

Brief Summary for Proposed Land Use Amendments

Presented here are the following sections of proposed land use amendments being requested for review. There are no development changes proposed, only administrative, however some changes are being made to reduce repetitiveness and add clarity.

Items to be removed are marked with ~~RED STRIKETHROUGH~~ and those being added are in **RED BOLD UNDERLINE**. Only those sections of the chapters and ordinances being proposed for amendment are presented here.

The purposed of these changes are to come into compliance with Chapter 160D of the North Carolina General Statutes. Deadline for compliance to the Chapter 160D regulations is July 1, 2021.

ARTICLE 1. AUTHORITY AND PURPOSE

1.1 AUTHORITY.

These regulations are adopted pursuant to the authority vested in the Town of Mount Gilead by its charter, the Session laws, and the General Statutes of North Carolina, particularly Chapter ~~160A, Article 19, Part 3~~ **160D** and any special local legislation enacted by the General Assembly for the Town of Mount Gilead.

1.4 JURISDICTION.

These regulations govern the development of land and structures within the corporate limits and the extraterritorial zoning jurisdiction (**ETJ**) of the Town of Mount Gilead.

(A) For an extension of the ETJ, the Town shall provide mailed notice thirty (30) days prior to the ETJ Hearing. One hearing with a single mailed notice may be used for the ETJ extension and the initial zoning map amendment.

1.5 ZONING MAP.

The Board of Commissioners has adopted a Zoning Map entitled “Official Zoning Map, Town of Mount Gilead, NC” which is retained in the office of the Town Clerk. The Zoning Map sets out and delineates the zoning districts established in Article 4. The Zoning Map and notations thereon are hereby designated, established, and incorporated as a part of these regulations and shall be as much a part of these regulations as if they were fully described herein.

(A) Prior zoning maps will be kept and maintained for public inspection in either paper or digital formatting.

(B) Other local, state or federal maps incorporated by reference into the Official Zoning Map will be kept and maintained for public inspection in either paper or digital formatting.

(C) Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the

Town Clerk in accordance with G.S. 160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.

ARTICLE 2. APPLICABILITY AND INTERPRETATION OF ORDINANCE

2.1 VESTED DEVELOPMENT RIGHTS.

- (A) **In General.** Any amendments, modifications, supplements, repeal or other changes in these regulations or the zoning maps shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:
- (1) For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to G.S. ~~160A-418~~ 160D-108(d)(1) and the building permit has not been revoked pursuant to G.S. ~~160A-422~~ 160D-1111; or
 - (2) For which a zoning permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this article and G.S. 160D-108(d)(2); or
 - (3) For which a vested right has been established and remains valid and unexpired pursuant to this section.
- (B) ~~Additional Procedures for Establishing a Vested Right Site-Specific Vesting Plan.~~ A vested right to commence with a ~~planned development or~~ use of property according to a ~~site-specific development plan~~ site-specific vesting plan shall be established upon approval of a development site plan, ~~conditional~~ special use permit or conditional zoning district by the Town Board. The vested right thus established is subject to the terms and conditions of the ~~site~~ site-specific vesting plan. Only those design elements shown on or made a part of the ~~site~~ site-specific vesting plan or permit shall be vested.

The site-specific vesting plan shall at a minimum include the following:

- (1) Approximate boundaries of the site;
- (2) Significant topographical and other natural features affecting development of the site;
- (3) The approximate location on the site of the proposed buildings, structures, and other improvements;
- (4) The approximate dimensions, including height, of the proposed buildings and other structures; and
- (5) The approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

What constitutes a site-specific vesting plan shall be defined by the relevant development regulation, and the development approval that triggers vesting shall be so identified at the time of its approval. At a minimum, the regulation shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site-specific vesting plan and approval of a site-specific vesting

plan with the condition that a variance be obtained shall 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 may not constitute a site-specific vesting plan.

(D) Declaration of a vested right upon voluntary annexation. A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established. A statement that declares that no ~~zoning development~~ vested right has been established under G.S. ~~160A-385.1 or G.S. 153A-344.1~~ **160D-108**, or the failure to sign a statement declaring whether or not a ~~zoning development~~ vested right has been established shall be binding on the landowner, and any such zoning vested right which may have existed shall be terminated.

(E) Multiphase Developments. A multiphase development shall be vested for the entire development with the zoning regulations, subdivision regulations, and other development ordinances in place at the time a site plan approval is granted for the initial phase of the multiphase development. This right shall remain vested for a period of seven (7) years from the time a site plan approval is granted for the initial phase of the multiphase development.

For purposes of this subsection, "multiphase development" means a development containing 100 acres or more that:

- (1) Is submitted for site plan approval for construction to occur in more than one phase; and
- (2) Is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

2.2 PERMIT CHOICE.

If an application made in accordance with this ordinance is submitted for a development approval required pursuant to this G.S. 160D and a development regulation changes 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. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit 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. This section applies to all development approvals issued by the Town. The duration of vested rights created by development approvals is as set forth in 2.2(C).

2.4 RULES OF CONSTRUCTION.

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

- (A) Interpretations shall be guided by statements of intent.
- (B) The term *this ordinance* shall refer to the Town of Mount Gilead Zoning Ordinance.

- (C) The words *shall, must, and will* are mandatory, implying an obligation or duty to comply with the particular provision.
- (D) The word *may* is permissive, except when the context of the particular use is negative, then it is mandatory (e.g., *may not*).
- (E) The word *should*, whether used in the positive or the negative, is a suggested guideline.
- (F) References to days will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.
- (G) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Appendix A except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.
- (H) Words used in the present tense include the future tense, and words used in the future tense include the present tense.
- (I) Words used in the singular number include the plural, and words used in the plural number include the singular.
- (J) The word *person* includes a firm, association, organization, partnership, corporation, trust, and company, as well as an individual.
- (K) The word *lot* includes the words plot, parcel or tract.
- (L) The word *building* includes the words structure, and the word structure includes the word building.
- (M) The words *used or occupied* as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.
- (N) Words used in the masculine gender include the feminine gender.
- (O) The word *street* includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians.
- (P) The term *town board* shall mean the Board of Commissioners of the Town of Mount Gilead, North Carolina.
- (Q) The term *planning board* shall mean the Planning and Zoning Board of the Town of Mount Gilead, North Carolina.
- (R) The term *zoning administrator* shall mean the Zoning Administrator of the Town of Mount Gilead, North Carolina.
- (S) The term *subdivision administrator* shall mean the Subdivision Administrator of the Town of Mount Gilead, North Carolina.
- (T) The term *mayor* shall mean the Mayor of the Town of Mount Gilead, North Carolina.

(U) The term *board of adjustment* shall mean the Board of Adjustment of the Town of Mount Gilead, North Carolina.

(V) The term *state* shall mean the State of North Carolina.

(W) Any reference to an *article* shall mean an article of the Town of Mount Gilead Zoning Ordinance, unless otherwise specified.

2.4 INTERPRETATION.

(A) Zoning Boundaries. Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the Zoning Administrator shall employ the following rules of interpretation.

(1) Where the zoning map shows a boundary line located within a street right-of-way, railroad or utility line right-of-way, easement or waterway, it shall be considered to be in the center of the right-of-way, easement or waterway. If the actual location of such right-of-way, easement or waterway varies slightly from the location as shown on the zoning map, then the actual location shall control.

(2) Where the zoning map shows a district boundary to approximately coincide with a property line or city, town or county border, the property line or border shall be considered to be the district boundary, unless otherwise indicated on.

(3) Where the zoning map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway or property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning map.

(4) If, because of error or omission in the zoning map, any property within the jurisdiction of this ordinance is not shown as currently being in a zoning district, such property will be classified as R-15, until changed by amendment.

(5) Where district boundaries appear to be parallel to the centerline of streets, easements or rights-of-way, such district boundaries shall be construed to be parallel thereto and at such a distance therefrom as is indicated on the zoning map.

(6) The Zoning Administrator shall decide the exact location of zoning district boundary lines when a question arises concerning boundary lines shown on the zoning maps. This decision may be appealed to the zoning board of adjustment.

(B) Split tracts and fractional requirements. The Zoning Administrator shall employ the following rules with respect to split tracts and fractional requirements:

(1) Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be extended to apply to the whole, provided such extensions shall not include any part of a lot or tract more than thirty-five feet beyond the district

boundary line. The term least restrictive shall refer to all zoning restrictions except lot or tract size.

(2) When any requirement of this ordinance results in a fraction of a dwelling unit or other measurement, that fraction will be disregarded and the nearest lower whole number shall apply.

(3) Whenever a density calculation for a legal lot of record results in less than one dwelling unit being permitted, one dwelling unit will be permitted subject to the remaining provisions of this ordinance.

(C) General rules of conflict.

(1) In the event of a conflict between the text of this article and any caption, figure, illustration, or table included herein, the text of this article shall control.

(2) In the event there is a conflict in limitations, requirements or standards applying to any individual use or structure, the more stringent or restrictive provision shall apply.

(D) Distance measurements.

Distance separations are required for many uses in this article. Unless otherwise specified, the following rules shall apply in determining such measurements:

(1) Where lot separation is required, measurements shall be made from lot line to lot line using the shortest straight-line distance between lots.

(2) Where separation between a building, structure, parking area, buffer, driveway or similar feature on a development site and any other feature on the same or abutting site is required or is part of a regulation contained herein, such separation shall be measured between the closest points on the feature using the shortest straight line distance between the two.

ARTICLE 4. ZONING DISTRICTS.

4.1 ZONING DISTRICTS ESTABLISHED.

(C) Zoning District Boundary Interpretation.

~~(7) In instances where none of the above methods are sufficient to resolve the boundary location, the Board of Adjustment shall establish the boundary location.~~

4.2 GENERAL DISTRICTS.

(A) Permitted Uses. Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a special use permit are listed in the TABLE OF PERMITTED USES in Section 4.5. This applies to all zoning districts unless otherwise noted.

(B) Dimensional Requirements and Supplemental Standards.

(1) All lots shall meet the minimum dimensional requirements shown in Section 4.4.

(2) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.

(AC) RESIDENTIAL AGRICULTURAL DISTRICT (R-A and R-A-CD)

~~(1) Intent~~

The R-A Residential Agriculture District is intended to provide land for low density single-family residential and agricultural uses. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development, and to insure that residential developments dependent upon private wells and septic tank systems for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

~~(2) Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(BD) LOW/MODERATE DENSITY SINGLE-FAMILY RESIDENTIAL DISTRICT (R-15 and R-15-CD)

~~(1) Intent~~

The R-15 Low/Moderate Density Single-Family Residential District is primarily intended to provide land for low to moderate density single-family detached dwellings with an overall maximum density between two (2) and three (3) dwelling units per acre. Public facilities, including public water and sewer and public roads are generally available. Residential developments dependent upon septic tank systems for sewage disposal will occur at sufficiently low densities to insure a healthful environment.

~~(2) Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(CE) MEDIUM DENSITY RESIDENTIAL DISTRICT (R-8 and R-8-CD)

~~(1) — Intent.~~

The R-8 Medium Density Residential District is intended to accommodate medium density residential development at a maximum density of five (5) dwelling units per acre. Types of residential development accommodated in the R-8 District may include single-family attached and detached dwellings in addition to multi-family structures. Public water and sewer, public roads, parks and other governmental support services are available. Uses which would negatively impact the residential nature of the district are discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(DF) HIGH DENSITY RESIDENTIAL ZONING DISTRICT (R-6 and R-6-CD)

~~(1) — Intent.~~

The R-6 High Density Residential Zoning District is primarily intended to accommodate residential uses such as single-family dwellings, two-family dwellings, multi-family residential buildings, and manufactured homes located within manufactured home parks at a maximum density of seven (7) dwelling units per acre. Public facilities, including public water and sewer, public roads,

parks, and other governmental support services are available. Uses that would interfere with the residential nature of the district are strongly discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(EG) OFFICE INSTITUTIONAL DISTRICT (O-I and O-I-CD)

~~(1) — Intent.~~

The O-I Office and Institutional Districts established primarily for office and institutional uses which have only limited contact with the general public and which have no offensive noises, odors, smoke, fumes, or other objectionable conditions. As residences are permitted in this zone and as this zone is usually adjacent to residential districts, provisions are made for yards, off-street parking and off-street loading areas.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(FH) CENTRAL BUSINESS DISTRICT (CB and CB-CD)

~~(1) — Intent.~~

The CB Central Business District is intended to encourage high density, compact, urban development. The district is intended to accommodate a wide range of uses, including office, retail, service, and institutional development in a pedestrian-oriented setting. The district also accommodates high-density residential development. These uses may be mixed on the same tract of land or within the same structure.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(G) GENERAL BUSINESS DISTRICT (G-B and G-B-CD)

~~(1) — Intent.~~

The GB General Business District is established to provide locations for retail, service and distributive establishments which require high visibility and good road access, or which cater primarily to passing motorists. Because these zones are generally located adjacent to main thoroughfares where they are subject to public view, they should provide an appropriate appearance, ample parking, and suitable landscaping.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(H) NEIGHBORHOOD BUSINESS DISTRICT (N-B and N-B-CD)

~~(1) — Intent.~~

The NB Neighborhood Business District is established as a zone in which the principal use of land is for commercial and service uses to serve the surrounding residential zones and in which traffic and parking congestion can be reduced to a minimum in order to preserve the residential character of the surrounding residential zones. Residential, heavy commercial and industrial uses of land and other uses of land which would substantially interfere with the development or continuation of the commercial uses in the zone are prohibited. Uses, which due to their character or size, would interfere with the use of land in the district as a shopping and service center for the surrounding residential zones are discouraged.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

~~(K)~~ **INDUSTRIAL DISTRICT** (I and I-CD)

~~(1) — Intent.~~

The I Industrial District's purpose is to promote and protect both the existing industrial activities and potential sites where urban services are available and which are considered suitable for continued or future industrial use. Uses of land which would substantially interfere with the continuation of industrial uses permitted in the district are prohibited. The operation of well-planned and well-maintained industrial facilities which can be operated in a relatively clean and quiet manner and which will not be obnoxious or have significant negative effects to adjacent residential or business properties is promoted.

~~(2) — Permitted Uses.~~

~~Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional use permit are listed in the TABLE OF PERMITTED USES in Section 4.5.~~

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum dimensional requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

(JL) LAKESIDE DEVELOPMENT CONDITIONAL DISTRICT (LD-CD)

~~(1) — Intent.~~

The LD-CD Lakeside Development Conditional District is intended to provide an appropriate location for a mixture of lake-oriented businesses, public and semi-public recreational opportunities and residential uses. Properties appropriate for rezoning to LD-CD shall be located within 2,000 feet of Lake Tillery. Uses may be mixed on the same tract of land or within the same structure and shall be designed to complement surrounding land uses through appropriate screening, buffers, and landscaping.

(2) Permitted Uses.

Uses permitted shall be those listed on the applicant’s rezoning application for Lakeside Development and approved by the Town Board and shall be selected from the uses listed in the TABLE OF PERMITTED USES in Section 4.5.

~~(3) — Dimensional Requirements and Supplemental Standards.~~

~~(a) — All lots shall meet the minimum requirements shown in Section 4.4.~~

~~(b) — Development density, amount and location of open space, arrangement of streets and lots, yard dimensions, and access to existing roads shall be controlled by the most recently approved subdivision plan (sketch, preliminary, or final). Any modifications to an approved subdivision plan shall maintain the density of the original plan.~~

4.3 OVERLAY DISTRICTS.

(A) HISTORIC OVERLAY DISTRICT (H-O)

(2) Permitted Uses.

Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a conditional-special use permit are the same as those listed in the TABLE OF PERMITTED USES in Section 4.5 for the underlying or base zoning district.

4.5 TABLE OF PERMITTED USES.

The following table lists uses permitted in each zoning district by 1) issuance of a zoning permit from the Zoning Administrator with or without conditions, and 2) issuance of a conditional-special use permit (abbreviated CUP-SUP in the legend at the top of the table) from the Board of Commissioners. The table

also denotes which districts certain uses are not permitted and where the uses permitted within an overlay district are determined by the uses permitted in the underlying district. For the purposes of interpreting the table, the zoning districts are abbreviated as listed in 4.1 (B) and are repeated as follows:

| District Abbreviation | District Name |
|------------------------------|---|
| R-A & R-A-CD | Residential Agricultural District |
| R-15 & R-15-CD | Low/Moderate Density Single-Family Residential District |
| R-8 & R-8-CD | Medium Density Residential District |
| R-6 & R-6-CD | High Density Residential District |
| OI & OI-CD | Office Institutional District |
| CB & CB-CD | Central Business District |
| GB & GB-CD | General Business District |
| NB & NB-CD | Neighborhood Business District |
| I & I-CD | Industrial District |
| LD-CD | Lakeside Development Conditional District |

Interpreting Permitted Uses. If a use is not specifically listed in any of the districts listed in this Ordinance, then the Town Zoning Administrator shall have the authority to interpret in which district, if any, the use shall be permitted. In determining if a use is permitted, the Zoning Administrator shall consider which category of expressed uses most closely matches the use proposed and apply the regulations pertaining to that category to the proposed use. In determining the use which most closely matches the proposed use, the Zoning Administrator shall consider the density and intensity of the use, and anticipated traffic, noise, light, and odor on adjacent properties. If requested, the applicant shall submit evidence to the Zoning Administrator of the anticipated traffic, noise, light, or odor of the proposed use. Reports prepared by the applicable professional trade may be required (i.e. transportation engineer, environmental scientist, etc.). Such interpretation shall be provided in writing to the property owner and subject to appeal by the Board of Adjustment.

[EDITOR’S NOTE: The Table of Uses has multiple changes involving only the change in coding from CU to S. These instances have been left out of this document to save space but may be reviewed at Town Hall. Only substantive changes and an example of the coding changes are presented here.]

| Uses | | | | | | | | | | | |
|---|--------------------|-------------|------------|------------|------------|-----------|-----------|-----------|--------------------|--------------|------------------------------|
| | R-A | R-15 | R-8 | R-6 | O-I | CB | GB | NB | I | LD-CD | Additional Conditions |
| X = Permit from Zoning Administrator CU S = CU S ^{SUP} from Board of Commissioners X/C = Permit from Zoning Administrator; use must meet additional conditions “-“ = not permitted U = Uses determined by underlying zoning district | | | | | | | | | | | |
| Agriculture, bona-fide farms, including processing or sale of products grown on the same zoning lot, excluding agricultural industry | X | X | - | - | - | - | - | - | X | - | 9.96 |
| Animal Feeder/Breeder Operations | CU S | - | - | - | - | - | - | - | CU S | - | 9.8 |
| <u>Fuel Dealer</u> | | | | | | | | | CU S | | 9.33 |
| Clinics | - | - | - | - | X | X | X | - | - | - | 9.21 |

| | | | | | | | | | | | | |
|--|--------------------|-----|---|---|---|--------------------|--------------------|-----|-----|---|---|-------------|
| Airports | CU S | - | - | - | - | - | - | - | - | - | - | <u>9.5</u> |
| Fairgrounds | CU S | - | - | - | - | - | - | - | - | - | - | <u>9.30</u> |
| Heliport | X/C | - | - | - | - | - | - | - | X/C | - | - | <u>9.39</u> |
| Recycling, Drop-Off Site | CU S | - | - | - | - | CU S | CU S | - | - | - | - | <u>9.70</u> |
| Temporary Seasonal Uses and Structures, including seasonal markets | X/C | X/C | - | - | - | X/C | X/C | X/C | - | - | - | <u>9.89</u> |

ARTICLE 7 SIGNAGE

7.5 PERMANENT SIGNS BY ZONING DISTRICT.

Signs shall be permitted and prohibited within certain zoning districts as follows:

Permanent Signs by Sign Type and Zoning District

| <i>SIGN TYPE</i> | R-A | R-15 | R-8 | R-6 | O-I | CB | GB | NB | I | LD-CD |
|---------------------------------------|-----|------|-----|-----|-----|----|----|----|-----------------|-------|
| Canopy/Awning | - | - | - | - | Z | Z | Z | Z | Z | Z |
| Directional/Incidental | P | P | P | P | P | P | P | P | P | P |
| Directory | - | - | - | - | Z | - | Z | Z | Z | Z |
| Flag | P | P | P | P | P | P | P | P | P | P |
| Freestanding (Pole) | - | - | - | - | Z | - | Z | Z | Z | - |
| Marquee | - | - | - | - | - | Z | - | - | - | - |
| Monument (Ground) | Z | Z | Z | Z | Z | Z | Z | Z | Z | Z |
| Outdoor Advertising (Billboard) | - | - | - | - | - | - | - | - | CU S | - |
| Planned Development (Shopping Center) | - | - | - | - | - | - | Z | Z | Z | - |
| Portable | - | - | - | - | - | - | - | - | - | - |
| Portable, Sandwich or Menu Board | - | - | - | - | - | P | - | P | - | P |
| Projecting | - | - | - | - | Z | Z | - | Z | - | - |
| Suspended | - | - | - | - | Z | Z | Z | Z | - | Z |
| Wall | Z | Z | Z | Z | Z | Z | Z | Z | Z | Z |
| Window | - | - | - | - | Z | Z | Z | Z | Z | Z |

P = permitted without a permit

Z = permitted only upon issuance of a valid zoning permit

~~CU~~ S = permitted only upon issuance of a ~~conditional~~ special use permit

"- " = not permitted

Important Note: Sign types not specifically listed in this table are not permitted

ARTICLE 9 ADDITIONAL CONDITIONS FOR CERTAIN USES

Note: These conditions apply only to uses "Permitted with Conditions" or by "~~Conditional-Special~~ Use Permit" in the applicable zoning district as listed in Section 4.5, Table of Permitted Uses.

9.2 Accessory Communication Antennae.

See applicable conditions for Accessory Communication Antennae listed under 9.879.88 Telecommunications Towers.

9.17 Bulk Storage of Petroleum Products.

- (F) The product shall be sold in the same form as received and shall not be altered, except that two (2) or more products may be blended. Any other alteration of the product shall be deemed a manufacturing use, requiring approval of a ~~conditional~~ special use permit.

9.45 Landfill, Construction and Demolition.

- (A) Applicants planning to develop a Construction and Demolition Landfill shall comply with all NC Division of Waste Management's requirements for construction, operation, and closure of a Construction and Demolition Landfill. Applicants shall provide copies of all plans and application materials to the Zoning Administrator prior to submittal of their ~~conditional~~ special use permit application and the approved Construction and Demolition permit or notification form issued by the North Carolina Department of Environment Natural Resources, Division of Solid Waste Management shall be presented prior to the commencement of fill activity.

9.47 Landfill, Sanitary.

- (J) Approval of the ~~conditional~~ special use permit will not become effective unless all applicable permits for the sanitary landfill have been issued by the appropriate State and Federal agencies governing operation of the facility. ~~Conditional~~ Special use permits will automatically expire if at any time after the issuance, State or Federal permits are revoked.

9.50 Manufactured Home Parks.

- (E) Procedure for Securing Approval of Manufactured Home Parks.

~~(1)~~ Manufactured Home Park Initial Permit Application Procedure

- ~~(a)~~ Prior to the construction of a new manufactured home park or the expansion of an existing manufactured home park, the developer shall make application to the Zoning Administrator for a permit to construct or expand such a park. ~~The application shall be accompanied by five (5) copies of the proposed park plan.~~

- ~~(b)~~ The park plan shall be drawn at a scale of 50 feet to one (1) inch or larger and shall include the following:

- ~~1~~a. The name of the park, the names and addresses of the owner or owners, and the designer or surveyor;
- ~~2~~b. Date, scale, and approximate North arrow;
- ~~3~~c. Boundaries of the tract shown with- bearings and distances;
- ~~4~~d. Site plan showing streets, traffic circulation, driveways, recreation areas, parking spaces, service buildings, water courses, easements, manufactured home lots, lot numbers, all structures to be located on the park site, and total acreage of the park;
- ~~5~~e. Vicinity map showing the location of the park and the surrounding land usage;
- ~~6~~f. Names of adjoining property owners;

- 7g. The existing and proposed utility system for surface water drainage, street lights, water supply, and solid waste and sewage disposal facilities;
- 8h. Certification of approval of water supply system plans by the appropriate state and county officials;
- 9i. Certification of approval of sewerage collection systems by the appropriate state, ~~and~~ county and/or city officials;
- 10j. Certification of approval of solid waste storage, collection, and disposal plans by the County Health Department;
- 11k. Land contours with vertical intervals of not less than two (2) feet for all manufactured home parks with 25 manufactured home spaces or more; and
- 12l. Certification of lot approved by Soil and Water Conservation District, including suitability for septic tank systems, if used.

~~(2) — Review of the Proposed Manufactured Home Park Plan.~~

~~(a) — The Zoning Administrator shall review the proposed park plan to determine if it is in accordance with the requirements set forth in this section.~~

~~(b) — If the Zoning Administrator finds that all requirements have been met, the plan shall be submitted to the Planning and Zoning Commission for review. The Planning and Zoning Board shall recommend approval or denial to the Board of Commissioners. The Town Board of Commissioners shall approve or deny the application following a public hearing.~~

~~(3) — Issuance of Initial Permit.~~

~~(a) — After receiving approval of the proposed manufactured home park plan, the Zoning Administrator is authorized to issue an initial permit. The intent of this permit is to enable the construction of the park according to the proposed plan, but shall not be construed to entitle the applicant to offer spaces for rent or lease, or to operate a manufactured home park.~~

~~(b) — If construction of the manufactured home park has not begun within six (6) months from the issued date of the initial permit, the Zoning Administrator may grant an extension of the permit when the applicant shows reasonable cause for the delay.~~

9.88 Telecommunication Towers.

(J) Co-location required.

- (2) Subsequent co-location or shared use of antennae on existing telecommunications towers which do not increase the height of the existing tower shall not require a conditional special use permit. Subsequent co-location of accessory communication facilities on other structures shall not require a conditional special use permit.

- (T) Prior to erecting a telecommunications tower or antenna or accessory communication facility, or installing same on any structure, any builder, user, carrier, etc., must be granted a ~~conditional-special~~ use permit by the Town of Mount Gilead Board of Commissioners, pursuant to the provisions of this article, except that a stealth telecommunications antenna may be erected or installed upon approval by the Zoning Administrator, with a right of appeal to the Board of Adjustment pursuant to Section 11.2 of this ordinance. The builder, user, carrier, etc., may be granted a ~~conditional-special~~ use permit only upon submission of an application and fee payment to the Town of Mount Gilead, who shall ~~transmit the application to the Board of Adjustment~~ **follow the procedures outlined in Article 10 of this ordinance**; in the case of a stealth telecommunications antenna, approval by the Zoning Administrator may be granted only upon submission of an application and fee payment to the Town of Mount Gilead. The application must be in the form prescribed by the Zoning Administrator and, in addition to any other or further requirements of this article, must contain the following information prior to being granted:

9.96 Bona Fide Farm in ETJ [Pursuant to G.S. 160D-903]

- (A) **Property that is located in the Town's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the Town's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903(a).**
- (B) **Accessory buildings for a "bone fide farm" has the same building code requirements as it does under Montgomery County's regulations.**
- (C) **Activities that are not related to the operation of a bona fide farm are still subject to the rules and regulations of this ordinance for the applicable zoning district.**
- (D) **For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:**
- (1) **A farm sales tax exemption certificate issued by the Department of Revenue.**
 - (2) **A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.**
 - (3) **A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.**
 - (4) **A forest management plan.**
- (E) **A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that:**
- (1) **Is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a);**
or
 - (2) **Is enrolled in the present-use value program pursuant to G.S. 105-277.3.**

ARTICLE 10 ADMINISTRATION

10.1 THE STAFF.

(A) **The Zoning Administrator.** The Zoning Administrator shall have the following powers and duties to be carried out in accordance with these regulations, which include but are not limited to:

(1) To serve as staff to the Town Board, Planning and Zoning Board, Historic Preservation Commission and the Board of Adjustment with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, amendments to the zoning map, appeals, variances, ~~conditional-special~~ use permit requests, certificates of appropriateness and any other matters brought before them under this article.

(8) Determinations made by the Zoning Administrator must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(B) **The Zoning Enforcement Officer.** The Zoning Enforcement Officer is charged with enforcing the provisions of the zoning regulations as set out herein except for enforcement duties specifically assigned to the Zoning Administrator.

(1) The Zoning Enforcement Officer will conduct inspections of properties from time to time. When inspecting, the Zoning Enforcement Officer must enter the premises during reasonable hours and upon presenting credentials. The Zoning Enforcement Officer must have the consent of premises owner or an administrative search warrant to inspect areas not open to the public or not visible from public access.

~~(2) If the Zoning Enforcement Officer shall find that any of the provisions of this article are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering that necessary actions be taken to correct the deficiency. He/she shall order discontinuances of illegal uses of land, buildings, or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes, discontinuance of any illegal work being done; and shall take any other action authorized by this article to insure its compliance.~~

(a) Shall order discontinuances of illegal uses of land, buildings, or structures;

(b) Shall order removal of illegal buildings or structures, or of illegal additions, alterations or structural changes;

(c) Shall order discontinuance of any illegal work being conducted; and

(d) Shall take any other action authorized by this article [Section 10.7] or State law to insure compliance.

(3) Determinations made by the Zoning Enforcement Officer must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(C) **The Town Manager.** The Town Manager shall appoint the Zoning Administrator and the Zoning Enforcement Officer, and shall have the authority to exercise any and all duties and authorities assigned to such.

(1) Determinations made by the Town Manager must be in writing and delivered by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination, if different from the owner.

(D) Conflict of Interest. In accordance with G.S. 160D-109, no staff member shall make a final decision on an administrative decision required by this ordinance if the outcome of that decision would have a 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 section, 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 staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation by 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 a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

10.2. THE BOARDS.

(A) Conflicts of Interest. The following shall govern conflict of interest for each of the boards, including the Town Board, in accordance with G.S. 160D-309.

(1) Town Board. – A town board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A town board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(2) Appointed Boards. – Members of appointed boards, to include the Planning Board, the Board of Adjustment, the Historic Preservation Commission and

any other board applicable under G.S. 160D, shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(3) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this ordinance 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.

(4) Resolution of Objection. – 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.

(5) Familial Relationship. – 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.

(AB) The Town Board. The Town Board shall have the following duties related to this article:

(5) A member of the Town Board shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. In accordance with G.S. 160D-308, the Town Board shall keep minutes of its proceedings.

(BC) The Planning Board. The Planning Board shall have duties related to this Ordinance that include, but may not be limited to, the following:

(2) Appointment. Planning Board Members shall be appointed for three (3) year staggered terms, but both regular members and ETJ members may continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.

If a regular member moves outside the town, or if an extraterritorial member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

ETJ representation will be based on ETJ population estimates, updated at least with each decennial census as per G.S. 160D-307.

(4) Oath of Office. All members appointed to the Planning Board shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(C) The Board of Adjustment.

(1) Establishment. The Board of Adjustment consists of five (5) regular members and two alternates. Four (4) regular members and one (1) alternate shall be appointed by the Town Board and one (1) regular member and one (1) alternate shall be appointed by the Board of County Commissioners of Montgomery County. In the event the Board of County Commissioners fails to make the appointments within 90 days after receipt of a resolution from the Town Board requesting that such appointments be made, the Town Board may thereupon make such appointments. The regular member and alternate member appointed to the Board of Adjustment by the Board of County Commissioners shall be residents of the Town's extraterritorial planning area (ETJ).

(2) Appointment. The Planning board will serve as the Board of Adjustment and will maintain the terms of their appointment to that board. The Town Board shall designate which members of the Planning Board are regular members or alternate members of the Board of Adjustment.

If a regular or alternate in-town member moves outside the town, or if an extraterritorial area regular or alternate member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

The in-town alternate may sit only in lieu of a regular in-town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

(3) Oath of Office. All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(4) Expenses. Members of the Board of Adjustment shall serve without pay.

(+5) Powers and Duties. The Board of Adjustment shall have the following powers and duties:

(a) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or Zoning Enforcement Officer in the administration and enforcement of this article.

- (b) To grant variances from the terms of this article according to the standards and procedures prescribed herein.
- (c) To serve as the local watershed review board as authorized and prescribed in G.S. 15A NCAC 02B and these regulations.

(6) Meetings. All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board therefore, all of which shall become a part of the public record.

(7) Quorum. No final action shall be taken on any matter unless a quorum is present. For the purposes of granting variances, a quorum shall be 4/5ths of the membership of the board. For the purposes of conducting other business related to the function of the board, such as adopting or amending rules of procedure or approving the agenda, a quorum shall be a simple majority of the full membership of the board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(8) Officers. The Board of Adjustment shall elect one (1) of its members as chair and another as vice-chair and shall appoint a secretary to keep minutes of its proceedings.

(9) Rules of Procedure. The Board shall abide by the following rules of procedure until such time as they need to be altered to conform to judicial rulings.

(a) All meetings of the Board of Adjustment are quasi-judicial meetings.

(b) All persons wishing to testify about a matter before the Board of Adjustment must be sworn in.

(c) Board members can only consider testimony that is pertinent to the matter at hand.

(d) Only those individuals who are party to a matter before the Board are allowed to testify. Parties are considered to be any groups or individuals with standing per §160D-1402(c).

(e) Each party is allowed to cross-examine the witnesses of the other party.

(f) Each party is allowed to present exhibits that support their case.

(g) The Board may not consider the opinions of the parties involved.

Testimony must be based on factual evidence.

(h) Board members may not discuss the issue with other members of the Board prior to the hearing.

(i) The decision of the Board must be based on the facts presented at the hearing. The Board must render its decision in writing. This decision must state which facts the Board found to be most important and why. It must also describe why those that voted in the minority voted the way that they did.

(j) All questions concerning rules or procedure should be directed to the Town Attorney or Town Manager.

(10) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Extraterritorial area members may vote on all matters coming before the Board.

(11) Re-Application and Appeals from a Decision of the Board of Adjustment.

(a) Re-Application Waiting Period Required. Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has been conducted, whichever is applicable, a similar application may not be filed for a period of one year after the date of denial of the original application.

(b) Appeals. Any person or persons, jointly or severally, aggrieved by any decision of the board, may, within 30 days after the board's decision, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the board shall be subject to review by Superior Court proceedings in the nature of certiorari as provided by law.

(DE) Historic Preservation Commission.

(1) Establishment. The Historic Preservation Commission was established by the Mount Gilead Board of Commissioners in May 2006 and consists of five (5) members, all of whom shall be residents of the Town of Mount Gilead or the Town of Mount Gilead Extra Territorial Jurisdiction (ETJ). There must be ETJ representation on the Board if there is a landmark or district designated for historic preservation in the ETJ.

The Ordinance establishing the Historic District Commission stipulates that a majority of the Commission members demonstrate expertise in history or architecture through special interest, education, or experience.

(2) Appointment. The members of the Commission shall be appointed by the Town Board and shall serve a term of three (3) years. Commission members shall continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.

If a member moves outside the town or extraterritorial planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

(3) Oath of Office. All members appointed to the Historic Preservation Commission shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.

(4) Expenses. Members of the Historic Preservation Commission shall serve without pay.

(5) Meetings. The Historic Preservation Commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law, G.S. § 143-318.9 et seq

(6) Rules of Procedure. The Historic Preservation Commission shall adopt and publish rules of procedure for the conduct of its business.

(7) Minutes. The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members and its resolutions, findings, recommendations and actions. The minutes of the Commission shall be a public record.

(8) Attendance. Any member of the Historic Preservation Commission who misses more than three consecutive meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Commission and may be replaced or reappointed by the Town Board. Absences due to sickness, death or other emergencies of like nature shall be

recognized as approved absences and shall not affect the member's status on the Commission.

- (+9) Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:
- (a) Undertaking inventories of properties of historical, architectural, pre-historical, and or cultural significance.
 - (b) Recommending to the Mount Gilead Town Board areas to be designated by ordinance as “Historic Overlay Zoning Districts”, as well as individual structures, buildings, sites, areas, or objects to be designated by ordinance as “Landmarks”. Prior to recommending such designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify its intent, provide pertinent information to, and seek comment from North Carolina’s State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.
 - (c) Acquiring by any lawful means the fee or any lesser included interest, including options to purchase and conservation easements, to properties within established historic districts, or to any properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions, which will secure appropriate rights of public access and promote the preservation of the property.
 - (d) Restoring, preserving, and operating historic properties.
 - (e) Recommending to the Mount Gilead Town Board that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause. Prior to recommending such revocation of designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify of its intent, provide pertinent information to, and seek comment from North Carolina’s State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.
 - (f) Conducting educational programs with respect to historic properties and districts within the Town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead.
 - (g) Cooperating with state, federal, and local governments, in pursuance of protecting and preserving Mount Gilead’s architectural and historical character and promoting its use and conservation for the education, pleasure, and enrichment of its citizens and people.
 - (h) Entering, solely in performance of its official duties, and only at reasonable times, upon private lands for the examination or survey thereof. However, no member, employee, or agent of the Commission

may enter any private building or structure without the express consent of the owner or occupant thereof.

- (i) Preparing and recommending the official adoption of a preservation element or component as part of any comprehensive land use plan adopted by the Mount Gilead Board of Commissioners. In making such recommendation, the Commission shall consult with the Mount Gilead Planning Board.
- (j) Reviewing and acting upon, through approval or denial, applications for a Certificate of Appropriateness for alterations, demolitions, or new construction within any designated historic overlay zoning districts, or regarding any designated landmark within the town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead. A Certificate of Appropriateness issued by the Commission shall be required prior to the issuance of a building, zoning, or any other permit issued by the Town of Mount Gilead or Montgomery County, which may be required by the construction, alteration, moving, or demolition of any structure.
- (k) Negotiating at any time with the owner of a building, structure, site, area, or object for its acquisition, or preservation, when such action is reasonably necessary or appropriate.

10.3 PERMITS.

- (A) **Permit Required.** No building or land shall hereafter be used or occupied and no building or structure shall be erected, expanded or moved until a zoning permit as required by this article shall have been issued. The form and content of such permit, when not expressly set out in this article, shall be determined by the Zoning Administrator and may include any information required for the applicant to demonstrate an intent to comply with the zoning regulations. Zoning permit forms shall be available at the office of the Zoning Administrator.

Applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.

- (B) **Permit Type.** Permits shall be required for any use by right, unless specifically exempted by this article and ~~conditional-special~~ uses.
- (C) **Expiration of Permit.** Any zoning permit issued by the Zoning Administrator shall become null and void after a period of ~~six (6)~~ **twelve (12)** months from the date of issuance of the permit unless a valid building permit has been issued for the work authorized by the permit or, if a building permit is not required, substantial work has not begun. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.

10.4 ~~CONDITIONAL~~**SPECIAL**USE PERMITS.

- (A) **Purpose.** The development and execution of this Ordinance is based upon the division of the community into zones within which the use of land and buildings, and the bulk and

location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular zone or zones, without consideration, in each case, of the impact of those uses in the particular location. Such ~~conditional-special~~ uses fall into two categories:

- (1) Uses publicly operated or traditionally affecting a public interest.
 - (2) Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.
- (B) **Applicants.** ~~Any person having a freehold interest in land, or a possessor interest entitled to exclusive possession, or a contractual interest which may become a free hold interest or an exclusive possessor interest and which is specifically enforceable, may file an application to use such land for one or more of the conditional uses provided for in this Ordinance in the zone in which the land is located. Applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.~~
- (C) **Application Required.**
- (1) An application for a ~~conditional-special~~ use shall be filed with the Zoning Administrator, on a form prescribed by the Zoning Administrator, at least ~~three (3) weeks~~ thirty (30) days prior to the date of the regularly scheduled Planning Board meeting. The application shall be accompanied by such plans and/or data prescribed in this Ordinance and shall include a statement in writing by the applicant and adequate evidence showing that the proposed ~~conditional-special~~ use will conform to the standards set forth in Section 10.4 (F).
 - (2) Upon receiving a complete application, the Zoning Administrator shall cause a notice of ~~public evidentiary~~ hearing to be published in a newspaper of general circulation. Said notice shall be published not less than ten (10) or more than 25 days prior to the date established for the ~~public evidentiary~~ hearing. All owners of property within 100 feet of the area under consideration shall be mailed notice of the ~~public evidentiary~~ hearing. Notice shall conform to the requirements set forth in the NC General Statutes. The ~~public evidentiary~~ hearing shall be held by the Town Board of Commissioners. ~~At its discretion, the Planning and Zoning Board may also hold a public hearing on the conditional use permit application. If a public hearing is to be held by the Planning and Zoning Board, public notice shall be provided as delineated for the Town Board public hearing.~~
- (D) **Planning Board Review.** The ~~conditional special~~ use permit application shall be forwarded from the Zoning Administrator to the Planning Board. The Planning Board shall review the application and prepare a recommendation thereon to the Town Board. ~~The Planning Board may hold a public hearing concerning the application provided adequate notice is provided as set forth in Section 10.4 (C).~~
- (E) **Public Evidentiary Hearing.** The Town Board shall conduct ~~a public an evidentiary~~ hearing on the application for a ~~conditional special~~ use permit to receive evidence. Notice of the evidentiary hearing will be in accordance with Section 11.1(B). ~~At the~~

~~public hearing, all interested persons shall be permitted to testify. The Town Board, in~~ **In** considering ~~conditional special~~ use permit requests, **the Town Board** acts in a quasi-judicial capacity and, ~~accordingly,~~ is required to observe the procedural requirements established for ~~the Board of Adjustment except that no vote greater than quasi-judicial procedures per Section 11.1. Aa~~ majority vote shall be required by the **Town Board of Commissioners** to issue a ~~conditional special~~ use permit.

The applicant, the Zoning Administrator, and any person who would have standing to appeal the decision under G.S. 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 Town Board.

At the conclusion of the ~~public~~ **evidentiary** hearing, the Town Board may proceed to vote on the ~~conditional special~~ use application request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. **The Town Board must make a decision in a reasonable time.**

(F) **Town Board Review**

- (1) The Town Board shall consider the application and recommendations of the Planning Board, and may grant or deny the ~~Conditional Special~~ Use Permit requested.
- (2) The ~~Conditional Special~~ Use Permit, if granted, shall include approval of plans as may be required. In granting the permit, the Town Board shall find:
 - (a) that the use meets all required conditions and specifications **and other conditions agreed to by the applicant and the Town;**
- (3) In granting the ~~Conditional Special~~ Use Permit, the Planning Board may recommend and the Town Board may designate additional conditions to assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this Ordinance and clearly in keeping with the public welfare. All such additional conditions shall be entered in the minutes of the meeting, at which the ~~Conditional Special~~ Use Permit is granted, on the ~~Conditional Special~~ Use Permit itself, and on the approved plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicants for the ~~Conditional Special~~ Use Permit, their heirs, successors and assigns.
- (4) If the Planning Board recommends the disapproval of the ~~Conditional Special~~ Use Permit, and if the Town Board denies the permit, each body shall enter the reason for its action in the minutes of the meeting at which the action is taken.
- (5) No appeal may be taken to the Board of Adjustment from the action of the Town Board in granting or denying a ~~Conditional Special~~ Use Permit. Any such action by the Town Board shall be considered as the equivalent of action on a proposed zoning amendment and shall be reviewable only in the same manner as action on a proposed amendment.

- (6) In addition to the conditions specifically imposed in this paragraph and such further conditions as the Town Board may deem reasonable and appropriate, conditional-special uses shall comply with the height, area and parking regulations for the zone district in which they are located.
- (G) **Conditions and Guarantees.** Prior to the granting of any conditional-special use, the Planning Board may recommend, and the Town Board may stipulate, such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Section 10.4 (F) above. In all cases in which conditional-special uses are granted, the Town Board shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

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 Town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the Town, 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. All such conditions shall be consented to in writing by the applicant or landowner.

- (H) **Expiration.** In any case where a conditional-special use has not been exercised within the time limit set by the Town Board, or within one (1) year if no specific time limit has been set nor a vested right established pursuant to Section 2.2, then without further action, the permit shall be null and void. “Exercised” as set forth in this section shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.) When construction is not a part of the use, “exercised” shall mean that the use is in operation in compliance with the conditions set forth in the permit. Further, all work on the conditional-special use must be completed within three (3) years of board approval or the permit shall be null and void.
- (I) **Withdrawal or Amendment of a Conditional-Special Use Permit Application.** An application for a conditional-special use permit may be withdrawn or amended as follows:
- (1) A petitioner may withdraw the petition filed according to this article at any time up to the scheduling of the date of the public evidentiary hearing on the petition.
 - (2) If the petitioner wishes to withdraw the petition after the scheduling of the public evidentiary hearing, the petitioner may file a request to withdraw with the Zoning Administrator. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than two (2) weeks prior to the scheduled public evidentiary hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the public evidentiary hearing. No changes to the petition shall be made at the hearing, except that changes proposed by the petitioner, Town Board, and other interested parties may be presented at the hearing and considered by the Town Board during their deliberations.
- (4) If the Town Board deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties with standing the opportunity to comment on the amendment to the petition.
- (5) If the Town Board deems any amendment to be an intensification of the petition, it shall call for a new public evidentiary hearing.

(J) Effect of Denial.

- (1) If the Town Board denies an application for a conditional-special use permit, a reapplication for that conditional-special use on that property shall not be made within one (1) year of the date of denial.
- (2) The Town Board may allow re-submission of the application within the one-year restricted period, however, if it determines that since the date of action on the prior application one of the following criteria has been met:
 - (a) The Town Board has adopted a new or amended plan for the area that changes public policy regarding how the subject property and/or the general area affected by the conditional-special use permit should be developed; or
 - (b) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the type and intensity of development which would be allowed under the proposed conditional special use permit; or
 - (c) There has been a substantial change in conditions or circumstances, outside the control of the applicant, which justifies waiver of the one (1) year restriction on resubmission of a conditional-special use permit application for the property; this shall not include a change in the ownership of the subject property nor a change in the scale or features of the development proposed in the prior application.

(K) Amendment to an Approved Conditional-Special Use Permit.

- (1) Any major change to a development approved by conditional-special use permit shall require an amendment to the conditional-special use permit by the Town Board. Any proposed change in use, increase in density or intensity, decrease in open space and common recreational facilities, substantial change in the location of uses or streets from what is shown on the approved plans, any change in a

condition imposed on the use by the Town Board, or any other change the Zoning Administrator determines is significant shall be deemed a major change requiring an amendment to the conditional-special use permit. Factors to be considered by the Zoning Administrator in determining if a change is substantial include, but are not limited to, the extent of the change, the expected impact on adjacent properties, and the impact on offsite streets and other public infrastructure. Otherwise, the Zoning Administrator may approve minor changes to a permit.

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

~~(M) — Recognition of Previously Approved Conditional Use Permits. Conditional use permits, which have been previously granted by the Town Board, will be recognized for building permit and other administrative purposes during the period of time the project was vested by the ordinance under which it was approved. After the vesting period, if construction of the development has not begun or there is no valid building permit in effect for the property, the conditional use permit will be considered null and void.~~

~~(NM)~~ **Revocation of a Conditional-Special Use Permit.**

- (1) If at any time the Zoning Administrator determines that construction inconsistent with the approved conditional-special use permit is occurring within the development, he or she shall cause to be issued a stop work order on such construction, and shall notify the responsible parties of the violation who will immediately cease and desist further work on the project. If the nonconforming construction is not brought into compliance with the permit or the applicant has not filed an appeal with the Board of Adjustment within 30 days, the Zoning Administrator may initiate a revocation of the conditional-special use permit. The Zoning Administrator may also act to suspend the issuance of any additional building permits within the development if he or she has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of nonconformance.
- (2) If the nonconformance involves a completed, unoccupied building, no certificate of occupancy shall be granted for such building until the violation is corrected. If the nonconformance involves initial construction or provision of any of the public facilities, open space, required landscaping, or similar common features of the approved permit, no building permits or certificates of occupancy will be issued within the development until the violation is corrected or a new conditional-special use permit has been granted by the Town Board.
- (3) ~~Action to revoke a permit shall be taken by the Town Board after receiving a request from staff. Such a request shall be in writing and shall declare that the~~

~~applicant and all property owners within the development, as recorded at the Register of Deeds office, have been notified at least ten (10) days before the meeting of the pending action and the date, time, and place of the Town Board meeting at which the request will be made. Said applicant and property owners shall have the right to appear before the Board at said meeting and show cause why the Town Board should not revoke the permit. Notification shall be deemed given when written notice is sent by first class mail to the property owner at the address shown on the most recent property tax records and one (1) or more signs are posted in prominent locations on the subject site reasonably calculated to give notice of the action.~~ **The process to revoke a special use permit shall follow the same procedure in which the special use permit was approved.**

10.5 AMENDMENTS.

- (B) **Initiation.** Any amendment to the zoning text or map, except for the classification of property to a conditional district, may be initiated by:
- (3) A petitioner other than the Town Board or property owner. **Third party downzonings are prohibited per S.L. 2019-111, Pt. I.**
- (D) **Application for a Map Amendment.** A petition for an amendment to the zoning map shall consist of:
- (2) A list of adjoining properties, including tax parcel numbers and the name and address of each owner. For the purposes of this section, adjoining property owners shall include owners of properties ~~lying within 100 feet of the subject property if located across a public or private street~~ **separated from the subject property by street, railroad, easement or other transportation corridor.**
- (E) **Conditional District Rezoning.**
- (3) Conditions. Prior to the action on the proposed amendment (which may also include a period after the ~~public evidentiary~~ hearing) ~~any Planning Board or Town Board member (or any group of members not comprising a majority of such board)~~ **the Zoning Administrator** may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal. **During the evidentiary hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.** The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. ~~During the public hearing, the Town Board may suggest additional features to be included or reflected in the proposal prior to taking action on the request.~~
- The applicant/landowner must supply written consent to the conditions related to conditional-zoning approval to ensure enforceability per S.L. 2019-111, Pt. I.**
- (F) **Copies.** ~~The Zoning Administrator shall determine the number of copies of each petition and other required documentation to be submitted by the petitioner so that copies may be circulated to all appropriate staff, agencies, and boards for review and comment.~~

Legislative Process. All amendment decisions shall follow legislative process. Complete applications must be submitted no later than thirty (30) days prior to the next Planning Board meeting. Adoption of any legislative decision for development regulation may occur on the first reading by a simple majority.

(G) Withdrawal or Amendment of Petition.

- (1) A petition filed according to this article may be withdrawn by the petitioner at any time up to the scheduling, by the Town Board, of the date of the **public evidentiary** hearing on the petition.
- (2) If the petitioner wishes to withdraw the petition after the scheduling of the **public evidentiary** hearing, the petitioner may file a request to withdraw with the Town Clerk. On the date scheduled for the hearing, the Town Board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.
- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than three (3) weeks prior to the scheduled **public evidentiary** hearing date. No changes to the petition shall be accepted ~~in the intervening weeks prior to the public hearing after~~ **publication and notice of the evidentiary hearing has occurred. No changes to the petition shall be made at the hearing, although potential Potential** changes proposed by the petitioner, Planning Board, Town Board, and other interested parties may be presented at the hearing and considered by the **Planning Board and** Town Board during their deliberations.
- (5) If the Town Board deems any amendment to be an intensification of the petition, it shall call for a new **public evidentiary** hearing.

~~(H) Protest Petitions.~~

- ~~(1) In the event of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the Town Board. Vacant positions on the Board and members who are excused from voting shall not be considered 'members of the Board' for calculation of the requisite three-fourths (3/4) supermajority.~~
- ~~(2) To qualify as a protest under this section, the petition must be signed by the owners of either 20% or more of the area included in the proposed change, or five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel.~~
- ~~(3) The Town may use the county tax listings to determine the owners of potentially qualifying areas.~~

- ~~(a) — The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved.~~
- ~~(b) — No protest against any amendment to a zoning ordinance or zoning map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the town at least two full normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.~~
- ~~(c) — All protest petitions shall be on a form prescribed and furnished by the town, and such form may prescribe any reasonable information deemed necessary to permit the town to determine the sufficiency and accuracy of the petition.~~
- ~~(d) — A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.~~
- ~~(e) — Only those protest petitions that meet the qualifying standards set forth in G.S. 160A 385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.~~

(H) Hearing.

- ~~(1) — The Town Board may refuse to call for a public hearing on any petition for an amendment to the zoning text or zoning map if, in the Board's opinion, such petition lacks merit.~~
- ~~(21) Notice of **public** hearings required under these regulations shall be in accordance with the North Carolina General Statutes. **That being that notification shall be sent to interested parties and published in a newspaper of general circulation no less than ten (10) days but no more than twenty-five (25) days prior to the hearing. For zoning map amendments, notice must be posted on-site or by an adjacent highway during the time period from twenty-five (25) day through ten (10) days before the hearing.**~~
- ~~(32) Notice of any request for a change in the zoning map shall state that the Planning Board and Town Board may consider the application of **any** of the zoning districts to the property, not just the classification requested.~~
- ~~(43) Amendments to the Zoning Ordinance text and Official Zoning Map shall be made in **accordance with consideration of** the adopted land use plan **and any other developmental plans adopted by the Town per 10.5(J)**. **Prior to adopting or rejecting any zoning amendment, the Town Board shall adopt a statement**~~

~~describing whether its action is consistent with the adopted land use plan and explain why the board considers the action taken to be reasonable and in the public interest.~~

~~(54)~~ Conduct of ~~Public~~ Hearing.

- (a) No amendment shall be adopted until after the Town Board has held a ~~public~~ hearing on the proposed amendment.
- (b) The hearing shall be conducted in accordance with rules and procedures established by the Mayor and Town Board. **For applications involving a conditional district rezoning, the hearing shall be conducted as an evidentiary hearing.**
- (c) When presenting a petition for the reclassification of property to a general-use district, as opposed to a conditional zoning district, the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development site design, ~~except for those which would apply to any use or development site design permitted in the requested district.~~

~~(H)~~ **Recommendation and Decision.**

- (1) No proposed amendment shall be approved unless it is first submitted to the Planning Board for a recommendation. ~~If the Planning Board does not make a recommendation to approve, approve with conditions, deny, or defer a decision on the proposed amendment within 30 calendar days after the petition has been referred to it, then the Planning Board shall be considered to have recommended deferral for additional deliberation.~~ The petition, along with the recommendation of the Planning Board, shall be placed on the agenda of the Town Board at its next regular meeting.
- (2) The Town Board, after receiving the recommendation of the Planning Board, shall ~~within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications~~ **set a hearing as per Section 10.5(H).**

~~(J)~~ **Plan Consistency.**

- (1) When adopting or rejecting any zoning text or map amendment, the Town Board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Board that at the time of action on the amendment the Town Board was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted comprehensive plan. (G.S. 160D-605(a))**
- (2) If a zoning map 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 approved plan, and**

no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently (G.S. 160D-605(a)).

(3) The plan consistency statement is not subject to judicial review (G.S. 160D-605(a)).

(4) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Town Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken (G.S. 160D-605(a)).

(5) When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Board. Per G.S. 160D-605(b), this statement of reasonableness may consider, among other factors:

(a) The size, physical conditions, and other attributes of the area proposed to be rezoned;

(b) The benefits and detriments to the landowners, the neighbors, and the surrounding community;

(c) The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;

(d) Any the action taken is in the public interest; and

(e) Any changed conditions warranting the amendment.

(6) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning (G.S. 160D-605(b)).

(7) The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement (G.S. 160D-605(c)).

(K) Effect of the Denial of a Petition.

10.6 WATERSHED AMENDMENTS AND VARIANCES.

(B) Watershed Variances.

- (4) The Zoning Administrator shall notify any jurisdictions within the watershed of a proposed variance to the watershed regulations. Local governments may submit any comments to the Zoning Administrator before the **public evidentiary** hearing by the Board of Adjustment.

10.7 ENFORCEMENT.

- (A) **Permit Revocation.** The Zoning Administrator/Zoning Enforcement Officer may revoke any zoning permit issued by staff after written notification to the permit holder when violations of this ordinance have occurred, when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, or a permit has been mistakenly issued in violation of this ordinance. **Revocation of development approval must follow the same process as was used for the approval.**
- (H) Notice of Violation (NOV).** For any violation or situation which requires enforcement action, the Zoning Administrator or Zoning Enforcement Officer shall issue a written notice of violation (NOV), detailing the nature of the violation and ordering the necessary action(s) to remedy the violation. The NOV shall follow these guidelines:
- (1) NOV shall be given to the permittee, and the landowner if different;**
 - (2) NOV may be given to the occupant or person underrating the activity;**
 - (3) NOV will be delivered by hand, email, or first-class mail;**
 - (4) NOV may be posted on-site; and**
 - (5) NOV will be certified by the Zoning Administrator or Zoning Enforcement Officer for the file.**

10.8 DEVELOPMENT AGREEMENTS.

(A) Purpose.

- (1) Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.**
- (2) Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.**
- (3) Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.**
- (4) Such projects involve substantial commitments of private capital; which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.**
- (5) Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.**

(6) To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments.

(B) Entering into a Development Agreement. The Town Board may consider and enter into development agreements with developers or other governmental or quasi-governmental entities. The following always applies:

(1) In entering into a development agreement, the Town may not exercise any authority or make any commitment not authorized by general or local ordinances and may not impose any tax or fee not authorized by otherwise applicable law.

(2) A development agreement is supplemental to the powers conferred upon the Town by the State and does not preclude or supersede rights and obligations established pursuant to other laws regarding development approvals, site-specific vesting plans, or other provisions of law.

(3) A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or local housing codes that are not part of the Town's development regulations.

(4) Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.

(5) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(C) Approval of a Development Agreement. A development agreement must be approved by the Town Board as a legislative procedure in accordance with G.S. 160D-1005 and must be by ordinance, not a resolution.

(1) The procedures for zoning map amendments shall be followed (see Section 10.5 Amendments).

(2) An evidentiary hearing shall be held after proper notice has been published and adjacent property owners have been notified.

(3) The notice for the evidentiary hearing must specify:

(a) The location of the property subject to the development agreement;

(b) The development uses proposed on the property; and

(c) Must specify a place where a copy of the proposed development agreement can be obtained.

(4) The developer shall record the agreement with the Montgomery County Register of Deeds within 14 days after the Town and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(D) Content and Modification.

(1) A development agreement shall, at a minimum, include all of the following:

(a) A description of the property subject to the agreement and the names of its legal and equitable property owners;

(b) The duration of the agreement;

(i) The parties may enter into subsequent development agreements that extend the original duration period.

(c) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design;

(d) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards;

(e) A description of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property;

(f) A description of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare; and

(g) A description of any provisions for the preservation and restoration of historic structures.

(2) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater

than five-year intervals. Failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.

- (3) The development agreement also may cover any other matter, including defined performance standards. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.
- (4) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be provided for in the development agreement.
- (5) Any performance guarantees under the development agreement shall comply with G.S. 160D-804.1.
- (6) A development agreement may be amended or terminated by mutual consent of the parties.

(E) Vested Rights. A vested right of reasonable duration shall be specified in a development agreement with the consent of the parties involved. Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement. The Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement unless provided for by law.

In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

(F) Monitoring and Enforcement.

- (1) Procedures established in a development agreement may include a provision requiring periodic review by the zoning administrator or other appropriate officer of the Town, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.
- (2) If the Town finds and determines that the developer has committed a material breach of the agreement, the zoning administrator shall notify the developer in writing setting forth the nature of the breach and the evidence

supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.

- (3) If the developer fails to cure the material breach within the time given, then the Town unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the Board of Adjustment following the appeals of administrative decisions process (see Article 11).
- (4) A development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this section shall be construed to remove the power of the Town to enforce applicable law.
- (5) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

10.9 TEMPORARY MORATORIA PROCEDURES.

North Carolina General Statute 160D-107 explicitly recognizes the authority of cities/towns to adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions as provided in NCGS 160D-107.

ARTICLE 11 BOARD OF ADJUSTMENT QUASI-JUDICIAL PROCEDURES AND HEARINGS

11.1 THE BOARD OF ADJUSTMENT

- (A) Establishment. The Board of Adjustment consists of five (5) regular members and two alternates. Four (4) regular members and one (1) alternate shall be appointed by the Town Board and one (1) regular member and one (1) alternate shall be appointed by the Board of County Commissioners of Montgomery County. In the event the Board of County Commissioners fails to make the appointments within 90 days after receipt of a resolution from the Town Board requesting that such appointments be made, the Town Board may thereupon make such appointments. The regular member and alternate member appointed to the Board of Adjustment by the Board of County Commissioners shall be residents of the Town's extraterritorial planning area (ETJ).
- (B) Appointment. Board of Adjustment regular members and alternates shall be appointed for three (3) year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Board members may be appointed to succeed themselves.

If a regular or alternate in town member moves outside the town, or if an extraterritorial

~~area regular or alternate member moves outside the planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.~~

~~(C) **Expenses.** Members of the Board of Adjustment shall serve without pay.~~

~~(D) **Powers and Duties.** The Board of Adjustment shall have the following powers and duties:~~

~~(1) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or Zoning Enforcement Officer in the administration and enforcement of this article.~~

~~(2) To grant variances from the terms of this article according to the standards and procedures prescribed herein.~~

~~(3) To serve as the local watershed review board as authorized and prescribed in G.S. 15A NCAC 02B and these regulations.~~

~~(E) **Meetings.** All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board therefore, all of which shall become a part of the public record.~~

~~(F) **Quorum.** No final action shall be taken on any matter unless a quorum is present. For the purposes of granting variances, appeals, and permits, a quorum shall be 4/5ths of the membership of the board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. For the purposes of conducting other business related to the function of the board, such as adopting or amending rules of procedure or approving the agenda, a quorum shall be a simple majority of the full membership of the board.~~

~~(G) **Conflicts of Interest.** A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate the affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, 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. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.~~

~~(H) **Officers.** The Board of Adjustment shall elect one (1) of its members as chair and another as vice chair and shall appoint a secretary to keep minutes of its proceedings.~~

~~(I) **Rules of Procedure.** The Board shall abide by the following rules of procedure until such time as they need to be altered to conform to judicial rulings.~~

- ~~(1) — All meetings of the Board of Adjustment are quasi-judicial meetings.~~
- ~~(2) — All persons wishing to testify about a matter before the Board of Adjustment must be sworn in.~~
- ~~(3) — Board members can only consider testimony that is pertinent to the matter at hand.~~
- ~~(4) — Only those individuals who are party to a matter before the Board are allowed to testify. Parties are considered to be the individual/group making the request and adjacent property owners.~~
- ~~(5) — Each party is allowed to cross-examine the witnesses of the other party.~~
- ~~(6) — Each party is allowed to present exhibits that support their case.~~
- ~~(7) — The Board may not consider the opinions of the parties involved. Testimony must be based on factual evidence.~~
- ~~(8) — Board members may not discuss the issue with other members of the Board prior to the hearing.~~
- ~~(9) — The decision of the Board must be based on the facts presented at the hearing. The Board must render its decision in writing. This decision must state which facts the Board found to be most important and why. It must also describe why those that voted in the minority voted the way that they did.~~
- ~~(10) — All questions concerning rules or procedure should be directed to the Town Attorney or Town Manager.~~

~~(J) — **Voting.** A concurring vote of the four-fifths (4/5) majority of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to effect any variance authorized by this article. Vacant seats on the Board and members disqualified from voting in a particular case shall not be considered 'members of the Board' when calculating the requisite 4/5 majority.~~

~~— Extraterritorial area members may vote on all matters coming before the Board.~~

~~The in-town alternate may sit only in lieu of a regular in-town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.~~

~~(K) — **Re-hearings and Appeals from a Decision of the Board of Adjustment.**~~

~~(1) — **Rehearing.** An application for a rehearing shall be made in the same manner as provided for an original appeal within a period of 15 days after the Board's decision has been filed with the Zoning Administrator or their designee. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions of the case, shall be presented in writing or graphically. The Board shall deny a rehearing, if, in its judgment, such change in facts, evidence or conditions has not been proven. In the event that the Board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as for the original hearing.~~

~~(2) — **Waiting Period Required.** Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has~~

~~been conducted, whichever is applicable, a similar application may not be filed for a period of one year after the date of denial of the original application.~~

- ~~(3) — Appeals. Any person or persons, jointly or severally, aggrieved by any decision of the board, may, within 30 days after the board's decision, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the board shall be subject to review by Superior Court proceedings in the nature of certiorari as provided by law.~~

11.1 QUASI-JUDICIAL PROCEDURE

- (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 as defined by G.S. 160D-102(28).
- (B) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing (right-of-way centerlines may be used to determine properties which abut); and to any other persons with standing entitled to receive notice. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice.
- The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- The person required to provide notice shall certify to the Town that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.
- The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (C) Administrative Materials. The Zoning Administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing 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.

(D) Presentation of Evidence. The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 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 board.

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 G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(E) Appearance of Official. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, 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 Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

(F) Administering 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.

(G) Subpoenas. The board making a quasi-judicial decision through the chair 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 Town, and any person with standing under G.S. 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.

(H) Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(I) 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 the relevant 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 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.

- (J) Decisions. The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

Every 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, 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 to the Town Clerk. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the Town that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

- (K) Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

11.2 APPEALS.

- (A) The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator or Zoning Enforcement Officer pertaining to this article. Appeals will use the standards and practices of Section 11.1.
- (B) An appeal may be taken by any person with standing aggrieved by any order, requirement, decision or determination made by the Zoning Administrator, Zoning Enforcement Officer or other Town official based in whole or in part upon the provisions of this article. ~~The appeal shall be taken within the time as shall be prescribed by the Board by general rule by filing with the Zoning Administrator a notice of appeal and specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting a record upon which the action appealed from was taken.~~ The property owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal.
- (C) ~~An~~ A written appeal, specifying in detail the grounds thereof, shall be filed with the Zoning Administrator ~~on a form provided by the Zoning Administrator. Once an appeal is~~

~~filed, the Zoning Administrator shall forthwith transmit all papers with reference to the case to the Board of Adjustment.~~

- (D) The Zoning Administrator shall set and advertise a date and time for a **public evidentiary** hearing before the Board of Adjustment. Notice of such hearing shall be **given as required in Section 11.1(B)**, ~~published in a newspaper of general local circulation not less than ten (10) days nor more than 25 days before the date set for the public hearing. During this period all adjacent property owners shall be mailed a notice of the hearing, via 1st class mail. The person mailing notices shall certify that the notices have been mailed, and the date of such mailing. Cost of postage shall be reimbursed through fees set by the Board of Commissioners. In addition, the property involved shall be posted at least one (1) week before the public hearing.~~
- (E) The Board shall conduct **public evidentiary** hearings using quasi-judicial procedures **as laid out in Section 11.1**, ~~allowing cross examination among all participants. Hearings shall be conducted allowing sworn testimony by all interested parties, for the single purpose of collection of factual evidence. The Board may disallow presentation of opinion and hearsay, and if allowed, shall discount such presentation as secondary and insufficient to refute any factual representation entered into evidence; provided that technical opinions rendered by persons professionally qualified and with no personal or financial interest in the case, may be given consideration as fact.~~
- (F) The Board of Adjustment may reverse or affirm, in whole or in part, or modify the order, requirement, decision, or determination **appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision** ~~with reference to the appeal.~~
- (G) **Stay of Proceedings.** An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him or her, that, by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life and property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator and on the cause shown. **If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator 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.**

11.3 VARIANCES.

The Board of Adjustment may authorize upon appeal in specific cases variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship. The Board of Adjustment shall not grant a variance from the terms of this ordinance unless and until the Board has found all of the following:

- (A) A written application for a variance is submitted demonstrating: **there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:**

(1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

(a) Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(b) A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(3) The hardship did not result from actions taken by the applicant 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.

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

~~(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of these regulations. This shall be construed to mean:~~

~~(a) If the property owner complies with the provisions of this chapter, he or she can secure no reasonable return from, nor make reasonable use of his or her property;~~

~~(b) The hardship results from the application of the requirements of this chapter;~~

~~(c) The hardship is suffered by the applicant's property;~~

~~(d) The hardship is not the result of the applicant's own actions; and~~

~~(e) The hardship is peculiar to the applicant's property.~~

~~(2) That the variance would be in harmony with the general purpose and intent of this chapter and preserves its spirit.~~

~~(3) That in granting the variance, the public safety and welfare have been assured and substantial justice has been done.~~

~~(4) That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of the land or structure.~~

(B) The application must be filed at least thirty (30) days prior to the next Board of Adjustment meeting.

- (~~BC~~) Notice of public evidentiary hearing shall be given as required in Section 11.1(B), ~~by state statute for quasi-judicial decisions~~. At the public evidentiary hearing any party may appear in person or by agent or by attorney.
- (~~CD~~) The Board of Adjustment shall make findings that all requirements have been met for a variance.
- (~~DE~~) The Board of Adjustment shall make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum one that will make possible the reasonable use of the land, building or structure.
- (~~EF~~) The Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and the Land Use Plan, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. The fact that property may be utilized more profitably will not be considered in granting a variance.
- (~~FG~~) In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of the conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (~~GH~~) Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in the district involved.

ARTICLE 12 HISTORIC DISTRICT REGULATIONS

~~12.4 THE HISTORIC PRESERVATION COMMISSION~~

- ~~(A) Establishment. The Historic Preservation Commission was established by the Mount Gilead Board of Commissioners in May 2006 and consists of five (5) members, all of whom shall be residents of the Town of Mount Gilead or the Town of Mount Gilead Extra-Territorial Jurisdiction (ETJ). The Ordinance establishing the Historic District Commission stipulates that a majority of the Commission members demonstrate expertise in history or architecture through special interest, education, or experience.~~
- ~~(B) Appointment. The members of the Commission shall be appointed by the Town Board and shall serve a term of three (3) years. Commission members shall continue to serve until their successors have been appointed. Board members may be appointed to succeed themselves.~~

~~If a member moves outside the town or extraterritorial planning jurisdiction that shall constitute a resignation from the board, effective upon the date a replacement is appointed.~~
- ~~(C) Expenses. Members of the Historic Preservation Commission shall serve without pay.~~
- ~~(D) Meetings. The Historic Preservation Commission shall establish a meeting time and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Commission shall be open to the public, and reasonable notice of the time and place~~

~~thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law, G.S. § 143-318.9 et seq~~

~~(E) **Rules of Procedure.** The Historic Preservation Commission shall adopt and publish rules of procedure for the conduct of its business.~~

~~(F) **Minutes.** The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members and its resolutions, findings, recommendations and actions. The minutes of the Commission shall be a public record.~~

~~(G) **Attendance.** Any member of the Historic Preservation Commission who misses more than three consecutive meetings or more than half the regular meetings in a calendar year may lose his or her status as a member of the Commission and may be replaced or reappointed by the Town Board. Absences due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the Commission.~~

~~(H) **Powers and Duties.** The Historic Preservation Commission shall have the following powers and duties:~~

~~(1) Undertaking inventories of properties of historical, architectural, pre-historical, and or cultural significance.~~

~~(2) Recommending to the Mount Gilead Town Board areas to be designated by ordinance as "Historic Overlay Zoning Districts", as well as individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks". Prior to recommending such designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify its intent, provide pertinent information to, and seek comment from North Carolina's State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.~~

~~(3) Acquiring by any lawful means the fee or any lesser included interest, including options to purchase and conservation easements, to properties within established historic districts, or to any properties designated as landmarks, to hold, manage, preserve, restore, and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions, which will secure appropriate rights of public access and promote the preservation of the property.~~

~~(4) Restoring, preserving, and operating historic properties.~~

~~(5) Recommending to the Mount Gilead Town Board that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause. Prior to recommending such revocation of designation to the Mount Gilead Board of Commissioners, The Historic Preservation Commission shall notify of its intent, provide pertinent information to, and seek comment from North Carolina's State Historic Preservation Officer (SHPO) and the Mount Gilead Planning Board.~~

- ~~(6) — Conducting educational programs with respect to historic properties and districts within the Town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead.~~
- ~~(7) — Cooperating with state, federal, and local governments, in pursuance of protecting and preserving Mount Gilead's architectural and historical character and promoting its use and conservation for the education, pleasure, and enrichment of its citizens and people.~~
- ~~(8) — Entering, solely in performance of its official duties, and only at reasonable times, upon private lands for the examination or survey thereof. However, no member, employee, or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof.~~
- ~~(9) — Preparing and recommending the official adoption of a preservation element or component as part of any comprehensive land use plan adopted by the Mount Gilead Board of Commissioners. In making such recommendation, the Commission shall consult with the Mount Gilead Planning Board.~~
- ~~(10) — Reviewing and acting upon, through approval or denial, applications for a Certificate of Appropriateness for alterations, demolitions, or new construction within any designated historic overlay zoning districts, or regarding any designated landmark within the town limits and extraterritorial zoning jurisdiction of the Town of Mount Gilead. A Certificate of Appropriateness issued by the Commission shall be required prior to the issuance of a building, zoning, or any other permit issued by the Town of Mount Gilead or Montgomery County, which may be required by the construction, alteration, moving, or demolition of any structure.~~
- ~~(11) — Negotiating at any time with the owner of a building, structure, site, area, or object for its acquisition, or preservation, when such action is reasonably necessary or appropriate.~~

12.54 CERTIFICATES OF APPROPRIATENESS.

(A) Certificate of Appropriateness Required.

~~**(1) The Historic Preservation Commission shall review and make determinations on all Certificates of Appropriateness using the quasi-judicial process outlined in Section 11.1. Administrative decisions on minor works and other decisions that do not need a Certificate of Appropriateness do not require quasi-judicial proceedings.**~~

~~**(5) All actions related to Certificates of Appropriateness shall adhere to G.S. 160D-947.**~~

(B) Approval Required for Repairs and Minor Works. Certificates of Appropriateness are not necessary for repairs using original materials, designs, and colors that do not alter the exterior appearance of the property. However, removal of architectural design features that would alter the appearance of the property and repair or maintenance that would change the original look or character of the property do require a Certificate of Appropriateness.

Some minor work does not require a Certificate of Appropriateness, but does require the approval of the Zoning Administrator and the Chairperson and the Vice-Chairperson of the Historic Preservation Commission. Minor work is defined as exterior changes that do not involve substantial alterations, additions, or removals that could impair the integrity of the landmark or property. ~~The types of changes that fall into this category are listed in Chapter 1, Section E of the adopted Mount Gilead Historic District Guidelines. Non-permanent window signage which does not obstruct architectural features may be considered a minor work.~~

- (C) **Certificate of Appropriateness Application.** An application for a Certificate of Appropriateness shall be obtained from the office of the Town Manager or Zoning Administrator and when completed, filed with the appropriate administrative official. Applications for Certificates of Appropriateness shall first be considered by the Zoning Administrator ~~and~~ Chair ~~and Vice-Chair~~ of the Historic Preservation Commission to determine whether the request concerns a minor work or ordinary maintenance or repair which does not involve a change in design, material, color, or outer appearance of any architectural feature in the Historic District. If the application does not require review and approval by the full Commission, a report of their decision will be reported at the next regularly scheduled meeting of the Commission. If a Certificate of Appropriateness is required the application shall be considered by the Historic Preservation Commission at its next regular meeting, provided they have been filed, complete in form and content, at least ~~ten (10)~~ thirty (30) calendar days before the regularly scheduled meeting of the Commission; otherwise, consideration shall be deferred until the following meeting.

~~(4) **Notification of Historic Preservation Commission.** Upon receipt of an application, the appropriate administrative official shall notify the Historic Preservation Commission at least five (5) calendar days before its regularly scheduled meeting.~~

~~(5) **Notification of Affected Property Owners.** Prior to issuance or denial of a Certificate of Appropriateness, the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.~~

~~(6) **Public Evidentiary Hearing.** In cases where the Commission deems it necessary, it may hold a public hearing concerning the application. The Commission shall conduct evidentiary hearings using quasi-judicial procedures as laid out in Section 11.1.~~

- (D) **Commission Action on the Application.**

~~(2) Action by the Commission shall follow the procedure for quasi-judicial proceedings as outlined in Section 11.1.~~

~~(F) **Time Limit for Action by Commission.** Action on an application for a Certificate of Appropriateness must be taken by the Commission within 30 days after the filing of a complete application. This time limit can be extended by mutual agreement between the applicant and the Commission.~~

- (H) **Appeals from the Commission's Decisions.**

~~(1) An appeal to an administrative decision involving a minor work or other administrative action may be made filed with the Historic Preservation Commission using the process laid out in Section 11.2.~~

(+2) An appeal may be taken to the Zoning Board of Adjustment from the Commission's action in granting or denying any Certificate of Appropriateness using the process laid out in Section 11.2.

(23) Such appeals may be taken by any aggrieved party **with standing**; shall be taken within times prescribed by the Historic Preservation Commission by general rule and shall be in the nature of certiorari.

~~ARTICLE 13 APPENDIX A RULES OF CONSTRUCTION, INTERPRETATION, AND DEFINITIONS~~

~~13.1 RULES OF CONSTRUCTION.~~

~~For the purposes of these regulations, the following rules of construction apply:~~

~~(A) Interpretations shall be guided by statements of intent.~~

~~(B) The term *this ordinance* shall refer to the Town of Mount Gilead Zoning Ordinance.~~

~~(C) The words *shall*, *must*, and *will* are mandatory, implying an obligation or duty to comply with the particular provision.~~

~~(D) The word *may* is permissive, except when the context of the particular use is negative, then it is mandatory (e.g., *may not*).~~

~~(E) The word *should*, whether used in the positive or the negative, is a suggested guideline.~~

~~(F) References to days will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.~~

~~(G) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in Section 13.3 except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.~~

~~(H) Words used in the present tense include the future tense, and words used in the future tense include the present tense.~~

~~(I) Words used in the singular number include the plural, and words used in the plural number include the singular.~~

~~(J) The word *person* includes a firm, association, organization, partnership, corporation, trust, and company, as well as an individual.~~

~~(K) The word *lot* includes the words plot, parcel or tract.~~

~~(L) The word *building* includes the words structure, and the word structure includes the word building.~~

- (M) ~~The words *used* or *occupied* as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.~~
- (N) ~~Words used in the masculine gender include the feminine gender.~~
- (O) ~~The word *street* includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians.~~
- (P) ~~The term *town board* shall mean the Board of Commissioners of the Town of Mount Gilead, North Carolina.~~
- (Q) ~~The term *planning board* shall mean the Planning and Zoning Board of the Town of Mount Gilead, North Carolina.~~
- (R) ~~The term *zoning administrator* shall mean the Zoning Administrator of the Town of Mount Gilead, North Carolina.~~
- (S) ~~The term *subdivision administrator* shall mean the Subdivision Administrator of the Town of Mount Gilead, North Carolina.~~
- (T) ~~The term *mayor* shall mean the Mayor of the Town of Mount Gilead, North Carolina.~~
- (U) ~~The term *board of adjustment* shall mean the Board of Adjustment of the Town of Mount Gilead, North Carolina.~~
- (V) ~~The term *state* shall mean the State of North Carolina.~~
- (W) ~~Any reference to an *article* shall mean an article of the Town of Mount Gilead Zoning Ordinance, unless otherwise specified.~~

~~13.2 INTERPRETATION.~~

- (A) ~~**Zoning Boundaries.** Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the Zoning Administrator shall employ the following rules of interpretation:~~
- ~~(1) Where the zoning map shows a boundary line located within a street right-of-way, railroad or utility line right-of-way, easement or waterway, it shall be considered to be in the center of the right-of-way, easement or waterway. If the actual location of such right-of-way, easement or waterway varies slightly from the location as shown on the zoning map, then the actual location shall control.~~
 - ~~(2) Where the zoning map shows a district boundary to approximately coincide with a property line or city, town or county border, the property line or border shall be considered to be the district boundary, unless otherwise indicated on.~~
 - ~~(3) Where the zoning map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway or~~

~~property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the zoning map.~~

- ~~(4) — If, because of error or omission in the zoning map, any property within the jurisdiction of this ordinance is not shown as currently being in a zoning district, such property will be classified as R-15, until changed by amendment.~~
- ~~(5) — Where district boundaries appear to be parallel to the centerline of streets, easements or rights of way, such district boundaries shall be construed to be parallel thereto and at such a distance therefrom as is indicated on the zoning map.~~
- ~~(6) — The Zoning Administrator shall decide the exact location of zoning district boundary lines when a question arises concerning boundary lines shown on the zoning maps. This decision may be appealed to the zoning board of adjustment.~~

~~(B) — **Split tracts and fractional requirements.** The Zoning Administrator shall employ the following rules with respect to split tracts and fractional requirements:~~

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

~~(C) — **General rules of conflict.**~~

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

~~(D) — **Distance measurements.**~~

~~Distance separations are required for many uses in this article. Unless otherwise specified, the following rules shall apply in determining such measurements:~~

- ~~(1) — Where lot separation is required, measurements shall be made from lot line to lot line using the shortest straight line distance between lots.~~

- ~~(2) — Where separation between a building, structure, parking area, buffer, driveway or similar feature on a development site and any other feature on the same or abutting site is required or is part of a regulation contained herein, such separation shall be measured between the closest points on the feature using the shortest straight line distance between the two.~~

~~13.3 — DEFINITIONS.~~

~~**ADMINISTRATIVE DECISION.** Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this ordinance. These are sometimes referred to as ministerial decisions or administrative determinations.~~

~~**BONA FIDE FARM.** A property that is located in the Town's extraterritorial jurisdiction that is used for bona fide farm purposes in accordance with G.S. 160D-903(a) and is exempt from zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903.~~

~~**DETERMINATION.** A written, final, and binding order, requirement, or determination regarding an administrative decision of the UDO Administrator. Such determinations shall be provided to interested parties in accordance with NCGS 160D-403(b).~~

~~**DEVELOPMENT APPROVAL.** An administrative or quasi-judicial approval made pursuant to this ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to this ordinance, including plat approvals, permits issued, development agreements entered into, and building permits issued. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this ordinance attach to and run with the land. Town-issued development approval permits expire one (1) year after issuance unless work authorized by the permit has substantially commenced.~~

~~**DEVELOPMENT REGULATION.** A unified development ordinance, zoning regulation, subdivision regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, building code regulation, or any other regulation adopted pursuant to this ordinance.~~

~~**EVIDENTIARY HEARING.** A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this ordinance.~~

~~**LEGISLATIVE DECISION.** The adoption, amendment, or repeal of a regulation under this ordinance, which shall include any text or map amendment (rezoning). The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of NCGS.~~

~~**QUASI-JUDICIAL DECISION.** A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion~~

when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, and appeals of administrative determinations.

SITE SPECIFIC VESTING PLAN. A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this ordinance and in accordance with the required procedure for approval, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property.

SUBDIVISION. All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition:

(G) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes

SUBDIVISION, MINOR EXPEDITED. The division of one existing parcel of land under single ownership that is not exempt per G.S. 160D-802(a);

(A) Where no part of the tract or parcel to be divided has been divided in the 10 years prior to the proposed division;

(B) The entire area of the tract or parcel to be divided is greater than 5 acres;

(C) After division, no more than three lots result from the division and all resultant lots comply with all lot dimension size requirements of the applicable zoning district and the use of the lots is in conformity with the applicable zoning district; and

(D) A permanent means of ingress and egress is recorded for each.

VESTED RIGHT (ZONING). ~~A right established pursuant to the provisions of this ordinance to undertake and complete the development and use of property.~~ Vested right shall be based upon the following criteria:

(A) Having an outstanding valid building permit in compliance with NCGS 160D-108; 108.1, or

(B) Having an approved site specific or phased development vesting plan or multi phased development plan in compliance with NCGS 160D-108; 108.1.

TOWN OF MOUNT GILEAD SUBDIVISION REGULATIONS ORDINANCE

ARTICLE I. LEGAL PROVISIONS

C. AUTHORITY

The provisions of this Ordinance are adopted under the authority granted by the North Carolina General Assembly, particularly GS Chapter ~~153A, Article 18, Part~~ 160D-801.

E. PLAT RECORDING REQUIREMENTS

After the effective date of this ordinance, each individual subdivision plat of land within the Town's jurisdiction shall be reviewed and approved by the Town of Mount Gilead ~~Planning Board,~~ hereinafter referred to as the Planning Board as described in these ordinances. ~~The Planning Board~~

~~has the authority to approve, approve with conditions or modifications or disapprove subdivision plans. The Town Board has the authority to review and render decisions in appeal cases.~~

The Montgomery Register of Deeds shall not file or record a plat of subdivision of land located within the territorial jurisdiction of the Town of Mount Gilead that has not been approved in accordance with these provisions, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section.

~~Subdivision lots which are not approved for building development may be approved for recording through the minor subdivision procedures. Such plats shall display a note stating the lots are not approved for building development and do not meet the requirements of the subdivision regulations but are approved for recording purpose only.~~

Pursuant to GS ~~153A-330~~ 160D-803 a final plat shall be prepared, approved and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place.

J. VESTED INTEREST AND RIGHTS

The purpose of this Section is to implement the provisions of GS ~~160A-385.1~~ 160D-108 and 160D-108.1 pursuant to which a statutory vested right is established.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site-specific development vesting plan or phased development plan, following notice and ~~public~~ hearing by the Town Board. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific development vesting plan or the phased development plan including any amendments thereto. The Town Board may approve a site-specific development vesting plan or phased development 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 Town Board shall not require a landowner to waive his vested rights as a condition of developmental approval. A site-specific development vesting plan or phased development plan shall be deemed approved upon the effective date of the Town Board's action. A right which has been vested shall remain vested for a period of two years.

A vested right, once established, precludes any zoning action which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific development vesting plan or an approved phased development except:

1. With written consent of the affected landowner; or
2. Upon findings 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 development plan or the phased development plan; or
3. To the extent the affected landowner receives compensation for all costs, expenses and losses incurred; or
4. Upon findings the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the

approval by the Town Board of the site-specific development plan or the phased development plan; or

5. Upon the enactment of a State or Federal Law or Regulation which precludes development as contemplated in the site-specific development plan or phased development plan.

K. VARIANCES

~~The Planning Board may upon appeal authorize in individual cases a variance from the terms of this Ordinance. The Board shall take into account the nature of the proposed subdivision, the existing use of land in the vicinity, the number of persons to reside or work in the subdivision and the probable effect of the subdivision on traffic conditions. The variance shall not be contrary to the public interest, safety, health and welfare and shall meet the following conditions:~~

- ~~1. There are extraordinary and exceptional conditions affecting the property due to the size, shape or topography that are not applicable to other land or structures in the same district. The following are such physical conditions:
 - a. Marshlands and low lying swampy areas;
 - b. Steep slope conditions (25% and over);
 - c. Natural or man made water courses and lakes;
 - d. Deep ravines;
 - e. Poor soil conditions that result in failure to pass soil testing standards for on lot sewage;
 - f. Public utility easements and rights of way that isolate portions of the lots. This does not include overhead power or communication lines that do not necessarily restrict access. All land within any public utility easement may be considered dead property in the sense that future development is severely restricted.~~
- ~~2. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.~~
- ~~3. The exceptional circumstances are not the result of the actions of the applicant.~~
- ~~4. A literal interpretation of the Ordinance provisions would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.~~
- ~~5. The granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which said property is situated.~~
- ~~6. The variance request is the minimum variance that will make possible the legal use of the land, building or structure.~~

An applicant may seek a variance to the regulations laid out in this ordinance. The applicant shall file a variance request with the Town Zoning Administrator to be heard before the Board of Adjustment no later than thirty (30) days before the meeting at which the variance will be heard. Variances will follow the procedures laid out in Article 11 of the Town of Mount Gilead Zoning Ordinance.

ARTICLE II. INTERPRETATION OF TERMS AND DEFINITIONS

B. DEFINITIONS

~~**Site Specific Development Plan.** A plan which has been submitted to the Town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land use approval designation as may be utilized by the Town. Unless otherwise expressly provided by the Town, such a 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 the 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 infrastructures on the site, including water, sewer, roads and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the Town pursuant to this Ordinance and the Town's Zoning Ordinance. However, at a minimum, the Town shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site-specific development plan, and approval of a site specific development with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan~~

Site-Specific Vesting Plan. A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by the Town. The plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the 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. 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 may not constitute a site-specific vesting plan.

Street, Private. An undedicated private right-of-way which affords access to abutting properties according to the standards of this Ordinance and requires a subdivision streets disclosure statement in accordance with NC General Statute GS ~~136-102-6~~ **136-102(f)**.

Subdivision Administrator. An individual or individuals appointed by the Mount Gilead Town Board to issue rulings on all minor subdivisions and review and make recommendations ~~to the Planning Board~~ on all major subdivisions, commercial subdivisions, planned unit developments and variance requests.

Subdivision Plat. The final map or drawing, described in these regulations, on which the subdivision is presented ~~to the Planning Board~~ for approval and which, is approved, may be submitted to the Register of Deeds for recording.

~~**Subdivision.** All divisions of a tract or parcels of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future). The following shall not be included within this definition nor be subject to any regulations:~~

- ~~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 Town standards.~~
- ~~2. — The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.~~
- ~~3. — The public acquisition by purchase of land strips for widening or opening streets.~~
- ~~4. — The division of a tract in single ownership whose entire area is no greater than two (2) acres into three (3) or fewer lots equal to or exceeding Town standards, where no street right-of-way dedication is involved.~~
- ~~5. — A conveyance made for the purpose of dividing the estate of a decedent among the heirs and devisees, by will or the courts.~~

Subdivision. All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition:

- (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 standards of the Town of Mount Gilead Subdivision Regulations.**
- (2) The division of land into parcels greater than ten (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 the location of public utility rights-of-way.**
- (4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is**

involved and where the resultant lots are equal to or exceed the standards of the Town of Mount Gilead Zoning Ordinance.

- (5) The division of land into plots or lots for use as a cemetery.
- (6) Subdivisions resulting from proceedings to partition interests in lots or parcels pursuant to Chapter 46 of the North Carolina General Statutes (or any successor statute) resulting in the division of a lot or parcel into two (2) or more lots or parcels except where the partition proceeding is brought to circumvent the provisions of this ordinance.
- (7) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes

Subdivision, Minor Expedited. The division of one existing parcel of land under single ownership that is not exempt per G.S. 160D-802(a);

- (1) Where no part of the tract or parcel to be divided has been divided in the 10 years prior to the proposed division;
- (2) The entire area of the tract or parcel to be divided is greater than 5 acres;
- (3) After division, no more than three lots result from the division and all resultant lots comply with all lot dimension size requirements of the applicable zoning district and the use of the lots is in conformity with the applicable zoning district; and
- (4) A permanent means of ingress and egress is recorded for each.

ARTICLE III ADMINISTRATION

E. RECOMBINATION OF LAND

Any plat or any part of any plat may be ~~vacated~~ **recombined** by the owner at any time ~~before the sale of any lot in the subdivision~~ by written instrument to which a copy of such plat shall be attached, ~~declaring the same to be vacated.~~

Such an instrument shall be **reviewed and** approved by ~~the same agencies as approved the final plat.~~ ~~The Planning Board~~ **Subdivision Administrator who** may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys. **If approved, the recombination plat shall be filed with the Montgomery County Register of Deeds.**

~~Such an instrument shall be executed, acknowledged or approved and recorded and filed in the same manner as a final plat; and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, and public grounds, and all dedications laid out or described in such plat.~~

~~When lots have been sold, the plat may be vacated with the consensus of all owners of the lots in such plat joining in the execution of such writing.~~

F. RIGHT OF APPEAL

If any subdivision plan is denied or revoked, the applicant may appeal the action. ~~Should an appeal to the Town Board be unsuccessful, any further recourse shall be to the applicable court as provided by Law.~~ **Appeals of subdivision decisions may be made pursuant to G.S. 160D-1403. In effect, administrative decisions shall be appealed to the Board of Adjustment per the regulations of Article 11 of the Town of Mount Gilead Zoning Ordinance and appeals of the Town Board shall be made with the superior court.**

ARTICLE IV REVIEW AND APPROVAL PROCEDURES

B. MINOR SUBDIVISION REVIEW AND APPROVAL PROCEDURES

2. **Final Plat.** Upon approval of the sketch plan by the Administrator the subdivider may proceed with the preparation of the final plat in accordance with the requirements of this Ordinance. The final plat shall be prepared by a Registered Land Surveyor and shall conform to the provisions set forth in North Carolina General Statutes GS 47-30 and the Manual of Practice for Land Surveying in North Carolina.

The subdivider may make revisions to the plat to bring the final plat into compliance and resubmit to the Administrator for reconsideration or appeal to the Town of Mount Gilead ~~Planning~~ Board of Adjustment.

3. Expedited Minor Subdivision Plat. For qualifying, expedited minor subdivisions, to be approved administratively, only a final plat for recordation is required for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- a. The tract or parcel to be divided is not exempted under G.S 160D-802(a).
- b. No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- c. The entire area of the tract or parcel to be divided is greater than 5 acres.
- d. After division, no more than three lots result from the division.
- e. After division, all resultant lots comply with all of the following:
 - i. All lot dimension size requirements of the applicable zoning district.
 - ii. The use of the lots is in conformity with the applicable zoning district.
 - iii. A permanent means of ingress and egress is recorded for each.

Upon Administrator approval of the final plat, the original tracing and (1) copy shall be retained by the Administrator and the following certification shall be shown on each copy of the plat:

Certificate of Subdivision Administrator Approval

I hereby certify the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Mount Gilead, North Carolina and this plat has been approved for recording in the Office of the Montgomery County Register of Deeds.

Subdivision Administrator Date

C. MAJOR SUBDIVISION REVIEW AND APPROVAL PROCEDURES

2. **Preliminary Plat.** For every major subdivision within the territorial jurisdiction of the Town of Mount Gilead the subdivider shall submit a preliminary plat which shall be reviewed and approved by the ~~Planning~~ Town Board (after review and

recommendation by the Planning Board) prior to beginning any construction or installation of any improvements.

Four copies (4) copies of the preliminary plat (as well as any additional copies which the Administrator determines are needed for other agencies) shall be submitted to the Administrator at least ~~fifteen (15) working~~ thirty (30) days prior to the Planning Board meeting at which the subdivider desires the preliminary plat to be ~~review and considered~~ reviewed. All comments from other agencies shall be required prior to this application deadline.

Preliminary plats shall meet the specifications as outlined on the Preliminary and Final Plat Checklist Form (Attachment A).

- a. **Review by Other Agencies.** The subdivider or developer shall submit copies of the preliminary plat and any accompanying material to the appropriate officials and agencies concerned with new development including, but not limited to:
- i. District Highway Engineer
 - ii. Montgomery County Health Department
 - iii. NC DENR Land Quality Section
 - iv. Other agencies as designated by the Planning Board Subdivision Administrator

Percolation or other forms of soil test shall be performed for all subdivisions unless a central sewage disposal system is planned. The test shall be approved by the Montgomery County Health Department.

- b. **Review by Planning Board.** The Planning Board shall review the preliminary plat at ~~or before~~ its next regularly scheduled meeting which follows ~~at least fifteen (15) days after the subdivision administrator receives~~ the complete submission of the preliminary plat and the comments from appropriate agencies.

The Planning Board shall recommend that the Town Board approve, approve with conditions to ensure Ordinance compliance, or disapprove with reasons ~~within forty (40) days of consideration.~~

~~If approved the preliminary plat shall note approval on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

~~Preliminary plats receiving conditional approval shall also note the approval with the specified conditions on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider. If disapproved the preliminary plat shall note disapproval with the reasons on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

~~If the preliminary plat is disapproved, the subdivider may make necessary changes and submit a revised preliminary plat to the Planning Board or appeal the decision to the Town of Mount Gilead Board of Commissioners.~~

- c. Review by Town Board. The Town Board shall receive the preliminary plat at its next regularly scheduled meeting following the Planning Board's review and recommendation. At this meeting, the Town Board shall set an evidentiary hearing following the quasi-judicial procedures laid out in the Town of Mount Gilead Zoning Ordinance.**

After the evidentiary hearing, the Town Board shall approve, approve with conditions to ensure Ordinance compliance, or disapprove with reasons. The Town Board must make a decision within sixty (60) days after the evidentiary hearing.

The preliminary plat shall note on two (2) copies, one (1) copy to be retained by the Town and one (1) returned to the subdivider, approval, the conditions of approval, or disapproval, based on the decision of the Town Board.

If the preliminary plat is disapproved, the subdivider may make necessary changes and submit a revised preliminary plat or appeal the decision as per Article III F of this ordinance.

3. **Final Plat.** Upon approval of the preliminary plat by the ~~Planning~~ **Town** Board, the subdivider may proceed with the preparation of the final plat. The final plat shall be prepared by a Registered Land Surveyor and shall conform to the provisions set forth in North Carolina General Statutes GS 47-30 and the Manual of Practice for Land Surveying in North Carolina. The final plat for the first stage of the subdivision shall be submitted not more than twelve (12) months after the date on which the preliminary plat was approved; otherwise, such approval shall be null and void, unless written extension of this limit is requested by the subdivider and granted by the Planning Board.

The Administrator shall review the final plat for general compliance with the requirements of this Ordinance and the prior approval ~~or approval with conditions~~ of the ~~Planning~~ **Town** Board. The Administrator may appoint a registered surveyor to confirm the accuracy of the final plat. If substantial errors are found, the costs shall be charged to the subdivider and the plat shall not be recommended for approval until such errors have been corrected. The final plat shall meet the specifications as outlined on the Preliminary and Final Plat Checklist Form (Attachment A).

Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this Ordinance or guaranteed installation as provided herein. No final plat will be accepted for review by the ~~Planning~~ **Town** Board unless the Administrator verifies compliance with the improvement and guarantee standards of this Ordinance. The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at that time; such portion shall conform to all requirements of this Ordinance.

4. **Improvement Performance Guarantees**

~~Agreement and Security Required.~~ In lieu of requiring the completion, installation and dedication of all improvements prior to final plat approval the Town Board may enter into an installation agreement with the subdivider. The Town Board shall review on an individual basis and may negotiate a joint cost sharing plan for the installation of the water and sewer infrastructure needs and streets. The Town Board may also elect to require the subdivider to complete all required improvements. Once an agreement on the installation and dedication of all improvements is signed by both parties and the security required herein is provided, the final plat may be approved by the **Planning Town** Board, if all other requirements of the Ordinance are met.

Nothing in this section shall require that the Town Board enter into a performance guarantee nor shall any provision violate G.S. Chapter 160D-804.1.

To secure the agreement, the subdivider shall provide, subject to the approval of the Town Board, either one, or a combination of the following guarantees not exceeding one point two five (1.25) times the subdivider's cost as provided herein:

- b. Cash or Equivalent Security.** The subdivider shall deposit cash, or irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the Town or in escrow with the financial institution designated as an official depository of the Town. The use of any instrument other than cash shall be subject to the approval of the Town Board. The amount of deposit shall be equal to one point two five (1.25) times the cost, as estimated by the subdivider and approved by the Town Board, of installing all required improvements.

If cash or other instrument is deposited in escrow with a financial institution as provided herein, then the subdivider shall file with the Town Board an agreement between the financial institution and the subdivider guaranteeing the following:

- iv. The Town Board may release a portion of any security posted as the improvements are completed and approved by the **Planning Board Subdivision Administrator**. When the **Planning Board Subdivision Administrator** approves said improvements, the Town Board shall ~~immediately~~ release any security posted **at their next regular meeting.**

c. Timing. The Town Board, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.

d. Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

e. Legal Responsibilities. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

- i. The local government to whom the performance guarantee is provided.**
- ii. The developer at whose request or for whose benefit the performance guarantee is given.**

- iii. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.
- f. Multiple Guarantees. The developer shall have the option to post one type of a performance guarantee as provided for in this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.
- g. Exclusion. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

5. Certificates. The following certifications shall be required on all final plats:

56. Final Plat Review by Planning Board. The Planning Board shall review the final plat at or before its next regularly scheduled meeting which follows at least fifteen (15) days after the subdivision administrator receives the final plat and the comments from appropriate agencies. The process to review and approve the final plat shall be the same as the preliminary plat with review by the Planning Board and then evidentiary hearing and review by the Town Board.

The Planning Town Board shall approve, ~~approve with conditions to ensure compliance, or disapprove with reasons within forty (40) days of consideration~~ or deny the final plat within sixty (60) days of the evidentiary hearing.

If approved the final plat shall note approval on two (2) copies. One (1) copy shall be retained by the Town and one (1) returned to the subdivider. ~~Final plats receiving conditional approval shall also note the approval with the specified conditions on two (2) copies. One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~ If disapproved the preliminary final plat shall note disapproval with the reasons on the two (2) copies. ~~One (1) copy shall be retained by the Administrator and one (1) returned to the subdivider.~~

The subdivider shall file the approved final plat with the Montgomery County Register of Deeds within thirty (30) days of the approval; otherwise, such approval shall be null and void.

If the application is disapproved the Subdivision Administrator shall state in writing the reasons for disapproval. A copy of the disapproval shall be provided to the subdivider ~~and the Montgomery County Inspections Department. The Administrator shall retain a copy of the disapproval and one (1) print of the plat.~~

The subdivider may make revisions to the plat to bring the final plat into compliance and resubmit for reconsideration or appeal the decision as per Article III F of this ordinance.

The following certification shall be required on all Planning Board approved final plats:

Certification of Planning Board Approval for Recording

I hereby certify the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of the Town of Mount Gilead, North Carolina, and this plat has been

~~approved by the Mount Gilead Planning Board for recording
in the Office of the Montgomery County Register of Deeds.~~

~~_____
Planning Board Chairman _____ Date~~

ARTICLE V. DESIGN STANDARDS

A. GENERAL PROVISIONS

Each subdivision shall contain the improvements specified in this article, which shall be installed in accordance with the requirements of this ordinance and paid for by the subdivider, unless other means of financing is specifically agreed upon by the Town Board.

3. **Municipal Regulations.** All subdivisions shall comply with previously approved regulations in the Town of Mount Gilead including the Zoning Ordinance, Manufactured Home Park Ordinance (if applicable), Sewer and Pretreatment Ordinance, Impact Policy, **other development policies and ordinances** and Code of Ordinances.

5. **Streets.** All public and/or private streets shall be built to the standards of NC Department of Transportation, Division of Highways, as taken from the American Association of State Highway Officials (AASHO) Manual. The design and construction of streets and roads shall be certified by a licensed engineer, architect, contractor or surveyor prior to final approval. Streets connecting to any existing State road shall also receive a permit from the Division of Highways District Engineer.

Privately maintained streets and roads may be allowed ~~by the Planning Board~~ provided the status and maintenance of said roads is made known by appropriate notes on the plat, in deeds, protective covenants or other means approved by the **Planning Town** Board.

9. **Sidewalks.** The installation of sidewalks along streets is optional. Sidewalks around amenities such as laundry facilities, clubhouses, schools, shopping centers, playgrounds and any other area subject to heavy pedestrian traffic is required. Sidewalks shall be constructed to a minimum width of four (4) feet and shall consist of a minimum thickness of four (4) inches of concrete. The minimum thickness shall increase to six (6) inches at all driveway crossings. All sidewalks shall be constructed in the right-of-way, unless platted as a planned unit or group development. **In all cases, ADA requirements will take precedence.**

13. **Common Open Space.** The location, shape, size and character of the common open space shall be reviewed. Common open space must be used for amenity or recreational purposes. The uses authorized for the common open space shall be appropriate to the scale and character of the planned development.

There shall be a minimum of fifteen percent (15%) of the total land area reserved as common open space. Roads and rights-of-way shall not be calculated as common open space. Common open space must be suitable for improvement but space containing natural features worthy of preservation may be left unimproved.

Appropriate buildings, structures and improvements must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.

The use and improvements of common open space must be planned in relation to any existing or proposed public or semi-public open space which adjoins or which is with close proximity to the perimeter of the planned development.

All land shown on the final master plan as common open space must be conveyed under one (1) of the following options:

- a. Conveyance to a public agency which will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on the land is permitted.
- b. Conveyance to a trustee(s) provided in a deed of record which establishes an association or similar organization for the maintenance of the planned development. The common open space may be conveyed to the trustees subject to the approval of the **Planning Town** Board which will result in the restriction of the common open space to the uses specified on the final plan, and which will provide for the maintenance of the common open space in a manner which assures the continuance of the intended purpose.

14. Utilities. Subdividers and developers installing utilizes shall design for underground utilities. The Town Board may allow above ground utilities if the subdivider can show a valid hardship in complying.

CHAPTER 150: BUILDING REGULATIONS

General Provisions

150.01 Moratoria

Repair, Closing or Demolition of Abandoned Structures

GENERAL PROVISIONS

§ 150.01 MORATORIA. Repealed [Insert Ordinance date]

~~(A) The town may adopt temporary moratoria on any development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements~~

~~of G.S. § 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. § 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. § 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:~~

~~(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the town and why those alternative courses of action were not deemed adequate;~~

~~(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium;~~

~~(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium; and~~

~~(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.~~

~~(B) No moratorium may be subsequently renewed or extended for any additional period unless the town shall have taken all reasonable and feasible steps proposed to be taken by the town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in division (A)(1) through (4) of this section, including what new facts or conditions warrant the extension.~~

~~(C) Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the town shall have the burden of showing compliance with the procedural requirements of this division. (See G.S. § 160A-381(e))
(Ord. 2006-11, passed 5-9-2006)~~

REPAIR, CLOSING OR DEMOLITION OF ABANDONED STRUCTURES

§ 150.15 FINDING; INTENT.

It is hereby found that there exists within the town, abandoned structures which the Board of Commissioners finds to be hazardous to the health, safety and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. § ~~160A-441~~ 160D-1201(b), it is the intent of this subchapter to provide for the repair, closing or demolition of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation. If the provisions of this Chapter conflict with the provisions of Article 12 of G.S. § 160D, then the rules, regulations and procedures of G.S. § 160D shall govern the actions of the Town.

(Ord. passed 7-10-1978)

CHAPTER 151: MINIMUM HOUSING CODE

§ 151.01 FINDING; PURPOSE.

(C) In order to protect the health, safety and welfare of the residents of the town as authorized by G.S. Chapter ~~160A, Article 19, Part 6~~ 160D Article 12, it is the purpose of this subchapter to establish and enforce minimum standards of fitness for the existence and initial and continued occupancy of all buildings used for human habitation, and for the protection of occupants of neighboring housing and other residents of the town, as expressly authorized by G.S. § ~~160A-444~~ 160D-1205.

(Ord. passed 7-13-2004)

§ 151.02 DEFINITIONS.

INSPECTOR. The Director of Inspections and Permits Division of the Department of Development services of the town, or a successor division thereto, and his or her designee(s). In addition to the powers and responsibilities granted in this chapter, the Inspector shall have and may exercise the powers ~~and responsibilities of public officer set forth in G.S. § 160A-441 et seq~~ outlined in Chapters 143 and 160D of the NC General Statutes.

§ 151.14 PROCEDURE FOR ENFORCEMENT.

(C) *Compliance with state law.* The Inspector shall comply with any requirements of G.S. § ~~160A-443(8)~~ 160D-1203 and other provisions of 160D Article 12.

§ 151.15 APPEALS FROM ORDERS OF THE INSPECTOR; REVIEW BY COURT.

Appeals from the orders of the building inspector shall follow the procedures outlined in G.S. §160D-1208. For the purpose of these appeals, the housing appeals board shall be the Board of Adjustment. These hearings are quasi-judicial and shall follow the procedures of G.S. §160D-406.

~~(A) Appeals Board. All appeals which may be taken from decisions or orders of the Inspector pursuant to this chapter shall be heard and determined by the Zoning Board of Adjustment. If the Zoning Board of Adjustment ("Board of Adjustment") consists of more than five members, the Chairman may designate five members to hear appeals under this chapter. As the appeals body, the Board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board shall keep an~~

~~accurate journal of all its proceedings.~~

~~(B) *When appeal may be taken.* An appeal may be taken by the owner or party in interest, or by any officer, board or commission of the town, from a final decision or an order of the Inspector, unless a different method of appeal is provided for herein. Any appeal shall be taken within ten days from the rendering of the decision or service of the order, as the case may be, by filing with the Inspector and with the Board of Adjustment a written notice of appeal which shall specify with particularity all of the grounds upon which the appeal is based.~~

~~(C) *Duty of Inspector upon the filing of an appeal.* Upon the filing of any notice of appeal, the Inspector shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the final decision or order appealed from was made.~~

~~(D) *Staying of action.* When an appeal is from a decision or order of the Inspector refusing to allow the person aggrieved thereby to do any act, the Inspector's decision or order shall remain in force until modified or reversed. When an appeal is from a decision or order of the Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Inspector certifies to the Board, after the notice of appeal is filed with the Inspector, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of the Inspector's requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except for due cause shown upon not less than one day's written notice to the Inspector, by the Board of Adjustment, or by a court of record upon petition made pursuant to G.S. § 160A-446(f) and this section.~~

~~(E) *Hearing of appeals.* The Board of Adjustment shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order as in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Inspector, but the concurring vote of four members of the Board shall be necessary to reverse or modify any decision or order of the Inspector. The Board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, to adapt the application of this chapter to the necessities of the case to the end that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. A copy of the Board's decision shall be served on the appellant by the Inspector.~~

~~(F) *Petition to Superior Court.*~~

~~(1) Every decision of the Board of Adjustment shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the date of service of the decision of the Board, but not otherwise.~~

~~(2) Any person aggrieved by an order issued by the Inspector or a decision rendered by the Board of Adjustment may petition the Superior Court for an injunction restraining the Inspector from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be held in accordance with G.S. § 160A-446(f).~~

~~(Ord. passed 7-13-2004)~~

§ 151.20 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this chapter is found to be in conflict with any provision of any other ordinance or code of the town or the State, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town or that takes legal precedence shall prevail. The headings contained in this chapter are for ease of reference only and shall not limit or otherwise define the contents of the sections. (Ord. passed 7-13-2004)

§ 151.99 PENALTY.

(B) *Action pursuant to ordinance.* If the owner of deteriorated or dilapidated housing fails to comply with an order of the Inspector within the time specified therein and court ordered relief has not been sought or has not been granted as provided in division (D) of this section, the Inspector may cause the housing to be repaired, altered, improved, vacated, closed or demolished and removed, as required by the order, provided the Inspector takes the following steps. The Inspector may submit to the Town Council for adoption an ordinance describing the property and ordering the Inspector to proceed to effectuate the purpose of this chapter with respect to the particular property or properties which the Inspector found to be substandard or unfit for human habitation. No such ordinance shall be adopted to require demolition and removal of housing until the owner has first been given a reasonable opportunity to bring it into conformity with this chapter. Such ordinance shall be recorded in the office of the Register of Deeds of the county, and shall be indexed in the name of the property owner in the grantor index. The Inspector may place a placard on any housing so closed stating “This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.” Notwithstanding any other provision of this chapter, in accordance with G.S. § ~~160A-443(4)~~ 160D-1203, occupation of a building so posted shall constitute a Class 1 misdemeanor, punishable by a fine of not more than \$500 or imprisonment of not more than 30 days. If, after adoption of such ordinance, any occupant fails to comply with an order to vacate housing, the Inspector may file a civil action in the name of the town to remove such occupant in accordance with G.S. § ~~160A-443(7)~~ 160D-1203, including the provision of 30 days’ prior notice to an occupant who is a tenant of the owner.

(C) *Additional ordinance one year later.* If the Town Council shall have adopted an ordinance pursuant to division (B) above or, if the Inspector shall have issued an order ordering a dwelling to be repaired or vacated and closed, as provided in § 151.14(B)(1), and if the owner has vacated and closed such housing and kept such housing vacated and closed for a period of one year pursuant to the ordinance or order, then, if the Town Council shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the housing in its vacated and closed status would be inimical to the health, safety, morals and welfare of the town in that the housing would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, or would render unavailable property and housing which might otherwise have been made available to ease the persistent shortage of decent and affordable housing, in such circumstances the Town Council may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner requiring the owner to either repair or demolish and remove the housing within 90 days. Such ordinance shall meet the requirements set forth in G.S. § ~~160A-443(5a)~~ 160D-1203 and shall be recorded in the office of the County Register of Deeds and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this chapter within the time fixed by such ordinance, then the Inspector

shall effectuate the purpose of the ordinance. The cost of such repairs, demolition or removal shall be a lien on the property.

(D) *Court-ordered relief.* If the owner of any deteriorated housing shall fail to comply with an order of the Inspector to repair, alter, or improve or to vacate and close the same within the time specified therein, or if the owner of dilapidated housing shall fail to comply with an order of the Inspector to repair, alter or improve or to vacate and close and demolish and remove the same within the time specified therein, or if any housing is erected, constructed, altered, repaired, converted, maintained, or used in violation of this chapter or any valid order or decision of the Inspector or Board of Adjustment made pursuant to this chapter, the Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use; to restrain, correct or abate the violation; to prevent the occupancy of the housing; or for any other purpose authorized by G.S. § ~~160A-446(g)~~ **160D** and other law.

CHAPTER 156: FLOOD DAMAGE PREVENTION

GENERAL PROVISIONS

§ 156.01 STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in G.S. Ch. 143, Art. 21, Part 6; G.S. Ch. ~~160A, Art. 19, Parts 3, 5, and 8~~ **160D**; and G.S. Ch. 160A, Art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. (Ord. passed 1-8-2019)