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Article 10.1. Review Bodies

Sec. 10.1.1. City Council

A. General Authority

1. The City Council may exercise any and all powers prescribed by North Carolina general and local law, including the City Charter, and as described in this UDO and in the City Code.
2. The City Council shall approve the rules of procedure and bylaws for all City Boards and Commissions.
3. The City Council may adopt rules of ethics for all City Boards and Commissions.

B. Specific Approval Authority

The City Council is responsible for final action regarding:

1. Comprehensive Plan amendments;
2. Text amendments to this UDO;
3. Rezonings;
4. Subdivision waivers;
5. Appeals on administrative subdivision decisions;
6. Subdivision approvals in the Metro-Park Overlay District other than single-unit living;
7. Subdivision approvals in a Historic Overlay District or for a designated Historic Landmark;
8. Historic landmark designations; and
9. Amendments to floodprone area maps.

Sec. 10.1.2. Planning Commission

A. In General

1. Establishment

The Planning Commission is established and may exercise any and all powers prescribed by North Carolina general and local law, including the City Charter, and as described in this UDO and in the City Code, and perform duties as lawfully directed by the City Council.

2. Composition

a. The Planning Commission shall consist of 10 members.

b. Nine members shall reside within the corporate limits of the City. The 9 members shall be appointed by the City Council for terms of no more than 2 years.

c. One member shall reside outside the corporate limits of the City but reside within the limits of the extraterritorial jurisdiction of the City. This member shall be appointed by the Chairman and Board of Commissioners of Wake County for a term of no more than 2 years.

d. Vacancies on the Planning Commission will be filled in the same manner and by the same governing body as the original appointment.

3. Rules of Procedure

a. The Planning Commission shall establish its own rules of procedure, subject to approval by the City Council.

b. The rules, regulations, minutes and actions of the Planning Commission shall be maintained at the office of the City Clerk.

B. Specific Review Authority

The Planning Commission is responsible for review and recommendation regarding:

1. Comprehensive Plan amendments;
2. Text amendments to this UDO; and
3. Rezonings.

Sec. 10.1.3. Board of Adjustment

A. In General

1. Establishment

The Board of Adjustment is established and may exercise any and all powers prescribed by North Carolina general and local law, including the City Charter, and as described in this UDO and in the City Code, and perform duties as lawfully directed by the City Council.

2. Composition

a. The Board of Adjustment shall consist of 5 regular members and 3 alternate members. Four of the regular members and 2 of the alternate members shall reside within the corporate limits of the City. They shall be appointed by the City Council for terms of 2 years.

b. One of the regular members and one of the alternate members shall reside outside the corporate limits of the City but within the limits of the extraterritorial jurisdiction of the City. They shall be appointed by the Chairman and Board of Commissioners of Wake County.

c. Vacancies on the Board of Adjustment will be filled in the same manner and by the same governing body as the original appointment.

d. An alternate member whose place of residence is within the City's corporate limits may vote on the Board of Adjustment only in the absence of a regular member residing within the City's corporate limits or the inability of the regular member to vote.

e. The alternate member from the extraterritorial jurisdiction may vote only in the absence of the Board of Adjustment regular member from the extraterritorial jurisdiction or the inability of the regular member to vote.

f. When serving on the Board of Adjustment, alternate members have the same powers and responsibility as the regular members they are replacing.

3. Vote Required and Jurisdiction

The concurring vote of ⅘ of the members of the Board of Adjustment is necessary to reverse any order or to find in favor of the applicant on any matter upon which the Board of Adjustment is required to pass under this UDO or to grant any variance from this UDO or to approve any special use permit authorized by this UDO.

4. Rules of Procedures

a. The Board of Adjustment shall establish its own rules of procedure, subject to approval by the City Council.

b. The rules of procedure shall at minimum provide for selection of officers of the Board of Adjustment, responsibilities of Board of Adjustment members, order for the conduct of quasi-judicial public hearings and times for filing appeals and holding public hearings.

c. The rules, regulations, minutes and actions of the Board of Adjustment shall be maintained at the office of the City Clerk.

B. Specific Approval Authority

The Board of Adjustment is responsible for final action regarding:

1. Special use permits;
2. Variances;
3. Appeals from administrative decisions (not including decisions on subdivision approvals); and
4. Appeals in the nature of certiorari of Historic Development Commission decisions granting or denying certificates of appropriateness.

Sec. 10.1.4. Historic Development Commission

A. In General

1. Purpose

a. The City is authorized by the North Carolina General Statutes to safeguard the heritage of the City by preserving any property or district that embodies important elements of its culture, history, architectural history or prehistory and to promote the use of and conservation of historic districts and historic landmarks for the education, pleasure and enrichment of the residents of the City and state as a whole.

b. The purpose of the Historic Development Commission is to provide the organizational vehicle by which certain areas, structures, buildings and objects within the City's planning jurisdiction that have special significance in terms of history, prehistory, architecture, archaeology and culture and possess integrity of design, setting, materials, feeling and association may be preserved and protected.

2. Composition

a. The Historic Development Commission consists of 12 members, appointed by City Council for uniform overlapping 2-year terms.

b. A majority of the members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields.

c. All members shall reside either within the City's corporate limits or within its extraterritorial jurisdiction area.

d. At least ¼ of the membership shall either reside or own property in a Historic Overlay District or that is designated as a Raleigh Historic Landmark.

e. The Historic Development Commission may appoint advisory bodies and committees as appropriate.

f. In event of a vacancy, the City Council shall appoint a new member within 60 days; members shall serve until their successors have been appointed.

3. Rules of Procedure

a. The Historic Development Commission may establish its own rules of procedure, subject to approval by the City Council.

b. The rules of procedures shall at minimum provide for selection of the officers of the Commission, the time and place of its regular meetings, which shall at least be held monthly, the calling of special meetings and the procedures for the conduct of public hearings and voting.

c. The Historic Development Commission shall elect from its membership a chairperson and vice-chairperson, who shall serve for terms of 1 year, who shall be eligible for reelection and who shall have the right to vote. The chairperson shall preside over the Commission.

d. In the absence or disability of the chairperson, the vice-chairperson shall perform the duties of the chairperson.

e. The rules, regulations, minutes and actions of the Historic Development Commission shall be maintained as a separate document as a public record at the office of the Commission.

B. General Authority

The powers of the Historic Development Commission are as follows.

1. Undertake an inventory of properties of historical, prehistorical, architectural, archaeological or cultural significance.
2. Recommend to the City Council districts or areas to be designated as a Historic Overlay District and recommend individual structures, buildings, sites, areas or objects to be designated as Historic Landmarks.
3. Recommend to the City Council that designation of any area as a Historic Overlay District or part of a Historic Overlay District be revoked or removed for cause and recommend that designation of individual structures, buildings, sites, areas or objects as Historic Landmarks be revoked or removed for cause.
4. Restore, preserve and operate historic properties.
5. Conduct an educational program with respect to historic properties and districts within its jurisdiction.

6. Cooperate with the State, Federal and local governments. The City Council or the Historic Development Commission, when authorized by the City Council, may contract with the State or the United States of America or any agency of either or with any other organization provided the terms are not inconsistent with State or Federal law.
7. Request the advice and assistance of any officer or agency of the City Council with respect to any matter arising under its purview.
8. Enter, solely in performance of its official duties and only at reasonable times, upon private land for examination or survey. However, no member, employee or agent of the Historic Development Commission may enter any private building or structure without either the express consent of the owner or occupant or authority of law.
9. Conduct any meetings or hearings necessary to carry out the responsibilities of the Historic Development Commission.
10. Acquire by any lawful means the fee or any lesser included property interest, including options to purchase, to properties within any established Historic Overlay District or to any properties designated as Historic Landmarks, to hold, manage, preserve, restore and improve the same and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property. All lands, buildings or structures acquired by the Historic Development Commission from funds other than those appropriated by the City Council may be acquired and held in the name of the Historic Development Commission, the City or both.
11. Recommend to the City Council acquisition of the fee or any lesser included property interest (including public access), preservation easements and other covenants of historic property. The City Council may make appropriations and own such property under the following conditions:
    a. Acquisition. Within the limits of its jurisdiction for planning and regulation of development the City Council may acquire properties within Historic Overlay Districts and/or properties designated as Historic Landmarks. In the event the property is acquired but is not used for some other governmental purpose, it shall be deemed to be "museum" under the provisions of General Statutes notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public;
    b. Ownership. All lands, buildings, structures, sites, areas or objects acquired by funds appropriated by the City Council shall be acquired in the name of the City unless otherwise provided by the City Council. So long as owned by the City, historic properties may be maintained by or under the supervision and control of the City; and
    c. Negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.
12. Take steps, during the period of postponement of demolition of any Historic Landmark or property within a Historic Overlay District, to ascertain what the City Council can or may do to preserve such property, including consultation with private civic groups, interested private citizens and other public boards or agencies and including investigation of potential acquisition by the City Council when the preservation of a given historic property is clearly in the interest of the general welfare of the community and such property is of certain historic and architectural significance.
13. Propose to the City Council changes to the Historic Overlay District regulations or any other ordinance and propose new ordinances or laws relating to Historic Landmarks and the Historic Overlay District or relating to a total program for the protection or development of the historic resources of the City.
14. Study and recommend to the City Council means by which historic preservation efforts can be coordinated and strengthened.
15. Study and recommend revisions to the Historic Preservation Element of the Comprehensive Plan.
16. Review and act upon proposals for restoration, alteration, reconstruction, relocation, demolition or new construction within a Historic Overlay District, pursuant to procedures established in this UDO and for proposals for alteration, reconstruction, restoration, relocation, new construction or demolition of designated Historic Landmarks outside a Historic Overlay District, pursuant to procedures outlined in this UDO.

17. Report violations of Historic Landmark and Historic Overlay District regulations or other ordinances affecting Historic Landmarks and properties within Historic Overlay Districts, to the appropriate enforcement agency.
18. Accept funds to be used for preservation purposes that are granted to the Historic Development Commission by private individuals, organizations and local governing bodies.
19. Receive appropriations as may be made to the Historic Development Commission by the City Council.
20. Planning and Development shall provide such technical, administrative and clerical assistance as required by the Historic Development Commission.

C. Specific Review Authority

1. The Historic Development Commission is responsible for review and recommendation regarding:
   a. Historic district rezoning;
   b. Historic landmark designation; and
   c. Subdivision approvals in a Historic Overlay District or for a designated Historic Landmark.

D. Specific Approval Authority

The Historic Development Commission is responsible for final action on certificates of appropriateness that are subject to summary proceedings or to a quasi-judicial public hearing.

Sec. 10.1.5. Appearance Commission

A. In General

1. Establishment

The Appearance Commission is established to exercise any and all powers prescribed by North Carolina general and local law under N.C. Gen.Stat. §160A, Article 19, Part 7, including the City Charter, and to perform duties as lawfully directed by the City Council.

2. Composition

a. The Appearance Commission shall be composed of 15 members who shall reside either within the City corporate limits or within the extra-territorial jurisdiction of the City.

b. Members of the Appearance Commission shall be appointed by the City Council. Each member shall be appointed for a term of 2 years.

c. Where possible, appointments to the Appearance Commission shall be made in such manner as to maintain a majority of members with special training or experience in a field of design such as architecture, landscape design, horticulture, city planning, urban design or a closely-related field.

3. Rules of Procedure

a. The Appearance Commission shall establish its own rules of procedure, subject to approval by the City Council.

b. The Appearance Commission shall, no later than April 15 of each year, submit to the City Council a written report of its activities, a statement of its expenditures to date for the current fiscal year and its requested budget for the next fiscal year. All accounts and funds of the Appearance Commission shall be administered in accordance with the requirements of all applicable State and local laws.

c. The Appearance Commission may receive contributions from private agencies, foundations, organizations, individuals and the State or Federal government or any other source in addition to any sums appropriated for its use by the City Council. It may accept and disburse these funds for any purpose within the scope of its authority as specified in this section and under all applicable State and local laws.

d. The rules, regulations, minutes and actions of the Appearance Commission shall be maintained by Planning and Development.

B. General Authority

1. The Appearance Commission shall make a careful study of the visual aspects of the City and its planning and zoning jurisdiction and shall make plans and carry out programs that will enhance and improve the visual quality and aesthetic characteristics of such areas within the Appearance Commission's scope of the powers.
2. The Appearance Commission may recommend to the City Council suitable arrangements for the procurement or provision of staff or technical services for the Commission and may establish an advisory council or other committee to aid it in its work.
3. The Appearance Commission shall in accordance with this UDO conduct public meetings and evaluate requests for Administrative Alternates and may recommend to the Planning and Development Officer approval of the alternate, approval of the alternate with changes or denial of the alternate.

Sec. 10.1.6. Open Meeting Requirements

Meetings of the City Council and its Boards and Commissions are subject to all applicable requirements of the North Carolina open meetings law.

Sec. 10.1.7. Planning and Development Officer

A. Delegation of Authority

1. The Planning and Development Officer serves as the administrator of this UDO unless otherwise stated.
2. The Planning and Development Officer may designate any staff member as their designee in any function assigned by this UDO to Planning and Development; the Planning and Development Officer remains responsible for any action taken by their designee.
3. The Planning and Development Officer is the administrative director of Planning and Development and has the authority to supervise all activities and decisions of Planning and Development.

B. General Authority

The functions and duties of the Planning and Development Officer include:

1. Administration and coordination of the City's planning program, including liaison information and technical assistance to citizens, community groups, commissions and supervision of planning studies and reports;
2. Administration of land use controls such as this UDO and their technical maintenance;
3. Assembling of data, preparation of maps, maintenance of a complete information system and development of planning policy and implementation for the comprehensive planning process;
4. Assistance in implementation of plans, studies and coordination of efforts dealing with environment, open space, urban design and historic preservation;
5. Neighborhood studies and coordination with regard to housing and neighborhood planning;
6. Economic development;
7. Transportation planning;
8. Assistance to other City departments;
9. Receive development plans, permit review, schedule inspections and issue permits; and
10. Urban design.

C. Specific Review Authority

The Planning and Development Officer is responsible for review and recommendation (unless otherwise noted) regarding:

1. Comprehensive Plan amendments;
2. Text amendments to this UDO;
3. Rezonings (review only)
4. City Council approved subdivisions (review only);
5. Special use permits (review only);
6. Variances (review only);
7. Historic Landmark designations;
8. Major certificates of appropriateness (review only); and
9. Subdivision waivers (review only).

D. Specific Approval Authority

Subject to any right of appeal, the Planning and Development Officer is responsible for final action regarding:

1. Preliminary subdivision plans except for subdivision approvals, other than single-unit living in the Metro-Park Overlay District, subdivision approvals in any Historic Overlay District or for a designated Historic Landmark or when a subdivision waiver is requested;
2. Final subdivision plats;
3. Zoning permits;
4. Plot plans;
5. Site plans;
6. Minor certificates of appropriateness;
7. Temporary use permits; and
8. Administrative alternates.

Sec. 10.1.8. Summary of Review Authority

The following table summarizes the review and approval authority of the various review bodies with regard to this UDO.

	ADMINISTRATION		REVIEW BODIES					PUBLIC NOTICE				
APPROVAL PROCESS	X-ref	City Official	Historic Development Commission	Appearance Commission	Board of Adjustment	Planning Commission	City Council	Neighborhood Meeting	Web	Site Posted	Mailed	Published
Comprehensive Plan Amendment	*Sec. 10.2.2.*	RR				RR	D-PH		Y		Y[2]	Y[3]
Text Amendment to UDO	*Sec. 10.2.3.*	RR				RR	D-PH		Y			Y[3]
Rezoning Map Amendment	*Sec. 10.2.4.*	R	R[1]			RR	D-PH	Y	Y	Y	Y	Y[3]
Subdivision Review	*Sec. 10.2.5.*											
Preliminary Subdivision Plan		D	R[1]						Y		Y	
Final Subdivision Plat		D										
Subdivision Waiver		R					D-QH		Y	Y	Y	
Subdivisions in an -MPOD (other than single-unit living)		R					D-QH		Y		Y	
Subdivisions in a -HOD-G or -HOD-S or properties with Historic Landmarks		R	RR				D-QH		Y		Y	
Other Map Approvals		D							Y			
Non-Subdivision Final Plat and Recorded Instruments	*Sec. 10.2.6.*	D					A-QH		Y			
Plot Plan Review	*Sec. 10.2.7.*	D			A-QH							
Site Plan Review	*Sec. 10.2.8.*	D			A-QH				Y	Y		
Special Use Permit	*Sec. 10.2.9.*	R			D-QH				Y	Y	Y	Y
Variance	*Sec. 10.2.10.*	R			D-QH				Y	Y	Y	Y
Common Signage Plan	*Sec. 10.2.12.*	D			A-QH							
Temporary Use Permit	*Sec. 10.2.13.*	D			A-QH				Y			
Written Interpretation of UDO	*Sec. 10.2.14.*	D			A-QH				Y	Y[5]	Y[5]	
Certificate of Appropriateness	*Sec. 10.2.15.*											
Minor		D	A-QH						Y			
Major		R	D-QH		A-QH				Y	Y	Y	Y
Historic Landmark Designation	*Sec. 10.2.16.*	R	R[1]				D-JH		Y	Y		Y
Administrative Alternative	*Sec. 10.2.17.*	D		RR[4]	A-QH				Y		Y	
Design Adjustment	*Sec. 10.2.18.*	D							Y		Y	
Vested Rights	*Sec. 10.2.19.*	R					D-QH		Y	Y	Y	Y

KEY: R = Review RR = Review & Recommendation D = Final Decision A = Appeal PH = Public Hearing QH = Quasi-Judicial Public Hearing
JH = Joint Public Hearing with Historic Development Commission Y = Required

[1] Historic Development Commission reviews applications in -HOD-G, -HOD-S or properties with Historic Landmarks.
[2] Staff to provide mailed notice to non-applicant property owners of proposed future land use map alterations in accordance with Comprehensive Plan.
[3] Published notice is only required for the Public Hearing.
[4] Appearance Commission review as specified in this UDO.
[5] Site posting and mailed notice provided only for written interpretations associated with a specific site plan or subdivision.

Article 10.2. Review Procedures

Sec. 10.2.1. Common Review Procedures

A. Applicability

The following requirements are common to many of the procedures contained in this UDO and apply to applications submitted under this Chapter. Additional details may be included for each specific procedure.

B. Application Requirements

1. Initial Application Submittal

All applications for development approval shall be submitted in accordance with the requirements of this UDO and shall be filed with Planning and Development.

2. Forms

Applications required under this UDO must be submitted, fully completed, on forms and in such numbers as required by the City. For required application forms, as may be found on the City's web portal, see *Sec. 10.2.2.* through *Sec. 10.2.18.*

3. Fees Schedule

a. Filing fees have been established to help defray the cost of processing applications. Fees shall be listed in the Development Fee Schedule. The fee schedule is kept on file by Planning and Development and except as otherwise provided in the Development Fee Schedule is updated annually on July 4th based on the average annual prior calendar year United States Department of Labor Consumer Price Index - All Urban consumers and as may be modified from time to time by the City Council.

b. Before review of an application, including applications for re-hearings, all filing fees must be paid in full. No refund of the fee or any part of the fee shall be made unless the application is withdrawn prior to a hearing.

c. A fee shall not be required if the application is made by the City or any agency created and appointed by the City Council to perform governmental functions.

4. Application Deadline

Complete applications shall be submitted in accordance with the City's filing calendar. A calendar indicating submittal dates shall be developed by the Planning and Development Officer each year and shall be maintained and updated by Planning and Development.

C. Public Notice Requirements

For public notice, meeting and hearing requirements applicable to each procedure, see *Sec. 10.1.8.* Any defective notification of a required City procedure, not otherwise required by State or Federal law, does not invalidate the proceedings if the defect is determined to be harmless error by the City.

1. Mailed Notice

a. Whenever mailed notice is required by *Sec. 10.1.8.*, at the time of submission of the application, the applicant shall deliver to Planning and Development sealed, first class stamped envelopes addressed to the property owners of the property included in the proposed application and the owners of all property within 100 feet on all sides of the subject property at the time of submittal.

b. When mailed notice is required for pre-submittal public meetings, the applicant may provide to the City return receipts from the mailing notification by the applicant to the required property owners by certified mail, returned receipt requested.

c. Mailed notice shall be provided to all property owners as listed in the Wake County tax records that own property within 100 feet of the application at the time of submittal. Additionally, all property owners in the area of request shall receive mailed notice. In calculating this 100-foot radius, adjacent right-of-way shall not be counted, unless the right-of-way is at least 100 feet in width.

d. Mailed notices must be sent to the addressees at least 10 calendar days prior and not more than 25 calendar days prior to the date of any public meeting.

e. Except as otherwise directed by the City Council, the City Board or Commission reviewing the matter shall not require additional notification.

f. For zoning map amendments that directly affect more than 50 properties owned by a total of at least 50 different property owners, the City may

elect to forego mailed notice and instead give notice of the public hearing by publication provided that the newspaper advertisement is not less than ½ of a newspaper page in size. Property owners who reside outside of the newspaper circulation area, according to the addresses listed in the most recent property tax listing for the affected properties, shall be notified by first class mail.

g. Except for a City-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the City Council that the owner of the parcel of land, as shown on the county tax listing, has received actual notice of the proposed amendment and a copy of the notice of public hearing. The applicant shall certify to the City Council that proper notice has been provided in fact and such certification shall be deemed conclusive in the absence of fraud.

h. Actual notice of the proposed amendment and a copy of the notice of public hearing shall be by any manner permitted under N.C. Gen. Stat. §1A-1, Rule 4(j).

i. If notice with due diligence cannot be achieved by personal delivery, registered or certified mail or by a designated delivery service, notice may be given by publication consistent with N.C. Gen. Stat. §1A-1, Rule 4(j1). (See N.C. Gen. Stat. §160A-384).

j. For quasi-judicial hearings, mailed notice shall be provided to all other persons with an ownership interest in the subject property as set forth in all applicable State and local laws.

2. Published Notice

a. When published notice is required, notice of the public hearing shall be published by Planning and Development at least once in a newspaper having general circulation in the City not more than 25 or less than 10 calendar days prior to the date of the public hearing.

b. In the case of any ordinance adopting, amending or repealing any provision of this UDO, including zoning map amendments, notice of a public hearing shall be published once a week in a newspaper having general circulation within the City for 2 successive calendar weeks.

c. In determining the time period, the day of publication is not to be included but the day of the hearing shall be included.

3. Web Notice

a. When web notice is required, notice shall be posted on the City's web portal within 5 business days following acceptance of a complete application; required web notice of the decision shall be posted on the City's web portal no later than 3 business days from the date of decision.

b. When web notice of any public meeting is required, notice of the public meeting shall be posted on the City's web portal not more than 10 business days prior to the date of the public hearing.

c. In determining the time period, the day of posting on the City's web portal is not to be included but the day of the hearing shall be included.

4. Posted Notice

a. When posted notice of any public meeting is required, signage shall be posted by the City on the property at a point visible from the nearest public street or streets if the property fronts on multiple streets.

b. In the case of multiple parcels, a posting on each individual parcel is not required, but sufficient signage shall be posted to provide reasonable notice to interested persons.

c. The sign shall not measure less than 18 inches x 24 inches. Signage shall be posted at least 10 calendar days prior to the date of the public meeting.

d. The posted sign shall be returned to Planning and Development by the applicant either at the public meeting or within 3 business days following the public meeting.

5. Content of Notice

a. Published, Web or Mailed Notice

The content of required published, web or mailed notice shall be as follows:

i. A case number;

ii. The address or Parcel Identification Number of the subject property (if available);

iii. The general location of the land that is the subject of the application, which may include a location map;

iv. A description of the action requested and nature of the questions involved;

v. The time, date and location of the public hearing, public meeting or the neighborhood meeting if applicable and the name of the reviewing body;

vi. A phone number and e-mail address to contact Planning and Development;

vii. The address for the City's web portal;

viii. A statement that persons may appear at the public hearing, public meeting or at the neighborhood meeting if applicable or make written comments to the Planning and Development Officer as applicable; and

ix. A statement that more specific information is available at Planning and Development.

b. Posted Notice

Required posted notice of a public meeting or public hearing shall provide at least the following:

i. A case number;

ii. A description of the action requested;

iii. The address for the City's web portal; and

iv. A phone number and e-mail address to contact Planning and Development.

6. Notice of Decision

a. Except when notice is provided by permit issuance, notice of decision shall provide at least the following:

i. A case number;

ii. The address of the subject property (if available and relevant);

iii. The general location of the land (if relevant) that was the subject of the application, which may include a location map;

iv. A description of the application;

v. The date the application was decided;

vi. A description of whether the application was approved, approved with conditions or denied;

vii. A phone number and e-mail address to contact Planning and Development; and

viii. The address for the City's web portal.

b. Unless otherwise stated by general law, this UDO or by the rules of procedure adopted by the applicable reviewing body, within 10 business days following the effective date of a decision, a copy of the decision shall be sent by either electronic notification or first class mailing to the applicant and the property owner (if the property owner is not the applicant) and filed with Planning and Development, where it shall be made available for public inspection during regular office hours. In the case of permit issuance, receipt of the permit by the applicant, contractor, property owner or their representative shall constitute written notice of the decision.

c. In the case of a quasi-judicial decision, notice of the decision shall also be given to the applicant, the property owner (if the property owner is not the applicant) and each person who has filed a written request for notice with the presiding officer or secretary of the reviewing body (if any) at the time of the hearing of the case, with such notice to be delivered to the requesting party by either personal service or by registered mail or certified mail, return receipt requested.

D. Additional Requirements

1. Quasi-Judicial Public Hearing Requirements

For notice and hearing requirements applicable to each quasi-judicial procedure see *Sec. 10.1.8.*

a. Rules of Procedure

i. In all quasi-judicial hearings, rulings must be based only upon the evidence received by the reviewing body at the hearing.

ii. The review body shall act as an impartial decision-maker. No member shall 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 conflicts include, but are not limited to, a member having a fixed opinion prior to the hearing of the matter that is not susceptible to change, undisclosed ex-parte communication, a close financial business or other associational relationship with an affected person or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not excuse themself, the remaining members of the review body shall by majority vote rule on the objection.

iii. The reviewing body shall act as a fact-finding body and shall approve or disapprove the application in accordance with the evidence presented before it which is substantial, competent, relevant and material.

iv. The burden of proof is upon the party who files the application and if the party fails to meet its burden, the reviewing body shall deny the request.

b. Conduct of Hearing

i. The presiding officer of the reviewing body shall call the proceedings to order and announce that the hearing has begun.

ii. All witnesses who are to testify at the hearing shall be sworn in.

iii. The Planning and Development Officer shall briefly describe the applicant's request, introduce and review all relevant City Code provisions and answer questions from the reviewing body.

iv. The applicant (if acting in a pro se capacity) or their legal counsel shall present the case in support of its application.

v. Parties in interest, including the City, shall have the right to present evidence and cross-examine witnesses, as to any competent, material and relevant facts, inspect documents and make oral argument.

vi. Counsel for the reviewing body may advise the reviewing body as to the applicable law and the findings of fact that must be made to approve or deny the request.

vii. The reviewing body shall conduct open deliberation of the application. The presiding officer of the reviewing body shall have the discretion to reopen proceedings for additional testimony or argument by the parties when the reviewing body determines that a decision cannot be made with the testimony at hand.

viii. Reasonable and appropriate conditions and safeguards may be imposed as part of any approval. A condition offered by the reviewing body for an approval must be related to the evidence received by the reviewing body at the hearing as provided for under all applicable State and local laws.

ix. Every decision shall include the vote, abstention from voting or absence of each member. The decision, including findings of fact and conclusions of law, shall be filed with the City Clerk. A written copy of the decision shall be delivered in accordance with *Sec. 10.2.1.C.6.*

x. The presiding officer of the reviewing body shall rule on the admissibility of evidence and make determinations on whether evidence is competent, material, relevant or redundant.

c. Examination

Members of the reviewing body may ask questions of persons presenting testimony or evidence at any time during the proceedings until commencement of deliberation.

d. Cross-Examination of Witnesses

After each witness testifies, testimony is subject to cross-examination.

e. Rules of Evidence

i. Competent evidence 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 General Court of Justice if;

a) The evidence was admitted without objection; or

b) The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the reviewing body to rely upon it.

ii. Competent evidence shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a) The use of property in a particular way would affect the value of other property;

b) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; and

c) Matters about which only expert testimony would generally be admissible under the rules of evidence.

iii. Documentary business records may be presented in the form of a copy or the original. Upon request, parties shall be given an opportunity to compare the copy with the original.

f. Statements of Counsel

Statements of counsel, or any individual acting in a pro se capacity, shall only be considered as argument and not testimony unless counsel or the individual is sworn in and the testimony is based on actual personal knowledge of the matters which are the subject of the statements.

g. Continuances and Deferrals

The reviewing body shall consider requests for continuances and may grant continuances in its sole discretion. If, in the opinion of the reviewing body, any testimony or documentary evidence or information presented at the hearing justifies allowing additional research or review in order to properly determine the issue presented, then the reviewing body may continue the matter to a time certain to allow for such research or review.



Sec. 10.2.2. Comprehensive Plan Amendment

A. Applicability

1. The City Council shall consider amendments to the Comprehensive Plan.
2. Amendments to the Comprehensive Plan shall be made in accordance with the provisions of this section.

B. Pre-Application Conference

Before submitting an application for a Comprehensive Plan amendment, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

C. Application Requirements

1. An application for a Comprehensive Plan amendment shall be submitted in accordance with the general application requirements of *Sec. 10.2.1.B.*
2. An application for a Comprehensive Plan amendment will only be accepted in accordance with the City's filing calendar.
3. A Comprehensive Plan Amendment form must be filled out completely to initiate a change.

D. Approval Process

1. Planning and Development Officer Action

a. The Planning and Development Officer shall review the application for a Comprehensive Plan amendment in accordance with Planning and Development Officer Review in *Sec. 10.2.2.E.* and provide a report and recommendation to the Planning Commission no later than Planning Commission's next public meeting.

b. The Planning and Development Officer shall also provide a report and recommendation to the City Council when the City Council considers authorizing a public hearing on the proposed Comprehensive Plan amendment.

2. Planning Commission Action

a. Within 45 days following submission of a completed application and City approval of all required technical documents, the Planning Commission shall hold a public meeting on the proposed amendment which shall be noticed in accordance with *Sec. 10.1.8.* and *Sec. 10.2.1.C.*

b. The Planning Commission may refer the proposed amendment to a work session of the Planning Commission or 1 of its committees for additional consideration or the Planning Commission may act upon the application.

c. Within 90 days after its receipt of the proposed amendment, the Planning Commission shall make its recommendation to the City Council. Within this time period, the Planning Commission may request extensions of time which may be granted by the City Council. If no recommendation is made within this time period and if no extension is granted, the City Council may take action on the application without further involvement of the Planning Commission.

d. The Planning Commission shall make its recommendation to the City Council in writing. The Planning Commission shall recommend that the request be approved, approved as revised, denied or request further study.

3. Public Hearing by City Council

a. Following the recommendation of the Planning Commission or expiration of the applicable Planning Commission review period without a recommendation, the City Council shall conduct a public hearing. Notice of the public hearing shall occur within 60 days of receiving the request from the Planning Commission.

b. The public hearing shall be noticed in accordance with *Sec. 10.1.8.* and *Sec. 10.2.1.C.*

4. City Council Public Hearing and Action

a. Before taking final action on a proposed Comprehensive Plan amendment, the City Council may consider the recommendations of the Planning Commission and Planning and Development Officer and comments made at the public hearing.

b. The City Council may review the application in light of the considerations in *Sec. 10.2.2.E.*

c. The City Council shall approve, approve as revised, deny, send the proposed Comprehensive Plan amendment back to the Planning Commission or Planning and Development Officer for additional consideration.

d. Approval by the City Council shall include the adoption of a statement describing how the City Council considers the action taken to be reasonable and in the public interest.

e. All enactments, amendments and changes must be in the form of a resolution. Copies of Comprehensive Plan amendments shall be kept on file at the office of the City Clerk.

E. Considerations for Planning and Development Officer Review

The following lists of considerations for the Planning and Development Officer's review and recommendations regarding a proposed Comprehensive Plan amendment are not all-inclusive. Review and recommendations of proposed Comprehensive Plan amendments may consider whether:

1. The proposed amendment corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed amendment is in response to changes in state law;
3. The proposed amendment constitutes a substantial benefit to the City as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time; and
4. The proposed amendment is consistent with other identified Plan policies and adopted area plans;
5. The impact of the proposed amendment has with regard to:
   a. Established property or proposed development in the vicinity of the proposed amendment;
   b. Existing or future land use patterns;
   c. Existing or planned public services and facilities;
   d. Existing or planned roadways;
   e. The natural environment, including air, water, noise, stormwater management, wildlife and vegetation; and
   f. Other policies of the Comprehensive Plan.



Sec. 10.2.3. UDO Text Amendment

A. Applicability

1. The City Council shall consider amendments to the text of this UDO.
2. Amendments to the text of this UDO shall be made in accordance with the provisions of this section.

B. Pre-Application Conference

Before submitting an application for a UDO text amendment, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

C. Application Requirements

1. An application for a UDO text amendment shall be submitted in accordance with the general application requirements of *Sec. 10.2.1.B.*
2. A UDO text amendment request by a member of the public also requires authorization by the City Council.
3. City Council may reject the petition or direct further consideration of the UDO text amendment request in accordance with *Sec. 10.2.3.D.*

D. Approval Process

1. Planning and Development Officer Action

a. The Planning and Development Officer shall provide a report and recommendation to the City Council when the Council considers authorizing a public hearing on a UDO text amendment.

b. Upon submittal, the Planning and Development Officer shall review the application for a UDO text amendment in accordance with *Sec. 10.2.3.E.* and provide a report and recommendation to the Planning Commission within 45 days of submittal of a completed application. The Planning and Development Officer may request additional time from the City Council.

2. Planning Commission Action

a. Upon acceptance of the UDO text amendment application, the Planning Commission shall hold a public meeting to discuss the UDO text amendment. Public notice of the text amendment shall be provided in accordance with *Sec. 10.1.8.*

b. The Planning Commission may refer the application to a work session of the Planning Commission or to 1 of its committees for additional consideration.

c. Within 90 days after receipt of the proposed amendment, the Planning Commission shall make its recommendation to the City Council. Within this time period, the Planning Commission may request extensions of time which may be granted by the City Council. If no recommendation is made within this time period and if no extension is granted, the City Council may take action on the application without further involvement of the Planning Commission.

d. A recommendation by the Planning Commission shall include the adoption of a statement describing how the Planning Commission considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.

e. The Planning Commission shall make its recommendation to the City Council in writing. The Planning Commission shall recommend that the request be approved, approved as revised, denied or request further study.

3. Authorization for Public Hearing by City Council

a. Following the recommendation of the Planning Commission or expiration of the applicable Planning Commission review period without a recommendation, the City Council shall conduct a public hearing. Notice of the public hearing shall occur within 60 days of receiving the request from the Planning Commission.

b. Notice of the public hearing shall be given in accordance with *Sec. 10.1.8.*

4. City Council Public Hearing and Action

a. Before taking final action on a UDO text amendment, the City Council may consider the recommendations of the Planning Commission and Planning and Development Officer and comments made at the public hearing.

b. The City Council shall approve, approve as revised, deny, send the proposed UDO text amendment back to the Planning Commission or Planning and Development Officer for additional consideration.

c. Approval by the City Council shall include the adoption of a statement describing how the City Council considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.

d. All enactments, amendments and changes must be in the form of an ordinance. Copies of adopted city ordinances shall be kept on file at the office of the City Clerk.

E. Considerations for Planning and Development Officer Review

The following lists of considerations for the Planning and Development Officer's review and recommendations regarding a UDO text amendment application are not all-inclusive. Review and recommendations on UDO text amendments to this UDO by the Planning and Development Officer may consider whether:

1. The proposed text amendment corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed text amendment is in response to changes in state law;
3. The proposed text amendment is generally consistent with the Comprehensive Plan and adopted area plans;
4. The proposed text amendment does not conflict with any specific policy or action item of the Comprehensive Plan;
5. The proposed text amendment is generally consistent with the stated purpose and intent of this UDO;
6. The proposed text amendment constitutes a benefit to the City as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time;
7. The proposed text amendment significantly impacts the natural environment, including air, water, noise, stormwater management, wildlife and vegetation; and
8. The proposed text amendment significantly impacts existing conforming development patterns, standards or zoning regulations.



Sec. 10.2.4. Rezoning

A. Applicability

1. The City Council may on its own motion initiate changes to the Official Zoning Map and shall consider amendments to the Official Zoning Map.
2. Amendments to the Official Zoning Map shall be made in accordance with the provisions of this section.

B. Zoning Change Requirements

1. Where practicable, zoning changes should correspond with the boundary lines of existing tracts and lots.
2. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, the applicant shall revise the request to include all property necessary to meet zoning requirements.

C. Pre-Application Conference

Before submitting an application for rezoning, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

D. Neighborhood Meeting

1. A pre-submittal neighborhood meeting is required for all applications for a zoning map amendment, except where the City is the applicant. The applicant shall provide an opportunity to meet with property owners within or adjacent to the development site.
2. The required neighborhood meeting must be conducted prior to submittal of the rezoning application. The meeting may not occur more than 6 months prior to the submittal of the application. Notice of the neighborhood meeting must be provided in accordance with *Sec. 10.2.1.C.1.*
3. A report of the meeting, made by the applicant, shall be included with the zoning application given to Planning and Development.
   a. The report shall include at a minimum, a list of those persons and organizations contacted about the neighborhood meeting, the date, time and location of the meeting, a roster of the persons in attendance at the meeting and a summary of issues discussed at the meeting.

E. Application Requirements

1. General Requirements

a. An application for a rezoning shall be submitted in accordance with the general application requirements of *Sec. 10.2.1.B.*

b. A Rezoning Application form must be filled out to initiate a rezoning request.

2. Additional Requirements for Conditional Use Applications

a. An application for a conditional use rezoning may specify the use or uses prohibited or the use or uses allowed, including the maximum number of dwelling units and all development regulations which are requested for the property submitted for rezoning. The requested use or uses must be permitted in the corresponding general use district.

b. All those regulations which apply to the corresponding general use zoning district are the minimum requirements in the conditional use district.

c. Conditions which represent greater restrictions on development and use of the property than would apply in the corresponding general use district or which involve subdivision, stormwater control, flood protection or other limitations on land which may be regulated by City and State law, may be specified in the application.

d. Zoning conditions associated with a lot line common to the subject property and an adjacent property shall reference the Deed Book / Page Number or recorded Book of Maps / Page Number of the associated adjacent property.

e. No condition may be made part of the petition which specifies ownership status, race, religion or character of occupant, minimum value of improvements or any other exclusionary device.

f. No condition shall be submitted that proposes to regulate right-of-way reimbursement values, prohibit cross-access or public street connections or extensions, prohibit submittal of a traffic impact analysis, nor shall any site plans, renderings or other images be submitted as part of the conditional use rezoning application unless all elements of the site plan, rendering or image graphically illustrate the written text of the conditions in which case the written zoning conditions shall remain as the controlling instrument.

g. No condition may be made part of the petition which duplicates an existing City code requirement.

h. For any condition specified on the petition that may affect potential compliance with the requirements of this UDO or any other City ordinance on the property requested for rezoning, proper submittal of information and review shall be requested by Planning and Development, prior to a City Council decision on the rezoning.

i. No condition may be made part of the petition which specifies the establishment and protection of tree conservation areas or tree protection areas unless the condition ensures that 100% of the critical root zones of trees proposed for protection and located on the subject rezoned property shall also be undisturbed areas.

3. Additional Requirements for CMP and PD District Applications

In addition to a Rezoning Application, a Master Plan Application Package must be submitted in complete form to initiate a Campus (*Article 4.6. Campus (CMP)*) or Planned Development (*Article 4.7. Planned Development (PD)*) rezoning.

4. Additional Requirements for -HOD-G, -HOD-S and Historic Landmarks Applications

a. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any proposed -HOD-G and -HOD-S and a description of the boundaries of the district, changes in boundaries or de-designation due to loss of significance, shall be prepared and/or reviewed by the Historic Development Commission. The City Council shall refer the report to the North Carolina Department of Cultural Resources.

b. The Department of Cultural Resources, acting through an agent or employee designated by its Secretary, may analyze and make recommendations concerning such report and description of proposed boundaries. Failure by the Department of Cultural Resources to submit its written analysis and recommendations to the City within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the City of any responsibility for awaiting such analysis (N.C. Gen. Stat. §160A-400.4(b)2).

c. The City Council may refer the report and proposed boundaries to the Planning Commission, in accordance with *Sec. 10.2.4.F.4.* and to any other interested body for its recommendations prior to taking action to amend the Official Zoning Map.

5. Additional Requirements for -NCOD Applications

a. Except for applications filed by the City or otherwise authorized by the City Council, Planning and Development is instructed not to accept -NCOD applications unless the application meets all the following:

i. Is requesting that either at least a minimum of 15 contiguous acres be zoned -NCOD or that an existing -NCOD be extended. If allowed in the underlying zoning district, all uses in the civic use category shall be excluded when determining the minimum 15 acre requirement; however, such civic uses may be used in determining contiguity of the area.

ii. Is signed by a majority of the property owners within the area proposed to be rezoned -NCOD.

iii. Is applied to an area where at least 75% of the lots are developed.

iv. It is located in an area in which the City Council has adopted into *Sec. 5.4.3.D.* specific neighborhood built environmental characteristics and regulations.

b. Within four years following the City Council adoption of specific neighborhood built environmental characteristics and regulations, Planning and Development may accept an application rezone property to a -NCOD.

c. Following the City's official acceptance of an application to rezone property to a -NCOD in accordance with *Sec. 5.4.3.*, no construction permit shall be issued or subdivision or recombination be approved by the City during the pendency of the application to amend the Official Zoning Map unless the proposed construction or the proposed subdivision or recombination meets all of the provisions of the existing zoning district and also the adopted neighborhood built environmental characteristics and regulations contained in *Sec. 5.4.3.D.* for the proposed -NCOD.

d. If the City Council accepts a rezoning petition to apply a -NCOD, staff shall provide direct mailed notice to all property owners in the proposed overlay district. Additional mailed notice shall be provided in accordance with *Sec. 10.2.1.C.1.b.*

6. Additional Requirements for DX- District Applications

New applications requesting a DX- District must be for property located contiguous to or directly across the street from an existing DX- District.

F. Approval Process

1. Planning and Development Officer Action

a. The Planning and Development Officer shall review the application for a proposed rezoning in light of the considerations for Planning and Development Officer Review in *Sec. 10.2.4.H.* and provide a report to the Planning Commission. The Planning Commission recommendation shall be sent to the City Council in advance of the public hearing.

b. In reviewing any required master plan, the Planning and Development Officer shall consult with the heads of the departments of Public Utilities, Public Works, Transportation, Parks and Recreation and Fire to check the proposed master plan against the requirements of the UDO and other applicable technical requirements of the City.

2. Planning Commission Action

a. Within 45 days following submission of a completed application and City approval of all required technical documents, the Planning Commission shall hold a public meeting on the proposed amendment which shall be noticed in accordance with the provisions of *Sec. 10.2.1.C.2.*

b. The Planning Commission may refer the application to a work session of the Planning Commission or to 1 of the Planning Commission's committees for additional consideration or the Planning Commission may act upon the application.

c. There is no limit on the sets of changes to the conditions following the first deliberation of the application by the Planning Commission. However, no set of changes to the conditions shall be considered and deliberated on by the Planning Commission unless an unsigned draft copy of the new set of conditions has been submitted at least 10 calendar days prior to the date of the scheduled Planning Commission meeting.

d. During the review and deliberations of the Planning Commission, specified conditions may be removed or added, zoning districts changed, zoning boundaries altered and specified conditions may be made more or less restrictive.

e. Within 90 days after its receipt of the proposed rezoning, the Planning Commission shall make its recommendation to the City Council. Within this time period, the Planning Commission may request extensions of time which may be granted by the City Council. If no recommendation is made within this time period and if no extension is granted, the City Council may take action on the application without further involvement of the Planning Commission.

f. A recommendation by the Planning Commission shall include the adoption of a statement describing whether the Planning Commission considers the action taken to be consistent with the Comprehensive Plan and any other officially adopted plan that is applicable and briefly explaining why the action taken is reasonable and in the public interest.

g. The Planning Commission shall make its recommendation to the City Council in writing. The Planning Commission shall recommend that the request be approved, approved as revised or denied.

h. In no case shall changes to the conditions be accepted following an action by the Planning Commission and prior to the Planning Commission's Certified Recommendation being received by the City Council, other than non-substantive, technical revisions to the text of the conditions.

i. For conditional use zoning cases, all conditions in the application must be signed by all of the property owners of the land being rezoned to a conditional use district and must be submitted to Planning and Development at least 2 business days before the date the City Council authorizes the matter for public hearing.

3. Authorization for Public Hearing by City Council

a. Following the recommendation of the Planning Commission or expiration of the applicable Planning Commission review period without a recommendation, the City Council shall conduct a public hearing. Notice of the public hearing shall occur within 60 days of receiving the request from the Planning Commission.

b. Notice of the public hearing shall be given in accordance with *Sec. 10.1.8.*.

4. Conduct of Public Hearing

a. At the public hearing, the Planning and Development Officer will explain or identify, by maps or otherwise, the location and area involved in the rezoning and explain the uses permitted in the proposed zoning district. If applicable, the conditions specified in the petition shall be discussed.

b. Those in favor of the rezoning will be allowed a total of 8 minutes to explain their support and those against the rezoning will be allowed a total of 8 minutes to explain their opposition. Additional time may be allowed by the City Council if requested in advance of the public hearing. Planning staff are not subject to the time limitation.

5. City Council Action

a. Following the public hearing, revisions may be made to proposed conditions in conditional use zoning cases within 30 days following the public hearing date, provided that any change to any zoning condition is submitted to Planning and Development at least 10 calendar days before the date of the City Council meeting.

b. Following the public hearing, no changes to conditional zoning conditions permitted by the City Council may be made which are less restrictive, including but not limited to less setback, more dwelling units, greater height, more access points, new uses and fewer improvements. However, more restrictive conditions as well as a reduction in size of the zoning request and a change to a more restrictive zoning district may be made provided the revised conditional zoning conditions are signed by all owners of property covered by the public hearing zoning petition.

c. Signed conditions may be submitted by facsimile or electronic mail so long as the original signed petition is received by the Planning and Development Officer at least 24 hours before the date of the meeting where final City Council action is taken; provided that the electronic signature is (1) unique to the person using it; (2) capable of certification; (3) under the sole control of the person using it; and (4) linked to the same page as the petition.

d. Before taking final action, the City Council may consider the recommendations of the Planning Commission and Planning and Development Officer and comments made at the public hearing.

e. Unless a valid protest petition has been submitted and received by the City in accordance with *Sec. 10.2.4.G.*, the City Council, by a simple majority vote shall approve, deny or send the proposed rezoning back to the Planning Commission for additional consideration.

f. Approval by the City Council shall include the adoption of a statement describing whether the City Council considers the action taken to be conform with the Comprehensive Plan and any other officially adopted plan that is applicable and briefly explaining why the action taken is reasonable and in the public interest.

g. For general use rezonings, the City Council shall consider all the potential uses and standards which would be allowed under the proposed rezoning. The City Council is not allowed to consider specific site plans or conditions as a basis for such a decision. Following the public hearing, general use rezonings may at the discretion of the City Council be reduced in acreage and height and the City Council may substitute, in whole or in part, a more restrictive zoning district.

h. All enactments, amendments and changes must be in the form of an ordinance. Copies of adopted city ordinances shall be kept on file at the office of the City Clerk.

G. Protest Petition

1. A rezoning request for which a protest petition has been determined to be valid requires a ¾ super majority vote of the City Council for approval rather than a simple majority. For purposes of this section, vacant positions on the City Council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority.
2. A protest petition in opposition to a rezoning shall be considered a "valid protest petition" if the petition meets the requirements of N.C. Gen. Stat. §160A-385 or any successor legislation.
3. Completed petitions shall be received by the City Clerk's office at least 2 business days prior to the date of the public hearing.
4. The City shall determine if the petition is a "valid protest petition", with such determination to be made by the Planning and Development Officer.
5. Planning and Development shall notify the petitioner and the City Council as to the validity of the protest petition.
6. A person who has signed a protest petition may withdraw their name from the petition at any time prior to the vote on the proposed zoning amendment. If a name has been withdrawn, the Planning and Development Officer shall determine the sufficiency of the protest petition.

H. Considerations for Planning and Development Officer Review

The following lists of considerations for the Planning and Development Officer's review and recommendations regarding a rezoning application are not all-inclusive. Review of zoning map amendments by the Planning and Development Officer may consider whether:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is generally consistent with the Comprehensive Plan;
3. The proposed rezoning conflicts with any specific policy or action item of the Comprehensive Plan;
4. The proposed rezoning is generally consistent with the Future Land Use Map;
5. The proposed rezoning is generally consistent with the stated purpose and intent of this UDO;
6. The proposed rezoning will reinforce the existing or planned character of the area;
7. The site is appropriate for the development allowed in the proposed district;
8. There are substantial reasons why the property cannot be used according to the existing zoning;
9. The subject property is suitable for the proposed zoning;
10. There is a need for the proposed use at the proposed location;
11. The City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, police, fire and emergency medical services, while maintaining sufficient levels of service to existing development; and
12. The proposed rezoning will not have a significant adverse impact on property in the vicinity of the subject property.

I. Withdrawal or Modification of a Pending Application

No application for a proposed rezoning can be withdrawn after the City Council authorizes it for public hearing. Following authorization for a public hearing for a proposed rezoning, no modification to the application may be made except as specifically allowed in *Sec. 10.2.4.F.5*.

J. Time Lapse between Applications

1. Limitations Between Applications

a. Without special waiver approved by the City Council, the Planning and Development Officer is not authorized to accept an application for rezoning whenever an application for rezoning on the same property would be heard more than once at a public hearing within a 24-month period. But when the City Council decides not to authorize a public hearing, for the zoning petition, the 24-month waiting period shall be calculated from the date the zoning petition was first filed with Planning and Development. The increase or decrease of an area or other change in the request for rezoning does not negate this rule.

b. In cases, however, where a proposed rezoning has been applied for by the City or other non-owner of the subject property, heard and acted on, applications by individual property owners (for the return of their property to its former zoning classification) will be accepted within the 24-month period without prior City Council approval.

c. This 24-month period shall also not apply to a change in the underlying district when an application for an overlay district has been heard on the same property within a 24-month period or to a change in the overlay district when an application of the underlying district has been heard on the same property within a 24-month period.

d. The 24-month waiting period shall not apply to any City Council-initiated rezoning when such modifications involve:

   i. Re-adoption of the entire Official Zoning Map;

   ii. Application of zoning to implement an adopted small area plan;

   iii. Application of zoning to new extraterritorial jurisdiction areas; or

   iv. Application of zoning to annexed areas which were not previously subject to this UDO.

e. This 24-month period shall not apply to simultaneously submitted applications for rezoning. Zoning applications are simultaneous submitted when all of the following are met:

   i. Two or more zoning applications by different persons are filed for portions of the same property on the same work day and within one ½ hour of the first zoning filing on the property;

   ii. No other earlier zoning application for portions of the same property have been filed with Planning and Development during the filing period under *Sec. 10.2.1.B.4.*; and

   iii. Each simultaneous zoning application is complete without any errors or omissions. No additions or corrections to a zoning application shall be allowed to relate back in time to its initial submission with Planning and Development.

f. For simultaneous submitted applications for rezoning, Planning and Development is instructed to set the applications for the same public hearing date.

2. Special Waiver

Following a recommendation from the Planning Commission, the City Council may grant a special waiver of the 24-month waiting period for one or more of the following grounds:

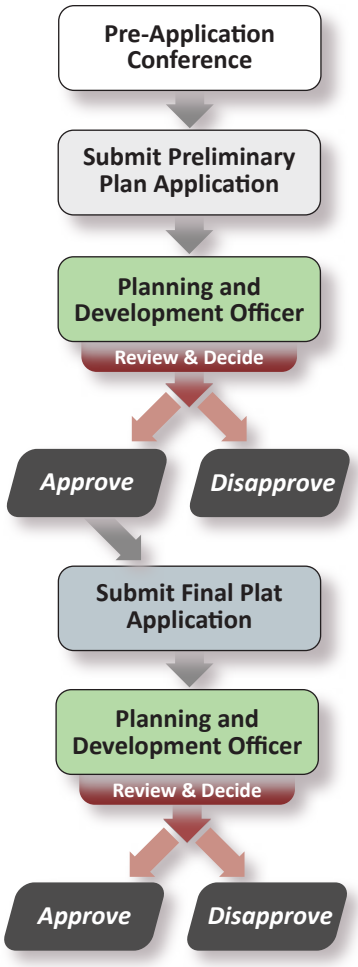
a. Materially changed conditions;

b. Clerical correction as the basis for the previous rezoning;

c. Newly discovered evidence of adverse impact of the current zoning which by due diligence could not have been discovered in time for the earlier public hearing;

d. Substantially changed zoning request; or

e. The petition changes from a general use district request to a conditional use district request and specific conditions are submitted by all owners of the property, which represents a substantial change from the previous general use district request.



Sec. 10.2.5. Subdivision Review

A. Applicability

Except as expressly exempted below, no land shall be subdivided within the City or within the City's extraterritorial jurisdiction until:

1. A preliminary subdivision plan has been submitted and approved as provided in *Sec. 10.2.5.E.*; and
2. Construction drawings have been submitted and approved; and
3. A final plat has been submitted and approved as provided in *Sec. 10.2.5.F.*; and
4. The approved final plat has been filed and recorded with the local register of deeds office where the property is located.

B. Exemptions

The following are exempt and are not subject to subdivision review under this section and the requirements of *Chapter 8. Subdivision & Site Plan Standards*, unless otherwise provided.

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 applicable zoning district.
2. The division of land into parcels greater than 10 acres where no 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 public transportation system corridors.
4. City of Raleigh right-of-way easement acquisition plats.

C. Limitations on Subdivision Approval

1. No subdivision of any property shall be approved pending any application for the rezoning of property unless the subdivision is permitted under the existing zoning district of the property and also under the zoning district which is proposed for the property.
2. No subdivision shall be approved on any parcel of a parent tract when general forestry has occurred on the parent tract and the perimeter buffers under *Sec. 9.1.10.C.* were removed or substantially removed within the last 5 years.

D. Pre-Application Conference

Before submitting an application for subdivision approval, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

E. Preliminary Subdivision Plan Approval Process

1. Application Requirements

a. An application for preliminary subdivision plan approval shall be submitted in accordance with *Sec. 10.2.1.B.*

b. The following forms must be filled out completely in order to process an application for preliminary subdivision plan approval:

i. Preliminary Subdivision Plan Application;

ii. Preliminary Subdivision Plan Checklist;

iii. Design Adjustment Request, if applicable (see *Sec. 10.2.18.*); and

iv. Any Waiver Request.

2. Waivers

a. In order to waive or modify any of the regulations or provisions of *Chapter 8. Subdivision & Site Plan Standards* not otherwise permitted, the City Council must hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.* and give notice as required in *Sec. 10.1.8.*

b. Before a waiver or modification request is granted, the City Council must find all of the following:

i. That topography or other existing physical conditions of the property are such that compliance with the requirements under this section or *Chapter 8. Subdivision & Site Plan Standards* would cause an unusual and unnecessary hardship or practical difficulties on the developer above and beyond what other developers would meet or deprive the owner of reasonable use of the property;

ii. That the waiver is in accordance with the stated purposes of this UDO as set forth in *Sec. 1.1.4.N.* through *Sec. 1.1.4.Q.*;

iii. That the practical difficulties or unnecessary hardship were not created by the owner of the property or the applicant;

iv. That the practical difficulties or unnecessary hardship are not solely financial;

v. That the waiver will not substantially or permanently injure adjacent property or its improvements;

vi. The waiver requested is the minimum required to resolve the difficulties described in *Sec. 10.2.5.E.2.b.i.* above that will make possible the legal use of the land, building or structure; and

vii. That the public health, safety and welfare are secured.

c. Conditions must be reasonably related to the conditions or circumstances that gave rise to the need for a waiver or as an offset to compensate for the granted waiver, conditions may be imposed on any waiver approved by the City Council.

3. Planning and Development Department Action

a. Planning and Development has the authority to approve preliminary subdivision plans without review by the City Council except in the following situations:

i. The preliminary subdivision plan is within a Historic Overlay District or of a designated Historic Landmark;

ii. The preliminary subdivision plan is located in a -MPOD, other than single-unit living lots; or

iii. A Waiver Request is filed.

b. After an application has been determined complete, Planning and Development shall give notice of pending review in accordance with *Sec. 10.1.8.* If subsequent to the filing of a completed application, a waiver from the City Council is requested, Planning and Development shall give notice of the requested waiver in accordance with *Sec. 10.1.8.*

c. In reviewing the preliminary subdivision plan, Planning and Development shall consult with the Public Utilities, Public Works, Parks and Recreation, Inspections and Fire Departments to check the proposed preliminary subdivision plan against the requirements of the City Code and other applicable technical requirements of the City.

d. Following review of the preliminary subdivision plan for compliance with the City Code and other applicable technical requirements of the City, Planning and Development shall approve, approve with conditions or deny the preliminary subdivision plan. Planning and Development shall keep written records of any action taken.

4. Action Following Planning and Development Department Decision

a. Following the date of the final action, notice of a decision on an administratively reviewed preliminary subdivision plan shall be provided as set forth in *Sec. 10.2.1.C.6.*

b. Within 30 days after the date of the decision on a preliminary subdivision plan, an appeal of Planning and Development's action may be filed with the City Council as set forth in *Sec. 10.2.11.*

5. Action Following Preliminary Subdivision Plan Approval

a. A copy of the preliminary subdivision plan, conforming to all conditions of approval, shall be submitted to Planning and Development, which shall distribute copies to other City departments as necessary.

b. An application for construction drawing approval shall be submitted in accordance with *Sec. 10.2.1.B.* The following forms must be filled out completely in order to process an application for construction drawing approval:

i. Infrastructure Construction Drawing Application;

ii. Infrastructure Construction Drawing Checklist; and

iii. A Phasing Plan in accordance with the standards of *Sec. 10.2.5.E.7.*

c. No construction of development-related improvements shall commence until all required construction drawing plans, profiles and specifications

have been reviewed and approved by the City or other governmental approving agency and all necessary permits issued.

6. Revisions to an Approved Preliminary Subdivision Plan

a. Minor revisions to an approved preliminary subdivision plan that reflect the same basic street and lot configurations as used for the original approval may be approved by the Planning and Development Officer.

b. Any request for a revision to an approved preliminary subdivision plan that increases the number of building lots, decreases the amount of common open space or alters a road pattern shall be initiated and processed as a new application for preliminary subdivision plan approval.

7. Phasing

a. If not otherwise set out as part of the preliminary subdivision plan, lots may be recorded and public improvements may be constructed in phases.

b. The Planning and Development Officer shall ensure that the phasing plan is in accordance with the approved preliminary subdivision plan, this UDO, resolutions of the City Council, and conditions of approval.

c. The phasing plan shall indicate timing of the construction of public improvements in such a way that the number of lots in each phase is reasonably proportional to the amount of development-related improvements in each phase and that rights-of-way and utility easements are extended in the initial phase of development to all adjacent lots that do not have public street access or access to public utilities.

d. The number of dwelling units in recorded phases complies with the density requirements of this UDO.

e. In the recorded phase, all setbacks, neighborhood transition zones, transitional protective yards and other special yard areas are met.

f. In the recorded phase, off-street parking requirements for the developed portion are observed.

g. In the recorded phase, the amount of required open space is proportionate to the percentage of land being recorded.

h. The recorded phase conforms to all of the requirements for a legal lot.

i. Unrecorded phases may contain inappropriate densities, setbacks, off-street parking spaces and required open space, provided any such phase at the time of its recordation is combined with other recorded phases of the development so that the combined properties together conform to the density, setback, off-street parking and open space requirements of this UDO.

j. Any residual portion of development complies with the requirements of a legal lot, including its authorization as a subdivided lot and the following:

   i. Total acres (gross) recorded;

   ii. Total acres of right-of-way approved;

   iii. Total acres of right-of-way dedicated;

   iv. Total acres (net) approved;

   v. Total acres (net) recorded;

   vi. Total acres of open space approved; and

   vii. Total acres of open space recorded.

k. Amendments to the phasing plan may be made in conjunction with the review of construction plans, but an updated copy of the new phasing plan must be submitted and placed in the case file maintained by the Planning and Development Officer. If the extent of the amendments has an impact on more than one phase, then a revised preliminary plan will be required.

8. Sunsetting of a Preliminary Subdivision Plan

a. Within 3 years after approval of the preliminary subdivision plan, at least ½ of the gross land area shown on the preliminary subdivision plan must have a final subdivision plat recorded in the local register of deeds office where the property is located and all remaining portions of the preliminary subdivision plan shall have the final subdivision plat recorded in the local register of deeds office where the property is located within five years from the approval date of the preliminary subdivision plan.

b. Failure to record final subdivision plats for an approved preliminary subdivision plan within the required time constraints shall automatically void the unrecorded portions of the preliminary subdivision plan unless the Planning and Development Officer finds that all of the following are met:

i. A written request for an extension has been made to the Planning and Development Officer prior to the expiration period;

ii. Unrecorded portions of the preliminary subdivision plan shall conform to all ordinances, laws and City Council resolutions in effect at the time of the requested extension;

iii. The preliminary subdivision plan considers and respects the practical limits of public facilities and services such as stormwater, water and sewer lines, streets, fire, public safety and trash collection;

iv. The applicant has provided the most recent City of Raleigh inspection report from the Public Works Department demonstrating that the site is currently in compliance and that any previously graded or cleared portion of the site which is not currently under construction is currently and appropriately stabilized to prevent erosion and sediment erosion control problems during the requested extension period; and

v. No other extension has been granted.

c. If all the requirements of *Sec. 10.2.5.E.8.b.* above are met, the Planning and Development Officer shall permit only one 3-year extension calculated from the date the request for extension is approved by the Planning and Development Officer.

F. Final Subdivision Plat Approval Process

1. Applicability

a. All divisions of land not exempted in *Sec. 10.2.5.B.* shall require final subdivision plat approval as set forth below.

b. The final subdivision plat shall constitute one or more phases of the approved preliminary subdivision plan.

c. Approval of the final subdivision plat shall be subject to the installation, acceptance, warranty and as-built drawing of the improvements required in *Chapter 8. Subdivision & Site Plan Standards* or the posting of a construction surety as set forth in *Sec. 8.1.3.*

2. Submittal Requirements

a. An application for final subdivision plat approval shall be submitted in accordance with *Sec. 10.2.1.B.*

b. The following forms must be filled out completely in order to process an application for final subdivision plat approval:

i. Recorded Map Application; and

ii. Recorded Map Checklist.

c. The final plat submission shall contain all of the following.

i. The inclusion of all required items as provided in the Recorded Map Application, Recorded Map Checklist and any other checklist contained within the final subdivision plat application forms.

ii. Compliance with all requirements of N.C. Gen.Stat. §47-30.

iii. A metes and bounds description of all required easements.

iv. Executed copies of all legal instruments required by the City in association with development approval.

v. Posting of a construction surety as set forth in *Sec. 8.1.3.* for improvements which are not accepted for public maintenance by the City.

vi. Tree conservation plats for approved preliminary subdivisions 2 or more acres in size.

vii. The final plat and all dedication plats shall contain a ownership certification that certifies and warrants that the undersigned is (are) the sole owner(s) of the property shown on the map or plat and any accompanying sheets having acquired the property in fee simple by deed(s) recorded in the county register of deeds office where the property is located and as such has (have) the right to convey the property in fee simple and that the dedicator(s) hereby agree to warrant and defend the title against any claims of all persons whomsoever excepted as specifically listed herein and that by recording this plat or map I (we) do irrevocably dedicate to the City of Raleigh for public use all streets, easements, rights-of-way, parks and greenways (as those interests are defined in the City Code) and as the same are shown on the plat for all lawful purposes to which the City may devote or allow the same to use and upon acceptance thereof, in accordance with all City policies, ordinances, regulations or conditions of the City of Raleigh, for the benefit of the public provided any dedication of easements for storm drainage not specifically labeled City of Raleigh or public are not made to the City

of Raleigh, but are irrevocably made to the subsequent owners of any and all properties shown hereon for their use and benefit.

viii. Delineations of watercourse buffers and impervious surface area limitations for properties located in a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District.

ix. Signature of an official from the North Carolina Department of Transportation if public street right-of-way is involved for lands located outside the City limits.

x. Stormwater control facilities, including without limitation, detention facilities, retention facilities, wet ponds, sand filters, wetlands, bio-retention measures, swales and storm pipes required by *Article 9.2. Stormwater Management*, permanently protected undisturbed open space areas, together with showing the means of transporting stormwater runoff to and from any nitrogen reduction and stormwater runoff control measures or facilities.

xi. A statement on the plat which lots, by number, are served by which stormwater control facility; the stormwater control facility shall be indicated by type and by its general location.

xii. A notation that the dedicators and their successors waive their statutory rights to withdraw dedications of the right-of-way when the public has made reimbursement for the right-of-way or when density has been transferred from the right-of-way.

d. The applicant shall submit all information, maps and data required by the Planning and Development Officer to properly review the final subdivision plat for conformity with all City ordinances, standards and regulations. For example, building envelopes may be required to show the development potential of any lot and if the lot can not be reasonably developed in accordance with *Article 8.3. Blocks, Lots, Access*, the lot shall not be recorded notwithstanding any prior preliminary subdivision plan approval of the lot.

3. Planning and Development Officer Action

a. After an application has been determined complete, Planning and Development shall review the final subdivision plat for compliance with the approved preliminary subdivision plan and conditions of approval.

b. In reviewing the final subdivision plat, Planning and Development shall consult with the Public Utilities, Public Works, Parks and Recreation and Fire Departments.

c. Upon completion of the review, the Planning and Development Officer may meet with the applicant to discuss any changes in development design.

d. If the final subdivision plat contains the dedication of streets and public easements, the construction of development-related improvements or the establishment of private drainage easements, then Planning and Development shall forward copies of the final subdivision plat to the appropriate City departments for review.

e. Planning and Development shall complete the review of the final subdivision plat and notify the applicant of nonconformities, omissions or required corrections. If the final subdivision plat is disapproved, the reasons for such disapproval shall be stated in writing, specifying the provisions of the UDO with which the final subdivision plat does not comply. A revised final subdivision plat may be submitted to Planning and Development for further consideration.

f. Within 20 days after the date of the decision on a final subdivision plat, an appeal of the Planning and Development Officer's action may be filed with the City Manager as set forth in *Sec. 10.2.11.*.

g. Planning and Development shall approve the final subdivision plat if it conforms with the approved preliminary subdivision plan and conditions of approval, N.C. Gen.Stat. §30-47 and the content requirements for the plat and recorded map checklist.

h. No final subdivision plat shall be approved until all required public improvements are accepted for public maintenance and completely installed or a construction security is posted with the City as set forth in *Sec. 8.1.3.*

4. Action Following Final Approval of the Plat

a. After a final subdivision plat is approved, the Planning and Development Officer shall certify the plat for recording after the required signatures for recordation have been provided.

b. The City may, as a precondition for recording lots, require the recording of legal instruments.

c. The subdivider shall present to the county register of deeds office where the property is located 3 signed copies of the final plat, 1 copy for the register of deeds, a copy for the subdivider and a copy for the City.

d. Plats presented to and approved for recordation by the City must be recorded on or before the 14th day following the certification of the Planning and Development Officer. The expiration date shall be clearly indicated on the plat. By the end of the next business day following the recordation of the final plat, the subdivider shall provide to Planning and Development evidence of a recorded copy of the certified final plat and the recordation of all legal instruments required by the City in association with development approval.

5. Revisions to an Approved and Signed Final Subdivision Plat Not Yet Recorded

Following certification of the Planning and Development Officer, in accordance with *Sec. 10.2.5.F.4.*, no final plat shall be revised, except with the consent of Planning and Development:

a. When revisions are proposed to an approved final subdivision plat, the applicant shall submit a written request to Planning and Development delineating the revisions and requesting authorization for the revisions.

b. Revisions to an approved final subdivision plat may only be approved if still in conformance with the approved preliminary plan.

c. Changes to an approved final subdivision plat not in conformance with the approved preliminary plan must be resubmitted as a new preliminary plan application.

d. In addition to the written request for revising the final plat and the submittal of a revised final subdivision plat, in all instances the applicant shall submit the required fees to Planning and Development for processing and recording the revised final plat.



Sec. 10.2.6. Non-Subdivision Final Plat and Recorded Instruments

A. Applicability

The provisions of this section apply to the following:

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 conform with, or exceed, the standards of *Sec. 8.3.3.*, but if the standards of *Sec. 8.3.3.* are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of *Sec. 8.3.3.* than do the existing conditions.
2. The division of land into parcels greater than 10 acres where no right-of-way dedication is involved.
3. The public acquisition by purchase or dedication of strips of land for the widening or opening of streets or for public transportation system corridors.
4. City of Raleigh right-of-way or easement acquisition plats.
5. All other plats or maps, other than subdivision plats, where the existing property boundaries or street rights-of-way are changed or new street rights-of-way are created.
6. All other maps or plats, other than subdivision plats, that are required by State Law to contain a City certification.
7. Except as expressly exempted below, no map or plat shall be filed and recorded with the local register of deeds office for lands within the City or within the City's extraterritorial jurisdiction unless and until it has been submitted and approved as provided in this section.

B. Exemptions

The following are exempt and are not subject to this section and to the requirements of *Chapter 8. Subdivision & Site Plan Standards* unless otherwise provided.

1. A survey of an existing parcel or parcels of land that does not create a new street or change an existing street or property boundary.
2. A survey of an existing building or other structure or natural feature, such as a watercourse.
3. A control survey.
4. North Carolina Department of Transportation rights-of-way plans or roadway corridor official maps.
5. Easement plats prepared by utility companies granted the power of eminent domain by N.C.Gen. Stat. §40A-3(a)(1).
6. A map attached to a deed or other instrument submitted for recording in a form for illustrative purposes only that meets the requirements of N.C. Gen. Stat. §47-30(n) and does not convey fee simple property in violation of this UDO.

C. Pre-Application Conference

Before submitting an application for any division of land greater than 10 acres where no right-of-way dedication is involved, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the consequences for development of a tract without a road network. This requirement may be waived at the discretion of the Planning and Development Officer.

D. Requirements for Recombinations

1. Recombination by Recorded Maps

The requirements for recombination by recorded map include all of the following:

a. The resultant lots conform with, or exceed, the standards of *Sec. 8.3.3.*, but if the standards are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of *Sec. 8.3.3.* than do the existing conditions;
b. The total number of lots is not increased;
c. The title block contains the word "Recombination";

d. Structures on the affected lots are shown and the requested recombination does not violate the setback requirements of this UDO and the North Carolina Building Code;

e. The amount of impervious surface per lot is indicated before and after the recombination. All impervious surfaces and lot areas within a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District shall be calculated from the adjoining street right-of-way; provided if an expansion of an existing right-of-way or new right-of-way has been established in the Comprehensive Plan, impervious surface and lot areas within the overlay district shall be calculated from the expanded or new right-of-way;

f. The recombination plat is certified by the Planning and Development Officer and contains the appropriate authorization number to ensure the proper mapping of the resultant lots on the applicable county and City Geographic Information Systems;

g. The recombination indicates that all resultant lots have the same water and sewer utility access that existed prior to the recombination;

h. The recombination is certified by the county health department where the property is located that the recombination will not create a violation of setback standards or other standards of the county health department regarding private wells and septic systems;

i. The recombination does not create the potential of new access points on a Major Street, Mixed Use Street or Thoroughfare in violation of the of the UDO and the Raleigh Street Design Handbook or render any existing driveway access point nonconforming;

j. The recombination plat conforms to all laws and ordinances for the recordation of maps and includes all information listed in the Recorded Map Checklist form except for information that is uniquely necessary for subdivision plats;

k. The resultant lots, if located within floodway fringe areas as set forth in *Article 9.3. Floodprone Area Regulations*, conform to the lot coverage limitations of *Sec. 9.3.5.C.*; and

l. The recombination plat will be processed in accordance with this section.

2. Recombination by Recorded Instrument

The requirements for recombination by recorded instrument include all of the following:

a. The resultant lots conform with, or exceed, the standards of *Sec. 8.3.3.*, but if the standards of *Sec. 8.3.3.* are not met, the recombination may still be approved if the recombined lots more closely conform to the minimum standards of *Sec. 8.3.3.* than do the existing conditions;

b. The total number of lots is not increased;

c. The instrument contains a metes and bounds description of the new recombined lots or reference is made to a recorded plat;

d. The instrument contains a statement as to the total acreage of the affected lots;

e. The title of the instrument contains the word "Recombination";

f. The instrument contains a certification that the recombination does not violate the setback requirements of this UDO and the North Carolina Building Code;

g. The amount of impervious surface per lot is indicated before and after the recombination. All impervious surfaces and lot areas within a -UWPOD, -FWPOD, -SWPOD, -MPOD or CM District shall be calculated from the adjoining street right-of-way; provided if an expansion of an existing right-of-way or new right-of-way has been established in the Comprehensive Plan, impervious surface and lot areas within the overlay district shall be calculated from the expanded or new right-of-way;

h. The recombination instrument is signed by all property owners;

i. If the number of lots is reduced, the instrument is to indicate which lots are eliminated;

j. The recombination instrument is certified by the Planning and Development Officer and the appropriate authorization number is attached to ensure the proper mapping of the resultant lots on the applicable county and City Geographic Information Systems;

k. The instrument indicates that all resultant lots have the same water and sewer utility access that existed prior to the recombination;

l. The instrument contains a certification by the county health department where the property is located that the recombination will not create a

violation of setback standards or other standards of the county health department regarding private wells and septic systems;

m. The recombination does not create the potential of new access points on a Major Street, Mixed Use Street or Thoroughfare in violation of the of the UDO and the Raleigh Street Design Manual or render any existing driveway access point nonconforming;

n. The resultant lots, if located within floodway fringe areas as set forth in *Article 9.3. Floodprone Area Regulations*, conform to the lot coverage limitations of *Sec. 9.3.5.C.*; and

o. The recombination instrument will be processed in accordance with this section.

3. Limitations on Recombination Approval

No recombination of any property shall be approved pending any application for the rezoning of property unless the recombination is permitted under the existing zoning district of the property and also under the zoning district which is proposed for the property.

E. Non-subdivision Maps, Plats and Instruments of Recombination Approval Process

1. Application Requirements

a. An application for approval of a non-subdivision final map, plat or recombination instrument shall be submitted in accordance with *Sec. 10.2.1.B.*

b. The following forms and documents must be completed in order to process an application for non-subdivision final map, plat or recombination instrument recordation approval:

i. A Recorded Map Application (recorded plat only);

ii. A Recorded Map Checklist (recorded plat only);

iii. One or more deeds of conveyance, when a recombination changes the boundaries of properties owned by different persons (recorded plat and recombination instrument); and

iv. A preliminary plat or an instrument of recombination (recorded plat and recombination instrument).

2. Planning and Development Officer Action

a. After an application has been determined to be complete, Planning and Development shall review the proposed application for compliance with this UDO and the requirements of N.C. Gen. Stat. §47-30.

b. Upon completion of the review of the initial non-subdivision map, plat or recombination instrument, Planning and Development either shall approve or approve with conditions or reject the application depending on whether it conforms to the applicable UDO provisions and the requirements of N.C. Gen. Stat. §47-30.

c. An appeal of Planning and Development's decision may be filed with the City Council as set forth in *Sec. 10.2.11.*

3. Action Following Approval

a. After a non-subdivision final map, plat or recombination instrument is approved, the Planning and Development Officer shall certify the final map, plat or recombination instrument as exempt from the subdivision regulations of the UDO.

b. The City may, as a precondition for recording non-subdivision maps, plats and recombination instruments, require the recording of legal instruments.

c. Non-subdivision plats and recombination instruments presented to and approved for recordation by the City must be recorded on or before the 14th day following the signature of the Planning and Development Officer. The expiration date shall be clearly indicated on the recording plat and on the recombination instrument.

d. By the end of the next business day following the recordation of the non-subdivision final plat or recombination instrument, the applicant shall provide to Planning and Development evidence of a recorded copy of the recombination instrument or certified final plat and the recordation of all legal instruments required by the City in association with the approval.



Sec. 10.2.7. Plot Plan Review

A. Applicability

1. No plot plan is required for ordinary maintenance or for any accessory building having an area less than 150 square feet and a roof span no greater than 12 feet.
2. A plot plan is required for certain improvements, as listed below.
   a. Construction of a fence, wall, gazebo, carport, home swimming pool, deck, porch or patio.
   b. Construction of a telecommunications tower.
   c. Installation of signage.
   d. Temporary uses.
   e. Food truck permits.
   f. Construction, reconstruction, addition, repair or alteration of any building, structure, parking facility or a change in use when the amount of required parking as determined in *Article 7.1. Parking*, notwithstanding any variance, credit, nonconformity, exception, special vehicle parking provision, vehicular parking reduction or the existence of any surplus parking, does not increase by 10 spaces or 10%, whichever is less.
   g. Demolition and replacement of a building, other than a detached house used for single-unit living when all of the following are met:
      i. The amount of required parking as determined in *Article 7.1. Parking*, notwithstanding any variance, credit, nonconformity, exception, special vehicle parking provision, vehicular parking reduction or the existence of any surplus parking, does not increase by 10 spaces or 10%, whichever is less;
      ii. The replacement building conforms to all City Code requirements;
      iii. Building permits are issued and foundations are installed for the replacement within 1-year of the demolition permit; and
      iv. All site improvements not limited to required parking, tree protection, landscaping, internal pedestrian walkways, driveways and closings are made in accordance with this UDO.
   h. Construction of a detached house used for single-unit living located on any vacant lot that was lawfully established, including the lawful recombination of lots. Construction of a detached house on lots that were created in violation of this UDO or on recombined lots not approved by the City are not plot plans.
3. No approval of a plot plan shall be conditioned to require public street, open space, drainage or utility dedications or improvements.

B. Pre-Application Conference

Before submitting an application for plot plan approval, an applicant may schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval.

C. Application Requirements

1. An application for site plan approval shall be submitted in accordance with *Sec. 10.2.1.B*.
2. The following forms must be filled out completely in order to process an application for plot plan approval:
   a. Plot Plan Submittal Checklist; and
   b. Administrative Alternate Request (see *Sec. 10.2.18.*);

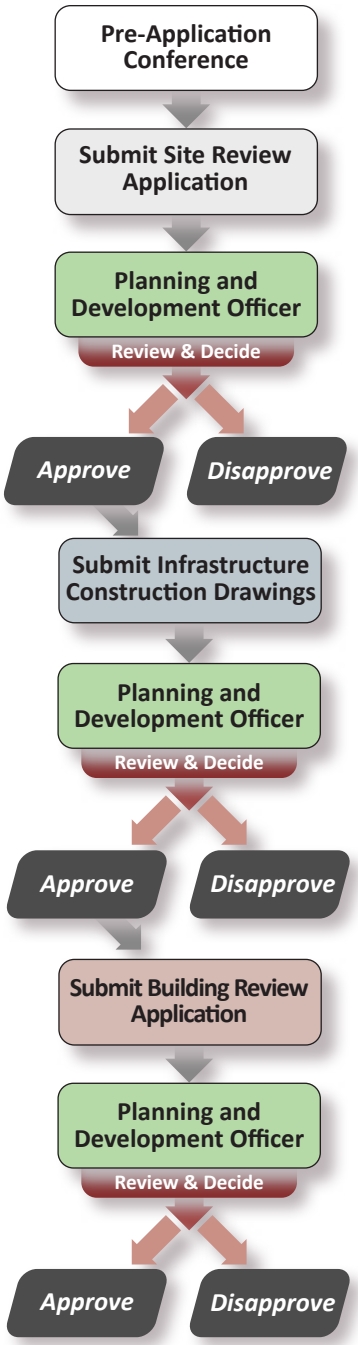
D. Planning and Development Officer Action

1. Planning and Development shall review the proposed application against the requirements of this UDO and other applicable technical requirements of the City.

2. In reviewing the application, Planning and Development may consult with the Public Utilities, Public Works, Transportation, Parks and Recreation, Inspections and Fire Departments.
3. Following review, the Planning and Development Officer shall approve, approve with conditions that bring the application into conformance with this UDO and other applicable technical requirements of the City or deny the application.
4. If the application is disapproved, the reasons for such disapproval shall be stated in writing and provided to the applicant, specifying the provisions of which the application does not comply. A revised application may be submitted to Planning and Development for further consideration.
5. Notice of a decision on an administratively reviewed site plan shall be provided within 3 days following the date of the final action as set forth in *Sec. 10.2.1.C.6.*.
6. An appeal as set forth in *Sec. 10.2.11.* shall be filed by persons who received notice of the decision within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal shall be filed within 30 days after the initiation of site work activities.

E. Expiration

An approved plot plan shall expire 6 months after the date of approval if a building permit application has not been filed.



Sec. 10.2.8. Site Plan Review

A. Applicability

1. Before any permit, not otherwise approved as a plot plan under *Sec. 10.2.7.*, is issued for the construction, reconstruction, extension, repair, renovation or alteration of any building, structure, parking facility, change of use or use of land, whether for any property located within the City or within the City's extraterritorial jurisdiction, a site plan approved in accordance with the provisions of this section shall be submitted to and approved by Planning and Development.
2. Construction of a detached house on a lot that was created in violation of *Sec. 10.2.5.* or on recombined lots not approved by the City in accordance with *Sec. 10.2.6.* are site plans.

B. Pre-Application Conference

Before submitting an application for site plan review, an applicant may schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval.

C. Application Requirements

1. An application for site plan approval shall be submitted in accordance with *Sec. 10.2.1.B.*
2. The following forms must be completed and submitted to process an application for site plan approval:
   a. Site Plan Application;
   b. Site Plan Checklist;
   c. Administrative alternate requests (see *Sec. 10.2.17.*); and
   d. Administrative design adjustments (see *Sec. 10.2.18.*).

D. Approval Process

1. Site Review

a. After construction drawings are approved, site review shall be performed. If subsequent to construction drawing review a waiver from the City Council is requested or an administrative alternate or administrative design adjustments is requested, Planning and Development shall give notice of the requested waiver in accordance with *Sec. 10.1.8.*

b. An application for site review approval shall be submitted in accordance with *Sec. 10.2.1.B.* The following forms must be filled out completely in order to process an application for site review approval:
   i. Site Review Application; and
   ii. Site Review Checklist.

c. Planning and Development shall complete the site review and notify the applicant of nonconformities, omissions or required corrections. If the site review plan is disapproved, the reasons for such disapproval shall be stated in writing, specifying the provisions of the UDO with which the site review plan does not comply. A revised site review plan may be submitted to Planning and Development for further consideration.

d. Following site review, Planning and Development shall approve, approve with conditions that bring the site review plan into conformance with this UDO and other applicable technical requirements of the City or deny the site review plan. Planning and Development shall keep written records of any action taken.

e. A sign shall be posted by the property owner on the property for 30 consecutive days, beginning the day of issuance of a zoning permit or site permit by the property owner or the next working day, for the following administrative approvals:

i. Where the new building is 25,000 square feet or more in size or any addition that represents an increase of more than 10% of the building area or 25,000 square feet whichever is greater; and

ii. Where the property of the approved administrative site plan is located within 100 feet of a property that is zoned R-1, R-2, R-4, R-6 or R-10.

f. Notice of a decision on an administratively reviewed site plan shall be provided within 3 days following the date the application was decided, as set forth in *Sec. 10.2.1.C.6.*

g. An appeal as set forth in *Sec. 10.2.11.* shall be filed by persons within 30 days of permit issuance or when a permit is not issued, the decision of approval or denial; this time period is applicable to all representatives of such persons, including without limitation their tenants and option holders.

h. Upon acceptance of a completed application, the Planning and Development Officer will provide mailed notice to the State of North Carolina for any site plan located within the Metro-Park Overlay District.

2. Infrastructure Construction Drawings

a. An application for construction drawing approval shall be submitted in accordance with *Sec. 10.2.1.B.* The following forms must be filled out completely in order to process an application for construction drawing approval:

i. Infrastructure Construction Drawing Application;

ii. Infrastructure Construction Drawing Checklist;

iii. A Phasing plan in accordance with the standards of *Sec. 10.2.5.E.7.*;

iv. If applicable, a Waiver Request is filed; and

v. If applicable, an Administrative Design Adjustment request is filed.

b. After an application has been determined complete, Planning and Development shall review the request in accordance with the provisions of this UDO.

c. No construction of development-related improvements shall commence until all required construction drawing plans, profiles and specifications have been reviewed and approved by the City or other governmental approving agency and all necessary permits issued.

d. In reviewing the construction drawings, Planning and Development shall consult with the Public Utilities, Public Works, Transportation, Parks and Recreation, Inspections and the Fire Departments to review the construction drawings against the requirements of this UDO and other applicable technical requirements of the City. The collective review shall consider the adequacy of public facilities, as described in *Article 8.2. Infrastructure Sufficiency*

e. Following review, Planning and Development shall approve, approve with conditions that bring the construction drawings into conformance with requirements of this UDO and other applicable technical requirements of the City,or deny the construction drawings. Planning and Development Officer shall keep written records of any action taken.

3. Waivers

a. In order to waive or modify any of the regulations or provisions of *Chapter 8. Subdivision & Site Plan Standards* not otherwise permitted, the City Council must hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.* and give notice as required in *Sec. 10.1.8.*

b. Before a waiver or modification request is granted, the City Council must find all of the following:

i. That topography or other existing physical conditions of the property are such that compliance with the requirements under this section or *Chapter 8. Subdivision & Site Plan Standards* would cause an unusual and unnecessary hardship on the developer above and beyond what other developers would meet or deprive the owner of reasonable use of the property;

ii. That the waiver is in accordance with the stated purposes of this UDO as set forth in *Sec. 1.1.4.N.* through *Sec. 1.1.4.Q.*;

iii. That the practical difficulties or unnecessary hardship were not created by the owner of the property or the applicant;

iv. That the practical difficulties or unnecessary hardship are not solely financial;

v. That the waiver will not substantially or permanently injure adjacent property or its improvements;

vi. The waiver requested is the minimum required to resolve the difficulties described in *Sec. 10.2.8.D.3.b.i.* above that will make possible the legal use of the land, building or structure; and

vii. That the public health, safety and welfare are secured.

c. Conditions must be reasonably related to the conditions or circumstances that gave rise to the need for a waiver or as an offset to compensate for the granted waiver may be imposed on any waiver approved by the City Council.

4. Building Review

a. An application for building or construction permit issuance shall be submitted to Planning and Development in accordance with *Sec. 11.2.1.B.*

b. A Permit Application must be filled out completely in order to process an application for building review.

c. No building or construction permit shall be issued for development requiring a site plan until the site review has been approved.

d. No review of building or construction plans shall occur until a copy of the approved site review plan conforming to all conditions of approval has been received by Planning and Development or the Board of Adjustment has granted a variance authorizing the use of a non-complying site plan element.

e. In reviewing the building permit application, the Inspections Department will consult with the various building trades of the Department and with the Fire, Utilities and Public Works Departments to check the proposed building plans against the requirements of this UDO and other applicable technical requirements of the City.

f. The Inspections Department shall complete the review of the building plans and notify the applicant of nonconformities, omissions or required corrections. If the building plans are disapproved, the reasons for such disapproval shall be stated in writing, specifying the provisions of this UDO and other applicable technical requirements of the City with which the building plans do not comply. Revised building plans may be submitted to the Inspections Department for further consideration

g. Following building review, the Inspection Department shall approve, approve with conditions that bring the building plans into conformance with this UDO and other applicable technical requirements of the City or deny the building plans. The Inspections Department shall keep written records of any action taken.

h. Prior to the issuance of any building or construction permit for the site, the applicant shall have installed all required improvements as specified in *Chapter 8. Subdivision & Site Plan Standards* or guaranteed their installation as provided in *Sec. 8.1.3.*

i. An issued building permit expires 6 months after the date of issuance if the work authorized by the permit has not commenced. If after commencement, the work is discontinued for a period of 12 months, the permit shall immediately expire. No work authorized by any permit that has expired shall be performed until a new permit has been obtained.

j. The approval process for site plans of construction drawings, site review and building review may at the option of the applicant be done sequentially as listed or combined all in 1 review process or in 2 different review processes provided that order of these processes are not reversed.

E. Revisions to an Approved Site Plan

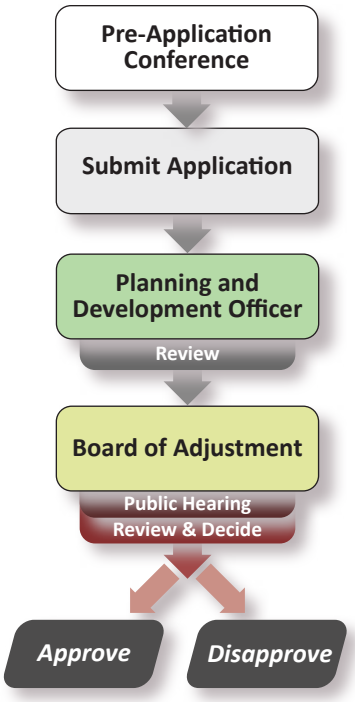
Minor revisions to an approved site plan may be approved by Planning and Development without providing additional notice. The following revisions shall be considered minor:

1. Up to a 10% increase or any decrease in gross floor area of a single building;
2. Up to a 10% reduction in the approved setbacks from exterior property lines; and
3. Relocation of parking areas, internal driveways or structures where such relocation occurs more than 100 feet from exterior property lines.
4. All other changes to an approved site plan must be resubmitted as a new application.

F. Expiration of a Site Plan

A building permit must be obtained from the Inspections Department within 3 years from the date of site plan approval. The site plan shall expire 3 years from the approval date of the site plan unless an applicant has been granted vested rights or unless a valid building permit has been issued by Inspections Department. One 2-year extension to submit a building permit shall be granted by the Planning and Development Officer provided all of the following are met:

1. A written request for an extension has been made to the Planning and Development Officer prior to the expiration period;
2. Unconstructed portions of the approved site review plan conform to all ordinances, laws, City policies and provisions of the Comprehensive Plan and other City Council adopted plans in effect at the time of the requested extension;
3. Adjacent streets have not been reclassified the Comprehensive Plan;
4. The plan addresses the adequacy of public facilities and services such as stormwater, water and sewer lines, streets, fire, public safety and trash collection;
5. There shall only be 1 extension permitted, not to exceed a time period of 2 years from the date of receipt by the Planning and Development Officer of the original written request for extension; and
6. Within 4 years after the issuance of the first building permit for the site plan, the construction of the entire site plan must be completed unless an applicant has been granted vested rights. Failure to complete construction within this specified time frame shall automatically void the approved site plan for which no building permits have been issued.



Sec. 10.2.9. Special Use Permit

A. Applicability

1. Special uses within each zoning district are uses that may be appropriate in a particular zoning district, but because of the increased potential for incompatibility with adjacent uses, require individual review by the Board of Adjustment.
2. A special use permit is required for all special uses as set forth in *Chapter 6. Use Regulations*

B. Pre-Application Conference

Before submitting an application for a special use permit, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

C. Application Requirements

1. An application for a special use permit shall be submitted with in accordance with *Sec. 10.2.1.B.*
2. A Special Use Permit Application must be filled out to initiate a request for a special use permit.

D. Approval Process

1. Planning and Development Officer Action

Planning and Development shall review the application for a special use permit in light of the showings of *Sec. 10.2.9.E.* and applicable requirements of *Chapter 6. Use Regulations* and advise the applicant.

2. Board of Adjustment Action

Following notice as required in *Sec. 10.1.8.* the Board of Adjustment shall hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.*

E. Showings

Before a request for a special use permit is granted, the Board of Adjustment must show that all of the following are met:

1. The proposed use complies with all applicable provisions of this UDO unless otherwise expressly modified in accordance with this UDO;
2. The proposed use is allowed as a special use in the respective zoning district (see *Chapter 6. Use Regulations*);
3. The proposed use complies with any specific use standard listed in *Chapter 6. Use Regulations* without the granting of any variance to the specific use standard;
4. The proposed use is compatible with adjacent uses in terms of location, scale, site design, hours of operation and operating characteristics;
5. Any adverse impacts resulting from the proposed use in the affected area will be effectively mitigated or offset or the special use is denied;
6. Access with respect to pedestrian, bicycle and automotive safety, traffic flow and emergency service is adequate;
7. Signage is suitable and appropriate; and
8. Any appropriate dedications of streets and utilities to the public will be made prior to the issuance of a building permit.

F. Limits on Approval

Whenever the Board of Adjustment approves a special use permit, approval shall not change the zoning of the property or give the property status as a nonconformity as set forth in *Article 10.3. Nonconformities*

G. Revisions to an Approved Special Use Permit

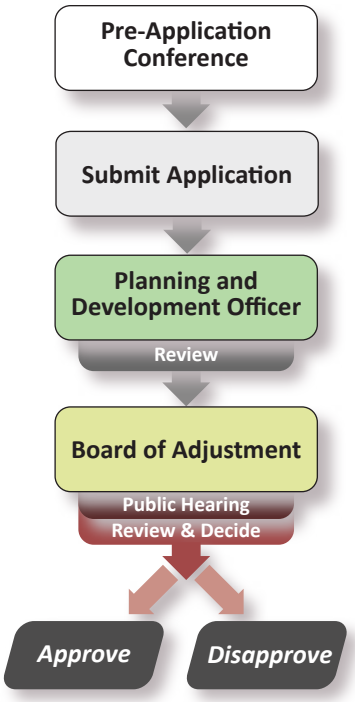
An approved special use permit shall not without prior approval of the Board of Adjustment:

1. Change to another use for more than 30 days;
2. Increase its density or intensity;

3. Enlarge, expand or increase its size;
4. Increase the requirements for off-street parking spaces;
5. Substantially change the exterior appearance of buildings; or
6. Add new outdoor equipment and machinery.

H. Expiration

1. A special use permit shall expire after 1 year from the date of approval by the Board of Adjustment unless a completed building permit application is submitted or a zoning permit is submitted when no building permit is required, including payment of all fees has been filed by the applicant and accepted by the City.
2. Any appeal of the issuance of the special use permit to Superior Court shall freeze the running of this 1 year period from commencement of the legal challenge until the end of all appeals. Once the use is constructed, the special use permit runs with the land and does not expire except:
   a. When the Board of Adjustment conditioned the special use permit to a limited defined time period;
   b. When the special use permit is revoked in accordance with *Sec. 10.2.1.D.1.*; or
   c. When the special use is changed to another use for more than 30 days, other than that for which the special use permit was issued or the special use is discontinued or ceased for a continuous period of 365 days or more without the re-approval of the Board of Adjustment. Without the re-approval of the Board of Adjustment, the special use permit is null and void and continuation of the special use is a violation of this UDO.



Sec. 10.2.10. Variance

A. Applicability

The Board of Adjustment has the authority to authorize variances from the provisions of *Chapter 3. Mixed Use Districts* through *Chapter 5. Overlay Districts* and *Chapter 7. General Development Standards*, subject to the requirements of this section.

B. Pre-Application Conference

Before submitting an application for a variance, an applicant shall schedule a pre-application conference with the Planning and Development Officer to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the Planning and Development Officer.

C. Application Requirements

1. An application for a variance shall be submitted in accordance with *Sec. 10.2.1.B.*
2. A Variance Application must be signed and notarized by the property owner in order to initiate a request for variance.

D. Approval Process

1. Planning and Development Officer Action

Planning and Development shall review the application for a variance in light of the showings of *Sec. 10.2.10.D.3.* below and advise the applicant.

2. Board of Adjustment Action

Following notice as required in *Sec. 10.1.8.* and *Sec. 10.2.1.C.*, the Board of Adjustment shall hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.*.

3. Showings

Before a variance request is granted, the Board of Adjustment shall show all of the following:

a. The variance will not authorize a use other than those uses allowed in the applicable district;

b. The variance is in accordance with the stated purposes and intent of this UDO;

c. That literal enforcement of the provisions of *Chapter 1. Introductory Provisions* through *Chapter 5. Overlay Districts* and *Chapter 7. General Development Standards* will result in practical difficulties or unnecessary hardship;

d. The practical difficulties or unnecessary hardship are not created by the owner of the property or the applicant and are not due to or the result of general conditions in the district in which the property is located;

e. The practical difficulties or unnecessary hardship are not solely financial;

f. The variance will not substantially or permanently injure the allowed uses of adjacent properties;

g. The variance requested is the minimum necessary variance to legalize the use of the land, building, parking facility or structure; and

h. The variance will not adversely affect the public health, safety or welfare.

E. Approval Limitations and Conditions

1. Absent specific authority from this UDO, the Board of Adjustment may not grant a variance which would modify, alter, change or suspend any requirement of a use standard as set forth in *Chapter 6. Use Regulations*
2. In granting a variance, the Board of Adjustment is authorized to attach safeguards and conditions to the approved variance as is necessary and appropriate and reasonably related to the circumstances that gave rise for the need of the variance.

F. Expiration of Variance

A variance shall expire after 6 months from the date of approval by the Board of Adjustment unless: (i) a completed building permit application, including payment of all fees has been filed by the applicant and accepted by the City; or (ii) the use and structure were previously in existence prior to the requested variance. Any appeal of the issuance of the variance to Superior Court shall freeze the running of this 6-month period from commencement of the legal challenge until the end of all appeals. Once the use is constructed or established, the variance runs with the land and does not expire except:

1. When the Board of Adjustment conditioned the variance to a limited defined time period; or
2. When the variance is revoked in accordance with *Sec. 10.2.1.D.1.*



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code* as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

1. City Council

Appeals of an administrative decision on a preliminary subdivision plan or combination or recombination of lots are heard by the City Council.

2. City Manager

Appeals of an administrative decision on final subdivision plats or on design adjustments are heard by the City Manager.

3. Board of Adjustment

All other appeals of administrative decisions, including site plan decisions not related to *Chapter 8. Subdivision & Site Plan Standards*, *Chapter 9. Natural Resource Protection* and *Chapter 11. Building and Housing Code*, are heard by the Board of Adjustment.

B. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

C. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.
2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to *Sec. 10.2.1.C.* within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the initiation of site work activities on the subject property.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 10 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with *Sec. 10.2.1.B.*

D. Approval Process

1. Planning and Development Officer Action

a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.

b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advice the applicant.

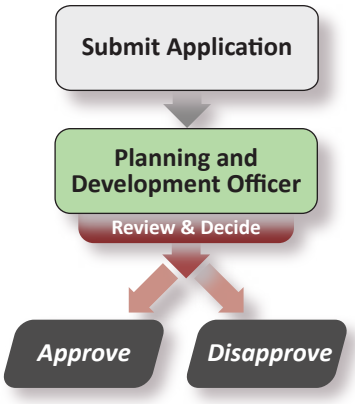
c. Planning and Development shall provide the notices required in *Sec. 10.1.7.* and *Sec. 10.2.1.C.*

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.* and provide notice as required in *Sec. 10.2.1.C.6.* Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

E. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.



Sec. 10.2.12. Common Signage Plan

A. Applicability

Prior to the issuance of a sign permit for one or more buildings or businesses in the same project, a common signage plan approved by the Planning and Development Officer in accordance with the requirements of this section shall be required.

B. Application Requirements

1. An application for a common signage plan shall be submitted in accordance with *Sec. 10.2.1.B.*
2. A Common Signage Plan Application must be filled out in order to process an application for a common signage plan.

C. Planning and Development Officer Action

1. The Planning and Development Officer shall check the proposed application against the requirements of *Sec. 7.3.16.H.* and other applicable technical requirements of the City.
2. In reviewing the application, the Planning and Development Officer may consult with the heads of the departments of Public Utilities, Public Works, Transportation, Parks and Recreation, Inspections and the Fire Department.
3. Following review, the Planning and Development Officer shall approve, approve with conditions that bring the application into conformance with this UDO and other applicable technical requirements of the City or deny the application.
4. If the application is disapproved, the reasons for such disapproval shall be stated in writing and provided to the applicant, specifying the provisions with which the application does not comply. A revised application may be submitted to the Planning and Development Officer for further consideration.
5. The Planning and Development Officer may allow modifications to the lettering style to accommodate state and federally registered trademarks (logos) if the Planning and Development Officer feels that the intent of the common signage plan requirements is maintained. In allowing modifications, the Planning and Development Officer may limit the logo size. The requirements of a common signage plan shall apply to all tenants within a related project, even if the properties have been subdivided.
6. Within 30 days after the date of the decision, an appeal of the Planning and Development Officer's action may be filed with the Board of Adjustment in accordance with *Sec. 10.2.11.*

D. Revisions to an Approved Plan

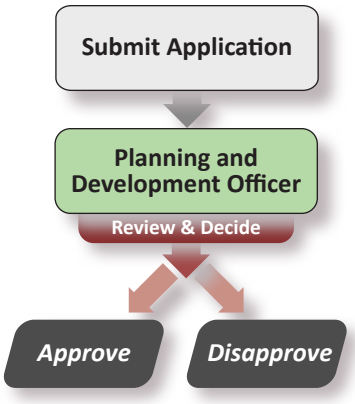
1. Revisions to an approved common signage plan shall require documentation from all tenants on the property prior to approval.
2. It shall be the responsibility of the applicant to enforce the terms of the common signage plan and a current copy of such plan, including any amendments, must be kept on file by the Planning and Development Officer.

E. Existing Signs Not Conforming to Common Signage Plan

All signs not conforming to the proposed common signage plan shall be required to comply at the time of application for a new sign permit.

F. Binding Effect

After approval of a common signage plan, no sign shall be erected, placed, painted or maintained, except in conformance with the common signage plan.



Sec. 10.2.13. Temporary Use Permit

A. Applicability

As listed in *Article 6.8. Temporary Uses*, temporary uses occurring on private property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit by the Planning and Development Officer in accordance with requirements of this section.

B. Application Requirements

1. An application for a temporary use permit shall be submitted in accordance with *Sec. 10.2.1.B.*
2. A Temporary Use Permit Application must be filled out in order to process an application for temporary use permit.

C. Planning and Development Officer Action

1. The Planning and Development Officer shall check the proposed application against the requirements of this UDO, all other applicable technical requirements of the City and the approval criteria of *Sec. 10.2.13.D.*
2. In reviewing the application, the Planning and Development Officer may consult with the heads of the departments of Public Utilities, Public Works, Transportation, Parks and Recreation, Inspections and the Fire Department.
3. Following review, the Planning and Development Officer shall approve, approve with conditions that bring the application into conformance with this UDO and other applicable technical requirements of the City or deny the application.
4. If the application is disapproved, the reasons for such disapproval shall be stated in writing and provided to the applicant, specifying the provisions with which the application does not comply. A revised application may be submitted to the Planning and Development Officer for further consideration.
5. Within 30 days after the date of the decision, an appeal of the Planning and Development Officer's action may be filed with the Board of Adjustment in accordance with *Sec. 10.2.11.*

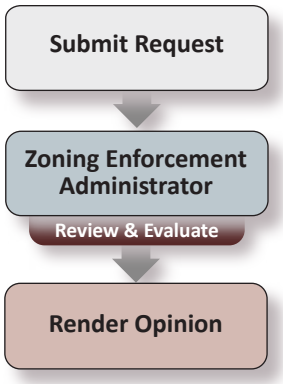
D. Approval Criteria

Before a request for temporary use permit is granted, the Planning and Development Officer must find the following:

1. The temporary use complies with any specific standard listed in *Article 6.8. Temporary Uses*;
2. No lighting or electrical service shall be provided without an electrical permit;
3. No structure associated with the temporary use shall be erected without a building permit;
4. All structures shall be cleared from the site within 5 days after the use is terminated;
5. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
6. The site of the temporary use shall be cleared of all debris at the end of the use;
7. Written permission of the property owner for the temporary use shall be provided;
8. Adequate parking shall be provided;
9. Required parking for other uses shall remain available;
10. Evidence that adequate traffic control measures shall be provided;
11. Evidence that adequate provisions for trash disposal and sanitary facilities shall be provided; and
12. When appropriate, adequate provisions for crowd control shall be provided.

E. Revocation of Temporary Use Permit

If any conditions of a temporary use permit are violated, the temporary use permit may be revoked by the Planning and Development Officer.



Sec. 10.2.14. Written Interpretation

A. Applicability

The Zoning Enforcement Administrator is authorized to make interpretations concerning the provisions of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*

B. Application Requirements

1. An application for an interpretation of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code* shall be submitted in accordance with *Sec. 10.2.1.C.*
2. A Written Interpretation Application must be completed in order to process a request for a written interpretation.

C. Zoning Enforcement Administrator Action

1. The Zoning Enforcement Administrator shall review and evaluate the request for written interpretation in light of the text of this UDO, the Official Zoning Map and any other relevant information.
2. Following review, the Zoning Enforcement Administrator shall render a written opinion within 5 working days after a completed application for a written interpretation is filed. Pursuant to *Sec. 10.2.1.C.6.*, the Zoning Enforcement Administrator shall notify the applicant and the property owner (if the property owner is not the applicant and the question of interpretation relates to a specific tract of land) of the interpretation.
3. All appeals of the Zoning Enforcement Administrator's written interpretation shall be made to the Board of Adjustment in accordance with *Sec. 10.2.11.* within 30 days after the date the written interpretation was decided.

D. Official Record

The Planning and Development Officer shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during regular office hours.



Sec. 10.2.15. Certificate of Appropriateness

A. Jurisdiction

1. The Historic Development Commission has jurisdiction for certificates of appropriateness for the exterior of all properties within the -HOD-G and -HOD-S.
2. The Historic Development Commission has jurisdiction for certificates of appropriateness for the exterior of Historic Landmarks within Raleigh's zoning jurisdiction.
3. The Historic Development Commission has jurisdiction for certificates of appropriateness for all designated interior spaces of Historic Landmarks within Raleigh's zoning jurisdiction.

B. Expiration of Certificate of Appropriateness

1. A certificate of appropriateness shall expire 6 months after the date of issuance if the work authorized by the certificate has not been commenced.
2. If after commencement the work is discontinued for a period of 12 months, the permit shall immediately expire.
3. A certificate of appropriateness authorizing demolition shall expire if the work has not been commenced within 6 months after the authorization date set by the Commission. If after commencement the demolition work is discontinued for a period of 12 months, the approval shall immediately expire.
4. No work authorized by any certificate that has expired shall thereafter be performed until a new certificate has been secured.

C. Application

1. All applications for a certificate of appropriateness are to be filed in the location noted on the current application form provided by the City.
2. The application shall be filed in accordance with the City's filing calendar on the form provided by the City.
3. The application must be accompanied by sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, alterations to designated interior features of Historic Landmarks, additions, changes or new construction. The names and mailing addresses of property owners filing or subject to the application and the addresses of property within 100 feet on all sides of the property which is the subject of the application must also be filed. Multiple copies of the application shall be provided when so required by the instructions on the form provided by the City. No incomplete applications will be accepted.
4. Staff may advise the applicant and make recommendations with regard to appropriateness based upon the adopted historic development standards.

D. Action on Application for Certificate of Appropriateness

1. Deadline

Applications for certificates of appropriateness shall be acted upon within 90 days after the complete application is filed, otherwise the application shall be deemed to be approved and a certificate of appropriateness shall be issued; provided however, that the Commission may take the matter under advisement for a total period of up to 180 days to receive additional evidence or memoranda of authority requested by the Commission for its consideration. Nothing in this paragraph shall prohibit an extension of time where mutual consent is given.

2. Minor Works

Upon receipt of a completed application, the Planning and Development Officer may issue a certificate of appropriateness for minor works.

a. Defined

Minor works are defined as those changes that do not involve substantial alterations, additions or removals

that could impair the integrity of the Landmark property or the Historic Overlay District as a whole. Minor works are limited to those listed in the "Bylaws and Rules of Procedure" of the Historic Development Commission.

b. Procedure

i. Applications for minor works shall be reviewed by the Planning and Development Officer according to the applicable historic development standards.

ii. A report describing all certificates of appropriateness for minor works shall be forwarded to the Historic Development Commission, for its information, at its next regularly scheduled meeting.

iii. Failure to approve the requested minor work by the Planning and Development Officer shall in no way interfere with the applicant's right to be heard by the Historic Development Commission—no application for a certificate of appropriateness may be denied without formal action by the Historic Development Commission.

3. Notice

a. Whenever a hearing on the application is to be heard by the Commission, Planning and Development shall make a reasonable attempt to identify and notify by mail the owners of property within 100 feet on all sides of the property that is the subject of the pending application.

b. Mailed notices are for the convenience of the property owners and occupants and any defect or their omission shall not impair the validity of issuing a certificate of appropriateness or any following action.

4. Hearing

a. Planning and Development shall transmit the application for a certificate of appropriateness, together with the supporting material, to the review body for its consideration.

b. Prior to the issuance or denial of a certificate of appropriateness by the Commission, the applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.

c. All meetings of the Historic Development Commission shall be open to the public in accordance with the North Carolina open meetings law, N.C. Gen. Stat. Chapter 143, Article 33B.

d. Interior arrangement shall not be considered by the review body and no certificate of appropriateness is required for interior repairs or renovations, except for designated interior features of Historic Landmarks.

e. The review body shall not refuse to issue a certificate of appropriateness except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs or other significant features in the –HOD-G, -HOD-S or for Historic Landmarks, which would be incongruous with the special character of the district or Landmark.

f. The Commission shall render its decision in written form, including its reasons for issuing or denying the certificate and a summary of any citation to the evidence, testimony, studies or other authority upon which it based its decision.

g. Without objection from any interested parties, the Historic Development Commission may hold summary proceedings on Certificates of Appropriateness. Such proceedings shall be a public meeting and the Commission's decision shall be rendered in written form.

h. In all proceedings or public hearings before the Historic Development Commission with regard to an application for a certificate of appropriateness, the burden of producing substantial evidence or testimony is upon the applicant and if the applicant fails to do so, the Commission shall deny the certificate.

i. Notwithstanding any other provisions of this UDO, the Historic Development Commission may require additional evidence or memoranda of authority to be submitted and may take the matter under advisement until such evidence or memoranda have been submitted and considered up to the 180-day limit established above.

j. As part of its deliberation, the Commission may view the premises and seek the advice of the North Carolina Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

k. The Commission's action on the application shall be approval, approval with conditions, deferral or denial.

E. Demolition of Buildings, Structures and Sites

1. General

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure or site within any Historic Overlay District or Historic Landmark may not be denied except as provided below for Statewide Significance. However, the authorization date of such a certificate may be delayed for a period of up to 365 days from the date of issuance. The maximum period of delay authorized by this section shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period of delay the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure or site. If the Commission finds that the building, structure or site has no particular significance or value toward maintaining the character of the Historic Overlay District or Historic Landmark, it shall waive all or part of such period and authorize earlier demolition or removal.

2. Pending Historic Landmark and within a Pending -HOD-G or -HOD-S

a. Where the Historic Development Commission has voted to recommend designation of a property as a Historic Landmark or an area as a -HOD-G or -HOD-S and final designation has not been made by the City Council, the demolition or destruction of any building, site or structure proposed as a Landmark or located in the proposed district may be delayed by the Commission for a period of up to 180 days or until the City Council takes final action on the designation, whichever occurs first.

b. Should the Council approve the designation prior to the expiration of the 180-day delay period, an application for a certificate of appropriateness for demolition must then be filed; however, the maximum period of authorization date delay for such demolition certificate shall be reduced by the Commission equal to the period of delay while the designation was pending.

3. Statewide Significance

An application for a certificate of appropriateness authorizing the demolition or destruction of a building, structure or site determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

4. Compliance with Other Law

Issuance of a certificate of appropriateness shall not relieve the applicant, contractor, tenant or property owner from obtaining any other permit required by this UDO or any law.

F. Appeals

1. In any action by the Historic Development Commission granting or denying any certificate of appropriateness issued as a summary proceeding or following a quasi-judicial public hearing, an appeal by an aggrieved party may be taken to the Board of Adjustment. To perfect such an appeal, written notice of intent to appeal must be sent to the Historic Development Commission, postmarked within 20 days following the decision, unless oral notice of appeal is made to the Commission during the meeting at which the decision is rendered. A completed application must then be filed with the Board of Adjustment within 60 days following the decision of the Commission. Appeals shall be in the nature of certiorari.
2. The State of North Carolina shall have a right of appeal to the North Carolina Historical Commission or any successor agency. Notice to the Historic Development Commission shall be served on the same day and in the same manner as for the North Carolina Historical Commission unless oral notice of appeal is given to the Historic Development Commission during the meeting at which the decision is rendered. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the Historic Development Commission.

G. Effect of Conflict with Other Ordinances

Whenever any ordinance adopted pursuant to N.C. Gen. Stat. Part 3C, Article 19, Chapter 160A requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or designated –HOD-G or –HOD-S than are established under any other statute, charter provision or regulation, Part 3C shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under general statute such other statute, charter provision, ordinance or regulation shall govern.



Sec. 10.2.16. Historic Landmark Designation

A. Applicability

1. The City Council shall designate Historic Landmarks.
2. Designations and amendments shall be made in accordance with the provisions of this section. Removing the designation from a Historic Landmark shall also follow the provisions of this section.

B. Application Requirements

1. Designation Reports

The Historic Development Commission shall make, or cause to be made, an investigation and report on the historical, prehistorical, architectural, archaeological and cultural significance of each building, structure, site, area or object proposed for designation. Applications prepared by owners will be judged by the same criteria as those prepared by the commission. Such reports shall contain the following information:

a. The name of the property to be considered for designation—both common and historic names, if they can be determined;

b. The name and address of the current property owner;

c. The location of the property proposed to be designated historic, including the street address and County tax map and parcel numbers or the parcel identification number;

d. The date of construction and of any later alterations, if any;

e. An assessment of the significance of the site or structure based on the criteria for designation cited below;

f. An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant features are proposed to be designated, the report shall contain a description of those features;

g. A historical discussion of the site or structure within its type, period and locality;

h. Archival photographs and/or digital images that clearly depict the property proposed to be designated, including views of all facades, pertinent details and siting, as outlined in the supporting information requirements of the current form for Historic Landmark Designation provided by the City; and

i. A map showing the location of the property, including any outbuildings and appurtenant features.

2. Elements of Ordinances Designating Historic Landmarks:

Ordinances designating historic landmarks shall contain the following elements which shall:

a. Describe each property designated in the ordinance, including the approximate area of the property so designated;

b. List the name or names of the owner or owners of the property;

c. Describe those elements of the property that are integral to its historical, prehistorical, architectural, archaeological and/or cultural significance;

d. Describe the nature of the commission's jurisdiction over the interior, if any and those interior features of the property to be reviewed for certificates of appropriateness if they are to be changed;

e. Require, for each building, structure, site, area or object designated as an historic landmark that the waiting period set forth in the general statutes be observed prior to its demolition;

f. Provide, for each designated historic landmark, a suitable sign or plaque indicating that the property has been so designated. If the owner consents, the sign or plaque shall be placed upon the property; if the owner objects, the sign or plaque shall be placed on a nearby public right-of-way; and

g. Recite any other information the governing body deems necessary within the authority conferred by the General Statutes.

C. Approval Process

Ordinances designating Historic Landmarks shall be adopted and amended according to the following procedure.

1. Planning and Development Officer Action

The Planning and Development Officer shall review the designation report and ordinance for conformance to the Application Requirements and provide a report to the Historic Development Commission and City Council that the documents are in conformance with this UDO's requirements.

2. Historic Development Commission Recommendation

The Commission shall forward its recommendation on the report to the City Council. The Council shall refer the report to the State Department of Cultural Resources, Office of Archives and History.

3. Department of Cultural Resources Action

The Department of Cultural Resources, acting through the State Historic Preservation Officer or designee, may make an analysis of and recommendations concerning the report. If the Department does not submit its written comments or recommendations in connection with any proposed designation within 30 days following a written request for such analysis has been received by the department, the Commission and the City Council shall be relieved of any responsibility to consider such comments.

4. Historic Development Commission and City Council Joint Public Hearing

a. The Historic Development Commission and the City Council shall hold a joint public hearing on the report and proposed ordinance.

b. Notice of the hearing shall be published at least once in a newspaper generally circulated within the City. Written notice of the hearing shall also be mailed by the Historic Development Commission to all owners and occupants of properties whose identity and current mailing address can be ascertained by the exercise of reasonable diligence.

c. All such notices shall be published or mailed not less than 10 nor more than 25 days prior to the date set for the public hearing.

d. The mailed notices in this subsection are for the convenience of property owners and occupants and any defect or their omission therein shall not impair the validity of the public hearing or any action following therefrom.

e. Following the Joint Public Hearing, the City Council shall refer the proposed ordinance to the Commission for final review and recommendation.

5. Historic Development Commission Action

a. Taking into consideration the written comments and recommendations of the Department of Cultural Resources and information received during the Public Hearing, if any, the commission shall make a final recommendation to City Council. The commission may recommend any amendments to the report or ordinance.

b. Upon adoption of the ordinance or any amendments, the commission shall give written notification of such designation to the owners and occupants of each designated historic property, insofar as reasonable diligence permits.

c. One copy of the ordinance and each amendment shall be filed by the Historic Development Commission in the office of the County Register of Deeds. Each historic property designated as a historic landmark in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Register of Deeds office and the Historic Development Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and of each amendment shall be kept on file in the City Clerk's office and shall be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment shall be given to the director of the Inspections Department.

d. Upon adoption of the ordinance or any amendments, the Historic Development Commission shall give notice to the County tax assessor. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the assessor in appraising it for tax purposes. The fact that a building, structure, site, area or object has been designated a Historic Landmark shall be clearly indicated on all tax maps maintained by the County or City for such period as the designation remains in effect.

6. City Council Action

Following the joint public hearing and upon receipt of the Commission's final recommendation, the City Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary or reject the proposal. If the City Council rejects a designation report, a copy of the minutes of the meeting at which such a decision to reject the report was made shall be mailed to the owner of the property proposed for designation.

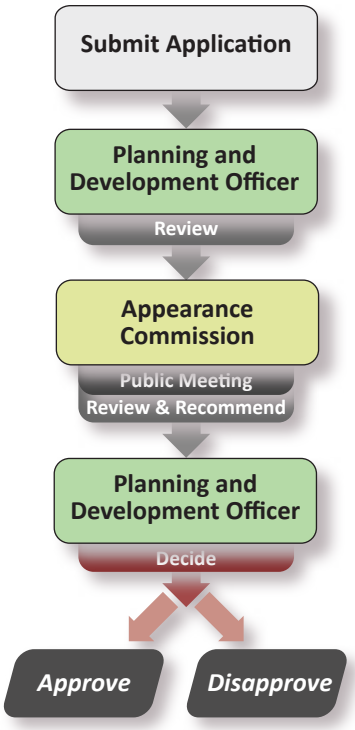
D. Considerations for Approval

1. Criteria for Designation

No building, structure, site, area or object shall be recommended for designation as a historic landmark unless it is deemed and found by the Historic Development Commission to be of special significance in terms of its historical, prehistorical, architectural, archaeological and cultural importance and to possess integrity of design, setting, workmanship, materials, feeling and association.

2. Limitations on Interior Designation and Review

Jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned historic landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner. If an owner's consent has been filed in the office of the County Register of Deeds and indexed according to the name of the owner of the property in the grantee and grantor indexes, such consent shall bind future owners and/or successors in title. The ordinance establishing the historic designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over those features.



Sec. 10.2.17. Administrative Alternate

A. Applicability

The Planning and Development Officer has the authority to approve a request for an administrative alternate as set forth in this UDO. All administrative alternates shall be reviewed in accordance with the provisions of this section and the applicable administrative alternative findings.

B. Application Requirements

1. An application for an administrative alternate shall be submitted in accordance with *Sec. 10.2.1.B.* A request for an administrative alternate must be submitted at the time of application for a preliminary subdivision plan, plot plan or site plan or at such time the administrative alternate is proposed in conjunction with the review of construction drawings, a plot plan or site plan.
2. An application for an administrative alternate must be signed and notarized by the property owner in order to initiate a request for an alternate.
3. The applicant shall submit pertinent material necessary for review of the alternate; in addition to the submittal material required for a subdivision, plot plan or site plan. This may include architectural renderings, materials samples or other project-specific information.

C. Approval Process

1. Appearance Commission Review

a. In reviewing the administrative alternate, the Planning and Development Officer shall consult with the heads of the departments of Public Utilities, Public Works, Transportation, Parks and Recreation, Inspections and the Fire Department to check the proposed request against the requirements of this UDO and other applicable technical requirements of the City.

b. Within 15 days of receipt of the completed application the Planning and Development Officer shall refer the request to the next scheduled Appearance Commission meeting.

c. Following the submission of a completed application, the Appearance Commission, shall hold a public meeting on the proposed amendment that shall be noticed in accordance with the provisions of *Sec. 10.2.1.C.1.* and *Sec. 10.2.1.C.3.*

d. The Appearance Commission shall review the request, giving consideration to the intent statements and findings listed for each alternate requested.

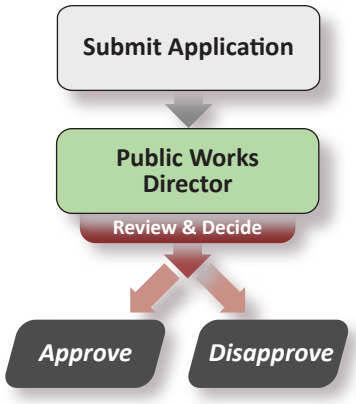
e. Within 21 days of its initial public meeting when the matter was first discussed, the Appearance Commission shall recommend to the Planning and Development Officer approval, approval with conditions or denial of the requested administrative alternate.

2. Planning and Development Officer Decision

a. The Planning and Development Officer shall consider the applicable intent statements and the administrative alternate findings for the requested administrative alternate and either approve, approve with conditions or deny the request.

b. The reasons for such approval or disapproval shall be stated in writing. In accordance with *Sec. 10.2.1.C.6.*, notice of the decision shall be provided to the applicant and the property owner (if the property owner is not the applicant) and to each person who has filed a written request for notice with the Planning and Development Officer prior to their decision.

c. Within 30 days from the date the application was decided, an appeal of the Planning and Development Officer's action may be filed with the Board of Adjustment in accordance with *Sec. 10.2.11.*



Sec. 10.2.18. Design Adjustment

A. Applicability

The Public Works Director has the authority to approve a request for a design adjustment set forth in this UDO. All design adjustments shall be reviewed in accordance with the provisions of this section and the applicable design adjustment findings.

B. Application Requirements

1. An application for a design adjustment shall be submitted in accordance with *Sec. 10.2.1.B.* A request for an design adjustment must be submitted at the time of application for a preliminary subdivision plan, plot plan or site plan or at such time the design adjustment is proposed in conjunction with the review of construction drawings, a plot plan or site plan.
2. An application for a design adjustment must be signed and notarized by the property owner in order to initiate a request for an adjustment.
3. The applicant shall submit pertinent material necessary for review; in addition to the submittal material required for a subdivision, plot plan or site plan. This may include detailed landscape plans, roadway cross-sections, site or subdivision layout or other project-specific information..

C. Public Works Director Action

1. In reviewing the design adjustment, the Public Works Director shall consult with the heads of the departments of Planning, Public Utilities, Transportation, Parks and Recreation, Inspections and the Fire Department to check the proposed request against the requirements of this UDO and other applicable technical requirements of the City.
2. The Public Works Director shall consider the applicable intent statements and design adjustment findings for the request and either approve, approve with conditions or deny the request within 60 days of the receipt of a completed application .
3. Additional review time may be necessary when the design adjustment involves review by another municipal or state entity or when detailed engineering studies are submitted to or required by the Public Works Director.
   a. The reasons for such approval or disapproval shall be stated in writing. In accordance with *Sec. 10.2.1.C.6.*, notice of the decision shall be provided to the applicant and the property owner (if the property owner is not the applicant) and to each person who has filed a written request for notice with the Public Works Director prior to their decision.
   b. Within 30 days from the date the application was decided, an appeal of the Public Works Director's action may be made to the City Manager in accordance with *Sec. 10.2.11.*



Sec. 10.2.19. Vested Rights

A. Applicability

Those landowners desiring the protections granted by N.C Gen. Stat. §160A-385.1 may, at their own option, request the City Council to hold a public hearing on an site plan.

B. Application Requirements

An application for a vested right determination shall be submitted in accordance with *Sec. 10.2.1.B.*

C. City Council Action

1. Following notice as required in *Sec. 10.1.8.*, the City Council shall hold a quasi-judicial public hearing as set forth in *Sec. 10.2.1.D.1.*
2. The City Council may impose conditions and terms on any site plan for which a vested rights hearing has been requested by the landowner, including site plans which in the absence of such a request from the landowner would not have been reviewed otherwise by the City Council.
3. Before a request for a vested right is granted, the City Council must find that all of the following are met.
   a. The approved site plan or plot plan complies with all applicable provisions of this UDO and other applicable technical requirements of the City;
   b. If the approved site plan or plot was conditionally approved upon the obtaining of any governmental approval and or street closing, such governmental approvals and street closings were in fact obtained.
   c. Access with respect to pedestrian, bicycle and automotive safety, traffic flow and emergency service is adequate.
   d. The lot upon which the site plan or plot plan is located complies with approved subdivision plans for the site.
   e. The site plan or plot plan coordinates with existing and planned public facilities, such as and without limitation:
      i. Stormwater drainages structures;
      ii. Public utilities;
      iii. Street and sidewalk and on-street parking;
      iv. Parks greenways and governmental recreational facilities;
      v. Fire stations and community service facilities;
      vi. Trash collection; and
      vii. Transit stops and facilities.
4. Approval of vested rights site plan with the condition that a variance or special use permit be obtained shall not confer a vested right unless and until the necessary variance or special use permit is obtained. In all other instances, a site plan shall be deemed vested upon approval by the City Council. The City Council shall not require landowners to waive their vested rights as a condition of approval of a site plan.

D. Action Following Approval

1. Following the vesting of a site plan, the landowners and their successors shall be entitled to submit to the Planning and Development a final site plan, together with any valid building permit applications of the total area of any section or phase of the approved preliminary site plan, within a period of not more than 2 years after the approval of any site plan.
2. If submissions were timely made and if within 3 years after approval of building permit applications, at least ½ of the total floor area gross shown on the site plan is completed, building permit applications for the remaining portions of the preliminary site plan for which no previous valid building permit applications has been filed, shall be processed by the City for an additional period not exceeding 5 years from the approval date of the preliminary site plan.
3. Following the approval or conditional approval of a vested site plan, nothing in this section shall exempt such plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, the UDO

existing at the time of approval and subsequent laws as permitted in *Sec. 10.2.19.D.5.* below.

4. If noncompliance is discovered, revocation of the site plan and remedies authorized by *Article 10.4. Enforcement* may be undertaken by the City, notwithstanding the vesting of the site plan.

5. Site plans which are vested under this section shall be subject to new or amended zoning regulations as allowed by State law and such vested rights shall terminate for any of the reasons stated in N.C. Gen. Stat. 160A-385.1(e).

Article 10.3. Nonconformities

Sec. 10.3.1. In General

A. Public Safety

Repairs required for public safety because of unsafe conditions or by either the Housing Code or North Carolina State Building Code may be made in any amount unless the repairs are caused by a casualty, in which case the provisions of *Sec. 10.3.2.G.* or *Sec. 10.3.3.D.* shall apply in lieu of this provision.

B. Reservation of Authority

Notwithstanding the policies and provisions of this Article with respect to nonconformities, the City expressly reserves its authority to initiate criminal and civil proceedings against unlawful uses, buildings, structures and lots, including those which unlawfully existed here before and to control or abate noxious uses, to require the repair or demolition of unsafe buildings or structures or to control or eliminate public health nuisances through the exercise of any powers authorized by the City Code and the North Carolina General Statutes.

Sec. 10.3.2. Nonconforming Uses

A. Authority to Continue

1. Subject to the provisions of this Article or any amortization provision, any lawfully existing nonconforming use may continue in operation on the same land area and on the same floor area of the structure that was occupied by the nonconforming use on the date the use first became a nonconforming use. The continuation of a nonconforming use shall not be constructed to permit an increase in the number of dwelling units or a reduction of land area to the number of dwelling units
2. Subject to the provisions of this Article or any amortization provision, any lawfully existing nonconforming structure may continue to occupy the same land area within the existing configuration and size of the structure which existed on the date the structure first became a nonconforming structure

B. Ordinary Repair and Maintenance

Normal maintenance and incidental repair or replacement, installation or relocation of non-bearing walls or non-bearing partitions, adding facilities to improve handicapped accessibility, painting, fencing and landscaping, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use; provided, however, that this paragraph shall not be deemed to authorize any violation of *Sec. 10.3.2.C.*through *Sec. 10.3.2.G.* Expenditures in any amount may be to either bring the nonconformity into full compliance with this UDO or to amortize the nonconformity.

C. Extensions

A nonconforming use shall not be extended, expanded, enlarged or increased in intensity, unless a special use permit is issued by the Board of Adjustment for such extension or expansion. Such prohibited activity shall include, without being limited to:

1. Extension of the use to any structure or land area other than that occupied by the nonconforming use on the effective date of this UDO or any amendment to this UDO that causes a use of the property to become otherwise nonconforming.
2. Extension of the use within a building or other structure to any portion of the floor area that was not occupied by the nonconforming use on the effective date of this UDO or any amendment to this UDO that causes the use to become otherwise nonconforming.
3. Operation of the nonconforming use in such a manner as to conflict with this UDO, or to further conflict with this UDO, if already conflicting as of the date this UDO or any amendments to this UDO is applied to the property, any use limitations established for the district in which the use is located.
4. New construction, reconstruction or structural alteration except those described as ordinary repair and maintenance in *Sec. 10.3.2.B.* above.

D. Relocation

1. No structure that is devoted in whole or in part to a nonconforming use shall be relocated in whole or in part to any other location on the same or any other tract or lot unless the entire structure and the use of the structure shall conform to all the regulations of the district to which the structure and use are relocated.
2. No nonconforming use of land shall be relocated in whole or in part to any other location on the same or any other lot unless such use conforms to all the regulations of the district to which the use of land is relocated.

E. Change in Use

A nonconforming use of land or of a structure shall not be changed to any use other than a use permitted in the zoning district in which the land or structure is located. When a nonconforming use has been changed to a permitted use, it shall only be used thereafter for a use permitted in the zoning district in which it is located. For purposes of this paragraph, a use shall be deemed to have been changed when an existing nonconforming use has been terminated and the permitted use has commenced and continued for a period of 7 days.

F. Abandonment or Discontinuance

1. When a nonconforming use of land or a nonconforming use of part or all of a structure is discontinued, vacated or abandoned for a period of 365 consecutive days or more, the use shall not be reestablished or resumed.
2. Operation of any nonconforming use without a license or permit required of the owner or operator, for 365 consecutive days, shall constitute a termination of the nonconforming use.
3. Following the abandonment or discontinuation of a nonconforming use, any subsequent use or occupancy of land or structure shall comply with the regulations of the zoning district in which the land or structure is located.

G. Damage or Destruction

1. In the event that a conforming structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than 50% of the replacement cost of the structure immediately prior to such damage, such structure shall not be restored unless the structure and the use will conform to all regulations of the district in which the structure and use are located or unless a special use permit is issued by the Board of Adjustment for such restoration.
2. In the event that a conforming structure that is devoted in whole or in part to a nonconforming use is damaged or partially destroyed, by exercise of eminent domain riot, fire, accident explosion, flood, lightning, wind or other calamity or natural cause to the extent of 50% or less of the replacement cost of the structure immediately prior to such damage, such structure may be repaired and reconstructed and used for the same purposes and degree as it was before the damage or destruction, provided that such repair or reconstruction is commenced with a valid building permit within 12 months of the date of such damage or destruction.
3. If a nonconforming use is located within an Airport Overlay District, the following shall apply:
   a. No renovation, maintenance or repair shall be made if the damage or destruction is more than 80% of its replacement cost immediately prior to such damage, unless the nonconformity is brought into compliance with this UDO; or
   b. A special use permit is issued by the Board of Adjustment for such restoration and the restoration does not create a greater hazard to navigation than the previously existing nonconformity.
4. Replacement cost shall be determined by either: (i) the median value based Square Foot Costs established by the most recent edition of Building Construction Cost Data published by R.S. Means; or (ii) the most recent tax value for building as reported in the county tax office where the property is located. The property owner shall decide which of the 2 methods for determining replacement cost is to be used.
5. The percent of damage shall be calculated by using the selected replacement value of the entire structure as the denominator and by using the selected replacement value of the damaged portion of the structure as the numerator. The same method used to determine replacement value for the denominator must be used.

Sec. 10.3.3. Nonconforming Principal Structures

A. Applicability

This section applies to all nonconforming principal structures and not to nonconforming accessory buildings, accessory structures, fences, signs, off-street parking, vehicular surface areas, private access points and outdoor lighting (see *Sec. 10.3.4.*)

B. Authority to Continue

Subject to the provisions of this Article or any amortization provision, any lawfully existing nonconforming structure may continue to occupy the same land area within the existing configuration and size of the structure which existed on the date the structure first became a nonconforming so long as it remains otherwise lawful.

C. Ordinary Repair and Maintenance

1. Normal maintenance and incidental repair or replacement, installation or relocation of non-bearing walls or non-bearing partitions, adding facilities to improve handicapped accessibility, painting, fencing and landscaping, wiring or plumbing, may be performed on any nonconforming structure; provided, however, that this paragraph shall not be deemed to authorize any violation of *Sec. 10.3.3.C.* through *Sec. 10.3.3.F.* Expenditures in any amount may be to either bring the nonconformity into full compliance with this UDO or to amortize the nonconformity.
2. Repairs maintenance and renovations to nonconforming residential buildings (detached house, attached house, townhouse and apartment) used exclusively for household living as set forth in *Sec. 6.2.1.* may be made in any amount and for any purpose except as restricted by *Sec. 10.3.3.D.* or *Sec. 10.3.3.G.1.* below.

D. Enlargement

Any nonconforming structure used for a conforming use may be enlarged or altered which does not exceed, singularly or collectively, 25% of the floor area gross of the original nonconformity; provided, however, that no enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.

E. Relocation

No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot unless the entire structure conforms to the regulations of the district to which such structure is relocated.

F. Voluntary Demolition

Nothing shall be deemed to permit the reconstruction of any part of a nonconforming structure that has been voluntarily demolished.

G. Damage or Destruction

1. In the event that a nonconforming structure that is devoted in whole or in part to a conforming use is damaged or partially destroyed, by exercise of eminent domain riot, fire, accident explosion, flood, lightning, wind or other calamity or natural cause to the extent of more than 50% of the replacement cost of the structure immediately prior to such damage, such structure shall not be restored unless the structure and the use will conform to all regulations of the district in which the structure and use are located or unless a special use permit is issued by the Board of Adjustment for such restoration.
2. In the event that a nonconforming structure that is devoted in whole or in part to a conforming use is damaged or destroyed, by any means other than voluntary demolition, to the extent of 50% or less the replacement cost of the structure immediately prior to such damage, such structure may be repaired and reconstructed and used for the same purposes and degree as it was before the damage or destruction, provided that such repair or reconstruction is commenced with a valid building permit within 12 months of the date of such damage or destruction
3. If the nonconforming structure is located within an Airport Overlay District, the following shall apply:
    a. No renovation, maintenance or repair shall be made if the damage or destruction is more than 80% of its replacement cost immediately prior to such damage, unless the nonconformity is brought into compliance with this UDO; or
    b. A special use permit is issued by the Board of Adjustment for such restoration and the restoration does not create a greater hazard to navigation than the previously existing nonconformity.

4. Replacement cost shall be determined by either: (i) the most recent edition of Building Construction Cost Data published by R.S. Means; or (ii) the most recent tax value for building as reported in the county tax office where the property is located. The property owner shall decide which of the 2 methods for determining replacement cost is to be used.
5. The % of damage shall be calculated by using the selected replacement value of the entire structure as the denominator and by using the selected replacement value of the damaged portion of the structure as the numerator. The same method used to determine replacement value for the denominator must be used.
6. Nothing in this paragraph shall prevent the rebuilding, reconstruction or restoration of a structure because such structure fails to conform to the standards of a Neighborhood Conservation Overlay District.

H. Replacement of Manufactured Homes

Replacement of nonconforming manufactured homes that fail to meet the minimum standards of the National Manufactured Home Construction and Safety Standards shall be permitted, provided that all of the following are met:

1. The replacement manufactured home meets the current minimum required standards as prescribed by the United States Department of Housing and Urban Development (HUD).
2. The newly installed manufactured home, if located in a flood prone area, complies with the provisions of *Article 9.3. Floodprone Area Regulations*
3. That the period of time between the time the nonconforming manufactured home is removed and the time it is replaced with a standard manufactured home is less than 365 days.
4. The number of manufactured homes is not increased.
5. The floor area gross of the new manufactured home does not exceed the floor area gross of the manufactured home it replaced by more than 25%.

Sec. 10.3.4. Nonconforming Site Elements

Subject to the provisions contained in this section and all other applicable provisions of this UDO, one or more of the following activities and improvements can be made to nonconforming accessory buildings, accessory structures, fences, signs, off-street parking, vehicular surface areas, private access points and outdoor lighting. Improvements and activities that are not explicitly authorized by in this section are not allowed. The following allowed activities and improvements can be initiated without the issuance of a special use permit by the Board of Adjustment.

A. Renovation, Ordinary Maintenance and Repair

1. The cost of renovation and ordinary maintenance and repair to any nonconforming accessory building, accessory structure, fence, vehicular surface area, private access point and outdoor lighting shall not during any 1 calendar year exceed 15% of the tax value of the zoning nonconformity in the county where the property is located, or if there is no listed tax value, the original cost of the nonconformity.
2. The limitation on expenditures established here does not apply to *Sec. 10.3.4.B.* through *Sec. 10.3.4.G.* below.
3. Ordinary maintenance and repair shall be limited to work necessary to maintain and correct any damage, other than caused by casualty or deterioration to the structural soundness or features of an accessory building, accessory structure, fence, vehicular surface area, private access point or outdoor lighting.
4. For damage to any nonconformity that is caused by any casualty, the provisions of *Sec. 10.3.4.E.* below apply in lieu of this provision.
5. The regulations for ordinary maintenance and repair of nonconforming signs are set forth in *Sec. 7.3.17.*

B. Casualties

The rebuilding, reconstruction or restoring of any nonconforming accessory building, accessory structure, fence, vehicular surface area, private access point and outdoor lighting which was damaged or partially destroyed by a casualty, which includes the exercise of eminent domain, riot, fire, accident, explosion, lightning, flood, wind or other calamity or natural act, is allowed provided all of the following conditions are met:

1. The cost of rebuilding, reconstructing and restoring the nonconformity is less than 50% of either its listed property tax value of the zoning nonconformity in the county where the property is located or, if there is no listed property tax value, the original cost of the nonconformity.
2. The nature and degree of the nonconformity is not expanded, extended or increased from that which existed prior to the damage or destruction, nor is it altered or changed except as otherwise allowed as a renovation in *Sec. 10.3.4.A.* above.
    a. Reconstruction and repair is commenced with a valid building permit within 12 months of the date of such damage or destruction
    b. If the cost of the rebuilding, reconstruction or restoration will be 50% or more of either the listed property tax value in he county where the property is located or if there is no listed property tax value the original cost of the nonconformity, the nonconforming accessory building, accessory structure, fence, vehicular surface area, private access point or outdoor lighting shall not be rebuilt, reconstructed or restored except in compliance with this UDO.

C. Expansions

Additions to the number of off-street parking spaces and expansions to vehicular surface areas shall be governed by *Article 7.1. Parking* In addition, expansions to vehicular surface areas to serve any zoning nonconforming use shall in addition to these standards be subject to all the requirements of *Sec. 10.3.6.A.3.*, including the requirement.

D. Resumptions

Any nonconforming accessory building, accessory structure, sign, vehicular surface area, private access point or outdoor lighting, which is discontinued, unused or unoccupied for a continuous period of 365 days or more may not be restarted, resumed or reoccupied.

E. Substitution of Impervious Surfaces

Substitution of impervious surfaces for 1 use, facility, building or structure, vehicular surface area or access point to another provided all of the following are met:

1. The amount and extent of impervious surfaces is not increased.
2. The placement of those new impervious surfaces conforms to the requirements of this UDO.
3. The impervious surface is for a lawful activity.

F. Zoning Nonconformities Brought Into Compliance

Expenditures to bring any nonconforming accessory building, accessory structure, fence, sign, off-street parking, vehicular surface areas, private access point or outdoor lighting into full compliance with the City Code are allowed in any amount. The owner may secure any permit or approval and make any alteration that will bring the zoning nonconformity into full compliance.

G. Amortizing a Nonconformity

Expenditures required by this UDO to amortize a nonconformity are permitted in any amount.

Sec. 10.3.5. Nonconforming Lots of Record

A. Authority to use For Single-Unit Living

In any district in which a single-unit living detached house is allowed as a permitted use, notwithstanding the regulations imposed by any other provisions of this UDO, a single-unit living detached house which complies with the restrictions of *Sec. 10.3.5.B.* below may be erected on a nonconforming lot that:

1. Has less than the prescribed minimum lot area or width; and
2. Is shown by a recorded plan or deed to have been a lot of record owned separately and individually from adjoining tracts of land at a time when the creation of a lot or tract of such area and depth at such location would not have been prohibited by any zoning or other ordinance.

B. Regulations for Single-Family Use of Nonconforming Lots

A nonconforming lot authorized to be used pursuant to *Sec. 10.3.5.A.* above may be used for a single-unit living detached house and permitted accessory uses and structures. Construction of the single-unit living detached house shall comply with all the regulations, except lot area or width, applicable to the detached house in the district in which the lot is located, unless a variance is granted pursuant to *Sec. 10.2.10.*

Sec. 10.3.6. Special Use Permits for Nonconformities

A. Special Use Permit Required

All special use permits authorized in this section shall be processed, noticed and heard in accordance with *Sec. 10.2.9.* After the issuance of a special use permit by the Board of Adjustment in accordance with *Sec. 10.3.6.B.*, one or more of the following activities can be made to a zoning nonconformity.

1. Repair and maintenance work not authorized by either *Sec. 10.3.2.B.*or *Sec. 10.3.3.B.*
2. Fixing and replacing damage and destruction authorized by *Sec. 10.3.2.G.1.* and *Sec. 10.3.2.G.3.*and by *Sec. 10.3.3.G.1.* and *Sec. 10.3.3.G.3.*
3. The expansion, extension or alteration of a nonconforming use or vehicular surfaces serving a nonconforming use (including nonconforming principal use parking facilities) when all of the following are met:
    a. The expansion, extension or alteration complies with all requirements of this UDO including but not limited to: height, bulk, setback, off-street parking, impervious surface coverage and access.
    b. The expansion, of a nonconforming use does not, singularly or collectively, exceed 25% of the total gross area occupied by the original nonconforming use. If the original nonconforming use occupied a portion of a building and that building has not been enlarged since the establishment of the nonconformity, that original nonconforming use may be extended beyond 25% within the interior portions of the building.
4. The change of an existing nonconforming use to another nonconforming use provided that all of the following are met:
    a. The use will have no greater adverse affect on the surrounding property in terms of automobile or truck traffic, on-street parking, noise, stormwater, vibration and hours of nighttime operation than the existing use.
    b. Any change to a limited use or special use complies with applicable requirements of *Chapter 6. Use Regulations*
    c. The proposed substitute nonconforming use is allowed in the zoning district of the highest classification in which the existing nonconforming use would be a conforming use. The determination of the classification of the use shall be based on Planning and Development Officer.
    d. Once a nonconforming use is changed to a higher classification, it may not thereafter be changed to a nonconforming use of a lower classification, including a change back to the original nonconforming use.
    e. The substitution of a nonconforming impervious surface for another, the replacement of a substandard nonconforming manufactured home and the change of use of a nonconforming use to a conforming use may all be done without a special use permit from the Board of Adjustment if the applicable provisions of *Sec. 10.3.5.*, *Sec. 10.3.3.E.*, *Sec. 10.3.2.B.* and *Sec. 10.3.3.B.* are met.
5. The relocation onto its same premise of either a nonconformity or a nonconforming private access point, is allowed; provided the relocation reduces the extent of the nonconformity and more closely conforms to the standards contained in this UDO.
6. The expansion, change, addition and alteration of a building or use which fails to comply with the regulations of a -TOD, -NCOD, -MPOD, CM District; provided all of the following are met:
    a. The expansion does not, singularly or collectively, exceed 25% of the total gross floor area of the building or use existing at the time the zoning district regulations was first applied to the property.
    b. The building or use existed at the time the zoning district regulations were applied to the property.
    c. The proposed activity complies with all requirements and regulations of this UDO other than the zoning district regulations.

B. Showings for Granting Special Use Permit for Nonconformities

1. Before a request for the special use permit is granted, the Board of Adjustment must show that all of the following are met :
   a. The applicable standards of this section have been met;
   b. All of the showings of *Sec. 10.2.9.E.* have been met; and
   c. The requested repair, reconstruction, expansion, change of use to a different nonconforming use or relocation will not be injurious to property or improvements in the affected area.
2. In acting upon a petition for a special use permit, the Board cannot order the discontinuance or termination of the nonconformity.
3. If a special use petition is denied, the continuation of the nonconformity and the activities allowed in *Sec. 10.3.2.*and *Sec. 10.3.3.* without a special use permit is still allowed unless otherwise prohibited by law. This policy is adopted to encourage the owners of nonconformities to apply for special use permits to improve and bring into conformance to the extent possible their property.

Article 10.4. Enforcement

Sec. 10.4.1. Violations and Violators

A. Each of the following are declared to be violations of the Raleigh City Code:

1. Any person owning, leasing, using, managing or occupying any building, sign, structure or land where there is placed, removed, altered, expanded or there now exists any thing contrary to *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*; any regulation, rule or order adopted pursuant to the applicable chapter; any certificate of appropriateness, conditional use, special use permit or variance issued pursuant to this UDO; or a lawful plan approved under this UDO.
2. Any architect, designer, engineer, agent or any other person who acts in concert, participates, directs or assists in the creation or continuation of a violation of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*; any regulation, rule or order adopted pursuant to this UDO; any certificate or appropriateness, conditional use, special use permit or variance issued pursuant to this UDO; or a lawful plan approved under this UDO.
3. Any builder, contractor or any other person who shall erect, expand, relocate, reconstruct, alter or use any land, structure, sign, tree or building contrary to *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*; any regulation, rule or order adopted pursuant to this UDO; any certificate of appropriateness, conditional use, special use permit or variance issued pursuant to this UDO; or a lawful plan approved under this UDO.
4. Any person, who shall fail, neglect or refuse to do any act as required by *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*; any regulation, rule or order adopted pursuant to this UDO; any certificate of appropriateness, conditional use, special use permit or variance issued pursuant to this UDO; or a lawful plan approved under this UDO.

B. The term "lawful plan" as used here shall mean a plot plan, site plan, Master Plan, Neighborhood Plan or Streetscape Plan.

C. The terms contrary to or violation of a lawful plan include the establishment, creation, expansion, alteration, relocation, occupancy or continuation of any use, building or structure for which a plan is required except in accordance with the terms, conditions and provisions of the approved lawful plan.

D. The enumeration of these declared violations shall not be deemed exclusive or all-inclusive. All persons who shall commit violations shall be held responsible and shall be subject to the penalties and remedies provided in *Sec. 1.1.10.* and *Sec. 10.4.2.* Each day's continuing violation shall be a separate and distinct violation or offense.

Sec. 10.4.2. Civil Penalty

A. General

1. Any act constituting a violation of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code* shall subject the offender to a civil penalty to be recovered by the City in a civil action in the nature of a debt or as otherwise provided herein if the offended fails to pay the penalty within 48 hours from and after receipt of a citation of a violation.
2. All violations shall be subject to a civil penalty in the amount of one $100 unless a higher amount is otherwise specified in this UDO; continuous violations shall be subject to a civil penalty in the amount specified in subsection e., below.

B. Citation Contents

A zoning violation citation shall, among other things:

1. State upon its face the amount of the penalty for the specific violation if the penalty is paid within 48 hours from and after issuance of the citation.
2. Notify the offender that a failure to pay the penalty within the prescribed time shall subject the offender to a civil action in the nature of debt for the stated penalty plus any additional penalties, together with the cost of the action to be taxed by the court.
3. Further provide that the offender may answer the City zoning citation by mailing the citation and the stated penalty to Post Office Box 590, Raleigh, North Carolina 27602 or may pay the amount at the cashier's window on the fourth floor, One Exchange Plaza.

4. That the penalty must be either paid or the failure to pay must be cleared with the Planning and Development Officer, within 48 hours of the issuance of the citation. The notice shall further state that if the zoning violation citation is not cleared within 48 hours, court action by the filing of a civil complaint for collection of the penalty may be taken. As used upon the zoning violation citation, the word "cleared" shall mean either:
   a. Payment;
   b. Arrangement for payment to be made; or
   c. A prima facie showing to the Planning and Development Officer that the zoning citation was received as a result of mistake, inadvertence or excusable neglect.

C. Settlement of Civil Claim

1. The Planning and Development Officer is authorized to accept payment in full and final settlement of the claim or claims, right or rights of action which the City may have to enforce such penalty by civil action in the nature of debt.
2. Acceptance of a penalty shall be deemed a full and final release of any and all claims or right of action arising out of contended violations, only if the activities or non-activities which gave rise to the violations are abated or otherwise made lawful.

D. Additional Penalty

A penalty of $25, in addition to the one imposed for payment within 48 hours, shall apply in those cases in which the penalties prescribed in this section have not been paid within the prescribed 48 hour period and in which a civil action shall have been instituted.

E. Civil Penalties for Continuing Violations

1. No civil penalty shall be levied against the same person for the same continuing violation at the same location more than once unless and until the Planning and Development Officer shall provide to the person to be assessed continuing civil penalties a written notice containing the following:
   a. The nature of the violation;
   b. An order directing corrective action;
   c. The date when corrective measures must be completed; and
   d. A statement that failure to correct the violation by the specified date will result in the assessment of additional civil penalties and other enforcement action.
2. If after the allotted time period for corrective measures has expired and after the hearing of any appeal, if any, by the Board of Adjustment corrective action has not been completed, a civil penalty shall be assessed in the amount of $500 per day of continuing violation.
3. Written notices may be served by personal service or by registered or certified mail, return receipt requested. When service is made by registered or certified mail, a copy of the notice may also be sent by first class mail. Service by first class mail shall be deemed sufficient if:
   a. The registered or certified mail is unclaimed or refused, but the first class mail is not returned by the post office within 10 days after the mailing; and
   b. The Planning and Development Officer has reasonable grounds to believe that the address used for the first class mailing is an address that will actually reach the person to be served.
4. If first class mail is used, a notice of the pending proceedings shall also be posted in a conspicuous place on the premises where the violation exists.
5. If the identities or whereabouts of persons are unknown and cannot be ascertained by the Planning and Development Officer in the exercise of reasonable diligence, then the notice may be served by publication in a newspaper having general circulation in the City. The notice shall be published at least once and publication shall occur no less than 30 days prior to the deadline for corrective action contained in the notice. When the notice is served by publication, a copy of the notice shall also be posted in a conspicuous place on the premises where the violation exists.

Sec. 10.4.3. Administrative Fee

Any person who shall commit a violation of *Chapter 1. Introductory Provisions* through *Chapter 7. General Development Standards* and *Chapter 11. Building and Housing Code*, receives official notice from the City of the violation and fails to remedy the violation within the time period specified such that a zoning violation citation is issued shall be subject to an administrative fee of $100 in addition to any other charge.