

# Article 10: Administrative Procedures

## Section 10.1. Advisory and Decision-Making Bodies

### 10.1.1. GENERAL

- A. The following bodies and County staff have powers and responsibilities in administering and reviewing development applications under this Ordinance:
1. Board of Commissioners;
  2. Planning Board;
  3. Board of Adjustment;
  4. Technical Review Committee (TRC);
  5. Planning Director;
  6. Building Safety Director; and
  7. County Engineer.
- B. Table 10.1.1: Summary Table of Development Review Responsibilities, summarizes the specific review responsibilities of advisory and decision-making bodies and County staff for each type of application. *[05-03-2021]*

<b>Table 10.1.1: Summary Table of Development Review Responsibilities</b> R = review and recommendation or report; D = decision; A = appeal; F = preliminary forum; <> = hearing						
Type of Application	Board of Commissioners	Planning Board	Board of Adjustment	Technical Review Committee (TRC)	County Engineer	Planning Director
<b>Discretionary Review</b>						
Text Amendment	<D>	<R> [1]				R
Zoning Map Amendment	<D>	<R> [1]				R
Conditional Zoning	<D>	<R> [1]		R [2]		R
Master Planned Development	<D>	<R> [1]		R [2]		R
Special Use Permit	<D>	<F>		R [2]		R
<b>Site Plans and Subdivision</b>						
<b>Site Plan</b>						
Major Site Plan			<A>	D		
Minor Site Plan			<A>	R [2]		D
<b>Subdivision</b>						
<b>Major Subdivision</b>						
Preliminary Plan [3]			<A>	D		

**Table 10.1.1: Summary Table of Development Review Responsibilities**

R = review and recommendation or report; D = decision; A = appeal; F = preliminary forum;  
<> = hearing

Type of Application	Board of Commissioners	Planning Board	Board of Adjustment	Technical Review Committee (TRC)	County Engineer	Planning Director
Construction Plans			<A>	D		
Final Plat [3]			<A>			D
Minor Subdivision Plat			<A>			D
<b>Permits</b>						
Zoning Compliance Approval			<A>			D
Tree Removal Permit			<A>			D
Floodplain Development Permit	<i>See Article 9: Flood Damage Prevention</i>					
<b>Relief</b>						
Variance – Zoning and Subdivision			<D>			R
Variance – Floodplain	<i>See Article 9: Flood Damage Prevention</i>					
Reasonable Accommodation			<D>			R
<b>Other Procedures</b>						
Interpretation			<A>			D

**NOTES:**

- [1] If the Planning Board’s decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant’s intent to proceed with the hearing before the Board of Commissioners within 10 calendar days of the Planning Board’s decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn.
- [2] The applicant may request, at the applicant’s option, that the TRC review and provide comments on the application. In such cases, the TRC does not make a recommendation on the application.
- [3] The decision may be appealed directly to the Superior Court of New Hanover County (see N.C.G.S. § 160D-1403).

[05-03-2021]

**10.1.2. BOARD OF COMMISSIONERS**

To exercise the authority granted to the Board of Commissioners by state law, the Board shall have the following powers and duties under this Ordinance:

- A.** To review and make a decision on applications for the following:
  1. Text amendments (Section 10.3.1);
  2. Zoning map amendments (Section 10.3.2);
  3. Conditional zonings (Section 10.3.3);
  4. Planned developments (Section 10.3.4); and
  5. Special use permits (Section 10.3.5).

- B.** To adopt a schedule of fees governing applications under this Ordinance, and civil penalties for violations of this Ordinance; and
- C.** To take any other action not delegated to the Planning Board, Board of Adjustment, Technical Review Committee (TRC), Planning Director, Building Safety Director, or County Engineer as the Board of Commissioners may deem desirable and necessary to implement the provisions of this Ordinance, in accordance with state law.
- D.** To enter into private development agreements as provided in Article 10 of N.C.G.S. Chapter 160D after conducting a public hearing. These development agreements may require a commitment of public and private resources for large scale projects containing at least 25 acres or more exclusive of wetlands, mandatory buffers, and other portions of the property precluded from development. In entering into such agreements, the County may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law. *[05-03-2021]*

### **10.1.3. PLANNING BOARD**

The Planning Board is hereby established in accordance with state law.

#### **A. Powers and Duties**

*[05-03-2021]*

The Planning Board shall have the following powers and duties:

1. To review and make a recommendation on the following applications:
  - a. Text amendments (Section 10.3.1);
  - b. Zoning map amendments (Section 10.3.2);
  - c. Conditional zonings (Section 10.3.3); and
  - d. Planned Developments (Section 10.3.4);
2. To provide a preliminary forum for review of special use permits (Section 10.3.5), provided that no part of the preliminary forum or recommendation may be used as a basis for the deciding board;
3. To make recommendations to the Board of Commissioners on studies, plans, and ordinances regarding growth, development, and redevelopment in the County, including comprehensive land use plans and development regulations; and
4. Any other powers and duties delegated to it by the Board of Commissioners, consistent with state law.

#### **B. Membership, Appointment, and Terms of Office**

1. The Planning Board shall consist of seven members appointed by the Board of Commissioners.
2. Planning Board members shall be residents of the County.
3. Planning Board members shall be appointed to three-year, staggered terms, except that in case of vacancy occurring during a term, the same

shall be filled by the Board of Commissioners for the unexpired portion of such term.

4. Planning Board members shall be appointed to three-year terms that are staggered such that the terms of not more than three members expire in any given year. Members may be appointed to successive terms without limitation.
5. The Board of Commissioners shall appoint Planning Board members to fill vacancies occurring for reasons other than expiration of terms for the period of the unexpired term only.
6. Any Planning Board member may be removed at any time with or without cause by the Board of Commissioners.

**C. Officers and Rules of Procedure**

The Planning Board shall elect its own officers and shall adopt the rules of procedure under which it will operate, including establishing the time(s) and place(s) of meetings. Copies of the rules of procedure shall be made available for public inspection in the Planning Department.

**D. Staff**

The Planning Director shall serve as the professional staff liaison to the Planning Board and provide it with administrative support.

**E. Meetings**

1. Regular meetings of the Planning Board shall be open to the public. There shall be no secret or executive meetings.
2. The Planning Board shall keep minutes of its meetings, in which shall be recorded all actions taken by the Board on all matters considered. Such minutes shall be public records.

**10.1.4. BOARD OF ADJUSTMENT**

The Board of Adjustment is hereby established in accordance with state law.

**A. Powers and Duties**

*[05-03-2021]*

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

1. To review and make a decision on the following:
  - a. Zoning and subdivision variances (Section 10.3.11);
  - b. Reasonable accommodations (Section 10.3.13); and
  - c. Appeals of administrative decisions made under authority of this Ordinance (including interpretations) (Section 10.3.14); and
2. Any other powers and duties delegated to it by the Board of Commissioners, consistent with state law.

**B. Membership, Appointment, and Terms of Office**

1. The Board of Adjustment shall consist of five regular members and three alternate members, appointed by the Board of Commissioners.
2. Members of the Board of Adjustment shall be residents of the County.
3. Members of the Board of Adjustment shall be appointed to three-year terms that are staggered such that the terms of not more than two regular members and one alternate member expire in any given year. Members may be appointed to successive terms without limitation.
4. The Board of Commissioners shall appoint Board of Adjustment members to fill vacancies occurring for reasons other than expiration of terms for the period of the unexpired term only.
5. Any Board of Adjustment member may be removed for cause by the Board of Commissioners upon written charges and after a public hearing.

**C. Officers and Rules of Procedure**

1. The Board of Adjustment shall elect one of its members as Chair and another as Vice Chair, each of whom shall serve one-year terms.
2. The Board of Adjustment shall adopt the rules of procedure under which it will operate, including establishing the time(s) and place(s) of meetings. Copies of the rules of procedure shall be made available for public inspection in the Planning Department.

**D. Staff**

The Planning Director shall serve as the professional staff liaison to the Board of Adjustment and provide it with administrative support.

**E. Meetings**

1. Regular meetings of the Board of Adjustment shall be open to the public.
2. The Board of Adjustment shall keep minutes of its meetings, in which shall be recorded all actions taken by the Board of Adjustment, including the vote of each member upon every question, or indicating the member's absence or failure to vote, and all records of its examination and any other official actions. Such minutes shall be public records.

**10.1.5. TECHNICAL REVIEW COMMITTEE (TRC)**

The Technical Review Committee (TRC) is hereby established in accordance with state law.

**A. Powers and Duties**

The TRC shall have the following powers and duties:

1. To review and make a decision on the following applications:
  - a. Major site plans (Section 10.3.6.D);
  - b. Major subdivision preliminary plans (Section 10.3.7.D.1); and
  - c. Major subdivision construction plans (Section 10.3.7.D.2);

2. To review and make a recommendation on the following applications:
  - a. Conditional zonings, at the applicant's request (Section 10.3.3);
  - b. Planned developments, at the applicant's request (Section 10.3.4);
  - c. Minor site plans, at the applicant's request (Section 10.3.6.E); and
  - d. Major subdivision final plats (Section 10.3.7.D.3); and
3. To provide its expertise and technical assistance to the County's other decision-making bodies, upon request.

**B. Membership**

The TRC shall consist of representatives from County departments and agencies involved with development review, including the following:

1. Planning;
2. Engineering;
3. Fire Services;
4. Cape Fear Public Utility Authority; and
5. Environmental Health.

**C. Chair**

The Planning Director shall serve as Chair of the TRC, and shall schedule committee meetings, coordinate the committee's activities, preside over committee meetings, prepare committee reports, and serve as the liaison to the departments and agencies involved in the TRC review process.

**D. Meetings**

1. The Planning Director shall establish a regular meeting schedule to allow the TRC to take action as expeditiously as reasonably possible on matters before it. The TRC may make recommendations and decisions on applications at its regular meetings or by other means established by the Planning Director to ensure an efficient review process.
2. The purpose of TRC meetings is to allow for discussion of comments provided by the TRC on specific development applications or conceptual proposals with the applicant, and for the TRC to make a decision or recommendations on the application, as appropriate.

**E. Review and Comment by Other Departments or Agencies**

Representatives from county departments and from non-county regulatory agencies involved with development review may participate in the TRC review process and provide comments on development applications. These agencies include, but are not limited to:

1. The North Carolina Department of Transportation;
2. The Wilmington Metropolitan Planning Organization;
3. The North Carolina Department of Environmental Quality; and
4. The United States Army Corps of Engineers.

### **10.1.6. PLANNING DIRECTOR**

- A.** The Planning Director shall have the following powers and duties under this Ordinance:
- 1.** To review and make a decision on the following applications:
    - a.** Minor site plans (Section 10.3.6);
    - b.** Major subdivision final plats (Section 10.3.7);
    - c.** Minor subdivision plats (Section 10.3.7);
    - d.** Zoning compliance approvals (Section 10.3.8);
    - e.** Tree removal permits (Section 10.3.9); and
    - f.** Interpretations (Section 10.3.15);
  - 2.** To review and prepare reports and/or recommendations, as appropriate, to advisory and decision-making bodies on the following applications:
    - a.** Text amendments (Section 10.3.1);
    - b.** Zoning map amendments (Section 10.3.2);
    - c.** Conditional zonings (Section 10.3.3);
    - d.** Planned developments (Section 10.3.4);
    - e.** Special use permits (Section 10.3.5);
    - f.** Major site plans (Section 10.3.6);
    - g.** Major subdivision preliminary plans (Section 10.3.7);
    - h.** Zoning and subdivision variances (Section 10.3.11); and
    - i.** Reasonable accommodations (Section 10.3.13);
  - 3.** To conduct pre-application conferences in accordance with Section 10.2.2, Pre-Application Conference;
  - 4.** To establish requirements for the content, format, and submission schedule for development applications reviewed under this Ordinance;
  - 5.** To compile and maintain an Administrative Manual that supplements procedures for development review required by this Ordinance, and which may include detailed submittal and procedural requirements for development applications, a schedule of application fees (as established by the Board of Commissioners), and detailed specifications and illustrations identifying how this Ordinance's standards for landscaping, infrastructure, and other aspects of development may be met;
  - 6.** To maintain the Official Zoning Map and related materials;
  - 7.** To serve as the Floodplain Administrator;
  - 8.** To serve as professional staff to the Planning Board and the Board of Adjustment;
  - 9.** To provide expertise and technical assistance to the County's review and decision-making bodies;

- 10. To enforce this Ordinance in accordance with Article 12: Violations and Enforcement;
  - 11. To carry out any other activities necessary for the administration of this Ordinance that are not delegated to other bodies or officials; and
  - 12. To prepare and implement studies, plans, and ordinances regarding growth, development, and redevelopment in the County, including comprehensive land use plans and development regulations.
- B. The Planning Director may delegate any act authorized by this Ordinance to be carried out by the Planning Director to professional-level staff under the Planning Director's direction.
  - C. The designated Planning Director for the purposes of this Ordinance is the Director of the Planning Department, or the head of the equivalent department that carries out the County's planning and zoning functions.

#### **10.1.7. COUNTY ENGINEER**

The County Engineer shall have the following powers and duties:

- A. To accept applications for construction plans and to issue approval letters for the installation of the required improvements in accordance with the approved plans and the design standards specified in this Ordinance.

## **Section 10.2. Standard Review Procedures**

### **10.2.1. GENERAL**

- A. This section sets forth the standard procedural steps that are generally required for development applications reviewed under this Ordinance. Where a procedural step is not required for a particular type of application, or where alternative procedures are required, Section 10.3, Application-Specific Procedures, specifies the variations from the standard review procedures. The procedural flow charts in Section 10.3 generally depict the procedural steps that apply to the review of each type of application.
- B. The County has prepared an Administrative Manual that includes information and requirements for submitting applications for development review under this Ordinance. That manual includes application submittal requirements, review schedules, and additional details on application review procedures.

### **10.2.2. PRE-APPLICATION CONFERENCE**

#### **A. Purpose**

The purpose of a pre-application conference is to provide an opportunity for the applicant and staff to review submittal requirements, procedures, and schedules for an anticipated development application. A pre-application conference is also intended for the applicant and staff to discuss the scope, features, and impacts of the proposed development.



**B. Applicability**

A pre-application conference is required for applications for planned development (see Section 10.3.4). A pre-application conference may be requested and held at the applicant's option for any other development application reviewed under this Ordinance.

**C. Effect**

The pre-application conference is intended as a means of facilitating the review process. Discussions held in accordance with this section are not binding on the County or the applicant. Official reviews of development applications do not begin until a formal application is submitted and determined to be complete.

**10.2.3. COMMUNITY INFORMATION MEETING**

**A. Purpose**

The purpose of a community information meeting is to inform owners and residents of nearby lands about a proposed development application, and to provide the applicant an opportunity to hear comments and concerns about the development proposal as a means of resolving conflicts and outstanding issues, where possible.

**B. Applicability**

1. Unless a report is submitted in accordance with subsection 2 below, a community information meeting that complies with the requirements in this section is required prior to submittal of any of the following applications:
  - a. Conditional rezonings;
  - b. Planned developments; and
  - c. Special use permits for uses classified as intensive industry.
2. A applicant may submit an application identified in subsection 1 above without first holding a community information meeting if the applicant submits with the application a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held.
3. The adequacy of a meeting held or report submitted shall be considered by the Planning Board and Board of Commissioners, as appropriate, in their decisions, but shall not be subject to judicial review.
4. For applications other than those identified in subsection 1 above, a community information meeting may be held in accordance with this section at the option of the applicant.

**C. Procedure**

If a community information meeting is conducted, the applicant shall comply with the requirements in subsections 1 and 2 below.

## **1. Notification**

- a.** The applicant shall provide written notice by mail or other agreed upon measure at least ten days prior to the date of the community information meeting. Notice shall be provided to the Planning Department and to each owner of record of land within 500 feet of and on the property subject to the application.
- b.** The County shall provide notice of the community information meeting by e-mail to the Sunshine List.

## **2. Conduct of Meeting and Written Summary**

- a.** The community information meeting shall be open to the public. At the meeting, the applicant shall explain the development proposal and application, inform attendees about the application review process, respond to questions or concerns neighbors raise about the proposed application, and discuss ways to resolve any conflicts or concerns.
- b.** The applicant shall prepare a written summary of the meeting. The summary shall be included with the application materials and contain the following information:
  - 1.** Date, time, and location of the meeting;
  - 2.** List of meeting attendees;
  - 3.** Summary of issues discussed;
  - 4.** Description of any changes or adjustments made to the proposal as a result of the comments and concerns received by the applicant; and
  - 5.** Any other information the applicant deems appropriate.

### **10.2.4. APPLICATION SUBMITTAL AND ACCEPTANCE**

#### **A. Authority to File Applications**

- 1.** Unless expressly stated otherwise in this Ordinance, development applications reviewed under this Ordinance shall be submitted by:
  - a.** The owner, contract purchaser, or any other person having a recognized property interest in the land on which development is proposed; or
  - b.** A person authorized to submit the application on behalf of the owner, contract purchaser, or other person having a recognized property interest in the land, as evidenced by a letter or document signed by the owner, contract purchaser, or other person having a recognized property interest in the land.
- 2.** Applications for text amendments and general use zoning map amendments may be submitted by any person, organization, or interested party, including the Board of Commissioners, the Planning Board, or County staff except that no text amendment or general use zoning map amendment that down-zones property, as defined by this ordinance, shall be initiated or considered without the written consent of all property

owners whose property is the subject of the down-zoning amendment, unless the amendment is initiated by the County. [05-03-2021]

**B. Application Content**

1. The Planning Director shall establish the requirements for the content and form of each type of specific development application reviewed under this Ordinance and shall include the requirements in the Administrative Manual.
2. The Planning Director may amend and update application requirements as necessary to ensure effective and efficient review.
3. The applicant bears the burden of ensuring that an application contains sufficient information to demonstrate compliance with all applicable standards in this Ordinance.

**C. Application Fees**

The Board of Commissioners shall establish application fees and may amend and update those fees as necessary. The Planning Director shall include a schedule of application fees in the Administrative Manual.

**D. Schedule for Application Submittal and Review**

1. The Planning Director shall establish a submittal and review schedule (including submittal deadlines and time frames for review) for the various types of development applications, and shall include the schedule in the Administrative Manual.
2. The Planning Director may amend and update the submittal and review schedule to ensure effective and efficient review under this Ordinance.

**E. Application Submittal**

Applications shall be submitted to the Planning Director in the form and having the content established by the Planning Director, along with the appropriate application fee.

**F. Determination of Application Completeness**

**1. Completeness Review**

After submittal of an application in accordance with this Ordinance, the Planning Director shall determine whether the application is complete or incomplete. A complete application is one that:

- a. Contains all information and materials required by this Ordinance, including the requirements for the submittal of the particular type of application established by the Planning Director in the Administrative Manual;
- b. Is in the form required by the Planning Director for the particular type of application;
- c. Includes information in sufficient detail to evaluate the application to determine whether it complies with the appropriate standards of this Ordinance; and

- d. Is accompanied by the fee established for the particular type of application.

## **2. Application Incomplete**

- a. If the Planning Director determines that the application is incomplete, the Planning Director shall notify the applicant of the deficiencies in the application. The applicant may correct the deficiencies and resubmit the application for completeness determination.
- b. The Planning Director shall not process an application for further review until it is determined to be complete.
- c. Applications fees shall not be accepted for applications determined to be incomplete.

## **3. Application Complete**

If the Planning Director determines that the application is complete, the Planning Director shall accept the application for review in accordance with the procedures and standards of this Ordinance.

## **G. Application Withdrawal**

- 1. An applicant may withdraw a complete application at any time by submitting a written notice to the Planning Director.
- 2. Applications fees shall not be refunded for withdrawn applications.

## **10.2.5. STAFF REVIEW AND ACTION**

### **A. Staff Review**

- 1. Applications shall be reviewed during the appropriate review cycle in place when the application is determined to be complete.
- 2. The Planning Director shall distribute the application to all appropriate staff and review agencies for review and comment.
- 3. In considering the application, the Planning Director, the TRC, or other County staff (as appropriate), shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- 4. If deficiencies in complying with the applicable development standards are identified, the Planning Director shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss the deficiencies and revise the application to address them. The Planning Director may also offer the applicant comments or suggestions regarding possible improvements to the proposed development that are not required by this Ordinance.

### **B. Applications Subject to Decision by the Planning Director or TRC**

- 1. If an application is subject to review and final decision by the Planning Director or the TRC, the Planning Director or TRC, as appropriate, shall either approve the application, approve the application subject to

conditions (as appropriate), or require that the application be revised to address deficiencies in complying with applicable development standards.

2. If an application is subject to review and final decision by the TRC, the application shall be approved or approved subject to conditions, if all members of the TRC find that it complies with the standards each individual member is responsible for administering.
3. Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this Ordinance. They shall be related in both type and scope to the anticipated impacts of the proposed development. All conditions of approval shall be expressly set forth in the development approval or permit.

### **C. Applications Subject to a Public Hearing**

#### **1. Staff Report**

If a public hearing is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the TRC shall review and make a recommendation on the application if required by Table 10.1.1, and the Planning Director shall review the application, and TRC's recommendation, as applicable, and prepare a written staff report on the application. The staff report may recommend one of the decisions authorized for the particular type of application, as set forth in Section 10.3, Application-Specific Procedures, and may identify and recommend conditions of approval, as appropriate.

#### **2. Distribution and Availability of Application and Staff Report**

Within a reasonable time period before the public hearing or meeting at which an application is scheduled for review by an advisory or decision-making body, the Planning Director shall:

- a. Schedule the public hearing or meeting and verify any required public notification of the hearing in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification;
- b. Transmit the application, related materials, and the staff report to the appropriate advisory or decision-making body;
- c. Transmit a copy of the staff report to the applicant; and
- d. Make the application, related materials, and staff report available for examination by the public on the County's website and/or in the Planning Department during normal business hours, at a reasonable cost.

### **10.2.6. PUBLIC HEARING AND PRELIMINARY FORUM SCHEDULING AND PUBLIC NOTIFICATION**

*[05-03-2021]*

If a public hearing or preliminary forum is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the scheduling and public notification of the public hearing or preliminary forum shall comply with the requirements in this section. The scheduling and public notification

requirements of this section shall apply to Special Use Permit Preliminary Forums.  
[05-03-2021]

## **A. Scheduling of Public Hearing**

### **1. General**

- a. If a public hearing is required for an application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the Planning Director shall ensure that the public hearing on the application is scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the advisory or decision-making body reviewing the application.
- b. A required public hearing on the application shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

### **2. Deferral of Hearing upon Applicant's Request**

An applicant may request that an advisory or decision-making body's consideration of a development application at a public hearing be deferred by submitting a written request for deferral to the Planning Director.

#### **a. Request Before Notification Provided**

If mailed or published notice has not been provided in accordance with this Ordinance, the Planning Director shall consider and decide the deferral request. An application may be deferred by the Planning Director for a time not to exceed six months, for good cause. Applications that are not considered by the advisory or decision-making body after a six-month administrative deferral shall be considered withdrawn.

#### **b. Request After Notification Provided**

If mailed or published notice has been provided in accordance with this Ordinance, the deferral request shall be considered by the advisory or decision-making body at the public hearing for which notice was provided and may be granted at the discretion of the advisory or decision-making body for good cause, for a period of time determined appropriate by the body. If a deferral is granted, the applicant shall be responsible for any additional fees in accordance with the adopted fee schedule. Applications that are not considered by the advisory or decision-making body within six months after the advisory or decision-making body grants a deferral shall be considered withdrawn.

## **B. Public Notification**

All development applications shall comply with the North Carolina General Statutes (N.C.G.S), the provisions of this section, and the other provisions of this Ordinance with regard to public notification.

## 1. Required Type and Timing of Public Notification

Public notification of a public hearing on a development application shall be provided in accordance with the requirements in Table 10.2.6.B.1: Required Type and Timing of Public Notification, for the type of application and the type of notice. In computing the required time periods, the day the notice is published, mailed, or posted shall not be included, but the day of the hearing shall be included.

**Table 10.2.6.B.1: Required Type and Timing of Public Notification**

Application Type	Required Type and Timing of Public Notification			
	Sunshine List/Website	Published Notice	Mailed Notice [1]	Posted Notice
Zoning Map Amendment	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Conditional Rezoning (CZD)	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Planned Development [2]	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Special Use Permit (SUP)	Within 10 business days of the submittal deadline	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Text Amendment	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	[3]	None
Variance	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing
Appeal	None	Once a week for 2 successive calendar weeks, with the first notice being between 10 and 25 days before hearing	Between 10 and 25 days before hearing	At least 10 days before hearing

**NOTES:**

[1] Expanded published notice may substitute for mailed notice in cases where a rezoning application directly affects more than 50 properties, owned by at least 50 different property owners in accordance with state law.

[2] Applies to the UMXZ, RFMU, EDZD, and PD zoning districts.

[3] Applications that would change the range of allowable uses within five miles of a military base require mailed notice by certified mail to the military base commander between 10 and 25 days before the hearing.

## **2. Sunshine List and Website Posted Notice Requirements**

- a.** The Planning Director shall post the application materials and the date, time, and location of the initial public hearing for which the application is scheduled to the Planning Department's website within ten business days of the application submittal deadline established in the Administrative Manual.
- b.** After the application has been posted to the Planning Department's website, the Planning Director shall send notice of the posting to the Sunshine List (see Section 2.3, Definitions and Terms) within the same timeframe stated above.
- c.** Additional materials submitted by the applicant after the application submittal deadline shall be posted to the Planning Department's website when received by the Planning Director.

## **3. Published Notice Requirements**

The Planning Director shall be responsible for providing published notice of a public hearing in accordance with this section. Notice shall be published in a newspaper that has general circulation in the County.

## **4. Mailed Notice Requirements**

- a.** Except for community information meetings, the Planning Director shall be responsible for mailing notice in accordance with this section. Notice shall be mailed to:
  - 1.** The owners of the land subject to the application;
  - 2.** The applicant, if different from the land owner;
  - 3.** The owners, as shown on the County tax listing, of land within 500 feet of the land subject to the application (including owners of land located outside of the County) whose address is known by reference to the latest ad valorem tax records; and
  - 4.** Commanders of military bases located within five miles of the land subject to the application when the application proposes:
    - i.** Changes to the Official Zoning Map;
    - ii.** Changes that affect the range of allowable uses of land;
    - iii.** Changes relating to telecommunication towers or windmills; or
    - iv.** Changes to proposed major subdivision preliminary plats or an increase of an approved subdivision by more than 50 percent of the subdivision's land area, including developed and undeveloped land.
- b.** Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The content and form of the notice shall comply with Section 10.2.6.B.6, Notice Content, and state law.



- c. The Planning Director shall prepare an affidavit affirming that notice of the public hearing meeting these standards was mailed. The affidavit shall be conclusive that notice is given in accordance this section.
- d. A copy of the mailed notice shall be maintained in the Planning Department for public inspection during normal business hours.

#### **5. Posted Notice Requirements**

- a. The Planning Director shall be responsible for posting notice required by this section.
- b. The posted notice shall be located on the land subject to the application or on an adjacent public street right-of-way in a conspicuous location so as to be clearly visible to the traveled portion of the respective street. If no part of the subject land is visible from a public right-of-way, the notice shall be posted in the public right-of-way of the nearest street. When multiple parcels are included within an application, a posting on each individual parcel is not required, but the Planning Director shall post sufficient notices to provide reasonable notification to interested persons.
- c. The content and form of the notice shall be established by the Planning Director in accordance with state law.

#### **6. Notice Content**

All notices for public hearings provided by mail (mailed notice), or publication (publishing in a newspaper of general circulation in the County) shall:

- a. Identify the date, time, and location of the public hearing;
- b. Identify the location of the land subject to the application; and
- c. Describe the nature of the proposed development or action.

#### **7. Constructive Notice**

- a. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt is made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to:
  - 1. Errors in a legal description; and
  - 2. Typographical or grammatical errors that do not impede communication of the notice to affected parties.
- b. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and location of a public hearing and the location of the subject property shall be strictly adhered to.
- c. If questions arise at the hearing regarding the adequacy of notice, the body conducting the hearing shall direct the Planning Director to make

a formal finding as to whether there is substantial compliance with the notice requirements of this Ordinance.

## **10.2.7. PUBLIC HEARING AND PRELIMINARY FORUM PROCEDURES**

*[05-03-2021]*

If a public hearing or preliminary forum is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the public hearing or preliminary forum shall comply with the requirements in this section. *[05-03-2021]*

### **A. General**

*[05-03-2021]*

1. The burden of demonstrating that an application complies with applicable review and approval standards of this Ordinance is on the applicant.
2. Any person may appear at a public hearing or preliminary forum and submit testimony, documents, and materials, either individually or as a representative of a person or an organization. Each person who speaks at a public hearing or preliminary forum shall identify themselves, state their home or business address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization they represent.
3. The body conducting the public hearing or preliminary forum may place reasonable time restrictions on the presentation of testimony and the submission of documents and other materials. The body conducting the hearing or preliminary forum may exclude testimony that it finds to be irrelevant, immaterial, or unduly repetitious.
4. The body conducting the public hearing or preliminary forum may, on its own motion or at the request of any person, continue the public hearing or preliminary forum to a fixed date, time, and place.
5. The body conducting the public hearing or preliminary forum shall record the proceedings by any appropriate means. The written or taped record of oral proceedings, the hearing minutes, all applications, exhibits, and papers submitted in any proceeding before the body conducting the public hearing or preliminary forum, the staff report, and the recommendation or decision shall constitute the record. All records of public hearings or preliminary forums conducted by an advisory or decision-making body shall be a public record, and open for inspection at the County offices during normal business hours upon reasonable notice.

### **B. Order of Proceeding for Standard Public Hearings**

*[05-03-2021]*

The order of proceedings at a standard public hearing shall be as follows:

#### **1. Presentation of Staff Report**

The Planning Director shall provide a brief introductory narrative and/or graphic description of the application and present the staff report and any review body findings and recommendations.

**2. Applicant Presentation**

The applicant shall present any information the applicant deems appropriate.

**3. Public Comment**

Public comments shall be heard. Any person other than the applicant or applicant's representatives may be permitted to speak in accordance with the advisory or decision-making body's rules of procedure, or at their discretion, as appropriate, in support of or in opposition to the application.

**4. Response to Comments and Presentation**

The applicant, public, and Planning Director may respond to any comments, documents, or materials presented as deemed appropriate by the body conducting the meeting.

**5. Close of Hearing**

The person chairing the body conducting the hearing shall close the hearing. After the hearing is closed, no additional testimony, evidence, or public comments will be heard or considered.

**C. Quasi-Judicial Public Hearings**

Quasi-judicial public hearings shall comply with the following requirements in addition to the requirements in subsections A and B above:

**1. Ex Parte Communication**

*Ex parte* communication between an applicant or an affected party and a member of the body holding the hearing on the application is prohibited, and must be disclosed during the hearing, if it occurs.

**2. Sworn Testimony**

All persons who will testify at the hearing shall be sworn in prior to their submission of testimony and evidence.

**3. Opportunity to Present Testimony and Evidence**

Any person may present testimony and evidence, subject to Section 10.2.7.A.3 above.

**4. Cross Examination**

Cross-examination by members of the body conducting the hearing shall be allowed. Cross-examination by the County, the applicant or applicant's representatives, and affected parties is also allowed, subject to the authority of the chair of the body holding the hearing.

**5. Consideration of Testimony and Evidence**

The body conducting the hearing shall make its recommendation or decision based on findings of fact supported by competent, substantial, and material evidence presented at the hearing.

**D. Order of Proceeding for Preliminary Forums**

The order of proceedings at a preliminary forum shall be as follows:

**1. Staff Introduction**

The Planning Director shall briefly introduce the application.

**2. Applicant Presentation**

The applicant shall present any information the applicant deems appropriate.

**3. Public Comment**

Public comments shall be heard. Any person other than the applicant or applicant's representatives may be permitted to speak in accordance with the Planning Board's rules of procedure, or at the Board's discretion, as appropriate, in support of or in opposition to the application.

**4. Response to Public Comments and Presentation**

The applicant, public, and Planning Director may respond to any comments, documents, or materials presented as deemed appropriate by the Planning Board.

**10.2.8. ADVISORY BODY REVIEW AND ACTION**

If review by an advisory body (the Planning Board) is required for the application (see Table 10.1.1: Summary Table of Development Review Responsibilities), the body shall review and act on the application in accordance with the following procedures.

**A. Review and Recommendation**

*[05-03-2021]*

1. The advisory body shall conduct a public hearing or preliminary forum on the application in accordance with 10.2.7, Public Hearing and Preliminary Forum Procedures, and shall consider the application, relevant support materials, the staff report, and any public comments made during the public hearing or preliminary forum. Following the public hearing, the body shall recommend one of the decisions authorized for the particular type of application, based on the applicable review standards.
2. The advisory body's recommendation shall be in writing and shall clearly state the factors considered in making the recommendation and the basis or rationale for the recommended decision.
3. If permitted for the particular type of application in accordance with Section 10.3, Application-Specific Procedures, the advisory body may recommend conditions of approval. Conditions of approval must relate in both type and extent to the anticipated impacts of the proposed development.
4. Unless the hearing is deferred or subject to a continuance, the advisory body shall take action as promptly as reasonably possible in

consideration of the applicant, affected parties, and citizens of the County.

5. In the case of a special use permit preliminary forum, no recommendation shall be made to the Board of Commissioners. *[05-03-2021]*

#### **B. Revision of Application**

Prior to the advisory body's action on an application, the advisory body may continue the public hearing to allow the applicant to make minor modifications to the application that directly respond to specific requests or suggestions made by the staff or the advisory body. In the case of a special use permit preliminary forum, such minor modifications shall not require a continuance nor an additional preliminary forum. *[05-03-2021]*

### **10.2.9. DECISION-MAKING BODY REVIEW AND ACTION**

If an application is subject to a final decision by the Board of Commissioners or the Board of Adjustment (see Table 10.1.1: Summary Table of Development Review Responsibilities), such decision-making body shall review and act on the application in accordance with the following procedures.

#### **A. Review and Decision**

1. The decision-making body shall conduct a public hearing on the application in accordance with 10.2.7, Public Hearing and Preliminary Forum Procedures, and shall consider the application, relevant support materials, the staff report, any advisory body recommendation, and any public comments made during the public hearing. Following the public hearing, the body shall make one of the decisions authorized for the particular type of application, based on the applicable review standards.
2. The decision-making body may remand the application to the appropriate advisory body or County staff for further consideration of new information or specified issues or concerns raised by the staff or the advisory body.
3. The decision-making body's decision shall clearly state the factors considered in making the recommendation and the basis or rationale for the decision.
4. Unless deferred or subject to a continuance, the decision-making body shall take action as promptly as reasonably possible in consideration of the applicant, affected parties, and citizens of the County.
5. Any conditions of approval shall be expressly set forth in the approval, shall relate in both type and scope to the anticipated impacts of the proposed development, and shall be mutually agreed to in writing by both the applicant and the decision-making body. *[05-03-2021]*
6. Any approval subject to conditions shall not take effect until the Planning Director has received the applicant's written consent to all conditions of approval. *[05-03-2021]*

#### **B. Revision of Application**

Prior to the decision-making body's action on an application, the decision-making body may continue the public hearing on the application to allow the applicant to

make minor modifications to the application that directly respond to specific requests or suggestions made by staff, the advisory body, as applicable, or the decision-making body.

#### **10.2.10. POST-DECISION LIMITATIONS AND ACTIONS**

##### **A. Notification to Applicant**

Within a reasonable time after a final decision on an application, the Planning Director shall provide the applicant written notice of the decision or action and shall make a copy of the decision available to the public in the offices of the Planning Department during normal business hours. If the application is denied, the written notice of the decision or action shall state the reason(s) for the denial.

##### **B. Effect of Approval**

1. Approval of an application in accordance with this Ordinance authorizes only the particular use, plan, or other specific development or activity approved, and not any other development or activity requiring separate approval.
2. In the event one development approval or permit is a prerequisite to another development approval or permit (e.g., variance approval prior to site plan approval), development may not take place until all required development approvals and permits are obtained. Approval of one application does not necessarily guarantee approval of any subsequent application.

##### **C. Amendment of Approval**

Unless otherwise provided in the specific procedure description in Section 10.3, Application-Specific Procedures, an amendment of a permit or approval may only be reviewed in accordance with the procedures and standards established for its original approval.

##### **D. Expiration of Approval**

*[05-03-2021]*

1. Approval of an application shall be valid as authorized for the approved development activity until the end of the expiration time period provided in Section 10.3, Application-Specific Procedures, for the particular type of application unless work authorized by the approval or permit has substantially commenced, subject to subsection 4 below.
2. If no expiration period is provided in Section 10.3, Application-Specific Procedures, for a specific type of approval or permit, the approval or permit shall expire if a building permit or zoning compliance approval authorizing the approved development is not obtained within two years unless work authorized by the approval or permit has substantially commenced.
3. A change in ownership of the land shall not affect the established expiration time period of an approval.
4. Failure to comply with the terms of an approval or permit, including any conditions of approval, shall constitute a violation of this Ordinance (see

Article 12: Violations and Enforcement) and shall render the approval or permit void and of no effect. No building permits for further construction or certificates of occupancy under the approval or permit shall be permitted, and all completed structures shall be regarded as nonconforming uses subject to Article 11: Nonconforming Situations.

**E. Termination of Site-Specific Development Plans**

1. Any site-specific development plan approved by the County pursuant to this Ordinance shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, unless work authorized by the approval or permit has substantially commenced. *[05-03-2021]*
2. Site specific development plans may terminate with the written consent of the affected landowner.
3. A site-specific development plan may be terminated following recommendations by the Planning Board and upon findings by the Board of County Commissioners, by ordinance after notice and public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan.
4. A site-specific development plan may be terminated following recommendations by the Planning Board and upon findings by the Board of County Commissions, by ordinance after notice and public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site-specific development plan.
5. A site-specific development plan may be terminated upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site-specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.
6. A site-specific development plan may be terminated upon payment to the affected landowner of compensation of all costs, expenses, and other losses incurred by the landowner, but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the County, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action.

**F. Limitation on Subsequent Similar Applications**

If an application requiring a public hearing is denied, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of the denial unless the Planning Director determines that:

1. There has been a substantial change in the circumstances relevant to the issues or facts considered during review of the prior application that might reasonably affect the action of the decision-making body;
2. New or additional information is available that was not available at the time of review of the prior application that might reasonably affect the action of the decision-making body;
3. The new application proposed to be submitted is materially different from the prior application; or
4. The final decision on the prior application was based on material mistake of fact.

## Section 10.3. Application-Specific Procedures

### 10.3.1. TEXT AMENDMENT

#### A. Applicability

The procedure in this section is required for any amendment of the text of this Ordinance, unless the amendment is part of a conditional zoning (see Section 10.3.3), or a planned development (see Section 10.3.4).

#### B. Text Amendment Procedure

Figure 10.3.1.B summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to text amendments. Subsections 1 through 6 below, specify the required procedure for a text amendment, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.1.B: Summary of Text Amendment Procedure**



#### 1. Application Submittal and Acceptance

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

#### 2. Staff Review and Action

The Planning Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 10.2.5, Staff Review and Action.



### **3. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

### **4. Advisory Body Review and Action**

- a.** The Planning Board shall conduct a public hearing on the application and make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.1.C, Text Amendment Review Standards. The Planning Board's recommendation shall address whether the proposed amendment is consistent with the Comprehensive Plan.
- b.** If the Planning Board's decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant's intent to proceed with a hearing before the Board of Commissioners within 10 calendar days of the Planning Board's decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn and no further review of the application shall occur.

### **5. Board of Commissioners Review and Action**

- a.** The Board of Commissioners shall conduct a public hearing on the application and make a decision on the application in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.1.C, Text Amendment Review Standards. The decision of the Board of Commissioners shall be one of the following:
  - i.** Adopt the text amendment as proposed;
  - ii.** Adopt a revised text amendment;
  - iii.** Deny the text amendment; or
  - iv.** Remand the text amendment application to the Planning Board for further consideration.
- b.** Prior to deciding to adopt or deny a text amendment, the Board of Commissioners shall adopt a statement that:
  - 1.** Addresses the consistency of the amendment with the Comprehensive Plan by either:
    - i.** Describing the consistency or inconsistency of the amendment with Comprehensive Plan; or
    - ii.** If the amendment is approved, declaring that the approval is also deemed an amendment to the Comprehensive Plan, and providing an explanation of the change in conditions Board of Commissioners took into account in approving the amendment to meet the development needs of the community. No additional request or application for amendment to the Comprehensive Plan shall be required.
  - 2.** Explains why the decision is reasonable and in the public interest.

**6. Post-Decision Limitations and Actions**

- a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions apply.
- b. Approval of a text amendment authorizes the approved revisions to the text of this Ordinance. Such approval does not itself authorize specific development activity.
- c. A text amendment shall not expire and shall remain valid unless and until the revised text of this Ordinance is subsequently amended in accordance with this section.

**C. Text Amendment Review Standards**

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed text amendment, the Board of Commissioners may consider many factors, including but not limited to, the proposed text amendment’s consistency with the Comprehensive Plan and whether it is reasonable and in the public interest.

**10.3.2. ZONING MAP AMENDMENT**

**A. Applicability**

The procedure in this section is required for any amendment of the Official Zoning Map, unless the amendment is part of a conditional zoning (see Section 10.3.3), or a planned development (see Section 10.3.4). [05-03-2021]

**B. Zoning Map Amendment Procedure**

Figure 10.3.2.B summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to Zoning Map amendments. Subsections 1 through 6 below, specify the required procedure for a Zoning Map amendment, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.2.B: Summary of Zoning Map Amendment Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

## **2. Staff Review and Action**

The Planning Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 10.2.5, Staff Review and Action.

## **3. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

## **4. Planning Board Review and Action**

a. The Planning Board shall conduct a public hearing on the application and make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.2.C, Zoning Map Amendment Review Standards. The Planning Board's recommendation shall address whether the proposed amendment is consistent with the Comprehensive Plan.

b. If the Planning Board's decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant's intent to proceed with a hearing before the Board of Commissioners within 10 calendar days of the Planning Board's decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn and no further review of the application shall occur.

## **5. Board of Commissioners Review and Action**

a. If appropriate, the Board of Commissioners shall conduct a public hearing on the application and make a decision in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.2.C, Zoning Map Amendment Review Standards. The decision of the Board of Commissioners shall be one of the following:

i. Approve the Zoning Map amendment as proposed;

ii. Approve the Zoning Map amendment with a reduction in the area proposed to be rezoned, or to a more restrictive district, with the applicant's consent;

iii. Deny the Zoning Map amendment; or

iv. Remand the Zoning Map amendment application back to the Planning Board for further consideration.

b. Prior to deciding to adopt or deny a Zoning Map amendment, the Board of Commissioners shall adopt a statement that:

1. Addresses the consistency of the amendment with the Comprehensive Plan by either:

i. Describing the consistency or inconsistency of the amendment with the Comprehensive Plan; or

- ii. If the amendment is approved, declaring that the approval is also deemed an amendment to the Comprehensive Plan, and providing an explanation of the change in conditions Board of Commissioners took into account in approving the amendment to meet the development needs of the community. No additional request or application for amendment to the Comprehensive Plan shall be required.
2. Explains why the decision is reasonable and in the public interest. This explanation may consider, among other factors,
- i. The size, physical conditions, and other attributes of the area proposed to be rezoned;
  - ii. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
  - iii. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
  - iv. Why the action taken is in the public interest; and
  - v. Any changed conditions warranting the amendment.
- c. Conditions of approval are not allowed.

**6. Post-Decision Limitations and Actions**

- a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions apply.
- b. Approval of a Zoning Map amendment reclassifies the land that is subject of the application to the approved zoning district classification(s) and subjects it to the development regulations applicable to the district(s). Such approval does not itself authorize specific development activity.
- c. A Zoning Map amendment shall not expire and shall remain valid unless and until the land that was subject of the amendment is subsequently reclassified to a different zoning district in accordance with this section, Section 10.3.3, Conditional Zoning, or Section 10.3.4, Master Planned Development.

**C. Zoning Map Amendment Review Standards**

The advisability of amending the Official Zoning Map is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny a proposed Zoning Map amendment, the Board of Commissioners may consider many factors, including but not limited to, the proposed Zoning Map amendment’s consistency with the Comprehensive Plan and whether it is reasonable and in the public interest.

### 10.3.3. CONDITIONAL ZONING

#### A. Purpose

The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a Conditional Zoning (CZ) district. In cases where the standards of a general use zoning district are inadequate to ensure that development allowed by the district will conform to the County’s adopted plans or to appropriately address the impacts expected to be generated by development, an applicant may apply for a conditional zoning. Conditional zoning establishes a parallel CZ district that is equivalent to a corresponding general use zoning district, but is subject to additional conditions or restrictions that the applicant and County mutually agree are necessary to ensure conformance to adopted plans and adequately address expected development impacts.

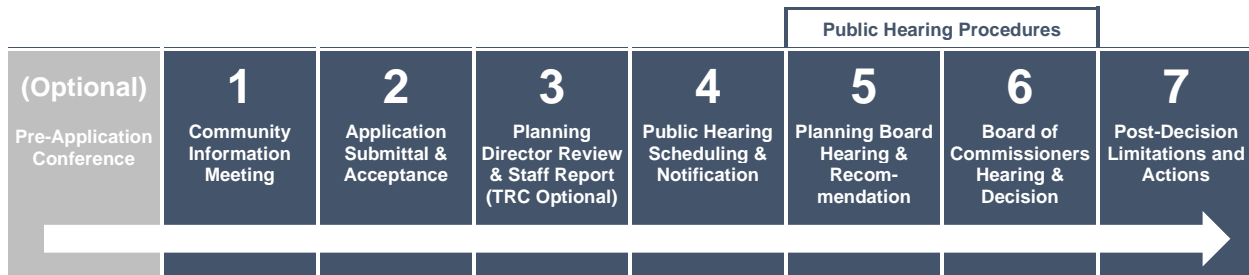
#### B. Applicability

The procedure in this section is required for land to be classified to the Conditional Zoning (CZ) District (see Section 3.5.5).

#### C. Conditional Zoning Procedure

Figure 10.3.3.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to conditional zonings. Subsections 1 through 7 below, specify the required procedure for a conditional zoning, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.3.C: Summary of Conditional Zoning Procedure**



#### 1. Community Information Meeting

The applicant shall conduct a community information meeting in accordance with Section 10.2.3, Community Information Meeting.

#### 2. Application Submittal and Acceptance

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. The application shall include the following, together with all other information required by the Administrative Manual:

- a. A conceptual development plan depicting the proposed development configuration that conforms to the application requirements for conditional zonings in the Administrative Manual; and
- b. Any other conditions of approval proposed by the applicant.

### **3. Staff Review and Action**

- a. If requested by the applicant, the TRC shall review the application and provide any comments on the proposed conditional zoning to the Planning Director, who shall transmit any comments received from the TRC in writing to the applicant.
- b. The Planning Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 10.2.5, Staff Review and Action.

### **4. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification. After the public notice of scheduled hearing before the Planning Board is delivered to the newspapers, the conditions of approval proposed by the applicant shall not be amended so they are less restrictive, including but not limited to less setback, more dwelling units, greater height, more access points, new uses, or fewer improvements.

### **5. Planning Board Review and Action**

- a. The Planning Board shall conduct a public hearing on the application in accordance with Section 10.2.8, Advisory Body Review and Action. Planning Board members may propose additional conditions and requirements beyond those proposed by the applicant.
- b. After the public hearing on the application is concluded, the Planning Board shall make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.3.D, Conditional Zoning Review Standards. The Planning Board's recommendation shall address whether the proposed conditional zoning is consistent with the Comprehensive Plan.
- c. If the Planning Board's decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant's intent to proceed with a hearing before the Board of Commissioners within 10 calendar days of the Planning Board's decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn and no further review of the application shall occur.

### **6. Board of Commissioners Review and Action**

- a. The Board of Commissioners shall conduct a public hearing on the application in accordance with Section 10.2.9, Decision-making Body Review and Action. One or more Commissioners may propose additional conditions or requirements beyond those proposed by the applicant.
- b. After the public hearing on the application is concluded, the Board of Commissioners shall make a decision on the application in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.3.D, Conditional Zoning Review Standards.

The decision of the Board of Commissioners shall be one of the following:

- i. Approve the application as submitted, subject to conditions of approval, including a conceptual development plan;
  - ii. Approve the application, subject to revised conditions of approval, including a conceptual development plan;
  - iii. Remand the application to the Planning Board for further consideration; or
  - iv. Deny the application.
- c. Prior to deciding to approve or deny a conditional zoning, the Board of Commissioners shall adopt a statement that:
1. Addresses the consistency of the conditional zoning with the Comprehensive Plan by either:
    - i. Describing the consistency or inconsistency of the conditional zoning with the Comprehensive Plan; or
    - ii. If the conditional zoning is approved, declaring that the approval is also deemed an amendment to the Comprehensive Plan, and providing an explanation of the change in conditions Board of Commissioners took into account in approving the conditional zoning to meet the development needs of the community. No additional request or application for amendment to the Comprehensive Plan shall be required.
  2. Explains why the decision is reasonable and in the public interest.
- d. Conditions of approval shall comply with the following requirements:
1. Only conditions of approval mutually agreed to in writing by both the applicant and the Board of Commissioners are allowed. [05-03-2021]
  2. Conditions of approval shall be limited to those that address the conformance of the development and use of the site to the County Code and to the Comprehensive Plan or other adopted County plans, and those that address the impacts reasonably expected to be generated by the development or use of the site.
  3. Conditions that are less restrictive than the standards of the corresponding general use zoning district, applicable overlay district(s), or other standards of this Ordinance are prohibited.

## **7. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply, in addition to subsections a through c below.

**a. Effect of Approval**

Lands rezoned to a CZ district shall be subject to the standards applicable to the parallel general use zoning district, as modified by the more restrictive conditions approved by the applicant and imposed as conditions of approval by the Planning Board or the Board of Commissioners, as applicable. These standards and modifying conditions are binding on the land as an amendment to this Ordinance and the Zoning Map.

**b. Minor Deviations**

*[05-03-2021]*

Subsequent applications for development within a conditional zoning district may include minor modifications from the approved conceptual site plan, provided such modifications do not result in a change in permitted uses or density, and otherwise have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

1. Modifications in building or structure placement, provided the placement complies with the setbacks of the corresponding base zoning, and does not decrease the setbacks agreed to and approved during the conditional rezoning process by more than 10 percent;
2. Increases to building or structure size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;
3. Modifications to structure floor plans;
4. Modifications to the driveway locations not exceeding 10 percent of the length of the subject property line, or as required by the North Carolina Department of Transportation; and
5. Modifications to the proportion of housing type not to exceed 10 percent.

**c. Expiration**

1. If no building permit has been issued for the subject tract within two years after the date of approval of the conditional zoning, or if work authorized by the approvals or permits associated with the conditional zoning has not substantially commenced, the Planning Director may, at the Planning Director's discretion, schedule a hearing for the Planning Board to consider whether active efforts are proceeding in accordance with the approved conditional zoning. If the Planning Board determines that such efforts are not proceeding, the Board may, at the Board's discretion, initiate a Zoning Map amendment in accordance with Section 10.3.2, Zoning Map Amendment, to rezone the land within the CZ district to its classification prior to approval, or to another zoning district the Board determines is appropriate. *[05-03-2021]*



2. A landowner may request, and the Planning Director may grant, one, one-year extension of the two-year time period established in subsection 1 above, if the Planning Director determines that site conditions have not substantially changed since the approval of the conditional zoning. The applicant must submit the request in writing prior to the expiration of the time period.
3. If site conditions have substantially changed since the approval of the CZ district, a landowner may request, and the Board of Commissioners may grant, at a regularly-scheduled public hearing, one extension, not to exceed three years, of the two-year time period established in subsection 1 above. The applicant must submit the request in writing prior to the expiration of the time period.
4. If any condition of approval of the CZ district is found to be illegal by a court of law, the approval of the CZ district shall be null and void, and the land within the district shall be rezoned to its classification prior to the approval of the conditional zoning in accordance with Section 10.3.2, Zoning Map Amendment.
5. If a violation of a condition of approval is not corrected within a reasonable time period after notice is provided in accordance with Article 12: Violations and Enforcement, the Planning Director may, at the Planning Director's discretion, submit an application to rezone lands in the CZ district to their classification prior to approval of the CZ district in accordance with Section 10.3.2, Zoning Map Amendment.

#### **D. Conditional Zoning Review Standards**

Adopting a CZ district is a matter committed to the legislative discretion of the Board of Commissioners. In determining whether to adopt or deny the proposed CZ district, the Board of Commissioners shall consider the review standards that apply to Zoning Map amendments in Section 10.3.2, Zoning Map Amendment.

### **10.3.4. MASTER PLANNED DEVELOPMENT**

*[09-08-2020]*

#### **A. Purpose**

The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a master planned development district. A master planned development (MPD) is a development under unified control with more flexible standards and procedures that are conducive to creating a more mixed-use, pedestrian-oriented development than could be achieved through general use zoning district regulations.

#### **B. Applicability**

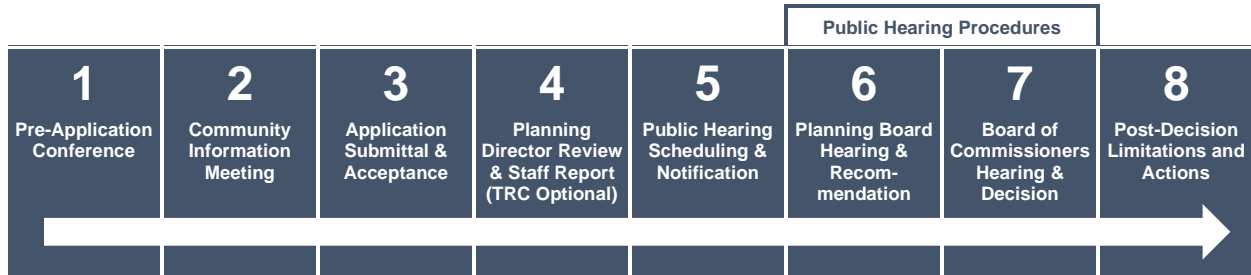
The procedure in this section is required for any amendment of the Official Zoning Map that rezones land to a master planned development district, including the UMXZ, RFMU, EDZD, or PD districts, or for major modifications to an already approved master planned development district. Any modification to an approved

master planned development district that is not a minor deviation as set forth in Section 10.3.4.C.8.b, Minor Deviations, is a major modification. [09-08-2020]

**C. Master Planned Development Procedure**

Figure 10.3.4.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to master planned developments. Subsections 1 through 8 below, specify the required procedure for a master planned development, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.4.C: Summary of Planned Development Procedure**



**1. Pre-Application Conference**

A pre-application conference in accordance with Section 10.2.2, Pre-Application Conference, is required.

**2. Community Information Meeting**

The applicant shall conduct a community information meeting in accordance with Section 10.2.3, Community Information Meeting.

**3. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. In addition to all other application requirements set forth in the Administrative Manual, the application shall include the following:

- a. An MPD Master Plan meeting the requirements of Section 3.3.3.A, MPD Master Plan, depicting the general configuration and relationship of the principal elements of the proposed development, including uses, general building types, density/intensity, resource protection, pedestrian and vehicular circulation, open space, public facilities, and phasing;
- b. An MPD Terms and Conditions document meeting the requirements of Section 3.3.3.B, MPD Terms and Conditions Document, specifying terms and conditions defining development parameters, providing for environmental mitigation, and outlining how public facilities will be provided to serve the master planned development; and
- c. To ensure unified control, a copy of the title to all land that is part of the proposed master planned development district or land that is

affected by a major modification to an existing master planned development district.

#### **4. Staff Review and Action**

- a. If requested by the applicant, the TRC shall review the application and provide any comments on the proposed master planned development to the Planning Director, who shall transmit any comments received from the TRC in writing to the applicant.
- b. The Planning Director shall review the application, prepare a staff report, and provide a recommendation in accordance with Section 10.2.5, Staff Review and Action. The Planning Director may recommend revisions to the proposed MPD Master Plan and MPD Terms and Conditions document.
- c. If the proposed master planned development involves a rezoning to or major modification of an EDZD District, the staff report shall address each of the following:
  1. The suitability of the proposal for the general type of function, the physical characteristics of the land, and relation of the proposed development to surrounding areas and existing and probable future development;
  2. The sufficiency of supporting evidence in the application showing that the proposed location can meet the basic criteria for exceptional design;
  3. The relation to major roads and mass transit facilities, utilities, and other facilities and services;
  4. The adequacy of evidence of unified control and the suitability of any proposed agreements, contracts, deed restrictions, sureties, dedications, contributions, guarantees, or other instruments, or the need for such instruments, or for amendments in those proposed;
  5. The suitability of plans proposed or the suggestion of conditions; and
  6. The consistency with the Comprehensive Plan and other adopted plans for development in the vicinity, and how the EDZD district might be reasonable and in the public interest if approved.

#### **5. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

#### **6. Planning Board Review and Action**

- a. The Planning Board shall conduct a public hearing on the application and make a recommendation on the application in accordance with Section 10.2.8, Advisory Body Review and Action, and Section 10.3.4.D, Master Planned Development Review Standards. The Planning Board's recommendation shall address whether the

proposed master planned development is consistent with the Comprehensive Plan.

- b. If the Planning Board's decision is to recommend denial of the application, the applicant must submit written notice to the Planning Director of the applicant's intent to proceed with a hearing before the Board of Commissioners within 10 calendar days of the Planning Board's decision. If the applicant does not provide such notice within that time period, the application shall be deemed withdrawn and no further review of the application shall occur.

## **7. Board of Commissioners Review and Action**

- a. If appropriate, the Board of Commissioners shall conduct a public hearing on the application and make a decision on the application in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.4.D, Master Planned Development Review Standards. The decision of the Board of Commissioners shall be one of the following:
  - 1. Approve the master planned development district subject to the MPD Master Plan and MPD Terms and Conditions document in the application;
  - 2. Approve the master planned development district subject to additional or revised conditions related to the MPD Master Plan or MPD Terms and Conditions document;
  - 3. Deny the master planned development district; or
  - 4. Remand the master planned development application back to the Planning Board for further consideration.
- b. Prior to deciding to adopt or deny a master planned development, the Board of Commissioners shall adopt a statement that:
  - 1. Addresses the consistency of the master planned development with the Comprehensive Plan by either:
    - i. Describing the consistency or inconsistency of the master planned development with the Comprehensive Plan; or
    - ii. If the master planned development is approved, declaring that the approval is also deemed an amendment to the Comprehensive Plan, and providing an explanation of the change in conditions Board of Commissioners took into account in approving the master planned development to meet the development needs of the community. No additional request or application for amendment to the Comprehensive Plan shall be required.
  - 2. Explains why the decision is reasonable and in the public interest.

- c. Only conditions of approval mutually agreed to in writing by both the applicant and the Board of Commissioners are allowed. *[05-03-2021]*

**8. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10 apply, in addition to the provisions in subsections a through c below.

**a. Effect of Approval**

- 1. Lands classified to master planned development district shall be subject to the approved MPD Master Plan and MPD Terms and Conditions document. Such approval does not itself authorize specific development activity, but allows the property owner to obtain subsequent development approvals and permits necessary to implement the MPD Master Plan and MPD Terms and Conditions document, in accordance with the applicable procedures and standards set forth in this Ordinance. Subsequent development approvals and permits shall comply with the MPD Master Plan and MPD Terms and Conditions document.
- 2. Approval of an MPD Master Plan shall establish a vested right in accordance with N.C.G.S. § 160D-108.1. *[05-03-2021]*

**b. Minor Deviations**

*[05-03-2021]*

Subsequent applications for development within a master planned development district may include minor modifications from the approved MPD Master Plan and MPD Terms and Conditions document, provided such modifications do not result in a change in permitted uses or density, and otherwise have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

- 1. Modifications in building or structure placement, provided the placement does not decrease approved setbacks by more than 10 percent;
- 2. Increases to building or structure size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;
- 3. Modifications to structure floor plans;
- 4. Modifications to the driveway locations not exceeding 10 percent of the length of the subject property line, or as required by the North Carolina Department of Transportation; and
- 5. Modifications to the proportion of housing type not to exceed 10 percent.

**c. Expiration**

- 1. If no building permit has been issued for the land approved as a master planned development district within two years of the date

of approval, or if work authorized by the approvals or permits associated with the master planned development has not substantially commenced, the Planning Director may, at the Planning Director's discretion, schedule a hearing for the Planning Board to consider whether active efforts are proceeding in accordance with the approved master planned development. If the Planning Board determines that such efforts are not proceeding, the Board may, at the Board's discretion, initiate a Zoning Map amendment in accordance with Section 10.3.2, Zoning Map Amendment, to rezone the master planned development district to its classification prior to approval, or to another zoning district the Board determines is appropriate. [05-03-2021]

2. A landowner may request, and the Planning Director may grant, one, one-year extension of the two-year time period established in subsection 1 above if the Planning Director determines that site conditions have not substantially changed since the approval of the master planned development district. The applicant must submit the request in writing prior to the expiration of the time period.
3. If site conditions have substantially changed since the approval of the master planned development district, a landowner may request and the Board of Commissioners may grant, at a regularly-scheduled public meeting, one extension not to exceed three years, of the two-year time period established in subsection 1 above. The applicant must submit the request in writing prior to the expiration of the time period.

#### **D. Master Planned Development Review Standards**

The advisability of establishing a master planned development district is a matter committed to the legislative discretion of the Board of Commissioners. In determining whether to approve a proposed master planned development district, the Board of Commissioners shall consider the review standards for Zoning Map amendments in Section 10.3.2.C, Zoning Map Amendment Review Standards. The Board of Commissioners shall not approve a master planned development district unless it complies with the requirements in Section 3.3.3, General Requirements for Mixed Use Zoning Districts, and the standards that apply to the specific master planned development district set forth in Section 3.3, Mixed Use Zoning Districts.

### **10.3.5. SPECIAL USE PERMIT**

#### **A. Purpose**

A use designated as a special use in Table 4.2.1: Principal Use Table, in a particular zoning district, is a use that may be appropriate in the district, but because of its nature, extent, and external impacts, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this section is to establish a uniform mechanism for the review of special uses to ensure they are appropriate for the location and zoning district where they are proposed.

**B. Applicability**

Approval of a special use permit in accordance with this this section is required before development of any use identified as a special use in Table 4.2.1: Principal Use Table.

**C. Special Use Permit Procedure**

Figure 10.3.5.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to special use permits. Subsections 1 through 7 below, specify the required procedure for a special use permit, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.5.C: Summary of Special Use Permit Procedure**



\*Special use permits for single-family dwellings, including mobile homes, shall not require a Planning Board preliminary forum prior to the Board of Commissioners Hearing & Decision. [05-03-2021]

**1. Community Information Meeting**

If the proposed use is classified as intensive industry, the applicant shall conduct a community information meeting in accordance with Section 10.2.3, Community Information Meeting. In all other cases, the applicant may conduct a community information meeting in accordance with Section 10.2.3 at the applicant’s option.

**2. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. The required completeness review must be completed within five business days after the application submittal date.

**3. Staff Review and Action**

[05-03-2021]

- a. If requested by the applicant, the TRC shall review the application and provide any comments on the proposed special use permit to the Planning Director, who shall transmit any comments received from the TRC in writing to the applicant.
- b. In preparation for the Planning Board’s preliminary forum on the application, the Planning Director shall review the application and prepare a brief introduction.
- c. In preparation for the Board of Commissioners’ public hearing on the application, the Planning Director shall prepare a staff report in accordance with Section 10.2.5, Staff Review and Action, which the

Clerk to the Board of Commissioners shall publish in the agenda package for the Board of Commissioners meeting for which the public hearing on the application is scheduled. The staff report shall:

1. Summarize the special use permit request, the information and materials provided in the application package, and preliminary findings of fact; and
2. Address the review standards in Section 10.3.5.D, Special Use Permit Review Standards, stating whether each standard is met or identifying, in staff's view, any additional information necessary for the Board of Commissioners to be able to determine whether each standard is met.

**4. Public Hearing and Preliminary Forum Scheduling and Public Notification**

*[05-03-2021]*

The Planning Director shall schedule the preliminary forum and public hearing and provide public notification for both meetings in accordance with Section 10.2.6.

**5. Planning Board Review and Action**

*[05-03-2021]*

The Planning Board shall conduct a preliminary forum on the application as a way to provide advisory review and recommendations to the applicant and public on potential relevant and material evidence, findings of fact, and issues or areas that the Board of Commissioners may need more information on in order to reach a required conclusion. *[05-03-2021]*

**6. Board of Commissioners Review and Action**

- a. The Board of Commissioners shall conduct a quasi-judicial public hearing on the application and make a decision in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.5.D, Special Use Permit Review Standards. The decision of the Board of Commissioners shall be one of the following:
  - i. Approve the special use permit application as submitted;
  - ii. Approve the approve the special use permit application, subject to conditions of approval; or
  - iii. Deny the planned development.
- b. A motion to approve, approved with conditions, or deny the application must include findings of fact and conclusions as to whether the application complies with each of the required standards in Section 10.3.5.D, Special Use Permit Review Standards.
- c. Subject to subsection d below, the Board of Commissioners may attach conditions of approval, including time limits for completion of development or for the start or end of certain uses or activities. Conditions of approval shall meet or exceed the minimum requirements of this Ordinance. *[05-03-2021]*



- d. Only conditions of approval mutually agreed to in writing by both the applicant and the Board of Commissioners are allowed. [05-03-2021]

## **7. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply, except the limitation on subsequent submittal of applications proposing the same or similar development if the initial application is denied in Section 10.2.10.F, Limitation on Subsequent Similar Applications, is not limited to one year but applies in perpetuity. Additionally, the provisions in subsections a through c below, apply.

### **a. Appeal**

A decision by the Board of Commissioners on a special use permit may be appealed to the Superior Court of New Hanover County in accordance with state law.

### **b. Minor Deviations**

[05-03-2021]

Subsequent applications for development pursuant to an approved special use permit may include minor modifications from the approved special use permit, provided such modifications do not result in a change in permitted uses or density, and otherwise have no material effect on the character of the approved development. Changes in the following constitute minor modifications that may be approved by the Planning Director:

1. Modifications in building or structure placement, provided the placement does not decrease approved setbacks by more than 10 percent;
2. Increases to building or structure size and height not to exceed 10 percent provided all other applicable standards of this Ordinance are met;
3. Modifications to structure floor plans;
4. Modifications to the driveway locations not exceeding 10 percent of the length of the subject property line, or as required by the North Carolina Department of Transportation; and
5. Modifications to the proportion of housing type not to exceed 10 percent.

The Planning Director may approve minor deviations in the location and size of structures of an approved special use permit if the applicant demonstrates that the deviation is necessary and would not cause or contribute to any of the following:

1. A change in the character of the development;
2. A change of design for, or an increase in the hazards to pedestrian and vehicle circulation; or

3. A modification in the originally approved setbacks from roads or property lines exceeding ten percent.

**c. Expiration**

1. A special use permit shall automatically expire and become null and void if the proposed use or work authorized by the approvals or permits associated with the special use permit has not substantially commenced within two years after the date of issuance, unless the applicant submits a written request for an extension to the Planning Director prior to the expiration, and the request is granted in accordance with subsection 2 or 3 below. [05-03-2021]
2. A landowner may request, and the Planning Director may grant, one, one-year extension of the two-year time period established in subsection 1 above, if the Planning Director determines that site conditions have not substantially changed since the approval of the special use permit.
3. If site conditions have substantially changed since the approval of the special use permit, a landowner may request, and the Board of Commissioners may grant, at a regularly-scheduled public meeting, one extension of the two-year time period established in subsection 1 above, of up to three years.
4. The total vesting period for extensions granted in accordance with subsections 2 and 3 above shall not exceed five years.

**D. Special Use Permit Review Standards**

The Board of County Commissioners shall approve an application for a special use permit only if it reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence presented at the hearing:

1. The use will not materially endanger the public health or safety if located where proposed and approved;
2. The use meets all required conditions and specifications of this Ordinance;
3. The use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity; and
4. The location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Land Use Plan for New Hanover County.

**10.3.6. SITE PLAN**

**A. Purpose**

The purpose of this section is to provide a uniform mechanism to ensure the layout, form, and general design of proposed development complies with all

applicable standards of this Ordinance and all other applicable County and state regulations.

**B. Applicability**

1. Approval of a major or minor site plan in accordance with this section is required prior to the issuance of a zoning compliance approval, building permit, or certificate of occupancy for any development that is not exempted by subsection 2 below.
2. The following types of development are exempt from the requirements of this section:
  - a. Internal construction that does not:
    1. Increase building height;
    2. Increase the density or intensity of use; or
    3. Require changes to parking or landscaping in accordance with Section 5.1, Parking and Loading, and Section 5.4, Landscaping and Buffering; and
  - b. Any change in use that does not result in additional parking or landscaping in accordance with Section 5.1, Parking and Loading, and Section 5.4, Landscaping and Buffering.

**C. Major and Minor Site Plans Distinguished**

There are two types of site plan review under this Ordinance: major site plan review and minor site plan review.

**1. Major Site Plans**

Major site plans are reviewed by the TRC in accordance with Section 10.3.6.D, Major Site Plan Procedure. Major site plan review is required for development that requires site plan review in accordance with Section 10.3.6.B, Applicability, and that

- a. Increases impervious surface by more than 10,000 square feet; or
- b. Includes more than 5,000 square feet of building gross floor area.

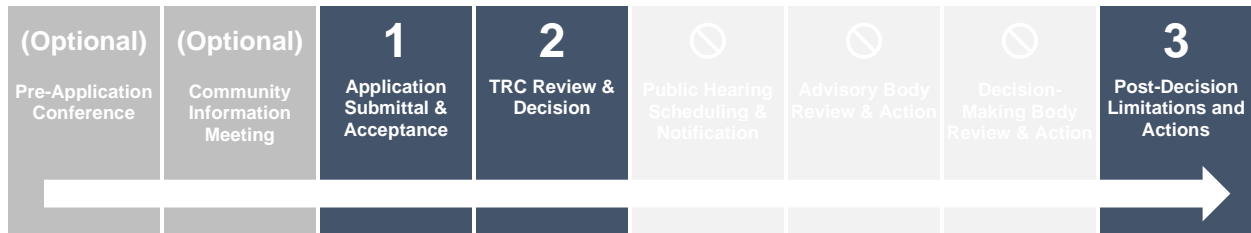
**2. Minor Site Plans**

Minor site plans are reviewed by the Planning Director in accordance with Section 10.3.6.E, Minor Site Plan Procedure. Minor site plan review is required for development that requires site plan review in accordance with Section 10.3.6.B, Applicability, and that does not require major site plan review in accordance with subsection 1 above.

**D. Major Site Plan Procedure**

Figure 10.3.6.D summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to a major site plan. Subsections 1 through 3 below, specify the required procedure for a major site plan, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.6.D: Summary of Major Site Plan Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

**2. Staff Review and Action**

The TRC shall review the application and make a decision, in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.6.F, Site Plan Review Standards. The TRC’s decision shall be one of the following:

- a. Approve the application as submitted;
- b. Approve the application, subject to conditions of approval; or
- c. Deny the application.

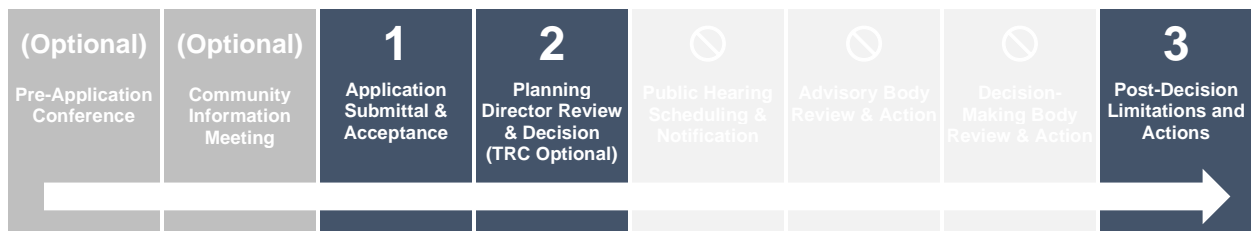
**3. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.

**E. Minor Site Plan Procedure**

Figure 10.3.6.E summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to minor site plans. Subsections 1 through 3 below, specify the required procedure for a minor site plan, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.6.E: Summary of Minor Site Plan Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

**2. Staff Review and Action**

- a. If requested by the applicant, the TRC shall review the application and provide any comments on the minor site plan application to the Planning Director, who shall transmit any comments received from the TRC in writing to the applicant.
- b. Following review by the TRC, as applicable, the Planning Director shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.6.F, Site Plan Review Standards. The Planning Director’s decision shall be one of the following:
  - 1. Approve the application as submitted;
  - 2. Approve the application, subject to conditions of approval; or
  - 3. Deny the application.

**3. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.

**F. Site Plan Review Standards**

The TRC or the Planning Director, as appropriate, shall approve a site plan application only on finding that the applicant demonstrates there is competent, substantial, and material evidence in the record that all of the following standards are met:

- 1. The proposed development and uses in the site plan comply with Article 3: Zoning Districts, and Article 4: Uses and Use-Specific Standards;
- 2. The development proposed in the site plan and its general layout and design comply with all the standards in Article 5: General Development Standards, and Article 6: Subdivision Design and Improvement;
- 3. The development proposed in the site plan complies with all conditions of approval in any development approval or permit to which the plan is subject; and
- 4. The development proposed in the site plan complies with all other applicable standards in this Ordinance and all other County regulations.

**10.3.7. SUBDIVISION**

**A. Purpose**

The purpose of this section is to provide a uniform mechanism for the approval of divisions of land and to ensure that plats (subdivisions) promote the health, safety, convenience, order, prosperity, and welfare of the present and future inhabitants of the County by:

- 1. Providing for the orderly growth and development of the County;
- 2. Coordinating streets and roads within proposed plat with the County’s street system and transportation plans, and with other public facilities;

3. Providing rights-of-way for streets and utility easements;
4. Avoiding congestion and overcrowding, and encouraging the proper arrangement of streets in relation to existing or planned streets;
5. Ensuring there is adequate open space and recreation facilities to serve development; and
6. Ensuring there is proper recordation of land ownership or property owner association records, where applicable.

## **B. Applicability**

1. Subdivision review and approval in accordance with the procedures and standards in this section are required for any division of land within the subdivision jurisdiction of the County, unless exempted in accordance with subsection 2 below.
2. The following are excluded from the definition of subdivision under this Ordinance and are not subject to the requirements of this section:
  - a. 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 in Article 6: Subdivision Design and Improvement;
  - b. The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
  - c. The public acquisition by purchase, of strips of land for the widening or opening of streets or for public transportation system corridors;
  - d. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the County as shown in Article 6: Subdivision Design and Improvement; and
  - e. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
3. The provisions of this section shall not prohibit any landowner or landowner's agent from entering into contracts to sell or lease by reference to an approved preliminary plan in accordance with N.C.G.S. § 160D-807. *[05-03-2021]*

## **C. Major and Minor Subdivisions Distinguished**

There are two types of subdivision review under this Ordinance: major subdivision review and minor subdivision plat review.

### **1. Major Subdivision**

Major subdivision review and approval in accordance with Section 10.3.7.D, Major Subdivision Procedures and Standards, is required for all subdivisions that are not reviewed as a minor subdivision plat in accordance with subsection 2 below. Approval of a major subdivision

requires approval of a preliminary plan, construction plans, and one or more final plats as set forth in subsection a through c below.

- a. Approval of a preliminary plan in accordance with Section 10.3.7.D.1, Preliminary Plan Procedure, is required prior to the submittal and review of Construction Drawings (see Section 10.3.7.D.2) and the submittal and review of final plat applications (see Section 10.3.7.D.3).
- b. Approval of construction plans in accordance with Section 10.3.7.D.2, Construction Plans Procedure, is required prior to the installation of any required improvements and the submittal and review of final plat applications (see Section 10.3.7.D.3). Subject to sewer availability, building permits may be issued after approval of construction plans. No land-disturbing activity or tree removal may begin on any site subject to the provisions of this Ordinance until all required development approvals and permits are issued.
- c. Approval of a final plat in accordance with Section 10.3.7.D.3, Final Plat Procedure, is required prior to recording the plat in the Office of the Register of Deeds. The final plat shall be recorded in the Office of the Register of Deeds prior to the sale or lease of land or buildings within the subdivision.

## **2. Minor Subdivision Plat**

Minor subdivision plat review and approval in accordance with Section 10.3.7.E, Minor Subdivision Plat Procedure and Standards, is required for any subdivision:

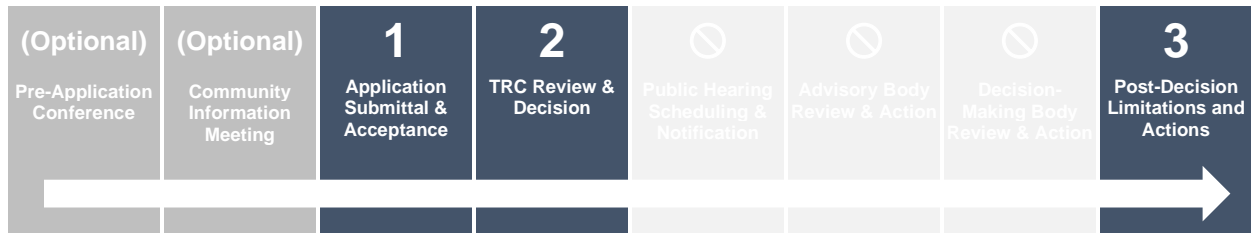
- a. Involving not more than five lots, all of which front on an existing approved street; and
- b. Not involving any new streets or prospectively requiring any new street for access to interior property; and
- c. Not requiring drainage improvements or easements to serve the applicant's property or interior properties.

## **D. Major Subdivision Procedures and Standards**

### **1. Preliminary Plan Procedure**

Figure 10.3.7.D.1 summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to preliminary plans. Subsections a through c below, specify the required procedure for a preliminary plan, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.7.D.1: Summary of Preliminary Plan Procedure**



**a. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. If the proposed subdivision will generate more than 100 trips during the peak hour, a traffic impact study must be submitted prior to approval of the application. The traffic impact study shall be prepared in accordance with Standards and Guidelines approved by the County. If a proposed major thoroughfare runs through or is associated with the tract of land to be subdivided, a sketch plan may be submitted for staff review prior to the submission of an application for a preliminary plat.

**b. Staff Review and Action**

The TRC shall review the application, hear any comments from the applicant or other interested persons at a meeting of the TRC, and make a decision, in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.7.D.4.a, Preliminary Plan Review Standards. The TRC’s decision shall be one of the following:

1. Approve the application as submitted;
2. Approve the application, subject to conditions of approval; or
3. Require that the application be revised to address deficiencies in complying with applicable development standards.

All subdivisions which require an erosion and sedimentation plan and/or require a Coastal Area Management Act (CAMA) major permit must be reviewed by the North Carolina Division of Water Quality for compliance with the Water Supply Watershed Projection Rules (15A NCAC 28.022) and the Coastal Storm Water Rules (15A NCAC 2H.1000).

**c. Post-Decision Limitations and Actions**

1. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.
2. If the application is not approved, the applicant may submit a revised preliminary plan in accordance with the application requirements in the Administrative Manual. Review of the revised preliminary plan shall be in accordance with this section (10.3.7.D.1).

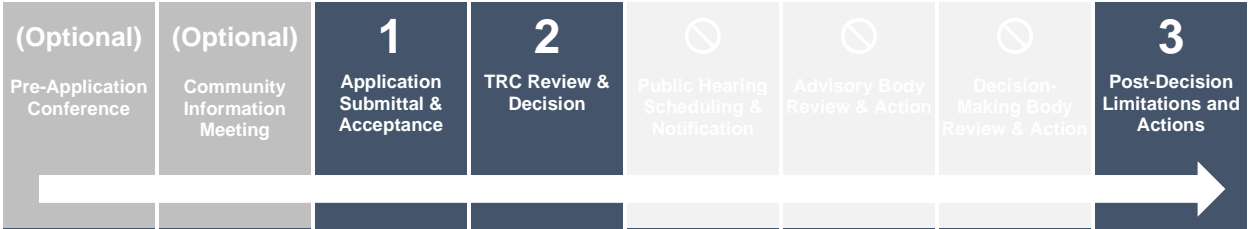


3. If the application is approved, approval shall be noted on the plan. One copy of the plan shall be transmitted to the applicant and another copy shall be retained by the Planning Department.
4. Preliminary plan approval shall automatically expire and become void if the subdivider does not submit a final plat for all or part of the lands subject to the approved preliminary plan or if work authorized by approvals or permits associated with the subdivision has not substantially commenced within two years of the preliminary plan approval date, unless an extension of time is granted in accordance with subsection 5 below. *[05-03-2021]*
5. The TRC may grant up to two, one-year extensions of the time period set forth in subsection 4 above, for good cause, if the applicant submits a written request for an extension prior to the expiration of the preliminary plan approval.

**2. Construction Plans Procedure**

Figure 10.3.7.D.2 summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to construction plans. Subsections a through c below, specify the required procedure for construction plans, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.7.D.2: Summary of Construction Plans Procedure**



**a. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.2, Application Submittal and Acceptance, except applications shall be submitted to the County Engineer, who shall make a determination of completeness and perform other administrative duties pertaining to the application.

**b. Staff Review and Action**

1. The TRC shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.7.D.4.b, Construction Plans Review Standards. The TRC’s decision shall be one of the following:
  - i. Approve the application as submitted;
  - ii. Approve the application, subject to conditions of approval; or
  - iii. Deny the application.

2. If the application is approved, the County Engineer shall issue an approval letter for the installation of the required improvements in accordance with the approved plans and the design standards specified in this Ordinance.

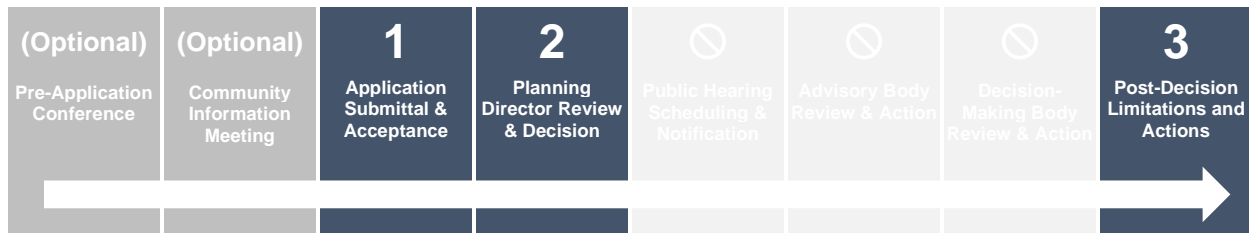
**c. Post-Decision Limitations and Actions**

1. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.
2. The Planning Director, in conjunction with the appropriate agencies, shall review and approve all required improvements prior to the final plat being approved (see Section 10.3.7.D.4.c, Final Plat Review Standards).

**3. Final Plat Procedure**

Figure 10.3.7.D.3 summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to final plats. Subsections a through c below, specify the required procedure for a final plat, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.7.D.3: Summary of Final Plat Procedure**



**a. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.2, Application Submittal and Acceptance.

**b. Staff Review and Action**

The Planning Director shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.7.D.4.c, Final Plat Review Standards. The Planning Director’s decision shall be one of the following:

1. Approve the application; or
2. Deny the application.

**c. Post-Decision Limitations and Actions**

1. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.
2. If the application is approved, the Planning Director shall indicate in writing on the original tracing that the plat is approved. After the

affixing of all required signatures (except Certificate of Registration by the Register of Deeds) the final plat shall be returned to the applicant.

3. The applicant shall file an approved final plat with the Office of the Register of Deeds for recording within 90 days of the date of its approval by the Planning Director or such approval shall be void, unless the Planning Director grants an extension of that time period for good cause.

#### **4. Major Subdivision Review Standards**

##### **a. Preliminary Plan Review Standards**

The TRC shall approve a preliminary plan application only if a traffic impact study is submitted in accordance with Section 10.3.7.D.1.a, and only on finding that the proposed subdivision complies with the applicable standards in Article 6: Subdivision Design and Improvement, all other applicable standards of this Ordinance, and all other applicable County and state laws and regulations.

##### **b. Construction Plans Review Standards**

The TRC shall approve construction plans on finding that the plans are in substantial conformance with the approved preliminary plan and comply with the applicable standards in Article 6: Subdivision Design and Improvement, and all other applicable County and state laws and regulations.

##### **c. Final Plat Review Standards**

The Planning Director shall approve a final plat application only on finding the following:

1. The final plat conforms substantially to the preliminary plan as it was approved;
2. The final plat complies with the applicable standards in Article 6: Subdivision Design and Improvement, and with all other applicable County and state laws and regulations, including the provisions in N.C.G.S. Section 47-30;
3. The final plat complies with the policies of New Hanover County in regard to mapping; and
4. All required improvements have been installed in accordance with the requirements of this Ordinance and any other applicable County and state regulations, or a financial guarantee is provided for any required improvements that are not installed in accordance with Section 6.3.2, Guarantees of Improvements.

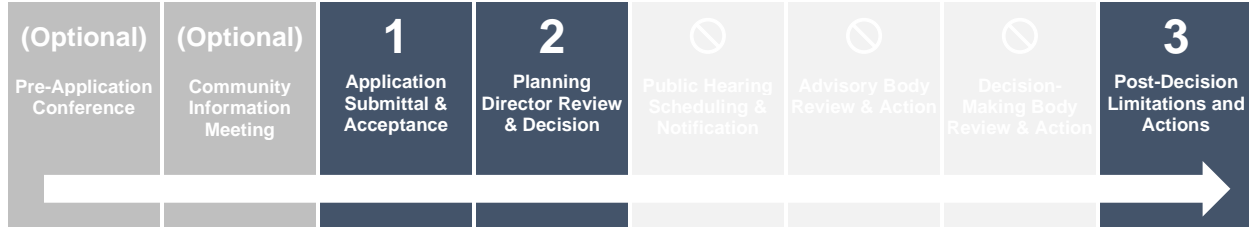
#### **E. Minor Subdivision Plat Procedure and Standards**

##### **1. Minor Subdivision Plat Procedure**

Figure 10.3.7.E.1 summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to a minor

subdivision plat. Subsections a through c below, specify the required procedure for minor subdivision plats, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.7.E.1: Summary of Minor Subdivision Plat Procedure**



**a. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. In addition to the other application requirements set forth in the Administrative Manual, the application shall include one original print of the plat, drawn in ink on film or linen in a size suitable for recording.

**b. Staff Review and Action**

1. The Planning Director shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.7.E.2, Minor Subdivision Plat Standards. The Planning Director’s decision shall be one of the following:
  - i. Approve the application; or
  - ii. Deny the application.
2. If the Planning Director approves the application, the Planning Director shall stamp the plat as an approved minor subdivision.
3. All subdivisions which require an erosion and sedimentation plan and/or require a Coastal Area Management Act (CAMA) major permit must be reviewed by the North Carolina Division of Water Quality for compliance with the Water Supply Watershed Projection Rules (15A NCAC 28.022) and the Coastal Storm Water Rules (15A NCAC 2H.1000).

**c. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply. The applicant shall file an approved final plat with the Office of the Register of Deeds for recording after approval.

**2. Minor Subdivision Plat Standards**

The Planning Director shall approve a minor subdivision plat application only on finding that the proposed subdivision complies with the applicable standards in Article 6: Subdivision Design and Improvement, all other

applicable standards of this Ordinance, and all other applicable County and state laws and regulations, including the provisions in N.C.G.S. § 47-30.

### 10.3.8. ZONING COMPLIANCE APPROVAL

#### A. Purpose

The purpose of zoning compliance approval is to provide a uniform mechanism to ensure development complies with the requirements of this Ordinance, either in conjunction with a building permit application or as a separate application if no building permit is required.

#### B. Applicability

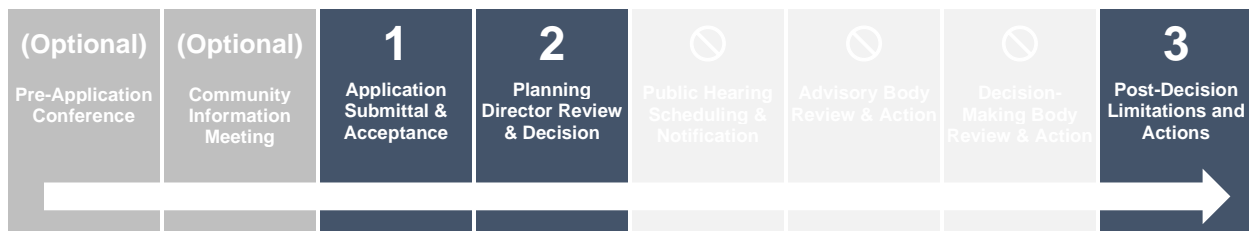
A zoning compliance approval is required for the following activities:

1. Establishment of a new use other than bona fide farms;
2. Erection, alteration, moving, or repair of any building or structure; and
3. Occupying or permitting the use or occupancy of any building or premises, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure. *[05-03-2021]*

#### C. Zoning Compliance Approval Procedure

Figure 10.3.8.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to zoning compliance approvals. Subsections 1 through 3 below, specify the required procedure for a zoning compliance approval, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.8.C: Summary of Zoning Compliance Approval Procedure**



#### 1. Application Submittal and Acceptance

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

#### 2. Staff Review and Action

The Planning Director shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.8.D, Zoning Compliance Approval Review Standards. The Planning Director's decision shall be one of the following:

- a. Approve the application as submitted;

- b. Approve the application, subject to conditions of approval; or
- c. Require the application be revised to address deficiencies in complying with applicable development standards .

### **3. Post-Decision Limitations and Actions**

- a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.
- b. Zoning compliance approval issued on the basis of plans and applications approved by the Planning Director authorizes only the use, arrangements, and construction set forth in such approved plans and applications. Subsequent use, arrangements, or construction that do not comply with the zoning compliance approval shall be deemed a violation of this Ordinance and shall be subject to Article 12: Violations and Enforcement.

### **D. Zoning Compliance Approval Review Standards**

The Planning Director shall issue a zoning compliance approval only on finding that the proposed use of the building or land conforms to the requirements of this Ordinance.

## **10.3.9. TREE REMOVAL PERMIT**

### **A. Purpose**

The purpose of this section is to provide a uniform mechanism for ensuring all development complies with the standards in Section 5.3.4, Tree Retention Standards.

### **B. Applicability**

#### **1. General**

- a. Unless a waiver, exemption, or exception applies in accordance with subsection 2 below, no person, directly or indirectly, shall remove any regulated tree identified in Section 5.3.4, Tree Retention Standards, from public or private property without first obtaining a tree removal permit in accordance with this section.
- b. Unless a waiver, exemption, or exception applies in accordance with subsection 2 below, a tree removal permit is required before any clearing, grading, or other authorizations are issued under this Ordinance, including erosion and sedimentation control permits (see Article 8: Erosion and Sedimentation Control) and building permits.
- c. An approved tree removal permit for new construction shall apply to the entire site.

#### **2. Waivers, Exemptions, and Exceptions**

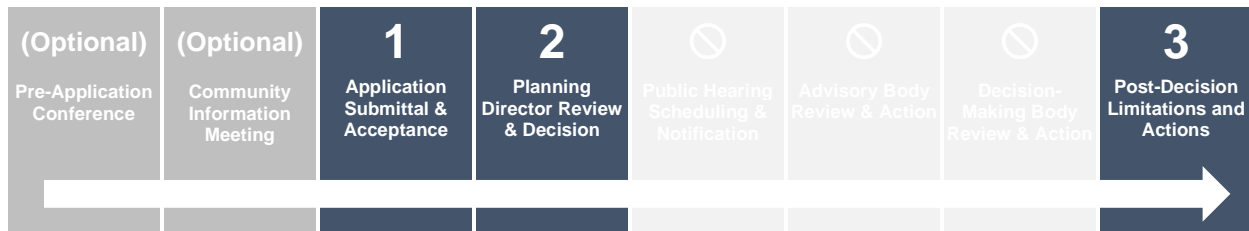
- a. The Planning Director may waive the requirement for a tree removal permit during an emergency such as a hurricane, tornado, windstorm, tropical storm, flood, or other natural disaster.

- b. The procedures and standards in this section do not apply to lands exempted from the tree retention standards by Section 5.3.1, Applicability.
- c. If any regulated tree under Section 5.3, Tree Retention, is determined to be creating a hazardous condition which immediately endangers the public health, safety, or welfare, or causes an immediate disruption of public services, the Planning Director may authorize the removal of the tree without a tree removal permit.

**C. Tree Removal Permit Procedure**

Figure 10.3.9.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to tree removal permits. Subsections 1 through 3 below, specify the required procedure for a tree removal permit, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.9.C: Summary of Tree Removal Permit Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

**2. Staff Review and Action**

The Planning Director shall review the application and make a decision in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.9.D, Tree Removal Permit Review Standards. The Planning Director’s decision shall be one of the following:

- a. Approve the application as submitted;
- b. Approve the application, subject to conditions of approval; or
- c. Deny the application.

**3. Post-Decision Limitations and Actions**

The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply, except that a tree removal permit shall automatically expire one year after the date it is issued. [05-03-2021]

**D. Tree Removal Permit Review Standards**

The Planning Director shall issue a tree removal permit only on determining the application complies with all applicable standards of Section 5.3, Tree Retention, and that any of the following conditions exist:

1. Essential site improvements cannot be accommodated on the site without the removal of protected or significant trees;
2. The regulated tree is dead, severely diseased, injured, or in danger of falling close to existing or proposed structures;
3. The regulated tree is causing disruption of existing utility service or causing passage problems upon the right-of-way;
4. The regulated tree is posing an identifiable threat to pedestrian or vehicular safety;
5. The regulated tree violates state and local safety standards; or
6. Removal of the regulated tree is necessary to enhance or benefit the health or condition of adjacent trees or property.

**10.3.10. FLOODPLAIN DEVELOPMENT PERMIT**

The requirements for submittal and review of floodplain development permit applications are set forth in Article 9: Flood Damage Prevention.

**10.3.11. VARIANCE – ZONING AND SUBDIVISION**

**A. Purpose**

The purpose of a variance is to allow certain deviations from specified standards of this Ordinance when the landowner demonstrates that, owing to special conditions beyond the landowner’s control (such as exceptional topographical conditions, narrowness, shallowness, or the shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

**B. Applicability**

1. The variance procedure in this section may be used to vary any of the following standards:
  - a. Standards for maximum height, maximum lot coverage, setbacks, minimum lot area, and minimum lot width for each zoning district in Article 3: Zoning Districts;
  - b. Article 5: General Development Standards; and
  - c. Article 6: Subdivision Design and Improvement.
2. The following variances are not allowed:
  - a. An increase in the development density (i.e. units per acre) beyond that allowed in a base zoning district;
  - b. An increase in the number of a particular type of sign beyond that allowed by Section 5.6, Signs; and
  - c. Permitting a use not allowed in a zoning district, or having the effect of allowing a prohibited use or a prohibited sign.



### C. Zoning and Subdivision Variance Procedure

Figure 10.3.11.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to zoning and subdivision variances. Subsections 1 through 5 below, specify the required procedure for zoning and subdivision variances, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.11.C: Summary of Zoning and Subdivision Variance Procedure**



#### 1. Application Submittal and Acceptance

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance.

#### 2. Staff Review and Action

The Planning Director shall review the application and prepare a staff report in accordance with Section 10.2.5, Staff Review and Action. A recommended decision on the application shall not be included in staff reports on variance applications.

#### 3. Public Hearing Scheduling and Public Notification

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

#### 4. Decision-Making Body Review and Action

[05-03-2021]

a. The Board of Adjustment shall conduct a quasi-judicial public hearing on the application and make a decision in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.11.D, Zoning and Subdivision Variance Review Standards. The Board's decision shall be one of the following:

1. Approve the application as submitted;
2. Approve the application subject to conditions of approval; or
3. Deny the application.

b. The concurring vote of four-fifths of the Board shall be necessary to grant a variance.

- c. Only conditions of approval mutually agreed to in writing by the applicant and the Board of Adjustment are allowed. [05-03-2021]

**5. Post-Decision Limitations and Actions**

- a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.
- b. Any appeal of the Board of Adjustment's or Planning Board's decision shall be to the Superior Court of New Hanover County, in accordance with state law.

**D. Zoning and Subdivision Variance Review Standards**

1. Except as otherwise provided by subsection 2 below, the Board of Adjustment shall grant a variance only if it reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence presented at the hearing: [05-03-2021]
  - a. Unnecessary hardship would result from the strict application of this Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - d. The requested variance is consistent with the spirit, purpose, and intent of this Ordinance, such that public safety is secured, and substantial justice is achieved.
2. The Board of Adjustment shall grant a variance from the requirements of Section 5.10, Airport Height Restriction, on finding that a copy of the application was furnished to the Airport Authority for advice as to aeronautical effects of the proposed variance and the Airport Authority was given 15 days to respond to the application, and on reaching all of the following conclusions, based on findings of fact supported by competent, substantial, and material evidence presented at the hearing:
  - a. A literal application or enforcement of the regulations will result in unnecessary hardship; and
  - b. The relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance.
3. The following factors do not constitute sufficient grounds for approval of a variance:

- a. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;
- b. Hardships resulting from factors other than application of the standards of this Ordinance;
- c. The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- d. The citing of other nonconforming or conforming uses of land or structures in the same or other zoning districts; or
- e. Financial hardship.

**10.3.12. VARIANCE – FLOODPLAIN**

The procedures and standards for obtaining a variance from the standards in Article 9: Flood Damage Prevention, are set forth in Section 9.7.5, Variance Procedures.

**10.3.13. REASONABLE ACCOMMODATION**

**A. Applicability**

**1. General**

This section provides a procedure for reasonable accommodation of eligible persons in cases where the strict application of the standards of this Ordinance would deprive them of their right to equal opportunity to use a dwelling under the federal Fair Housing Act.

**2. Eligible Persons**

- a. An eligible person is a person who meets the definition of a disabled or handicapped person under federal law.
- b. A person recovering from substance abuse is considered a person with a disability or handicap provided they are not currently engaging in the illegal use of controlled substances.

**B. Reasonable Accommodation Procedure**

Figure 10.3.13.B summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to reasonable accommodation applications. Subsections 1 through 5 below, specify the required procedure for reasonable accommodation applications, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.13.B: Summary of Reasonable Accommodation Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance. No filing fee is required for a reasonable accommodation application.

**2. Staff Review and Action**

The Planning Director shall review the application and prepare a staff report in accordance with Section 10.2.5, Staff Review and Action. A recommended decision on the application shall not be included in a staff report on reasonable accommodation applications.

**3. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule public hearings and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

**4. Decision-Making Body Review and Action**

a. The Board of Adjustment shall conduct a quasi-judicial public hearing on the application and make a decision in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.13.C, Reasonable Accommodation Review Standards. The Board’s decision shall be one of the following:

- 1. Approve the application as submitted;
- 2. Approve the application with revisions; or
- 3. Deny the application.

b. The concurring vote of four-fifths of the Board shall be necessary to grant a reasonable accommodation. *[05-03-2021]*

**5. Post-Decision Limitations and Actions**

a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.

b. Any appeal of the Board of Adjustment’s decision shall be to the Superior Court of New Hanover County, in accordance with state law.

**C. Reasonable Accommodation Review Standards**

1. A reasonable accommodation application shall be approved on a finding the proposed accommodation:
  - a. Will be used by an individual or individuals with a disability or handicap protected under federal law;
  - b. Is the minimum needed to provide accommodation; and
  - c. Is reasonable and necessary.
2. For the purposes of this section, an accommodation is reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other County standard, and it will not impose significant financial and administrative burdens upon the County.
3. For the purposes of this section, an accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to use housing in residential districts in the County.

**10.3.14. APPEAL OF ADMINISTRATIVE DECISION**

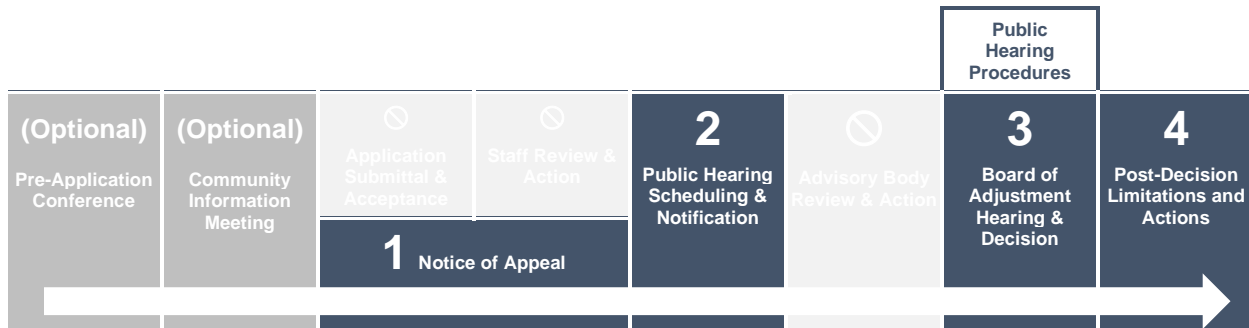
**A. Applicability**

Any person who has standing under N.C.G.S. 160D-1402, or the County, may appeal a decision, interpretation, or determination made by the Planning Director or the TRC under this Ordinance to the Board of Appeals in accordance with the procedures and standards in this section and state law. [05-03-2021]

**B. Appeal of Administrative Decision Procedure**

Figure 10.3.14.B summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to an appeal of an administrative decision. Subsections 1 through 4 below, specify the required procedure for an appeal of an administrative decision, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.14.B: Summary of Appeal of Administrative Decision Procedure**



## 1. Notice of Appeal

The procedures and requirements in Section 10.2.4, Application Submittal and Acceptance, and Section 10.2.5, Staff Review and Action, do not apply to appeals of administrative decisions. Instead, a Notice of Appeal, along with the required fees, shall be filed and processed in accordance with subsections a through e below.

- a. The appellant shall file a Notice of Appeal stating the grounds for the appeal with the County Clerk within 30 days of:
  1. Receipt of written notice in accordance with Section 10.2.10.A, Notification to Applicant; or
  2. If the appellant did not receive written notice in accordance with Section 10.2.10.A, Notification to Applicant, receipt of actual or constructive notice of the decision.
- b. The Planning Director shall transmit all documents and exhibits constituting the record upon which the decision appealed from is taken to the Board of Adjustment, and shall provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal, if the appellant is not the owner.
- c. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, subject to subsections 1 and 2 below.
  1. The official who made the decision may certify to the Board of Adjustment, after the Notice of Appeal is filed, that because of the facts stated in an affidavit:
    - i. A stay would cause imminent peril to life or property; or
    - ii. A stay would seriously interfere with enforcement of this Ordinance because the violation is transitory in nature.
  2. If a certification is made in accordance with subsection 1 above, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- d. If enforcement proceedings are not stayed in accordance with subsection c above, the appellant may file with the Planning Director a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after the request is filed.
- e. Decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay the further review of applications for development approvals or permits for the property. In such cases, the appellant may request, and the Board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.

**2. Public Hearing Scheduling and Public Notification**

The Planning Director shall schedule the public hearing on the appeal and provide public notification in accordance with Section 10.2.6, Public Hearing and Preliminary Forum Scheduling and Public Notification.

**3. Decision-Making Body Action**

a. The Board of Adjustment shall conduct a quasi-judicial public hearing and make a decision on the appeal, by vote of a majority of members, not counting vacant positions on the Board or members who are disqualified from voting. The hearing and decision shall be in accordance with Section 10.2.9, Decision-making Body Review and Action, and Section 10.3.14.C: Appeal of Administrative Decision Standards. The Board’s decision shall be one of the following:

- 1. Affirm (wholly or partly) the decision;
- 2. Modify the decision; or
- 3. Reverse the decision.

b. In making its decision, the Board of Adjustment shall have all the powers of the official who made the decision and shall make any order, requirement, decision, or determination that ought to be made.

**4. Post-Decision Limitations and Actions**

a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.

b. Any appeal of the Board of Adjustment’s decision shall be to the Superior Court of New Hanover County, in accordance with state law.

**C. Appeal of Administrative Decision Standards**

The Board of Adjustment shall modify or reverse the decision on appeal only if it finds, based upon competent, substantial, and material evidence in the record, that there has been a clear and demonstrable error, abuse of discretion, or denial of procedural due process in the application of the facts in the record to the applicable standards of this Ordinance.

**10.3.15. INTERPRETATION**

**A. Purpose**

The purpose of the interpretation procedure in this section is to establish a uniform mechanism for rendering formal written interpretations of the text of this Ordinance and the boundaries or classifications on the Official Zoning Map.

**B. Applicability**

- 1. The procedure and standards in this section are required for the rendering of formal written interpretations of the text of this Ordinance and the boundaries or classifications on the Official Zoning Map.

2. Except as set forth in subsection 3 below, the Planning Director is responsible for making interpretations of all provisions of this Ordinance, including, but not limited to:
  - a. Interpretations of the text;
  - b. Interpretations of the zoning district boundaries; and
  - c. Interpretations of whether an unlisted use in Table 4.2.1: Principal Use Table, is comparable to a listed use or not, and should be allowed in a zoning district or prohibited in that district.

**C. Interpretation Procedure**

Figure 10.3.15.C summarizes the requirements and procedures in Section 10.2, Standard Review Procedures, that apply to interpretations. Subsections 1 through 3 below, specify the required procedure for an interpretation, including applicable additions or modifications to the standard review procedures.

**Figure 10.3.15.C: Summary of Interpretation Procedure**



**1. Application Submittal and Acceptance**

Applications shall be submitted in accordance with Section 10.2.4, Application Submittal and Acceptance, subject to the modifications in subsections a and b below. Written requests for interpretations shall be considered “applications” for purposes of this section. An application for an interpretation may be initiated by the Board of Commissioners, the Planning Board, any resident or landowner in the County, or any person having a contractual interest in land in the County.

**2. Staff Review and Action**

- a. The Planning Director shall distribute the application, review the application, and make an interpretation, which shall constitute the decision on the application, in accordance with Section 10.2.5, Staff Review and Action, and Section 10.3.15.D: Interpretation Standards.
- b. Prior to rendering an interpretation, the Planning Director shall consult with the County Attorney and other affected County officials

**3. Post-Decision Limitations and Actions**

- a. The post-decision limitations and actions in Section 10.2.10, Post-decision Limitations and Actions, apply.



- b. A written interpretation shall be binding on subsequent decisions by the Planning Director or other officials in applying the same provision of this Ordinance or the Official Zoning Map in the same circumstance, unless the interpretation is modified in accordance with this section, or the relevant text of this Ordinance or zoning district boundary is amended.
- c. The Planning Director shall maintain a record of written interpretations that shall be available in the Planning Department during normal business hours.

#### **D. Interpretation Standards**

##### **1. Unspecified Uses**

Interpretation of whether an unspecified use is similar to a use identified in Table 4.2.1: Principal Use Table, or is prohibited in a zoning district shall be based on Section 4.1.3, Classification of New or Unlisted Uses.

##### **2. Zoning Map Boundaries**

Interpretation of zoning district boundaries on the Official Zoning Map shall be in accordance with the standards in Section 3.1.1.C, Rules for Interpretation of District Boundaries.

##### **3. Text Provisions**

Interpretation of the text and its application shall be based on the standards in Section 2.2, Rules of Construction, and the following considerations:

- a. The clear and plain meaning of the provision's wording, as defined by the meaning and significance given specific terms used in the provision—as established in Section 2.2, Rules of Construction, and by the common and accepted usage of the term;
- b. The intended purpose of the provision, as indicated by purpose statements, its context and consistency with surrounding and related provisions, and any legislative history related to its adoption; and
- c. The general purposes served by this Ordinance, as set forth in Section 1.3, General Purpose and Intent.