ARTICLE IV

PERMITS AND FINAL PLAT APPROVAL

PART I. PERMIT REQUIREMENTS

Section 15-46 Permits Required.

(a) Subject to Section 15-271 (Sign Permits) and subsection (e) of this section, the use made of property may not be substantially changed (see Section 15-152), substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits: **(AMENDED 10/22/91)**

(1) A zoning permit issued by the administrator;

(2) A special use permit-B issued by the board of adjustment;

(3) A special use permit-A issued by the Town Council.

(a1) Pursuant to G.S. sections 160D-705(c) and 160D-102(30) any valid 'conditional use permit' issued prior to January 1, 2021 shall automatically convert to a 'special use permit-A.' Any valid 'special use permit' shall automatically convert to a 'special use permit-B.' Any 'conditional use zoning district,' adopted in accordance with section 15-141.3 and Article XX of this chapter shall be deemed a 'conditional zoning district' and the 'conditional use permit' issued concurrently with the establishment of the district shall be deemed a valid 'special use permit-A.' Requests for modifications to special use permits shall be consider in accordance with the procedures in section 15-64 of this chapter. **(AMENDED 6/22/21)**

(b) Zoning permits, special use permits-B, special use permits-A, and sign permits are issued under this chapter in respect to plans submitted by the applicant that demonstrate compliance with the ordinance provisions contained herein. Such plans as are finally approved are incorporated into any permit issued in reliance thereon, and except as otherwise provided in Section 15-64, all development shall occur strictly in accordance with such approved plans. Approvals shall be in writing, issued in print or electronic form, and may contain a provision that the development shall comply with all applicable State and local laws. **(AMENDED 1/10/81; 6/22/21)**

(c) Physical improvements to land to be subdivided may not be commenced except in accordance with a special use permit-A issued by the Town Council (for major subdivisions containing more than twelve lots and all subdivisions in watershed districts) or a special use permit-B issued by the board of adjustment (for major subdivisions outside the watershed districts containing between five and twelve lots) or after final plat approval by the planning director for minor subdivisions (see Part II of this article). **(AMENDED 12/15/87)**

(d) A zoning permit, special use permit-A, special use permit-B, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All such permits issued with respect to tracts of land in excess of one acre (except sign permits and zoning permits for single-family residential uses and duplexes) shall be recorded in the Orange County Registry after execution by the record owner as provided in Section 15-63. **(AMENDED 5/26/81)**

(e) Notwithstanding the provisions of subsection (a) of this section, no permit under this chapter shall be required for the substantial alteration of a building or structure located within a B-1(c), B-1(g) or B-2 zoning district if such alteration does not change the exterior of such building or structure in any substantial way. **(AMENDED 10/22/91)**

(f) Property located in the town's extraterritorial planning area and development regulation jurisdiction that is used for bona fide farm purposes, as defined in G.S. sections 106-581.1 and 106-743.2 is exempt from the regulations in this chapter. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes becomes subject to exercise of the town's extraterritorial planning and development regulation jurisdiction under this chapter. [See also the definition of bona fide farm in Article II of this chapter.] **(AMENDED 6/22/21)**

(g) Notwithstanding the provisions of subsection (a) of this section, the Town may consider the use of development agreements for part or all of a development in accordance with G.S. sections 160D-1003 through 160D-1007 and the legislative hearing process in Article XX of this chapter. **(AMENDED 6/22/21)**

Section 15-47 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled.

Issuance of a special use permit-A, or special use permit-B or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 15-53, 15-60, and 15-61, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a special use permit or zoning permit have been complied with.

Section 15-48 Who May Submit Permit Applications.

(a) Applications for special use, zoning, or sign permits or minor subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the minor subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who

have contracted to purchase property contingent upon their ability to acquire the necessary permits under this chapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract venders). An easement holder may also apply for development approval for such development as is authorized by the easement. **(AMENDED 6/22/21)**

(b) The administrator may require an applicant to submit evidence of the applicant's authority to submit the application in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

Section 15-48.1 Concept Plan Review Procedures Prior to Submitting Applications. (Amended 10/24/06)

(a) Prior to submitting an application for a special use permit-B or special use permit-A or for conditional zoning to allow use classification 3.260 Social Service Provider/Community Kitchen, the applicant shall comply with the requirements of this section. **(AMENDED 3/22/16)**

(b) The applicant shall attend a regularly scheduled Development Review meeting and discuss the proposed project with staff in attendance at such meeting. This requirement shall not apply to a developer of a proposed major subdivision who has met with the planning staff under the provisions of Subsection 15-50(d) following an "on-site walkabout".

(c) Following compliance with the provisions of subsection (b), the applicant shall attend a Joint Advisory Board meeting comprising at least the following boards: Planning Board, Appearance Commission, Transportation Advisory Board, and Environmental Advisory Board. The planning staff may notify the Economic Sustainability Commission, Recreation and Parks Commission, Northern Transition Area Advisory Committee, Affordable Housing Advisory Commission, or other boards when issues relevant to those boards are raised by a proposed development and members of those boards may attend. **(AMENDED 6/25/19; 6/22/21)**

(1) No quorum requirements shall apply to the Joint Advisory Board.

(2) The applicant shall present to the Joint Advisory Board sufficient information about the proposed development to enable the board to have a general understanding of the nature and extent of the development. If the development is a major subdivision, then a "conceptual preliminary plan" prepared in accordance with the provisions of Section 15-50 shall suffice. If the development is not a major subdivision, then the information submitted shall include at least the following:

a) A sketch site plan showing the location and size (including floor area) of proposed buildings, (including the extent to which buildings taller than 40 feet may cast a shadow), parking areas, and driveway entrances; **(AMENDED 3/25/14)**

b) Proposed residential densities and types of residential units (in terms of number of bedrooms);

c) Illustrations of building elevations.

d) Other information deemed necessary by the staff to demonstrate to the Joint Advisory Board the concept of the proposed development.

(d) Following the presentation of the concept plan to the Joint Advisory Board, the members of that board may present such feedback to the developer as they deem appropriate. In addition, following the Joint Advisory Board meeting, the component advisory boards may meet separately and make recommendations to the developer.

(e) When the development application comes back before the advisory boards for a recommendation prior to the public hearing on such application, the applicant shall provide a written response to all advisory board comments, and each advisory board that has reviewed the concept plan and made comments on it shall review those comments and may ask the developer to explain how those comments have been addressed or why they have not been addressed.

Section 15-49 Applications To Be Complete.

(a) All applications for zoning permits, special use permits, or sign permits must be complete before the permit-issuing authority is required to consider the application.

(b) Subject to subsections (c) and (c1), an application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this chapter. **(AMENDED 11/23/10)**

(c) In this chapter, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices of this chapter. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as (subject to subsection (c1)) the plans provide sufficient information to allow the permit-issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this chapter. However, whenever this chapter requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, or whenever it reasonably appears to the administrator that such construction drawings are necessary to demonstrate that construction details will comply with plans submitted and approved as part of the permit-issuing process, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the administrator. A detailed description of the construction plan submittal and review requirements is provided in Article IV, Part III. Failure to observe this requirement may

result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII. **(AMENDED 6/06/89; 11/23/10)**

(c1) If the administrator determines that a proposed development that has been issued a zoning permit, special use permit-B, or special use permit-A would likely have a significant impact on adjoining or nearby streets, sidewalks, or properties during the construction process, the administrator shall notify the permit recipient that a construction management plan must be submitted and approved by the administrator. Examples of significant impacts include but are not limited to the construction of more than 1000 square feet of new building area in the downtown commercial zoning districts or ground disturbance of more than 20,000 square feet in the downtown commercial zoning districts. A construction management plan shall likewise be submitted and approved by the administrator if required by a condition attached to a special use permit. **(AMENDED 2/25/14)**

(1) The administrator shall inform the permit recipient of the contents of the Town Code regarding (i) construction noise and hours of operation (Section 5-12(4)), and (ii) obstructing or excavating within public street rights of way (Sections 7-1, 7-4, and 7-12). The administrator shall also inform the developer that the construction management plan shall commit the developer to compliance with those provisions and shall explain how the developer intends to address other potential impacts identified by the administrator, such as streets to be used or avoided by construction vehicles, the location of entrances to the site for construction vehicles, parking for employees, contractors and subcontractors, and the location on the site for the staging of construction materials and equipment, and concerns about potentially harmful pollutants including but not limited to dust, debris and aerosols.

(2) If a development triggers a construction management plan, a meeting will be held by the developer with surrounding residents and businesses to elicit their input into the development of the construction management plan and to ensure its implementation. Town staff shall be present at the meeting and shall record the minutes to make certain that public input is conveyed to the applicant and incorporated into the construction management plan.

(3) No construction may be commenced until the construction management plan has been approved. The administrator shall approve the plan if the plan proposes measures to mitigate the potential negative impacts of the project during the construction process to the extent reasonably practical under all the circumstances.

(4) The provisions of an approved construction management plan shall be enforceable in the same manner as other provisions of this chapter. **(AMENDED 2/25/14)**

(c2) Permit applications for commercial projects (meaning those where at least twenty percent of the proposed floor area is devoted to non-residential uses) in the commercial zoning districts need not contain all of the detailed information necessary for the permit issuing authority to determine that the development, if constructed in accordance with the application and plans, will comply with the drainage and stormwater management requirements set forth in Sections 15-262 and 15-263 of this chapter, so long as:

(1) The application contains sufficient information to explain how the development will address drainage and stormwater management issues, and it appears reasonably likely to the permit issuing authority that the proposed drainage and stormwater management systems will function in such a manner that the development will comply with Sections 15-262 and 15-263; and

(2) Before construction plans are approved, such plans must demonstrate that all the requirements of Sections 15-262 and 15-263 and related appendices will be satisfied. **(AMENDED 11/23/10; 2/25/14)**

(d) The presumption established by this chapter is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit-issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or board of adjustment, the applicant may rely in the first instance on the recommendations of the administrator as to whether more or less information than that set forth in Appendix A should be submitted.

(e) The administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the administrator to determine compliance with this chapter, such as applications for zoning permits to construct single-family houses or duplexes, or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 15-50 Site Planning Procedures for Major Subdivisions. (AMENDED 5/25/99)

(a) Before submitting an application for a special use permit for a major subdivision, the applicant shall comply with the requirements of this section.

(b) The applicant shall submit a site analysis plan drawn approximately to scale (1inch = 100 feet) that contains the following information:

(1) The name and address of the developer;

(2) The proposed name and location of the subdivision;

(3) The approximate total acreage of the proposed subdivision;

(4) Topographic lines based on maps published by the U.S. Geological Survey;

(5) The location of all primary and secondary conservation areas as defined in subsections 15-198(b)(4) and (5); and

(6) The location of any existing or proposed road connections on adjacent property.

(c) After the site analysis plan has been submitted, the planning staff shall schedule a mutually convenient date to walk the property with the applicant and the applicant's site designer. Designated members of the Planning Board, Appearance Commission, Transportation Advisory Board, Environmental Advisory Board, Northern Transition Area Advisory Commission, and Affordable Housing Advisory Commission, or other boards when issues relevant to those boards are raised by the proposed subdivision, shall be notified of the date and time of this "on-site walkabout." The purpose of this visit is to familiarize town officials with the property's special features and to provide an informal opportunity for an interchange of information as to the developer's plans and the town's requirements. **(REWRITTEN 2/25/14) (AMENDED 6/25/19; 6/22/21).**

(d) Prior to the submission of a conceptual preliminary plan as described in subsection (e), the staff shall meet with the developer to discuss how the four-step approach to designing subdivisions described below could be applied to the subject property. This conference may be combined with the on-site walkabout.

(e) Following completion of the steps described in subsections (b), (c), and (d), the developer shall submit a conceptual preliminary plan of the proposed subdivision, prepared in accordance with the four-step process described in subsection (f). This plan shall be a preliminarily engineered sketch plan drawn to illustrate initial thoughts about a conceptual layout for open space, house sites, and street alignments. This is the stage where drawings are tentatively illustrated, before heavy engineering costs are incurred in the design of any proposed subdivision layout. The planning staff shall review this plan and provide comment to the developer on the overall pattern of streets, house lots, open space, and the treatment of primary and secondary conservation areas in light of the applicable requirements of this chapter.

(f) Each conceptual preliminary plan shall be prepared using the following four-step design process:

(1) During the first step, all primary and secondary conservation areas are identified (and shown on the site analysis plan described in subsection (b)).

(2) During the second step, potential sites are tentatively located. House sites should generally be located not closer than 100 feet from primary conservation areas and 50 feet from secondary conservation areas.

(3) The third step consists of aligning proposed streets to provide vehicular access to each house in the most reasonable and economical way and to identify points of existing or proposed connectivity in order to comply with Subsection 15-217(a). When lots and access streets are laid out, they shall be located in a way that avoids or at least minimizes adverse impacts on primary and secondary conservation areas. To the greatest extent practicable, wetland crossings and streets traversing existing slopes over 15% shall be strongly discouraged. Street connections shall comply with the provisions of Section 15-214.

(4) The fourth step is to draw in the lot lines.

(g) The conceptual preliminary plan shall demonstrate that the proposed development will satisfy the following objectives, as more particularly described in the remaining provisions of this chapter:

(1) Protects and preserves all floodplains, wetlands, and steep slopes from clearing, grading, filling, or construction (except as may be approved by the Town for essential infrastructure or active or passive recreation amenities).

(2) Preserves and maintains mature woodlands, existing fields, pastures, meadows, and orchards, and creates sufficient buffer areas to minimize conflicts between residential and agricultural uses. For example, locating house lots and driveways within wooded areas is generally recommended, with two exceptions. The first involves significant wildlife habitat or mature woodlands which raise an equal or greater preservation concern, as described in #5 and #8 below. The second involves predominantly agricultural areas, where remnant tree groups provide the only natural areas for wildlife habitat.

(3) If development must be located on open fields or pastures because of greater constraints in all other parts of the site, dwellings should be sited on the least prime agricultural soils, or in locations at the far edge of a field, as seen from existing public roads. Other considerations include whether the development will be visually buffered from existing public roads, such as by a planting screen consisting of a variety of indigenous native trees, shrubs and wildflowers (specifications for which should be based upon a close examination of the distribution and frequency of those species, found in a typical nearby roadside verge or hedgerow).

(4) Maintains or creates an upland buffer of natural native species vegetation of at least 100 feet in depth adjacent to wetlands and surface waters, including creeks, streams, springs, lakes and ponds.

(5) Designs around existing hedgerows and tree-lines between fields or meadows. Minimizes impacts on large woodlands (greater than five acres), especially those containing many mature trees or a significant wildlife habitat, or those not degraded by invasive vines. Also, woodlands of any size on highly erodible soils with slopes greater than 10 percent should be avoided. However, woodlands in poor condition with limited management potential can provide suitable location for residential development. When any woodland is developed, great care shall be taken to design all disturbed areas (for buildings, roads, yards, septic disposal field, etc.) in locations where there are no large trees or obvious wildlife areas, to the fullest extent that is practicable.

(6) Leaves scenic views and vistas unblocked or uninterrupted, particularly as seen from public roadways. (For example, in open agrarian landscapes, a deep, "no-build, no-plant" buffer is recommended along the public roadway where those views or vistas are prominent or locally significant. In wooded areas where the sense of enclosure is a feature that should be maintained, a deep "no-build, no-cut" buffer should be respected, to preserve existing vegetation.

(7) Avoids siting new construction on prominent hilltops or ridges, by taking advantage of lower topographic features.

(8) Protects wildlife habitat areas of special species listed as endangered, threatened, or of special concern by the state or federal government.

(9) Designs around and preserves sites of historic, archaeological, or cultural value, and their environs, insofar as needed to safeguard the character of the feature, including stone walls, spring houses, barn foundations, cellar holes, earthworks, burial grounds, etc.

(10) Protects rural roadside character and improves public safety and vehicular carrying capacity by avoiding development fronting onto existing public roads. Establishes buffer zones along the scenic corridor of rural roads with historic buildings, stone walls, hedgerows, etc.

(11) Landscapes common areas (such as community greens), and both sides of new streets with native species shade trees and flowering shrubs with high wildlife conservation value.

(12) Provides active recreational areas in suitable locations offering convenient access by residents, and adequately screened from nearby house lots.

(13) Includes a pedestrian circulation system designed to assure that pedestrians can walk safely and easily on the site, between properties and activities or special features within the neighborhood open space system. All roadside footpaths should connect with off-road trails, which in turn should link with potential open space on adjoining undeveloped parcels (or with existing open space on adjoining developed parcels, where applicable).

(14) Provides open space that is reasonably contiguous, and whose configuration is in accordance with the guidelines contained in the Design and Management Handbook for Preservation Areas, produced by the Natural Lands Trust [Appendix K]. For example, fragmentation of open space should be minimized so that these resource areas are not divided into numerous small parcels located in various parts of the development. To the greatest extent practicable, this land shall be designed as a single block with logical, straightforward boundaries. Long thin strips of conservation land shall be avoided, unless the conservation feature is linear or unless such configuration is necessary to connect with other streams or trails. The open space shall generally abut existing or potential open space land on adjacent parcels, and shall be designed as part of larger, contiguous, and integrated greenway systems, as per the policies in the Open Space and Recreation section of the Town's Ordinance.

Section 15-51 Staff Consultation After Application Submitted.

(a) Upon receipt of a formal application for a zoning, special use permit or minor plat approval, the administrator shall review the application and confer with the applicant to ensure that the applicant understands the planning staff's interpretation of the applicable requirements of this chapter, that the applicant has submitted all of the information that the applicants intends to submit, and that the application represents precisely and completely what the applicant proposes to do.

(b) If the application is for a special use permit, the administrator shall place the application on the agenda of the appropriate boards when the applicant indicates that the application is as complete as the applicant intends to make it. However, as provided in Sections 15-56 and 15-57, if the administrator believes that the application is incomplete, the administrator shall recommend to the appropriate boards that the application be denied on that basis.

Section 15-52 Zoning Permits.

(a) A completed application form for a zoning permit shall be submitted to the administrator by filing a copy of the application with the administrator in the planning department.

(b) The administrator shall issue the zoning permit unless the administrator finds, after reviewing the application and consulting with the applicant as provided in Section 15-50, that:

(1) The requested permit is not within the town's jurisdiction according to the Table of Permissible Uses as interpreted in the light of the other provisions of Article X, particularly Section 148.

(2) The application is incomplete; or

(3) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those requirements concerning when a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations, involving permit choice). **(AMENDED 6/22/21)**

(c) If the administrator determines that the development for which a zoning permit is requested will have or may have substantial impact on surrounding properties, the administrator shall, at least ten days before taking final action on the permit request, send a written notice to those persons who have listed for taxation real property any portion of which is within 150 feet of the lot that is the subject of the application, informing them that: **(AMENDED 5/26/81)**

(1) An application has been filed for a permit authorizing identified property to be used in a specified way;

(2) All persons wishing to comment on the application should contact the administrator by a certain date; and

(3) Persons wishing to be informed of the outcome of the application should send a written request for such notification to the administrator.

(d) In determining under subsection (c) whether a development for which a zoning permit is requested "will have or may have [a] substantial impact on surrounding properties" the administrator shall consider, among other relevant factors, whether: **(AMENDED 5/21/02)**

(1) The development involves a permit for property where a nonconforming situation exists; and

(2) The development constitutes a departure from the development pattern of surrounding properties in terms of the type, density, intensity or scale of use.

(e) If the administrator is contacted by a person entitled to receive notice under subsection (c) within the time period specified in subsection (c)(2) and requested to delay issuing the permit for

an additional period of not more than ten days, the administrator shall comply with this request and so notify the permit applicant. **(AMENDED 5/21/02).**

(f) An application for a zoning permit to collocate small and micro wireless facilities in public rights-of-way on new, existing or replacement utility poles or wireless support structures; or outside public rights-of-way is subject to the approval process required by G.S. 160D Art. 9, Part 3 Wireless Telecommunications Facilities, as incorporated into this ordinance. **(AMENDED 6/23/20; 6/22/21)**

(1) In addition to the requirements of section 15-176, and Chapter 7, Streets and Sidewalks, an application for a small wireless facility must include an attestation that the small wireless facility shall be:

a. Activated for use by a wireless services provider to provide service no later than one year from the permit issuance date; and

b. Collocation shall commence within six months or the permit issuance date; and

c. If not, the permit may be revoked.

(2) Review and processing shall be completed within forty-five (45) days of the Town's receipt of a completed application. The Town shall provide written notice that an application is incomplete within thirty (30) days of the receipt of the application.

(3) Applications for zoning permits for small wireless facilities shall be reviewed for conformance with this ordinance, including the applicable site plan and State Building code requirements.

(4) The Town may deny an application for a small wireless facility only on the basis that it does not meet any of the following:

a. The Town's applicable ordinance;

b. Town ordinances that concern public safety, objective design standards for decorative utility poles, Town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment, subject to Appendix E;

c. Public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or

d. The requirements of any historic district.

(5) Applicants may file for a consolidated application for no more than 25 separate facilities and may receive a permit for the collocation of all the small wireless facilities meeting the requirements of this ordinance. The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless collocations *(i)* for which incomplete information has been provided, or *(ii)* that are denied. The Town may issue a separate permit for each collocation that is approved.

(6) Applications for small wireless facilities to be in Town rights-of-way shall meet the requirements of Chapter 7, Streets and Sidewalks.

(7) No zoning permit application or fee is required for the suspension of micro wireless facilities between existing utility poles by or for a communications service provider; for routine maintenance; or for the replacement of small wireless facilities with small wireless facilities. An encroachment permit may be required as provided in Chapter 7, Streets and Sidewalks.

Section 15-53 Performance Guarantee to Ensure Compliance with Zoning Permit. (AMENDED 10/24/06; 6/22/21)

In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this chapter (including approved plans) before commencing the intended use of the property or occupying any buildings, the administrator may authorize the commencement of the intended use or occupancy of buildings (insofar as the requirements of this chapter are concerned) if the permit recipient provides a surety bond, letter of credit or other security that complies with all of the standards applicable to security guarantees in subsection 15-60(b) of this chapter and is satisfactory to the administrator.

Section 15-54 Special Use Permits-A and Special Use Permits-B. (AMENDED 6/28/05; 6/22/21)

(a) An application for a special use permit-B shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department.

(b) An application for a special use permit-A shall be submitted to the Town Council by filing a copy of the application with the administrator in the planning department.

(c) The board of adjustment or the Town Council, respectively, shall issue the requested permit unless it concludes, based upon the information submitted at the evidentiary hearing, that:

1) The requested permit is not within its jurisdiction according to the table of permissible uses;

2) The application is incomplete, or

3) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations, involving permit choice); **(AMENDED 6/22/21)**

4) If completed as proposed, the development, more probably than not:

   a) Will materially endanger the public health or safety; or

   b) Will substantially injure the value of adjoining or abutting property; or

   c) Will not be in harmony with the area in which it is to be located; or

   d) Will not be in general conformity with the Comprehensive Plan, Land Use Plan, Long Range Transportation Plans, or other plans officially adopted by the Council. **(AMENDED 6/22/21)**

Section 15-54.1 Affordable Housing Goal and Alternative Methods of Achieving the Goal. (AMENDED 6/28/05; REWRITTEN 6/26/07; AMENDED 10/28/08; 6/26/12)

(a) The Town Council has established as a policy goal that at least fifteen percent of the housing units within all new residential developments should consist of affordable housing units as described in Section 15-182.4. That section, as well as Section 15-188, establish incentives for developers to provide for such affordable housing. The purpose of this section is to establish alternative processes whereby developers who do not achieve the 15% objective can nevertheless contribute to the fulfillment of this goal in another way, and also to create a process to ensure that developers understand the importance of attempting to meet this goal.

(b) An applicant for approval of any residential development containing five or more dwelling units or lots that does not elect to meet the Council's 15% affordable housing policy goal by constructing affordable housing units or donating affordable housing lots (as those terms are described in Section 15-182.4) shall nevertheless be considered to have met this goal if such applicant makes a payment to the Town's Affordable Housing Special Reserve Fund in lieu of such construction or donation in an amount calculated as provided in this subsection:

1) The number of dwelling units or lots authorized within the development (including additional units or lots authorized under Section 15-182.4 when the developer constructs affordable units, provides affordable housing lots,

or is authorized by the Council to construct density bonus units by making a payment in lieu of constructing units) shall be multiplied by 0.15 and the product shall be carried to two decimal places. **(REWRITTEN 1/22/08)**

2) There shall be subtracted from the product derived under subsection (b)(1) of this section (i) the number of affordable housing units or affordable housing lots the developer proposes to provide under Section 15-182.4, plus (ii) the number of affordable housing payment in lieu fees the Council has agreed to allow to be regarded as the equivalent of providing an affordable housing unit under Subsection 15-182.4(d1). **(REWRITTEN 1/22/08)**

3) The product derived under subsection (b)(2) shall be multiplied by the affordable housing payment in lieu fee. The result is the amount that must be paid to satisfy the provisions of this subsection (b).

4) The affordable housing payment in lieu fee shall be an amount established by the Town Council and shall be included in the Town's Miscellaneous Fees and Charges Schedule. In establishing the amount of this fee, the Council may consider (i) the extent to which the costs incurred by a developer in constructing and selling a two bedroom affordable housing unit (including land cost, the cost of construction, interest cost, closing costs, and other costs allocable to such unit) exceed the maximum amount for which that housing unit could be sold (as an affordable housing unit) by the developer in accordance with Section 15-182.4, (ii) the extent to which non-monetary factors might induce developers to prefer paying a fee in lieu of constructing an affordable housing unit if the monetary cost of doing one or the other were roughly equivalent, and (iii) any other factors the Council deems relevant in establishing a fee that provides developers with a practical and financially viable means of satisfying the Town's affordable housing policy goals. **(AMENDED 10/28/08; 6/26/12)**

(c) An applicant for approval of any residential development containing five or more lots restricted to single-family residential use (which lots the developer intends to sell undeveloped) who does not elect to meet the Council's 15% affordable housing policy goal by donating affordable housing lots (as those terms are described in Section 15-182.4) or making a payment in lieu as provided in subsection (b) above shall nevertheless be considered to have met this goal if such applicant chooses to follow the process that reserves lots for purchase by the Town of Carrboro and makes a payment for the eventual purchase of such lots as outlined in this subsection.

1) The developer shall request that a condition that obligates the developer to comply with the provisions of this subsection be added to the special use permit that authorizes the subdivision in question, and such condition shall be added by the permit issuing authority.

2) Before the final plat is approved, the developer shall designate on the plat a number of lots that are reserved for purchase by the Town of Carrboro. The number of lots so reserved shall be equal to the product of the number of lots within such subdivision multiplied by 0.15, rounded down to the nearest whole number.

3) The purchase price for each reserved lot shall be the estimated market price as agreed upon by the Town and the developer, which price shall be specified in the condition added to the special use permit.

4) The lots so designated shall be restricted by the permit to the development of affordable housing as defined in Section 15-182.4 of this chapter.

5) The lots so designated shall be in all other ways equal to the market rate lots and shall be provided with utility connections and other necessary infrastructure so as to render them buildable at the time of sale.

6) With respect to all other lots within the subdivision, no certificate of occupancy shall be issued for any dwelling unit constructed on such lots unless and until a payment is made to the town in an amount determined as follows:

   a. Prior to approval of the permit for such subdivision, the applicant for the permit shall estimate the total market value of all developed lots (i.e. lots with houses completed on them) within the subdivision that are not restricted to affordable housing units, and calculate from this number the percentage number that, when applied to the total market value of such developed lots, would yield the number of dollars necessary to purchase the lots within the subdivision that are restricted to affordable housing use.

   b. If the town accepts the percentage number derived above as a reasonable estimate, such percentage shall be included as part of the condition on the permit prohibiting the issuance of a certificate of occupancy until a payment is made to the town as provided in this subsection.

   c. The amount of the payment shall be determined by applying the percentage determined in accordance with this subsection to the appraised value of the completed house and lot, as determined by a licensed appraiser.

7) The funds so received shall be held and reserved for the purchase of the lots designated to be developed with affordable housing.

8) The town shall have the right to purchase the designated lots at any time after final plat approval, and must purchase the lots not later than ninety days after sufficient funds to do so have been received by the town from the other lots.

9) If sufficient funds have not been received by the town to purchase one or more of the affordable housing lots after the last certificate of occupancy is issued for the other lots within the subdivision, then the town shall either purchase such affordable housing lot or lots using such funds as may be available to the town within ninety days after the date of issuance of such certificate of occupancy, or the condition limiting the use of such designated lot or lots to affordable housing shall be deemed to have expired and such designated lot or lots may thereafter be conveyed without this restriction.

10) If the funds received exceed the amount necessary to purchase the lots that have been reserved then such funds shall be retained in the fund and used for other purposes authorized for that fund.

(d) The Council finds that some developers may not fully understand how the affordable housing provisions of this chapter operate or the incentives that are available under the ordinance to encourage affordable housing. Therefore, the Council concludes that, when developers of proposed developments containing five or more dwelling units propose to construct such developments without meeting the affordable housing goals established by the town for new developments, it may be beneficial to both the developers and the town for the Council and such developers to have an opportunity, prior to the formal consideration of a permit request, to discuss the town's affordable housing policy, the affordable housing opportunities and incentives provided by this chapter, and any questions or concerns such developers may have about utilizing those provisions. Subsections (e) and (f) below provide for that opportunity.

(e) The applicant for any residential development containing five or more lots or dwelling units, and therefore required to obtain either a special use permit-B from the Board of Adjustment or a special use permit-A from the Town Council, shall be required to participate in an Affordable Housing Review Meeting with the Town Council if the residential development does not meet the Council's affordable housing goal in any of the ways described in this section or Section 15-182.4.

(f) Should an applicant for any residential development containing five or more lots or dwelling units decide in the course of the development review process to change the application in such a way that it no longer satisfies the Council's affordable housing policy goal, further review of the project will be delayed until the applicant participates in an Affordable Housing Review Meeting with the Town Council.

Section 15-55 Burden of Presenting Evidence, Burden of Persuasion.

(a) The burden of presenting a complete application (as described in Section 15-49) to the permit-issuing authority shall be upon the applicant. However, unless the council or board of adjustment informs the applicant at the evidentiary hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing) the application shall be presumed to be complete.

(b) Once a complete application has been submitted, the burden of presenting evidence to the permit-issuing authority sufficient to lead it to conclude that the application should be denied for any reasons stated in Subdivisions 15-54(c)(1), (3), or (4) shall be upon the party or parties urging this position, unless the information presented by the applicant in their application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists for denying the application as provided in Subdivision 15-54(c)(1), (3), or (4).

1) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subdivision 15-54(c)(4) rests on the party or parties urging that the requested permit should be denied.

Section 15-55.1 Findings and Burden of Proof for Special Use Permits-A Required for Taller Buildings in Commercial Districts. (AMENDED 10/25/05)

If a special use permit-A for a development is required under Section 15-147(j), then, notwithstanding the provisions of Subsection 15-54(c) and Section 15-55 of this chapter, the applicant for such special use permit-A shall have the burden of demonstrating that, if completed as proposed, the development:

(1) Will not substantially injure the value of adjoining or abutting property; and

(2) Will be in harmony with the area in which it is to be located. The manner in which a project is designed to accommodate additional building height including, but not limited to, scale, architectural detailing, compatibility with the existing built environment and with adopted policy statements in support of vibrant and economically successful and sustainable, mixed-use, core commercial districts shall be among the issues that may be considered to make a finding that a project is or is not in harmony with the area in which it is to be located. The applicant may use a variety of graphic and descriptive means to illustrate these findings.

(3) Will be in general conformity with the Comprehensive Plan, Land Use Plan, Long Range Transportation Plans, and other plans officially adopted by the Council. **(AMENDED 6/22/21)**

Section 15-56 Recommendation on Special Use Permit-B Applications.

(a) When presented to the board of adjustment at the evidentiary hearing, the application for a special use permit-B shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with Section 15-49 (Application To Be Complete) and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the board of adjustment. **(AMENDED 6/22/21)**

(b) If the staff proposes a finding or conclusion that the application fails to comply with Section 15-49 or any other requirements of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(c) The board of adjustment may, by general rule applicable to all cases or any class of cases, or on a case by case basis, refer applications to the planning board, the appearance commission, transportation advisory board, the environmental advisory board, the affordable housing advisory commission, or to other relevant advisory board, to obtain the recommendations of some or all of these boards. **(REWRITTEN 02/25/14, AMENDED 6/25/19; 6/22/21).**

Section 15-57 Recommendations on Special Use Permits-A. (REWRITTEN 6/22/21)

(a) Before being presented to the Town Council, an application for a special use permit-A shall be referred to the planning board, appearance commission, transportation advisory board, environmental advisory board, the affordable housing advisory commission, or other relevant advisory board for joint review and action in accordance with this section. The Town Council may not hold a public hearing on a special use permit application-A until the planning board, appearance commission, transportation advisory board, environmental advisory board, affordable housing advisory commission, or other relevant advisory board have had an opportunity to consider the application (pursuant to standard agenda procedures) at one regular meeting. In addition, at the request of the planning board, appearance commission, transportation advisory board, environmental advisory board, affordable housing advisory commission, or other advisory board, the Town Council may continue the public hearing to allow the respective boards more time to consider the application. **(AMENDED 9/19/19; REWRITTEN 2/25/14; AMENDED 6/25/19)**

(b) When presented to the planning board, appearance commission, transportation advisory board, environmental advisory board, affordable housing advisory commission, or other advisory board, the application shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with Section 15-49 and other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Town Council. If the planning staff report proposes a finding or conclusion that the application fails to comply with Section 15-49 or any other requirement of this chapter, it shall

identify the requirement in questions and specifically state supporting reasons for the proposed findings and conclusions. **(AMENDED 9/19/95; 6/25/19)**

(c) The planning board, appearance commission, transportation advisory board, environmental advisory board, affordable housing advisory commission, or other board, shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public. **(AMENDED 9/19/95; AMENDED 6/25/19)**

(d) After reviewing the application, the planning board, appearance commission, transportation advisory board, environmental advisory board, affordable housing advisory commission or other advisory board, shall, in their advisory capacity, report to the Town Council whether it concurs in whole part with the staff's proposed findings and conditions, and to the extent there are differences the respective boards shall propose their own recommendations and the reasons therefore. **(AMENDED 9/19/19; REWRITTEN 2/25/14; AMENDED 6/25/19)**.

(e) In response to the planning board's, the appearance commission's, transportation advisory board's, environmental advisory board's, affordable housing advisory commission's or other advisory board's recommendations, the applicant may modify their application prior to submission to the Town Council, and the planning staff may likewise revise its recommendations. **(AMENDED 9/19/19; REWRITTEN 2/25/14; AMENDED 6/25/19)**.

Section 15-58 Board of Adjustment Action On Special Use Permits-B and Town Council Action on Special Use Permits-A.

In considering whether to approve an application for a special use permit-B or special use permit-A, the board of adjustment or the Town Council, respectively, shall proceed according to the following format:

(1) The board or Council shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the board that the application is complete.

(2) The board or Council shall consider whether the application complies with all of the applicable requirements of this chapter. If a motion to this effect passes, the board or Council need not make further findings concerning such requirements. If such a motion fails or is not made then a motion shall be made that the application be found not in compliance with one or more of the requirements of this chapter. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the board to be unsatisfied through this process.

(3) If the board or Council concludes that the application fails to comply with one or more requirements of this chapter, the application shall be denied. If the board or Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subdivision 15-54(c)(4). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Section 15-59 Additional Requirements on Special Use Permits-B and -A.

(a) Subject to subsection (b), in granting a special use permit-B or special use permit-A, the board of adjustment or Town Council, respectively, may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location: **(AMENDED 3/23/10)**

(1) Will not endanger the public health or safety; or

(2) Will not injure the value of adjoining or abutting property; or

(3) Will be in harmony with the area in which it is located; or

(4) Will be in conformity with the Carrboro Comprehensive Plan, Land use Plan, Long Range Plans, or other plan officially adopted by the Council. **(AMENDED 6/22/21)**

(b) The permit-issuing authority may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements. **(AMENDED 5/26/87; REWRITTEN 6/22/21)**

(1) Conditions and safeguards imposed under this subsection shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the town, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

(2) The applicant/landowner shall provide written consent to all conditions relating to the special use permit.

(c) Without limiting the foregoing, the board may attach to a permit a condition limiting the permit to a specified duration.

(d) **(REPEALED 6/22/21)**

(e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this chapter.

(f) A vote may be taken on additional conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subdivision 15- 54(c)(3) or (4).

Section 15-60 Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use Permits. (AMENDED 10/08/96; 10/24/06; (REWRITTEN 6/22/21)

(a) With respect to unsubdivided developments, in cases when, because of weather conditions or other factors beyond the control of the special use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter (including approved plans) before commencing the intended use of the property or occupying any buildings, the manager may authorize the commencement of the intended use or occupancy of buildings (insofar as the requirements of this chapter are concerned) if the permit recipient provides a surety bond, letter of credit or other security that complies with all of the standards applicable to security guarantees in subsection 15-60(b) of this chapter and **is** satisfactory to the manager

(b) With respect to subdivided developments, the manager may authorize final plat approval and the sale of lots before all the requirements of this chapter (including approved plans) are fulfilled if the subdivider provides a surety bond, letter of credit, or other security pursuant to G.S. 160D-804.1 and satisfactory to the manager to ensure that all of these requirements will be fulfilled within a reasonable period, as described below. (By way of illustration without limitation, where it is sensible to delay the final coat of pavement of a street until heavy construction within the subdivision is essentially complete, or where completion of a bioretention area should be delayed until site disturbance is nearly finished).

To assure compliance with G.S.160D-804, 160D-804.1, and other development regulation requirements, the town may provide for performance guarantees to assure successful completion of required improvements. For purposes of this section, all of the following apply with respect to performance guarantees:

(1) Type. The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:

a. Surety bond issued by any company authorized to do business in this State.

b. Letter of credit issued by any financial institution licensed to do business in this State.

c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(2) Duration. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

(3) Extension. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of town standards, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (e) of this subsection and shall include the total cost of all incomplete improvements.

(4) Release. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the town that the improvements for which the performance guarantee is being required are complete. The town shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to town acceptance. When required improvements that are secured by a bond are completed to the specifications of the town, or are accepted by the town, if subject to its acceptance, upon request by the developer, the town shall timely provide written acknowledgement that the required improvements have been completed.

(5) Amount. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The town may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materi-

als necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(6) Timing. The town, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.

(7) Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(8) Legal responsibilities. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

a. The town, to whom the performance guarantee is provided.

b. The developer at whose request or for whose benefit the performance guarantee is given.

c. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.

(9) Multiple guarantees. The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.

(10) Exclusion. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

(c) The authorization provided to the manager under subsections (a) and (b) of this section shall also apply to fulfillment of additional requirements upon the special use permit recipient by the permit issuing board in accordance with Section 15-59 unless the council or board specifies a certain date by which or a schedule according to which such requirements must be met.

Section 15-61 Completing Developments in Phases.

(a) If a development is constructed in phases or stages in accordance with this section, then, subject to subsection (c), the provisions of Section 15-47 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 15-60 (exceptions to Section 15-47) shall apply to each phase as if it were the entire development. [See Article VIII for provisions relating to vested rights for multi-phase developments.]

(b) As a prerequisite to taking advantage of the provisions of subsection (a), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this chapter that will be satisfied with respect to each phase or stage.

(c) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of their application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:

(1) If the improvement is one required by this chapter then the developer may utilize the provisions of Subsections 15-60(a) or 15-60(c);

(2) If the improvement is an amenity not required by this chapter or is provided in response to a condition imposed by the board, then the developer may utilize the provisions of Subsection 15-60(b).

(3) Changes in phasing schedules may be made in the same manner as other permit modifications pursuant to the procedures set forth in Section 15-64. **(AMENDED 2/24/87)**

Section 15-62 Expiration of Permits.

(a) Zoning, special use, and sign permits shall expire automatically if, within two years after the issuance of such permits: **(AMENDED 5/26/81)**

(1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or

(2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased

development (see Section 15-61), this requirement shall apply only to the first phase.

(b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period (i) of one year if the date of discontinuance occurs more than one year after the issuance of the permit, or (ii) equal to two years less the time between the issuance of the permit and the time work is discontinued if the date of discontinuance occurs less than one year after the issuance of the permit, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 15-63.

(c) The permit-issuing authority may extend for a period up to two years the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods of up to two years upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit. **(AMENDED 6/23/15)**

(d) For purposes of this section, a permit within the jurisdiction of the Town Council or the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place: **(AMENDED 11/10/81)**

(1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or

(2) The zoning administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under G.S. 15-46(c).

(e) Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

Section 15-63 Effect of Permit on Successors and Assigns.

(a) Zoning, special use, and sign permits authorize the permittee to make use of the land and structures in a particular way. Such permits run with the land. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

(1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

(2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection (b)) of the existence of the permit at the time they acquired their interest.

(b) Whenever a zoning or special use permit is issued to authorize development (other than single-family residences or duplexes) on a tract of land in excess of one acre, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Orange County Registry and indexed under the record owner's name as grantor.

Section 15-64 Amendments to and Modifications of Permits. (AMENDED 5/25/04; 11/22/05)

(a) Subject to subsection (e), insignificant deviations from the permit (including approved plans) issued by the Town Council, the board of adjustment, or the administrator are permissible, and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. **(AMENDED 5/26/81; 6/22/82)**

(b) Subject to subsection (e), minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Unless it is requested by the permit-issuing authority, no public hearing shall be required for such minor modification. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. **(AMENDED 6/22/82; 6/06/89)**

(c) Subject to subsection (e), all other requests for changes in approved plans including requests for a change in permitted uses or the density of the overall development, will be processed as new applications. If such requests are required to be acted upon by the Town Council or board of adjustment, new conditions may be imposed in accordance with Section 15-59, but the applicant retains the right to reject such additional conditions by withdrawing their request for an amendment and may then proceed in accordance with the previously issued permit. **(AMENDED 6/22/82; 6/22/21)**

(d) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c). **(AMENDED 5/26/81)**

(e) Notwithstanding the foregoing provisions of this section, whenever the council issues a special use permit-A for a planned industrial development (use classification 30.000), the administrator may authorize changes in the approved plans for such development that do not substantially alter the character or pattern of development approved by the council, so long as the revised plans continue to comply with the provisions of this chapter and any conditions imposed by the council in issuing the permit. In granting a permit for a planned industrial development, the council may identify more specifically those elements of the plans concerning which changes may be approved by the administrator under this subsection. **(AMENDED 6/22/82)**

(f) An applicant requesting a change in approved plans shall point out to the administrator, specifically and in writing, what deviation or changes are requested. The administrator shall respond in writing. No changes shall be authorized except in conformity with this section. **(AMENDED 1/22/85)**

(g) When (i) a request for a change in a permit is made under this section (whether for an insignificant deviation, minor modification, or major modification), and (ii) the use of the property is not changed, and (iii) some type of nonconforming situation other than a nonconforming use exists on the property, then the permit change may be approved without requiring the elimination of the nonconforming situations. However, (i) any new development authorized by the permit change shall comply with current standards to the extent reasonably practicable, unless the provisions of permit choice apply, and (ii) the permit issuing authority may require the elimination of nonconforming situations when the cost (financial and otherwise) of doing so is clearly proportional to the benefits of elimination of such nonconformity. **(AMENDED 6/22/21)**

(h) Notwithstanding the other provisions of this section, whenever town-owned facilities or services are proposed as an additional use on property for which a special use permit-A or special use permit-B is already in effect the permit required by this article for the new town-owned facility or service shall be as shown in Section 15-146. **(AMENDED 11/25/05)**

Section 15-65 Reconsideration of Council or Board Action.

Whenever (i) the Town Council disapproves a special use permit-A application, or (ii) the board of adjustment disapproves an application for a special use permit-B or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the council or board at a later time unless the applicant clearly demonstrates that:

(1) Circumstances affecting the property that is the subject of the application have substantially changed; or

(2) The application is changed in some substantial way; or

(3) New information is available that could not with reasonable diligence have been presented at a previous hearing; or

(4) A member of the Town Council or board of adjustment who voted to deny the application makes a motion to reconsider no later than the next regular meeting. **(AMENDED 6/22/21)**

Section 15-66 Applications to be Processed Expeditiously.

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this chapter.

Section 15-67 Maintenance of Common Areas, Improvements, and Facilities.

The recipient of any zoning, special use, or sign permit, or the recipient's successor, shall be responsible for maintaining all common areas, improvements or facilities required by this chapter or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Section 15-68 through 15-75 Reserved.

PART II. MAJOR AND MINOR SUBDIVISIONS

Section 15-76 Regulation of Subdivisions.

Major subdivisions are subject to a two-step approval process. Physical improvements to the land to be subdivided are authorized by a special use permit-A as provided in Part I of Article IV of this chapter, and sale of lots is permitted after final plat approval as provided in Section 15-79. Minor subdivisions only require a one-step approval process final plat approval (in accordance with Section 15-78). **(AMENDED 12/15/87)**

Section 15-77 No Subdivision Without Plat Approval.

(a) As provided in G.S. 160D-807, no person may subdivide their land except in accordance with all of the provisions of this chapter. In particular, no person may subdivide their land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 15-78 or Section 15-79 and recorded in the Orange County Registry. **(AMENDED 6/22/21)**

(b) As provided in G.S. 160D-803, the Orange County Register of Deeds shall not record a plat of any subdivision within the town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this chapter. **(AMENDED 6/22/21)**

Section 15-78 Minor Subdivisions Approval.

(a) The planning director shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.

(b) The applicant for minor subdivision plat approval, before complying with subsection (c), shall submit a sketch plan to the planning director for a determination of whether the approval process authorized by this section can be and should be utilized. The planning director may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land within the previous five years.

(c) Applicants for minor subdivision approval shall submit to the planning director a copy of a plat conforming to the requirements set forth in subsections 15-79(b) and (c) (as well as two prints of such plat), except that a minor subdivision plat shall contain the following certificates in lieu of those required in Section 15-80:

(1) **Certificate of Ownership**

I hereby certify that I am the owner of the property described hereon, which property is within the subdivision regulation jurisdiction of the Town of Carrboro, and that I freely adopt this plan of subdivision.

_____ _____

Date Owner

(2) **Certificate of Approval** **(AMENDED 5/26/81)**

I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with Chapter 15 of the Carrboro Town Code, and that therefore this plat has been approved by the Carrboro planning director, subject to its being recorded in the Orange County Registry within 30 days of the date below.

_____ _____

Date Town Manager (or designee)

(3) A Certificate of Survey and Accuracy, in the form stated in subdivision 15-80(3).

(d) The planning director shall take expeditious action on an application for minor subdivision plat approval as provided in Section 15-66. However, either the planning director or the applicant may at any time refer the application to the major subdivision approval process.

(e) No more than a total of four lots may be created out of one tract using the minor subdivision plat approval process, regardless of whether the lots are created at one time or over an extended period of time. **(AMENDED 7/21/87)**

(f) Subject to subsection (d), the planning director shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 15-15 or the application or the proposed subdivision fails to comply with subsection (e) or any other applicable requirements of this chapter. **(AMENDED 5/26/81)**

(g) If the subdivision is disapproved, the planning director shall promptly furnish the applicant with a written statement of the reasons for disapproval.

(h) Approval of any plat is contingent upon the plat being recorded within thirty days after the date the Certificate of Approval is signed by the manager or the manager's designee. **(AMENDED 5/26/81)**

Section 15-78.1 Special Review for Certain Classes of Subdivisions. (REWRITTEN 6/22/21)

Pursuant to G.S. 160D-82, the town may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

(a) The tract or parcel to be divided is not exempted under G.S.160D-802(a)(2), [the division of land into parcels greater than 10 acres where no street right-of-way dedication is involved];

(b) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to the proposed division;

(c) The entire area of the tract or parcel to be divided is greater than 5 acres;

(d) After division, no more than three lots result from the division; and

(e) After division, all resultant lots comply with all of the following:

(1) All lot dimension size requirements of the applicable regulations of this chapter;

(2) The use of the lots is in conformity with the applicable zoning requirements, if any; and

(3) A permanent means of ingress and egress is recorded for each lot.

(f) Applicants for special review of certain classes of subdivision approval shall submit to the planning director a copy of a plat demonstrating that the property in question conforms with the standards in Section 15-78.1 (as well as two prints of such plat); the subdivision plat subdivision plat shall contain the following certificates in lieu of those required in Section 15-80:

(1) **Certificate of Ownership**

I hereby certify that I am the owner of the property described hereon, which property is within the subdivision regulation jurisdiction of the Town of Carrboro, and that I freely adopt this plan of subdivision.

_____ _____

_____ Date Owner

(2) **Certificate of Approval for Recording – Subdivision Plat**

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Carrboro, North Carolina, and that this plat has been approved for recording in the Office of the Register of Deeds of Orange County. This plat is null and void if not recorded at the Orange County Deed Registry within sixty (60) days of the date written below.

_____ _____

Date Owner

Section 15-79 Major Subdivision Approval Process.

(a) The town manager (or designee) shall approve or disapprove major subdivision final plats. Notwithstanding the foregoing, if, at the time the special use permit-A or special use permit-B was issued for the subdivision pursuant to Part I of Article IV of this Chapter, the permit issuing authority requested that the final plat be reviewed by it, then the Town Council or board of adjustment shall approve or disapprove the major subdivision final plat. **(AMENDED 12/15/87; 7/27/89)**

(b) The applicant for major subdivision plat approval shall submit to the administrator a final plat, drawn in waterproof ink on a sheet made of material that will be acceptable to the Orange County Register of Deeds' Office for recording purposes, and having dimensions as follows: either (i) 21" x 30", (ii) 12" x 18", or (iii) 18" x 24". When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision. The scale of the plat shall be at one-inch equals not more than one hundred feet. The applicant shall also submit two prints of the plat.

(c) In addition to the appropriate endorsements, as provided in Section 15-80, the final plat shall contain the following information:

(1) All of the information required by G.S. 47-30 and G.S. 39-32.3;

(2) The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the Orange County Registry;

(3) The name of the subdivision owner or owners;

(4) The township, county and state where the subdivision is located; and

(5) The name of the surveyor and the surveyor's registration number and the date of survey.

(d) The applicable final plat approval authority shall approve the proposed plat unless it finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this chapter or that the final plat differs substantially from the plans and specifications approved in conjunction with the special use permit-A that authorized the development of the subdivision. **(AMENDED 12/15/87)**

(e) If the final plat is disapproved by the town manager (or designee), the applicant shall be furnished with a written statement of the reasons for the disapproval and may appeal the decision pursuant to Section 15-91. If the final plat is disapproved by the Town Council or the board of adjustment, the applicant shall be furnished with a written statement of the reasons for the disapproval and shall be given an opportunity to petition the applicable plat approval authority for a hearing, to be conducted in accordance with the procedures for processing special use permit applications. Following such hearing, the Council or board may reverse, modify, or affirm its earlier decision. **(AMENDED 12/15/87; 6/27/89)**

(f) Approval of a final plat is contingent upon the plat being recorded within thirty (30) days after the approval certificate is signed by the manager (or designee). **(AMENDED 11/10/81)**

Section 15-80 Endorsements on Major Subdivision Plats.

All major subdivision plats shall contain the endorsements listed in subdivision (1), (2), and (3) herein. The endorsements listed in subdivision (4) shall appear on plats of all major subdivisions located outside the corporate limits of the town but within the planning jurisdiction. The endorsement listed in subdivision (5) shall appear on plats when required by federal regulations.

(1) CERTIFICATE OF APPROVAL

I hereby certify that all streets shown on this plat are within the Town of Carrboro's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within ten months after the date below) has been ensured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter 15 of the Carrboro Town Code, and therefore this plat has been approved by the [Carrboro Town Manager] [Carrboro Town Council] [Carrboro Board of Adjustment], subject to its being recorded.
(AMENDED 7/21/87; 12/15/87; 6/27/89)

_____ _____

Date Carrboro Town Manager (or designee)

(2) CERTIFICATE OF OWNERSHIP AND DEDICATION

I hereby certify that I am the owner of the property described hereon, which property is located within the subdivision regulation jurisdiction of the Town of Carrboro, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Town Council in the public interest.

_____ _____
Date Owner

_____
Notarized

(3) CERTIFICATE OF SURVEY AND ACCURACY **(AMENDED 11/26/85)**

I, _____, certify that this plat was drawn under my supervision from (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____); that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this __ day of _____, 19_____.

_____
Surveyor

Seal or Stamp

_____
Registration Number

North Carolina, _____ County, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this ___ day of _____, 19_____.

_____
Notary Public

Stamp or Seal My Commission Expires_____

(4) DIVISION OF HIGHWAYS DISTRICT ENGINEER CERTIFICATE

I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the N.C. State Department of Transportation for acceptance of subdivision streets on the State highway system for maintenance.

_____
District Engineer

(5) CERTIFICATE FOR FEDERALLY FUNDED PROJECT

I hereby certify that the specifications for street grading, drainage improvements, and paving for the group housing development shown on this plat, which development is being financed or insured under regulations of the United States Government, are equal to or of a higher standard than required by the subdivision regulations of the Town of Carrboro and the Standards of the N.C. Department of Transportation.

_____
Planning Director

Section 15-81 Plat Approval Not Acceptance of Dedication Offers.

Approval of a plat does not constitute acceptance by the town of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the town may accept any such offer of dedication by resolution of the Council, by issuing to the dedicator a written notice of acceptance signed by the town manager (or designee), or by actually exercising control over and maintaining such facilities. **(AMENDED 6/06/89)**

Section 15-82 Protection Against Incompleteness.

(a) Whenever (pursuant to Section 15-60) occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance guarantee that is posted pursuant to Section 15-60 shall guarantee that any required improvements not completed shall be completed, subject to the Town collecting the performance guarantee to make the improvements. **(AMENDED 4/27/82; 6/06/89; 6/22/21)**

(b) Whenever all facilities or improvements intended for dedication are installed before occupancy, use or sale is authorized, then the developer shall post a performance guarantee that any incomplete improvements will be satisfactorily installed, in accordance with subsection 16-60(b). Or the Town will make such improvements using the performance guarantee. **(AMENDED 4/27/82; 6/06/89; 6/22/21)**

(c) An architect or engineer retained by the developer shall certify to the town that all facilities and improvements to be dedicated to the town have been constructed in accordance with the requirements of this chapter. This certification shall be a condition precedent to acceptance by the town of the offer of dedication of such facilities or improvements.

(d) **(REPEALED 6/22/21)**

Section 15-83 Maintenance of Dedicated Areas Until Acceptance.

As provided in Section 15-67, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

Section 15-83.1 Display of Approved Site Plan Required. (AMENDED 1/28/92)

(a) Prior to final plat approval, the developer of any residential subdivision that contains or is designed to contain when fully developed a total of more than four lots shall display in a prominent outdoor location on the development site a copy of a site plan drawn at a minimum scale of 1" = 100' that shows town approved lot configurations, easements, street patterns, amenities, and other design features that may affect the use or enjoyment of property purchased within such development. Included on the site plan shall be a prominently displayed notice advising prospective purchasers to contact the Carrboro Planning Department for additional information concerning the approved development plans.

(b) For purposes of this section the term "design features" includes but is not limited to water, sewer, or electric power easements, recreational amenities, street extensions or future streets, bikeways, and proposed future phases. When a private street is proposed, such signs shall indicate that maintenance will be the responsibility of a homeowner's association.

(c) The site plan required under this section shall be placed within a weatherproof display case. It shall be regarded as a continuing condition of the developer's permit that the site plan displayed under this section shall be kept current as changes in development plans are approved by the town and shall remain at all times sufficiently legible to satisfy the disclosure objectives of this section. The site plan shall remain on display as lots within the subdivision remain in the possession of the developer to whom the special use permit-A was granted or the developer's successors.

(d) The site plan displayed in accordance with this section as well as the location and construction of the display case shall be subject to the prior approval of the zoning administrator, which approval shall not be unreasonably withheld.

(e) The site plan display required under this section shall not be regarded as a sign for purposes of Article XVII of this chapter.

Section 15-83.2 Signs Posted to Disclose Development Plan. (AMENDED 1/28/92)

(a) Prior to final plat approval, the developer of any residential subdivision that contains or is designed to contain when fully developed to total of more than four lots may be required by the permit issuing authority to post a sufficient number of signs throughout the subdivision in appropriate locations to provide notification (to the extent reasonably practicable) to the prospective purchasers of lots or dwelling units within the area for which final plat approval is requested of design features proposed for the subdivision that may significantly affect the use or enjoyment of property purchased within the subdivision.

(b) For purposes of this section the term "design features" includes but is not limited to water, sewer, or electric power easements, recreational amenities, street extensions or future streets, bikeways, and proposed future phases. When a private street is proposed, such signs shall indicate that maintenance will be the responsibility of a homeowner's association.

(c) Notwithstanding the other provisions of this section, no signs need be posted where the impact of the design feature is evident upon inspection of the property (e.g., a power line or sewer line is already constructed and the easement boundaries are apparent).

(d) Signs posted in conformity with this section shall remain so long as lots within the subdivision remain in the possession of the developer to whom the special use permit-B or special use permit-A was granted or the developer's successor, and it shall be regarded as a continuing condition of the permit authorizing the subdivision that such signs be maintained to serve the purposes intended by this section. However, in any enforcement action it shall be a valid defense for the developer to show that signs have been posted as required but have been deliberately removed or destroyed without such developer's consent or acquiescence.

(e) The developer of a subdivision that is subject to the provisions of this section shall submit with their application for a special use permit a sign plan that shows the location, size, design and content of every sign proposed to be posted to satisfy the requirements of this action. The Council or board shall approve the plan if it demonstrates substantial compliance with this action. Signs erected or posted pursuant to such an approved sign plan are exempt from the provisions of Article XVII of this chapter. Signs shall be erected prior to final plat approval for each phase.

Section 15-83.3 Covenants May Not Prohibit Devices that Generate or Conserve Energy or Water. (AMENDED 4/26/11)

(a) This section is authorized by Chapter 42 7 of the 2009 Session Laws, codified as Section 10-2 of the Carrboro Town Charter.

(b) Subject to the provisions of subsections (c) and (d) of this section, lots within a residential subdivision may not be conveyed subject to covenants or restrictions that run with the land unless, prior to approval of the final plat creating such lots, the final plat approval authority

(planning director for minor subdivisions and town manager for major subdivisions) has determined that such covenants or restrictions are consistent with the requirements of this section. The developer shall submit any such proposed covenants to the town along with or subsequent to the proposed final plat. Final plat approval for such subdivision may not be granted if the covenants or restrictions prohibit, or have the effect of prohibiting, or allow a property owners association to prohibit, the orderly installation of solar collectors, clotheslines, rain barrels, garden fences, or any further technology or device designed specifically to generate or conserve energy through the use of renewable resources or to capture, store, or reuse water, so long as such installation is done by or on behalf of a person who otherwise has a property right to install such device.

(c) The provisions of subsection (b) of this section do not apply to any condominium created under Chapter 47A or 47C of the General Statutes. Nor are such provisions intended to prohibit the adoption or enforcement of any covenant or restriction, or any rule or regulation adopted by a property owners association that does any of the following:

(1) Affects a common area.

(2) Is designed to ensure that any device described in subsection (b) is installed and maintained in such a manner that it does not pose a risk to the safety of any person or domesticated animal.

(3) Regulates the location or screening of any device described in subsection (b), provided the covenant or restriction, or rule or regulation adopted by a property owners association, does not have the effect of preventing the reasonable use of such device.

(d) The provisions of this section apply only to covenants or restrictions recorded after the effective date of this section.

PART III. CONSTRUCTION DRAWING APPROVAL (AMENDED 6/06/89)

Section 15-84 Construction Drawings Shall Conform To Land Use Permit Plans.

(a) Construction drawings prepared for development projects and prepared in accordance with Section 15-49 (c) shall conform to the plans which have been approved as part of the appropriate land use permitting process (special use permit-A, special use permit-B or zoning permit). In the event that the detailed site work which is required for the preparation of construction drawings makes necessary modifications or deviations from the general design approved during the land use permitting process, such changes may require additional review by the relevant permit-issuing authority, as described in Section 15-64, prior to the start of construction plan review.

(b) For utility extension projects, which are exempted from the requirement to obtain a special use permit-A, special use permit-B or zoning permit by the provisions of Section 15-151, construction plans shall be submitted to and approved by the public works director prior to the commencement of construction activity.

Section 15-85 Construction Drawing Submittal Process.

As set forth in Section 15-49 (c), persons desiring to construct any development project in the area within the town's planning jurisdiction may be required to submit construction drawings for review and approval by the town. Submittal of construction drawings shall be made only after a land use permit (special use permit-A, special use permit-B or zoning permit) has been issued for the project in question, and filed with the Orange County Register of Deeds, if required by Section 15-63. Construction drawings are to be submitted to the land use administrator for review and approval in accordance with the process described below.

(a) **PRE-SUBMITTAL CONFERENCE**. Persons preparing construction drawings are requested to confer with the land use administrator prior to making the formal construction drawings submittal described below in subsection (b). This conference is suggested in order to minimize the time required for the construction drawing review process. It is especially encouraged where such drawings will require modifications to the plans approved as part of the land use permitting process in order to comply with the provisions of Section 15-84. As described in Section 15-64, land use permit modifications can require additional review by the permit-issuing authority, prior to construction plan review.

(b) **INITIAL SUBMITTAL**. Four (4) complete sets of construction drawings shall be submitted to the land use administrator for review. Construction drawing size and content shall conform to the requirements set forth in Section 15-87. The land use administrator will review the initial submittal and will send the applicant written comments outlining the additions or corrections that are considered necessary.

(c) **DRAWINGS REVISED AND RESUBMITTED**. After receiving the land use administrator's comments on the initial submittal, the applicant shall revise the drawings to

incorporate those comments. The applicant shall resubmit four (4) sets of revised construction drawings for review. The land use administrator will review the revised drawings and will send the applicant written comments outlining any additions or corrections that may still be considered necessary. The applicant shall then revise the construction drawings accordingly. This process shall continue until such time as the land use administrator is satisfied as to the sufficiency of the drawings and their conformance with the required standard specifications included in Appendix C.

(d) **FINAL SUBMITTAL**. Once the land use administrator is satisfied as to the sufficiency of the construction drawings, a full set of final construction drawing materials shall be submitted for approval. These materials shall include at a minimum:

(1) five (5) complete sets of final construction drawings, including all the revisions as requested by the land use administrator, and sealed by the professional engineer responsible for their preparation. Materials that must be included in a complete set of construction drawings are described in Section 15-87 below;

(2) a letter from the Orange Water and Sewer Authority, if applicable, certifying their approval of the final construction drawings;

(3) letters from the appropriate utility providers certifying their approval of the final construction drawings;

(4) copies of any applicable state or federal permits or approvals;

(5) a copy of the Orange County Sedimentation and Erosion Control permit, if required, or a copy of correspondence from the Erosion Control Office indicating that a permit is not required;

(6) a copy of all approved driveway permits and/or encroachment agreements from the North Carolina Department of Transportation.

The land use administrator shall review the final construction drawing package submittal, shall approve them for construction if they are found to be complete and sufficient, and shall notify the applicant in writing of the approval.

Section 15-86 Record Drawings.

Upon completion of construction, a set of record drawings reflecting as-built conditions must be submitted prior to the final acceptance of the streets and any other facilities by the town. The record drawings must be labeled RECORD DRAWINGS and sealed and signed by the engineer preparing them. The record drawings shall be permanent reproducible drawings, on mylar, 2 mil minimum weight or in a digital format determined acceptable by the Town. **(AMENDED 6/22/21)**

Section 15-87 Construction Drawing Submittal Requirements.

(a) **CERTIFICATION OF DRAWINGS**. All construction drawings submitted shall be signed by and carry the seal of the professional engineer, professional architect or professional landscape architect responsible for that preparation, who shall be licensed to practice in the State of North Carolina. **(AMENDED 10/9/90)**

(b) **MATERIALS TO BE SUBMITTED AS PART OF THE CONSTRUCTION DRAWINGS PACKAGE**: A complete set of construction drawings submitted in accordance with the provisions of Section 15-49 (c) shall include at least the following items. The Town's required standard construction specifications, for use in preparing construction drawings are outlined in Appendix C.

(1) Project site drawings including all information required by Appendix A as part of the approved land use permit submittal, including but not limited to footprints of existing and proposed buildings, parking areas, the location of 100-year floodplain limits, existing and proposed contour elevations at 2 foot intervals. These drawings shall also include the boundary of the tract with all courses and distances indicated. One corner of the tract shall be tied to the North Carolina Plane Coordinate System. Plan size shall generally be 24 inches by 36 inches, however the land use administrator may permit smaller sized plans if that is deemed appropriate for a smaller project; and

(2) A summary illustrative site plan drawn to a scale of 1"=100', on one 24" X 36" sheet if possible, or two sheets with match lines if not possible, showing a vicinity map, the outline of the project, and the location of lots, buildings, roads and other significant project features; and

(3) Plan and profile sheets indicating all existing and proposed roads, sidewalks, parking areas and driveways, cut-and-fill lines, the location of all utilities, and all drainage improvements. A summary roadway plan showing the street layout and all centerline and curve data shall be submitted in addition to a separate plan and profile sheet for each proposed new street; and

(4) Specifications sheets showing details for all curb and gutter treatments, proposed pavement treatments, and specifications for all erosion control, drainage and permanent stormwater control structures and facilities; and

(5) A grading, drainage and erosion control plan including data on construction sequencing and a schedule for re-stabilization of denuded areas. Drainage and stormwater facility drawings shall include information on materials used, pipe sizes and lengths, invert elevations, and top elevations for each structure, including but not limited to catch basins, curb inlets, stormwater retention or detention structures, and stormwater velocity dissipaters. In addition, a complete set of hydrologic calculations of existing and proposed runoff

(prepared as described in Appendix C) shall be submitted, and estimated stormwater exit volumes and velocities provided for each proposed drainage and stormwater control structure; and

(6) A landscape and tree protection plan showing the location of all trees greater than 18 inches in diameter and rare species trees that are to be retained, all proposed plantings, and the location of other existing trees that are to be retained, and giving specifications for their preservation during construction; and

(7) A water and sewer location plan meeting the requirements of the Orange Water and Sewer Authority, and showing the location of all easements and proposed fire hydrants; and

(8) A utilities plan showing primary and secondary electrical and natural gas distribution and service lines, and the location of all electrical and natural gas easements; and

(9) A preliminary soils evaluation as described in Appendix C (Standard Specifications), prepared by a certified soils engineer and addressing the soils' suitability for street construction, as well as any potential problems and recommendations. The report shall confirm the adequacy of the standard pavement design required by the town, or, if the subgrade soils are expected to have poor CBR (California Bearing Ratio) values, and if the standard design is considered inadequate, the report shall present a recommended alternative design for consideration.

PART IV. ADEQUATE PUBLIC SCHOOL FACILITIES
(ADOPTED JULY 17, 2003)

Section 15-88 Purpose.

The purpose of this Part IV is to ensure that, to the maximum extent practical, approval of new residential development will become effective only when it can reasonably be expected that adequate public school facilities will be available to accommodate such new development.

Section 15-88.1 Certificate of Adequacy of Public School Facilities.

(a) Subject to the remaining provisions of this part, no approval under this ordinance of a special use permit-A or special use permit-B for a residential development shall become effective unless and until Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the School District. Notwithstanding the foregoing, this subsection shall not apply to special use permits-A for residential developments less than five lots or dwelling units in the WR, B-5 and WM-3 zoning districts.

(b) A CAPS shall not be required for a conventional or conditional rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (a) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect. **(AMENDED 6/22/21)**

(c) A CAPS must be obtained from the School District. The School District will issue or deny a CAPS in accordance with the provisions of the Memorandum of Understanding between Carrboro, Chapel Hill, Orange County, and the Chapel Hill Carrboro School District dated July 17, 2003.

(d) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property with respect to which such CAPS is issued, but may not be severed or transferred separately.

Section 15-88.2 Service Levels.

(a) This section describes the service levels regarded as adequate by the parties to the Memorandum of Understanding described in subsection (b) with respect to public school facilities.

(b) As provided in the Memorandum of Understanding between Orange County, Chapel Hill, Carrboro, and the Chapel Hil1/Carrboro School District, adequate service levels for public schools shall be deemed to exist with respect to a proposed new residential development if, given the number of school age children projected to reside in that development, and considering all the factors listed in the Memorandum of Understanding, projected school membership for the

elementary schools, the middle schools, and the high school(s) within the Chapel Hil1/Carrboro School District will not exceed the following percentages of the building capacities of each of the following three school levels:

Elementary school level	105%
Middle school level	107%
High school level	110%

For the period of time beginning the effective date of this ordinance and terminating on the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, the determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made without regard to whether or not projected capacity of the High School level exceeds 110% of Building Capacity. On and after the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made only if projected capacity of each school level does not exceed the following:

Elementary School	105% of Building Capacity
Middle School	107% of Building Capacity
High School	110% of Building Capacity

For purposes of this ordinance, the terms "building capacity" and "school membership" shall have the same meaning attributed in the Schools Adequate Public Facilities Memorandum of Understanding among the Towns of Carrboro, Chapel Hill, Orange County, and the Chapel Hill/Carrboro Board of Education.

Section 15-88.3 Expiration of Certificates of Adequacy of Public School Facilities.

A CAPS issued in connection with approval of a special use permit-A or special use permit-B shall expire automatically upon the expiration of such permit approval.

Section 15-88.4 Exemption From Certification Requirement for Development with Negligible Student Generation Rates.

In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

Section 15-88.5 Applicability to Previously Approved Projects and Projects Pending Approval.

(a) Except as otherwise provided herein, the provisions of this part shall only apply to applications for approval of special use permits that are submitted for approval after the effective date of this ordinance.

(b) The provisions of this part shall not apply to amendments to special use permit approvals issued prior to the effective date of this ordinance so long as the approvals have not expired and the proposed amendments do not increase the number of dwelling units authorized within the development by more than five percent or five dwelling units, whichever is less.

(c) The Town Council shall issue a special exception to the CAPS requirement to an applicant whose application for approval of a special use permit-A or special use permit-B covers property within a planned unit development or master plan project that was approved prior to the effective date of this ordinance, if the Town Council finds, after an evidentiary hearing, that the applicant has (1) applied to the School District for a CAPS and the application has been denied, (2) in good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained planned unit development or master plan approval, and (3) would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this ordinance. In deciding whether these findings can be made, the Town Council shall consider the following, among other relevant factors:

(1) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the planned unit development or master planned project that have not yet been approved for construction;

(2) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities that directly benefit other properties outside the development in question or the general public;

(3) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;

(4) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;

(5) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a CAPS can be issued for the project, and the effect of such delay on the development and the developer.

(d) The decision of the Town Council involving a special exception application under subsection (c) is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the decision of the Town Council is delivered to the applicant and every other party who has filed a written request for such copy with the Clerk to the Town Council at the time of its hearing on the application for a special exception. The written copy of the decision of the Town Council may be delivered either by personal service or by certified mail, return receipt requested.

(e) The Mayor or any member temporarily acting as Mayor may, in their official capacity, administer oaths to witnesses in any hearing before the Town Council concerning a special exception.

Section 15-88.6 Appeal of School District Denial of a CAPS.

The applicant for a CAPS which is denied by the School District may, within 30 days of the date of the denial, appeal the denial to the Town Council. Any such appeal shall be heard by the Town Council at an evidentiary hearing before it. At this hearing the School District will present its reasons for the denial of the CAPS and the evidence it relied on in denying the CAPS. The applicant appealing the denial may present its reasons why the CAPS application should have, in its view, been approved and the evidentiary basis it contends supports approval. The Town Council may (1) affirm the decision of the School District, (2) remand to the School District for further proceedings in the event evidence is presented at the hearing before the Town Council not brought before the School District, or (3) issue a CAPS. The Town Council will only issue a CAPS if it finds that the CAPS should have been issued by the School District as prescribed in the Memorandum of Understanding among the School District, Orange County and the towns of Carrboro and Chapel Hill. A decision of the Town Council affirming the School District may be appealed by the applicant for a CAPS by proceedings in the nature of certiorari and as prescribed for an appeal under section 15-88.5 of this part.

Section 15-88.7 Information Required From Applicants.

The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to determine whether a CAPS should be issued under the provision of the Memorandum of Understanding. An applicant for a CAPS special exception or an applicant appealing a CAPS denial by the School District shall submit to the Town Council all

information reasonably deemed necessary by the Town Council to determine whether a special exception should be granted as provided in Section 15-88.5 or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 15-88.6. A copy of a request for a CAPS special exception or of an appeal of a School District denial of a CAPS shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

Section 15-89 through 15-90 Reserved.