

3. ADMINISTRATIVE PROCEDURES

3.1 ADMINISTRATIVE MANUAL

The Town of Hillsborough’s *Administrative Manual*, provides information relevant to the day-to-day use of this Ordinance. The Manual provides guidance in the use of this Ordinance, consolidates information on the development review processes, and explains review procedures and requirements. References to the *Administrative Manual* are made in this Ordinance. This Manual is intended to supplement, and not as a substitute for, this Ordinance.

3.2 APPLICABLE TO ALL REVIEW PROCESSES

3.2.1 COMPLETE APPLICATIONS

All applications for any approval required by this Ordinance must be complete. Planning Director will establish application deadlines to allow time to review applications for completeness before continuing the application process. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application and a date by which the information must be submitted to maintain the review schedule. No application will be considered complete until all fees required by the Town’s fee schedule have been paid in full. Application Packets including application deadlines, submittal requirements, and application forms can be found in the *Administrative Manual*.

3.2.2 EXPEDITIOUS REVIEW

Town shall make every reasonable effort to process applications expeditiously, consistent with the need to ensure that all development conforms to the requirements of this chapter.

3.2.3 FEES

Filing fees for all development approvals pursuant to this ordinance shall be established by the Fee Schedule adopted by the Town Board. The fee schedule can be found in the *Administrative Manual*.

3.2.4 AUTHORITY TO FILE

Applications for any approval or permit required by this Ordinance must be signed by the property owner, a designated owner’s agent, or a contract purchaser of a property with authorization of the property owner. Written proof of authority must be submitted with every application.

3.2.5 PERMIT ISSUANCE

Unless otherwise designated in this ordinance, the Town shall not issue or sign off on any building permit or certificate of occupancy for any use requiring additional state, county, or local permits or licenses that have not yet been obtained or are not working toward being obtained as demonstrated by the applicant.

3.3 COMPREHENSIVE REVIEW OF CHAPTER

The Planning Board shall, from time to time, but not less frequently than every five (5) years, examine the provisions of this Ordinance and the location of Zoning District boundary lines, and shall submit a report to the Town Board recommending changes and amendments, if any, which are desirable in the interest of public health, safety, and general welfare, mindful of the intent expressed in Section 1.3, *General Purpose and Intent*.

3.4 TYPOGRAPHICAL ERRORS

Typographical errors, spelling changes, numerical reference errors, errors in section or page numbering or other purely non-substantive editorial changes may be corrected by the Planning Director without formal adoption by the Town Board provided that such corrections do not change the meaning of the Ordinance.

Any correction made pursuant to this section shall be reported in writing to the Town Board and made a part of the Board’s regular meeting minutes.

3.5 CREATION OF NEW LOTS/DIVISION OF LAND

3.5.1 REVIEW REQUIRED

No land within the Town of Hillsborough planning jurisdiction shall be subdivided, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the Orange County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

3.5.2 THE REVIEW REQUIRED IS DETERMINED BY THE NUMBER OF NEW LOTS TO BE CREATED AS FOLLOWS:

- 3.5.2.1 Exempt plats: Staff review, must meet standards in Section 3.5.3 below.
- 3.5.2.2 Minor subdivisions: Staff review to create 4 or fewer lots.
- 3.5.2.3 Major subdivisions: Staff review to create 5-19 lots.
- 3.5.2.4 Special subdivisions: Special Use Permit review by the Board of Adjustment to create 20 or more lots.
- 3.5.2.5 Conservation subdivisions: Special Use Permit review by the Board of Adjustment to create 20 or more lots, but less than 100 lots with reduced lot sizes and additional open space

3.5.3 EXEMPT PLATS

- 3.5.3.1 Property owners or their authorized agents must present a paper or recordable map to the Planning Department for determination of whether the action created by the recording of the map meets the Ordinance standards to be exempt.
- 3.5.3.2 If the proposal meets the exemptions listed in this Ordinance or in North Carolina General Statutes, Section 160D-802(a), the Planning Director shall sign an exemption note on the face of the recordable map before it is recorded.

- 3.5.3.3** In addition to the divisions of land identified in North Carolina General Statutes §160D-802(a), the following divisions of land shall not be included within the definition of the term “subdivision” and shall not be subject to this Ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a utility pump station; (2) the recordation of a plot of lots created by deeds recorded in the Orange County Registry prior to March 13, 1978; (3) the creation of a lot to be conveyed to the Town or to a non-profit entity for the purpose of creating public parks or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose, (4) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use, and (5) the recordation of a plat consistent with Section 7.3.3, *Multiple Detached Dwellings on a Single Parcel*.
- 3.5.3.4** If the proposal does not meet the exemptions, the Planning Director shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.

3.5.4 MINOR SUBDIVISION

Property owners or agents must present a paper map to the Planning Department to review any division of land into 4 or fewer lots from a single tract of land in any five (5) year period. If a new public road is proposed as part of the project, the subdivision shall be reviewed as a Major Subdivision. The Planning Director has the authority to refer a minor subdivision involving a new or existing private road to the Technical Review Committee. If no public or private road right of way or construction is part of the proposal, the Planning Director may approve the minor subdivision by signing the approval certificate on the recordable map.

The application will be processed according to the procedure details in Section 5.2.49, *Subdivisions, Minor*, or 5.2.47, *Subdivision, Major or Special*, as applicable.

3.5.5 MAJOR SUBDIVISIONS

Divisions of land resulting in the creation of between five (5) and nineteen (19) new lots from a single tract of land in any five (5) year period shall require major subdivision approval from the Planning Director.

3.5.5.1 Sketch Plan

Before submitting an application, the applicant shall submit a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal, the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.6 SPECIAL SUBDIVISIONS

Divisions of land resulting in the creation of twenty (20) or more new lots from a single tract of land in any five (5) year period shall require a Special Use Permit, with review criteria as set forth in Section 5.2.46, *Subdivisions, Major or Special*.

3.5.6.1 Sketch Plan

Prior to submitting a Special Use Permit application, the applicant shall submit a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal, the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.6.2 Special Use Permit Required

The preliminary plan will be processed according to the Special Use Permit procedure and details found in Section 3.8.

3.5.7 CONSERVATION SUBDIVISIONS (SECTION 9.2 FOR DEFINITION)

Divisions of land into twenty (20) or more new lots from a single tract of land in any five (5) year period, with special features as set forth in Section 5.2.48 for conservation subdivisions, shall require a Special Use Permit.

3.5.7.1 Sketch Plan

Prior to submitting a preliminary plat, the applicant shall submit to a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal, the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.7.2 Special Use Permit Required

The preliminary plan will be processed according to the Special Use Permit procedure and details found in Section 3.8.

3.6 FUTURE LAND USE PLAN AND COMPREHENSIVE PLAN AMENDMENTS**3.6.1 INTENT**

It is the intent of this section to set forth the procedures for amending the *Future Land Use Plan* and the Comprehensive Plan. Amendments shall be made by formal action of the Town Board. All proposed amendments shall be referred to the Planning Board for its consideration and recommendation. In no case shall final action be taken to amend this Ordinance until a duly advertised legislative hearing is held.

3.6.2 AUTHORITY TO APPLY**3.6.3.1 Amendments to the *Future Land Use Plan***

Any property owner or other person or entity establishing a sufficient legal interest in a parcel may apply to amend the *Future Land Use Plan* designation on the parcel. Any

advisory board of the town may request the Planning Board or Town Board to sponsor an amendment to the *Future Land Use Plan* related to the duties and authority of the advisory board.

3.6.3.2 Amendments to the Comprehensive Plan

Any resident of the town may apply to amend any component of the Comprehensive Plan. Any advisory board of the town may request the Planning Board or Town Board to sponsor an amendment to any component of the Comprehensive Plan related to the duties and authority of the advisory board.

3.6.3 APPLICATION REQUIREMENTS

Applicants shall refer to the *Administrative Manual* for the requirements for a complete application to amend the *Future Land Use Plan*, or the Comprehensive Plan.

3.6.4 STAFF REVIEW

Upon receipt of an application to amend the *Future Land Use Plan*, or the Comprehensive Plan, the Planning Director shall first determine if the application is complete (including the submission of the required application fee).

Applications which are not complete, or which otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant with a notation by the Planning Director of the deficiencies in the application.

Once the application is deemed complete, it will be placed on the next available public hearing agenda.

3.6.5 PUBLIC HEARING

The Town Board and the Planning Board generally shall hear applications for amendments to these documents as legislative proceedings at a quarterly, joint public hearing. The Town Board may, in its discretion, schedule public hearings on applications at times other than the quarterly public hearing. The *Administrative Manual* includes the schedule of quarterly public hearing dates and filing deadlines.

3.6.5.1 Notice of Public Hearing

All notices required under this Ordinance shall comply with the North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance, comply with the following.

3.6.5.1.a Published Notice

Notice of each public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the Town, stating the time and place of such hearing and the substance of the proposed amendment, in accordance with the provisions of North Carolina General Statutes, Section 160D-601. This notice shall appear in said newspaper for two (2) successive weeks prior to the public hearing, the first publication not less than ten (10) days nor more than twenty-

five (25) days prior to the hearing.

3.6.5.1.b Post-Hearing Process

The public hearing on an amendment to the *Future Land Use Plan*, or the Comprehensive Plan is formally closed by a motion and vote of the Board members present at the hearing.

3.6.6 PLANNING BOARD RECOMMENDATION

The Planning Board shall within thirty (30) days after the public hearing is closed, prepare and submit for the Town Board a written recommendation concerning the application.

3.6.7 TOWN BOARD ACTION

The Town Board shall not take action on the proposed amendment until thirty (30) days after the date of the public hearing or until the Planning Board makes its written recommendation, whichever comes first.

3.6.8 FORMALIZING THE OUTCOME

The Town Board's action on a proposed amendment shall be in the form of an ordinance amending the applicable document. An amendment is effective immediately, unless some other effective date is specified in the amending ordinance.

The applicant shall receive written notice of the Town Board's decision on the application, including a copy of the Ordinance adopted by the Town Board if the application is approved, within 30 days of the effective date of the ordinance.

3.6.9 APPEAL

Text and map amendments are legislative actions of the Town Board. Any person seeking to challenge the validity of any amendment to this Ordinance may challenge such amendment by filing an appropriate action in the Orange County Superior Court within the time established by North Carolina General Statutes, Section 160D-1405.

3.6.10 EFFECT OF DENIAL OR WITHDRAWAL

An applicant may withdraw his or her application for an amendment at any time by written notice to the Planning Director.

3.6.11 VESTING

Amendments to the *Future Land Use Plan*, or the Comprehensive Plan do not qualify as site-specific development plans and do not establish statutory vested rights.

3.6.12 DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION

Text and map amendments enacted by the Town Board are legislative actions and are not subject to deviations, modifications, revocation, or expiration except through specific action to further amend these documents.

3.7 UNIFIED DEVELOPMENT ORDINANCE AND MAP AMENDMENTS

3.7.1 INTENT

It is the intent of this section to set forth the procedures for amending this Ordinance including the Official Zoning Map. Amendments shall be made by formal action of the Town Board. All proposed amendments shall be referred to the Planning Board for its consideration and recommendation. In no case shall final action be taken to amend this Ordinance until a duly advertised legislative hearing is held.

3.7.2 GENERAL STANDARDS/FINDINGS OF FACT

Before amending this Ordinance or the Official Zoning Map, the Town Board must consider, when conducting the process below, whether the request is consistent with the adopted Comprehensive Plan for the Town of Hillsborough.

Amending the Official Zoning Map (Rezoning) is a matter committed to the legislative discretion of the Town Board. In determining whether to adopt a proposed amendment, the Town Board shall consider and weigh the relevance of the following factors:

- 3.7.2.1** The extent to which the proposed amendment is consistent with all applicable Town-adopted plans.
- 3.7.2.2** The extent to which there are changed conditions that require an amendment.
- 3.7.2.3** The extent to which the proposed amendment addresses a demonstrated community need.
- 3.7.2.4** The extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zoning district for the land.
- 3.7.2.5** The extent to which the proposed amendment would result in a logical and orderly development pattern or deviate from logical and orderly development patterns.
- 3.7.2.6** The extent to which the proposed amendment would encourage premature development.
- 3.7.2.7** The extent to which the proposed amendment would result in strip or ribbon commercial development.
- 3.7.2.8** The extent to which the proposed amendment would result in the creation of an isolated zoning district unrelated to or incompatible with adjacent and surrounding zoning districts.
- 3.7.2.9** The extent to which the proposed amendment would result in significant adverse impacts on the property values of surrounding lands; and
- 3.7.2.10** The extent to which the proposed amendment would result in significantly adverse environmental impacts, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

3.7.3 AUTHORITY TO APPLY

Subject to the limitations of the foregoing statement of intent, an amendment to this Ordinance, including the Official Zoning Map, may be initiated by:

- 3.7.3.1** The Town Board on its own motion.
- 3.7.3.2** The Planning Board.

3.7.3.3 The Board of Adjustment.

3.7.3.4 Any person or agency. Rezoning requests to establish the PD (Planned Development) zoning designation must be made by all the owners of the property(ies) to be subject to the PD district.

3.7.4 PRE-APPLICATION

Applicants seeking to amend the Official Zoning Map shall, before submitting an application for a Zoning Map Amendment, participate in a pre-application meeting with the Planning Director to ensure the application does not require additional, parallel reviews for Land Use Plan amendments.

3.7.5 APPLICATION REQUIREMENTS

Applicants shall refer to the Administrative Manual for the requirements for a complete application to amend this Ordinance or the Official Zoning Map.

3.7.6 NEIGHBORHOOD MEETING REQUIRED - PLANNED DEVELOPMENT MAP AMENDMENTS

Applicants requesting rezoning to the PD district designation must conduct at least one neighborhood meeting prior to an initial application submittal. The meeting may occur prior to the required pre-application meeting. The meeting shall comply with the following requirements:

1. The meeting must be held by the applicant or their agent and take place within six months of application submittal. A second meeting must be held if more than six months have passed at the time of application submittal.
2. The meeting shall be held at a place generally accessible to neighbors residing close to the subject property, virtually with both internet and dial-in options, or a combination of both methods. Applicant shall confirm that member of the Town of Hillsborough Planning staff can be present to observe the meeting.
3. The applicant shall mail written notice of the meeting to the Town of Hillsborough Planning Department and all landowners located within 500 feet of the subject property's boundaries. The property owner listing shall be obtained from the Orange County Land Records/GIS Division. The notice shall be mailed no later than 14 calendar days prior to the meeting date. The applicant will retain a copy of the list of those that received notice and provide it as part of the after meeting report.
4. At the meeting, the applicant shall explain the development proposal and application, answer any questions, respond to concerns neighboring property owners have about the application and propose resolutions to these concerns. Applicant shall take detailed notes of this meeting to include in the below Neighborhood Meeting report.
5. After the meeting is held, the applicant shall prepare a Neighborhood Meeting report including all the following:
 - (a) a listing of all persons contacted about the meeting,
 - (b) the manner and date of contact,
 - (c) the date, time and location of the meeting,
 - (d) a roster form identifying the persons in attendance at the meeting,
 - (e) a summary of issues discussed, and

(f) a description of any changes made by the petitioner as a result of the meeting.

3.7.7 STAFF REVIEW

Upon receipt of an application to amend this Ordinance or the Official Zoning Map, the Planning Director shall first determine if the application is complete (including the submission of the required application fee).

Applications which are not complete, or which otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant with a notation by the Planning Director of the deficiencies in the application.

Once the application is deemed complete, it will be placed on the next available public legislative hearing agenda.

3.7.8 PUBLIC HEARING

The Town Board and the Planning Board generally shall hear applications for amendments to these documents at a quarterly, joint legislative hearing. The Town Board may, in its discretion, schedule legislative hearings on applications at times other than the quarterly legislative hearing. The Administrative Manual includes the schedule of quarterly legislative hearing dates and filing deadlines.

3.7.8.1 Notice of Legislative Hearing

All notices required under this Ordinance shall comply with the North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance, comply with the following.

3.7.8.2 Published Notice

Notice of each legislative hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the Town, stating the time and place of such hearing and the substance of the proposed amendment, in accordance with the provisions of North Carolina General Statutes, Section 160D-601. This notice shall appear in said newspaper for two (2) successive weeks prior to the public hearing, the first publication not less than ten (10) days nor more than twenty-five (25) days prior to the hearing.

3.7.8.3 Mailed Notice

In the case of a proposed Zoning Map amendment, in addition to the public notice requirement established in Section 3.7.7.2 above, the Planning Director shall give notice by first class mail to owner of the subject property and to the owners of all parcels any part of which lies within five hundred (500) feet of the property boundaries of the subject property. Mailed notice shall be deemed sufficient if mailed to the property owner as shown on the current Orange County tax roll on the date of the notice. The Planning Director shall certify to the Town Board that such notice was given.

3.7.8.4 Posted Notice

In the case of a proposed Zoning Map amendment, the Planning Director shall post notice on the subject property(ies) notice of the time, date, and location of the legislative hearing, and a summary of the requested amendment in a form established by the Planning Director, at least ten (10) days before the date fixed for legislative hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. The

posted notice shall remain in place until after a final decision is rendered on the application. The posted notice shall be placed in a manner to provide visibility from the public right-of-way. The applicant shall ensure that the posted notice is maintained on the land until completion of the legislative hearing on the application.

3.7.9 POST-HEARING PROCESS

The legislative hearing on an amendment to this Ordinance, or to the Zoning Map, is formally closed by a motion and vote of the Board members present at the hearing.

3.7.10 PLANNING BOARD RECOMMENDATION

The Planning Board shall within thirty (30) days after the legislative hearing is closed, prepare and submit for the Town Board a written recommendation concerning the application.

3.7.11 CONDITIONS OF APPROVAL - PLANNED DEVELOPMENT MAP AMENDMENTS

The petitioner and/or the Town or its agencies, may propose specific conditions applicable to PD districts. Only those conditions mutually approved by the Town and the petitioner may be incorporated into the PD approval ordinance. Conditions and site-specific standards imposed on a PD district are limited to those addressing conformance of the project's development and use to Town ordinances, Comprehensive Plan or other applicable officially adopted plans, and those addressing reasonably expected impacts generated by the development project. Conditions shall be recorded and outlined in a formal development agreement presented at the time of rezoning submittal.

3.7.12 TOWN BOARD ACTION

The Town Board shall not take action on the proposed amendment until thirty (30) days after the date of the legislative hearing or until the Planning Board makes its recommendation, whichever comes first.

3.7.13 FORMALIZING THE OUTCOME

The Town Board's action on a proposed amendment shall be in the form of an ordinance amending the applicable document. An amendment is effective immediately, unless some other effective date is specified in the amending ordinance.

The applicant shall receive written notice of the Town Board's decision on the application, including a copy of the Ordinance adopted by the Town Board if the application is approved, within 30 days of the effective date of the ordinance.

3.7.14 APPEAL

Text and map amendments are legislative actions of the Town Board. Any person seeking to challenge the validity of any amendment to this Ordinance may challenge such amendment by filing an appropriate action in the Orange County Superior Court within the time established by North Carolina General Statutes, Section 160D-1405.

3.7.15 EFFECT OF DENIAL OR WITHDRAWAL

An applicant may withdraw his or her application for an amendment at any time by written notice to the Planning Director.

When the Town Board shall have acted upon an application or the application shall have been withdrawn after the first notice of the public legislative hearing thereon, the Town shall not accept

another application for the same or similar text or Official Zoning Map amendment, affecting the same property or a portion of it, until the expiration of a one (1) year period, extending from the date of action or withdrawal. The Town Board may on its own motion, however, initiate an amendment of this nature prior to the expiration of the one (1) year period.

3.7.16 VESTING

- 3.7.16.1** Amendments to this Ordinance and the Zoning Map do not qualify as site-specific development plans and do not establish statutory vested rights.
- 3.7.16.2** The Town Board may approve a rezoning to a PD district conditioned on a development schedule for all or each phase of the PD. If at any time the PD or any phase of the PD has not been developed according to the schedule, the Town Board shall give notice by certified mail to the property owner(s) and applicant for the rezoning request and schedule a public hearing where any of the following actions may be taken:
1. administrative action to extend, remove or determine compliance with the development schedule; or
 2. legislative action to cause the property to revert to its former zoning classification or an appropriate general use district; or
 3. legislative action to amend the master development plan.

3.7.17 DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION

Text and map amendments (except Planned Development district map amendments) enacted by the Town Board are legislative actions and are not subject to deviations, modifications, revocation, or expiration except through specific Town Board action to further amend these documents.

3.8 SPECIAL USE PERMIT

3.8.1 INTENT

Special uses, because of their inherent nature, extent of development, or external effects, require special consideration of their location, design and methods of operation, in order to protect the public health, safety and welfare. This section sets forth the information to be submitted with applications for Special Use Permits (SUP) and states the standards by which each application shall be judged.

The criteria and procedures established in this section are intended to ensure that the design and construction of site elements include appropriate consideration of the relationship and balance among site elements, the relationship of the proposed development to natural features and neighboring developments, access and circulation systems, mitigation of erosion and sedimentation, mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring development and streets, and mitigation of traffic impacts.

3.8.2 APPLICABILITY

An application for a Special Use Permit may be submitted when the use is designated special use for the zoning district in which the property is located, in the Permitted Use Table.

3.8.3 GENERAL STANDARDS/FINDINGS OF FACT

The Board of Adjustment shall not approve a Special Use Permit application unless it makes each of the following findings concerning the proposed special use:

- 3.8.3.1** That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.
- 3.8.3.2** That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations.
- 3.8.3.3** That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity, and
- 3.8.3.4** That the use or development conforms with the general plans for the physical development of the Town and is consistent with the Town's Comprehensive Plan.

3.8.4 APPLYING THE ORDINANCE TO DETERMINE COMPLIANCE WITH STANDARDS TO MAKE FINDINGS OF FACT

- 3.8.4.1** All requirements in this ordinance apply to applications for Special Use Permits.
- 3.8.4.2** Certain uses require specialized information, which is contained in Section 5, *Use Standards*.
- 3.8.4.3** To the extent that an applicant seeks a Special Use Permit for a parcel which does not have a specified development standard based on the zoning designation assigned to that parcel, the standard for the Office Institutional zoning district shall apply.

3.8.5 BURDEN OF PRESENTING EVIDENCE

The burden of presenting a complete application shall at all times be upon the applicant. However, unless the Planning Director informs the applicant at or before the hearing on the application that, and in what way, the application is incomplete, and offers the applicant an opportunity to complete the application, the application shall be presumed to be complete.

Once a completed application has been submitted, the burden of presenting evidence to the permit-issuing board sufficient to allow the permit-issuing board to conclude that the application should be denied for any reasons stated in Section 3.8.3, *General Standards/Findings of Fact*, shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

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 other reasons set for in Section 3.8.3, *General Standards/Findings of Fact*, rests on the party or parties urging the requested permit should be denied.

3.8.6 PRE-APPLICATION

Applicants are encouraged to meet with Planning Director before filing a Special Use Permit application to review specific permit and application requirements.

3.8.7 APPLICATION REQUIREMENTS

Special Use Permit applications shall be filed with the Planning Director.

The Planning Director shall prescribe the form(s) on which applications are made. Application requirements and necessary submittals are set forth in the *Administrative Manual*.

3.8.8 STAFF REVIEW

Upon receipt of a Special Use Permit application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, , and other regulations applicable in the case.

In preparing their analysis, the Planning Director shall refer a Special Use Permit application to the next available Technical Review Committee meeting to facilitate the outside agency review and collection of comments.

If a Special Use Permit application is filed for a parcel located within the Historic Overlay District, the application shall be referred to the Historic District Commission for its review prior to the public hearing on the Special Use Permit application. The applicant shall present a conceptual plan of the proposal to the Historic District Commission and shall discuss how the application fits into the historic district in terms of site organization, circulation, structure, form, massing, scale, height, orientation, roof form, and proportion. The Commission may offer comments and recommendations on the application to the applicant and shall formulate a formal statement to be provided in writing to the Board of Adjustment during the public hearing on the application. The Board of Adjustment shall consider any comments or recommendations provided by the Commission when determining the findings of fact for the application. The Commission's comments and/or recommendations, if any, shall not be binding on the Commission when it considers any application for a Certificate of Appropriateness with respect to the property, which application shall be processed and reviewed pursuant to Section 3.12.

3.8.9 TECHNICAL REVIEW COMMITTEE

The Technical Review Committee shall review all applications for Special Use Permits, and make a recommendation on each such application, which recommendation may include recommended conditions of approval. Once the Technical Review Committee has made its written recommendation, the Special Use Permit application shall be scheduled for the next available public hearing agenda.

3.8.10 EVIDENTIARY HEARING

After notice in accordance with Section 3.8.11, *Notice of Evidentiary Hearing*, is given the Board of Adjustment shall hold an evidentiary hearing on the application at the next available regular meeting.

The evidentiary hearing on a Special Use Permit application shall be a quasi-judicial hearing open to the public. At the hearing, the applicant and property owners receiving written hearing notices shall be given the opportunity to present evidence and arguments and to ask questions. Reasonable and equitable limitations may be placed on the presentation of evidence and arguments, and the cross-examination of witnesses, so that the application may be heard without undue delay. All persons who intend to present evidence at the evidentiary hearing shall be sworn.

When the applicant presents substantial and competent evidence that the proposed development will satisfy the general standards established by Section 3.8.3, *General Standards/Findings of Fact*, above and will conform to all specific provisions applicable to that particular Special use as established by this Ordinance, persons opposed to the application shall have the burden of presenting substantial and competent evidence contrary to the applicant's evidence or substantial and competent evidence that the proposed development will violate one or more of the general standards set forth in Section 3.8.3, *General Standards/Findings of Fact*, or any of the specific standards for the particular Special use established by this Ordinance. If no such evidence is submitted, the applicant shall be granted the permit. If substantial and competent evidence in opposition to the application is submitted, the applicant shall have the burden of overcoming that evidence with further evidence of his/her own.

A record of the proceedings of the hearing shall be made and shall include all application materials and documentary evidence presented at the hearing.

3.8.11 NOTICE OF EVIDENTIARY HEARING

Notice of the evidentiary hearing on a Special Use Permit application shall be given once a week for two (2) consecutive calendar weeks in a newspaper of general circulation in Orange County. The notice shall be published the first time not less than ten (10) days no more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Written notice shall be sent to the applicant, owner of the property subject to the request, and the owners of all property lying within 500 feet of the property which is the subject of the application as indicated on the then-current Orange County tax rolls. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (10) days, but not more than twenty-five (25) days before the hearing date.

3.8.12 POST-HEARING PROCESS

The evidentiary hearing on a Special Use Permit application is formally closed by a motion and vote of the Board members present at the hearing.

3.8.13 BOARD OF ADJUSTMENT ACTION

The Board of Adjustment shall review the record of the evidentiary hearing, the Technical Review Committee's recommendation, , and the Planning Director's report and shall take action on the application based on findings of fact as to the determinations required in Section 3.8.3, *General Standards/Findings of Fact*, and the applicable standards for the specific special use as established by this Ordinance. All findings shall be based on substantial, competent evidence presented at the evidentiary hearings.

The Board of Adjustment may impose such reasonable conditions upon approval of a Special Use Permit as will afford protection of the public health, safety, and general welfare, ensure that substantial justice is done, and equitable treatment provided.

All conditions of approval shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Board of Adjustment denies the permit, the reasons for its action shall be recorded in the minutes of the meeting.

3.8.14 FORMALIZING THE OUTCOME

The vote by the Board of Adjustment is the date of issuance or denial of the Special Use Permit. The Planning Director shall cause written notice of the disposition of the application to be delivered by certified mail to the applicant and any party who has filed a written request for a copy with the Planning Director at the time of the hearing, and shall cause a copy of the decision to be filed in the Planning Department.

In the case of approval or approval with conditions, the staff shall issue the Special Use Permit in accordance with the action of the Board of Adjustment and the applicant shall record it in the office of the Orange County Register of Deeds within thirty (30) days of receipt. No Special Use Permit will be effective, and no further permits or approvals for the development may be issued, until the Special Use Permit has been filed with the Register of Deeds. A copy of the Special Use Permit, with proof of filing with the Orange County Register of Deeds, shall be delivered to the Planning Director prior to issuing Zoning Compliance Permits to begin the work authorized by the Special Use Permit.

Any construction authorized by a Special Use Permit must receive construction drawing approval and a Zoning Compliance Permit as detailed in Section 3.14, *Zoning Compliance Permits*.

3.8.15 APPEAL

An aggrieved party may appeal a decision by the Board of Adjustment on an application for a Special Use Permit to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by North Carolina General Statutes, Section 160D-1402.

3.8.16 EFFECT OF DENIAL OR WITHDRAWAL

When the Board of Adjustment shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first evidentiary hearing notice required in Section 3.8.11, *Notice of Evidentiary Hearing*, the Planning Director shall not accept another

application for the same or similar Special Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

3.8.17 VESTING

A vested right pursuant to Section 1.8, *Vested Rights* is established by the issuance of a Special Use Permit pursuant to this section.

3.8.18 MINOR CHANGES AND MODIFICATIONS

After a Special Use Permit has been approved, the Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the Board of Adjustment but the Planning Director shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Board of Adjustment. If the Planning Director is uncertain whether a requested deviation is a “minor change” or a “modification,” it shall be treated as a modification and referred to the Board of Adjustment for review and approval.

3.8.19 CRITERIA USED FOR DETERMINATION

The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification. For the purposes of this section “significant” shall mean a change that is important to character or appearance of the project and generally refers to items not easily quantifiable; “substantial” refers to measurable quantities, size, or impact.

- 3.8.19.1** Changes that are consistent with the original approval shall constitute a minor change. Consistency means the changes would not significantly alter the development’s general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other characteristic from that indicated by the original approval.
- 3.8.19.2** Changes to a specific condition imposed during the approval of a Special Use Permit or expansion of an approved waiver shall constitute a modification. A change that eliminates or reduces the need for a granted waiver is a minor change.
- 3.8.19.3** Each of the following shall constitute a modification:
 - 3.8.19.3.a** A significant or substantial change in use.
 - 3.8.19.3.b** An expansion of building square footage of 20% or greater.
 - 3.8.19.3.c** A change in any quantifiable standard in this ordinance of ten percent or more. This includes but is not limited to increasing the number of dwellings, increasing or decreasing the amount of parking, increasing the removal of canopy trees, increasing the building height.
 - 3.8.19.3.d** A significant or substantial rearrangement of uses on a site which may impact adjacent or on site uses, open space and recreation provisions, vehicular and pedestrian access to and across that site, vehicular and pedestrian circulation on the site, or public or private infrastructure and utilities installations shall constitute a modification.
 - 3.8.19.3.e** Any combination of minor changes that in the determination of the Planning Director, is substantial or significant and impacts the project’s consistency with the original approval.

3.8.20 APPLYING CRITERIA

Minor changes and modifications are reviewed only after a permit has been approved. The criteria shall be applied as follows:

- 3.8.20.1** When the requested change creates a situation of non-compliance with a quantified standard in the ordinance but does not qualify as a modification under 3.8.19, staff may approve the request as a minor change without triggering a waiver.
- 3.8.20.2** When the requested change modifies a feature or required standard with an approved waiver, the relief granted in the waiver is fixed and not subject to flexibility in 3.8.19.
- 3.8.20.3** When the requested change is for relief similar to that in an approved waiver, but in a different location, that approved waiver cannot be applied to a different location. Staff may review the requested change independently and determine if it is a minor change.

3.8.21 REVIEW OF RECORD REQUIRED

The Planning Director shall, before deciding whether a proposed change to a special use is a minor change or modification, review the record of the proceedings of the original Special Use Permit approval. The Planning Director's decision shall be based upon the applicant's request, a review of the record of the original request, and the Planning Director's findings under the criteria of Section 3.8.19, *Criteria Used for Determination*.

3.8.22 ACTION REQUIRED ON PROPOSED MINOR CHANGES

If the Planning Director determines that the proposed action is a minor change, they shall state their findings in writing to the applicant. The applicant shall file with the Planning Director an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the originally approved site plan.

3.8.23 ACTION REQUIRED ON PROPOSED MODIFICATIONS

If the Planning Director determines that the proposed action is a modification, they shall require the applicant to submit a request for modification of the approved Special Use Permit. An application for a modification to an approved Special Use Permit will be reviewed in the same manner as a new Special Use Permit. The outcome on the application shall be documented in the same manner as a new Special Use Permit.

Modifications to Special Use Permits for properties located in the historic overlay district which impact the site organization, form, massing, scale, height, orientation, roof form, and proportion of the site shall be referred to the Historic District Commission, as described in Section 3.8.8 before any evidentiary hearing on the modification.

3.8.24 EXPIRATION

An approved Special Use Permit expires 24 months from the date of approval if the Zoning Permit has not been issued for the project unless an extension of the expiration date has been granted by the Board of Adjustment. Extensions may be in the form of a longer expiration time approved with the initial Special Use Permit, or a separate request made in writing before the expiration of the standard 24 months.

3.9 RESERVED FOR FUTURE CODIFICATION

3.10 VARIANCE

3.10.1 INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers requests for relief relating to the requirements of this Ordinance. Nothing in this section shall be construed to authorize the Board of Adjustment to permit a use in a district where that use is neither a permitted, nor a Special Use.

3.10.2 APPLICABILITY

When a property owner claims that he or she will be subject to an unnecessary hardship if they are required to comply with the strict application of this Ordinance, they may seek a variance from such requirement. Only the Board of Adjustment has authority to grant such variances, and then only upon application of established legal standard as set forth in this Ordinance.

3.10.3 GENERAL STANDARDS/FINDINGS OF FACT

3.10.3.1 A Variance from all provisions of this Ordinance, with the exception of Section 4.5.1, *Upper Eno Watershed District*; Section 4.5.2, *Upper Eno Protected Watershed, Critical Area District* and Section 6.20.16, *Riparian Buffers* (which contain their own separate requirements to receive a variance), shall be approved only upon a finding that all of the following standards are met:

- 3.10.3.1.a** Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property; and
- 3.10.3.1.b** The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted to provide reasonable accommodation under federal Fair Housing Act for a person with a disability, and
- 3.10.3.1.c** The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance shall not be regarded as a self-created hardship; and
- 3.10.3.1.d** The requested Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.

3.10.3.2 WATERSHED PROTECTION DISTRICT VARIANCE FINDINGS

Development activities within the Upper Eno and Upper Eno Protected Watershed, Critical Area Districts may be granted minor and major variances by the Board of Adjustment in accordance with Section 4.5.5.2, *Variances*, of this Ordinance.

3.10.3.3 RIPARIAN BUFFER VARIANCES

Variations shall be approved by the North Carolina Management Commission on a case by case basis pursuant to 15A NCAC 02B .0226.

3.10.4 INSUFFICIENT JUSTIFICATION FOR VARIANCE

The following do not constitute grounds for a Variance:

- 3.10.4.1** The existence of other nonconforming or conforming uses of land or structures in the same or other districts;
- 3.10.4.2** The request for a particular use expressly, or by inference, prohibited in the district; or
- 3.10.4.3** Economic hardship or the fact that property may be utilized more profitably with a Variance; or
- 3.10.4.4** Hardships resulting from personal circumstances and/or conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.

3.10.5 SUBSEQUENT DEVELOPMENT

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance and/or any other applicable regulations. The granting of a Variance does not constitute and shall not be deemed to constitute a forecast that the development receiving a Variance will receive any other required approval.

3.10.6 PROCEDURE

3.10.6.1 Application requirements

The application requirements, checklists, and timeline are provided in the *Administrative Manual*.

3.10.6.2 Staff Review

Upon receipt of a variance application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case. The Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

3.10.6.3 EVIDENTIARY HEARING

Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct an evidentiary hearing on the application.

3.10.6.4 Notice of Public Hearing

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), to the owners of all parcels of land abutting the parcel of land that is subject to the evidentiary hearing (including those across a public or private street), to any other persons entitled to receive notice as provided by this Ordinance. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (10) days, but not more than twenty-five (25) days before the hearing date.

In cases where a variance is requested from the provisions of Section 4.5.1, Upper Eno Watershed District; Section 4.5.2, *Upper Eno Protected Watershed, Critical Area District* of this Ordinance, all local governments having jurisdiction within the watershed area and the entity using the water supply for consumption shall be notified of the proposed variance. Comments from these entities shall be submitted to the Planning Director before the Board of Adjustment decision and shall be made a part of the record of the Board of Adjustment decision.

3.10.6.5 Public Hearing

3.10.6.5.a Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct an evidentiary hearing on the application. After close of the hearing, the Board of Adjustment shall consider the application, relevant support materials, any testimony or evidence given at the hearing and included in the record, determine contested facts and substantial evidence in the record and make its decision within a reasonable time. The Board of Adjustment shall take one of the following actions, based on the standards in Section 3.10.3, *General Standards/Findings of Fact*:

- (a) Approve the application as submitted;
- (b) Approve the application subject to conditions; or
- (c) Deny the application.

The affirmative vote of at least four-fifths (4/5) of the members of the Board of Adjustment who are eligible to vote is required to grant a variance. Appropriate conditions may be imposed on a Variance provided that the conditions are reasonably related to the Variance.

3.10.6.5.b The Board's decision on a Variance shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

3.10.7 FORMALIZING THE OUTCOME

The Planning Director shall cause notice of the disposition of the application to be delivered by either personal delivery, electronic mail, first class mail or certified mail to the applicant, the property owner and any party who has filed a written request for a copy with the Board at the time of the hearing prior to the date the Board’s decision becomes effective, and shall cause a copy of the decision to be filed in the Planning Department.

The applicant will also be required to record a notice of the Variance, which will be provided by the Planning Director, with the Orange County Register of Deeds.

3.10.8 APPEAL

An aggrieved party may appeal a decision by the Board of Adjustment on an application for a Variance to Superior Court. Such appeal shall be in the nature of certiorari, pursuant to North Carolina General Statutes, Section 160D-1402, and must be filed within the time provided by North Carolina General Statutes, Section 160D-1405(d).

3.10.9 MODIFICATIONS

A Variance may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

3.10.10 EXPIRATION

Variance approval shall automatically expire if the applicant does not record the Variance with the Orange County Register of Deeds within 30 days after the date the Variance is approved.

Except where required as a prerequisite for a Site Plan associated with new development, an approved and recorded Variance shall run with the land. In cases where a Variance is a prerequisite to site plan approval, failure of an applicant to apply for a Zoning Compliance Permit and commence construction within one year of receiving Variance approval shall automatically render the decision of the Board of Adjustment null and void. Such time period shall not be extended with transfer of ownership.

3.11 APPEAL

3.11.1 INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers appeals from any order, requirement, decision or determination made by the Planning Director concerning the enforcement of this Ordinance.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Planning Director a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay

the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications affected by the issue being appealed.

3.11.2 APPLICABILITY

The Board of Adjustment shall hear an appeal taken by any person with standing pursuant to North Carolina General Statutes, Section 106D-405 or the by Town regarding a decision or determination made by the Planning Director concerning the enforcement of this Ordinance in this Ordinance, within the times provided by this Ordinance.

3.11.3 GENERAL STANDARDS

In deciding appeals, the Board of Adjustment may hear those arguments based upon an allegedly improper or erroneous interpretation of the ordinance. The Board of Adjustment will:

- 3.11.3.1** Interpret the meaning of parts of this Ordinance, and
- 3.11.3.2** Apply the Ordinance provisions to particular fact situations in the application.

3.11.4 PROCEDURE

3.11.4.1 Appeal requirements

The appeal requirements, checklists, and time for filing an appeal are provided in the *Administrative Manual*. Unless another time is specifically established by this Ordinance, appeals shall be filed with the Planning Department within thirty (30) days from the receipt of the written notice regarding the matter subject to appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision, (as described below) within which to file an appeal.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant.

Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

3.11.4.2 Staff Review

Upon receipt of an appeal, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the appellant in writing of the reasons for such determination. The Planning Director shall prepare a staff report detailing the situation involved in the appeal. Once a complete application has been received, the Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

A copy of the staff report and record of the case shall be delivered to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

3.11.4.3 Evidentiary Hearing Required

Following receipt of the appeal from the Planning Director, the Board of Adjustment shall conduct an evidentiary hearing on the appeal.

3.11.4.4 Notice of Evidentiary Hearing

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), to the owners of all parcels of land abutting the parcel of land that is subject to the evidentiary hearing (including those across a public or private street), to any other persons entitled to receive notice as provided by this Ordinance, and the Planning Director. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the evidentiary hearing or on an adjacent street or highway right-of-way at least ten (10) days, but not more than twenty-five (25) days before the hearing date.

3.11.4.5 Evidentiary Hearing Steps

3.11.4.5.a The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. After close of the hearing, the Board of Adjustment shall consider the application, relevant support materials, and any testimony or evidence given at the hearing and included in the record. The Board of Adjustment shall take one of the following actions:

- (a) Affirm, wholly or partly, the determination being appealed,
- (b) Reverse, wholly or partly, the determination being appealed, or
- (c) Modify the determination which is being appealed.

The Board shall have all the powers of the official who made the decision. The Board of Adjustment may include direction to the appealed entity for how it should carry out the direction from the Board.

The Board of Adjustment shall review the record of the evidentiary hearing, and the Planning Director's report, and determine contested facts and substantial evidence in the record and make its decision within a reasonable time.

3.11.4.5.b The affirmative vote of a majority of the members of the Board of Adjustment who are eligible to vote is required to grant an appeal (overturn a determination).

3.11.4.5.c The Board's decision on an Appeal shall be reduced to writing and reflect the Board's determination of contested facts and their application to the

applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

3.11.5 FORMALIZING THE OUTCOME

The Board of Adjustment's decision on the appeal shall be reduced to writing and transmitted to the appellant, the property owner and any party who has filed a written request for a copy by either personal delivery, electronic mail, first class mail or certified mail prior to the date the Board's decision becomes effective.

3.11.6 APPEAL

An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to Superior Court. Such appeal shall be in the nature of certiorari, pursuant to North Carolina General Statutes, Section 160D-1402, and must be filed within the time provided by North Carolina General Statutes, Section 160D-405(d).

3.11.7 EXPIRATION

The decision on an appeal before the Board of Adjustment, if attached to a development approval, shall run with the approval period of that permit or approval.

3.12 CERTIFICATE OF APPROPRIATENESS

3.12.1 INTENT

As authorized by North Carolina General Statutes, Section 160D-303 *et seq*, the Town has established an historic overlay district, the purpose and intent of which is to protect the historic and culturally important and significant structures located in the historic district. The Town may, in the future, designate historic landmarks or establish additional historic districts. Consistent with North Carolina General Statutes, Section 160D-947, the erection, alteration and improvement of the exterior features of buildings and structures designated as landmarks or located in an historic district may not be undertaken until after an application for a Certificate of Appropriateness for the work has been submitted to and approved by the Historic District Commission.

3.12.2 APPLICABILITY

It shall be unlawful to begin construction, moving, demolition, alteration, or restoration of any structure or site which has been designated as a landmark or is located within an Historic District until a Certificate of Appropriateness has been issued.

3.12.3 STANDARDS OF EVALUATION

The Commission, in deliberating upon an application for a property located within an Historic District or a local landmark, shall consider, among other things, the general scale, design, arrangement, texture, material, and color of the building, structure, or site in question and the relation of such factors to similar features of buildings in the immediate vicinity or buildings of a similar architectural style or age in the Historic District. The Commission shall not consider the interior arrangement, nor shall it make any requirements except for the purpose of preventing developments which are incongruous to the historic character of the landmark or Historic District.

To provide reasonable standards to assist the Commission in its review of design and to guide and limit the discretion of the Commission, the report entitled “*Hillsborough Historic District Guidelines*,” as adopted by the Town Board, is hereby adopted and incorporated by reference as part of this Ordinance to guide the review of applications for Certificates of Appropriateness for properties located within the historic district.

Designated landmarks located outside an historic district shall be held to the Secretary of the Interior’s Standards for Rehabilitation.

3.12.4 CERTAIN CHANGES NOT PROHIBITED

Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any architectural feature on any property designated as a landmark or located in an Historic District which does not involve a change in design, material, color, or other appearance nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the County Building Inspector shall certify to the Commission is required for the public safety because of an unsafe or dangerous condition.

A list of examples of projects for which no Certificate of Appropriateness is required is listed in Historic District Design Guidelines Exempt Works List.

3.12.5 PROCEDURE

3.12.5.1 Authority to apply

The owner of property designated as a landmark or located in a Historic District, or their authorized representative may apply to the Planning Director for a Certificate of Appropriateness for their property.

3.12.5.2 Pre-application

Applicants for Certificates of Appropriateness are encouraged to schedule and participate in a pre-application conference with the Planning Director to review the proposal for the property and the Hillsborough Historic District Guidelines.

3.12.5.3 Application requirements

Applications for certificates of appropriateness shall be filed with the Planning Director. The forms for such applications and other submittal requirements shall be as set forth in the *Administrative Manual*.

No application shall be accepted by the Planning Director unless it complies with all submittal requirements of this Ordinance, including payment of the applicable fee. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

In the case of an application for a Certificate of Appropriateness for a property encumbered with a Preservation Easement or Agreement regarding the exterior of the structure, the written concurrence of the Preservation Easement holder shall be submitted with the application. The decision of the Commission shall be binding on the property owner and Preservation Easement/Agreement holder equally.

3.12.6 DELAY IN DEMOLITION

An application for Certificate of Appropriateness authorizing the demolition, destruction, or relocation of a building, structure, or site designated as a landmark or located within an Historic District may not be denied except as provided in Section 3.12.6.4. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section maybe reduced by the Commission based upon a finding that the property owner would suffer extreme hardship or be permanently deprived of beneficial use of or a reasonable return from such property by virtue of the delay.

- 3.12.6.1** During such period the Commission may negotiate with the owner and with other parties in an effort to find a means of preserving the building or site. If the Commission finds that a building or site has no special significance or value toward maintaining the character of the landmark or the historic landmark property or in the proposed District, it may waive all or part of such period and authorize earlier demolition or removal.
- 3.12.6.2** If the Commission or Planning Board has voted to recommend the designation of an area as a landmark or as an historic district and final designation has not been made by the Town Board, the demolition or destruction of any building, site, or structure located on the proposed district may be delayed up to 180 days or until the Town Board takes final action on the designation, whichever occurs first.
- 3.12.6.3** The Town Board may enact an Ordinance to prevent the demolition by neglect of any building or structure designated as a landmark or located within the Historic District. Such Ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.
- 3.12.6.4** An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

3.12.7 STAFF REVIEW

3.12.7.1 Action Required on Proposed Minor Works

The applicant shall file with the Planning Director a written statement outlining in detail the minor works(s) proposed. If the Planning Director determines that the work proposed in an application for a Certificate of Appropriateness is a minor work, such determination shall be made in written findings. The Planning Director shall file this statement in the Planning Department.

A list of examples of types of projects that are considered minor works is listed in the Historic District Design Guidelines Minor Works List.

3.12.8 Evidentiary Hearing

The Commission is required to conduct an evidentiary hearing on applications for certificates of appropriateness.

3.12.9 HISTORIC DISTRICT COMMISSION ACTION

The Commission may approve, approve with conditions, or deny an application for a Certificate of Appropriateness. The Commission shall review the record of the meeting or hearing and the application and make its decision on the application based on the standards of evaluation listed in Section 3.12.3, *Standards of Evaluation*.

3.12.10 IMPOSED CONDITIONS

The Commission may impose such reasonable conditions upon approval of a Certificate of Appropriateness as will afford protection of the public health, safety, and general welfare; ensure that substantial justice is done; and equitable treatment provided. Such conditions shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Commission denies the Certificate, the reasons for its action shall be recorded in the minutes of the meeting and a copy sent to the applicant by certified mail, return receipt requested.

3.12.11 NOTICE OF DECISION AND ISSUANCE OF CERTIFICATE OF APPROPRIATENESS

Upon approval, approval subject to conditions, or denial of any application, the Commission shall forthwith transmit a report to the Planning Director stating its decision and cause a copy of the decision to be transmitted to the applicant.

The Planning Director shall periodically inspect the construction or alteration, and immediately report to the Commission any work not in accordance with the Certificate.

All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date that a complete application for a Certificate of Appropriateness is filed, unless an extension of time is agreed to by the applicant.

3.12.12 APPEAL

A decision of the Commission on an application for a Certificate of Appropriateness may be appealed to the Orange County Superior Court by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in Section 3.12.11, whichever is later. Such appeals to the Orange County Superior Court are in the nature of certiorari and the court shall determine such appeals based on the record generated before the Commission.

3.12.13 EXPIRATION

A Certificate of Appropriateness approved pursuant to this section shall expire one year after the date of approval if the work authorized by the approval has not begun, unless the time is extended by the Commission. The process for extending approvals is addressed in the Rules of Procedure for the Historic District Commission.

3.12.14 EMERGENCY ADMINISTRATIVE CERTIFICATES OF APPROPRIATENESS

When a State of Emergency applicable to the Town of Hillsborough is declared pursuant to G.S. Chapter 166A Article 1A Part 4, the Planning Director (or their designee) is authorized to issue Emergency Administrative Certificates of Appropriateness. Such authority shall begin upon said

declaration and end upon the rescission of the State of Emergency by the declarant, subject to the provisions and limitations contained herein. The intent of this emergency authority is to ensure that, to the extent practical, works necessitated by the effects of a disaster are performed in a manner that is consistent with the spirit of this Ordinance and the Historic District Design Standards.

3.12.14.1 The Planning Director's authority to issue Emergency Certificates of Appropriateness shall be subject to the following:

- 3.12.14.1.a** The conditions that have caused the declaration of the State of Emergency are preventing the Historic District Commission from meeting, either in-person or remotely pursuant to G.S. 166A-19.24, to establish a quorum and conduct business, and such conditions are anticipated to exist for at least 48 hours following the declaration of the State of Emergency.
- 3.12.14.1.b** During the period of the declared State of Emergency, all work except for those specified below, shall be deemed Minor Works if it is needed to be done due to the state of emergency, and shall be eligible for the issuance of an Administrative Emergency Certificate of Appropriateness.
- (A) The demolition of a contributing structure, or any portion of a contributing structure, unless the Building Inspector, Fire Marshal, or other qualified person determines that the demolition is necessary to ensure public safety.
 - (B) The relocation of a contributing structure unless such relocation is undertaken to preserve the structure's integrity by removing from a hazardous situation. Any authorized relocation shall be subject to rescission, and the structure shall be returned to its previous location upon a finding by the Historic District Commission that the hazardous condition no longer exists, and the relocation is feasible.
 - (C) The permanent expansion, enlargement, or other modification of a contributing structure that increases its height or floor area, or which materially alters its layout or massing for a purpose other than ensuring the safety, stability, and/or integrity of the structure.
 - (D) The permanent removal or alteration of any distinctive architectural feature or ornamentation from a contributing structure, unless deemed to be a hazard to the public or to the integrity of the structure.
 - (E) The removal of any tree that is otherwise subject to regulation by this Ordinance unless the removal of said tree is necessary to ensure public safety.
 - (F) The grading, filling, or excavation of a lot, except where such work is necessary to preserve life or property due to damage incurred during the event that caused the declaration of the State of Emergency.
- 3.12.14.1.c** The Planning Director shall approve or deny all Emergency Certificates of Appropriateness in writing and shall have the authority to hold any application for future consideration by the Historic District Commission if the work in question cannot be adequately demonstrated to be emergency in nature, provided that such

applications may not be held for more than 180 days, as specified in G.S. 160D-947(d).

- 3.12.14.2** During the period when Emergency Administrative Certificates of Appropriateness are authorized, applicants shall continue to comply, to the maximum extent practical, with the standards for the submission of applications for Certificates of Appropriateness. When circumstances do not allow for the submission of all required materials, the Planning Director is authorized to deem any application complete, provided that, at a minimum, an attempt is made to visually document the current condition of the structure, the proposed work is described in sufficient detail to determine its nature and extent, and the finished work is inspected following its completion for compliance with the authorization granted by the Emergency Certificate of Appropriateness.
- 3.12.14.3** The Planning Director's authority granted under this Section shall be immediately extinguished upon notice from the Chair of the Historic Commission that a Special Meeting has been called and the attendance of a quorum of the members of the Commission are expected to gather, either in-person or remotely pursuant to G.S. 166A-19.24.
- 3.12.14.4** At the first regular meeting of the Historic District Commission following the end of the State of Emergency, the Planning Director shall provide the members of the Commission with a summary report and copy of all applications and Certificates of Appropriateness issued under the temporary emergency authority.

3.13 SITE PLAN REVIEW

3.13.1 INTENT

The intent of this subsection is to address the specific conditions and standards of evaluation for site plan review and approval.

3.13.2 APPLICABILITY

Site plan review and approval is required prior to issuance of a Zoning Compliance Permit for any development except the following:

- (a) Bona fide farms and agricultural uses, including associated principal and accessory buildings and structures.
- (b) Single-family dwellings, two-, three-, and four-unit attached dwellings, and manufactured homes, including their accessory uses and structures, located on an individual lot.
- (c) Construction of new structures not listed in (a) or (b), above consisting of no more than 5,000 square feet of gross floor area.
- (d) Expansion of existing development if the expansion results in:
 - (1) an addition of no more than 15% of previously existing gross floor area, or 2,500 square feet of gross floor area, whichever is greater, or

- (2) an addition of no more than 15% of previously existing parking spaces, or 10 parking spaces, whichever is greater, or
 - (3) an increase of no more than 15% in the amount of land cleared for non-agricultural development, or 10,000 square feet of new land clearing, whichever is greater.
- (e) Any change in use, provided the change does not involve development other than that exempted above.
- (f) Any sign.
- (g) Uses requiring a Special Use Permit, as site plan review is built into the Special Use Permit review process.

3.13.3 PROCEDURE

3.13.3.1 Authority to Apply

The property owner or their authorized representative may apply for site plan approval.

3.13.3.2 Pre-application Conference

Applicants should meet with the Planning Director to review the proposed plan and discuss ordinance requirements before submitting an application for site plan review.

3.13.4 APPLICATION REQUIREMENTS

The Planning Director shall provide forms for site plan review. Applicants shall submit all required information found in the *Administrative Manual*, and any additional information needed to demonstrate compliance with this Ordinance. No application shall be accepted as complete unless accompanied by the required application fee.

3.13.5 REVIEW PROCESS

3.13.5.1 General

The Planning Director shall review and, if the site plan submitted otherwise meets all standards of this Ordinance, approve the site plan. Approval or denial of the site plan shall be made within 45 working days of a site plan submittal being deemed complete.

3.13.5.2 Completeness Review

Upon receipt of a Site Plan Review application, the Planning Director shall first determine whether the application is complete, including payment of the application fee. The Planning Director shall have five working days in which to determine application completeness. If the Planning Director determine the application is incomplete, they shall notify the applicant in writing of the reasons for such determination.

3.13.5.3 Technical Review Committee

Upon determination that a complete application has been filed, the Planning Director shall refer the site plan to the Technical Review Committee. The Technical Review Committee shall

review the plan at its next regularly scheduled meeting. Written review comments shall then be forwarded to the applicant.

3.13.6 DECISIONS ON SITE PLAN APPLICATIONS

The Planning Director has the authority to approve or deny site plans. Denial of site plan approval shall be based on the grounds that the site plan fails to comply with any specific requirements of this Ordinance. Decisions shall be provided in writing via first class mail to the applicant within 5 working days of the decision.

3.13.7 APPEAL

The Planning Director's decision on an application for a Site Plan Review may be appealed to the Board of Adjustment following procedures established in Section 3.11, *Appeal*.

3.13.8 VESTING

No statutory vested right is established by approval of a site plan. However, as part of their application, applicants may request statutory vesting of a site plan following procedures found in subsection 1.8, *Vested Rights*, of this Ordinance.

3.13.9 MODIFICATIONS

Approval of modifications to approved site plans shall be made by applying the criteria found in paragraphs 3.8.18, *Minor Changes and Modifications*, and 3.8.19, *Criteria Used for Determination*, of this Ordinance.

3.13.10 REVOCATION

The Planning Director may revoke site plan approval by following the procedure found in subparagraph 8.6.4.5, *Revocation of Permits or Certificates*, of this Ordinance.

3.13.11 EXPIRATION

Site plan approval expires 12 calendar months from the date of approval unless:

- (a) A Zoning Compliance Permit has been issued for the project prior to the expiration date,
- (b) a statutory vested right was obtained under procedures found in subsection 1.8, *Vested Rights*, of this Ordinance prior to approval, or
- (c) a common law vested right is obtained from the Planning Director following provisions found in North Carolina General Statute 160D-108(h).

3.14 ZONING COMPLIANCE PERMIT

3.14.1 INTENT

The intent of the Zoning Compliance Permit is to provide written documentation of the completion of the development review processes under this Ordinance. This permit is a pre-requisite to securing an Orange County Building Permit. A Zoning Compliance Permit documents a project's compliance with this Ordinance and with the *Administrative Manual* without regard to any contractual or other arrangements (including, but not limited to restrictive covenants) among

private parties which may also affect the use of the property.

3.14.2 APPLICABILITY

It shall be unlawful to begin construction, place, or move any structure (including signs) or to begin to grade or excavate for immediate construction until the Planning Director has issued for such work a Zoning Compliance Permit. A Zoning Compliance Permit signifies a determination that the site plan, building specifications and the intended use of such structure conform in all respects to the provisions of this Ordinance.

Also, it shall be unlawful to change the type of use or type of occupancy of any building, or to alter or extend any use of any lot on which there is a non-conforming use, until the Planning Director has issued for such intended use a Zoning Compliance Permit, including a determination that the proposed use conforms in all respects to the provisions of this Ordinance.

3.14.3 GENERAL STANDARDS/FINDINGS OF FACT

The application materials, as specified in the *Administrative Manual*, when taken together provide sufficient evidence for the Planning Director to conclude that the project, with reasonable conditions, will comply with the provisions of this ordinance and the *Administrative Manual*.

3.14.4 PROCEDURE

If the proposed excavation, construction, relocating, alteration, or use of land as set forth in the application is in conformity with the provisions of this Ordinance, the Planning Director shall issue a Zoning Compliance Permit; however,

Issuance of a Zoning Compliance Permit shall in no case be construed as waiving any provision of this Ordinance.

Under no circumstances is the Planning Director permitted to vary the terms of this Ordinance, deviate from the apparent meaning of any clause, standard, or regulation contained in this Ordinance, or otherwise afford SPECIAL treatment to any person making application to excavate, construct, move, alter, or use either buildings, structures, or land.

Under no circumstances is the Planning Director permitted to make any changes to this Ordinance.

The Planning Director shall issue a Stop Work Order if a project is found to be under construction without a Zoning Compliance Permit, if a Zoning Compliance Permit is revoked in accordance with Section 8.6.4.5, Revocation of Permits or Certificates, or if work being undertaken is contrary to this Ordinance or any permit issued pursuant to this Ordinance.

3.14.5 FORMALIZING THE OUTCOME

The Planning Director shall issue a permit when the applicable provisions of this Ordinance are satisfied.

If an application for such a permit is not approved, the Planning Director shall state in writing the reason(s) for such denial.

3.14.6 APPEAL

Persons aggrieved by a decision or a determination made by the Planning Director may appeal that action to the Board of Adjustment, following the procedures established in Section 3.11, *Appeal*.

3.14.7 VESTING

A Zoning Compliance Permit does not confer a statutory vested right.

3.14.8 DEVIATIONS

If a site inspection reveals work undertaken does not comply with conditions and specifications of an approved Zoning Compliance Permit, the approved permit may be revoked, or a stop work order issued. Such stop work order shall remain in effect until the Planning Director determines that the work is in compliance with the provisions of this Ordinance and the *Administrative Manual*.

3.14.9 MODIFICATIONS

A Zoning Compliance Permit may be modified at the request of the applicant at any time before it expires. Such modification must comply with all provisions of this ordinance and the *Administrative Manual*. All modifications must be documented in writing.

3.14.10 REVOCATION

The Planning Director shall revoke a Zoning Compliance Permit if it is found to be issued in violation of any provisions of this Ordinance, or if the conditions stated on the permit are not satisfied.

3.14.11 EXPIRATION

A Zoning Compliance Permit shall be valid for 12 months from the date of issuance. In the case that the Zoning Compliance Permit authorizes a construction project that takes more than 12 months to complete, the permit shall be valid so long as the Orange County Building Permit for the project remains active and unexpired.

3.14.12 AUTHORIZING OCCUPANCY BEFORE COMPLETION OF DEVELOPMENT

3.14.12.1 The Planning Director may authorize the use of a site or the occupancy of buildings prior to the completion of all improvements required by the approved permit for the development when completion of the work is delayed for reasons beyond the control of the permit recipient if the permit recipient provides a financial security satisfactory the Planning Director to ensure that all permit requirements will be satisfied within a reasonable period (not to exceed 12 months from the date of the Planning Director’s determination). The following circumstances may serve as the basis for a request under this subparagraph:

3.14.12.1.a All building and fire code requirements have been satisfied for any building requesting approval for residential occupancy or use by the public.

3.14.12.1.b Weather conditions being unacceptable to install required items

(e.g. Wet conditions for paving, heat or dry conditions for landscaping).

3.14.12.1.c Phased nature or large scale of a project creates significant time lag between portions of the project being ready for occupancy and full completion (e.g. Allowing occupancy of leasing office or certain residential buildings in an attached dwelling development).

3.14.12.1.d Other situations beyond the applicant’s control other than financial hardship.

3.14.12.2 The Planning Director shall take into consideration the following conditions prior to allowing use or occupancy before completion:

3.14.12.2.a Adequacy of vehicle ingress and egress in the portion of the site to be used or occupied for occupants, construction traffic, town service vehicles, and emergency service vehicles.

3.14.12.2.b Potential conflicts between construction activity and use or occupancy, including but not limited to: noise, lighting, pedestrian circulation, access to recreation or common areas, or injury or disturbance of comfort or peace of reasonable persons of normal sensibilities.

3.14.12.2.c Length of performance period requested.

3.14.12.2.d Any approved phasing plan or completion requirements enacted in the original or modified project approvals by the permit issuing authority.

3.14.12.2.e The relative significance of the uncompleted work to the overall project (e.g. Punch list items) and/or the portion requesting use or occupancy.

3.14.12.3 The permit recipient must supply an itemized, sealed design professional’s estimate for the cost of the uncompleted portion of the project. A financial security (performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement) equal to 125% of the provided engineer’s estimate. The town attorney shall review the financial surety for form and validity under North Carolina law.

3.14.12.4 The Planning Director may release the financial guarantee in phases as the work guaranteed is completed. Releases will be for the amount in the engineer’s estimate, with the 125% amount being released with upon full completion of the project.