

ARTICLE 3 – DEVELOPMENT AND ADMINISTRATIVE REVIEW PROCEDURES

[Replaces Zoning Ordinance – Various Parts – Section 11.25-11.27, Subdivision Ordinance – Portions of Article 8 and 12, Portions of City Code of Ordinances – Chapter 2, ARTICLE III]

3.01 DEVELOPMENT PROCESSES AND PERMITS

A. PURPOSE AND INTENT

In order to establish an orderly process to develop land within the planning and zoning jurisdiction of the City of Eden consistent with standard development practices and terminology it is the purpose of this section to provide a clear and comprehensible development process.

B. PROVISIONS AND APPLICABILITY

The provisions of this section shall be applicable to all development activity under the planning and zoning jurisdiction of the City of Eden.

1. Permit to Start Construction Required

- a. No land shall be used or occupied, and no structures shall be erected, moved, extended, or enlarged, nor shall any timbering, clearing and grubbing, or filling of any lot for the construction of any building be initiated until the Administrator has issued an appropriate permit which will certify that the proposed work is in conformity with the provisions of this Ordinance.

2. Fees and Inspections

- a. The City of Eden is authorized to establish fees to be charged by the City for the administration of the regulations in this Ordinance. Based on the City's official fee schedule, fees shall be paid to the City to cover the cost of processing, advertising and other administrative expenses regarding each application and/or development plan as specified in this Ordinance.
- b. Agents and officials of the City are authorized to inspect land development activities to ensure compliance with this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, and to determine whether the measures required in approved development plans are being appropriately followed. Notice of the right to inspect shall be included in the certificate of approval of each plan.
- c. No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of the City while that person is inspecting or attempting to inspect a land development activity.
- d. The City shall also have the power to require written statements or filing reports under oath, with respect to pertinent questions relating to the land development activity.

3. Review Authority Table:

Development / Permit Process	Process Type	Review / Recommendation	Final Action	Appeal Process	Public Notice Level
Appeal of Administrative Decision	Quasi-Judicial	Administrator	Board of Adjustment	Superior Court	1
Administrative Modification of Setbacks	Administrative	Administrator	Administrator	BOA	N/A
Certificate of Compliance	Administrative	Administrator	Administrator	BOA	N/A
Conditional Zoning District / Conditional Rezoning	Legislative	Planning Board	City Council	Superior Court	1, 2 & 3
Special Use Permit	Quasi-Judicial	Administrator/TRC	City Council	Superior Court	1, 2 & 3
Erosion & Sediment Control Permit	Administrative	Administrator/TRC	Administrator	BOA	N/A
Minor Subdivision / Final Plat	Administrative	Administrator/TRC	Administrator	BOA	N/A
Floodplain Development Permit	Administrative	Administrator	Administrator	BOA	N/A
Site Plan	Administrative	Administrator/TRC	Administrator	BOA	N/A
Construction Plans	Administrative	Administrator/TRC	Administrator	BOA	N/A
Major Subdivision	Administrative	Administrator/TRC	Administrator	BOA	N/A
Rezoning (Map Amendment)	Legislative	Planning Board	City Council	Superior Court	1, 2 & 3
Stormwater Permit	Administrative	Administrator/TRC	Administrator	BOA	N/A
Text Amendment	Legislative	Planning Board	City Council	Superior Court	1, 2 & 3
Tree Protection Permit	See Zoning Compliance Permit				
Variance	Quasi-Judicial	Board of Adjustment	Board of Adjustment	Superior Court	1, 2 & 3
Administrative Vested Right	Administrative	Administrator/TRC	Administrator	BOA	N/A
Zoning Compliance Permit	Administrative	Administrator	Administrator	BOA	N/A
Public Tree Removal / Maintenance Permit	Administrative	Administrator	Tree Board	City Council	N/A

4. Application Completeness

a. Applications to Be Complete

- (1) No application is complete unless all of the information required herein is included and all filing fees have been paid. The Administrator shall consider an application that includes such information deemed complete.
- (2) Additional information may be required by the Administrator to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Ordinance. Failure to provide additional requested required information may result in application denial or in a determination of incompleteness. The presumption established by this UDO is that all required application information herein or otherwise requested by the Administrator is necessary.
- (3) Review for completeness of application forms is solely for the purpose of determining whether preliminary information required for submission constitute a decision as to whether the application complies with the provisions of the UDO.
- (4) Any incomplete application shall not be reviewed further until all information deemed necessary is produced. A determination of an incomplete application is an administrative decision and may be appealed to the Board of Adjustment.

b. Evidence of Authority

- (1) No application shall be considered complete without written affirmation from the landowner either as applicant or through express written consent.

5. Public Notice

The following procedures have been established for development processes/permits that require notification of the public prior to consideration and/or approval.

a. Level 1: Published Notice - General

- (1) A notice shall be published in a newspaper of general circulation in the City once a week for 2 successive weeks. The first publication shall appear no less than 10 days or more than 25 days prior to the date fixed for the public hearing. The notice shall include the time, place and date of the hearing/meeting and include a description of the property and the nature of the proposal.

b. Level 2: Mailed Notice / Full Community Notice

- (1) The owners of property within 100 feet on all sides of the subject property shall be notified of the hearing/meeting by first class mail. Such notification shall be postmarked at least 10 but not more 25 days prior to the date of the meeting at which the matter is to be heard.
- (2) As an alternative, to the mailed notice requirements in subsection b(1) above and per G.S. § 160D-602(b), the City may elect to serve notice through a full community notification for pending actions that affect at least 50 properties with at least 50 different property owners. The City shall publish notice of the hearing/meeting in a newspaper of general circulation in the City. Two advertisements shall be published in separate calendar weeks. Each advertisement shall not be less than one- half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper

DEVELOPMENT PROCESSES AND ADMINISTRATIVE REVIEW PROCEDURES

which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail.

c. Level 3: Posted Notice

- (1) In addition to providing published or mailed notice, as required in above, a sign shall be placed in a prominent location on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number (designated City contact person or department) to contact for additional information.

6. Application Requirements

- a. The following general standards for various applications have been identified as a means to create a hierarchy of submissions for permits/processes.
- b. The City’s official application checklists are intended to provide further guidance to applicants as to the necessary level of detail for certain permit/process types. Permits/processes for which checklist requirements are needed are marked with “●” in the table below:

Development Permit/Process	Existing Conditions Map	Sketch Plan	Master Plan	Construction Plan	Final Plat	Building Elevations	As-built Drawings
Administrative Modification of Setbacks	●[1]	●[1]		●[1]		●[1]	●[1]
Conditional Zoning District / Conditional Rezoning	●	●[1]	●			●[1]	
Special Use Permit	●		●			●[1]	
Erosion & Sediment Control Permit [2]	●			●			●[1]
Final Plat Review					●		●[1]
Flood Development Permit	●			●			●[1]
Site Plan Review	●[1]		●[1]	●	●[1]	●[1]	●[1]
Construction Plan Review	●			●		●[1]	●[1]
Major Subdivision	●		●[1]	●	●		●[1]
Minor Subdivision/Final Plat	●[1]	●[1]			●		●[1]
Tree Protection Permit	●[1]	●[1]				●[1]	
Variance	●[1]	●[1]				●[1]	●[1]
Administrative Vested Right			●[1]				
Zoning Compliance Permit		●				●[1]	

Stormwater Permit [2]	●			●			●[1]
-----------------------	---	--	--	---	--	--	------

[1] *As needed by the Administrator.*

[2] *Issued in conjunction with construction plans.*

c. Existing Conditions Map

- (1) An existing conditions map is intended to identify existing developed conditions and natural features including, but not limited to, the following:
- (a) Rights of way
 - (b) Existing structures
 - (c) Cemeteries
 - (d) Bridges or culverts
 - (e) Utilities
 - (f) Driveways & curb cuts
 - (g) Sidewalks, surface parking & loading areas
 - (h) Streets with pavement width
 - (i) Existing easements
 - (j) Natural features such as large stands of trees, water features, special flood hazard area
 - (k) Soils type
 - (l) Existing topography
 - (m) A survey shall be required when any proposed improvements, uses, or structures are within twice the setback from the property line.

d. Sketch Plan

- (1) A sketch plan shall show in simple sketch form the dimensions of the lot on which the proposed building or use is to be constructed or conducted and the following:
- (a) Proposed layout of existing and proposed streets
 - (b) Existing or proposed lot(s) layout, building(s) location and size
 - (c) Nature of land use, parking areas and means of ingress/egress,
 - (d) Environmental conditions (i.e. Special Flood Hazard, wetlands, Impervious Surface Area, etc.)
- (2) Sketch Plans shall be reviewed as binding documents for compliance of Unified Development Ordinance conformance, but shall be nonbinding when used in the review for pre-application conferences for all other development application processes in which a sketch plan is required. All plans shall be submitted at a scale not less than 1 inch = 50 feet (for Site Plans) or 1 inch = 200 feet (for Subdivisions) unless otherwise authorized by the Administrator.

e. Master Plan

- (1) A master plan is intended to provide a detailed two-dimensional drawing that illustrates all of the required site features including:

- (a) Buildings and parking areas
 - (b) Streets locations, street sections, and new and existing rights-of-ways
 - (c) Property lines and setbacks
 - (d) Required or proposed buffers,
 - (e) Conceptual landscaping
 - (f) All related development calculations (e.g. density, proposed building areas, number of parking spaces, impervious surface coverage) in sufficient detail to show compliance with this Ordinance.
- (2) Detailed engineering drawings such as subsurface utilities (e.g., water and sewer) and on-site stormwater facilities are not required for Master Plans, except that horizontal water and sewer locations shall be indicated as required by the utility provider.
- f. Construction Plan**
- (1) Construction Plans shall constitute a full and complete set of engineered drawings necessary for final permitting and construction.
 - (2) All plans shall be submitted at a scale not less than 1 inch = 50 feet unless otherwise authorized by the Administrator.
 - (3) All streets, utilities, and stormwater, and other infrastructure systems shall be designed and constructed in accordance with the City's adopted standards and specifications and other utility provider requirements where applicable.
- g. Final Plat**
- (1) The final plat shall be prepared by a professional land surveyor, licensed to practice in the State of North Carolina and shall be drawn to a scale no less than 1 inch = 100 feet, and shall meet the requirements of G.S. § 47-30.
 - (2) The final plat shall constitute an accurate survey of the entire phase as shown on the approved plan and shall include all the relevant notes and certifications.
- h. Building Elevations**
- (1) In order to reasonably evaluate the appearance, function, and impact of nonresidential and multifamily buildings, it is necessary to submit scaled drawings of each elevation. These drawings should be in color and shall accurately represent the building heights, floor levels, architectural features, fixtures, and building materials.
- i. As-Built Drawings**
- (1) The "as built" drawings shall show the final design specifications for all public infrastructure. The designer of the infrastructure shall certify, under seal, that the installed infrastructure is in substantial compliance with the approved plans and designs and with the requirements of this Ordinance. A final inspection and approval by the Administrator shall occur before the release of any performance securities.

3.02 REQUIREMENTS FOR HEARINGS AND DECISIONS

A. STANDARDS FOR CONDUCT OF QUASI-JUDICIAL HEARINGS

Per G.S. § 160D-102, a quasi-judicial decision is a process that involves the finding of facts regarding a specific application of development regulation and the exercise of discretion when applying the standards of this Ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative decisions. Decisions on the approval of major site plans and major subdivision preliminary plats are quasi-judicial in nature if this Ordinance authorizes a decision-making board to approve or deny the application based on one or more generally stated standards requiring a discretionary decision based on findings of fact. As a result, the following standard procedures are incorporated as appropriate per G.S. § 160D-406.

1. Contact with Decision-Making Board Members

- a. Contact with any members of a decision-making board prior to the public hearing by any individual regarding the matter is prohibited.

2. Conflict of Interest

- a. A member of the decision-making board shall not participate in or vote on a quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

3. Participants to be Sworn

- a. All participants in the public hearing shall be duly sworn in prior to the submission of any testimony.

4. Competent Evidence Required

- a. All decisions shall be based on competent evidence entered in as part of the record.
- b. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision making board to rely upon it.
- c. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 - (1) The use of property in a particular way would affect the value of other property.
 - (2) The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

(3) Matters about which only expert testimony would generally be admissible under the rules of evidence.

d. Cross-Examination Permitted

(1) The cross-examination of witnesses submitting testimony shall be permitted upon request.

B. DECISION STANDARDS

1. Each decision-making board under the provisions of this Ordinance shall ensure that the rights of petitioners have not been prejudiced because of the decision-making body's findings, inferences, or conclusions. In addition, such decision shall not be:
 - a. In violation of constitutional provisions, including those protecting procedural due process rights.
 - b. In excess of the statutory authority conferred upon the City or the authority conferred upon the decision-making board by Ordinance.
 - c. Inconsistent with applicable procedures specified by statute or Ordinance.
 - d. Affected by other error of law.
 - e. Unsupported by substantial competent and material evidence in view of the entire record.
 - f. Arbitrary and capricious.

C. DECISION RECORDS

1. The following shall become part of the official record of decision:
 - a. Documents and exhibits submitted to the decision-making board;
 - b. Meeting minutes;
 - c. Any party may request, at their expense, a transcript of the proceedings from any recorded audio/video if available.

3.03 ADMINISTRATIVE PERMITS

A. ZONING COMPLIANCE PERMIT

A zoning compliance permit indicates compliance with the provisions of this Ordinance and shall be required for the construction or development of any new use within the planning and zoning jurisdiction of the City of Eden, and any other site improvement as indicated in the UDO. In addition to new uses, a zoning compliance permit shall be required for expansions of existing uses, changes of use, any uses permitted with special conditions (*Article 5 – Individual Use Standards*) and any signage requiring a permit (*Article 6 – General Development Standards*).

1. Application Prior to Building Permit

- a. A zoning compliance permit application shall be presented to the Administrator prior to applying for a building permit. No building permit shall be issued for any activity within the City's jurisdiction until such zoning permit is approved.

2. Pre-Application Process

- a. No meeting is required but applicants are encouraged to call or visit the Administrator prior to requesting a zoning permit to determine what information is required for the application.

3. Determination of Compliance

- a. Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the standards contained in this Ordinance.

4. Appeals

- a. Per Review Authority Table, Section 3.01.B.3.

5. Permit Validity & Extensions

- a. Per Establishment of Administrative Vested Rights, Section 3.11.
- b. The Administrator shall grant one extension of this time period for 6 months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

B. CERTIFICATE OF COMPLIANCE

Issuance of a certificate of compliance shall be required prior to the occupancy or use of any new construction and re-occupancy or re-use of any renovation/rehabilitation. Certificates of compliance insure that a completed development project has complied with all the applicable requirements of this Ordinance and all other applicable federal, state and local regulations. Certificates of compliance are issued by the Administrator and certify compliance with applicable regulations of this Ordinance.

1. Determination of Compliance

- a. Upon receipt of the request for a certificate of compliance, the Administrator shall inspect the site for compliance with the approved plan and the applicable standards of this Ordinance. The applicant shall be notified of any deficiencies in the building(s) or site that prevents the issuance of the certificate of compliance or the certificate shall be issued.

2. Appeals

- a. Per Review Authority Table, §3.01.B.3.

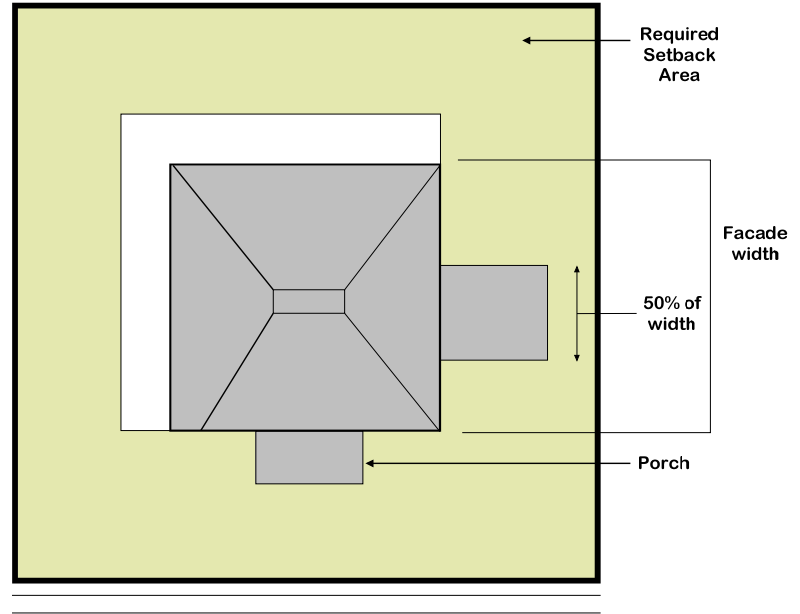
C. ADMINISTRATIVE MODIFICATION OF SETBACKS

In keeping with the purpose of these regulations to accomplish coordinated, balanced, and harmonious development in a manner which will best promote the health, safety, and general welfare while avoiding undue and unnecessary hardships, on approval by the City Manager, the Administrator is authorized to approve certain requests for deviation from dimensional standards.

1. Conditions for Modification of Setbacks

- a. Requests for deviation from required setbacks set forth in this ordinance by up to 10% of the required setbacks or 24 inches, whichever is greater, may be considered upon determination that one or more of the following conditions exists:

- (1) There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
- (2) The part of the proposed structure that would encroach into the minimum setback area is less than 50% of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as chimney).
- (3) The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.
- (4) The proposed structure will allow the preservation of significant existing vegetation.
- (5) A good faith error was made in the location of a building foundation not exceeding 1 foot due to either field construction error or survey oversight.



2. Administrative Authority is Permissive Only

- a. The authority given to the Administrator to grant such modification shall be construed to be permissive and not mandatory and the Administrator may decline to make such modification. In the event this occurs, the applicant shall have the right to submit an application to the Board of Adjustment to grant a variance. Nothing in this section shall be construed as limiting the Administrator's duties and rights under this chapter, or an applicant's right to appeal the decision of the Administrator to the Board of Adjustment.

D. ENVIRONMENTAL PERMITS

1. Stormwater management

Development activities tend to increase the volume of stormwater runoff due to the elimination of pervious surfaces through paving and the construction of buildings and other structures. Stormwater runoff impacts the public health, safety and welfare by flooding private and public property, by discharging pollutants, such

as oils and greases, into receiving water bodies, and by making public streets and roads unsafe. Therefore, applicants for development authorization in which the total impervious surface will exceed 20,000 square feet, shall not be entitled to a zoning compliance permit until such time as the applicant has submitted a stormwater management plan demonstrating compliance with this section.

a. Plan Protection

The stormwater management plan shall be prepared, signed and sealed by a registered or licensed North Carolina professional with qualifications appropriate for the type of system required and to the degree they are permitted to do so under the law.

b. Conceptual Stormwater Management Plan

The Purpose of a conceptual stormwater management plan is to demonstrate the likelihood that a development undergoing site plan review or special use review will meet the standards for stormwater management contained in this section. When a conceptual stormwater management plan is required, the following requirements shall apply:

- (1) The plan shall show the location of proposed improvements, shall only include stormwater related features, and shall not be shown on any other plan such as a site plan, an erosion control plan, or a landscape plan.
- (2) Calculations, including all assumptions of the pre- and post-development stormwater runoff rate in cubic feet per second generated by the peak runoff from a ten-year storm.
- (3) Identification of drainage areas.
- (4) A general layout of stormwater drainage features within the development.
- (5) If applicable, a statement describing the feature or features proposed to limit the post development stormwater runoff rate to the pre-development stormwater runoff rate, and the proposed location and size of feature(s).
- (6) Location of the point(s) of discharge of the stormwater system.
- (7) Location of connection(s) to the City stormwater sewer system, if applicable.

If in the opinion of the Administrator, the conceptual stormwater management plan does not adequately address the requirements of the stormwater resolution, additional information may be required.

c. Contents of Final Stormwater Management Plan

Final stormwater management plans shall contain the following elements:

- (1) A plan showing all pre- and post-development features with (1) a table listing and describing each feature and whether or not it is impervious, (2) each feature's area in square feet or acres and the percent each feature represents of the total area, and (3) identification and delineation of all drainage areas and point(s) of discharge of the stormwater system. This plan shall be drawn in a suitable east to read scale and shall be a separate document and not part of any other plan.

- (2) Topographic contours or spot elevations for all pre- and post-development areas. Topographic contours or spot elevations shall clearly show pre- and post-development drainage patterns.
- (3) Calculations showing the pre- and post-development rate of stormwater runoff in cubic-feet-per second generated by the peak runoff rate from a ten-year storm.
- (4) Details of proposed stormwater drainage structures, infiltration areas, retention ponds or detention ponds including as appropriate pertinent elevations, sections, outlet details, area capacity curves, identifying labels, and other information as required by the City Engineer.
- (5) Details and logical calculations and tables showing all design assumptions, methods of analysis, the pre- and post-development runoff qualities, capacities of proposed structures, slopes, sizes, identifying labels, and other information as required by the City Engineer.

d. Standards for Review

Unless the applicant has been approved to discharge stormwater runoff into an existing City stormwater facility with sufficient capacity to accommodate increased flows attributable to the proposed development as provided below, the stormwater management plan shall be designed so that the post-development rate of stormwater runoff, shall not exceed the pre-development rate of stormwater runoff. The stormwater management plan may propose retention either on-site or off-site or by means of a combination of on-site and off-site. If any or all of the stormwater from a design storm is proposed to be retained off-site, such shall be done only under express terms of a recorded easement.

e. Discharge into City Stormwater Facility

An applicant may request authorization to discharge stormwater runoff from a proposed development into an existing City stormwater facility. Upon determination that there is sufficient capacity in the City stormwater facility to accommodate the runoff associated with the proposed development, as well as existing and other anticipated runoff, the Administrator or their designee, may authorize the applicant to discharge into the City facility. All costs associated with such discharge, including installation of necessary storm sewers, shall be borne by the applicant.

f. Installation of Stormwater System

The stormwater system shall be installed in substantial conformity with the plans. If there are significant deviations from the design, a revised plan showing the deviations shall be submitted in time to permit the review and approval of the plans before any construction work affected by such deviations is begun. Upon completion of construction, a registered professional appropriate for appropriate for the type of stormwater system designed must certify in writing to the Director of Engineering that the system was inspected during construction and was constructed in substantial conformity with the approved plans, and shall submit a suitable plan clearly marked "As-Built" showing the system as constructed. No Certificate of Occupancy shall be issued until these requirements are met and the as-built plan has been approved. If a development has been approved for construction in phases, a temporary certificate of occupancy may be requested for each phase as long as all other requirements are met. The as-built plan described above will be required at the completion of all phases.

g. Maintenance of Stormwater Management Facilities

The owner of a stormwater management facility shall be responsible for maintenance of that facility unless the City accepts maintenance as provided below. This responsibility shall be noted on the final plat and deeds for any affected lots.

Any detention or retention facilities approved under this ordinance shall be subject to inspection by the City Engineer at least annually and the owner shall pay an annual inspection fee the amount of which shall be determined by resolution of City Council. The owner shall correct any deficiencies within 30 calendar days of written notification thereof. Failure to correct deficiencies or to pay the annual inspection fee shall constitute a violation of this ordinance.

Whenever an existing or future private stormwater management facility is proposed to serve a development undergoing site plan or special use review, the following shall be provided the Zoning Administrator prior to issuance of a certificate of occupancy.

- (1) A written inspection and maintenance agreement in a form acceptable to the City Attorney and executed by the applicant and the owners of the facility, which shall bind the parties thereto and all subsequent owners, successors and assigns, and provide for the following:
 - (a) The maintenance of the facility. If a party other than the applicant assumes primary responsibility for the maintenance of the facility, the applicant shall guarantee the maintenance of the facility and assume ultimate responsibility thereof.
 - (b) Access to the facility at reasonable times for inspection by the City and/or its agents or representatives.
 - (c) That if an order directing the correction, repair, replacement, or maintenance of the facility or of any portion thereof is not satisfactorily complied with within a reasonable period of time, as deemed appropriate by the Director of Engineering, the City may, after notice to the owner, enter the land and perform all necessary work to place the facility in proper working condition, and may assess the owners of the subject property with the cost of said work, which cost shall be a lien on such property and may be collected as provided in NCGS Section 160A-193. Notice shall be provided five (5) calendar days prior to entry and performance of necessary work by the City. Notice shall be in writing and shall be delivered to the owner by hand-delivery, by certified mail, return receipt requested, or by any other means allowed by Rule 4 of the North Carolina Rules of Civil Procedure. The owners of all property served by the facility shall be jointly and severally responsible to the City for the maintenance of the facility and liable for any costs incurred by the City pursuant to said agreement, and all such properties are jointly and severally subject to the imposition of liens for said costs.
 - (d) The Inspection and Maintenance Agreement shall be recorded in the Register of Deeds Office for Rockingham County, Wentworth, NC, at the expense of the applicant.

(e) Any other provision as may be reasonable required by the City Attorney to achieve the purposes of this section.

- (2) When deemed necessary by the City Attorney, an easement in a form approved by the City Attorney, granting the City and its agents and representatives adequate and perpetual access to the facility and sufficient area for inspection and maintenance, if necessary, by the City, its agents and representatives. Said easements shall be filed in the Office of the Register of Deeds for Rockingham County, Wentworth, NC, at the expense of the applicant, and shall bind all subsequent owners and assigns of the facility and of the property on which the easement is located.

h. Emergency Authority

If the Director of Engineering determines that the condition of any stormwater management facility presents an immediate danger to the public health and safety because of an unsafe condition or improper maintenance, the City Engineer shall take such actions as may be necessary to protect the public and make the facility safe. Any costs incurred by the City as a result of the City Engineer's action shall be assessed against any or all of the owners of property served by said facility who shall be jointly and severally liable for all said costs and whose property shall jointly and severally be subject to a lien for said costs which may be collected as provided in NCGS Section 160A-193.

2. Floodplain Development Permit

All Floodplain Development Permits are issued by the City of Eden. *See Article 9 – Environmental Protection* for specific regulations and standards.

3. Erosion & Sediment Control Permit

All Erosion & Sediment Control Permits are issued by the City of Eden. *See Article 9 – Environmental Protection* for specific regulations and standards.

4. Tree Protection Permit

a. Purpose

The purpose of this section is to establish regulations and standards for the protection, removal and long-term management of trees within the City of Eden and its extraterritorial jurisdiction. The City of Eden, under the zoning authority granted to the City, desires to regulate such activity in order to accomplish the following objectives:

- (1) To preserve the natural beauty and resources of the City of Eden and its extraterritorial jurisdiction;
- (2) To encourage the proper protection and maintenance of existing trees on all public and some private lands;
- (3) To promote the economic health of the community by creating a more attractive environment for residents, tourists and business interests;

- (4) To protect private property owners' investments by allowing development of land and harvesting of timber, while preserving the value of surrounding properties and aesthetics of the community at large;

b. Applicability

The City recognizes that development is essential and desirable for the economic health of the community; that trees are a renewable resource and a source of revenue; and that removal of trees is often essential to preserve the overall health and value of other trees in the vicinity. The City also recognizes that trees contribute to the natural beauty of the area, which in turn contributes to the economic health of the community. Therefore, trees may be removed and timber harvested within the City of Eden and its extraterritorial jurisdiction only in conformance with the standards, procedures, exemptions and other requirements of this ordinance. The city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either: (1) forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the N.C. General Statutes, or (2) forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the N.C. General Statutes.

c. Permits Required

Except as otherwise provided in this section, no trees shall be removed from any site without first obtaining a zoning compliance permit from the Planning and Inspections Department. Such permit applications and permits shall be governed by the same provisions of this ordinance applicable to development permits. Applicant must submit a site plan showing rivers, streams and other natural features; public rights of way and easements, including greenways, trails, and utility easement; areas to be timbered; and buffers to be left in place.

(1) Activities requiring a permit:

- (a) Harvesting or removal of any type of timber from any parcel or parcels of property on any public or private land for the purpose of development. Such timbering shall be permitted only after the applicant has submitted development plans and such development plans have been reviewed and approved by the Zoning Administrator.
- (b) The removal, cutting, clearing or harvesting of one (1) or more contiguous acres of timber from any parcel or parcels of property on any public or private land for the practice of forestry, as defined by North Carolina General Statute 105-277.2-.7, including clear cutting, select cutting, thinning, or other generally accepted forestry practices. Such timbering shall be permitted only after the applicant has submitted a plan for harvesting and replanting consistent with the most current Forest Practices Guidelines published by the North Carolina Department of Natural Resources and Community Development, or its successor agency, and such plans have been reviewed and approved by the Zoning Administrator.

- (c) The removal, cutting, clearing or harvesting of any trees located in a watershed area. Any such timbering in a watershed area must comply with the requirements of the *Article 9 – Environmental Protection* and the provisions of this ordinance.
- (d) The removal, cutting, clearing or harvesting of any trees for a parking lot. Parking lots must comply with the landscaping requirements for parking lots, as set forth in this ordinance.
- (e) The removal, cutting, clearing or harvesting of any trees on any public land, right of way, or easements owned or maintained by the City of Eden or the State of North Carolina including, but not limited to utility easements and unopened street rights of way.

(2) Activities that do not require a permit:

- (a) The removal, cutting, clearing or harvesting of timber from land to allow for non-commercial open space of no greater than one (1) acre;
- (b) The removal, cutting, clearing or harvesting of timber normally associated with new construction or expansion of a single-family or two-family dwelling situated on less than one (1) acre of land;
- (c) The removal, cutting or clearing of trees for accessory buildings or other activities normally associated with the occupancy of an existing single-family or two-family dwelling, the area of the clearing not to exceed two times the area of the structure to be built;
- (d) The removal, cutting, clearing or harvesting of timber normally associated with the new construction or expansion of a commercial building on property of one (1) acre or less in size;
- (e) The removal, cutting or clearing of dead trees and shrubs, or trees and shrubs that have been determined to be diseased beyond treatment, the burden of proof being placed on the property owner.

d. Buffer

Where any portion of the harvested area abuts a river, creek or stream, any public right of way or easement, or any adjoining developed property, a buffer shall be installed and maintained in accordance with the following provisions:

- (1) A minimum thirty (30) foot timber buffer shall be left in place along all perennial waters as defined in the *Article 9 – Environmental Protection*
- (2) A minimum thirty (30) foot timber buffer shall be left in place along any portion of the timbered area which borders a public park, greenway, trail or utility easement owned or maintained by the City of Eden. .
- (3) For property that is cleared, but not developed, a minimum of 6 (six) foot tall evergreen vegetative buffer shall be installed and maintained along the property line of any adjoining developed property. Such buffer shall consist of 2 (two) rows of evergreen trees or shrubs planted at 6 (six) foot centers along the length of the property line.
- (4) For property that is cleared for development, a buffer in *Article 6 – General Development Standards* shall be installed and maintained along the property line of any adjoining residential property.

e. Enforcement

- (1) Any person(s) found to be in violation of these provisions shall be issued a stop work order until they are determined to be in compliance with the provisions of the ordinance.
- (2) In the case of approved development plans or building permits, no final inspection shall be passed, nor any certificate of occupancy issued until the property meets all the requirements of this section.
- (3) Any act constituting a violation of this ordinance resulting in the loss or destruction of trees shall subject the property owner to a civil penalty equivalent to 1.5 times the monetary value of the trees removed or destroyed, up to a maximum of twenty thousand (\$20,000), the value to be determined by a registered forester, timber appraiser, or landscaper. In addition, any trees removed or destroyed shall be replaced with new trees to be approved by the City of Eden.
- (4) The city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to: (a) three (3) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under the city regulations governing development from the tract of land for which the permit or approval is sought, or (b) five (5) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under the city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations.

3.04 **SITE PLAN AND CONSTRUCTION PLAN REVIEW**

A. SITE PLAN REVIEW

The site plan review process shall apply to most development applications in the City of Eden's planning and zoning jurisdiction. A site plan is scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities, that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review.

1. Pre-Application Process

- a. No meeting is required, but applicants are encouraged to call or visit the Administrator to determine what information is required for the application.

2. Determination of Compliance

- a. Once an application is deemed complete by the Technical Review Committee, the Administrator shall review the application and approve, deny, or approve with conditions the Site Plan based on compliance with the standards contained in this Ordinance.

3. Public Notification:

- a. Per Review Authority Table, Section 3.01.B.3.

4. Appeals

- a. Per Review Authority Table, Section 3.01.B.3.

5. Permit Validity

- a. Per Establishment of Administrative Vested Rights, Section 3.11.

6. Permit Extension

- a. The Administrator shall grant a single extension of a period of one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant. If an extension is denied, or a Construction Plan is not presented for approval within a granted extension period, the applicant may reapply for a Site Plan using the same process as if the application was being considered for the first time.

B. MAJOR SITE PLAN REVIEW

The Major Site Plan Review process shall apply to all multi-family dwelling developments and to all development applications which require a Transportation Impact Analysis according to *Article 7 – Subdivisions and Infrastructure Standards*. Applications not meeting this threshold shall proceed directly to the minor site plan or construction plan review process.

1. Pre-Application Process

- a. It is required that every applicant for Major Site Plan meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plans for approval.

2. Process Type

- a. Per Review Authority Table, §3.01.B.3.

3. Determination of Compliance

- a. The Technical Review Committee shall review the plan to ensure that it is complete, and may request additional information until it is possible to determine affirmative compliance with this Ordinance, upon which the Administrator shall issue approval of the site plan.

4. Appeals

- a. Per Review Authority Table, §3.01.B.3.

5. Validity & Extensions

- a. Per Establishment of Administrative Vested Rights, §3.11.
- b. The Administrator shall grant one extension of this time period for 6 months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

(1) Substantial Changes

- (a) Any substantial change to a Site Plan (as noted below) shall be reviewed and processed according to the standard entitlement process as would be required for a new application. By definition, any modifications that exceed the maximum standards for the zoning district are considered substantial.
- (b) The following changes shall be considered substantial and require approval by the process outlined for the original entitlement:
 - i. When there is addition or reduction of a new vehicular access point to an existing street, road or thoroughfare.
 - ii. Modification of special performance criteria, design standards, or other requirements specified in the original entitlement.
 - iii. When there is an increase in the total number of residential dwelling units originally authorized by the original entitlement or where there is a decrease of residential dwelling units by 20% or greater.
 - iv. For nonresidential uses, when the total floor area is increased by 10% or decreased by 20% beyond the total floor area last approved in the original entitlement.
 - v. Any increase in number of parking spaces of greater than 10%.
 - vi. Any increase or decrease of open space greater than 20%.
 - vii. The net addition of any public right-of-way or utilities, provided that any change in location or reduction in amount must be reviewed and approved by TRC else it shall be determined substantial.
- (c) All other modifications shall be considered “minor modifications” and shall be reviewed for consistency with other portions of this Ordinance and if those criteria are met, shall be approved by the Administrator. Cumulative modifications from the original approval may trigger a substantial change and shall require review by that process.

C. CONSTRUCTION PLAN REVIEW

1. Pre-Application Process

No meeting is required but applicants are encouraged to call or visit the Administrator to determine what information is required for the application.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. Determination of Compliance

The Site Construction Plan shall be reviewed by the Technical Review Committee for compliance with the requirements of this Ordinance and for conformity with the approved Major Site Plan, if applicable. Provided the application is complete, applications shall be reviewed by the committee and plan approval or written review comments will be given to the applicant within 30 days of receipt of the Site Construction Plan.

4. Appeals

Appeals of decisions of the Technical Review Committee shall be heard by the Board of Adjustment. An appeal must be made in writing by the applicant within 30 days of the receipt of the committee's comments.

5. Validity & Extensions

Approval of a Site Construction Plan shall be valid for 1 year from the date of approval. The Administrator shall grant one extension of this time period for 6 months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

6. Substantial Changes

- a. Any substantial change to a construction plan (as noted below) shall be reviewed and processed according to the standard entitlement process as would be required for a new application. By definition, any modifications that exceed the maximum standards for the zoning district are considered substantial.
- b. The following changes shall be considered substantial and require approval by the process outlined for the original entitlement:
 - i. When there is addition or reduction of a new vehicular access point to an existing street, road or thoroughfare.
 - ii. Modification of special performance criteria, design standards, or other requirements specified in the original entitlement.
 - iii. When there is an increase in the total number of residential dwelling units originally authorized by the original entitlement or where there is a decrease of residential dwelling units by 20% or greater.
 - iv. For nonresidential uses, when the total floor area is increased by 10% or decreased by 20% beyond the total floor area last approved in the original entitlement.
 - v. Any increase in number of parking spaces of greater than 10%.
 - vi. Any increase or decrease of open space greater than 20%.
 - vii. The net addition of any public right-of-way or utilities, provided that any change in location or reduction in amount must be reviewed and approved by TRC else it shall be determined substantial.
- c. All other modifications shall be considered "minor modifications" and shall be reviewed for consistency with other portions of this Ordinance and if those criteria are met, shall be approved by the Administrator. Cumulative modifications from the original approval may trigger a substantial change and shall require review by that process.

3.05 SUBDIVISIONS

A. MINOR SUBDIVISION PLAN REVIEW

1. Applicability

- a. The minor subdivision review process shall proceed according to the process for a final plat (see § 3.050(D)). However, if a major subdivision is submitted, then plan preparation, submission, content and review shall be the same as that for a final plat of a minor subdivision.
- b. A final plat must be submitted within two (2) years following preliminary plat approval or the preliminary plat becomes null and void.
- c. A minor subdivision of land is defined as those divisions of land which contain ten or fewer lots result after subdivision:
 - (1) All of which front on an existing improved public street;
 - (2) Not involving any new public streets, right-of-way dedication or requiring any new street for access to interior property;
 - (3) Not requiring drainage improvements or easements, other than rear and side lot line easements, to serve the applicant's property or interior properties;
 - (4) Not involving any utility extensions; and
 - (5) Not requiring any easements, other than rear and side lot line easements.

B. MAJOR SUBDIVISION PLAN REVIEW (MAJOR PRELIMINARY PLAT)

1. Applicability

The major subdivision preliminary plat review process is required for all subdivisions except those defined as minor subdivision (see subsection A, above) or as otherwise identified in G.S. § 160D-802(a) as exempt from local government subdivision regulation.

2. Pre-Application Process

It is required that every applicant for major subdivision preliminary plat meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plans for approval. At a minimum, the applicant shall provide a sketch of the proposed plan at the pre-application conference.

3. Process Type:

Per Review Authority Table, §3.01.B.3.

4. Determination of Compliance

Within 45 days from the date the Administrator determines the application is complete, the Technical Review Committee shall review the plan to ensure that it meets the standards of this Ordinance.

5. Review Process

a. Approval

If the Administrator approves the major subdivision preliminary plat, the applicant may proceed toward final plat approval.

b. Conditional Approval

If the Administrator gives conditional approval to the major subdivision, then the applicant shall revise the plan in accordance with the conditions of approval and resubmit it. The Administrator shall review the revised plan and, if the plan meets all the approved conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. If the plan is not revised within 60 days to meet the approval conditions, or if the applicant notifies the Administrator that he/she is unwilling to revise the plan, then the plan shall be deemed denied.

(6) Denials

If the Administrator denies the major subdivision plan he/she shall state the reasons in writing to the applicant within 15 days of the date at which the said plan is reviewed. The applicant may revise and submit a new application for subdivision approval; or the developer may appeal the decision Per Review Authority Table, §3.01.B.3.

c. Appeals

An appeal from the decision of the Administrator regarding a major subdivision plans may be made to the Board of Adjustment.

d. Validity & Extensions

- (1) Approval of a major subdivision shall be valid for 2 years from the date of approval. Construction Plans shall be presented for approval prior to the end of this 2-year period.
- (2) If the approved major subdivision provides for multiple phases within the subdivision, Construction Plan approval for any one phase shall extend the major subdivision preliminary plat approval for all other phases for a period of 2 years from the date of the Construction Plan approval for that phase. If Construction Plan approval has not been obtained prior to the end of this 2-year period, the major subdivision preliminary plat approval shall become void.
- (3) The Administrator may grant a single extension of this time period of up to one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.
- (4) If an extension is denied, or a major subdivision is not presented for approval within a granted extension period, the applicant may reapply for a major subdivision using the same process as if the application was being considered for the first time.

e. Substantial Changes

- (1) Any substantial change (as noted below) shall be reviewed and processed according to the standard entitlement process as would be required for a new application. By definition, any modifications that exceed the maximum standards for the zoning district are considered substantial. The following changes shall be considered substantial and require approval by the process outlined for the original entitlement:
 - (a) Modification of special performance criteria, design standards, or other requirements specified in the original entitlement.

- (b) When there is an increase in the total number of residential dwelling units originally authorized by the approved original entitlement or where there is a decrease of residential dwelling units by 20% or greater.
 - (c) For nonresidential uses, when the total floor area is increased by 10% or decreased by 20% beyond the total floor area in the original entitlement.
 - (d) Any increase in number of parking spaces of greater than 10%.
 - (e) Any increase or decrease of open space greater than 20%.
 - (f) The net addition of any public right-of-way or utilities, provided that any change in location or reduction in amount must be reviewed and approved by TRC else it shall be determined substantial.
 - (g) When there is addition or reduction of a new vehicular access point to an existing street, road or thoroughfare.
- (2) All other modifications shall be considered “minor modifications” and shall be reviewed for consistency with other portions of this Ordinance and if those criteria are met, shall be approved by the Administrator. Cumulative modifications from the original approval may trigger a substantial change and shall require review by that process.

C. CONSTRUCTION PLAN

1. Pre-Application Process

No meeting is required but applicants are encouraged to call or visit the Administrator to determine what information is required for the application.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. For construction plans, the street and utility construction plans for all street, water, sanitary sewer, storm water facilities, and other public infrastructure shall be submitted following preliminary plat review but shall not be reviewed until the street and utility network on the preliminary plat has been granted entitlement approval by the reviewing body. For each subdivision section, the street and utility construction plans shall include all improvements lying within or adjacent to that section as well as all water and sanitary sewer lines lying outside that section and being required to serve that section. No street and utility construction plans shall be approved until the preliminary plat has been approved.

4. Determination of Compliance

The Construction Plan shall be reviewed by the Technical Review Committee (TRC) for compliance with the requirements of this Ordinance and for conformity with the approved preliminary plat, if applicable. Provided the application is complete, applications shall be reviewed by the committee and written review comments will be given to the applicant within 30 days of receipt of the Construction Plan.

5. Appeals

Per Review Authority Table, §3.01.B.3.

6. Phasing

Construction Plans for phased subdivisions shall be reviewed and recorded individually in accordance with the schedule presented by the applicant during the major subdivision preliminary plat approval.

7. Validity & Extensions

- a. Approval of a Construction Plan shall be valid for 2 years from the date of approval.
- b. A Final Plat shall be recorded prior to the end of this 2-year period.
- c. The Administrator shall grant a single extension of this time period of one year upon submittal by the applicant of sufficient justification for the extension. Sufficient justification includes delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

D. FINAL PLAT

1. Applicability

The final plat review process applies to all proposed subdivisions determined to be minor subdivisions or otherwise identified in G.S. § 160D-802(a) as exempt from local government subdivision regulation.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. Required Improvements

All required infrastructure improvements shall be either installed or financially guaranteed in accordance with *Article 7 – Subdivisions and Infrastructure Standards*.

4. As-Builts

Upon completion of a development, and before a Final Plat shall be approved (unless financially guaranteed), the applicant shall certify that the completed development is in substantial accordance with the approved plans and designs, and shall submit actual “as-built” plans for all public infrastructure after final construction is completed.

5. Determination of Compliance

The Final Plat shall be reviewed by the Administrator for compliance with the requirements of this Ordinance and, in the case of major subdivision preliminary plats, for conformity with the approved Construction Plan. Provided the application is complete, plans shall be reviewed and acted upon by the Administrator and notice given the applicant within 45 days of receipt of the Final Plat. If the Administrator has not completed review in this time period, the final plat shall be automatically denied. Further review would require the submittal of a new application.

6. Appeals

Per Review Authority Table, §3.01.B.3.

7. Effect of Approval

The approval of a Final Plat does not constitute acceptance for maintenance or other purposes of improvements in rights-of-way, such as utility lines, street paving, drainage facilities or sidewalks. Such improvements, when located within the corporate limits of the City of Eden, may be accepted only by action of the City following inspection and approval. Public land designated on a plat shall be considered to be offered for dedication, but not accepted until the City Council has by express action done so.

8. Phasing

Final plats for phased subdivisions shall be recorded in accordance with the schedule presented by the applicant during the Construction Plan approval.

9. Validity & Extensions

Final plats that have been granted approval must be recorded in the Office of the Register of Deeds within 30 days following approval or the approval becomes invalid. No lots in a subdivision shall be sold prior to approval by the City and recording of the Final Plat for the subdivision.

3.06 SPECIAL USE PERMITS (SUP)

Special Use Permits add flexibility to the Zoning Ordinance and are authorized by G.S. §160D-705(c). A Special Use Permit may be issued in the classes of cases or situations hereinafter specified in accordance with the standards, principles, conditions, safeguards and procedures hereinafter specified subject to any additional reasonable and appropriate conditions and safeguards imposed on said Special Use Permits. By use of Special Use Permits, such special use may be allowed in a zoning district where such use would not otherwise be acceptable or permitted and in a way which allows the use while minimizing negative effects on surrounding properties.

The procedures for the issuance of Special Use Permits and the uses for which Special Use Permits may be issued are established in this Section. All land and structures under authority of a Special Use Permit shall strictly comply with the conditions and safeguards imposed upon such Special Use Permits.

A. TRANSITIONAL PROVISIONS

On January 1, 2021, any existing and legal Conditional Use Permit (CUP) that is valid and in effect shall be deemed a Special Use Permit subject to the same conditions of approval or operation of the existing entitlement.

B. APPLICATION PROCEDURES

1. Pre-Application Process

Every applicant for a Special Use Permit is required to meet with the Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. Required Application Information

- a. An application for a Special Use Permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Each application for a Special Use Permit shall contain the following at a minimum:
 - (1) A boundary and vicinity map.
 - (2) The property's total acreage, its zoning classification, the general location in relations to all major streets, railroads, and/or waterways, the date and the north arrow.
 - (3) All existing easements, reservations and rights-of-way.
 - (4) The approximate dimension, including height, of proposed buildings, structures or appurtenances.
 - (5) All required setbacks, buffers, screening, and landscaping required by this ordinance or proposed by the petitioner; the landscape plan may be a part of the site plan or shown as a separate drawing.
 - (6) All existing and proposed points of access on public streets.
 - (7) Delineation of areas within the floodplain as shown on the official flood boundary maps.
 - (8) Proposed phasing, if any
 - (9) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development
 - (10) Approximate location of all existing and proposed infrastructure on the site including water, sewer, roads, pedestrian ways.
 - (11) Generalized traffic, parking and circulation plans.

4. Determination of Compliance

The Administrator shall review the plan to ensure that it is complete. The Administrator shall prepare a report and recommendation on the application for City Council review and decision. After review and recommendation on the application by the Administrator, the City Council shall hold a public hearing on the proposal for official action.

5. Review Process & Public Hearing

a. Public Hearing

The City Council shall hold a public hearing on the proposal. The applicant and other property owners likely to be affected by the application shall be given an opportunity to be heard.

b. Decision & Findings of Fact

- (1) The City Council shall approve, deny or approve with conditions the Special Use Permit. No Special Use Permit approval shall be granted unless it complies with the following findings of fact:
 - (a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
 - (b) That the use meets all required conditions and specifications of this Ordinance and of its approval;

- (c) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (d) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Eden and its environs and other adopted plans.
- (e) Adequate and reasonable mitigation has been provided of potentially adverse effects on adjacent properties through the conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping and screening on the site;
- (f) The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property;

6. Additional Conditions

The City Council may place conditions on the use as part of the approval to assure that mitigation measures are associated with the use. The conditions shall become part of the Special Use Permit approval.

7. Review Period

The City Council shall take action (approve, deny, or approve with conditions) within 60 days of the public hearing. Should the City Council fail to act on the Special Use Permit within the prescribed period, the application shall be considered approved.

8. Decisions

If the City Council approves the Special Use Permit the applicant will be directed to proceed to the preparation of Construction Plans. If the City Council disapproves or approves conditionally the plan, the reasons for such action shall be stated in writing by the Administrator and entered in the records of the Board, and the applicant may make changes and submit a revised plan for consideration in accordance with the procedures set forth in this section.

9. Appeals

Per Review Authority Table, §3.01.B.3.

10. Validity & Extensions

- a. Conditional Uses that have been granted approval must begin site development within 2 years following approval or the approval becomes invalid.
- b. The City Council may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.
- c. If an extension is denied, or a Special Use Permit is not presented for approval within a granted extension period, the applicant may reapply using the same process as if the application was being considered for the first time.

11. Substantial Changes

- a. Any substantial change (as noted below) shall be reviewed and processed according to the standard entitlement process as would be required for a new application. By definition, any modifications that exceed the maximum standards for the zoning district are considered substantial.
- b. The following changes shall be considered substantial and require approval by the process outlined for the original entitlement:
 - (1) When there is addition or reduction of a new vehicular access point to an existing street, road or thoroughfare.
 - (2) Modification of special performance criteria, design standards, or other requirements specified in the original entitlement.
 - (3) When there is an increase in the total number of residential dwelling units originally authorized by the approved original entitlement or where there is a decrease of residential dwelling units by 20% or greater.
 - (4) For nonresidential uses, when the total floor area is increased by 10% or decreased by 20% beyond the total floor area in the original entitlement.
 - (5) Any increase in number of parking spaces of greater than 10%.
 - (6) Any increase or decrease of open space greater than 20%.
 - (7) The net addition of any public right-of-way or utilities, provided that any change in location or reduction in amount must be reviewed and approved by TRC else it shall be determined substantial.
- c. All other modifications shall be considered “minor modifications” and shall be reviewed for consistency with other portions of this Ordinance and any conditions of approval of the Special Use Permit, and if those criteria are met, shall be approved by the Administrator. Cumulative modifications from the original approval may trigger a substantial change and shall require review according to that process.

3.07 APPEALS OF ADMINISTRATIVE DECISION

A. APPLICABILITY

Parties aggrieved by any order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this Ordinance may be appealed per G.S. §160D-405.

B. PROCEDURES

1. Process Type:

Per Review Authority Table, §3.01.B.3.

2. Filing Process

An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent), or by the Administrator, to the Board of Adjustment. Such an appeal shall be made within 30 days of

the receipt by such aggrieved party of the written notice of decision from the Administrator with the City Clerk.

3. Proceedings

The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order or preliminary injunction granted by the Superior Court of jurisdiction.

4. Required Application Information

Such relevant information as may reasonably allow the Board of Adjustment to understand the basis for the appeal. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.

C. REVIEW PROCESS

1. Upon receiving the application, the Board of Adjustment shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent at the hearing.
2. After conducting the public hearing, the Board of Adjustment shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. It shall take a 4/5ths vote of the Board of Adjustment to reverse or modify the contested action.
3. The Board of Adjustment, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
4. The decision of the Board of Adjustment must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board of Adjustment, which must be delivered to parties of interest by certified mail.

D. APPEALS

Per Review Authority Table, §3.01.B.3.

3.08 VARIANCES

A. APPLICABILITY

1. The variance process (G.S. §160D-705(d)) administered by the Board of Adjustment is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this Ordinance.
2. It is not intended that variances be granted solely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general or to increase the profitability of a proposed development, although such factors can be taken into consideration.

3. In no event shall the Board of Adjustment grant a variance which would allow the establishment of a use which is not otherwise allowed in a land development district or which would change the land development district classification or the district boundary of the property in question.
4. In no event shall the Board of Adjustment grant a variance which would conflict with any state code unless otherwise authorized by laws and regulations.

B. PROCEDURES

1. Pre-Application

Every applicant for a variance is encouraged to meet with the Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. Filing Process

An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.

4. Determination of Compliance

The Administrator shall review the application to ensure that it is complete and shall prepare a report on the application for the Board of Adjustment to consider.

5. Proceedings

The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order or preliminary injunction granted by the Superior Court of Rockingham County.

6. Required Application Information

Such relevant information as may reasonably allow the Board of Adjustment to understand the basis for the appeal. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.

C. REVIEW PROCESS

1. Upon receiving the application, the Board of Adjustment shall conduct a public hearing on the variance.
2. After conducting the hearing, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; approve the application; or approve the application with additional conditions. A concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance.
3. A decision by the Board of Adjustment shall be made within 45 days of the date of the hearing.

4. Any approval or denial of the request shall be accompanied by written findings of fact supporting the conclusion that the variance meets or does not meet each of the standards set forth in subsection 5 a-d below.
5. The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:
 - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
6. Additional Conditions
 - a. In granting any variance, the Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the purposes and objectives of this Ordinance. The Board of Adjustment may also attach conditions in order to reduce or minimize any injurious effect of such variance upon other property in the neighborhood and to ensure compliance with other terms of this Ordinance. Such conditions and safeguards must be reasonably related to the condition or circumstance that gives rise to the need for a variance.

3.09 TEXT AMENDMENTS AND REZONINGS (MAP AMENDMENTS)

A. APPLICATION PROCEDURES

1. Pre-Application Process

Every applicant for a rezoning or text amendment is required to meet with the Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.

2. Process Type:

Per Review Authority Table, §3.01.B.3.

3. Required Application Information

A petition for a text amendment or rezoning of a part of the City's official zoning map shall be filed on a form provided by the Administrator. Such petition shall contain all the information required on the form and must

be determined to be complete by the Administrator prior to advancing it through the review process. Such application shall be filed with the Administrator not later than twenty days prior to the Planning Board meeting at which the application is to be considered.

4. Determination of Compliance

The Administrator shall review the application to ensure that it is complete. The Administrator shall prepare a report and recommendation on the application for Planning Board review and recommendation. After review and recommendation on the application by the Planning Board, the City Council shall hold a public hearing on the proposal for official action.

5. Review Process & Public Hearing

a. Planning Board Recommendation

- (1) Upon determination of compliance by the Administrator, the Planning Board shall review and provide a recommendation to the City Council on the application at the next available, regularly scheduled meeting.
- (2) If the Planning Board is able to reach a recommendation without further deliberation, the Planning Board shall submit a recommendation on the application and refer it to the City Council for their consideration at the next available public hearing.
- (3) If the Planning Board determines that further deliberation on the application is required, the Planning Board shall deliver its recommendation to the City Council within 45 days of its first consideration on the matter. If no recommendation is received from the Planning Board within 45 days of consideration on the matter, the City Council shall proceed in its consideration of the matter without a recommendation from the Planning Board.

b. Effect of Planning Board Recommendation

If the Planning Board makes a favorable recommendation, the matter shall proceed to a public hearing before the City Council.

c. Public Hearing

Upon consideration by the Planning Board, the City Council shall hold a public hearing on the proposal. The applicant and other property owners likely to be affected by the application shall be given an opportunity to be heard.

d. City Council Decision

- (1) Following receipt of a recommendation from the Planning Board, or after 45 days from the Planning Board meeting if no recommendation is received, the City Council shall conduct a public hearing on the matter.
- (2) Upon reviewing all of the pertinent information, the City Council shall take action to:
 - (a) Adopt the proposed amendment/rezoning request.
 - (b) Adopt the proposed amendment/rezoning request with modifications.
 - (c) Reject the proposed amendment/rezoning request.
 - (d) Refer the proposed amendment back to the Planning Board for further consideration.

6. Land Use Plan Consistency

- a. In accordance with G.S. § 160D-701, all rezonings/zoning map amendments shall be made after due consideration of all adopted plans, including the comprehensive plan or land use plan.
- b. Prior to adopting or rejecting any such request, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan and a brief statement explaining the reasonableness and benefit to the public interest of the proposed changes, or otherwise be in accordance with G.S. § 160D-605.
- c. Prior to consideration by the City Council of the proposed request, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the comprehensive plan. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that the request is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council.
- d. As used in this section, “comprehensive plan” includes a unified development Ordinance and any other officially adopted plan that is applicable.

7. Citizen Comments

- a. If any resident or property owner in the City submits a written statement regarding a proposed amendment, modification, or repeal to this Ordinance to the City Clerk at least two business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council.
- b. Any resident or property owner who submits a written statement of citizen concern may withdraw their written statement any time prior to the meeting at which the item will be considered.

8. Appeals

Per Review Authority Table, §3.01.B.3.

9. Period to Subsequent Application

- a. After an application for an amendment has been approved or denied by the City Council, there shall be a 6-month waiting period before an application shall be considered on the same issue or property.
- b. This waiting period may be waived by the City Council (three-fourths vote required) if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.

10. Application for Withdrawal

- a. An application for rezoning may be withdrawn by the applicant prior to submission of the public hearing notice to the newspaper.
- b. After submission of such notice, an application may be withdrawn by action of the Planning Board or City Council at the public hearing.

- c. No more than two (2) withdrawals may occur on the same property within a one (1) year period after the date of the second withdrawal.
- d. No application shall be filed on the same property within a one (1) year period after the date of the second withdrawal.

11. Statute of Limitations

Appeals to text amendment and rezoning changes shall be filed within two (2) months from date of adoption of ordinance or amendment(s), but not thereafter.

3.10 CONDITIONAL ZONING DISTRICTS

Conditional Zoning Districts (CZ) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the City Council in accordance with G.S. § 160D-703. Conditional Zoning Districts provide for orderly and flexible development under the general policies of this Ordinance without the constraints of some of the prescribed standards guiding by-right development. The purpose of the district is to provide for: Flexibility in design to take greatest advantage of natural land, water, trees and historical features; Accumulation of large areas of open space for recreation and preservation of natural amenities; Greater freedom for the developer to submit plans that embody a creative approach to land use and utilizing innovative techniques to enhance the aesthetic quality of the development; Efficient use of land which may result in smaller street and utility and maintenance costs; Simplification of the procedures for obtaining approval of proposed development through timely review of proposed land use, site plan, public needs and other relevant factors.

Conditional Zoning Districts may be applied in any district but may not be used to relieve hardships or barriers that would otherwise be addressed via a variance procedure.

B. TRANSITIONAL PROVISIONS

On January 1, 2021, any existing and legal Conditional Use zoning districts, Special Use zoning districts or Planned Unit Development (PUD) zoning districts that are valid and in effect shall be deemed a Conditional Zoning (CZ) District subject to the same conditions of approval or operation of the existing entitlement.

C. APPLICATION PROCEDURES

1. Process Type:

Per Review Authority Table, §3.01.B.3.

2. Applicant and Property Information

- a. Conditional Zoning District classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included in the specific Conditional District request.
- b. A Conditional Zoning District shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. Unified control means that all land to be included within a Conditional Zoning District shall be owned or otherwise under the legal control of the applicant for a Conditional Zoning District.

- c. The applicant shall be legally capable of providing a commitment to the City that the Conditional Zoning District development will comply with all documents, plans, standards and conditions ultimately approved by the City.

3. Required Application Information

- a. A Conditional Zoning District shall consist of the Existing Conditions Map, a Sketch Plan (may be waived by the Administrator as appropriate), and Master Plan; as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the City Council.
- b. In addition to those items required for Master Plans, a Conditional Zoning District Master Plan shall, at a minimum, illustrate the following:
 - (1) The underlying zoning districts and a full list of proposed uses consistent in character with those zoning districts. Such use classifications may be selected from any of the uses, whether permitted, by right or with supplemental standards, allowed in the general zoning district upon which the Conditional Zoning District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional Zoning District;
 - (2) General traffic routes (external and internal) to and from the development with major access points identified;
 - (3) Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios and impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
 - (4) A proposed development schedule if the project is to be phased.

D. EXCEPTION FOR CONDITIONAL ZONING DISTRICTS WITH USE LIMITATIONS ONLY

- 1. If an applicant proposes a Conditional Zoning District which meets the following criteria, no Conditional Zoning District Master Plan shall be required in the application:
 - a. The only proposed deviation in use from the underlying zoning is to impose additional limitations on the uses that will be allowed in the Conditional Zoning District.
 - b. No other deviations from the standards of the underlying zoning are proposed in the Conditional Zoning District.

E. REVIEW PROCESS AND PUBLIC HEARING

- 1. The procedure for approval of a Conditional Zoning District shall follow the procedure for review of Text Amendments and Rezoning (Map Amendments) as outlined in Section 810.090.
 - a. Effect of Approval

The applicant may proceed with development only after approval of the Conditional Zoning District Master Plan by the City Council, followed by approval of any necessary Site or Subdivision Plans/Plats, except that all subsequent approvals shall be completed by the Administrator. The development and use of all land within the Conditional Zoning District shall be in keeping with the approved Master Plan and all applicable provisions therein.

b. Substantial Changes

- (1) The following changes to a Conditional Zoning District Master Plan (as noted below) shall be considered substantial and require approval by the process outlined for the original entitlement:
 - (a) Land area being added or removed from the Conditional Zoning District.
 - (b) Modification of special performance criteria, design standards, or other requirements specified by the original approval.
 - (c) A change in land use or development type beyond that permitted by the approved Conditional Zoning District Master Plan.
 - (d) When there is addition or reduction of a new vehicular access point to an existing street, road or thoroughfare.
 - (e) When there is an increase in the total number of residential dwelling units originally authorized by the approved original entitlement or where there is a decrease of residential dwelling units by 20% or greater.
 - (f) For nonresidential uses, when the total floor area is increased by 10% or decreased by 20% beyond the total floor area in the original entitlement.
 - (g) Any increase in number of parking spaces of greater than 10%.
 - (h) Any increase or decrease of open space greater than 20%.
 - (i) The net addition of any public right-of-way or utilities, provided that any change in location or reduction in amount must be reviewed and approved by TRC else it shall be determined substantial.
- (2) All other modifications shall be considered “minor modifications” and shall be reviewed for consistency with other portions of this Ordinance and any conditions of approval of the Special Use Permit, and if those criteria are met, shall be approved by the Administrator. Cumulative modifications from the original approval may trigger a substantial change and shall require review according to that process.

F. RECESSION OF CONDITIONAL ZONING DISTRICTS

1. The Applicant shall secure a valid building or construction permit(s) within 2 years from date of approval of the Conditional Zoning District unless otherwise specified.
2. If such project is not complete or a valid building or construction permit is not in place at the end of the 2-year period, the Administrator shall notify the applicant of either such finding.
3. Within 60 calendar days of notification, the Administrator shall make a recommendation concerning the rescission of the Conditional Zoning District to the City Council.
4. The City Council may then rescind the Conditional Zoning District, or extend the life of the Conditional Zoning District for a specified period of time.
5. The rescission of a Conditional Zoning District shall follow the same procedure as was needed for approval.
6. Once a Conditional Zoning district is fully executed and the Conditional Zoning District Master plan is completely constructed, the district cannot be rescinded or altered except by the standard process for a rezoning or new conditional rezoning request.

3.11 ADMINISTRATIVE ESTABLISHMENT OF VESTED RIGHTS

The vested right (G.S. § 160D-102(33)) is a right which must be requested by the applicant at the time of submittal and is established pursuant to G.S. § 160D-108 to undertake and complete the development and use of property under the terms and conditions of an approved plan.

A. APPLICATION PROCEDURES

1. Process Type:

Per Review Authority Table, §3.01.B.3.

2. Determination of Compliance

The Administrator shall review the application to ensure that it is complete. The Administrator shall prepare a report and recommendation on the application for Planning Board review and recommendation. After review and recommendation on the application by the Planning Board, the City Council shall hold a public hearing on the proposal for official action.

B. REVIEW PROCESS

Per Review Authority Table, §3.01.B.3.

1. Appeals

Per Review Authority Table, §3.01.B.3.

C. DURATION OF VESTED RIGHT

1. For the purposes of establishing vested rights, the following are recognized:
 - a. All standards according to G.S. §160D-108, including
 - (1) Building permit: expires six months after issuance unless work under the permit is commenced. Regardless, building permits expire if work is discontinued for a period of 12 months after work has commenced.
 - (2) Development approvals: expires one year after issuance unless work has substantially commenced. "Substantially commenced" includes but is not limited to application for a building permit.
 - (3) Site specific vesting plan: expires two years after approval unless explicitly extended by City Council up to a maximum of 5 years. Includes preliminary plats, site plans, construction plans, Conditional Zoning District Master Plan (subject to the requirements of that Section 310.109), planned unit development, and special use permit.
 - (4) Multi-phase developments: expires seven years after approval and subject to the requirements of G.S. §160D-108(d)(4). As phases continue to receive development approvals or site specific vesting plans, the vesting period may extend past the initial seven year period according to the standards for those approvals.
 - (5) Where more than one vested right may be in effect, the longer time period applies.

DEVELOPMENT PROCESSES AND ADMINISTRATIVE REVIEW PROCEDURES

2. Upon issuance of a permit/plan approval, the expiration provisions for those permits/plans shall apply, except that they shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding. A zoning vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid permit/plan applications have been filed.
3. The City may terminate the zoning vested rights upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of all financing and all architectural, legal and other fees incurred after approval by the City.
4. The zoning vested right may be terminated upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the plan. In such a case the City Council may, by Ordinance, after notice and a hearing, modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.
5. A zoning vested right is not a personal right but shall attach to and run with the applicable property. After approval of a plan, all successors to the original landowner shall be entitled to exercise such right while applicable.
6. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this Ordinance.