

## 2 Development Review Procedures

### 2.1 General (TA 21-01)

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#### 2.1.1 Authority to File Applications (TA 21-01)

Unless otherwise expressly stated elsewhere in this chapter, any application under this chapter may be filed by any city department, review or decision-making body, the owner of property that is the subject of the application, a lessee or person holding an option or contract to purchase or lease the property, or an authorized agent of the subject property owner. In the case, of subdivision plats, site plan review, planned developments, conditional zoning, and special uses, only property owners or authorized agents may submit an application. In the case of appeals, applications may be filed by the subject property owner or by any person who has standing under G.S. 160D-1402(c), or by the City. When a decision-making body initiates an application it does so without prejudice toward the outcome.

#### 2.1.2 Pre-application Conference (TA 14-01)

Pre-application conferences are intended to provide a forum for the discussion of proposed development projects. These conferences include relevant City and County staff, developers, architects, engineers, contractors and other design professionals. The intent of these conferences is to provide preliminary comments and observations regarding development projects; and to further provide developers, architects, contractors and other design professionals with the opportunity to ask questions and receive feedback before formally submitting applications for development review. The Planning Department will be responsible for facilitating pre-application conferences.

Development projects with any of the following shall be required to participate in a pre-application conference prior to submittal for any applications:

- A. any development project proposing to construct or erect a single structure, or addition to an existing structure(s), which has a gross floor area of fifteen-thousand square feet (15,000 ft<sup>2</sup>) or greater;
- B. any development project proposing renovations to an existing structure, where such activities involve improvements and/or alterations to fifteen-thousand square feet (15,000 ft<sup>2</sup>) or more of the existing floor area of the structure(s);
- C. any development project which involves the construction of more than one (1) structure on a single parcel of property;
- D. any development project which involves the construction of an additional structure(s) on a parcel of property which already contains a structure (This shall not apply to incidental accessory structures.);
- E. any development project which involves the construction of new, or relocation of existing public or private streets;
- F. any development project, which upon completion, would be expected to increase traffic by seven hundred fifty (750) vehicle trips per day, as outlined in the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual; and
- G. any development project which requires the extension of utility services.

For all other development projects, applicants are encouraged to request a pre-application conference with the appropriate city staff.

### **2.1.3 Form of Application**

Applications required under this Land Development Code must be submitted in a form and in such numbers as noted on the application as required by the official responsible for accepting the application. Application forms and checklists of required submittal information are available from the official responsible for accepting the application.

### **2.1.4 Application Filing Fees (TA 18-01)**

Applications must be accompanied by the required fee amount as established by the City of Hickory Annual Fee Schedule available from the Planning Department. Fees are not required with applications initiated by a city department or by review of decision-making bodies. Unless otherwise expressly stated in this Land Development Code, application fees are nonrefundable.

### **2.1.5 Application Completeness**

An application will be considered complete if it is submitted in the required number and form, includes all requested information and is accompanied by the applicable fee. A determination of application completeness shall be made within 10 days of application filing. If an application is determined to be incomplete, the official responsible for accepting the application shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected.

### **2.1.6 Application Deadlines**

Each year, staff shall prepare a calendar of application deadlines. Applications shall be submitted prior to the deadline and determined to be complete within the prescribed period. Any application submitted after the deadline or found to be incomplete within the prescribed time frame shall be held until the next deadline.

### **2.1.7 Notices (TA 14-01)**

**Content.** Notices required under subsections (1) and (3) below shall: (1) indicate the date, time and place of the public hearing or date of action that is the subject of the notice; (2) describe the property involved in the application by street address and by Property Identification Number (PIN) or by legal description; (3) describe the nature, scope and purpose of the application or proposal; and (4) indicate where additional information on the matter can be obtained.

#### **Types.**

(1) **Newspaper Notice (N) (TA 23-02).** When the provisions of this Land Development Code require that "Newspaper Notice" be provided, the official responsible for accepting the application shall ensure that notice is published as required by NCGS 160D. Prior to final action on the application, the official responsible for accepting the application shall certify that notices have been published.

(2) **Posted Notice (P) (TA 18-01) (TA 21-01) (TA23-02).** When the provisions of this Land Development Code require that "Posted Notice" be provided, the official responsible for accepting the application shall post notice on the subject property. Such posted notice shall be in the form of official signs provided by the Planning Department and be done in a manner that makes the notice clearly visible to neighboring residents and passers-by from each public street bordering the subject property. The official responsible for accepting the application shall post this notice as required by NCGS 160D.

(3) **Mailed Notice (M) (TA 18-01) (TA 21-01 & 22-01)**

- (a) When the provisions of this Land Development Code require that “Mailed Notice” be provided, the official responsible for accepting the application shall mail notice as required by NCGS 160D. Ownership information shall be based on the most recent county tax records. Unless otherwise expressly provided in state statutes or this Land Development Code, required notices shall be deposited in the U.S. mail at least 10 days before and not more than 25 days before the public hearing, meeting, or date of action that is the subject of the notice. Prior to final action on the application, the official responsible for accepting the application shall certify that notices have been given.
- (b) The first class mail notice required under subsection (a) shall not be required if a zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least 50 different property owners. In this instance the city may, as an alternative, elect to publish a notice of public hearing as required by NCGS 160D-601, but provided that each advertisement shall not be less than on-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a).
- (c) In the event of appeals of administrative decisions, the notice shall only be required to be mailed to the person or entity whose appeal, application or request is the subject of the hearing, and to the owner of the property that is subject to the hearing if the owner did not initiate the hearing.
- (d) In the event of Major Certificates of Appropriateness, mailings shall only be required to be sent to those who own property immediately adjacent to the property under consideration for action. The timeframe for mailing such notices, shall be the same as required in subsection (a) above.

**(4) Additional Notice Required for Development Approvals. (TA 21-01)** In addition to any other notice required by this ordinance, a development approval or denial shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. The City may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.

**(5) Notice of Determinations. (TA 21-01)**

1. In addition to any other notice required by this ordinance, when an officer makes a determination under this ordinance her or she shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.
2. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words ““Zoning Decision”” or ““Subdivision Decision”” or similar language for other

determinations in letters at least 6 inches high and shall identify the means to contact a City of Hickory local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an ordinance provision to the contrary, posting of signs under this subsection shall not be required.

### **2.1.8 Continuation of Public Hearings.**

Whenever the provisions of this Land Development Code require that a review or decision-making body take action on an application, the review or decision-making body shall be authorized to postpone action on the matter until a later date. A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Land Development Code, provided that the continuance is set for a date and time certain which is announced in open session during the originally noticed meeting. If a public hearing is tabled or deferred for an indefinite period of time or postponed more than 6 months from the date of the originally scheduled public hearing, new public notice shall be required prior to the rescheduled public hearing. The cost of such re-notification shall be borne by the party requesting the postponement.

### **2.1.9 Action by Decision-Making Bodies.**

Unless otherwise expressly stated in this Land Development Code, decision-making bodies may take any action on an application that is consistent with any notice given, including, but not limited to, approving such application, approving the application with modifications or conditions or denying the application. The decision-making body may impose conditions on the application or allow amendments to the pending application if the effect of the conditions or amendments is to allow a less intensive use or zoning district than indicated in the application or to reduce the impact of the development or to reduce the amount of land area included in the application. Decision-making bodies may not approve of a greater density of development; a more intensive use or a more intensive zoning district than was indicated in any required notice.

### **2.1.10 Burden of Proof or Persuasion.**

In all cases, the applicant shall have the burden of establishing that an application complies with applicable review or approval criteria of this Land Development Code.

### **2.1.11 Conditions of Approval. (TA 21-01)**

In approving development applications for Special Use Permits, decision-making bodies shall be authorized to impose such conditions upon the premises benefited by the approval as outlined within Chapter 2. In approving development applications for conditional zoning districts or planned developments, conditions shall be imposed only in accordance with Sec. 2.2.8 and Sec. 5.1. the decision making body has the authority enter into mutually agreed upon conditions. The applicants / landowners must consent in writing to such conditions.

### **2.1.12 Inaction by Review/Decision-Making Bodies.**

When a review or decision-making body fails to take action on an application within any time frame that is specified in this chapter or by statute, such inaction shall be interpreted as a recommendation of approval without conditions or approval of the application without conditions, respectively. Time frames for action may be extended if the applicant consents to the extension. When a review body fails to take action on an application within the time required, the decision-making body shall be free to proceed with its own action on the matter without further awaiting the recommendation of the review body.

**2.1.13 Summary of Procedures. (TA 14-01) (TA18-01) (TA 23-02)**

The following table provides a summary of the procedures in this chapter. In the event of conflict between this summary table and the detailed procedures in this chapter, the detailed procedures shall govern.

Procedure	Decision-Making Authority [1]						City Council	Notice [2]
	Staff	PD	HRPC	BOA	HPC			
Text Amendments	R	-	R	-----	-	<DM>	N	
Zoning Map Amendments	R	-	R	-----	-	<DM>	N, P, M	
Subdivision Plats								
Minor Subdivision								
Preapp. Conf./Sketch Plan	R	-	-	-	-	-	-	
Final Plat	R	DM	-	A	-	-	-	
Major Subdivision								
Preapp. Conf./Sketch Plan	R	-	-	-	-	-	-	
Preliminary Plat	R	DM	-	A	-	-	-	
Final Plat	R	DM	-	A	-	-	-	
Procedure	Staff	PD	HRPC	BOA	HPC	City Council	Notice	
Special Uses	R	-	<DM>	-	-	-	P, M	
Alternative Sign Plans	R	DM	-	-	-	-	-	
Certificates of Appropriateness								
Minor	DM	-	-	A	-	-	-	
Major	R	-	-	A	<DM>	-	P, M	
Sign Permits/Common Sign Plan	DM [3]	-	-	-	-	-	-	
Zoning Compliance Permits	DM [3]	-	-	-	-	-	-	
Zoning Compliance Certificates	DM [3]	-	-	-	-	-	-	
Variances	R	-	-	<DM>	-	-	P, M	
Appeals of Admin. Decisions	-	-	-	<DM>	-	-	M	

Notes: PD = Planning Director • PC = Planning Commission • BOA = Board of Adjustment • HPC = Historic Preservation Commission

When no local appellate body is specified, appeals are taken to the Superior Court.

[1] R = Review Body (Responsible for Review and Recommendation); DM = Decision-Making Body (Responsible for Final Decision to Approve or Deny); A = Authority to hear and decide appeals of Decision-Making Body’s action.

[2] Notices required for public hearings: N = Newspaper (published); P = Posted (signs); M = Mailed (See Sec. 2.1.7)

[3] Appeals processed as “Appeals of Administrative Decisions.”

◊ = Public Hearing Required (TA 18-01)

**2.1.14 Permit Choice. (TA 21-01)**

If an application made in accordance with this Land Development Code is submitted for a development approval pursuant to this Land Development Code and a development regulation change between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application and use of the building, structure, or land indicated on the permit application. If the applicant chooses the version

of the rule or ordinance applicable at the time of the permit application, the applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. If an applicable ordinance is amended after the development permit is wrongfully denied or after an illegal condition is imposed, as determined in a proceeding challenging the permit denial or the condition imposed, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. Provided, however, any provision of the development permit applicant's chosen version of the rule or ordinance that is determined to be illegal for any reason shall not be enforced upon the applicant without the written consent of the applicant. This section applies to all development approvals issued by city and state government. The duration of vested rights created by development approvals are as set forth in NCGS 160D-108.

#### **2.1.15 Vested Rights. (TA 21-01)**

- (1) Process to Claim a Vested Right.** A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Planning Director, or other designated official, who shall make an initial determination as to the existence of the vested right. The Planning Director's or officer's determination may be appealed to the Board of Adjustment under NCGS 160D – 405. On appeal the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided by NCGS 160D-108(h) and 160D-1403,160D-405(C).
- (2) Types and Duration of Statutory Vested Rights.** Except as provided by this section and subject to Sec. 2.1.14 of this Land Development Code, amendments in development regulations shall not be applicable or enforceable without written consent of the owner with regard to any of the following: in regard to development that has been permitted or approved pursuant to this Land Development Code so long as one of the approval listed in this section remains valid and unexpired.
  - (a)** Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with NCGS 143-755;
  - (b)** Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with NCGS 143-755;
  - (c)** A site-specific vesting plan pursuant to NCGS 160D-108.1;
  - (d)** A multi-phased development pursuant to this subsection; or
  - (e)** A vested right established by the terms of a development agreement authorized by Article 10 of NCGS Chapter 160D.

Each type of vested right listed in this section is subject to the limitations provided in this section and the cited statutes. Vested rights established under this section are not mutually exclusive. The establishments of a vested right under one subsection does not preclude vesting under one or more other subsections or by common law principles.

1. **Building Permits – One Year.** Pursuant, to NCGS 160D 108, a building permit expires twelve months after issuance unless work under the permit has commenced. If, after commencement, the work is discontinued for a period of twenty-four months, the permit shall immediately expire. Building permits also expire if work is discontinued for a period of twenty-four months after work has commenced. **(TA 23-02)**
2. **Other Approvals – One Year.** Pursuant to NCGS 160D 403(C), unless otherwise specified by this section, statute or other ordinance, all other development approvals expire one year after issuance unless work authorized by the development approval has been substantially commenced, or if work is discontinued for twelve months after commencement. Expiration of

a development approval does not affect the duration of a vested right established by the approval of a site-specific vesting plan, a multiphase development plan, a development agreement, or vested rights established under common law.

3. **Site-Specific Vesting Plans – Two to Five Years.** Site specific vesting plans and the vested rights associated with them shall be governed by this subsection and NCGS 160D-108.1

- (a) **Duration.** A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the city. The city may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding five years, if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This determination shall be in the sound discretion of the city and shall be made following the process provided by subsection (c) below for the particular form of a site-specific vesting plan involved.
- (b) **Relation to Building Permits.** A right vested as provided in this subsection shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of NCGS 160D 111109 and NCGS 160D 1113 shall apply, except that the permit shall not expire or be revoke because of the running of time while a vested right under this subsection is outstanding.
- (c) **Requirements for Site-Specific Vesting Plans.** For purposes of this section a “site-specific vesting plan” means a plan submitted to the city describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not limited to, any of the following plans or approvals: a Planned Unit Development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by the city that satisfies the definition a “site-specific vesting plan.” A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it does not constitute a site-specific vesting plan. Unless otherwise expressly provided by this ordinance city, the plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of proposed buildings, structures, and other improvements; the approximate dimensions, including height of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.
- (d) **Process for Approval and Amendment of Site-Specific Vesting Plans.** A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto. If a site-specific vesting plan is based on an approval required by this Land Development Code, the city shall provide whatever notice and hearing is required for that underlying approval.

If the duration of the underlying approval is less than two years, that shall not affect the duration of the site-specific vesting established by this subsection. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by NCGS 160D 602 shall be held. The city may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The city shall not require a landowner to waive vested rights as a condition of development approval. A site-specific vesting plan shall be deemed approved upon the effective date of the city's decision approving the plan or such other date as determined by the city council upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the city as follows: Any major modification must be reviewed and approved in the same manner as the original approval, minor modifications may be approved by staff.

4. **Multi-Phase Developments – Seven Years.** A multi-phase development shall be vested for the entire development with the Land Development Code regulations. in place at the time a site plan approval is granted for the initial phase of the multi-phased development. 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 section, “multi-phased development” means a development containing 25 acres or more that is submitted for site plan approval for construction to occur in more than one phase, and is subject to a master development plan with committed elements showing the type and intensity of use of each phase., including a requirement to offer land for public use as a condition of its master development approval.
5. **Development Agreements – Indefinite.** A vested right of reasonable duration may be specified in a development agreement approved by the city.

**(3) Continuing Review.** Following issuance of a development permit, approval or conditional approval of a statutory vested right, the city may make subsequent inspections and reviews and require approvals to ensure compliance with applicable land development regulations in effect at the time of the original application the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The city may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or applicable development regulations.

**(4) Exceptions.**

- (a) A vested right, once established by a site-specific vesting plan, as provided for above, precludes any zoning decision action by the city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except: site-specific vesting plan, except under one or more of the following conditions:
  - (i) With written consent Upon written notice of the affected landowner;
  - (ii) Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan or phase development plan approved vested right;
  - (iii) To the extent that the effected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited

to, all fees paid in consideration of financing, and all architectural, planning, marketing legal, and other consultant's fees incurred after approval by the city, together with interest as provided in NCGS 160D-106. Compensation shall not include any diminution in the value of the property that is caused by the such action;

- (iv) Upon finding, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the city of the site-specific vesting plan or phased development plan vested right; or
  - (v) Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or phased development plan approved vested right, in which case the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.
- (b) The establishment of a vested right through the approval of a site-specific vesting plan under subdivisions 3 or 4 of subsection (B) of this section shall not preclude the application of overlay zoning or other development regulation which imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations which that are general in nature and are applicable to all property subject to development regulation by the city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site-specific vesting plan that is subject to a vest right established under this section upon the expiration or termination of the vested rights period provided for in this section.
- (c) Notwithstanding any provision of this section, the establishment of a vested right does under this section shall not preclude, change or impair the authority of the city to adopt and enforce development regulation provisions governing nonconforming situations or uses.

**(5) Miscellaneous Provisions.**

- (a) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site-specific vesting plan, vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.
- (b) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, noting in this section shall be construed to alter the existing common law.
- (c) In the event a vested right for a Planned Development or Conditional Zoning District expires, the zoning of the property shall revert back to the district, or equivalent, assigned to the property prior to the approval of the Planned Development or Conditional Zoning District.

**2.1.16 Quasi-Judicial Procedure Generally. (TA 21-01)**

- A. **Process Required.** Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision. All quasi-judicial proceedings shall comply with NCGS 160D-406, this ordinance, and any applicable rules of procedure of the decision-making board.
- B. **Notice of Hearing.** Notice of a quasi-judicial hearing shall be provided in accordance with Sec. 2.1.7.

- C. **Continuing a Hearing; Quorum of the Board.** The board may continue a quasi-judicial 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.
- D. **Administrative Materials.** The administrator or staff to the decision-making 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 if at the same time they are distributed to the board 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. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
- E. **Presentation of Evidence.** The applicant, the City, and any person who would have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the decision-making board.
- F. **Objections.** Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, 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 NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.
- G. **Appearance of Official; New Issues.** The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the City, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- H. **Oaths.** The chair of the board 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.
- I. **Subpoenas.** The chair of the board making a quasi-judicial decision or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the City, and any person with standing under NCGS 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

- J. **Voting.** The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members of a board shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter because of a conflict of interest shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- K. **Decisions.** The board shall determine contested facts and make its decision within a reasonable time. Each quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards (i.e. each written decision shall include findings of fact and conclusions of law), and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within the time specified in this ordinance or if no time is specified then 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 prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- L. **Conflicts of Interest**
1. A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
  2. If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
  3. For purposes of this subsection, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.
- M. **Judicial Review.** Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160D-1402. Appeals shall be filed within the times specified in NCGS 160D-1405(d), which provides that a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 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 days shall be added to the time to file the petition.

#### **2.1.17 Duration of Development Approval. (TA 21-01)**

Unless a different period is specified by this ordinance or a different period is provided by a quasi-judicial development approval, or a development agreement, or a development approval issued pursuant to this ordinance shall expire one year after the date of issuance if the work authorized by

the development approval has not been substantially commenced. Unless otherwise provided by this ordinance, a quasi-judicial development approval, or a development agreement, if after commencement the work or activity is discontinued for a period of 12 months, the development approval shall immediately expire. The time periods set out in this section shall be tolled during the pendency of any appeal. No work or activity authorized by any development approval that has expired shall thereafter be performed until a new development approval has been secured. Nothing in this section shall be deemed to limit any vested rights secured pursuant to this ordinance or common law.

## **2.2 Land Development Code Text and Zoning Map Amendments**

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### **2.2.1 Amendments in general. (TA 21-01)**

Amendments to the text of this ordinance or to the zoning map shall be made in accordance with the provisions of this section.

Conditional district zoning requests shall be made in accordance with the provisions of section 2.2.8. The review process for an amendment to the text of this ordinance or to the zoning map shall include:

- (1) Planning department staff review;
- (2) Planning Commission review and recommendation in accordance with Section 2.2.5; and
- (3) City Council review and action.

### **2.2.2 Initiation and Application Filing. (TA 21-01)**

Any person or organization may petition the City Council to amend this ordinance, with the exception that only the property owner or authorized agent may petition for rezoning. The petition shall be filed with the Planning Director and shall include:

- (1) The name, address, and phone number of the applicant;
- (2) A scaled map of the land affected by the amendment if a change in zoning district classification is proposed; and
- (3) Description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.

Petitions for amendments shall be submitted to the Planning Director by the established deadline for the Planning Commission meeting at which the petition will be reviewed.

### **2.2.3 Public Hearing Notice.**

Notice shall be provided in accordance with Sec. 2.1.7.

### **2.2.4 Staff Review/Report**

The Planning Director shall review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7 and, if deemed necessary, distribute the proposed amendment to other agencies and reviewers. Based on the results of those reviews, the Planning Director shall provide a report on the proposed amendment to the Planning Commission and City Council.

### **2.2.5 Planning Commission's Review/Recommendation (TA 21-01)**

The Planning Commission shall review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7 and recommend that the City Council approve, approve with modifications or deny the proposed amendment. The Planning Commission shall make its recommendation to the City Council within no more than two consecutive meetings. If no written report is received from the Planning Commission within thirty days of referral of the

amendment to that board, the City Council may proceed in its consideration of the amendment without the Planning Commission report. The City Council is not bound by the recommendations, if any, of the Planning Commission. The Planning Commission shall advise and comment on whether the proposed action is consistent with the city's adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the City Council. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the Planning Commission 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.

### **2.2.6 City Council Hearing and Decision (TA 18-01) (TA 21-01)**

After receiving the Planning Commission's recommendation or after having allowed the time required for the Planning Commission's consideration, the City Council shall hold at least one public hearing to review each proposed Land Development Code and Zoning Map amendment in light of the Review Criteria of Sec. 2.2.7. Following the public hearing (at the same or subsequent meeting), the City Council shall take action to approve, approve with modifications or deny the proposed amendment.

When adopting or rejecting any zoning text or map amendment, City Council shall approve a brief statement describing whether its action is consistent or inconsistent with the city's adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the meeting minutes that at the time of action on the amendment city council was aware of and considered the Planning Commission's recommendations and any relevant portions of the adopted comprehensive plan. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the adopted plan, and no additional requests or application for plan amendment shall be required. A plan amendment and zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the City Council 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 actions taken.

When adopting or rejecting any petition for a zoning map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by City Council. The statement of reasonableness may consider, among other factors: (1) the size, physical conditions, and other attributes of any area proposed to be rezoned; (2) the benefits and detriments to the landowners, neighbors, and the surrounding community; (3) the relationship between the current actual and permissible development and the development permissible under the proposed amendment; (4) why the action taken is in the public interest; and (5) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the city council statement on reasonableness may address the overall rezoning.

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

### **2.2.7 Review Criteria**

In reviewing and making recommendations on proposed text and map amendments, review bodies shall consider all of the following factors:

#### **Zoning Map Amendments**

- (1) Consistency of the proposed amendment with the Hickory Comprehensive Land Use and Transportation Plan and the stated Purpose and Intent of this Land Development Code (See Sec. 1.7);
- (2) Existing land uses within the general vicinity of the subject property;
- (3) The zoning classification of property within the general vicinity of the subject property;
- (4) The suitability of the subject property for the uses permitted under the existing zoning classification;
- (5) The extent to which the proposed amendment will detrimentally affect properties within the general vicinity of the subject property;
- (6) The extent to which the proposed amendment will cause public services including roadways, stormwater management, water and sewer, fire and police protection to fall below acceptable levels; and
- (7) Whether the proposed amendment will protect the public health, safety and general welfare.

**Text Amendments**

- (1) Whether the proposed amendment corrects an error or inconsistency in the Land Development Code or meets the challenge of a changing condition;
- (2) Whether the proposed amendment is consistent with the Hickory Comprehensive Land Use and Transportation Plan and the stated purpose of this Land Development Code; and
- (3) Whether the proposed amendment will protect the public health, safety and general welfare.

**2.2.8 Conditional Zoning (TA 21-01)**

**Purpose.** Conditional zoning is established to provide for flexibility in the development of property while ensuring that the development is compatible with neighboring uses. Conditional zoning affords a degree of certainty in land use decisions not possible when rezoning to a general use district. Additional standards and regulations may be attached to a proposed development to ensure compatibility with the surrounding uses and with applicable adopted plans in accordance with the requirements of this section.

**Conditional zoning districts.** Conditional zoning is available for any of the general zoning classifications enumerated in this ordinance. The conditional zoning designation shall be indicated on all zoning maps and other official documents with the suffix, "(CZ)" (e.g. R-1 (CZ); C-2 (CZ)). All applications for rezoning to a Planned Development (PD) zoning district, as described in Chapter 5, shall be processed as conditional zoning applications.

**General requirements.** The following provisions shall apply to the administration of conditional zoning.

- (1) A conditional zoning application shall be considered only upon request of the owners of all the affected property or their duly authorized representative.
- (2) Prior to submittal of the application, it is strongly recommended that the applicant meet with representatives of the surrounding property owners and of the surrounding neighborhood(s) to discuss the proposed development, and include a report of any such meetings in its application.
- (3) All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning are more restrictive than the general use standards, and/or where the requirements are modified in accordance with Sec. 2.2.8, "General Requirements", subsection (6).
- (4) No uses shall be permitted except those enumerated in the ordinance adopting the conditional zoning.

- (5) The conditions agreed upon pursuant to the conditional zoning approval shall be stated in the adopting ordinance and may limit the uses which are permitted on the property. By way of illustration and not limitation, conditions may specify location on the property of the proposed structure(s), the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the height of structures, the location and extent of rights-of-way and other areas to be dedicated for public purposes, and other such matters as may be identified as appropriate for the proposed development.
- (6) Minor modifications as defined by this ordinance to the approved conditional zoning ordinance may be approved by the planning and development director.
- (7) Major modifications, as defined by this ordinance, shall be approved by the City Council as an amendment to the conditional zoning ordinance, and shall be referred to the Hickory Regional Planning Commission. The Planning Director shall in every case have the discretion to decline to exercise the power to approve or deny minor modifications as provided for herein and may require the applicant to seek an amendment to the conditional zoning ordinance.
- (8) Any violation of a provision of a conditional zoning ordinance shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any other such violation.
- (9) If for any reason any provision of a conditional zoning ordinance is found to be illegal or invalid, or if the applicant should fail to accept any condition, the entire ordinance shall be null and void, and the property shall revert to its previous zoning classification without further action by the City Council.

**Application procedure.** When applying for conditional zoning, the owner shall specify the nature of the proposed development and shall propose conditions to ensure compatibility with the surrounding uses and consistency with adopted plans. Applications for conditional zoning shall be processed, considered, and voted upon using the same procedures and subject to the same requirements as those established in this chapter for zoning map amendments, except as provided below:

- (1) The application shall include site plans, landscape plans, building elevations, floor plans, and such other information required to provide the approving bodies with a complete and accurate description of the proposed development.
- (2) The application and supporting materials shall be reviewed by the planning department in accordance with its procedures for reviewing applications for zoning map amendments prior to the meeting of the planning commission at which the application is to be considered. The recommendations and comments of the planning department shall be reported to the planning commission, which shall be reported at the public hearings on said applications.
- (3) Following review by the planning department, the Planning Commission shall make a recommendation on applications for conditional zoning. The Planning Commission may recommend approval, approval with conditions, or denial.
- (4) Upon receipt of the recommendations from the Planning Commission, the city council shall hold a public hearing on the application for conditional zoning. Notice of the public hearing shall be provided in accordance with the provisions of Sec. 2.1.7 of this chapter and the North Carolina General Statutes.
- (5) The city council's consideration of an application for conditional zoning is legislative in nature, and the council may consider any relevant information in its deliberations, including the criteria for considering zoning map amendments. Consideration shall be given to adopted land use plans for the area, small area

plans, corridor plans, and other land use policy documents, and to surrounding land uses. The council may adopt or not adopt a conditional zoning ordinance, or may continue its consideration of the application as necessary or appropriate.

- (6) During the adoption process for a conditional zoning ordinance, specific conditions may be proposed by the petitioner, City Council, Planning Commission or city staff, but only those conditions mutually approved by city council and the petitioner may be incorporated into the zoning regulations and permit requirements. Conditions and site-specific standards imposed shall be limited to those that address the conformance of the development and use of the site to city ordinances, an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.
- (7) Specific findings of the City Council are not required for action on an application for conditional zoning. However, a statement analyzing the reasonableness of the proposed rezoning shall be prepared and adopted by City Council.
- (8) Prior to the issuance of any permits, the applicant must submit detailed plans to the planning department for final review.
- (9) Upon adoption of a conditional zoning ordinance, the official zoning map of the City of Hickory shall be amended to add the conditional zoning district. The planning director shall maintain a book or file for conditional zoning ordinances, and each conditional zoning ordinance shall be filed therein. Failure to comply with this provision shall not render the ordinance invalid.
- (10) The conditional zoning ordinance adopted as provided herein shall be perpetually binding upon the affected property unless subsequently changed or amended as provided for in this chapter.
- (11) Conditional zoning ordinances are legislative in nature, and judicial review of conditional zoning ordinances shall be as provided by law for zoning map amendments.
- (12) Within 30 days after the adoption of a conditional zoning ordinance by the City Council, the applicant for the conditional zoning, or the applicant's agent, shall sign a form provided by the City of Hickory that acknowledges that all conditions to the conditional zoning were consented to by the applicant. If the consent form is not timely executed, the zoning of the property shall automatically revert back to the previous zoning without further action by the City Council.

### **2.2.9 Citizen Comment (TA 15-01)**

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal of this Land Development Code or official zoning map to the City Clerk at least two (2) business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS 160D-705 160D-603, the City Clerk shall provide only the name and address of the individual providing written comment, and the provision of such names and addresses to all of the City Council shall not disqualify any member of the Council from voting.

### **2.2.10 Notice of Decision**

Within 10 days after a final zoning map amendment decision is made by the City Council, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

### **2.2.11 Withdrawal of Application**

An applicant may withdraw the application at any time prior to a final decision on the application by the City Council by providing written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

### **2.2.12 Deferral of Applications**

An applicant may defer the application by written notice to the Planning Director prior to the first public hearing notice. An application shall not be deferred for a period longer than thirty (30) days, at which time the application shall proceed to public hearing or be withdrawn.

### **2.2.13 Successive Applications**

When the City Council denies an application or the applicant withdraws an application after the first public hearing notice has been published in the newspaper, the City Council shall not consider another application for the same or similar amendment affecting the same property or a portion of it until the expiration of a 1-year period, extending from the date of denial by the City Council or withdrawal by the applicant.

## **2.3 Subdivision Plats**

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### **2.3.1 Applicability**

Unless otherwise expressly stated, review and approval in accordance with the procedures of this section shall be required for all divisions of a tract or parcel of land into two or more lots, building sites or other division for the purpose of sale or building development, whether immediate or future, including all divisions of land involving the dedication of a new street or a change in existing streets.

### **2.3.2 Exemptions**

The following shall not be subject to the review and approval procedures of this section:

- (1) 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 requirements of the subdivision regulations of this Land Development Code;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors; or
- (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than 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 subdivision regulations of this Land Development Code.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with interstate succession under Chapter 24 of the North Carolina General Statutes.

Any subdivision plat that qualifies as exempt pursuant to this section must be reviewed and confirmed by City staff to be exempt, and no exempt subdivision plat may be recorded until the City staff has confirmed the exempt status by written notation on the plat.

In interpreting paragraph (1) above, the term “previously subdivided” shall mean platted and approved if such lots were created in accordance with subdivision regulations in effect at the time of their creation, or created as a result of a recorded land division prior to existence of applicable subdivision regulations.

In interpreting paragraphs (2) and (4) above, the phrase “where no street right-of-way dedication is involved” shall be construed as meaning that any such parcel shall be served by a private driveway or an existing street that has been accepted for dedication and maintenance by the City of Hickory or the North Carolina Department of Transportation.

### **2.3.3 Expedited Review of Specified Subdivisions (TA 18-01)**

Only a plat for recordation will be required for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

1. The tract or parcel to be divided is not exempted under Sec. 2.3.2 of this Land Development Code.
2. No part of the tract or parcel to be divided has been divided under this section in the ten (10) years prior to the current proposed division.
3. The entire area of the tract or parcel to be divided is greater than five (5) acres.
4. After division, no more than three (3) lots result from the division.
5. After division, all resultant lots comply with all of the following:
  - a. Any lot dimension size requirement of this Land Development Code.
  - b. The use of the lots is in conformity with this Land Development Code.
  - c. A permanent means of ingress and egress is recorded for each lot.

### **2.3.4 Minor Subdivisions**

The expedited review and approval procedures of this subsection shall apply to “Minor Subdivisions,” as that term is defined in Chapter 14. The procedures for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest. The main difference between the Minor and Major Subdivision processes is that Minor Subdivisions do not require a preliminary plat. Applicants may apply directly for approval of a final plat, but are encouraged to take part in a Pre-application Conference and Sketch Plan review prior to plat submission.

#### **Pre-application Conference**

Before submitting a Minor Subdivision application, the applicant may confer with the Planning Director to discuss the proposal and applicable regulations. The purpose of the Pre-application Conference is for the applicant to become familiar with applicable subdivision procedures and standards. Prior to or as part of the Pre-application Conference, the applicant should submit a Sketch Plan of the proposed subdivision showing the approximate size of the property, the tentative street layout, proposed lot sizes, watercourses and the location of the property in relation to existing streets and surrounding areas. The Planning Director and other administrative officials shall review the Sketch Plan. Following their review, the reviewing officials shall confer with the applicant to discuss any matters that will assist the applicant in preparing a Final Plat. No review fee shall be required for Pre-application Conferences or Sketch Plans.

#### **Final Plat**

After completing the optional Pre-application Conference and Sketch Plan review, applicants for Minor Subdivision approval shall proceed to the Final Plat review stage, which shall be carried out in accordance with Sec.2.3.6. “Final Plats”, Subsection 3.

#### **Approval Criteria (TA 21-01)**

Minor subdivision plats shall be approved only when the Planning Director finds that all of the following conditions exist:

- (1) The plat complies with the standards of Chapter 8 and the other applicable requirements of this Land Development Code;
- (2) The plat indicates that all subject lots will have frontage on existing approved streets;
- (3) New or residual parcels will conform to the requirements of this Land Development Code and other applicable regulations;
- (4) No new streets are required or are likely to be required for access to interior property;
- (5) No extension of public sewerage or water lines will be required;
- (6) The proposed subdivision will not adversely affect permissible development of the remainder of the parcel or of adjoining property;
- (7) All necessary drainage easements have been provided and stormwater management as required by this Land Development Code; and
- (8) The County Health Director or local public utility, as appropriate, has been given an opportunity to make recommendations as to proposed water or sewerage systems

#### **Notice of Decision (TA 21-01)**

Within 10 days after a minor subdivision plat decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours. In addition to giving notice to the applicant, the Planning Director shall also give written notice to the owner of the property, if different from the applicant. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

#### **2.3.5 Appeals (TA 18-01) (TA 21-01)**

The decision to approve or deny a minor subdivision plat shall be subject to review by filing an action in superior court seeking appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the decision. and consistent with NCGS 160D-1403

#### **2.3.6 Major Subdivisions (TA 23-02)**

The procedures of this subsection shall apply to all “Major Subdivisions,” as that term is defined in Chapter 14.

##### **Pre-application Conference**

Before submitting a Preliminary Plat for a proposed subdivision, the applicant shall confer with the Planning Director to discuss the proposal and applicable regulations. The purpose of the Pre-application Conference is for the applicant to become familiar with applicable subdivision procedures and standards. Prior to or as part of the Pre-application Conference, the applicant may submit a Sketch Plan of the proposed subdivision showing the approximate size of the property, the tentative street layout, proposed lot sizes, watercourses and the location of the property in relation to existing streets and surrounding areas. The Planning Director and other administrative officials shall review the Sketch Plan. Following their review, the reviewing officials shall confer with the applicant to discuss any matters that will assist the applicant in preparing a Preliminary Plat. No review fee shall be required for Pre-application Conferences or Sketch Plans.

##### **Preliminary Plats (TA 21-01)**

- (1) **Application.** A complete application for Preliminary Plat approval shall be submitted to the Planning Director on forms available in the Planning Department.

- (2) **Notice.** Each application for Preliminary Plat approval shall contain the name and address of the person who is to receive all notices pertaining to the application.
- (3) **Staff Review.** Subdivision plans shall go through plan review, which consist of review by all relevant city departments and required external entities. Completion of the review shall be deemed as preliminary plat approval.
- (4) **Relevant Intergovernmental Coordination.**
  - a. The Planning Director may provide copies of all applications for Major Subdivision preliminary plat approval to the Superintendent of the public school system for which the subject property is located for their review and comment.
  - b. The Planning Director shall give the District Highway Engineer the opportunity to make recommendations concerning proposed State streets, State highways, and related drainage systems.
  - c. The Planning Director shall give the County Health Director or local public utility, as appropriate, the opportunity to make recommendations as to proposed water or sewerage systems.
- (5) **Notice of Decision.** Within 10 days after a Preliminary Plat decision is made, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director
- (6) **Effect of Approval.** Approval of the Preliminary Plat shall constitute approval of the submitted construction drawings for all required infrastructure and improvements.
- (7) **Land Development Permit.** After approval of the Preliminary Plat and prior to submittal of the Final Plat, the subdivider shall work directly with the City Engineer so any and all inspections are conducted during the installation of any required improvements and infrastructure.

#### **Final Plats**

- (1) **Improvements or Financial Guarantees.** Prior to approval of a Final Plat, the subdivider shall install all required improvements or post a financial guarantee of performance, in accordance with this Land Development Code.
- (2) **Applicant Notice.** Each application for Final Plat approval shall contain the name and address of the person who is to receive all notices pertaining to the application.
- (3) **Planning Director's Review/Action.** The Planning Director shall review the Final Plat to determine if it complies with the approved Preliminary Plat, the standards of Chapter 8 and all other applicable requirements of this Land Development Code. Final Plats shall be approved only when the Planning Director determines that all of the following criteria have been met:
  - (a) The Final Plat conforms substantially to the approved Preliminary Plat and conforms to all other standards and requirements lawfully established under this Land Development Code;
  - (b) All required improvements shall be completed by the applicant or his agents and inspected and approved by appropriate public officials or agencies or a financial or performance guarantee has been offered and accepted in accordance with Sec. 8.15;
  - (c) Offers to dedicate, or to reserve for future dedication, shall be made clear of all liens and encumbrances on the property and public improvements thus dedicated; and
  - (d) All required maintenance guarantees have been made.

- (4) If the Planning Director determines that the Final Plat conforms substantially to the approved Preliminary Plat and all other standards and requirements lawfully established under this Land Development Code, the Planning Director shall approve the Final Plat.
- (5) If the Planning Director determines that the Final Plat does not comply with the approved Preliminary Plat or other applicable standards, the Planning Director shall require that modifications be made to bring the Final Plat into compliance with this Land Development Code. Upon completion of any required modifications to the Final Plat, the Planning Director shall act to approve the Final Plat.
- (6) **Appeals.** The decision to approve or deny a final preliminary plat shall be subject to review by filing an action in superior court seeking appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the decision. and consistent with NCGS 160D-1403
- (7) **Notice of Decision.** Within 10 days after a Final Plat decision is made by the Planning Director, copies of the decision shall be sent to the applicant and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours. In addition to giving notice to the applicant, the Planning Director shall also give written notice to the owner of the property, if different from the applicant. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.
- (8) **Effect of Approval; Recording.** Within 90 days of the date of Final Plat approval, the applicant shall record the plat with the County Register of Deeds.

#### **Official Acceptance of Dedications**

- (1) The approval of a final plat shall not be deemed to constitute or affect an acceptance by the city or the public of the dedication of any street, facility, utility, easement, or other real property shown upon the plat. Acceptance of such dedications within the City of Hickory shall be only by resolution of the City Council. The City Council shall consider such resolutions only when the City Engineer determines that all required improvements have been properly installed and all applicable conditions met.
- (2) Pursuant to North Carolina General Statutes, the City Council may, by resolution, accept the dedication of all lands and facilities for streets, parks, public utilities or other public purposes that have been approved by the City Engineer for public dedication. The City Council shall not accept the dedication of such lands and facilities until it determines, based upon recommendation of the City Engineer, that: (i) all lands and facilities have been properly offered for dedication through recorded plats, deeds, or deeds of easements; (ii) all lands and facilities meet all applicable standards and have been inspected and approved by the affected departments; (iii) the subdivider has requested that the lands and facilities be accepted as public; (iv) the subdivider has provided a valuation of all lands and facilities to be dedicated to the public; and (v) the subdivider has (or shall provide) as-built drawings for all required improvements.

#### **Terms and Conditions of Acceptance**

The acceptance of any lands and facilities through resolution of the City Council shall be subject to the following terms and conditions:

- (1) The subdivider shall guarantee all materials and workmanship for a period of 18 months from the date of official acceptance by the City Council;
- (2) The acceptance by the City Council shall not be interpreted in any way to relieve any developer, contractor, subcontractor, insurance company, owner, or other person of his

individual or several obligations under any ordinance, policy, or contract or to otherwise reduce or eliminate the rights of the city, its agents and employees against any other party connected with or in any way related to the development of the subdivision and facilities. The acceptance shall not be interpreted as a waiver of any defense or immunities that the city, its agencies or employees may assert or be entitled to;

- (3) All rights, privileges and warranties of whatsoever nature and kind, for equipment, supplies, materials, goods, and services shall be assigned to the city and any and all benefits derived there from shall inure to the city, its agents, and employees. The acceptance of the lands and facilities shall be conditioned upon the owners covenanting and warranting that they are lawfully seized and possessed of all the lands and facilities dedicated to the public; that they have good and lawful authority to dedicate the same to the public for the stated purpose; that the lands and facilities are free and clear of any deed of trust, mortgage, lien or assessments and that the dedicators for their heirs, successors, executors, administrators, and assigns, covenant that they will warrant and defend the dedication of such land and facilities against any and all claims and demands whatsoever;
- (4) Acceptance of dedication of lands and facilities shall not obligate the city to construct, install, maintain, repair, replace, extend, improve, build or operate any public facilities or utilities which are not in existence as of the date of the acceptance of the lands and facilities. Such acceptance shall not obligate the city to construct any main, line, pipe, lateral, or other extension or permit connection to the city's water, sanitary sewer, storm sewer, drainage or other public utilities systems.

## **2.4 Special Uses**

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Special uses are those uses that require, because of their inherent nature, intensity, and external effects, special care in the control of their location, site design and methods of operation.

### **2.4.1 Application Filing**

Special Use applications shall be submitted to the Planning Director on forms available in the Planning Department. Incomplete applications shall not be fully evaluated until all necessary items outlined on the application have been submitted as prescribed.

### **2.4.2 Public Hearing Notice**

Newspaper, posted and mailed notice of the Planning Commission's hearing shall be provided in accordance with Sec. 2.1.7. Written notice shall also be mailed to the applicant.

### **2.4.3 Staff Review/Report**

The Planning Director shall review each proposed Special Use application in light of the Review Criteria of Sec. 2.4.5. Based on the results of those reviews, the Planning Director shall provide a report on the proposed special use to the Planning Commission.

### **2.4.4 Planning Commission Hearing and Decision**

After receiving the Planning Director's recommendation, the Planning Commission shall hold a public hearing on the proposed Special Use. Following the public hearing (at the same or subsequent meeting), the Planning Commission shall take action to approve, approve with modifications or deny the proposed Special Use. The Planning Commission's decision shall be based on the Review Criteria of Sec. 2.4.5. In order to approve any special use petition a majority of the members of the Planning Commission must vote in favor of the petition. For the purposes of this section, vacant positions on the Commission and members who are disqualified from voting

on a quasi-judicial matter shall not be considered “members of the Commission” for calculating the requisite majority.

#### **2.4.5 Review Criteria (TA 21-01)**

Special Use applications shall be approved by the Planning Commission, upon demonstration by the applicant, that they have found all of the following criteria have been met:

- (a) The proposed use is consistent with the Hickory by Choice 2030 Comprehensive Plan and the stated Purpose and Intent of this Land Development Code
- (b) The proposed use complies with all applicable provisions of this Land Development Code;
- (c) The proposed use is compatible with adjacent uses in terms of scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
- (d) Any significant adverse impacts on neighboring properties and/or the natural environment resulting from the use will be mitigated or offset;
- (e) The proposed use will not cause substantial diminution in value of other property in the neighborhood in which it is to be located;
- (f) Public safety, transportation and utility facilities and services will be available to serve the subject property while maintaining sufficient levels of service for existing development; and
- (g) Adequate assurances of continuing maintenance have been provided;

#### **2.4.6 Conditions of Approval (TA 21-01)**

The Planning Commission may impose such reasonable and appropriate conditions, as it deems necessary (so long as the conditions do not conflict with existing state or federal law) to address the impacts of the proposed development on:

- (a) surrounding property;
- (b) the existing natural and man-made features of the site;
- (c) off site and on site traffic flow;
- (d) public utilities; and
- (e) such other public services or goals of the Land Use and Transportation Plan that may be negatively impacted by the proposed development.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the City of Hickory does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the City, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

#### **2.4.7 Quasi-judicial Hearing**

The public hearing in front of the Planning Commission to consider the Special Use shall be a quasi-judicial hearing and shall proceed as provided in Sec. 2.1.16 and in the Planning Commission’s Rules of Procedure.

#### **2.4.8 Written Decision; Acceptance of Conditions (TA 21-01)**

After the public hearing has been closed, but not necessarily at the same meeting, the Planning Commission shall within a reasonable time render a written decision in accordance with Sec. 2.1.16 and the Planning Commission’s Rules of Procedure.

Within 30 days after the approval of Special Use Permit, the permit applicant, or the applicant's agent, shall sign a form provided by the City of Hickory that acknowledges that all conditions to the Special Use Permit were consented to by the applicant. If the consent form is not timely executed, the Special Use Permit shall automatically be void and of no effect without further action by the Planning Commission.

#### **2.4.9 Notice of Decision; Effective Date (TA 21-01)**

Within 10 days after the Planning Commission adopts its written decision, (i) copies of the decision shall be delivered 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 prior to the date the decision becomes effective and (ii) and shall be filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

#### **2.4.10 Withdrawal of Application**

An applicant may withdraw the application at any time by written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

#### **2.4.11 Successive Applications**

When the Planning Commission denies an application or the applicant withdraws an application after the first public hearing notice has been published in the newspaper, the Planning Commission shall not consider another application for the same or Special Use affecting the same property or a portion of it until the expiration of a 1-year period, extending from the date of denial by the Planning Commission or withdrawal by the applicant.

When the Planning Commission denies an application, the applicant may not submit another application for the same or similar Special Use affecting the same property, unless the applicant can demonstrate that either changes in the applicable ordinances or material changes in site conditions or conditions near the property would support new findings of facts and conclusions by the Planning Commission.

#### **2.4.12 Appeals (TA 21-01)**

Any person aggrieved may appeal a final decision of the Planning Commission on Special Use matters to the Superior Court of the county where the property is located in accordance with Sec. 2.1.16 and NCGS 160D-1402 and 160D-1405(d).

#### **2.4.13 Final Plan Approval**

The Planning Director shall review all final Special Use plans for compliance with all requirements of this Land Development Code, conditions of approval and the Special Use plan presented to the Planning Commission prior to issuance of a building permit or other development permit. The Planning Director may require a final Special Use plan to be reviewed by the other departments if he finds that there are technical issues that should be addressed by other departments of the City.

#### **2.4.14 Minor Changes and Modifications (TA 21-01)**

The Planning Director is authorized to approve minor changes in approved Special Use plans as long as they are in harmony with action of the decision-making body. The Planning Director shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Planning Commission and shall be handled as a new application. The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification:

- (a) Any change in use shall be considered a modification.

- (b) A change in the density of the overall development shall be considered a modification. Changes in the density of the overall development include, but are not limited to:
  - (i) Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area greater than 300 square feet, an increase in number of dwellings, or change in the type of dwelling or an increase in outside land area devoted to sales, displays or demonstrations; and
  - (ii) Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the decision-making body shall constitute a modification. In no case shall the Planning Director reduce the minimum number of spaces below the minimum required by this Land Development Code.
- (c) Any change in location or any increase in the size or number of signs shall constitute a modification.
- (d) Structural alterations significantly affecting the basic size, form, style, ornamentation and the like of the building, as shown on the approved plan, shall be considered a modification.
- (e) Substantial change in the amount or location of open space, recreation facilities or landscape screens shall constitute a modification.
- (f) Substantial changes in pedestrian or vehicular access or circulation shall constitute a modification.

The Planning Director shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the special use.

If the Planning Director determines that the proposed action is a modification, they shall require the applicant to file a request for approval of the modification, which shall be submitted to the Planning Commission. The Planning Commission may approve or disapprove the application for approval of a modification and, prior to its action, may hold a public hearing thereon.

## **2.5 Certificates of Appropriateness**

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### **2.5.1 Purpose and Intent**

The City of Hickory’s historic districts and landmarks are among the City’s most valued and important assets. Historic Districts Overlay Zoning helps to preserve these districts and landmarks by regulating changes to buildings. In a historic district and for landmarks designated by the City Council, certain exterior work must be approved in advance by the Historic Preservation Commission. Approval is in the form of a Certificate of Appropriateness.

### **2.5.2 Applicability (TA 21-01)**

From and after designation as an historic landmark or district no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission except as otherwise noted herein.

For the purposes of this section, “exterior features” shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size, and location of all such signs. To the extent provided for in the Hickory Historic Preservation

Commission Design Review Standards Guidelines or ordinance adopted by the City Council, “ Such "exterior features" shall also include may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

A Certificate of Appropriateness is to be issued by the Historic Preservation Commission prior to the issuance of a building permit for the purposes of constructing, altering, moving or demolishing structures. A Certificate of Appropriateness may be issued subject to reasonable conditions necessary to carry out the purposes of this section and any applicable standards.

A Certificate of Appropriateness shall be required whether or not a building permit is required, and any building permit or such other permit not issued prior to the issuance of a required Certificate of Appropriateness not in conformity with said certificate shall be invalid.

The State of North Carolina, the City of Hickory, and other State political subdivisions and agencies and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of above-ground utility structures, including but not limited to street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the City of Hickory or public utility companies.

### **2.5.3 Ordinary Maintenance and Emergency Utility Restoration Permitted (TA 18-01) (TA 21-01)**

Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in H-O districts that does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Building Inspector or similar official shall certify in writing to the Historic Preservation Commission is required by the need to protect the public health and safety because of an unsafe or dangerous condition. Prior to beginning any exterior work in an H-O district, a property owner shall consult with the Planning Department to determine if the work qualifies as ordinary maintenance or repair, or if it requires a Certificate of Appropriateness.

Nothing in this section shall be construed to prevent, in an emergency, the immediate restoration of existing above-ground utility structures without the approval of the Historic Preservation Commission.

### **2.5.4 Application Filing**

Applications for Certificates of Appropriateness shall be submitted to the Planning Director on forms available in the Planning Department.

### **2.5.5 Staff Review/Report (TA 21-01)**

The Planning Director shall review each proposed Certificate of Appropriateness in light of the Review Criteria of Sec. 2.5.8 and, if deemed necessary, distribute the application to other agencies and reviewers. Based on the results of those reviews, the Planning Director shall provide a report on the Certificate of Appropriateness to the Historic Preservation Commission. Upon completion of the staff review, the Planning Director may determine that such work is ordinary maintenance and repair work or minor work as defined in the Historic Preservation Commission's Design Review Standards. In such cases the Planning Director may issue the Certificate of Appropriateness without further consideration of the Historic Preservation Commission, provided that no application may be denied without formal action of the commission. Should the Planning Director find that the work constitutes major work, as defined by the Historic Preservation Commission's Design Review Standards the procedures below shall be followed.

### **2.5.6 Public Notice (TA 18-01) (TA 21-01)**

Prior to taking action on a Certificate of Appropriateness for major work, the Historic Preservation Commission shall hold a public hearing on the application. Notice shall be provided in accordance with Sec. 2.1.7. Written notice of the hearing shall also be mailed to the applicant.

### **2.5.7 Historic Preservation Commission's Decision (TA 21-01)**

Applications for Certificates of Appropriateness shall be considered by the Historic Preservation Commission at its next regular meeting, provided a complete application has been filed by the established deadline. Otherwise, consideration shall be deferred until the following meeting.

The Historic Preservation Commission shall conduct its hearing in accordance with Sec. 2.1.16 and any rules of Procedure adopted by the Commission. The Commission shall review each proposed Certificate of Appropriateness in light of the Review Criteria of Sec. 2.5.8 and take action to approve, approve with modifications or deny the proposed Certificate of Appropriateness.

The Historic Preservation Commission shall make written findings of fact, based on the Review Criteria of Sec. 2.5.8, indicating the extent to which the application is or is not compatible with the historic aspects of the district in which it is located and any applicable standards, and the Commission shall then issue a written determination in accordance with Sec. 2.1.16.

If the Historic Preservation Commission fails to take final action upon any application within 90 days after the complete application is submitted to the Planning Director, the application shall be deemed to be approved without conditions. This time limit can be extended by mutual agreement between the applicant and the Historic Preservation Commission.

### **2.5.8 Review Criteria (TA 21-01)**

It is the intention of these regulations to ensure, insofar as possible, that buildings or structures in H-O districts shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of them or to impose architectural styles from particular historic periods. In considering new construction, the Historic Preservation Commission may encourage contemporary design that is harmonious with the character of the district or landmark.

In granting a Certificate of Appropriateness, the Historic Preservation Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure or property, as well as the effect of such change or additions upon other structures or properties in the vicinity.

The Historic Preservation Commission shall make no requirement except to prevent work that is incongruous with the historic district or landmark.

Applicants for Certificates of Appropriateness shall consult the Historic Preservation Commission's Design Review Standards and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings. These guidelines are used by the Historic Preservation Commission to administer these regulations and to answer frequently asked questions.

#### **Exterior Form and Appearance**

The Historic Preservation Commission shall base its decision on Historic Preservation Commission's Design Review Standards and the criteria listed below.

- (1) Building height.

- (2) Setback, lot coverage, yards, orientation and positioning of the building, and spacing of buildings.
- (3) Materials, surface textures and patterns.
- (4) Architectural detailing.
- (5) Roof shapes, forms, and materials.
- (6) Fenestration proportions, shapes, position and location, and pattern
- (7) General form and proportions of buildings and structures
- (8) Appurtenant features and fixtures including, but not limited to, lighting, walls, and fences.

#### **2.5.9 Interior Arrangement Not Considered Without Permission of Owner (TA 21-01)**

The Historic Preservation Commission shall not consider interior arrangement unless consent for interior review has been given by the owner in compliance with NCGS 160D-947(b). Said consent of an owner for interior review shall bind future owners and/or successors in title, provided written proof of the consent has been recorded in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indices. Any landmark designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

#### **2.5.10 Delay in Demolition or Relocation of Buildings or Sites**

Except as provided in this section below, an application for a Certificate of Appropriateness authorizing the demolition or relocation of a historic landmark or a building, structure, or site within an H-O district may not be denied. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Historic Preservation Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such a period, the Historic Preservation Commission or its agent shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building, structure, or site. If the Historic Preservation Commission finds that the building, structure or site has no particular significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal.

An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

If the Historic Preservation Commission has formally voted to recommend application of the H-O zoning designation to a property or district, and final designation has not been made by the City Council, the demolition of any building, structure or site located on the property of the proposed H-O, historic district may be delayed by the Historic Preservation Commission for a period of up to 180 days or until the City Council takes final action on the designation, whichever comes first.

#### **2.5.11 Site Visits by Commission**

As part of its review procedure, the Historic Preservation Commission may view the premises and seek the advice of the State Historic Preservation Office or such other expert advice as it may deem necessary under the circumstances.

#### **2.5.12 Successive Applications**

If the Historic Preservation Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

### **2.5.13 Appeals (TA 14-02) (TA 21-01)**

Any aggrieved party may appeal the issuance or denial of a Major Certificate of Appropriateness to the Board of Adjustment. In order to obtain review of a final decision by the Historic Preservation Commission, the person seeking review must submit a petition in the form of a written request to the Planning Director and City Clerk within 30 days of the final written decision. Such appeals must include the reason the appeal is being sought. Appeals are in the nature of certiorari, which means that the Board of Adjustment will review the decision for legal errors, but no new evidence shall be taken. The scope of review shall be limited as prescribed in NCGS 160D-406(h) and 160D-1402(J). Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court.

### **2.5.14 Lapse of Approval (TA 12-01)**

All Certificates of Appropriateness shall expire one year from the date of issuance. The Historic Preservation Commission may grant an extension of up to one year, provided that the Commission finds that substantial progress has been made or that the recipient has encountered unforeseen difficulties that have caused the delay.

### **2.5.15 Compliance (TA 12-01) (TA 21-01)**

Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Planning Director. Failure to comply with a Certificate of Appropriateness shall be a violation of this Land Development Code and punishable as provided in Chapter 13.

The discontinuance of work or the lack of progress toward achieving compliance with a Certificate of Appropriateness for a period of one year shall be considered as a failure to comply with a Certificate of Appropriateness. Nothing contained in this Land Development Code shall prohibit, impair, or limit in any way the power of the City of Hickory to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures, or outdoor signs in the historic (H-O) districts in violation of the provisions of this Land Development Code. The enforcement of any remedy provided herein shall not prevent the use of any other remedy or remedies provided herein or in other ordinances or laws. (See G.S. 160A175 and 160D-404)

## **2.6 Zoning Compliance Permits**

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### **2.6.1 Applicability**

It shall be unlawful to begin the excavation, construction, moving, alteration, or repair, except ordinary repairs, for or any building or other structure, including an accessory structure, valued at more than \$25.00 or exceeding 100 square feet in area, until the Planning Director has issued for such work a zoning compliance permit. Also, it shall be unlawful to change the type of use of land, or to change the type of use or type of occupancy of any building, including accessory structure; or to extend any use or any lot on which there is a nonconforming use, until the Planning Director has issued for such intended use a zoning compliance permit, including a determination that the proposed use does, in all respects, conform to the provisions of this Land Development Code.

### **2.6.2 Timing of Application**

In all cases where a building permit is required, application for a zoning compliance permit shall be made coincidentally with the application for a building permit. In all other cases, application shall be made before initiating any of the activities that trigger compliance with this section (See “Applicability,” Sec. 2.6.1). Zoning compliance permits are required before work may begin on any project previously approved through subdivision plat approval, the issuance of a special use permit, or conditional zoning district approval.

### **2.6.3 Application Filing**

Zoning compliance permit applications shall be made in writing to the Planning Director on forms provided for that purpose and available in the Planning Department. The Planning Director shall keep a record of all such applications on file.

### **2.6.4 Contents of Application**

Every application for a zoning compliance permit shall be accompanied by a written statement and plans or plats, drawn to scale, showing the following in sufficient detail to enable the Planning Director to ascertain whether the proposed work or use is in conformance with the provisions of this Land Development Code:

- (a) the actual shape, location, and dimensions of the lot; if the lot is not a lot of record, sufficient data to locate the lot on the ground;
- (b) the shape, size and location of all buildings or other structures to be erected, altered or moved and of any other buildings, or other structures already on the lot;
- (c) the existing and intended use of the lot and of all structures upon it; and
- (d) such other information concerning the lot, adjoining lots, or other matters as may be essential for determining whether the provisions of this Land Development Code are being observed including, but not limited to, parking, landscaping, screening, buffering, signage, flood hazards, and floor areas.

### **2.6.5 Planning Director’s Review and Action**

If the proposed activity is in conformity with the provisions of this Land Development Code, the Planning Director shall issue a zoning compliance permit, provided that all of the following conditions shall apply:

- (1) Issuance of a zoning compliance permit shall in no case be construed as waiving any provisions of this Land Development Code;
- (2) The Planning Director shall not grant any exceptions to the actual meaning of any clause, standards, or regulation contained in this Land Development Code to any person making application to excavate, construct, move, alter or use buildings, structures or land;
- (3) the Planning Director shall not make any changes to this Land Development Code or vary the terms of this Land Development Code;
- (4) the Planning Director shall issue a permit when the imposed conditions of this Land Development Code are complied with by the applicant regardless of whether the use of the permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties.
- (5) The zoning compliance permit shall include a determination that plans, specifications and the intended use of such structure and land do, in all respects, conform to the provisions of this Land Development Code. Prior to the issuance of a Zoning Compliance Permit, the Planning Director shall consult with all applicable departments.

If the proposed activity is not in conformity with the provisions of this Land Development Code, the Planning Director shall not issue a zoning compliance permit. If an application for a zoning

compliance permit is disapproved, the Planning Director shall state in writing the cause of such disapproval and provide written notice to the applicant.

### **2.6.6 Lapse of Approval (TA 21-01)**

Expiration of a zoning compliance permit shall be governed by subsection 2.1.17.

## **2.7 Zoning Compliance Certificates**

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No building, structure or zoning lot for which a zoning compliance permit has been issued shall be used or occupied until the Planning Director has, after final inspection, issued a certificate of zoning compliance indicating compliance has been made with all the provisions of this Land Development Code. The issuance of a certificate of zoning compliance shall in no case have the effect of nor be construed as waiving the provisions of this Land Development Code.

## **2.8 Variances**

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### **2.8.1 Applicability**

This section sets out the procedure for gaining approval of variances from the zoning-related standards of this Land Development Code. Variances are intended to address practical difficulties or unnecessary hardships resulting from strict application of zoning standards. The variance procedures of this section shall not be used to permit a use in a zoning district that is not otherwise allowed in that district, nor shall the procedures of this section be used to vary or waive the subdivision standards of this Land Development Code.

### **2.8.2 Application Filing**

Applications for zoning variances shall be submitted to the Planning Director on forms available in the Planning Department.

### **2.8.3 Public Hearing Notice**

Newspaper, posted and mailed notice of the Board of Adjustment hearing shall be provided in accordance with Sec. 2.1.7. Written notice of the hearing shall also be mailed to the applicant.

### **2.8.4 Board of Adjustment's Review and Decision**

The Board of Adjustment shall hold at least one public hearing on the proposed zoning variance. Following the hearing (at the same or subsequent meeting), the Board of Adjustment shall take action to approve, approve with modifications or deny the proposed zoning variance. An affirmative vote of a least 4/5 of the total membership of the Board of Adjustment shall be required to approve any zoning variance. For the purposes of this section, vacant positions on the board and members who are disqualified from voting shall not be considered "members of the board" for the calculation of requisite supermajority if there are no qualified alternates to take the place of such members.

### **2.8.5 Approval Criteria (TA 14-01) (TA 21-01)**

Zoning variances may be approved only when the Board of Adjustment finds substantial evidence in the official record and the application to support all the following findings:

- A. Unnecessary hardship would result from the strict application of this Land Development Code. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- B. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships

resulting from conditions that are common to the area or the general public, may not be the basis for granting a variance;

- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship; and
- D. The requested variance is consistent with the spirit, purpose and intent of the Land Development Code, such that public safety is secured, and substantial justice is achieved.

**Conditions.** Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

### **Quasi-judicial Hearing**

The Board of Adjustment's public hearing to consider the application shall be a quasi-judicial hearing and shall be conducted in accordance with Sec. 2.1.16 and as provided in the Planning Commission's Rules of Procedure.

#### **2.8.6 Written Decision (TA 21-01)**

All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the approval criteria of Sec. 2.8.5, and a written decision shall be rendered in accordance with Sec. 2.1.16.

#### **2.8.7 Notice of Decision (TA 14-01) (TA 21-01)**

Within 30 days after a final zoning variance decision is made by the Board of Adjustment, copies of the written decision shall be sent to the applicant and others as provided in Sec. 2.1.16 and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

#### **2.8.8 Appeals (TA 21-01)**

Any person aggrieved by a zoning variance decision of the Board of Adjustment, may appeal the decision to the Superior Court of the county where the property is located in accordance with Sec. 2.1.16 and NCGS 160D-1402 and 160D-1405(d).

## **2.9 Written Interpretations**

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### **2.9.1 Application Filing**

Applications for written interpretations of this Land Development Code shall be submitted to the Planning Director on forms available in the Planning Department.

### **2.9.2 Planning Director's Review and Decision**

Within 30 days of receipt of a complete application for a written interpretation, the Planning Director shall: (1) review and evaluate the application in light of this Land Development Code, the Hickory by Choice 2030 Comprehensive Plan and any other relevant documents; (2) consult with other staff, including the City Attorney, as necessary; and (3) render a written interpretation.

### **2.9.3 Form (TA 21-01)**

The interpretation shall be provided to the applicant in writing in accordance with subsection 2.1.7 and shall be filed in the official record of interpretations.

### **2.9.4 Official Record of Interpretations**

An official record of interpretations shall be kept on file in the office of the Planning Department. The record of interpretations shall be available for public inspection in the Planning Department during normal business hours.

### **2.9.5 Appeals**

Appeals of written interpretations of the Planning Director may be taken to the Board of Adjustment in accordance with procedures of Sec. 2.10. If the appeal results in a change of interpretation, the new interpretation shall be filed in the official record of interpretations.

## **2.10 Appeals of Administrative Decisions**

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### **2.10.1 Authority and Applicability**

The Board of Adjustment shall be authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code.

### **2.10.2 Application Filing (TA 14-01) (TA 21-01)**

Appeals of administrative decisions in the form of a written request shall be submitted to the Planning Director and City Clerk. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to NCGS 160D-403(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

### **2.10.3 Effect of Filing (TA 14-01) (TA 21-01)**

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

Notwithstanding any other provision of this subsection, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

### **2.10.4 Record of Administrative Decision (TA 14-01) (TA 21-01)**

The official whose decision is being appealed shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed is taken. The official shall also provide copies of the record to the appellant and to the owner(s) of the property that is subject of the appeal if the appellant is not the owner.

### **2.10.5 Public Hearing Notice (14-01)**

Newspaper, mail, and posted notice of the Board of Adjustment's hearing shall be provided in accordance with Sec 2.1.7. Written notice of the hearing shall be mailed to the applicant.

### **2.10.6 Board of Adjustment Review and Decision (TA 14-01) (TA 21-01)**

The Board of Adjustment shall hold a public hearing on the appeal and render a written decision in accordance with Sec. 2.1.16.

The zoning official who made the final determination shall be a witness at the hearing.

In exercising the appeal power, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken, and the Board of Adjustment may reverse or affirm wholly or partly or may modify the decision being appealed.

An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official. Notwithstanding the foregoing and in accordance with G.S. § 63-33(c), the concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or determination of any administrative official pertaining to the requirements of Sec. 4.6, "Airport Overlay District."

### **2.10.7 Notice of Decision (TA 14-01) (TA 21-01)**

Within thirty (30) days after a final decision on an administrative appeal is made by the Board of Adjustment, copies of the written decision shall be sent to the applicant and others as provided in Sec. 2.1.16 and filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

### **2.10.8 Appeals (TA 21-01)**

Any person aggrieved by a decision of the Board of Adjustment may appeal the decision to the Superior Court of the county where the property is located in accordance with Sec. 2.1.16 and NCGS 160D-1402 and 160D-1405(d).

## **2.11 Review and Decision Making Bodies and Administrative Staff**

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### **2.11.1 City Council (TA 21-01)**

**Powers and Duties.** The City Council shall have the following powers and duties under this Land Development Code.

- (1) Land Development Code Text and Zoning Map Amendments.** The City Council shall review applications for amendments to the text or zoning map of this Land Development Code and make a decision in accordance with Sec. 2.2.

**Conflicts of Interest.** A City Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member. A City Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition of the applicant for a text amendment is a person with whom the member has a close familial, business, or other associated relationship.

### **2.11.2 Planning Commission (TA 21-01)**

**Powers and Duties.** The Planning Commission shall have the following powers and duties under this Land Development Code:

- (1) **Land Development Code Text and Zoning Map Amendments.** The Planning Commission shall review applications for amendments to the text zoning map of this Land Development Code and make recommendations on such amendments to the City Council in accordance with Sec. 2.2.
- (2) **Special Use Permits.** The Planning Commission shall review and take final action on all Special Use Permits in accordance with Sec. 2.4. When considering a Special Use Permit, Sec. 2.1.16 shall apply.

**Appeals of Planning Commission.** Recommendations of the Planning Commission regarding text and map amendments are not appealable. Any person aggrieved may appeal a final decision of the Planning Commission on Special Use matters to the Superior Court of the county where the property is located in accordance with Sec. 2.1.16 and NCGS 160D-1402 and 160D-1405(d).

**Conflicts of Interest.** A Planning Commission member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member. A Planning Commission member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition of the applicant for a text amendment is a person with whom the member has a close familial, business, or other associated relationship. When considering quasi-judicial matters, the conflict of interest standards of Sec. 2.1.16 shall apply.

### **2.11.3 Board of Adjustment (TA 18-01) (TA 21-01)**

**Composition.** The Hickory Board of Adjustment shall be composed of the members of the Planning Commission.

#### **Administration.**

- (1) The Board of Adjustment shall adopt rules of procedures and regulations for the conduct of its affairs, and the Board shall be governed by Sec. 2.1.16.
- (2) All meetings of the Board of Adjustment shall be open to the public.
- (3) The Board of Adjustment shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.

#### **Quorum and Vote Required. (TA 14-01)**

- (1) A quorum of the Board of Adjustment, necessary to conduct any business of the Board of Adjustment, shall consist of a simple majority.
- (2) The concurring vote of 4/5 of the full membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be necessary in order to grant a variance.
- (3) An affirmative vote of a majority of the total membership of the Board of Adjustment, excluding vacant seats and disqualified members, shall be required to reverse, in whole or in part, any order, requirement, decision, or determination of any administrative official.

For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered “members of the board” for calculation of requisite super-majority if there are no qualified alternates available to the place of such members.

**Powers and Duties.** The Board of Adjustment shall have the following powers and duties under this Land Development Code.

- (1) **Zoning Variances.** The Board of Adjustment shall be responsible for reviewing and taking final action on Zoning Variance requests in accordance with Sec. 2.8.

- (2) **Appeals of Administrative Decisions.** The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Land Development Code. (See 2.10).
- (3) **Appeals of Certificates of Appropriateness Decisions.** The Board of Adjustment shall hear and decide appeals of Certificates of Appropriateness by staff and the Historic Preservation Commission. Such appeals shall be heard in the nature of certiorari.
- (4) **Request for Waiver of Requirements.** The Board of Adjustment shall consider requests for waivers of requirements in accordance with Sec. 4.4.8 and Sec. 4.4.9.

**Appeals of Board of Adjustment Actions.**

Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by filing a petition for review in the nature of certiorari within 30 days of the filing of a written decision in the office of the Planning Director or the delivery of a copy of the decision to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the board at the time of the hearing on the matter.

**Conflicts on Quasi-Judicial Matters.** When considering quasi-judicial matters, the conflict of interest standards of Sec. 2.1.16 shall apply.

**2.11.4 Historic Preservation Commission (TA 21-01)**

**Powers and Duties.** The Historic Preservation Commission, as established in Chapter 6, Article VI of the Hickory City Code, shall have the following powers and duties under this Land Development Code:

- (1) **Certificates of Appropriateness.** The Historic Preservation Commission shall review and take final action on such applications in accordance with Sec. 2.5.
- (2) **Historic District and Landmark Designation.** The Historic Preservation Commission shall review and make a recommendation to the City Council on all proposed Historic Districts and Landmarks as described in Sec. 4.4.
- (3) **Authentic Restoration or Reconstruction.** As described in Sec. 4.4.8, the Historic Preservation Commission may recommend that the Board of Adjustment grant a waiver of dimensional requirements of this Land Development Code for an activity that constitutes an authentic restoration or reconstruction.
- (4) **Parking Waiver.** As described in Sec. 4.4.9, upon a finding that the number of parking spaces required by this Land Development Code would render the building incongruous with the special character of the historic district or landmark, the Historic Preservation Commission may recommend that the Board of Adjustment waive or reduce the required number of parking spaces.
- (5) **Special Use Permit Applications.** When a Special Use Permit application affects a property that is located within an H-O district, the Historic Preservation Commission shall review and comment on the proposed application within 30 days of the receipt of said application.

**Conflicts of Interest.**

- (1) **Quasi-Judicial Decisions.** The conflict of interest provisions of Sec. 2.1.16 shall apply to applications for a Certificate of Appropriateness and requests for a waiver requirements pursuant to Secs. 4.4.8 and 4.4.9.
- (2) **Other Matters.** Members of the Historic Preservation Commission shall not vote on any other matters where the outcome of the matter being considered is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member. Members shall not vote on any certificates of appropriateness or waivers zoning amendment

recommendation if the landowner of the property subject to a rezoning petition or the applicant for a text amendment the action is a person with whom the member has a close familial, business, or other associational relationship.

#### **2.11.5 Administrative Staff (TA 21-01)**

**Powers and Duties.** Administrative staff members have the authority to issue and enforce this Land Development Code as outlined within its various chapters.

**Conflicts of Interest.** No administrative staff member shall make a final decision on an administrative decision required by this Land Development Code if the outcome of that decision would have direct, substantial, and readily identifiable financial impact on the staff member, or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this subsection, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No administrative staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the City of Hickory to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the City, as determined by the City.

#### **2.11.6 Conflicts of Interest Generally (TA 21-01)**

- (A) For the purposes of this section, if an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
- (B) For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.