
SECTION 17 ADMINISTRATION

17.1 ADMINISTRATOR

This Ordinance shall be administered and enforced by the Administrator. If the Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal Use of land, buildings, or structures; removal of illegal buildings or structures or addition, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violations of its provisions.

17.2 CERTIFICATE OF ZONING COMPLIANCE FOR USES ALLOWED BY RIGHT

No land shall be excavated, filled, paved, used or occupied and no building hereafter structurally altered, erected, or moved, shall be used, or its use changed until a Zoning Permit shall have been issued by the Administrator stating that the building, structure, and/or the proposed use thereof complies with the provisions of this Ordinance. No zoning permit shall be issued except in conformity with the provisions of this Ordinance unless after written order from the Board of Adjustment.

A record of all zoning permits shall be kept on file in the office of the Administrator and copies shall be furnished, on request, to any persons having a proprietary or tenancy interest in the building erected.

1. **Application Procedures for Uses by Right**

Each application for a Zoning Permit shall be accompanied by a plan in duplicate, drawn to scale, one (1) copy of which shall be returned to the Owner upon approval. A zoning permit application form can be obtained at Town Hall, and shall contain the information listed below.

A fee for processing each application for a zoning permit or certificate of zoning compliance shall be charged by the Town.

A. Single-Family and Two-Family Residential Structures

Two (2) copies of a scaled dimensional survey drawn by and certified as true and correct by a surveyor or engineer registered with the State of North Carolina which shows (a) the exact shape, dimensions and location of the lot to be built upon, and (b) the exact shape, dimensions, use and location of existing

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structures on the lot. Upon this survey shall be sketched the following: (a) the exact shape, dimensions and area of proposed location of the proposed structure(s) to be placed upon the lot; (b) all setback lines on the lot once the proposed residence is completed, affirmatively showing that the area of proposed location will meet all setback requirements; and (c) any other information that may be needed to insure that the proposed structure is in compliance with all applicable provisions of this Ordinance.

Provided, however, that if the tract that the residence is being constructed contains ten (10) acres or more, then the person applying for the zoning permit shall not be required to provide a drawing certified by an engineer or surveyor, but shall be allowed to present a non-certified sketch in lieu thereof; provided that the residence is not to be located closer than 200 feet from any of the boundaries of the tract. In the event that the proposed residence is to be located closer than 200 feet from any of the boundaries of the tract, then the applicant shall submit a certified survey with respect to those boundaries only. The sketch submitted shall in all other respects comply with the requirements set forth above.

B. Non-Residential and Other Residential Structures/Uses

A development plan, in accordance with Section 9.18, shall be submitted to the Administrator for review and approval.

C. Accessory Buildings on Residential

Two (2) copies of a sketch which shows: (a) the shape, dimensions and location of the lot to be built upon; (b) the shape, dimensions, use and location of existing structures on the lot; (c) the shape, dimensions, use and location of the accessory or agricultural structure(s) to be placed upon the lot; (d) all setback lines on the lot once the proposed accessory building is completed; and (e) any other information that may be needed to insure that the proposed accessory structure(s) will be in compliance with all applicable provisions of the Ordinance.

A fee for processing each application for a zoning permit shall be charged by the Town. The fee shall be as established from time to time by resolution of the Board of Commissioners, and must be paid by check or cash at the time an application for a zoning permit is received by the Town. Additional fees for engineering or other consultant review with respect to Development Plan review shall be paid to the Town prior to the zoning permit for such development being issued.

2. Approval Process for Uses Allowed by Right

The Administrator shall review the application, examine the plans and specifications, and may inspect the premises upon which the proposed structure is to be built. A permit shall be issued or denied within thirty (30) working days of receipt of application. After obtaining a zoning permit from the Administrator, the applicant shall apply to the Town of Waxhaw for a building permit. All building inspections in the Town of Waxhaw shall be done by the Town's Building Inspection Department.

3. Conditions for Approval for Uses Allowed by Right

Zoning permits issued on the basis of dimensional plans approved by the Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction that differs from that authorized shall be deemed a violation of this Ordinance and is subject to any and all sanctions as indicated under Section 17.5.

4. Expiration of Zoning Permit for Uses Allowed by Right

Any zoning permit shall become invalid unless the work authorized by it shall have been substantially begun within a period of six (6) months of the date of issuance of the permit. Once a zoning permit has expired, construction work on the lot(s) in question cannot proceed until a new zoning permit is issued.

5. Certificate of Compliance

No building hereafter erected or structurally altered or changed in use shall be used or occupied until the Administrator has issued a certificate of compliance. The certificate of compliance shall state that the building or portion of a building is in compliance with the provisions of this Ordinance, and with the information stated on the zoning permit.

6. Application for a Certificate of Compliance

A certificate of compliance may only be issued after written application for same has been made in which the applicant must state that the building or structure erected or altered or changed complies in all respects with this Ordinance and the zoning permit previously issued. If the application for certificate of compliance is for any building the application shall include a scaled, dimensional plat drawn by and certified as accurate by a surveyor or engineer registered with the State of North Carolina that affirmatively shows that the building or structure was erected in compliance with this Ordinance and the zoning permit previously issued. Provided, however, for residential properties only, that the tract that the residence is constructed contains ten (10) acres or more, then the person applying for the certificate of compliance shall be allowed to present a non-certified sketch in lieu thereof, provided that the residence is not to be located closer than 200 feet from any of the boundaries of the tract. In the event that the proposed residence is to be located closer than 200 feet from any of the boundaries of the tract, then the applicant shall submit a certified survey of the improvements with respect to those boundaries only. The sketch submitted shall in all other respects comply with the requirements set forth above.

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7. Right of Appeal

If the Zoning Permit or Certificate of Zoning Compliance is denied, the applicant may appeal the action of the Administrator to the Board of Adjustment.

17.3 DUTIES OF ADMINISTRATOR, BOARD OF ADJUSTMENT, COURTS AND BOARD OF COMMISSIONERS AS TO MATTERS OF APPEAL

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Administrator; and that from the decision of the Board of Adjustment recourse shall be to courts as provided by law. It is further the intention of this Ordinance that the duties of the Board of Commissioners in connection with the Ordinance shall not include the hearing and passing upon disputed questions that may rise in connection with the enforcement thereof, but the procedure for determining such questions shall be as herein set out in the Ordinance, and that the duties of Board of Commissioners in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendment or repeal of the Ordinance as provided by law.

17.4 EARLY VESTING OF DEVELOPMENT RIGHTS UPON APPROVAL OF SITE PLAN

Pursuant to G.S. 160A-385.1 and notwithstanding any other provision of this Ordinance or amendment thereto, a landowner may apply for a site specific development plan approval which shall entitle said landowner to develop properly in accordance with said site specific development plan. The procedure for establishing a vested right is set forth in this section.

1. Definitions

For the purpose of this section only, the following definitions shall apply:

- A. Landowner
Any owner of a legal or equitable interest in real property, including the heirs, devisers, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan in the manner allowed by Ordinance.

- B. Property
All real property subject to the regulations contained in this Ordinance.

- C. Vested Right
The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

2. Submission of a Site Specific Development Plan

To apply for vested right, a landowner shall first submit to the Administrator a site-specific development plan. The plan shall be submitted in completed form (i.e., contain all information as herein prescribed) at least twenty-five (25) days prior to the date of a regularly scheduled meeting of the Board of Commissioners. The site-specific development plan shall be considered complete if submitted with a fee (in accordance with a fee schedule adopted by the Board of Commissioners) and an accompanying application that, at a minimum, contains all information necessary for review of a Conditional Use Permit or Conditional Zoning application.

3. Public Hearing

Notice of any Board of Commissioners public hearing shall be given as follows:

- A. A notice shall be published in a newspaper having general circulation in the Waxhaw area once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- B. A notice of the public hearing shall be sent by first class mail by the Administrator to all contiguous property owners at least ten (10) days prior to the public hearing.

4. Board of Commissioners Action

Once the public hearing has been conducted and concluded, and a recommendation received from the Planning Board (except as herein provided) the Board of Commissioners shall determine whether or not to approve the site-specific development plan and accord the vested right. In approving an application for vested rights of a site specific development plan, the Board of Commissioners may attach fair and reasonable ad hoc conditions which tend to support the requiring finding of facts as herein listed. The petitioner shall be given reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Commissioners. The Board of Commissioners may not require the landowner to waive his vested right as a condition of developmental approval.

The Board of Commissioners may approve the site-specific development plan if it has evaluated an application and determined that:

- A. The use meets all required specifications of the Unified Development Ordinance, and
- B. The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the site-specific development plan by the Board of Commissioners shall be adequate to meet this requirement.
- C. If the site-specific development plan is vested for a period of greater than two (2) years, this shall be based on one or more factors so described in Section 17.4.5.

The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the site plan would be contrary to one or more of these findings) shall rest entirely with the landowner.

If the use or development for which the site specific development plan is submitted is a conditional use, the Board of Commissioners may approve the site specific development plan contemporaneously with the approval of the Conditional Use Permit or Conditional Zoning. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a Conditional Use Permit without the Conditional Use Permit having first been issued or approval of the Conditional Zoning.

5. **Effect of Approval**

The effect of the Board of Commissioners approving a site-specific development plan shall be to vest such site plan for a period of two (2) years from the date of approval. If the landowner requests, however, the Board of Commissioners may approve a vesting period not to exceed five (5) years from the date of approval. The vesting of any site plan beyond a two (2) year period may only be authorized by the Board of Commissioners where it is found that due to (1) the sizing and phasing of the development; or (2) the level of Investment; or (3) the need for the development; or (4) economic cycles; or (5) market conditions, building permits for all phases of the development cannot be secured within two years.

A vested right shall confer upon the landowner the right to undertake and complete the development and use or said property under the terms and conditions of the site specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the vested right previously accorded.

A vested right, once established as herein provided, shall preclude any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development except under the following conditions:

- A. The affected landowner provides written consent to the Town of his desire to terminate the vested right; or,
- B. The Town determines, after having advertised and held a public hearing, that natural or man made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the site specific development plan; or,
- C. Compensation is made by the Town to the landowner for all costs, expenses, and other losses incurred, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
- D. The Town determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site specific development plan; or,
- E. Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site-specific development plan. In such case the Town may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that the change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular site specific development plan, nothing in this section shall preclude the Town from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with the original approval.

6. Revocation or Expiration of a Vested Right

The vested right resulting from the approval of a site specific development plan may be revoked by the Board of Commissioners as provided for in Section 17.4.6. In addition, a

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revocation may occur if the Board of Commissioners determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Unified Development Ordinance. The vested right shall otherwise expire at the end of the approval period established by the Board of Commissioners.

7. Revocation of County Building Permit

A building permit issued by Union County or the Town of Waxhaw pursuant to G.S. 160A-417 may not be revoked because of the running of time on a piece of property for which a site specific development plan has been approved and the vested right period has not otherwise expired.

8. Amendments to the Unified Development Ordinance

The establishment of a vested right on a piece of property for a site specific development plan shall not preclude the Town from establishing and putting into place one or more overlay districts which may impose additional restrictions on said property, provided such restrictions do not affect the allowable type or intensity or use. Otherwise such regulations shall become effective with respect to the subject property upon the expiration or termination of the vested right. The Town may also enforce on the property any additional regulations (adopted during the time the vested right was in effect) that are general in nature and applicable to all property subject to the regulations of this Ordinance.

17.5 VIOLATIONS

Upon determination of a violation of any Section of this Ordinance, the Administrator or his designee may cause a warning citation to be issued to the violator setting out the nature of the violation, the Section violated, the date of the violation, an order to immediately cease the violation, or if the violation is in the nature of an infraction for which an order or abatement would be appropriate in a civil proceeding, a reasonable period of time is stated in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

If the violator fails to obey the warning citation a civil citation shall be issued by the Administrator and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to cure the violation and pay the citation to the Town Clerk of Waxhaw, located in the Town Hall, within fifteen (15) days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected

by the time the citation is paid, otherwise further citations may be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

Except as otherwise provided herein, violations of the provisions of this Ordinance shall constitute a civil penalty in the amount of (\$500) dollars for each violation. The civil penalty, if not paid to the Town Clerk within fifteen (15) days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt for the collection of the penalty, costs, attorneys' fees and such other relief as permitted by law.

In addition to the penalty set out above, any provision of this ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

Any provision of this ordinance that makes unlawful a condition existing upon or Use made of real property may be enforced by injunction and order of abatement by general court of justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful Use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the Town may seek an order of abatement as a part of the judgment in the cause. An order of abatement may direct that Buildings or other Structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from Buildings on the property; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

The provisions of the Ordinance may be enforced by one, all or a combination of the remedies authorized and prescribed by this Section.

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Each day's continuing violation of any provision of this Ordinance shall be a separate and distinct offense.

17.6 IMPROPER SUBDIVISION OF LAND

After the effective date of this Ordinance, any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of this Ordinance, hereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance and recorded in the Office of the Register of Deeds of Union County, shall be a violation of this Ordinance. The descriptions by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town of Waxhaw, through its attorney or other official designated by the Town may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Further, violators of this Ordinance shall be subject to civil penalties as set forth in Section 17.5.

17.7 EFFECTS UPON OUTSTANDING BUILDING PERMITS

Nothing herein contained shall require any change in the plans, constructions, size or designated Use of any Building, Structure or part thereof for which a Building Permit has been granted by the Building Inspector prior to the time of passage of this Ordinance; provided, however, that where construction is not begun under such outstanding permit within a period of one hundred and eight (180) days subsequent to the passage of this Ordinance or where it has not been prosecuted to completion within eighteen (18) months subsequent to passage of this Ordinance, any further construction or Use shall be in conformity with the provisions of this Ordinance.

17.8 INTERPRETATION, PURPOSE AND CONFLICT

In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

17.9 VALIDITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this

Ordinance. The Board of Commissioners hereby declares that it would have passed this Ordinance and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. Notwithstanding, whenever the regulations of this Ordinance require a greater width or size of yards, or other open space, or require a lower height of buildings or fewer number of stories or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statute or agreement, the regulations and requirements of this Ordinance shall govern. Whenever the provisions of any other statute or agreement require more restrictive standards than are required by this Ordinance, the provisions of such statute or agreement shall govern.

This Ordinance is in part carried forward by re-enactment of some of the provisions of the Zoning Ordinance of the Town of Waxhaw (made effective by the Board of Commissioners on March 1, 1991, as amended) and the Subdivision Ordinance of the Town of Waxhaw (adopted on January 22, 1991, as amended.) It is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued there under are preserved and may be enforced. All provisions of the Zoning Ordinance of the Town of Waxhaw, enacted in 1991, as amended, and the Subdivision Ordinance of the Town of Waxhaw, enacted in 1991, as amended, which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any Zoning Ordinance or Subdivision Ordinance heretofore in effect, which are now pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this Unified Development Ordinance but shall be prosecuted to their finality, the same as if this Ordinance had not been adopted, and any and all violations of the existing Zoning Ordinance and Subdivision Ordinance, prosecutions for which have not yet been initiated, may be hereafter filed and prosecuted. Nothing in this Ordinance shall be construed as to abandon, abate or dismiss any litigation or prosecution now pending, and/or which may heretofore have been instituted or prosecuted.