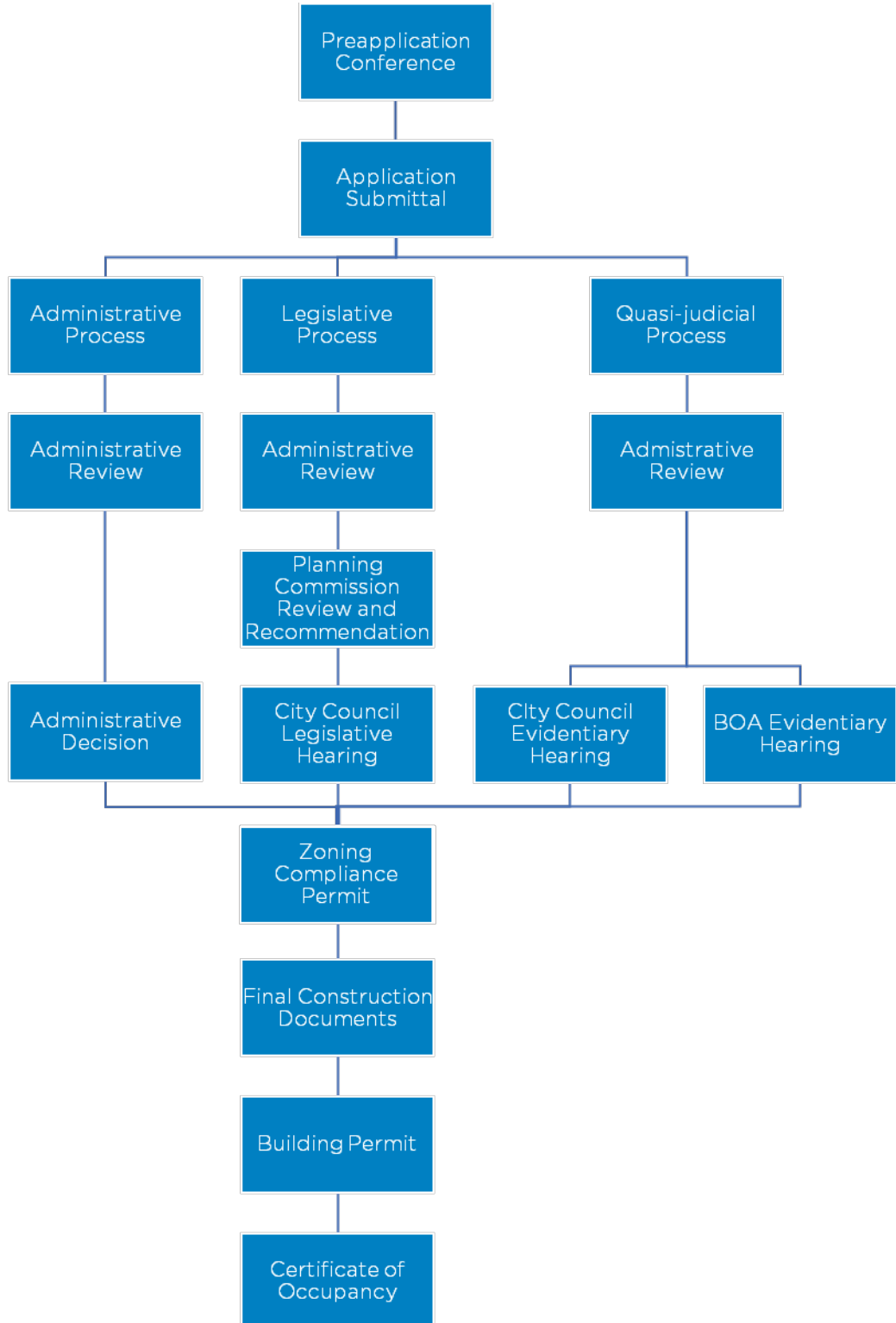

ARTICLE 2. APPROVALS

2.1 GENERAL APPROVAL PROCESS



2.1.1 COMPLIANCE

Approvals shall comply with all of the applicable standards of the North Carolina Building Code and the regulations of this and other applicable sections of the Goldsboro Code of Ordinances.

2.1.2. NO OCCUPANCY, USE, OR SALE OF LOTS UNTIL REQUIREMENTS FULFILLED

Except as provided in Section 2.2.5. (Improvement Guarantees), the intended use shall not be commenced, no building shall be occupied and in the case of subdivisions, no lots shall be sold until all of the requirements of this Ordinance, all additional requirements imposed pursuant to the approval of a site plan or subdivision have been complied with, and all required permits procured.

2.1.3. WHO MAY SUBMIT PERMIT APPLICATIONS / SUBMISSION REQUIREMENTS

Applications will be accepted only from persons having the legal authority to take action in accordance with the land use, subdivision, appeal, or development approval request. By way of illustration, this means that applications should be made by the owners, their agents, lessees or persons who have contracted to purchase the property contingent upon permit approval, or by the appropriate City board, body, or agent. The Director of Planning and Community Development may require an applicant to submit evidence of his authority to make the application, whenever there appears to be a reasonable basis for questioning this authority.

2.1.4. STAFF CONSULTATION BEFORE FORMAL APPLICATION

To minimize development and planning costs, avoid misunderstanding or misinterpretation and ensure compliance with the requirements of this Ordinance, pre-application consultation between the developer and the planning staff may be required as provided by this Section. The applicant is encouraged to arrange a pre-application consultation at least ten days prior to the application deadline.

2.1.5. APPLICATION DEADLINES

All applications and land use or development approval requests shall be submitted to the Planning Department as follows:

Administrator (Planning Director)	Per established application submission schedule or as walk-in / ad hoc
Planning Commission	Two weeks prior to next meeting.
City Council	Four weeks prior to next public hearing.
Board of Adjustment	Four weeks prior to next public hearing.
Historic Preservation Commission	Four weeks prior to next public hearing.

2.1.6. APPLICATIONS TO BE COMPLETE

All applications and accompanying plans for permits must be complete before the issuing authority will consider the application. Subject to subsection below, an application is complete when it contains all the information necessary for the issuing authority to decide whether the development, if completed as proposed, will comply with all the requirements of this Ordinance.

Detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks etc.) are set forth in one or more of the appendices or other sections of this Ordinance. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in this Ordinance. However, whenever this Ordinance requires a certain element of the development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element shall begin until detailed construction drawings have been submitted to and been approved by the Department of Planning and Community Development. Failure to observe this requirement may result in permit revocation, denial of final plat approval or other penalty as provided in Section 4.0 (Enforcement).

2.1.7. REVOCATION

Pursuant to G.S. § 160D-403, all revocations shall follow the same process that was used for their respective approvals.

2.2 ADMINISTRATIVE PROCESSES

2.2.1. DETERMINATIONS

The Administrator (Planning Director or their designee) shall be responsible for administrative decisions. The Administrator shall provide a written notice of determination to the property owner and the party seeking the determination if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or first class mail.

2.2.2. WRITTEN INTERPRETATION

The Administrator is authorized to make interpretations concerning the provisions of this Ordinance and pass judgment upon disputed questions of district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be processed in accordance with Section 3.1.1 (Appeals).

An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application in the office of the Administrator in the Planning Department. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

Where uncertainty exists as to the boundary of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams or railroads shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following platted lot lines, City limits or extraterritorial jurisdiction boundary lines shall be construed as following such lines, limits or boundaries;
3. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following the new shoreline;
4. Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map; and
5. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of the vacation or abandonment.

2.2.3. BUILDING PERMITS

A. APPLICABILITY

No building or structure or any part thereof shall be erected, enlarged or structurally altered, nor shall any excavation, soil removal, disturbance of vegetation including trees, filling or grading be commenced (in connection with site development), nor shall any sign be erected, repaired or painted except in conformance with the provisions and standards of this Ordinance.

B. ApplicatIION

An application for a building permit shall be filed only by the owner of the lot on which the building or structure is located or an agent, lessee or contract purchaser specifically authorized by the owner to file such an application.

An application for a building permit shall be filed with the Inspections Department on a form prescribed by the department.

No building permit shall be issued for any proposed development until the applicant has filed a statement of its intended use.

Each application for a building permit shall be accompanied by a plat or site plan, drawn to scale, showing accurate dimensions of the lot to be built upon, accurate dimensions of the building to be erected, its location on the lot and such other information as may be necessary to determine the project's compliance with this Ordinance.

C. LICENSED CONTRACTORS

Where any ordinance or construction code of the City or any provision of the General Statutes of North Carolina requires that work be done by a licensed specialty contractor of any kind, no building permit for such work shall be issued unless it is to be performed by such licensed contractor. Before any work begins pursuant to the building permit, the applicant shall furnish the inspections department with the names of all the contractors and subcontractors who will be performing the work.

D. PERMIT DISPLAY

The building permit shall be conspicuously displayed by the applicant on the property for which it was obtained in the manner prescribed by the Inspections department. The building permit shall remain so posted until the applicant has obtained a permanent certificate of occupancy.

E. BUILDING PERMIT EXPIRATION

Any building permit issued by the Inspections department shall become null and void unless the work approved by the permit is commenced within six months after the date of issuance, as shown on the permit. No work shall be considered to have commenced for the

purposes of this paragraph until an inspection has been made and recorded. All building permits shall become null and void after their six month issuance date, unless the specific inspector for that particular trade allows the permit to be extended, which shall be done in six month increments.

F. CHANGES TO APPROVED PERMITS

After a building permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without specific written approval of such changes by the appropriate city department.

G. REVOCATION OF A BUILDING PERMIT

Per Section 2.1.7., Revocation, the Inspections Department may revoke and require the return of any building permit by notifying the permit holder in writing, stating the reasons for such revocation. The department shall revoke building permits for any of the following reasons:

1. Any material departure from the approved application, plans or specification;
2. Refusal or failure to comply with the requirements of this Ordinance or any other applicable state, federal or local laws; or
3. False statements or misrepresentations made in securing such permit.

2.2.4 APPEALS

Appeals of building permits shall be taken directly to superior court.

2.2.5 CERTIFICATES OF OCCUPANCY

A. PURPOSE

The certificate of occupancy is required to ensure the completed development has complied with all of the applicable standards of the current North Carolina Building Code and the regulations of this and other sections of the Goldsboro City Code of Ordinances.

B. APPROVAL PROCEDURE

Per G.S. § 160D-403, a new building or part thereof, an addition or enlargement of any existing building or an existing building may be occupied after being moved or altered or a change in the use or occupancy of any building may be made only after the Inspections department has issued a certificate of occupancy, stating that the building, site and/or proposed use complies with the provisions of this Ordinance, including any applicable regulations applying to the proposed use and/or the zoning district in which the use is to be located.

No certificate of occupancy shall be issued until the Planning and/or Engineering Department issues a certificate of zoning compliance that certifies that the site improvements have been completed in accordance with the approved plans and that the proposed use is in conformance with the provisions of this Ordinance.

The Inspections Department shall issue a certificate of occupancy when, after inspection of the building, structure, landscaping and/or changes to the property, the department finds that the building complies with all the applicable provisions of this Ordinance, any other applicable ordinances and the current North Carolina Building Code.

No final Certificate of Occupancy shall be granted for projects that require a site plan or subdivision plat until an as-built utility plan is submitted to the City of Goldsboro Engineering Department. The as-builts shall be submitted on paper and in electronic format.

C. VIOLATIONS

Any person or persons who occupies or uses a building prior to the issuance of a certificate of occupancy shall be in violation of this section and be subject to the penalties and remedies as outlined in Section 4.0 (Enforcement).

D. APPEALS

See Section 2.4, Quasi-judicial Processes.

2.2.6. SIGN PERMITS

See Section 6.4, Signage Standards.

2.2.7. SITE PLANS

A. APPROVAL AUTHORITY FOR SITE PLANS

The Planning Director shall have the authority to approve or a deny a site plan request.

B. DEVELOPMENT REQUIRING SITE PLAN APPROVAL

The following development shall be required to secure site plan approval prior to the issuance of a building permit or the initiation of site improvement:

Nonresidential, manufactured home park and multi-family development not otherwise required to undergo the subdivision review process as defined in 2.2.7. Subdivisions

C. SITE PLANS ASSOCIATED WITH VARIANCES

Where a use requiring site plan approval also requires the approval of a variance, the variance shall first be sent to Board of Adjustment, if approved, the site plan shall proceed to the City Council for the review of the special use permit.

D. ACTION ON SITE PLANS APPROVED BY THE PLANNING DIRECTOR

The Planning Director shall approve the site plan provided that the following standards are met:

1. That it fully complies with all applicable requirements of this Ordinance and any conditions of approval;
2. That it adequately protects other property, or residential uses located on the same or adjacent properties, from the potential adverse effects of a nonresidential use;
3. That it provides harmony and unity with the development of nearby properties
4. That it provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways
5. That it provides safe ingress and egress for emergency services to site.

If the Planning Director rejects the site plan, then the reasons therefore shall be stated in the record of action on the site plan.

E. CHANGES TO PREVIOUSLY APPROVED SITE PLANS

The Planning Director shall have the authority to approve revisions to a previously approved site plans, provided the following conditions are met:

1. That all changes conform to the minimum required standards for the zoning district in which the property is located;
2. That off-street parking is not reduced below the minimum required by this Ordinance and any conditions of approval.
3. That all additions, alterations, and expansions shall be compatible with the existing or approved buildings, structures, and parking area, up to a 10% increase or decrease;
4. That any additional required landscaping shall be comparable to the approved site plan and shall follow City specifications and guidelines;
5. That the effect of the landscaping, buffers, or screening on the site, or on the approved site plan, is not diminished;
6. That the number of access points to public streets is neither increased, decreased, nor substantially relocated (50 feet or more in any direction);
7. That the circulation pattern provides for the safe, controlled, and orderly flow of pedestrians and vehicles and is not diminished;
8. That the changes do not otherwise violate any provision of this Ordinance, the City Code, or other applicable laws; and
9. That the use and development of the property is otherwise in full compliance with the requirements of this Ordinance.

F. FAILURE OF PLANNING DIRECTOR TO ACT

Failure of the Planning Director to act on a completed application for site plan approval within 90 days of receiving the site plan shall be deemed denial of the site plan.

G. EFFECT AND DURATION OF SITE PLAN APPROVAL

Site plan approval shall remain valid for two years from the date of approval.

2.2.8. SUBDIVISIONS

A. APPLICABILITY

Per G.S. § 160D-802, subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development and shall include all divisions of land involving the dedication of a new street or a change in existing streets. The sale, use, or development of lots shall not occur on lots created contrary of the standards of this Ordinance.

B. EXEMPTIONS

Pursuant to NC GS § 160D-802, the following activities are not required to undertake or follow the City's subdivision approval process. However, lots created under these exemptions shall fulfill all of the dimensional, size and other zoning requirements of this Ordinance. (Such as minimum lot sizes, road frontage, setbacks etc.) It is highly recommended that all exceptions to the subdivision process be reviewed by the Planning Director or their designee for conformity with the City's subdivision regulations. Failure to do so may result in the recordation of non-conforming or illegal lots that may not be suitable for new construction.

1. The division of land to settle an estate where the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance.
2. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance.
3. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
4. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
5. The division of a tract in single ownership the entire area of which is no greater than two acres, into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the City as shown in this Ordinance.

C. NO SUBDIVISION WITHOUT FINAL PLAT APPROVAL

As provided in G.S. § 160D-807, no person shall subdivide land except in accordance with all of the provisions of this Ordinance. In particular, no person shall subdivide land unless a final plat of the subdivision has been approved in accordance with the provisions of this Article and recorded in the Wayne County Registry.

Whenever a final plat is approved to authorize development, nothing authorized by the final plat approval shall be done until the owner of the property records the plat in the Wayne County Registry, indexed under the book of maps and page number and returns a copy of the recorded plat to the Planning Department.

As provided in G.S. § 160D-803, the Wayne County Register of Deeds shall not record a plat of any subdivision within the City's planning jurisdiction unless the plat has been approved in accordance with the provisions of this Ordinance.

D. MAJOR SUBDIVISION

A major subdivision is defined as a subdivision where any of the following conditions exist:

1. Public right-of-way dedication is necessary;
2. Variances are necessary or requested;
3. The subdivision has four or more lots; and
4. The entire tract to be subdivided is greater than three acres in size.

Major subdivisions are subject to a two-step approval process including:

1. Physical improvements to the land being subdivided are authorized by a preliminary subdivision plat. Preliminary subdivision plats shall follow the approval process as provided in this Ordinance;
2. Sale of lots is permitted after final plat approval as provided in this Ordinance.

E. PRELIMINARY PLATS

Major subdivision preliminary plats shall be reviewed by the Planning Director or their designee.

The Planning Director or their designee shall approve a major subdivision preliminary plat if it meets the standards and requirements of this Ordinance and provides for the dedications and improvements, or payments and guarantees in lieu thereof, required by this Ordinance.

The Planning Director or their designee shall reject the preliminary plat on any of the following grounds:

1. That it fails to fully comply with all applicable requirements of this Ordinance;
2. That it fails to provide safe conditions for pedestrians or motorists, such as a dangerous arrangement of pedestrian and vehicular ways; or

3. That it fails to provide safe ingress and egress for emergency services to the site.

If the Planning Department rejects the preliminary plat, then a notice of determination shall be provided to the applicant via personal delivery, electronic mail, or first-class mail.

F. CHANGES TO PREVIOUSLY APPROVED PRELIMINARY PLATS

The Planning Director or their designee shall have the authority to approve revisions to a previously approved preliminary plat, provided the following conditions are met:

1. That all changes conform to the minimum required standards for the zoning district in which the property is located;
2. That the effect of the landscaping, buffers, or screening on the site, or on the approved preliminary plat, is not diminished;
3. That the number of access points to public streets is neither increased nor substantially relocated;
4. That the circulation pattern provides for the safe, controlled, and orderly flow of pedestrians and vehicles;
5. That the changes do not otherwise violate any provision of this Ordinance, the City Code, or other applicable laws; and
6. That the use and development of the property is otherwise in full compliance with the requirements of this Ordinance and any conditions of approval.

G. EFFECT AND DURATION OF PRELIMINARY SUBDIVISION PLAT APPROVAL

Preliminary plat approval shall remain valid for two years from the date of approval, unless an associated special use permit expires, in which case, the preliminary plat shall also expire. Preliminary subdivision plans commenced within the two-year period shall have all phases of the subdivision completed within five years of preliminary plat approval. Minor Subdivision Plats and Final Plats of approved Major Subdivisions

A minor subdivision is defined as a subdivision where all of the following conditions exist:

1. No public right-of-way dedication is necessary;
2. No variances are necessary or requested;
3. The subdivision has three lots or less; and
4. The entire tract to be subdivided is three acres or less in size.

The Planning Director or his designee shall approve or disapprove subdivisions and final plats in accordance with the provisions of this Ordinance.

The applicant for subdivision plat approval, before complying with the subsection below, shall submit a preliminary plan to the Planning Director for a determination of whether the approval process authorized by this Section may be and should be utilized. The Planning Director may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all the lots previously subdivided from that tract within the previous five years.

Applicants for minor subdivision approval shall submit to the Planning Director a final plat conforming to the requirements set forth in Appendix A. The Planning Director shall take expeditious action on an application for a minor subdivision plat approval. However, the applicant may at any time refer the application to the major subdivision approval process.

Not more than three (3) lots shall be created out of one tract using the minor subdivision approval process, regardless of whether the lots are created at one time or over an extended period of two (2) years.

If the subdivision fulfills all the requirements of this Ordinance, the Planning Director shall approve it. If the subdivision does not fulfill one or more of the requirements of this Ordinance, the Planning Director shall furnish the applicant with a written decision of the reasons for its disapproval.

H. PLAT APPROVAL NOT ACCEPTANCE OF DEDICATION OFFERS

Approval of a final plat does not constitute acceptance by the City of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the City may accept any such offer of dedication by resolution of the Council or by actually exercising control over and maintaining such facilities.

I. PLACEMENT OF PERMANENT REFERENCE POINTS

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with the following requirements.

1. Subdivision corner tie - At least one control corner of the subdivision shall be designed by course and distance (tie) from a readily discernible reference marker. If a corner is within 2,000 feet of a U.S. Coast and Geodetic Station or N. C. Grid System coordinated monument or City coordinated system, then this corner shall be marked with a monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this station or monument and to an accuracy of 1:10,000. When such a monument or station is not available, the tie shall be made to a pertinent, readily recognizable landmark, identifiable point, physical object or structure.

2. Monuments - Within each block of a subdivision, at least two monuments designed as control corners shall be installed. All monuments shall be constructed of concrete and shall be at least four inches in diameter or square and not less than three feet in length. Each monument shall be imbedded in the ground and flush with its top to serve as the point, a copper or bronze wire at least four inches in length and not less than .3249 (#0) in diameter. Such monument shall be set at least 30 inches in the ground with at least six inches exposed above the ground unless this requirement is impractical because of traffic or other factors. The surveyor shall employ additional monuments when required.
3. Property markers - A steel or wrought iron pipe or the equivalent not less than three-fourths inches in diameter and at least 30 inches in length shall be set at all corners, except those located by monuments. A marker shall be set at a point of curve, point of intersection, property corner, point of tangency, reference point and tangent unless a monument has already been placed at these points. Additional markers shall be placed at other points of importance when required.
4. Accuracy - Land surveys within the City and the extraterritorial jurisdictional limits shall be at an accuracy of at least 1:10,000.

J. APPEALS OF SUBDIVISION DECISIONS

Appeals of subdivision decisions shall follow the quasi-judicial process described in Section 2.4.9., Appeals. Decisions may be appealed to the Board of Adjustment or superior court.

2.2.9. IMPROVEMENT GUARANTEES

A. AGREEMENT

In lieu of meeting the requirement for the completion, installation and dedication of any and all improvements (e.g., landscaping, water, sewer, street lights, etc.) prior to final plat approval for subdivisions or certificate of occupancy for zoning, vested rights, zoning compliance, special use permits, the City of Goldsboro or its authorized agent may enter into a written agreement with the developer whereby the developer shall agree to complete and warrant all required improvements. Once both parties sign the agreement and the security required herein is provided, the final plat or certificate of occupancy may be approved by the issuing authority, Zoning Administrator or authorized agent, if all other requirements of this Ordinance are met. To secure this agreement, the developer shall provide either one or a combination of the following guarantees equal to the entire cost of the improvements secured.

B. SURETY PERFORMANCE GUARANTEE

Pursuant to NC GS § 160D-804, specifically section (g), the developer shall obtain a performance guarantee subject to approval by the Planning Director. The bond shall be payable to the City of Goldsboro (or its authorized agent) and shall be in an amount equal to 125% of the remaining cost, as estimated by the developer and verified by the City, of installing all required improvements. Any expenses associated with the cost verification by the City shall be paid entirely by the developer.

C. RELEASE OF GUARANTEE SECURITY

The City may release a portion of any security posted as the improvements are completed and recommended for approval by the Planning Director. Within thirty days after receiving the Planning Director's recommendation, the City Engineer shall approve or disapprove said improvements. When the City Engineer approves said improvements, the City shall immediately release the portion of the security posted which covers the cost of the approved improvements. Requests for release of any security shall be equal to at least 51% of the total security or the remainder in whole.

D. WARRANTY AGAINST DEFECTS

The applicant shall warrant the improvements against defects in workmanship and materials for a period of one year from the date of acceptance of such improvements. In exceptional situations, where undue hardship would otherwise result and the shorter term would not be inconsistent with the purposes of this Ordinance, the City Engineer may approve a shorter-term guarantee. The guarantee shall be secured by a surety bond or cash escrow in an amount reflecting five percent of the cost of the completed improvements.

If necessary, the applicant shall construct and pay for all costs of any temporary improvements required by the City Engineer and shall maintain said temporary improvements for the period specified by the City Engineer.

Thirty days prior to the expiration of the guarantee instrument, if any defects in workmanship and/or materials are not repaired to the satisfaction of the City Engineer, the applicant/developer shall be required to make all necessary repairs immediately.

E. DEFAULT

Upon default, meaning failure on the part of the developer to complete or warrant the required improvements in the time required by this Ordinance or as spelled out in the performance guarantee or an escrow agreement, then the surety, or financial institution holding the escrow account, shall pay all or any portion of the guarantee the City of Goldsboro up to 125% of the amount needed to complete the improvements based on an estimate by the City. Upon payment, the City, in its discretion, may expend such portion of said funds, as it deems necessary to complete or repair all or any portion of the required improvements. The City shall return to the developer any funds not spent in completing the improvements.

2.2.10. ZONING COMPLIANCE CERTIFICATES

A. PURPOSE

A zoning compliance certificate is required to ensure that a proposed development complies with all the applicable standards of this Ordinance.

B. APPROVAL PROCEDURE

A certificate of zoning compliance shall be required prior to approval of all residential and non-residential building permits not covered by any other approval process in this Ordinance and before the issuance of the final certificate of occupancy for all projects. A zoning compliance certificate shall also be required for any change in use or change in occupancy that triggers additional off-street parking, landscaping, buffering or other requirements in accordance with this Ordinance.

An application for a certificate of zoning compliance shall be filed with the Planning Department on a form prescribed by the department.

C. STAFF REPORT

The planning/inspections/engineering staff shall review zoning compliance requests in light of the approval criteria listed below and the standards of this Ordinance and provide to the Planning Director its recommendation regarding whether to approve or reject the zoning compliance certificate.

D. APPROVAL CRITERIA

The approval criteria for a zoning compliance certificate shall be all the zoning standards contained in this Ordinance that are applicable to the proposed use and type of development.

E. PLANNING DIRECTOR ACTION ON ZONING COMPLIANCE CERTIFICATE

After reviewing the recommendations of the staff and within thirty days of the receipt of a completed application, the Planning Director shall:

1. Approve the application as made; or
2. Approve the application with modification; or
3. Reject the application.

F. REHEARING

If the Planning Director decides to reject the application, the applicant shall have thirty days from the date of rejection to submit a corrected application without paying another application fee. If a corrected application is not resubmitted within thirty days, the application shall be considered withdrawn and a new application fee shall be required for future submissions.

G. APPEALS

Appeals of subdivision decisions shall follow the quasi-judicial process described in Section 2.4.9, Appeals. Decisions may be appealed to the Board of Adjustment or superior court.2.2.10 Watershed Protection

H. PERMITS REQUIRED

Within certain areas of the City designated as Watershed Areas - (Critical Area) or (Protected Area) additional permits are needed for certain types of land disturbing activities. Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of Section 5.8 (Water Supply Watershed Protection Overlay District).

Where development exceeds either two residential units per acre or 24 percent built upon area, a High Density Development Permit shall be required. High Density Development Standards are outlined in Section 5.8 of this Ordinance.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit or High-Density Development Permit is required until that permit has been issued.

The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of Section 5.8 of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

Watershed Protection Permits are issued under this Ordinance only when the application and necessary plans have been submitted and indicate that the development will comply with the provisions of this Ordinance. Such plans and applications as are finally approved are incorporated into any permit issued. All development shall occur strictly in accordance with approved plans and applications.

All permits shall be issued in the name of the applicant or the principal, if submitted by an agent. The permit shall identify the property involved, the proposed use, incorporate by reference the plans submitted and contain any special conditions or requirements lawfully imposed by the permit issuing authority.

A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of issuance.

I. WHO MAY SUBMIT PERMIT APPLICATIONS/ SUBMISSION REQUIREMENTS

Applications for Watershed Protection Permits and High Density Development Permits will be accepted only from persons having the legal authority to take action in accordance with the permit or subdivision plat approval. By way of illustration, this means that applications should be made by the owners, their agents, lessees or persons who have contracted to purchase the property contingent upon permit approval. The Watershed Administrator may require an applicant to submit evidence of his authority to make the application, whenever there appears to be a reasonable basis for questioning this authority.

J. APPLICATION DEADLINES

All applications for permits requiring Planning Commission, City Council or Watershed Review Board or administrative review shall be submitted to the Watershed Administrator four weeks prior to the date of the meeting at which the application will be reviewed.

K. STAFF CONSULTATION BEFORE FORMAL APPLICATION

To minimize development planning costs, avoid misunderstanding or misinterpretation and ensure compliance with the requirements of this Ordinance, pre-application consultation between the developer and the planning staff may be required. The applicant is encouraged to arrange a pre-application consultation at least ten days prior to the application deadline.

The Administrator shall meet with the developer as soon as possible to review the preliminary plan. Before submitting an application for any other permit, developers are strongly encouraged to consult with the planning staff concerning the application of this Ordinance to the proposed development.

L. STAFF CONSULTATION AFTER THE APPLICATION HAS BEEN SUBMITTED

Upon receipt of a formal application for a Watershed Protection Permit, the Administrator shall review the application and confer with the applicant to ensure that he understands the planning staff's interpretation of the requirements of this Ordinance, that he has submitted all of the information that he intends to, and that the application and accompanying plans represents precisely and completely what he proposes to do. However, if the Administrator believes that the application is incomplete, he shall reject the application and inform the applicant of its deficiencies.

M. GENERAL THRESHOLDS FOR DETERMINING APPROVAL AUTHORITY

The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept

on file and shall be available for public inspection during regular office hours of the Administrator.

The City Council may approve high-density development proposals consistent with the following standards:

- (1) WS-IV Watershed Areas- Critical Area (WS-IV-CA). Where new development exceeds either 2 dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.
- (2) WS-IV Watershed Areas- Protected Area (WS-IV-PA). Where new development exceeds either 2 dwelling units per acre or 24% built-upon area or 3 dwelling units per area or 36% built-upon area for projects without curb and gutter street systems, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

Application for a High Density Development shall be approved by the City Council.

N. WATERSHED PROTECTION PERMITS CRITERIA FOR APPROVAL

A completed application form and the accompanying plans for a Watershed Protection Permit shall be submitted by filing a copy of the application with the Watershed Administrator in the Planning Department. A Watershed Protection Occupancy Permit, either for the whole or part of a building shall be applied for coincident with the application for the Watershed Protection Permit, and shall be issued or denied within ten (10) days after the erection or structural alterations of the building have been satisfactorily completed. The Watershed Administrator shall issue the Watershed Protection Permit unless he finds, after reviewing the application and consulting with the applicant that:

- 1) The permit request is not within his review authority according to the general thresholds for approval; or
- 2) The application is incomplete; or
- 3) If completed as proposed in the application the development will not comply with one or more requirements of this Ordinance, with special attention to Section 5.8, Water Supply Watershed Protection Overlay. District

O. COUNCIL ACTIONS ON HIGH DENSITY DEVELOPMENT PERMITS

In considering whether to approve an application for a High Density Development Permit, the Council shall proceed according to the following format. The Council vote need only achieve a simple majority to reach a decision.

The Council shall consider whether the application complies with all the applicable requirements of this Ordinance. If a motion to this effect passes, the Council need not make further findings concerning such requirements and may issue the permit. If such a motion

fails or is not made, a motion shall be made that the application be found not in compliance with one or more of the requirements of this Ordinance. Such a motion shall specify the requirements that have not been met.

If the Council concludes that the application complies with all other provisions of this Ordinance, it may still deny the permit if it concludes, based upon information submitted, that, if completed as proposed, the development:

1. Will materially endanger the public health or welfare; or
2. Will substantially injure the beneficial use of adjoining or abutting property; or
3. Will not be in harmony with existing development and uses within the area in which it is located; or
4. Will not be in general conformity with the Comprehensive Plan, Thoroughfare Plan or other plan officially adopted by the Council.

Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

P. WATERSHED REVIEW BOARD ACTIONS ON WATERSHED PROTECTION PERMITS

The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this ordinance.

Q. EXPIRATION OF PERMITS

A Watershed Protection Permit shall expire if a Building Permit for such use is not obtained by the applicant within one (1) year from the date of issuance.

R. EFFECTS OF PERMIT ON SUCCESSORS AND ASSIGNS

Watershed Protection Permits authorize the permittee to make use of the land and structures in a particular way. Such permits are transferable. However, so long as the land, structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

1. No person shall make use of the land or structures covered under the permit except in accordance with all the terms and requirements of that permit; and
2. The terms and requirements of the permit apply to and restrict the use of the land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also to persons who subsequently obtain an interest in all or part of the covered property and want to use it for a purpose other than that for which the permit was originally issued, so long as the person(s) who

subsequently obtained an interest in the property had actual or record notice (as provided for below) of the existence of the permit at the time they acquired their interest.

S. HEARING

Whenever the Administrator denies a Watershed Protection Permit, on any basis other than a failure of the applicant to submit a completed application, such action may be appealed to the Watershed Review Board by the person aggrieved within thirty days of the notification to deny the permit by following the procedures described in this Ordinance.

Whenever the Administrator denies a Watershed Protection Permit on any basis other than the failure of the applicant to submit a completed application, such action shall not be reconsidered by the respective issuing authority unless the applicant clearly demonstrates that:

- 1) Circumstances affecting the property have substantially changed; or
- 2) New information is available that could not, with reasonable diligence, have been presented at the previous meeting. A request to be heard on this basis must be filed within thirty days of the notification of the decision to deny the first application. However, such a request does not extend the period within which an official legal appeal must be filed with the superior court. (See Section 3.2.7 - Judicial review).

Notwithstanding the subsection above, the City Council, Watershed Review Board or Planning Director may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered. For the purposes of determining fees, resubmission of an application shall be treated as a new application subject to new fees.

2.3 LEGISLATIVE PROCESSES

Pursuant to NC GS § 160D Article 6, the procedure for legislative amendments to development regulations (i.e. – this Ordinance) and the official zoning map are herein described.

2.3.1. STAFF REPORT

The planning staff shall review each request in light of the standards of this Ordinance and provide to the reviewing authority its analysis of the consistency of the requested action with these standards and any adopted plans as well as its recommendation regarding whether to approve or deny the request.

2.3.2. STAFF AND PLANNING COMMISSION REVIEW

All legislative requests shall be reviewed by Planning Department and then the Planning Commission. At the Planning Commission's meeting, the staff shall present its recommendation. After taking into account the staff recommendation, and reviewing all other pertinent information, the Planning Commission shall formulate a recommendation for the City Council.

2.3.3. HEARING REQUIRED

Before making a decision on a legislative process, the City Council shall hold a public hearing on the issue.

The hearing shall be open to the public and all persons shall be given an opportunity to speak. Broad public comment is encouraged. The Council may place reasonable and equitable limitations on speakers so that the matter at issue may be heard and decided without undue delay.

The Council may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the final decision is made. No further notice of a continued hearing need be published as long as the date, time and location of the continued hearing is announced prior to the close of the initial hearing.

2.3.4 NOTICE OF HEARING

The Administrator shall give notice of any hearing required by NC GS § 160D-602, and, to the extent not inconsistent with, as follows:

1. Notice of the public hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days or more than twenty-five days before the date of the hearing. In computing this period, the date of publication shall not be counted, but the date of the hearing shall be.

2. Notice of a rezoning or conditional rezoning public hearing shall be given to neighboring property owners by mailing a written notice not less than ten days but no more than twenty-five days before the hearing to those persons who have listed for taxation real property any portion of which is within 100 feet of the lot that is the subject of the petition.
3. If a rezoning or conditional zoning directly affects more than fifty properties owned by at least fifty different property owners, notice shall be given through the requirements of G.S. § 160D-602(b).
4. The notice required by this Section shall set the date, time and place of the hearing, reasonably identify the lot that is the subject of the petition and give a brief description of the action requested or proposed.

2.3.5. EVIDENCE

No rules of evidence are required for a legislative hearing. Members of the Council are permitted to discuss the case and gather information outside of the hearing. Exhibits including, photographs, documents, maps etc. may be presented at the hearing. Any exhibit presented becomes part of the record and must be retained by the issuing authority.

2.3.6. MODIFICATION OF APPLICATION AT HEARING

In response to questions or comments by persons appearing at the hearing or to suggestions by the City Council, Planning Commission or City Staff, the applicant may agree to modify his application, including the plans and specifications submitted.

Unless such modifications are so substantial or extensive that the Council cannot reasonably be expected to perceive the nature and impact of the changes without revised plan review, the issuing authority may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to and accepted by the planning staff.

2.3.7. RECORD

A record shall be made of all hearings, such recordings shall be kept as provided by state law. Minutes, identifying speakers and summarizing their testimony, shall also be kept of all such proceedings, but a transcript need not be made. Documentary evidence and exhibits presented at a hearing may be made a part of the record of the proceedings.

2.3.8. WRITTEN DECISION

Any decision made by the City Council regarding a rezoning or Ordinance amendment shall become part of the public record.

2.3.9. JUDICIAL REVIEW

Every decision of the City Council granting, denying or revoking a legislative decision shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs.

1. A written copy of the Council's decision has been filed in the office of the Planning Department; and
2. A written copy of the Council's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

2.3.10. REZONINGS

A. PURPOSE

The City Council in accordance with the procedures set forth in this Section, may amend/change the classification of a property appearing on the Official Zoning Map, also known as a "rezoning." The purpose is not to relieve particular hardships, nor to confer special privileges, but only to make adjustments to the Zoning Map that are necessary in light of changed conditions or changes in public policy or that are necessary to advance the general welfare of the City.

B. CONDITIONAL ZONING DIFFERENTIATED

The following standards specifically apply to conventional rezonings. Applicable parts of this section may also apply to the review of conditional zoning districts, which are further described in Section 2.3.11, Conditional Zoning Districts).

C. APPROVAL PROCEDURE

A rezoning may be initiated by any review or decision-making body, any owner (or legally authorized agent) of a legal or equitable interest in land located in the City or its extraterritorial jurisdiction.

All applications for rezonings shall be submitted four weeks prior to the date of the next regularly scheduled meeting at which public hearings are held and applications reviewed. Such meetings, concerning amendments, rezonings or repeals are held monthly at the second regular meeting of the City Council or at a special meeting or meetings as fixed by the City Council.

An application may be withdrawn if a written request is submitted to the Department of Planning and Community Development at least three (3) business days before the first notice of public hearing publish date. Withdrawal requests received after the abovementioned deadline must be approved or denied by the City Council at the scheduled public hearing. If an application is allowed to be withdrawn a new application may not be submitted until the expiration of six months from the date of withdrawal. The Council, however, at its own discretion, may waive or modify the six-month waiting period.

When considering a rezoning application, neither the City Council nor Planning Commission shall evaluate the application based on any specific proposal for the use or development of the affected property. The applicant shall avoid using any graphic materials or descriptions of the proposed use or development except those that would apply to any use permitted in the requested district.

D. APPROVAL CRITERIA

In deciding whether to approve a rezoning, the Planning Commission and the City Council shall consider the following factors:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact.
2. The proposed rezoning is compatible with the City of Goldsboro Comprehensive Plan and accompanying Land Use Plan Map.
3. The proposed rezoning and the range of uses permitted in the requested zoning district are compatible with the surrounding zoning patterns and land uses.
4. The City or other service providers will be able to provide sufficient public safety service, meet transportation and utility demands to the subject property, while maintaining sufficient levels of service to existing developments.
5. The proposed rezoning will not impair or injure the health, safety and general welfare of the public.

E. PUBLIC HEARING REQUIRED

A public hearing shall be held in accordance with the procedures detailed in Section 2.3, Legislative Processes.

F. CITY COUNCIL ACTION ON REZONINGS

After reviewing the reports and recommendations of the City staff and Planning Commission and considering the views discussed at the public hearing, the City Council shall, within ninety days of the public hearing, based on the approval criteria listed in Section 2.6.6 (Approval Criteria), do one of the following:

1. Approve the rezoning or conditional zoning district; or
2. Approve the rezoning or conditional zoning district, but to a more restrictive district, with consent from the applicant (See below); or
3. Approve the rezoning or conditional zoning district, but with a reduction in the area requested; or
4. Approve the rezoning or conditional zoning district with a combination of 2 and 3 above; or
5. Reject the proposed rezoning or conditional zoning district; or
6. Refer the proposed rezoning or conditional zoning district back to the Planning Commission and City staff for further consideration.
7. Approve as a conditional zoning district with conditions agreed to by the applicant.

G. REHEARING

No reapplication, connected to the same property or any part thereof, for a rezoning shall be filed until the expiration of six months from the date of denial, unless the City Council finds that there has been a substantial change in the conditions or circumstances bearing on the application. The six-month waiting period shall not be applicable or otherwise be involved in the filing of a new application for a change of zone for all or any part of the property previously considered by the City Council where the new application requests a change of zone to a more restrictive zoning district classification.

2.3.11. CONDITIONAL ZONING DISTRICTS

A. PURPOSE

Conditional zoning districts (CZD) are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property.

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations and the adopted Comprehensive Land Use Plan. The review process established in this Part provides for the accommodation of such uses by a reclassification of property into a conditional zoning

district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties.

B. CONDITIONAL ZONING DISTRICTS ESTABLISHED

A parallel conditional zoning district is a conditional zoning district in which the potential permitted use or uses are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in a general district having a parallel designation or name. The following parallel zoning district categories are conditional zoning districts:

Conditional Zoning Districts (CZDs)

Agricultural – AG CZD

Residential – R-40 CZD

Residential – R-20A CZD

Residential – R-20 CZD

Residential – R-16 CZD

Residential – R-12SF CZD

Residential – R-12 CZD

Residential – R-9SF CZD

Residential – R-9 CZD

Residential – R-6SF CZD

Residential – R-6 CZD

Residential – RM-9 CZD

Residential – RM-8 CZD

Office-Residence – OR CZD

Office and Institutional – O&I-1 CZD

Office and Institutional – O&I-2 CZD

Neighborhood Business – NB CZD

Central Business District – CBD CZD

Highway Business – HB CZD

Shopping Center – SC CZD

General Business – GB CZD

Airport Business – AB CZD

Light Industry – I-1 CZD

General Industry – I-2 CZD

Note: The Planned Industrial and Business Park districts do not have a corresponding CD.

C. PROCEDURE

A rezoning to a CD shall be initiated only by an application signed by all the owners of the property or by an agent who has written authorization from all of the owners to file such application for such amendment.

The applicant shall submit an application for a CZD along with a concept plan that shall specify the location(s) of use(s) that are intended for the property, major roads and external connections, open spaces, as well as any additional conditions on the use of the property that the applicant proposes. The conditions may include, but shall not be limited to the location of uses on the site; number of dwelling units; location and extent of accessory and support facilities, such as sidewalks, parking, driveways, access streets; the extent and character of buffer areas; the location, character and extent of open space; the height of any structure; or the timing of the development. A public hearing is not required for concept plan approval unless specified as a condition of rezoning approval by the City Council. Any site plan drawing or subdivision plat meeting the standards above and the standards of Sections 2.2.6. or 2.2.7, and with uses clearly designated, and approved by Council as part of a Conditional Rezoning shall not require additional review as a special use, even if identified as such on the Table of Permitted Uses (See table in Section 5.4).

A concept plan shall include the following:

1. The correct number of external, cross-access, and adjacent property stub-out access points, although the exact location may be modified through subsequent review.
2. The uses desired and their general location and intensity or density. Conditional zoning shall include a table of permitted uses for the proposed district. It shall include all uses listed in the table of permitted uses and whether they are included or excluded
3. The appropriate setbacks, dimensional standards, and other regulations for each zoning district, use, or area. Conditional zoning requests shall include a table of dimensional standards based on the general zoning district with any updated or altered dimensions.

All applications for CD's shall be submitted four weeks prior to the date of the next regularly scheduled meeting at which public hearings are held and applications reviewed.

D. STAFF AND PLANNING COMMISSION REVIEW

The CD request shall be reviewed by the Planning Commission. At the Planning Commission's meeting, the staff shall present its recommendation. After taking into account the staff recommendation, and reviewing all other pertinent information, the Planning Commission shall formulate a recommendation for the City Council.

E. PUBLIC HEARING REQUIRED

Before the City Council makes a final determination on any conditional zoning district, a public hearing shall be held in accordance with the procedures detailed in Section 2.3 Legislative Processes.

F. APPROVAL CRITERIA

In deciding whether to approve a conditional zoning district, the Planning Commission and the City Council shall consider the factors listed in 2.3.10., Rezoning approval criteria.

G. EFFECT OF APPROVAL

(1) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the ordinance requirements of the parallel general zoning district except those superseded by specific conditions, the approved concept plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Official Zoning Map.

(2) If a petition is approved, the petitioner shall comply with all requirements for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and concept plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to this

Ordinance. The changes to the concept plan layout shall not increase the number of structures or dwelling units permitted.

(3) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Maps by the appropriate district designation. A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters "CD" (for example "R-12 CD").

(4) Any conditional zoning district approved on or after October 1, 1991, shall have vested rights pursuant to G.S. § 160D-108 for the period of time established pursuant to this Zoning Ordinance, except as such vested rights may be altered as allowed by G.S. § 160D-108. Vested rights shall remain effective beyond the end of one year. Notwithstanding, the foregoing, property governed by this subsection shall not include as a permitted use an adult establishment or sexually oriented business, unless the approved concept plan explicitly provides that an adult establishment or sexually-oriented business is a permitted use.

H. ADMINISTRATIVE MODIFICATIONS

- (1) Except as provided in the subsection two below, modifications to an approved petition or to the conditions attached to the approved petition shall be treated the same as modifications to these regulations or to the Zoning Maps and shall be processed in accordance with the procedures in this Chapter.
- (2) The Planning Director or designee shall have the delegated authority to approve an administrative modification change to an approved concept plan. The standard for approving or denying such a requested change shall be that the change does not significantly alter the concept plan or its conditions and that the change does not have a significant impact upon abutting properties.
- (3) The Planning Director or designee, however, shall always have the discretion to decline to exercise the delegated authority either because the designee is uncertain about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and City Council consideration is deemed appropriate under the circumstances. If the Planning Director or designee declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and Council decision.
- (4) Any request for an administrative modification shall be pursuant to a written letter, signed by the property owner, to the Planning staff detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Accompanying the letter shall be the applicable fee for administrative review. Upon an approval of an administrative modification, the applicant must file a sufficient number of copies of a revised concept plan as deemed necessary by the Planning Director.
- (5) If the Planning Director or designee denies approval of the requested modification, then the applicant can appeal that decision to the Board of

Adjustment for its review and decision. An appeal to the Board of Adjustment will require filing a revised application and concept plan, submittal of the required filing fee and another public hearing.

2.3.11. ORDINANCE TEXT AMENDMENT APPROVAL

A. PURPOSE

The City Council in accordance with the procedures set forth in this Section, may amend the text of this Ordinance. The purpose is not to relieve particular hardships, nor to confer special privileges, but only to make adjustment to the text of this Ordinance that are necessary in light of changed conditions or changes in public policy or that are necessary to advance the general welfare of the City.

B. APPROVAL PROCEDURE

An amendment to the text of this Ordinance may be initiated by any review or decision-making body, city staff, any owner (or legally authorized agent) of a legal or equitable interest in land located in the City or its extraterritorial jurisdiction.

All applications for text amendments shall be submitted four weeks prior to the date of the next regularly scheduled meeting at which public hearings are held and applications reviewed. Such meetings, concerning amendments, rezonings or repeals are held monthly at the second regular meeting of the City Council or at a special meeting or meetings as fixed by the City Council.

All applications for text amendments shall include a reference to the specific section, subsection, paragraph or item proposed to be changed, as well as the exact wording of the proposed change and the reasons therefore.

C. STAFF CONSULTATION BEFORE FORMAL APPLICATION

To avoid misunderstanding or misinterpretation and ensure compliance with the requirements of this Ordinance, pre-application consultation between the applicant and the planning staff may be required as provided by this Section. The applicant is encouraged to arrange a preapplication consultation at least ten days prior to the application deadline.

D. APPROVAL CRITERIA

In deciding whether to approve a text amendment, the Planning Commission and the City Council shall consider the following factors:

1. Whether the proposed amendment corrects an ambiguity or error or meets the challenge of some changing condition, trend or fact;
2. Whether the proposed amendment is consistent with the Comprehensive Plan and associated Land Use Plan Map and any other adopted plans; and

3. Whether the proposed amendment will impair or injure the health, safety and general welfare of the public.

E. PUBLIC HEARING REQUIRED

A public hearing shall be held in accordance with the procedures detailed in Section 2.3 Legislative Processes.

F. STAFF AND PLANNING COMMISSION REVIEW

Following the public hearing, the text amendment request shall be reviewed by the Planning Commission. At the Planning Commission's meeting, the staff shall present its recommendation. After taking into account the staff recommendation, and reviewing all other pertinent information, the Planning Commission shall formulate a recommendation for the City Council.

G. CITY COUNCIL ACTION ON TEXT AMENDMENTS

After reviewing the reports and recommendations of the City staff and Planning Commission and considering the views discussed at the public hearing, the City Council shall, within ninety days of the public hearing, based on the approval criteria listed above and do one of the following:

1. Approve the text amendment as written; or
2. Approve the text amendment, with modifications; or
3. Reject the text amendment; or
4. Refer the proposed text amendment back to the Planning Commission and/or City staff for further consideration.

H. REHEARING

No reapplication, connected to the same or substantially the same issue, for a text amendment shall be filed until the expiration of six months from the date of denial, unless the City Council finds that there has been a substantial change in the conditions or circumstances bearing on the application.

2.4 QUASI-JUDICIAL PROCESSES

2.4.1. STAFF REPORT

The planning staff shall review each request in light of the standards of this Ordinance and provide to the reviewing authority a report of how the requested action is (or is not) consistent with these standards and any adopted plans.

2.4.2 EVIDENTIARY HEARING REQUIRED ON APPLICATIONS AND APPEALS

Before making a decision on an appeal, or an application for a variance, special use permit, , the Board of Adjustment, Watershed Review Board (for variance from Watershed Protection standards, pursuant to Section 5.8), or City Council, as the case may be, shall hold an evidentiary hearing on the application or appeal.

The hearing shall be open to the public and all persons shall be given an opportunity to present evidence, oral or written, offer sworn testimony and direct questions to the issuing authority regarding other evidence or testimony. The reviewing authority may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.

The issuing authority hearing an appeal or application may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the final decision is made. No further notice of a continued hearing needs to be published unless a period of six weeks or more elapses between hearing dates.

2.4.3 NOTICE OF EVIDENTIARY HEARING

The Administrator shall give notice of any hearing required as prescribed in 2.3.4, Notice of Hearing.

2.4.4 EVIDENCE

All findings and conclusions necessary to the issuance or denial of the quasi-judicial decision shall be based upon sworn testimony and admitted evidence. Competent, substantial and material evidence (evidence admissible in a court of law) shall be required. Findings cannot be based on conjecture, assumptions or hearsay evidence alone. Opinion evidence, unless offered by a properly qualified expert, is generally not allowed and cannot be the basis for critical findings.

Members of the issuing or hearing authority are not allowed to discuss the case or gather evidence outside of the hearing. Only the facts presented to the full body at the hearing may be considered.

Exhibits including, photographs, documents, maps etc. may be presented at the hearing. Any exhibit presented becomes part of the record and must be retained by the issuing authority.

2.4.5 MODIFICATIONS OF APPLICATION AT HEARING

In response to questions or comments by persons appearing at the hearing or to suggestions by the City Council, Planning Commission, Board of Adjustment or City Staff, the applicant may agree to modify his application, including the plans and specifications submitted.

Unless such modifications are so substantial or extensive that the issuing authority cannot reasonably be expected to perceive the nature and impact of the changes without revised plan review, the issuing authority may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to and accepted by the planning staff.

2.4.6 RECORD

A record shall be made of all hearings required and such recordings shall be kept as provided by state law. Minutes, identifying witnesses and summarizing their testimony, shall also be kept of all such proceedings, but a transcript need not be made. All documentary evidence and exhibits presented at a hearing shall be made a part of the record of the proceedings.

2.4.7 WRITTEN DECISION

Any decision made by the Board of Adjustment, Watershed Review Board, or City Council regarding an appeal, variance, or issuance or revocation of a special use permit shall be made in writing and served upon the applicant, appellate or other persons who make a written request for a copy. In addition to a statement of the issuing authority's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the issuing authority's findings and conclusions, as well as supporting facts or reasons, whenever this Ordinance requires the same as a prerequisite to taking action.

2.4.8 JUDICIAL REVIEW

Every quasi-judicial decision shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs:

1. Receipt of the written notice of the determination withing which to file an appeal;; and

2. Notice pursuant to G.S. § 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United State Postal Service..

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

2.4.9 APPEALS

The Board of Adjustment or the Watershed Review Board shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. § 160D-405 and 406 apply to these appeals.

A fee as established by resolution of the City Council shall accompany each Board of Adjustment appeal. No appeal shall be accepted, and no public hearing scheduled until the necessary fees have been paid. No fee pursuant to this paragraph shall be refunded.

2.4.10 SPECIAL USE PERMITS

A. STAFF CONSULTATION AFTER THE APPLICATION HAS BEEN SUBMITTED

Upon receipt of a formal application for a special use permit approval, the Director of Planning and Community Development or his designee shall review the application and confer with the applicant to ensure that he understands the planning staff's interpretation of the requirements of this Ordinance, that he has submitted all of the information that he intends to, and that the application and accompanying plans represents precisely and completely what he proposes to do.

If the application is for a special use permit, the Director of Planning and Community Development shall place the application on the agenda of the appropriate Board when the applicant indicates the application is as complete as he intends to make it. However, if the Director of Planning and Community Development believes that the application is incomplete or finds substantial deficiencies in the submitted plans, he shall reject the application and inform the applicant of its deficiencies.

B. TYPES OF SPECIAL USE PERMITS

The Table of Permitted Uses found in Article 5 indicates two types of special use permits. S1 requires review and approval or denial by the Board of Adjustment. S2 requires review and approval or denial by the City Council.

C. SPECIAL USE PERMITS CRITERIA FOR APPROVAL

An application and accompanying plans for a special use permit shall be submitted to the Board of Adjustment or City Council (which may hereafter be referred to as

“Board”, as applicable based on the body reviewing the application) by filing a copy of the application with the Administrator in the Planning Department.

Subject to subsection below, the Board of Adjustment or the Council shall issue the requested permit unless it concludes, based upon the information submitted at the hearing that;

1. The permit request is not within its review authority according to the table of permitted uses; or
2. The application is incomplete; or
3. If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance, not including those requirements for which a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Section 5.6 (Nonconforming Situations).

Even if the permit-issuing Board finds that the application complies with all the other provisions of this Ordinance, it may still deny the permit if it concludes, based upon information submitted at the hearing that if completed as proposed the development:

1. Will materially endanger the public health or welfare; or
2. Will substantially injure the beneficial use of adjoining or abutting property; or
3. Will not be in harmony with existing development and uses within the area in which it is located; or
4. Will not be in general conformity with the Comprehensive Plan, Thoroughfare Plan or other plan officially adopted by the Council.

D. EVIDENTIARY HEARING REQUIRED

Before the City Council or Board of Adjustment makes a final determination on special use permits a public hearing shall be held in accordance with the procedures detailed in 2.4 (Quasi-judicial Processes).

Where a special use permit and a variance are both required, the Board of Adjustment shall hear the variance case prior to any special use permit evidentiary hearing.

E. RECOMMENDATIONS ON SPECIAL USE PERMIT APPLICATIONS

When presented to the Board of Adjustment or City Council at the hearing, the application for a special use permit shall be accompanied by a report setting forth the planning staff's findings concerning the application's compliance with the requirements of this Ordinance as well as any staff recommendations for additional

requirements to be imposed by the Board of Adjustment or City Council. The report shall be made part of the evidentiary hearing record.

If the staff proposes a finding or conclusion that the application fails to comply with any of the requirements of this Ordinance, it shall identify the requirement in question and specifically state the reasons supporting such a finding or conclusion.

Per G.S. § 160D-406, objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

F. BOARD OF ADJUSTMENT OR CITY COUNCIL ACTION ON SPECIAL USE PERMITS

In considering whether to approve an application for a special use permit, the Board of Adjustment or City Council shall follow the statutory procedures for quasi-judicial decisions, as described in NC GS § 160D-705.

1. The Board shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes by the necessary simple-majority vote, the Board or Council need not make any further findings and may issue the permit. If such a motion is not made or fails to receive the required simple-majority vote, then a motion shall be made that the application is not in compliance with one or more of the requirements of this Ordinance. Such a motion shall specify the requirements the application failed to meet.
2. If the Board concludes that the application complies with all other provisions of this Ordinance, it may still deny the application for one or more of the reasons specified herein. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

G. ADDITIONAL CONDITIONS ON SPECIAL USE PERMITS

In granting a special use permit, the Board may attach to the permit additional reasonable conditions beyond the provisions in this Ordinance, to ensure that the development in its proposed location:

1. Will not materially endanger the public health, safety or welfare; or
2. Will not substantially injure the beneficial use of adjoining or abutting property; or
3. Will be in harmony with existing development and uses within the area in which it is located; or
4. Will be in general conformity with the Comprehensive Plan, Thoroughfare Plan or other plan officially adopted by the Council.

The Board shall not impose conditions on special use permits that the Board does not otherwise have statutory authority to impose.

H. MAINTENANCE OF REQUIRED COMMON AREAS, IMPROVEMENTS AND FACILITIES

The recipient of any sign, special use permit, subdivision approval, or site plan approval or his successor, shall be responsible for maintaining all common areas, improvements and facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements and facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority.

I. MULTI-PHASE DEVELOPMENTS

Multi-phase developments, long-term projects of at least 25 acres

If a development is constructed in phases in accordance with this Section, the provisions of Section 2.1.2. (No Occupancy, Use or Sale of Lots until Requirements Fulfilled) and Section 2.2.8. (Improvement Guarantees) shall apply to each phase as if it were the entire development.

The developer shall submit plans that clearly show the various phases of the proposed development and that the requirements of this Ordinance will be satisfied by each phase.

If a development that is to be built in phases includes improvements that are designed to be used or benefit the entire development, then, as part of his application for development approval, the developer shall submit a proposed schedule for the completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases of the entire development. Once a schedule has been approved and made part of the permit, no land may be used, no building occupied and no subdivision lot sold except in accordance with the schedule approved as part of the permit and/or the requirements imposed by Section 2.2.8 (Improvement Guarantees).

J. Expiration of Permits

Special use permits shall comply with the standards for site specific vesting plans.

In either of the following instances, building permits shall expire six (6) months after the issuance of the permit:

1. The use authorized by such permits has not commenced, in circumstances where no substantial (i.e. no building permit is needed) construction, alteration, demolition or similar work is necessary before commencement of such use.

2. Less than ten percent of the total cost stated on the permit application (as determined by the Inspections Department) of all construction, alteration, demolition or similar work on any development authorized by such permits has been completed on the site.

The Planning Director shall grant a one-time extension of up to six (6) months from the original expiration date provided the owner or owner's agent submits a written request for an extension at least thirty (30) days prior to the expiration date.

If after some physical alteration to land or structures begins and work is discontinued for a period of twelve (12) consecutive months, then the permit authorizing such work shall immediately expire, pursuant to the standards for vested rights per NC GS 160D-108

After approval of a site specific vesting plan and vested rights certificate, if no substantial physical alteration to land or structures has begun or the permitted use has not commenced, and special use permits shall expire at the end of the two-year vesting period established in accordance with Section 2.2.9 Zoning Compliance Certificates. "Substantial" shall mean installation or approval of on-site infrastructure.

All permits for special uses shall become invalid if the use for which the permit was issued is discontinued, abandoned or ceases for one hundred and eighty consecutive days.

For purposes of this Section, the special use permit within the jurisdiction of the Board of Adjustment is issued when the Board votes to approve the application and issues the permit. A special use permit within the jurisdiction of the City Council is issued when the Council votes to approve the application and issues the permit. A zoning or sign permit within the jurisdiction of the Administrator is issued when the earlier of the following takes places:

1. A copy of the fully executed permit is delivered to the permit recipient. Delivery is accomplished when the permit is hand delivered or mailed to the applicant; or
2. The Administrator notifies the applicant that the application has been approved and that all that remains for a fully executed permit to be delivered is for the applicant to take certain actions, such as having the permit executed by the property owner so it can be recorded.

Notwithstanding any of the provisions of Section 5.6 (Nonconforming Situations), this Section shall be applicable to permits issued prior to the date this Section becomes effective.

K. EFFECTS OF PERMIT ON SUCCESSORS AND ASSIGNS

Special use permits and other zoning permits (including sign permits) authorize the permittee to make use of the land and structures in a particular way. Such permits are transferable. However, so long as the land, structures or any portion thereof

covered under a permit continues to be used for the purposes for which the permit was granted, then:

No person shall make use of the land or structures covered under the permit except in accordance with all the terms and requirements of that permit; and

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

2.4.11 VARIANCES

An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning Department. Applications shall be handled in the same manner as applications for quasi-judicial procedures in conformity with the provisions in Section 2.1, General Approval Processes and NC GS § 160D-705(d), Variances. Applications for variances from the Watershed Protection Permit requirements shall be filed with the Watershed Review Board in the manner set forth in Section 2.4.11. of this Ordinance.

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in unnecessary hardships for the applicant., It may reach these conclusions if it finds that all of the following have been met:

1. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
2. 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.
3. 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
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

Note that a variance shall be granted administratively when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing

Act for a person with a disability. The granted variance shall be the least amount of deviation from the dimensional standards of this Ordinance necessary to make the necessary accommodation.

No change in permitted uses may be authorized by variance. Variances shall not be granted to lessen the required distances between incompatible uses. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of this subsection.

2.4.12 BURDEN OF PROOF IN APPEALS AND VARIANCES

When an appeal is taken to the Board of Adjustment in accordance with Section 2.4.8., the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in above, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

2.4.13 BOARD ACTION ON APPEALS AND VARIANCES

With respect to appeals, a motion to reverse, affirm or modify the order, requirement, decision or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, per G.S. § 160D-406, then the decision appealed from shall be upheld.

Before granting a variance, the Board must take a separate vote to affirm by a four-fifths majority on each of the four findings listed above. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth shall include a statement of the specific reasons or findings of fact supporting such a motion.

A motion to deny a variance may be made on the basis that any one or more of the four criteria are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by a simple majority of the Board's membership.

2.4.14 JUDICIAL REVIEW

Every decision of the Board of Adjustment shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari, pursuant to G.S. § 160D-1402.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs.

1. A written copy of the Board's decision has been filed in the office of the Planning Department; and
2. A written copy of the Board's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

2.5 VESTED RIGHTS

2.5.1 PURPOSE

The purpose of this Section is to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability and fairness in the land-use planning process and to protect the reasonable expectations of landowners in recognition that City approval typically follows significant investment in the form of site evaluation, consultant fees and planning expenses.

2.5.2 ESTABLISHMENT

Pursuant to the provisions of G.S. § 160D-102 and -108, a vested right is the right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in G.S. § 160D-108 or under common law.

A vested right shall be deemed established upon the valid approval or conditional approval, by the City Council, of a development approval following appropriate noticing and hearing requirements.

A zoning vested right is not a personal right, but shall attach and run with the land. After approval of a site-specific development plan, all successors to the original owner shall be entitled to exercise such rights while applicable.

The City Council may approve a site-specific vesting plan upon such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare.