

ARTICLE IX. PROCEDURES

9.1 General Procedures

The Town of North Wilkesboro establishes the procedures herein to create an orderly process to develop land that is consistent with standards development practices and terminology. The section provides a clear and comprehensible development process that is fair and equitable to all interests, including applicants, affected neighbors, the Administrator, staff and related agencies, and elected and appointed officials of the Town.

A. No Construction to Commence without Permit

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 development approval which will certify that the proposed work is in conformity with the provisions of this ordinance.

B. Development Approvals Run with the Land

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Section attach to and run with the land.

9.2 Submission Procedures

The following requirements shall apply to all applications prior to and for development approval as identified in this section.

A. Applicants

As outlined in NCGS 160D-403, applications for development approvals may only be made by the landowner, a lessee or person holding an option or contract to purchase or lease land with the permission of the landowner, or an authorized agent of the landowner. The director of the appropriate department, or designee, may require an applicant to present evidence of the authority to submit an application.

B. Pre-Submittal Meeting

1. A pre-submittal conference with the Administrator or designee held prior to the applicant submitting an application for development approval to discuss the procedures, standards and regulations required for development approval in accordance with this chapter. The meeting is required with certain applications as outlined on the Development Process Table in **Section 9.5**. For all other applications, the Pre-Submittal meeting is optional.
2. At the time of the pre-submittal conference, applicants shall submit a sketch plan for review by the Administrator. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

C. Forms

Applications required under this Section shall be submitted with application forms approved by and available from the Planning Department.

D. Fees

Application filing fees shall be established and updated as needed to defray the actual cost of processing the application, as listed in the approved Fee Schedule maintained by the Town. Fees shall be submitted with applications.

E. Plans

The applicable engineered and/or surveyed plans shall be submitted with each application as outlined in **Section XX**.

F. Completeness Review

1. Submission

All completed applications for development approval shall be submitted to the Administrator, including the application fee, all appropriate forms and documentation, and the plan sets in accordance with the requirements of this Section and the Fee Schedule adopted by the Town.

- a. Applications sufficient for processing shall be submitted to the Administrator or designee, in accordance with the established submission schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

2. Completeness Determination

- a. An application shall be considered submitted only after it has been determined to be complete and sufficient for review as provided below, not upon submission to the Administrator.
- b. On receiving a development application, the Administrator shall determine whether the application is complete or incomplete in a timely manner. A complete application is one that:
 - (1) Contains all information and materials required by this Ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for the Administrator to evaluate the application for compliance with applicable review standards; and
 - (2) Is accompanied by the fee established for the applicable type of application.

3. Complete Applications

- a. Once the application has been determined complete, the Administrator shall:
 - (1) Accept the application as submitted in accordance with the procedures and standards of this Code in effect at the time of the submittal; and
 - (2) Provide the applicant notice of application submittal acceptance.
 - (3) Copies of the application and/or plans shall be referred by the Administrator to the appropriate reviewing entities.

b. Incomplete Applications

On determining that the application is incomplete, the Administrator shall provide the applicant with written notice of the submittal deficiencies in a timely manner. The applicant may correct the deficiencies and resubmit the application for a completeness review.

G. Additional Information as Needed

The presumption shall be that all the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the

particular case. The applicant may rely on the recommendations of the Administrator as to whether more or less information should be submitted.

H. Withdrawal of Application

1. An applicant may withdraw an application at any time, by filing a statement of withdrawal with the Administrator or designee.
2. The statement of withdrawal shall be signed by all persons who signed the application, or in the event of death or incompetence, by the estate's lawful personal representative.
3. The Administrator shall withdraw applications due to the failure of the applicant to submit required information within ninety (90) days of the initial request. An applicant may receive an additional sixty (60) day extension by requesting it in writing before the 90 day period expires.
4. An applicant may postpone a scheduled public hearing once per application for up to ninety (90) days after the date the first public hearing was scheduled to occur, after which the Administrator shall withdraw the application.

I. Related Applications

1. Related applications necessary for development approvals may be filed and reviewed simultaneously, at the option of the applicant, and with approval from the Administrator. Any application that also requires a rezoning, variance or special use permit, shall not be eligible for final approval until the rezoning, variance, or special use permit has been granted.
2. Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

J. Active Application Time Period

1. Requests for additional information, corrections, or other modifications for all applications, unless otherwise indicated in this Ordinance, shall be returned to the Administrator or designee within ninety (90) days from the date comments on the application are officially issued. Failure to meet this deadline may result in the application being considered withdrawn and voided, thus requiring a new application, including all requirements associated with a new application.

9.3 Public Notification

Public notice for certain applications will be required prior to consideration and/or approval in accordance with the table in **Section XX** and with the specific requirements of this Article.

A. Published Notice

1. An advertisement shall be placed by the Town and published in a newspaper of general circulation once a week for two (2) successive weeks, The first publication shall appear no less than ten (10) days or more than twenty-five (25) days prior to the date of the public hearing. An annexation public hearing requires a single notice.
2. **All published notices shall contain the following:**
 - a. Parcel Identification Number;

- b. The address of the subject property (if available);
- c. The general location of the land that is the subject of the application, which may include, a location map;
- d. A description of the action requested;
- e. The current and proposed zoning districts;
- f. The time, date and location of the public hearing;
- g. A phone number to contact the Town; and
- h. A statement that interested parties may appear at the public hearing.

B. Posted Notice.

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 not less than ten (10) days prior to the hearing in which the application shall be reviewed, with a case number, notice of the pending action, and a phone number to contact for additional information. When multiple parcels are included, a posting on each individual parcel is not required but the Town shall post sufficient notices to provide reasonable notice to interested persons.

C. Mailed Notice.

1. The Town shall notify by first-class mail (at the last addresses listed for such owners in the county tax records) the affected property owner and all property owners within and immediately abutting the subject property. The notice must be mailed at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The Town shall certify to the Commissioners that fact that mailings occurred, and such certificate shall be deemed conclusive in the absence of fraud. Mailed notices shall contain the following:
 - a. Parcel Identification Number;
 - b. The address of the subject property (if available);
 - c. The general location of the land that is the subject of the application, which may include, a location map;
 - d. A description of the action requested;
 - e. The current and proposed zoning districts;
 - f. The time, date and location of the public hearing;
 - g. A phone number to contact the Town; and
 - h. A statement that interested parties may appear at the public hearing.

9.4 Permit Required

- A. No building or land shall hereafter be used or occupied and no building or structure shall be erected, expanded or moved until a zoning permit as required by this Article shall have been issued.

- B. The form and content of such permit, when not expressly set out in this article, shall be determined by the Administrator and may include any information required for the applicant to demonstrate an intent to comply with the zoning regulations.
- C. All permits and other development approvals shall be provided in writing. Zoning permit forms shall be available at the Planning and Inspections office, and the Town website.
- D. Applications for permits must be made by a person with a property interest in the property or a contract to purchase the property on which the development is proposed.
- E. **Permit Type**
Permits shall be required for any use by right that is regulated by this ordinance, unless specifically exempted by this ordinance and/or special uses.
- F. **Permits for uses by right and uses with supplemental standards.**
 - 1. A permit for a use by right and a use with supplemental standards shall be obtained from the Administrator.
 - 2. Applications for a permit shall be made on a form provided by the Administrator.
- G. **Permits for special uses.**
Permits for special uses shall be obtained from the Board of Adjustment. Applications for a special use permit shall be made on a form provided by the Administrator.
- H. **Permits for Conditional District Zoning.**
 - 1. Permits for Conditional District Zoning shall be obtained from the Town Board of Commissioners.
 - 2. Applications for a conditional district zoning permit shall be made on a form provided by the Administrator.
- I. **Expiration of permit.**
 - 1. Any zoning permit issued by the Administrator shall become null and void after a period of one year from the date of issuance of the permit unless a valid building permit has been issued for the work authorized by the permit or, if a building permit is not required, substantial work has not begun.
 - 2. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.
- J. **Condition of approval.**
Zoning permits issued on the basis of site plans, architectural renderings, landscaping plans, and other information submitted as part of the zoning permit application process authorize only the use, arrangement, construction, and change set forth in such approved plans and applications. Use, arrangement, construction, or change that differs from that authorized by the permit shall be deemed a violation of this article.
- K. **Right of appeal.**
If a request for a zoning permit from the Administrator is disapproved or if a ruling of the Administrator is questioned, the aggrieved party may appeal such ruling to the Board of Adjustment in accordance with **Section X.X.**

9.5 Development Review Process Table

9.6

Zoning Permit	9.4	ADMIN		AD		AD	BOA	1 year
Sign Permit	9.14	ADMIN		AD		AD	BOA	1 year
Determinations	9.9	ADMIN		AD		AD	BOA	6 months
Exempt Subdivision	9.10	ADMIN		AD		AD	BOA	1 year
Major Subdivision Preliminary Plat	9.12	ADMIN		AD, TRC, & PB		PB	BOA	2 years
Minor Subdivision	9.11	ADMIN		AD, TRC		AD		1 year
Final Plat	9.12.D	ADMIN		AD, TRC		AD		1 year
Site Plan	9.6	ADMIN		TRC		AD	BOC	1 year
Floodplain Development Permit	9.13	ADMIN		AD		AD		1 year
Text Amendment	9.19	LEGIS		AD & PB	A	TC	NCSC	
Rezoning/ Map Amendment	9.20	LEGIS		AD & PB	A, B, C	TC	NCSC	
Conditional Zoning	9.21	LEGIS	NB	AD & PB	A,B,C	TC	BOA	May be rescinded after two years
Special Use Permit	9.8	QJ		AD	B,C	BOA	NCSC	1 year
Variance	9.18	QJ		AD	B,C	BOA	NCSC	30 days to appeal
Admin. Appeal	9.17	QJ		AD	B,C	BOA	NCSC	
Interpretation of Zoning Boundaries	9.27	QJ		AD	B,C	AD	NCSC	30 days to appeal
<p>Legend: ADMIN = Administrative AD = Administrator NCSC = NC Supreme Court <u>Public Notice:</u> LEGIS= Legislative PB= Planning Board QJ= Quasi-Judicial TRC = Technical Review Committee A=Published Notice TC = Town Board of Commissioners PS = Pre-Submission Meeting B=Posted Notice BOA = Board of Adjustment NB = Neighborhood Meeting C=Mailed Notice</p>								

Site Plan

A. Requirement.

Prior to approval and issuance of a zoning permit for any new structure or expansion to an existing structure permitted under this chapter and any new impervious coverage on any lot (excluding single family detached residential) in a designated water supply watershed, all

applicants shall be required to submit a site plan as outlined below. All site plans must be reviewed by staff and found to meet submission requirements before any application for a zoning permit is deemed to be complete.

B. Single Family Residential Structures.

The site plan shall show the approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines as required. This type of site plan may be drawn by the applicant and does not require an engineer, surveyor, or landscape architect's seal unless such development appears to lie wholly or in part within a federally designated floodplain or a required watershed buffer area.

C. All uses except single family residential structures, signs, flags, and similar structures.

1. The site plan shall show:
 - a. The approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines and distances from other structures.
 - b. Adjacent streets and street right-of ways.
 - c. Adjacent property lines, owners, uses, and zoning districts.
 - d. The location of any federally designated floodplain.
 - e. The location of any required watershed buffer area.
 - f. The location of all existing and proposed public easements.
 - g. The location of any proposed parking and loading and screening which may be required by this section.
2. These site plans must be sealed by a registered engineer, surveyor, architect or landscape architect licensed to practice in the State of North Carolina.
3. The Administrator, at their discretion, may waive certain site plan requirements only if adequate information is provided in lieu.
4. All new development on vacant lots or change in land use on existing lots shall be required to submit the following in addition to the site plan required contents listed above.

D. Landscape Plan Requirements

1. Landscape plans shall clearly demonstrate conformance to the intent of all applicable sections of this ordinance. Landscape plans shall be submitted at a scale of 1" = 30' or other appropriate scale acceptable to the Administrator, and shall include:
 - a. Planting plan showing location, quantity, and type of proposed plantings including existing trees to remain and new trees.
 - b. Planting schedule listing all plant materials by botanical name, common name, quantity, and size at installation.
 - c. All horizontal landscape construction such as walls, drives, decks, terraces, and other features shall be labeled according to material and finish with spot elevations. All vertical landscape construction such as walls, fences, raised decks, shelters, light standards, signs,

flagpoles, trellises, seats, mailboxes, etc. shall be labeled sufficiently to indicate size, materials, and general appearance.

- d. For any proposed irrigation, outline performance specifications, and show extent of coverage, and location of rain sensor.
- e. In an effort to conserve water, landscape plans which utilize existing vegetation, native plants, drought-tolerant ornamental plants, and limited lawn areas are encouraged.
- f. Plants shall comply with sizing and grading standards of the latest edition of "American Standard for Nursery Stock".

E. Site Lighting Plan Requirements

1. Site lighting plans shall clearly demonstrate conformance to Article VI, Design Standards.
2. Site lighting plans shall be submitted at a scale of 1" = 30' or other appropriate scale acceptable to the Administrator, and shall include:
 - a. Location and mounting information for each light;
 - b. Illumination calculations showing light levels in foot candles at points located on a 10-foot on center grid;
 - c. A fixture schedule listing fixture design, type of lamp, and wattage of each fixture; and Manufacturer's photometric data for each type of light fixture.

F. Other requirements.

1. In addition to information required in this subsection, other information or documents deemed relevant by the Administrator or review board shall be required, such as evidence of approval of sedimentation and erosion control plans, prior to issuance of a zoning permit.

G. Amendments to and Modification of Permits

See Section 9.15, Administrative Modifications.

H. Permits run with the land.

All permits and other development approvals are attached to and run with the land.

I. Revocation of permit.

Any revocation of permit and other development approvals must follow the same process as was used for the approval.

9.7 Quasi-Judicial Processes and Evidentiary Hearings

All quasi-judicial processes are required to have an evidentiary hearing.

A. Notice.

1. Public notice of the meetings is required.

Mailed and Posted Notice shall be provided in accordance with the requirements of **Section XX**.

2. Continuation of Hearing with Notice.

The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is

not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

B. Evidentiary Hearing.

1. Evidentiary hearings are required to gather competent, material, and substantial evidence. They are held by the body making the quasi-judicial decision, either Board of Adjustment or Board of Commissioners.

2. Contact with Decision-Making Board Members

Contact with any members of a decision-making board prior to the evidentiary public hearing by any individual regarding the matter is prohibited. **Constitute as ex-parte communication.**

3. Materials

The Administrator or staff to the Board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing as long as a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record.

4. Oaths

The Board Chair or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

5. Presentation of Evidence

The applicant, the local government, and any person who would have the standing to appeal the decision under **G.S. 160D-1402(c)** shall have the right to participate as a party at the evidentiary hearing. This includes presenting evidence, cross-examination of witnesses, objecting to evidence and making legal arguments. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Further, elected officials may subpoena witnesses and compel the production of evidence.

6. Administrator as Witness

The official who made the decision or the person currently occupying that position, if the decision-maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness.

7. Competent Evidence Required

a. All decisions shall be based on competent evidence entered in as part of the record. 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. 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 public safety.

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

8. Objections

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party or the inclusion or exclusion of administrative materials, may be made to the Board. The Board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to [G.S. 160D-1402](#). Objections based on jurisdictional issues may be raised for the first time on judicial review.

9. Voting

A simple majority is needed for all quasi-judicial decisions with the exception of variances that require a concurring vote of four-fifths ($\frac{4}{5}$) of the Board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under [G.S. 160D-109\(d\)](#) shall not be considered members of the board for calculation of the majority if there are no qualified alternates available to take the place of such members.

10. Decisions

Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be in writing, reflect the Board's determination of contested facts and their application to the applicable standards. Each decision approved by the board shall be signed by the chair.

11. Effective Date

A quasi-judicial decision is effective upon filing the written decision with the clerk to the Board. The decision of the Board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy of the decision.

12. Judicial Review

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to [G.S. 160D-1402](#).

C. Appeals from Quasi-Judicial Decisions

An appeal from the decision of the Board of Adjustment regarding a quasi-judicial decision may be made by an aggrieved party and shall be made to the Superior Court of Pender County in the nature of certiorari. Any such petition shall be filed with the clerk of the superior court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with [G.S. 160D-406\(j\)](#). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

9.8 Special Use Permits

Special uses are land uses that are generally compatible with the land uses permitted by right in a zoning district, but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.

A. Applicability

A Special Use Permit shall be required for all uses as set forth in the Table of Uses.

B. Applications

1. Applications for all special use permits or amendments to any approved special use permit must be filed with the Administrator. Applications which are not complete shall be returned to the applicant, with a notation of the deficiencies in the application. The Administrator has the authority to waive any application requirements where the type of use or scale of proposal makes that information unnecessary or impractical. A complete application will include all of the following:
 - a. A completed application form signed by all of the property owners of the area proposed for the permit, or a completed application form signed by the developer along with an affidavit signed by all property owners giving the applicant the permission to pursue the permit and to bind the property to the proposal and to conditions which the board might impose.
 - b. A complete explanation of the proposed use(s) of the property.
 - c. A site plan as specified in [Section 9.6](#).
 - d. A preliminary subdivision plat which meets all the requirements of [Article 4](#) when subdivision of the land is proposed.
 - e. Documentation containing facts which will be used to support the petition, including but not limited to deed restrictions, letter of sufficiency regarding public water and sewer, proposed homeowners association documents, and appropriate county and state approvals.
 - f. All appropriate fees.
 - g. A synopsis or overview of the project, including information relevant to use, density, lot layout, housing type, planned amenities, and the like.
 - h. Any other information deemed by the Administrator to be necessary for sufficient review of the application.

C. Public notices.

See [Section 9.3](#) for public notice requirements.

D. Staff review.

1. Sketch plan.

- a. Prior to submission of the complete application, all subdivision developers are required to submit a sketch plan for staff review. Preparation and review of the sketch plan shall conform to the requirements of the Town of North Wilkesboro Subdivision Regulations outlined in [Article 4](#).

E. Required Findings

1. No special use permit shall be approved by the Board of Adjustment unless the following general findings of fact are made concerning the proposed special use:
 - a. The use will not materially endanger the public health or safety if located, designed, and proposed to be operated according to the plan submitted.

- b. The use complies with all regulations and standards of this article.
- c. The use will not substantially injure the value of adjoining property, or the use is a public necessity.
- d. 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.
- e. Public water and sewer service are available in adequate capacity, if needed.

That the proposed use will not be in conflict with the objectives of the most detailed plan adopted for the area in which it is located.

F. Conditions of Approval

1. In considering an application for a special use permit, the Board of Adjustment may attach reasonable and appropriate conditions and safeguards to the location, nature, and extent of the proposed use and its relationship to surrounding property, for the purpose of ensuring that the conditions of permit approval will be complied with and any potentially injurious effect of the special use on adjoining properties, the character of the neighborhood, or the health, safety, and general welfare of the community will be minimized.
2. Such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, intensity of site development, the timing of development, and other matters the Board of Adjustment may find appropriate or the applicant may propose.
3. The applicant will have a reasonable opportunity to consider and respond to any additional conditions or requirements prior to final action by the Board of Adjustment.

G. Effect of Decision

1. If the Board of Adjustment votes to deny an application, there may be no subsequent application for the same or similar use submitted by any party for any part of the subject property until twelve (12) months have elapsed from the date of denial. If the Board of Adjustment votes to approve an application, the permit shall be recorded in the Wilkes County Register of Deeds office.
2. The special use permit and additional conditions, if applicable, shall run with the land and shall be binding on the original applicant as well as any successors, assigns, and heirs. Any decision by the Town may be appealed within thirty (30) days of the decision in accordance with **G.S. § 160D-405**.

H. Amendment Once Approved

1. Any major change to a development approved by special use permit shall require an amendment to the special use permit by the Board of Adjustment.
2. Any proposed change in use, increase in density or intensity, decrease in open space and common recreational facilities, substantial change in the location of uses or streets from what is shown on the approved plans, any change in a condition imposed on the use by the Board of Adjustment, or any other change the Administrator determines is significant shall be deemed a major change requiring an amendment to the special use permit.
3. Factors to be considered by the Administrator in determining if a change is substantial include, but are not limited to, the extent of the change, the expected impact on adjacent

properties, and the impact on offsite streets and other public infrastructure. Otherwise, the Administrator may approve minor changes to a permit.

4. The owner of property which is subject to an approved special use permit may petition for an amendment of the special use permit and accompanying conditions by following the procedures applicable to initiation of new special use permits.
5. Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original special use permit, any plans or conditions which were a part of the original special use permit, and the present standards and requirements in this zoning ordinance.

I. Revocation

1. If at any time the Administrator determines that construction inconsistent with the approved special use permit is occurring within the development, he/she shall issue a stop work order on such construction, and he/she shall notify the responsible parties of the violation who will immediately cease and desist further work on the project.
2. If the nonconforming construction is not brought into compliance with the permit or the applicant has not filed an appeal with the Board of Adjustment within thirty days, the Administrator may initiate a revocation of the special use permit.
3. The Administrator may also act to suspend the issuance of any additional building permits within the development if he/she has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of nonconformance.

J. Expiration

1. Approval of a special use permit shall confer upon the developer all vested rights as set forth in this ordinance.
2. In order for a special use permit to remain in effect for a particular development, a valid building permit must be issued for construction within the time period vested. If at any time after this date, construction has not been completed and no valid building permits are outstanding for construction within the development, the special use permit shall expire. No further construction may occur within the development until the Board of Adjustment has issued a new special use permit. Application for a new special use permit shall follow the procedures outlined in this article.

9.9 Determinations

A determination is a final and binding order, requirement, or determination regarding an administrative decision. The Administrator is authorized to make determinations. Any determination shall be provided in writing, by personal delivery, electronic mail, or first-class mail to the property owner or party legally authorized to take action on their behalf.

9.10 Exempt Subdivisions

The following shall be considered shall not be included within the definition of a subdivision as outlined in NCGS 160D-802 and shall only require review of a Final Plat by the Administrator.

- A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town of North Wilkesboro.
- B. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
- C. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town of North Wilkesboro, as contained herein.
- E. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

9.11 Minor Subdivision Preliminary Plat is reviewed as Final Plat

Minor Subdivisions, as defined in Article 4, are any subdivision not considered exempt nor meeting the criteria of a Major Subdivision. The following review procedures shall apply to all Minor Subdivisions.

A. Simplified Review

1. All proposed Minor Subdivisions shall first be discussed with the Administrator to ensure the understanding that the requirements are the same as for the approval of a final plat.
2. Following the meeting with the Administrator, the final plat shall be prepared by a professional land surveyor currently licensed and registered in the state of North Carolina and contain the required certificates as included in [Appendix A](#) and meet all final plat content requirements as outlined in [Appendix B](#).
3. The subdivider shall submit a digital copy of the final plat to the administrator for review. Once the Administrator has confirmed the final plat to be in conformity with the UDO and preliminary plat (if applicable), a recordable mylar shall be provided for signatures.

9.12 Major Subdivision Preliminary Plat

Major Subdivisions are defined in [Article 10](#) and shall be subject to the following review procedures.

A. Preliminary Plat

1. All major subdivisions (excluding those which qualify as major based solely upon size and having no public and/or private infrastructure) shall require review by the Technical Review Committee (TRC) in addition to the Planning Board. Construction or installation of improvements may not begin until after preliminary plat review and approval by the Planning Board.

2. The subdivider shall submit an appropriate number of copies of the preliminary plat as determined by the Administrator at least fourteen days prior to a regularly scheduled meeting of the Planning Board. The Preliminary Plat shall contain all required contents as outlined in **Appendix B**.

C. TRC Review

1. The preliminary plat shall be reviewed by the Technical Review Committee (TRC). The TRC's function is to insure conformance of the proposed development with the town's various ordinances and development standards. The Planning Director (Administrator of this ordinance) shall serve as chairperson of TRC. Other staff members and individuals may be called on to provide input to the committee, as the Administrator deems necessary.
2. The TRC shall review the plans for development and report its findings to the Administrator prior to the Planning Board meeting.
3. All TRC meetings shall be open to the public however no public comment shall occur during these meetings.
4. Following TRC review, all papers and data pertinent to the plat shall be transmitted to the Planning Board.
5. If the Administrator determines that the land to be subdivided warrants special consideration because of topographical or other conditions peculiar to the site, the subdivider shall submit, upon request, a separate topographic map of the site with a contour interval deemed necessary by the board. The topographic map cannot be used as the same preliminary plat for the subdivision because of the difficulty of interpreting all of the information required on one document.
6. Before acting on the preliminary plat, the Planning Board may request a report from any person or agency directly concerned with the proposed development, such as the North Carolina Department of Transportation district highway engineer, Wilkes County Health Department, North Carolina Department of Environment Quality, the superintendent of schools, and any other officials or agencies deemed necessary. Such report shall certify compliance with or note deviations from the requirements of this chapter and include comments on other factors which bear upon the public interest.
7. The Planning Board shall review the preliminary plat at its next regularly scheduled meeting and shall recommend approval, temporary approval subject to minor modifications, or disapproval. If approval is recommended subject to modifications, specific references shall be made of the preliminary plat stating the nature of the regulatory noncompliance and possible modifications. If the Planning Board recommends disapproval of the preliminary plat, the reasons for such recommendations shall be stated in writing and references shall be made to the specific regulations with which the preliminary plat does not comply. The applicant shall then have the right of appeal to the Board of Adjustment within thirty days of the written rendered decision.
8. Approval of the preliminary plat shall be effective for a period not to exceed two years and shall thereafter expire and be considered null and void, unless a petition for an extension of time is submitted to and subsequently approved by the Planning Board prior to the two-year limit. Vested rights are to be followed per 160D-108.

D. Final Plat

No street shall be accepted and maintained by the town, nor shall any street lighting, water, or sewer be extended to or connected with any subdivision of land as defined herein, nor shall any permit be issued by an administrative agent or department of the town for the construction of any

building or other improvement requiring a permit, upon any land concerning which a plat is required to be approved unless and until the final plat has been approved by the Administrator and TRC. The procedure for obtaining final plat approval is as follows:

1. Upon approval of the preliminary plat by the Planning Board, the subdivider may proceed with the preparation of the final plat, and the installation of or arrangement for required improvements in accordance with the approved preliminary plat. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided in **Article 4**.
2. The final plat shall be prepared by a professional land surveyor currently licensed and registered in the state of North Carolina and contain the required certificates as included in **Appendix A** and meet all final plat content requirements as outlined in **Appendix B**.
3. The subdivider shall submit a digital copy of the final plat to the administrator for distribution to the TRC. Once the Administrator and TRC have confirmed the final plat to be in conformity with the UDO and preliminary plat, a recordable mylar shall be provided.

9.13 Floodplain Development Permit

See Article 5, Environmental Standards.

9.14 Sign Permit

A. **Applicability**

Sign permits shall require review in accordance with the standards outlined in **Article 7**.

B. **Effect**

Except as otherwise provided in this UDO, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to an approved sign permit.

C. **Other Permits Required**

A sign may also require separate building and electrical permits from the Town.

9.15 Administrative Modifications

A. **Applicability**

A design modification may be requested for any valid development approval or site-specific vesting plan, including conditional zoning districts and special use permits.

B. **Design-related modifications to approved plans, permits, or development approvals shall be approved according to the following standards:**

1. **Major Modifications**

- a. Major modifications require review according to the appropriate review procedure per the Development Review Table.
- b. Major Modifications Include:
 - (1) Removal of a new vehicular access point to an existing street, road, or thoroughfare.

- (2) Modification of special performance criteria, design standards, or other conditions or requirements specified in the original entitlement.
- (3) An increase or decrease in the total number of residential dwelling units by 10 percent or greater.
- (4) An increase in total floor area by 10 percent or greater or a decrease in total floor area by 20 percent or greater.
- (5) Any increase in number of parking spaces of greater than 10 percent.
- (6) Any increase greater than 20 percent or decrease of greater than 10 percent in open space.
- (7) Any increase greater than 10 percent in the amount of public right-of-way or utilities, provided that any change in location or reduction in amount must also be reviewed and approved by TRC.

2. Minor Modifications

All other design-related modifications shall be considered minor, except that if cumulative minor modifications would result in a significant deviation from the original entitlement, or if review of a minor modification requires the application of subjective review criteria or standards, the modification request shall be considered major and subject to the appropriate review process.

a. Review

The TRC shall review minor modifications for consistency with this UDO and adopted Town plans and specifications.

b. Decision

- (1) Upon certification by the TRC that the modification meets (or will meet) all applicable standards of this Ordinance and other Town ordinances, the Administrator shall approve the modification with or without conditions. Approval with conditions may only be permitted to the extent that such conditions specify the actions necessary to bring the application into complete compliance with this UDO.
- (2) Should the TRC make a final determination that all such requirements and provisions have not been (nor will be) satisfied, the Administrator shall deny the application.

9.16 Temporary Use Permit

A. Applicability

Temporary uses operating for up to 90 days within a one-year period shall obtain a temporary use permit from the Administrator that outlines conditions of operations to protect the public health, safety, and welfare. Such uses include short-term or seasonal uses that are not otherwise permanently allowed in the zoning district regulations.

B. Application Submittal

The application should be submitted at least 30 days prior to the requested start date. Applications submitted late may not be approved.

C. Review

1. The TRC shall evaluate temporary uses based on the following standards:
 - a. **Land Use Compatibility**

The temporary use must be compatible with the purpose and intent of this UDO and the associated zoning district. The temporary use shall not impair the primary use of the same site.
 - b. **Other Departmental Review**

Any temporary structures shall require building permits or approvals by the Building Official and Fire Code Inspector. If necessary, the applicant must obtain approvals from the State of North Carolina and Wilkes County Health Department.
 - c. **Duration**

The duration of the temporary use shall be approved by the Administrator.
 - d. **Design Standards**

All proposed parking, landscaping, and signage shall be reviewed and approved by the Administrator so that no adverse effects are created for adjoining properties and permanent uses in the vicinity.

9.17 Administrative Appeals

The following is established to provide an appeal process for parties aggrieved by an order, requirement, decision, or determination made by the Administrator or designee charged with enforcing the specific provision of the ordinance.

A. Application Procedure

An appeal of an administrative decision may be taken by any person who has standing under [G.S. 160D-1402\(c\)](#) or by the Town, to the Board of Adjustment. Such an appeal shall be made within thirty (30) days of the receipt of the written notice of decision from the Administrator or designee, or of the filing of the written notice with the Town Clerk. If notice is sent via first-class mail, it is deemed received on the third business day following the deposit of the notice, for mailing with the United States Postal Service. A complete application, in accordance with [Section 9.2](#), is required for an Appeal.

B. Stay of Proceedings

The filing of an appeal shall stay enforcement of the action appealed from and accrual of any fines assessed during the length time of the appeal to the board of adjustment and any subsequent appeal in accordance with [G.S. 160D-1402](#) or during the length of time of any civil proceeding authorized by law or appeals therefrom unless the Administrator or designee certifies that, in their 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 Wilkes County in accordance with Rule 65 of the North Carolina Rules of Civil Procedure.

C. Required Appeal Application Information

Upon submission of a complete application, containing such relevant information as may reasonably allow the Board of Adjustment to understand the basis for the applicant's appeal, the Administrator or designee shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.

D. Review Process

1. Upon receiving the application and being deemed complete, the Administrator or designated staff for the Board of Adjustment shall schedule a public, evidentiary hearing on the appeal. The applicant, the local government, and any person who would have the standing to appeal the decision under [G.S. 160D-1402\(c\)](#) shall have the right to participate as a party at the evidentiary hearing. Refer to [Section XX](#) for hearing procedures.
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 simple majority 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 or designee 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 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.

9.18 Variances

The variance process 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. However, in no event shall the Board of Adjustment grant a variance that would conflict with any state code, would allow the establishment of use that is not otherwise allowed in a particular zoning district, or which would change the zoning district classification or the district boundary of the property in question. For variances to the requirements of a water supply Watershed Overlay District, [see Article VI, Section 6.5\(B\)\(3\)\(P\)](#).

A. Application Procedure

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 an application. Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator or designated staff shall schedule the matter for consideration at a meeting of the Board of Adjustment. The Administrator or designee shall prepare a staff report regarding the submitted variance application.

B. Review Process

1. Upon receipt of the request for a variance from the Administrator or designee, the Board of Adjustment shall hold a public, evidentiary hearing on the request.
2. After conducting the hearing and within forty-five (45) days, 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 (4/5) of the members of the Board of Adjustment shall be necessary to grant a variance.
3. Conditions. 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.

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 below in **Subsection C**.

C. Required Findings

The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:

1. Carrying out the strict letter of the ordinance would result in unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
3. The hardship did not result from actions taken by the applicant of the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.
5. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. That is, the applicant is not seeking to establish, or expand, or extend a nonconforming use. Moreover, the existence of a nonconforming use is the same or in any other zoning district shall not constitute a reason for granting the requested variance.

9.19 Text Amendments

A. Applicability

Amendments to the text of this chapter shall be made in accordance with the provisions of this section. The Town Board of Commissioners shall consider amendments to the text of this chapter, as may be required from time to time.

B. Initiation of Amendment

A request to amend the text of this chapter may be initiated by the Town Board of Commissioners, Board of Adjustment, Planning Board, Administrator, or the general public.

C. Action by Administrator.

1. The Administrator shall draft the appropriate amendment and prepare a staff report that reviews the proposed text amendment request.
2. Following completion of technical review by staff, the Administrator shall forward the completed request and any related materials to the Planning Board for a recommendation.

D. Action by Planning Board

1. The Planning Board shall make a recommendation on the application to the Town Board of Commissioners. If the Planning Board fails to make a recommendation, the Town Board of Commissioners may process the request without a recommendation.
2. When conducting a review of proposed map amendment pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan or future land use plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Board of Commissioners that addresses plan consistency. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board of Commissioners.
3. Following Planning Board review, the Administrator or designee shall forward the completed request and any related materials, including the Planning Board recommendation (if applicable), to the Town Board of Commissioners for final action.

E. Action by Town Board of Commissioners

1. Before taking action on a text amendment, the Town Board of Commissioners shall consider the recommendations of the Planning Board and Administrator or designee.
2. The Town Board of Commissioners may approve the amendment, deny the amendment, or send the amendment back to the Planning Board for additional consideration.
3. Concurrently with adopting, denying, or remanding any text amendment, the Town Board of Commissioners shall adopt a statement describing whether its action is consistent or inconsistent with the adopted plans and polices of the Town and explaining why the Town Board of Commissioners considers the action taken to be reasonable and in the public interest. The requirement may also be met by a clear indication in the minutes of the Town Board of Commissioners that the Board was aware of and considered the planning board's recommendations and any relevant portions of the comprehensive plan.

F. Approval Criteria

1. In evaluating any proposed amendment of the text of this chapter, the Planning Board and the Town Board of Commissioners shall consider the following:
 - a. The extent to which the proposed text amendment is consistent with the remainder of the chapter, including, specifically, any purpose and intent statements;
 - b. The extent to which the proposed text amendment represents a new idea not considered in the existing chapter, or represents a revision necessitated by changing circumstances over time;
 - c. Whether or not the proposed text amendment corrects an error in the chapter; and
 - d. Whether or not the proposed text amendment revises the chapter to comply with state or federal statutes or case law.
2. In deciding whether to adopt a proposed text amendment to this chapter, the central issue before the Town Board of Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with the adopted plans and policies of the Town and the specific intent of this chapter.

A. Applicability

1. Amendments to the Zoning Map shall be made in accordance with the provisions of this Section.
2. Rezoning should correspond with the boundary lines of existing platted lots or parcels. Where the boundaries of a rezoning request stop short of an exterior property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of this chapter.
3. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, prior to advertisement of the public hearing, the rezoning shall be expanded to include all property necessary to meet zoning requirements.

B. Initiation of Amendment

1. The Town Board of Commissioners, any Town agency, or any resident or landowner within the land use jurisdiction of the Town may initiate a rezoning, except that no amendment to a zoning regulation or a zoning map that down-zones property shall be initiated nor enforceable without the written consent of all property owners subject to the amendment unless initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
 - a. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
 - b. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage."

2. Citizen Comment

If any resident or property owner in the Town submits a written statement regarding a proposed amendment, modification, or repeal to zoning regulation, including a map amendment that has been properly initiated as provided in 160D-601, to the clerk to the Board of Commissioners at least two (2) business days prior to the proposed vote on such change, the clerk shall deliver such written statement to the Town Board of Commissioners.

C. Review Process

1. Action by Administrator

- a. The Administrator shall prepare a staff report that reviews the rezoning request in light of the adopted plans and policies of the Town and the general requirements of this chapter.
- b. Following completion of technical review by staff, the Administrator shall forward the completed request and any related materials to the Planning Board.

2. Action by Planning Board

- a. All proposed amendments to the zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the planning board within thirty (30) days of referral of the amendment to that board, the Town Board of Commissioners may act on the amendment without the planning board report. The Town

Board of Commissioners is not bound by the recommendations, if any, of the planning board.

- b. When conducting a review of proposed map amendment pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan or future land use plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Board of Commissioners that addresses plan consistency.
 - (1) A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board of Commissioners.
 - (2) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.
 - (3) The review and comment required of the Planning Board by this section shall not be assigned to the Town Board of Commissioners and must always be performed by a separate board, even if the Town Board of Commissioners is acting on behalf of the Planning Board.
- c. Following Planning Board review, the Administrator shall forward the completed rezoning request and any related materials, including the Planning Board recommendation (if applicable), to the Town Board of Commissioners for final action

3. Action by the Town Board of Commissioners

- a. Before taking action on a rezoning, the Town Board of Commissioners shall consider the recommendations of the Planning Board and Administrator.
- b. The Town Board of Commissioners may approve the rezoning, deny the rezoning, or send the rezoning back to the Planning Board for additional consideration.
- c. Concurrently with adopting, denying, or remanding any rezoning, the Town Board of Commissioners shall adopt a statement describing whether its action is consistent or inconsistent with the adopted plans and policies of the Town and explaining why the Town Board of Commissioners considers the action taken to be reasonable and in the public interest. The requirement may also be met by a clear indication in the minutes of the Town Board of Commissioners that the Town Board of Commissioners was aware of and considered the planning board's recommendations and any relevant portions of the comprehensive plan.
 - (1) If a zoning map amendment is adopted and the action was deemed inconsistent with the plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.
 - (2) A comprehensive plan amendment and a zoning amendment may be considered concurrently.
 - (3) The comprehensive plan consistency statement is not subject to judicial review.
 - (4) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners' statement describing plan consistency may

address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(5) Additional Reasonableness Statement for Rezonings

- (a) When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Board of Commissioners. This statement of reasonableness may consider, among other factors:
- (b) The size, physical conditions, and other attributes of the area proposed to be rezoned,
- (c) The benefits and detriments to the landowners, the neighbors, and the surrounding community,
- (d) The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
- (e) Why the action is taken is in the public interest; and
- (f) Any changed conditions warranting the amendment.
- (g) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Town Board of Commissioners' statement on reasonableness may address the overall rezoning.

(6) Single Statement Permissible

The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

9.21 Conditional Zoning

A. Applicability

- 1. Development in a conditional zoning district shall be subject to all the use and development standards and requirements that apply to development in the parallel general zoning district, plus any conditions imposed as part of the conditional zoning approval.
- 2. The purpose of this section is to provide a uniform means for amending the Official Zoning Map to establish a conditional zoning district.
- 3. Only the property owner(s) may initiate the classification of property to a conditional district, or an agent authorized by affidavit to act on the owner's behalf. The developer is strongly encouraged to work closely with staff and/or Administrator and neighboring property owners before and during the application and review process to minimize delays and address concerns that may arise.

B. Petition

- 1. A request for rezoning to a conditional district shall include an official petition consisting of the following:
 - a. A completed application form.

- b. A list of adjoining properties, including tax parcel numbers and the name and address of each owner. For the purposes of this section, adjoining property owners shall include owners of properties lying within one hundred feet of the subject property if located across a public or private street.
- c. A map of the parcel and its relationship to the general area in which it is located.
- d. All appropriate fees.
- e. A site plan meeting the requirements of **Section X.X.**
- f. A written description or notation on the map explaining the proposed use of all land and structures, including the number of residential units, permitted uses, yard requirements or the total square footage of any nonresidential development and planned amenities.
- g. A preliminary subdivision plat that meets all of the requirements of the subdivision ordinance, including type and quantity for submission, where subdivision of land is proposed. Any other information deemed necessary by the Administrator or Planning Board.

C. Modifications

1. The following changes and/or modifications to a Conditional District ordinance and site plan require consideration and approval by the Town Board of Commissioners. All other changes and/or modifications require consideration and approval by the Administrator. However, if in the judgment of the Administrator, the requested changes and/or modifications alter the basic development concept, the Administrator may require concurrent approval by the Planning Board and Town Board of Commissioners.
 - a. Land area being added or removed from the Conditional District.
 - b. Modification of special performance criteria, design standards, or other requirements specified by the Conditional District ordinance.
 - c. A change in land use or development type beyond that permitted by the Conditional District ordinance.
 - d. When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
 - e. When there is an increase in the total number of residential dwelling units originally authorized by the Conditional District ordinance.
 - f. When the total floor area of a commercial or industrial classification is increased more than ten percent (10%) beyond the total floor area originally authorized by the Conditional District ordinance.

D. Additional Requirements for Planned Developments

1. In addition, the following must be submitted prior to the public hearing for Planned Development Conditional District rezonings:
 - a. Evidence of unified control of the area of the proposed district.
 - b. Statement of agreement of all present owners and their successors in title to proceed with the proposed development according to regulations in effect when the map amendment

creating the PD district is established. This statement shall be filed at the Wilkes County Register of Deeds on the subject property after approval is made for the amendment. All costs associated with filing shall be at the owner's expense.

- c. Statement of agreement of all present owners and their successors in title to provide bonds, dedications, guarantees, agreements, contracts, and deed restrictions acceptable to the Town Board of Commissioners for completion of the development according to approved plans and for continuing operation and maintenance of areas and facilities not provided at public expense; and such dedications, contributions, or guarantees as required for public facilities and services. This statement shall be filed at the Wilkes County Register of Deeds on the subject property after approval is made for the amendment. All costs associated with filing shall be at the owner's expense.
- d. Statement of agreement of all present owners to bind future successors in title to any commitments made under subsections b and c above.
- e. Detailed proposals in accordance with subsections b and c above as a basis for specific modification of applicable regulations where such modification is intended to serve public purposes.

E. Conditions

1. Prior to the action on the proposed amendment (which may also include a period after the public hearing) any Planning Board or Town Board of Commissioners member (or any group of members not comprising a majority of such board) may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal.
2. The specifics of the plan may be negotiated to address community issues or concerns and to ensure that the spirit and intent of this article are preserved.
3. During the public hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.
4. Any modifications and/or conditions, the Board must obtain the applicant's/landowner's written consent to conditions and/or modifications related to a conditional zoning approval in regards to enforceability.

9.22 Enforcement and Penalties

A. Purpose and Intent

This section provides for the methods of notification and penalties involved in enforcement of this Ordinance. Whenever possible, it is desirable to gain voluntary compliance with the provisions of this Ordinance without the necessity of pursuing formal enforcement measures.

B. Violation

It is unlawful and a violation of this ordinance to establish, create, expand, occupy, or maintain any use, land development activity, or structure, including, but not limited to, signs and buildings, that violates or is inconsistent with any provision of this Ordinance. Approvals and authorizations include, but are not limited to Special Use Permits, Sign Permits, Building Permits, Certificates of Zoning Compliance, Certificates of Occupancy, Variances, development plans, site plans, landscaping plans, and conditions of such permits and plans. It is also a violation to engage in any construction, land development activity, or use without all approvals and authorizations required by this Ordinance.

C. Violators

1. Violators include but are not limited to, any person (s) who owns, leases, occupies, manages, or builds any structure or land development activity in violation of this Ordinance, and any person(s) who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator. For the purpose of **Article IV of this Ordinance**, the term "person" is defined to include but not be limited to any individual, group of individuals, or any corporation, partnership, association, company, or business, trust, joint venture, or other legal entity. In addition, one or more of the following persons may be held responsible for a violation of this Ordinance, and be subject to the remedies and penalties provided in this Section:
 - a. An owner of the property on which the violation of this Ordinance occurs, any tenant or occupant of that property who has control over, or responsibility for, its use or development, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance.

D. Responsibility

The Administrator shall enforce this Ordinance and the remedies authorized under this Section. The Administrator shall have the authority to settle any violations that involve the payment of money to the governing body.

Vested Rights

A. Applicability

1. Any amendments, modifications, supplements, repeal or other changes in these regulations or the zoning maps shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:
 - a. For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to G.S. 160D-403 and the building permit has not been revoked pursuant to G.S. 160D-403; or;
 - b. For which a zoning permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this article; or
 - c. For which a vested right has been established and remains valid and unexpired pursuant to this section.

B. Additional Procedures

A vested right to commence a planned development or use of property according to a vesting plan shall be established upon approval of a special use permit, or conditional zoning by the appropriate board. The vested right thus established is subject to the terms and conditions of the site plan. Only those design elements shown on or made a part of the site plan or permit shall be vested.

C. Term

1. A right, which has been vested by the Town of North Wilkesboro, shall remain vested for a period of two years from date of approval. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the appropriate board when it approves the modification or amendment. A vested right obtained under this subsection is not a personal right, but shall attach to and run

with the subject property. A right which has been vested under the provisions of this sub-section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit has been issued except that:

- a. When a vested development plan has been at least fifty percent completed by the end of the vesting period, the project as a whole shall be given two more years to complete development in conformance with the approved plan not to exceed a total vested period of five years; and
 - b. Prior to the vested right terminating at the end of the two-year period, the owner of the property may petition the appropriate board for a one-time, two-year extension of the vested right not to exceed a total vested period of five years. In its deliberations regarding the extension request, the board may consider, among other things:
 - (1) the percentage of the project completed;
 - (2) a demonstration by the petitioner of good faith efforts made towards project completion;
 - (3) the reasons for the delay of project build-out; and
 - (4) the compatibility of the planned development with current town plans and the surrounding landscape. The board may choose to extend the vested right for the entire project or only a portion of the project and may require one or more design features shown on the plan or incorporated in the permit to meet the current code
2. A multi-phased development shall be vested for the entire development with the zoning regulations, ordinances, subdivision regulations, ordinances, and unified development ordinances then in place at the time a site plan approval is granted for the initial phase of the multi-phased development.
 3. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, "multi-phased development" means a development containing 25 acres or more that:
 - a. is submitted for site plan approval for construction to occur in more than one phase and
 - b. is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

D. Vested Rights and Annexation

A petition for annexation filed with the town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established. A statement that declares that no zoning vested right has been established under G.S. 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established shall be binding on the landowner, and any such zoning vested right which may have existed shall be terminated.

A. Purpose and Applicability

The purpose of this section is to regulate and limit the continued existence of uses and structures that were established prior to the effective date of these regulations and that do not conform to these regulations. Any nonconformity created by a change in the text of these regulations or by the reclassification of property shall be regulated by the provisions of this Section. The “effective date” referenced below shall be the date the text of these regulations or the zoning map is amended to render a particular use, structure, or lot nonconforming. Many nonconformities may continue, but the provisions of this chapter are designed to curtail substantial investment in nonconformities, and to bring about their eventual improvement or elimination.

B. Specific Terms

For the purposes of this article and discussing nonconformities, the following definitions shall apply:

1. **Abandon:** To cease, either intentionally or unintentionally, from actively using land, structures, or any premises for the intended or previous use, but excluding temporary periods of inactivity due to remodeling, maintaining, or otherwise improving a facility. Abandonment is often referenced to a specified time period. This definition includes “abandon”, “abandonment”, and any other tense or version of the word “abandoned.”
2. **Discontinued:** To quit or cease, either intentionally or unintentionally, operation or activity associated with a use of land, structures, or any premises from their intended or previous use or to replace the previous use with a new use of a different kind or class. A change of occupancy, owner, or tenant does not constitute a discontinuance or change of use. This definition includes “discontinue”, “discontinuance”, “ceased” (as it refers to a use), and any other tense or version of the word “discontinued.”

C. Other Clarifications

An “intent to resume” a use, operations, or activities may be demonstrated through continuous operation of a portion of the facility, by the maintenance of water, sewer, electric, and other utility service (as appropriate), or by other outside documentation such as proof of deliveries.

D. Nonconforming Uses**1. Normal Maintenance and Repair of Structures with Nonconforming Uses**

Normal maintenance or repair of structures where nonconforming uses are located may be performed in any consecutive 12-month period, to an extent not exceeding 33 percent of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the cubic content of the structure occupied by the nonconforming use, except pursuant to this section.

2. Extension

- a. A nonconforming use may be extended throughout any portion of a completed structure that, when the use was made nonconforming by this UDO, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional structures or to land outside the original structure.
- b. A nonconforming use of open land may not be extended to cover more land area than was occupied by that use when it became nonconforming, except that a use involving the removal of natural materials (e.g., a quarry) may be expanded to the boundaries of the lot

where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed prior to **XX,XX,XXXX**.

3. Change of Use

A nonconforming use may be changed to any permitted use(s) in the subject district, so long as new nonconformities or an increase in the extent of existing nonconformities, such as parking requirements, are not created. The affected property may not then revert to a nonconforming use.

4. Continuation of Accessory Use

No use that is accessory to a principal nonconforming use shall continue after such principal use has discontinued, ceased, been abandoned, or terminated unless it conforms to all provisions of this UDO.

5. Discontinuance and Abandonment

a. A nonconforming use shall be presumed to be discontinued and abandoned, shall lose its nonconforming status, and shall not be reestablished or resumed and thereafter be used only for conforming purposes, when any of the following has occurred:

(1) The owner has indicated intent to abandon the use, delivered in writing to the Administrator.

(2) When a nonconforming use is abandoned or discontinued for a consecutive 180-day period or for a total of 180 calendar days in a 12-month period.

(3) At the point when the electric meter is pulled off or water service or other public utility service is terminated on a structure or lot due to any reason, provided that it is not replaced or reactivated within the 180-day period immediately following.

b. All of the uses and structures maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section. However, if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

E. Nonconforming Structures

1. Normal Maintenance and Repair

Normal maintenance or repair of nonconforming structures may be performed in any consecutive twelve-month period, to an extent not exceeding 33 percent of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the cubic content of the structure, except pursuant to this section.

2. Alterations or Additions

Alterations or additions to a nonconforming structure may be permitted as long as the alterations or additions do not increase the nonconformity of the structure related to the building setback line, height limitations, yard, or other provisions regulating the size and placement of structures for the district in which the nonconforming structure is located.

3. Reconstruction

a. Nonresidential Structures

(1) If a nonresidential structure, including any accessory structure, is damaged by reason of fire, flood, explosion, earthquake, or other extraordinary circumstance; it may be repaired, reconstructed, and used as before if the damage does not exceed 50 percent of its replacement value as determined by the **Building Official**, and if the repairs and reconstruction are done within 12 months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.

(2) If a nonresidential building or structure, including any accessory structure, is damaged, and if such damage is greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may only be reconstructed to conform with the standards in the district in which it is located.

b. Residential Structures

If a residential structure, including any accessory structure, is damaged greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may be repaired, reconstructed, and used as before if the repairs and reconstruction are done within 12 months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.

4. Unsafe Structure

If a nonconforming structure or portion thereof is declared to be an unsafe structure per G.S. § 160D-1119, it shall thereafter be rebuilt only in conformance with the standards of this UDO and the adopted building code.

5. Discontinuance and Abandonment

a. If a nonconforming structure on a property is abandoned or all associated use of the structure has been discontinued for a period of 180 consecutive days, any subsequent use of that property shall conform to current zoning district regulations. See **Section 9.17.B.1** for the definition of Abandon.

b. When a structure made nonconforming by this UDO is abandoned or all associated use of the structure has been discontinued as of **XX,XX,XXXX**, the 180-day period begins to run at that date.

c. All of the uses and structures maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.

d.

1. Setback Requirements

When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot reasonably be complied with, then the entity authorized to issue a permit for the proposed use may allow deviations from the setback requirements if it makes all of the following findings:

a. That the property cannot reasonably be developed for the use proposed without such deviations.

- b. That these deviations are necessitated by the size or shape of the nonconforming lot.
- c. That the property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

2. Setback Hardship

For purposes of **Section 9.17.F.3**, strict compliance with applicable setback requirements is not reasonably possible if a building serving the minimal needs of the proposed use cannot practicably be constructed and located on the lot in conformity with setback requirements. Financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

3. Governmental Acquisition of Land

A lot, established under the provisions of this Ordinance or a previous town zoning ordinance, that is reduced in size by governmental action, such as acquisition for a right-of-way or other governmental use, shall not render the lot nonconforming.

F. Nonconforming Signs

1. Normal Maintenance and Repair

- a. Nonconforming signs may be maintained or repaired as long as the cost of any work requiring a permit does not exceed, within a 12-month period, 33 percent of the value of such sign. Proof of value is required at the time of permit.
- b. The message of a nonconforming sign (sign face) may be changed, so long as a change in use has not occurred. If a change in use occurs, a change of sign face is not considered normal maintenance and repair; therefore, the sign and associated sign structure(s) must be brought into full conformity with this UDO.

2. Enlargement of Alteration

- a. No nonconforming sign shall be enlarged or altered in any manner that results in a greater degree of nonconformity.
- b. No alteration of the structure of any nonconforming sign shall be permitted, except to bring the sign into conformity.
- c. Illumination may not be added to a nonconforming sign that previously was unilluminated.

3. Discontinuation of Business

If a nonconforming sign other than a billboard advertises a discontinued business, service, commodity, accommodation, attraction or other enterprise, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, property owner, or other person having control of the property.

4. Billboards on Federal-Aid Highways

Billboards on federal-aid highways are protected by the State and Federal Highway Beautification Acts (Article 11 of G.S. § 136, and 23 U.S.C. § 131) and cannot be amortized and can only be removed upon payment of just compensation as defined by those Acts.

A. Inspections and Investigations

A program of inspections and investigations to determine compliance with the Zoning Ordinance and orders, plans, permits, certificates, and authorizations issued under the Zoning Ordinance, is hereby authorized. This program shall be conducted under the general authority of the Administrator. On receiving complaints or other information indicating a violation of this Ordinance, the Administrator or Zoning Enforcement Officer shall investigate the situation and determine whether a violation exists. Inspections shall be during reasonable hours and the inspector must present credentials and consent of the premises owner or an administrative warrant to inspect areas not open to the public.

B. Initial Notice of Violation

On determining that a violation exists, the Administrator shall, whenever possible, make contact with the violator either in person or via telephone to discuss the violation. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property and shall be recorded in the file. The notice shall describe the nature of the violation and its location, state the actions necessary to correct the violation, and invite the alleged violator to meet with the Administrator to discuss the violation and how it may be corrected. The Administrator may provide the alleged violator additional notices of violation. This notice is an administrative determination subject to appeal.

C. Final Notice of Violation; Correction Order

1. The Administrator's final written notice of violation (which may be the initial notice) shall also order correction of the violation, specify a reasonable time period in which the violation must be corrected, state the remedies and penalties authorized in Section the Administrator may pursue if the violation is not corrected within the specified time limit, and state that the correction order may be appealed to the Board of Adjustment if the correction order is the initial notice.
2. The final notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property and shall be recorded in the file.
3. A notice of a new violation is not required where a notice of a violation of the same kind has been issued to the same violator at the same property within the previous two (2) years. In such cases, the violator may be charged with a continuing violation without further notice, as provided in Section X.X below. A notice is also not required where action is taken under Sections X.X or X.

D. Appeal to the Board of Adjustment

Any person aggrieved by the Administrator's determination of a violation or a correction order may appeal that determination or order to the Board of Adjustment. An appeal generally stays all further actions to enforce a notice of violation, correction order, or Stop Work Order, until the Board of Adjustment has made a decision concerning the appeal. Civil Penalty citations that follow the initial notice of violation may not be appealed to the Board of Adjustment. The Board shall hear the appeal and may affirm, modify, or revoke the Administrator's determination of a violation. If there is no appeal, the Administrator's determination of the nature and degree of the violation are final.

E. Failure to Comply with Notice or Board of Adjustment Decision

If the violator does not comply with a notice of violation, correction order, Stop Work Order, which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed by G.S.160D-403 or by this Ordinance.

F. Extension of Time Limit to Correct Violation

The recipient of an initial notice of violation, correction order, or Stop Work Order, or the owner of the property on which the violation occurs, may, within thirty (30) days of the receipt or posting of the initial notice of violation or correction order, whichever is earlier, submit to the Board of Adjustment, a written request, to be filed with the Administrator, for extension of the specified time limit for correction of the violation. In cases where an appeal of the notice of violation has been properly filed with the Board of Adjustment, the thirty (30) day period shall commence upon receipt of the notice of the Board of Adjustment decision concerning the violation or correction order. The Administrator shall assist individuals in the preparation of said statement in cases where an individual(s) is/are unable to prepare a written statement. The Administrator will recommend whether the time limit should be extended. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit, for reasons beyond the control of the person requesting the extension, the Board of Adjustment may extend the time limit as reasonably necessary to allow timely correction of the violation.

G. Enforcement Action After Time Limit to Correct Violation

Following the time limit for correction of the violation, including any stay or extension thereof, the Administrator shall determine whether the violation has been corrected. If the violation has been corrected, the Administrator shall take no further action against the alleged violator. If the violation has not been corrected, the Administrator may act to impose one or more of the remedies and penalties specified in the notice of violation, correction order, or Stop Work Order.

H. Emergency Enforcement Without Notice

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Administrator may seek immediate enforcement without prior written notice through any of the remedies or penalties authorized in **Section X.X.**

I. Remedies, Penalties, Enforcement Action

The Administrator may pursue one (1) or more of the following remedies and penalties described below or in Section 4.4, or otherwise authorized by common law or statute, to prevent, correct, or abate a violation of this Ordinance. Use of one (1) of the authorized remedies and penalties does not preclude the Administrator from using any other authorized remedies or penalties, nor does it relieve any party to the imposition of one (1) remedy or penalty from imposition of any other authorized remedies or penalties.

J. Permit Revocation

In accordance with the provisions of this Ordinance, the Administrator, upon a written determination, may revoke any permit, certificate, or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance. Any permit, certificate, or authorization mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked without such written determination.

K. Permit Denial or Conditioning

As long as a violation of this Ordinance remains uncorrected, the Administrator may deny or withhold approval of any permit, certificate, or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs. The Administrator may also condition a permit, certificate, or authorization on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

L. Injunctive and Abatement Relief in Superior Court

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NC General Statute 160A-175. The Administrator shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of the execution shall be a lien on the property in the nature of a mechanic's or material man's lien.

M. Judicial Action to Collect Civil Penalty

1. A civil action in the nature of a debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under **Section X.X** below.

a. Stop Work Order

- (1) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of a Stop Work Order, the Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or lands, or to prevent any illegal act, conduct, business or use in or about the premises.
- (2) The stop work order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefore, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud.
- (3) No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.
- (4) The person(s) conducting the violating activity and/or the property owner may appeal the Stop Work Order to the Board of Adjustment pursuant to **Section X.X** of this ordinance.

9.26 Civil Penalty

A. General.

The Administrator, after consultation with the Town Manager, may impose one or more civil penalties and issue one or more Civil Penalty citations for a violation as provided below. If the violator does not pay the penalty, the Administrator may collect it in a court through a civil action in the nature of a debt.

B. Notice of Civil Citations.

Notice of civil citations shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of civil citation may be posted on the property. The notice shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline

for payment, which shall be ten (10) days from the date of the notice, and the possibility of civil enforcement.

C. Amount

1. Fines associated with notices of violations are outlined in the Town's fee schedule.
2. In addition to civil penalties rendered, the violator may be required to pay any and/or all attorney's fees in the collection of monetary penalties.

D. Continuing Violations

The Administrator may issue a Civil Penalty citation for a violation that continues without being corrected. The violator in such cases may be assessed a penalty for each day of the continuing violation. An initial Civil Penalty citation for a single violation must be issued before a Civil Penalty citation for a continuing violation is issued. If the violator has failed to pay the penalty and correct the violation after the initial Civil Penalty citation, the violator is subject to a Civil Penalty citation for a continuing violation with a daily penalty. An initial Civil Penalty citation is not required if the Town has previously issued a Civil Penalty citation to the violator for the same violation at the same location within the previous two (2) years. The Administrator may give a single notice of a Civil Penalty citation for a continuing violation. The notice must contain a copy of the notice of violation and must state that the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.

E. Settlement of Claims

The Town Attorney is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the Board of Commissioners may have in connection with the violation. The Town Attorney shall indicate in writing the claims from which the violator is released. If the violation has not been remedied, payment shall not release a violator from potential civil prosecution or a claim for injunctive relief and/or an order of abatement.

Rules of Construction.

For the purposes of these regulations, the following rules of construction apply.

- A. Interpretations shall be guided by statements of intent.
- B. The term "ordinance" shall refer to the Town of North Wilkesboro Unified Development Ordinance.
- C. The words "shall", "must", and "will" are mandatory, implying an obligation or duty to comply with the particular provision.
- D. The word "may" is permissive, except when the context of the particular use is negative, then it is mandatory (i.e. may not.).
- E. The word "should", whether used in the positive or the negative, is a suggested guideline.
- F. References to "days" will always be construed to be business days, excluding weekends and Town-observed holidays, unless the context of the language clearly indicates otherwise.

- G. For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Section 5.3. Except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.
- H. Words used in the present tense include the future tense, and words used in the future tense include the present tense.
- I. Words used in the singular number include the plural, and words used in the plural number include the singular.
- J. The word "person" includes a firm, association, organization, partnership, corporation, trust, and company, as well as an individual.
- K. The word "lot" includes the word "plot", "parcel" or "tract".
- L. The word "building" includes the word "structure", and the word "structure" includes the word "building".
- M. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged", or "designed" to be used or occupied.
- N. Words used in the masculine gender include the feminine gender.
- O. The word "street" includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians
- P. The terms "Town Board" and "Board of Commissioners" shall mean the Town Board of Commissioners of the Town of North Wilkesboro, North Carolina.
- Q. The term "Planning Board" shall mean the Planning Board of the Town of North Wilkesboro, North Carolina.
- R. The term "Administrator" shall mean the Zoning Administrator of the Town of North Wilkesboro's Unified Development Ordinance, North Carolina, currently designated as the Planning Director or other Town Manager designee.
- S. The term "Manager" or "Town Manager" shall mean the Town Manager of the Town of North Wilkesboro, North Carolina.
- T. The term "Board of Adjustment" shall mean the Board of Adjustment of the Town of North Wilkesboro, North Carolina.
- U. The term "state" shall mean the State of North Carolina.
- V. Any reference to an article shall mean an article of the Town of North Wilkesboro Zoning Ordinance, unless otherwise specified.
- A. Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the Administrator shall employ the following rules of interpretation.
 - 1. Where the zoning maps show a boundary line located within a street or alley right-of-way, railroad or utility line right-of-way, easement or waterway, it shall be

considered to be in the center of the right-of-way, easement or waterway. If the actual location of such right-of-way, easement or waterway varies slightly from the location as shown on the zoning maps, then the actual location shall control.

2. Where the zoning maps show a district boundary to approximately coincide with a property line or city, town or county border, the property line or border shall be considered to be the district boundary, unless otherwise indicated on the zoning map.
3. Where the zoning maps show a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway or property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning maps to determine the boundary's distance from other features shown on the map.
4. If, because of error or omission in the zoning maps, any property within the jurisdiction of this ordinance is not shown as currently being in a zoning district, such property will be classified as "R10", until changed by amendment.
5. The Zoning Enforcement Officer shall decide the exact location of zoning district boundary lines when a question arises concerning boundary lines shown on the zoning maps. This decision may be appealed to the Board of Adjustment.
6. Where district boundaries appear to be parallel to the centerline of streets, easements or rights-of-way, such district boundaries shall be construed to be parallel thereto and at such a distance there from as is indicated on the zoning maps.

B. Split Tracts

1. The Zoning Enforcement Officer shall employ the following rules with respect to split tracts and fractional requirements:
2. Where a district boundary line divides a lot or tract in single ownership, the district requirements for the most restricted portion of such lot or tract shall be extended to apply to the whole, provided such extensions shall not include any part of a lot or tract more than thirty-five feet beyond the district boundary line. The term "most restrictive" shall refer to all zoning restrictions except lot or tract size.
3. When any requirement of this ordinance results in a fraction of a dwelling unit or other measurement, that fraction will be disregarded and the nearest lower whole number shall apply.
4. Whenever a density calculation for a legal lot of record results in less than one dwelling unit being permitted, one dwelling unit will be permitted subject to the remaining provisions of this ordinance.

C. Rules of Conflict

1. In the event of a conflict between the text of this article and any caption, figure, illustration, or table included herein, the text of this article shall control.
2. In the event there is a conflict in limitations, requirements or standards applying to any individual use or structure, the more stringent or restrictive provision shall apply.

D. Distance Measurements

1. Distance separations are required for many uses in this article. Unless otherwise specified, the following rules shall apply in determining such measurements:
 - a. Where lot separation is required, measurements shall be made from lot line to lot line using the shortest straight-line distance between lots.
 - b. Where separation between a building, structure, parking area, buffer, driveway or similar feature on a development site and any other feature on the same or abutting site is required or is part of a regulation contained herein, such separation shall be measured between the closest points on the feature using the shortest straight-line distance between the two.