them; this section is consistent with statute. Staff recommends deleting and requiring completion of all required improvements prior to final plat approval.

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the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

- (3) The amount of the performance guarantee shall not exceed 125% of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed 125% of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- (4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (5) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following: (a) the local government to whom such performance guarantee is provided; (b) the developer at whose request or for whose benefit such performance guarantee is given; (c) the person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

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Article IV. Administration, Enforcement and Appeals

Commented [JJ60]: Statutorily required unless otherwise specifically noted; could put this article in Chapter 20 and make it applicable to Chapter 25 and 36.

Sec. 25-___ Administrative Staff.

Commented [JJ61]: 160D-402

The Town Manager shall designate such staff members to serve as subdivision administrator, zoning administrator, and code enforcement officer as they deem appropriate in order to develop, administer and enforce development regulations authorized by G.S. Chapter 160D.

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to G.S. Chapter 160D; determining whether applications for development approvals are complete; receipt and processing of applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance; enforcing development regulations, including issuing notices of violation, and orders to correct violations; and the recommending of bringing judicial action against actual or threatened violations; keeping adequate records; and any other actions that may be required in order to adequately enforce the laws and development regulations under the town's planning and development jurisdiction.

The town hereby designates the Buncombe County building inspectors to serve as the building inspectors within the town's planning and development jurisdiction and authorizes the Town Manager to enter into such contracts or interlocal agreements with Buncombe County for such building inspection services.

Sec. 25-___ Administrative Approvals and Determinations.

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- (a) **Development Approvals** – To the extent consistent with the scope of regulatory authority granted by G.S. Chapter 160D, no person shall commence or proceed with development without first securing any required development approvals from the local government with jurisdiction over the site of the development. A development approval shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. A local government may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- (b) **Determinations and Notice of Determinations** – The subdivision administrator is charged with making administrative determinations as allowed under the subdivision regulations contained in this Code Chapter 25. The zoning administrator is charged with making administrative determinations as allowed under the zoning

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regulations contained in Code Chapter 36. In all instances, the officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify a means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner, applicant or person who sought the determination. Verification of posting shall be provided by the staff member responsible for the determination.

- (c) **Duration of Development Approvals** – Unless a different period is specified by G.S. Chapter 160D or other specific applicable law, or a different period is provided by a special use permit or other quasi-judicial development approval, a development agreement, or with the site specific standards of a conditional zoning district, a development approval issued pursuant to G.S. Chapter 160D shall expire one year after the issuance if the work authorized by the development approval has not been substantially commenced. Development approvals for temporary land uses, special events, temporary signs, and similar development may be shorter in duration. If work or activity is discontinued for a period of 12 months after commencement, development approval shall immediately expire. The time periods set out in this section shall be tolled during the pendency of any appeal. No work of activity authorized by any development approval that has expired shall thereafter be performed until a new development approval has been secured. This section shall not limit any vested rights secured by G.S. 160D-108.
- (d) **Changes** – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval or proposed changes or deviations has been obtained.
 - i. **Minor Modification** – Minor modifications, as defined herein, are subject to administrative approval by the subdivision or zoning administrator. "Minor modifications" are defined as All other modifications are considered major modifications.
 - ii. **Major Modification** – The same development review and approval process required for issuance of the development approval in the review and approval of any major modification of that approval.
- (e) **Inspections** – Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and the terms of the approval. In exercising this

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power, staff is authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

- (f) **Revocation of Development Approvals** – In addition to initiation of enforcement actions under G.S. 160D-404 and Code Section ____, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for the issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal of failure to comply with the requirements of any application local development regulation of any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of any applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405 and Code Section ____. If an appeal is filed the provisions regarding stays in G.S. 160D-405(e) are applicable.
- (g) **Certificate of Compliance or Occupancy** – Administrative staff may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certification of compliance if staff finds that the completed work complies with all applicable State and local laws and with the terms of the permit approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of G.S. Chapter 160D shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-1116 has been issued by Buncombe County.

Sec. 25-___. Enforcement.

- (a) **Notices of Violation** – When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to G.S. Chapter 160D or other local development regulation, such as Code Chapters 25 and 36, or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of the development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail, and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by

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G.S. 160D-1123, 160D-1206, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

- (b) **Stop Work Orders** – Whenever any work or activity subject to regulation pursuant to G.S. 160D or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112, 160D-1208, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

- (c) **Remedies** – In addition to revocation of development as provided for in G.S. 160D-403(f) and Code Section 25-____, all development regulation adopted pursuant to authority conferred by G.S. Chapter 160D, including specifically Code Chapters 25 and 36, may be enforced by any remedy provided in G.S. 160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of G.S. Chapter 160D or any development regulation or other regulation adopted by the town under authority of G.S. Chapter 160D, the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

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Sec. 25-____. Appeals.

- (a) **Appeals** – Except as provided in subsection (c) below, appeals of decisions made by the staff as allowed by G.S. 160D and the development regulations adopted by the town under the authority of G.S. Chapter 160D, shall be made to the board of adjustment.
- (b) **Standing** – Any person who has standing under G.S. 160D-1402(d) or the town may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

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- (c) **Judicial Challenge** – A person with standing may bring a separate and original civil action to challenge the constitutionality of an ordinance or development regulation or that it is ultra vires, preempted, or otherwise in excess of statutory authority without filing an appeal under subsection (a) above.
- (d) **Time to Appeal** – The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D-403(b) and Code Section 25-___ given by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (e) **Record of Decision** – The official who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (f) **Stays** – An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board of adjustment after the notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations the appellant or the town may request and the board of adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
- (g) **Alternative Dispute Resolution** – The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

Sec. 25-___. Quasi-Judicial Procedure

- (a) **Process Required** – The board of adjustment shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- (b) **Notice of Hearing** – Notice of evidentiary hearings conducted pursuant to G.S. Chapter 160D shall be mailed to the person whose appeal, application, or request is the subject of the hearing; the owners of all parcels of land abutting the parcel of

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land that is the subject of the hearing. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board of adjustment may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

- (c) **Administrative Materials** – The administrator or staff to the board of adjustment shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board of adjustment prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board of adjustment at the hearing.
- (d) **Presentation of Evidence** – The applicant, the town, and any person who would have standing to appeal the decision under G.S. 160D-1402(d) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The chair of the board of adjustment shall rule on any objections and the chair’s rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.
- (e) **Appearance of Official, New Issues** – The official who made the decision or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing.
- (f) **Oaths** – The chair of the board of adjustment or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- (g) **Subpoenas** – The board of adjustment, through the chair, or in the chair’s absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the town, and any person with standing under G.S. 160D-1402(d) may make a written request to the

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chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas they determine to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

- (h) **Appeals in the Nature of Certiorari** – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(k).
- (i) **Voting** – The concurring vote of four-fifths (4/5) of the board of adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) or Code Section ___ shall not be considered members of the board for calculation of the requisite majority if there are not qualified alternates available to take the place of such members.
- (j) **Decisions** – The board shall determine contested facts and make its decisions within a reasonable time. When hearing an appeal, the board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be reduced to writing, reflect the board’s determination of contested facts and their application to the applicable standards and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the decision with the clerk to the board of adjustment. The decision of the board of adjustment shall be delivered within a reasonable time by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the town that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud.
- (k) **Judicial Review** – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402 and Code Section ___. Appeals shall be filed with the clerk to the superior court of Buncombe County in the form of a petition for writ of certiorari by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. 160D-405(j) or Code Section 25-___. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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160D-1405(d)

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Sec. 25- __. Declaratory Judgments and Other Civil Actions

Challenges of legislative decisions of the town, including the validity and constitutionality of development regulations adopted pursuant to G.S. Chapter 160D, and actions authorized by G.S. 160D-108(c), 160D-108(g), and 160D-405(c), may be brought pursuant to Article 26 of G.S. Chapter 1. If the town was the governmental unit making the challenged decision, the town shall be named as a party to the action.

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Sec. 25- __. Appeals in the Nature of Certiorari

(a) **Applicability** – This section applies to appeal of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari as required by G.S. Chapter 160D.

(b) **Filing the Petition** – An appeal in the nature of certiorari shall be initiated by filing a petition for writ of certiorari with the superior court of Buncombe County. The petition shall do all of the following:

- i. State the facts that demonstrate that the petitioner has standing to seek review.
- ii. Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petition contends that an error was made.
- iii. Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109 or Code Section __, the decision-making body was not sufficiently impartial to comply with due process principles.
- iv. Set forth the relief the petitioner seeks.

(c) **Standing** – A petition may be filed under G.S. 160D-1402 only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

- i. Any person possessing any of the following criteria
 - a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - b. An option or contract to purchase the property that is the subject of the decision being appealed.
 - c. An applicant before the decision-making board whose decision is being appealed.
- ii. Any other person who will suffer special damages as the result of the decision being appealed.
- iii. 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

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Check these references – inconsistencies noted in book!!!

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neighborhood or local area, so long as at least one of the members of the association would have had 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 the appeal.

- iv. The town, if the governing body of the town believes its decision-making board made a decision that improperly granted a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the town's governing body.

(d) **Respondent** – The respondent named in the petition shall be the local government whose decision-making board made the decision that is being appealed, except that if the petition is a local government that has filed a petition pursuant to subdivision(iv) of subsection (c) above, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) **Writ of Certiorari** – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of Buncombe County. The writ shall direct the respondent local government, or the respondent decision-making board, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the North Carolina Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d of the Rules of Civil Procedure shall apply in the event the chair of the decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court. Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion, and on such conditions that properly provide for the security of the adverse party. A stay granted in favor of a local government shall not require a bond or other security.

(f) **Response to the Petition** – The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitions at least 30 days prior to the hearing on the petition. If it is not serve within that time period, the matter may be continued to allow petitioners time to respond pursuant to subsection (j) below.

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- (g) **Intervention** – Rule 24 of the North Carolina Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section except that the exceptions noted in G.S. 160D-1402(g) shall apply.
- (h) **The Record** – The record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree that matters unnecessary to the court’s decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the local government respondent, or the respondent decision-making board, upon all petitioners within three (3) days after it is filed with the court.
- (i) **Hearing on the Record** – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with G.S. 160D-1402(h) and section (h) above. The court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:
 - i. Whether the petitioner or intervenor has standing.
 - ii. Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making board was not sufficiently impartial to comply with due process principles.
 - iii. Whether the decision-making board erred for the reasons set forth in G.S. 160D-1402(j)(1)(a) and (b).
- (j) **Scope of Review** –
 - i. When reviewing the decision under the provisions of G.S. 160D-1402, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making board’s findings, inferences, conclusions, or decisions were:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights.
 - b. In excess of statutory authority conferred upon the local government or the authority conferred upon the decision-making board by ordinance.
 - c. Inconsistent with applicable procedures specified by statute or ordinance.
 - d. Affected by other error of law.
 - e. Unsupported by competent, materials, and substantial evidence in view of the entire record.
 - f. Arbitrary or capricious.
 - ii. When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de

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novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

- iii. The term “competent evidence,” as used in this section, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the North Carolina General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term “competent evidence,” as used in this section, shall not be deemed to include the opinion testimony of law witnesses as to any of the following:
 - a. The use of the property in a particular way affects the value of other property.
 - b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety.
 - c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(k) **Decision of the Court** – Following its review of the decision-making board in accordance with G.S. 160D-1402(j), the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

- i. If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.
- ii. If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.
- iii. If the court concludes that the decision by the decision-making board is not supported by competent, material, and substantial evidence in the record or is based upon error at law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such action as is necessary to correct the error. Specifically:
 - a. If the court concludes that a permit was wrongfully denied because the denial was not based on competent,

**Outline of Subdivision Ordinance Rewrite
September 2020**

material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.

- b. If the court concludes that a permit was wrongfully issued because the issuance was not based upon competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(l) Effect of Appeal on Ancillary Injunctive Relief –

- i. If a development approval is appealed, the applicant shall have the right to commence work while the appeal is pending. However, if the development approval is reversed by a final decision of any court of competent jurisdiction, the applicant shall not be deemed to have gained any vested rights on the basis of actions taken prior to or during the pendency of the appeal and must proceed as if no development approval has been granted.
 - ii. Upon motion of a party to a proceeding under G.S. 160D-1402, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal.
- (m) **Joinder** – A declaratory judgment brought under G.S. 160D-1401 or other civil action relating to the decision at issue may be joined with a petition for writ of certiorari and decided in the same proceeding.

Sec. 25-__. Appeals of Decisions on Subdivision Plats

Since the subdivision regulations adopted by the town under G.S. Chapter 160D provides that the decision whether to approve or deny a preliminary or final subdivision plat is based solely upon whether the application complies with the specific requirements set forth in the subdivision regulations, and is therefore administrative in nature, then the decision of the board [board of adjustment] shall be subject to review by filing an action in superior court seeking appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the decision, which shall be made as provided in G.S. 160D-403(b).

Commented [JJ70]: 160D-1403(b)

Sec. 25-__. Statute of Limitations

G.S 160D-1405 set out the specific applicable statute of limitations on zoning map adoption or amendments, text adoption or amendments, enforcement actions, and quasi-judicial decisions.

Commented [JJ71]: 160D-1405

**Outline of Subdivision Ordinance Rewrite
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POLICY QUESTIONS (NOT INCLUDED IN OUTLINE):

Commented [JJ72]: List of policy questions!!

Transportation and Utility Infrastructure Improvements – 160D-804(c)
Pedestrian Infrastructure Improvements
Recreation Areas and Open Space – 160D-804(d)
Community Service Facilities – 160D-804(e)
School Sites – 160D-804(f)
Development Agreements – Article 10 of 160D
Historic Preservation – Article 9, Part 4, of 160D
Community Appearance Commissions – Article 9, Part 5, of 160D
Affordable Housing Incentives

USPS Cluster Box Units and Standards?

Jennifer Jackson

From: James Eller
Sent: Wednesday, September 30, 2020 4:56 PM
To: Jennifer Jackson
Subject: Minor Modifications

Please find the following language related to minor modifications as per our conversation...

Asheville

Minor modifications to the approved site plan may be reviewed and approved administratively provided that they do not involve a change in permitted uses, changes in overall density or substantial changes to the configuration of the development that affect the operation or impacts of the development. Any other modification of the conditions and standards in a conditional zoning district shall be approved by the city council following this review process as an amendment to the conditional zoning ordinance and may be referred to the technical review committee as appropriate. The planning and urban design director shall in every case have the discretion to decline to exercise the power to approve minor modifications as provided for herein, and may require the applicant to seek an amendment to the conditional zoning ordinance.

Brevard

Minor modifications to the approved conditional zoning district requirements may be approved by the administrator. The minor modifications authorized herein are intended to provide relief where conditions established by enacting ordinance of the conditional zoning district create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of adoption of the enacting ordinance and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the zoning. The permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

- (a) A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback.
- (b) A reduction of up to 25 percent in the number of parking spaces.
- (c) Any other minor modification in accordance with the limitations and procedures prescribed in this ordinance, unless an enacting ordinance of a conditional zoning district adopted pursuant to this section specifies otherwise.

Any other modifications must be approved by the city council as an amendment to the enacting ordinance of the conditional zoning district, and shall be referred to the planning board or technical review committee as appropriate. The administrator shall in every case have the discretion to decline to exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the conditional zoning ordinance.

Charlotte

In certain limited circumstances modifications of an approved special use permit may be allowed by the Planning Director. Changes of detail which do not affect the basic relationships of the special use to the standards and requirements of the ordinance under which the special use permit was approved, affect the conditions attached to the approval of the special use permit, or require a variance of the standards of the underlying zoning district may be authorized by the Planning Director. In the case of a major special use permit, the decision of the Planning Director may be appealed to the Planning Commission for review and decision as to whether a modification may be approved in this

manner. In the case of a minor special use permit, the decision of the Planning Director as to whether the special use permit may be modified in this manner is final.

Rutherfordton

https://library.municode.com/nc/rutherfordton/codes/code_of_ordinances?nodeId=PTIICOOR_CH30UNDE_ARTIVPE_FIPLAP_DIV2ZOSPUSCOUSPE_S30-235AMMOPE

James W. Eller
Planning Director
Town of Weaverville

Town of Weaverville

Sec. 36-84. - Conditional zoning district.

- (m) *Modifications.* Minor modifications that can be approved by staff are limited to modifications that do not affect the property lines, do not affect the final plat and which are in substantial compliance with the approved plans. An extension of any time frame stated within an ordinance designating a conditional zoning district must be approved by town council but shall otherwise be considered a minor modification. All other modifications must be approved by town council and are subject to the procedures set out in section 36-84(n).
- (n) *Approval procedures for modifications of a CZD.* Except for minor modifications that can be approved by staff or town council as provided in section 36-84(m), the procedures to be followed in reviewing, granting or denying any requested modification to the approved site plan or the CZD ordinance shall be the same as those established for approval of an initial CZD except that a public involvement meeting is not required. Staff is required to notify the mayor and town council of any modifications that staff has approved or denied.

TOWN OF WEAVERVILLE
PLANNING AND ZONING BOARD AGENDA ITEM

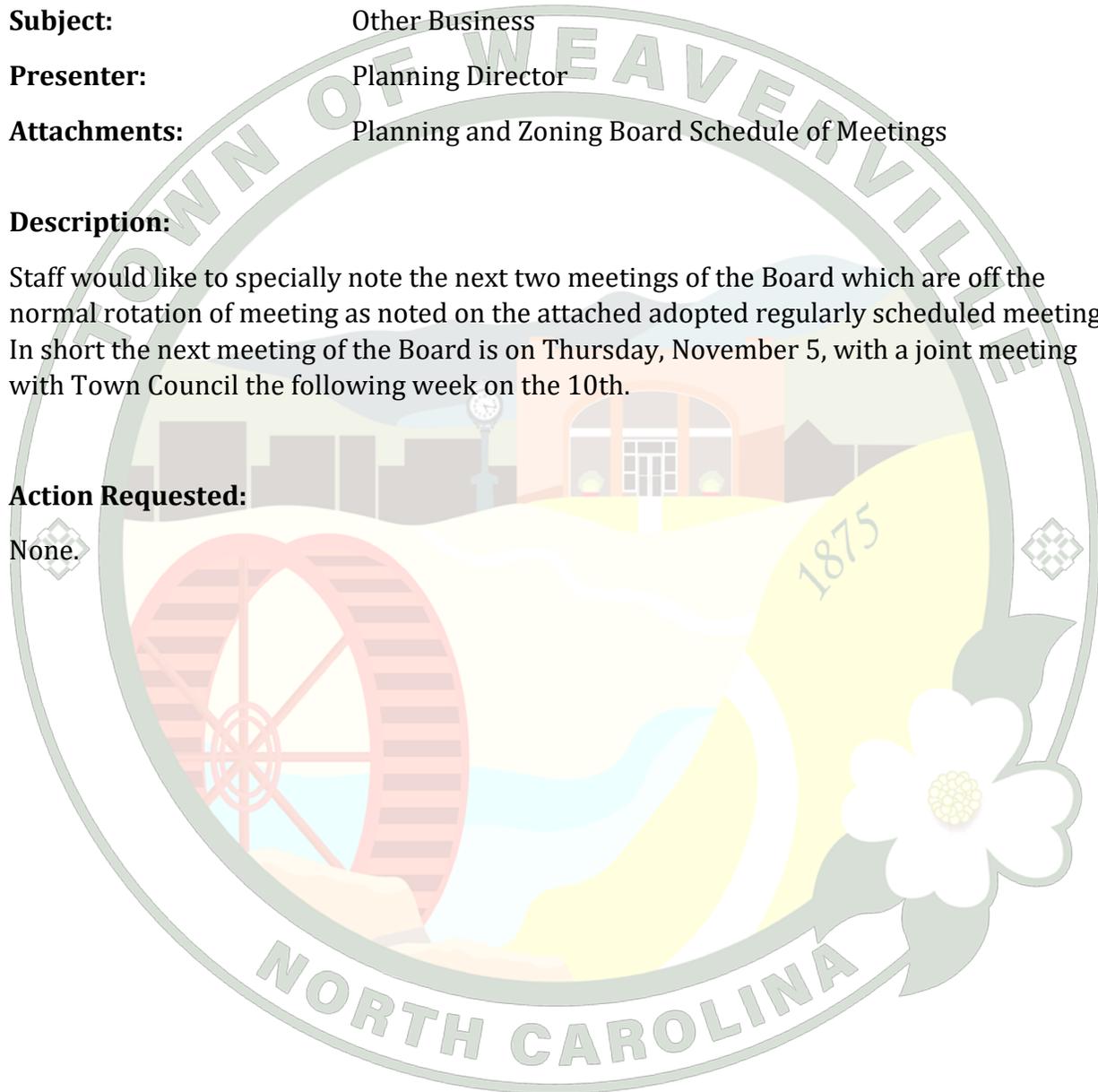
Date of Meeting: Tuesday, October 6, 2020
Subject: Other Business
Presenter: Planning Director
Attachments: Planning and Zoning Board Schedule of Meetings

Description:

Staff would like to specially note the next two meetings of the Board which are off the normal rotation of meeting as noted on the attached adopted regularly scheduled meetings. In short the next meeting of the Board is on Thursday, November 5, with a joint meeting with Town Council the following week on the 10th.

Action Requested:

None.





| TOWN OF WEAVERVILLE PLANNING AND ZONING BOARD 2020 SCHEDULE OF MEETINGS | | |
|--|-------------|------------------|
| Date | Time | Location |
| Tuesday, January 7 | 6:00 | Council Chambers |
| Tuesday, February 4 | 6:00 | Council Chambers |
| Thursday, March 5 | 6:00 | Council Chambers |
| *Tuesday, March 10 | 6:00 | Council Chambers |
| Tuesday, April 7 | 6:00 | Cancelled |
| Tuesday, May 5 | 6:00 | Remote |
| Tuesday, June 2 | 6:00 | Remote |
| Tuesday, July 7 | 6:00 | Remote |
| *Tuesday, July 14 | 6:00 | Remote |
| Tuesday, August 4 | 6:00 | Remote |
| Tuesday, September 1 | 6:00 | Remote |
| Tuesday, October 6 | 6:00 | Remote |
| Thursday, November 5 | 6:00 | Council Chambers |
| *Tuesday, November 10 | 6:00 | Council Chambers |
| Tuesday, December 1 | 6:00 | Council Chambers |

* Joint Meeting with Town Council