

Chapter

9

Administration: Boards and Procedures

- 9.1 The Administrator
- 9.2 Planning Board
- 9.3 Board of Adjustment
- 9.4 Board of Commissioners
- 9.5 Boards: Policies & Meetings
- 9.6 Development Approval Procedures
- 9.7 Quasi-Judicial Procedures
- 9.8 Legislative Procedures
- 9.9 Vested Rights
- 9.10 Permit Choice

9.1. THE ADMINISTRATOR

The Town Board of Commissioners shall appoint an Administrator to oversee the administration and enforce the various provisions contained within this Ordinance. The directors of each department and their subordinate staff shall be collectively referred to as the Administrator for purposes of this Ordinance.

A. Authority

The Town Board of Commissioners is authorized to appoint an Administrator in accordance with G.S. 160D-402. to develop, administer, and enforce development regulations authorized by this Ordinance. Further, the Town may enter into a contract with the County to serve as a member of its staff for purposes of exercising the duties in Chapter 9.1.B.

B. Responsibilities

The Administrator shall have the following powers and duties, to be carried out in accordance with the terms of this ordinance:

1. To maintain a record of all development approvals and permits on file and to make copies available to interested parties.
2. To maintain the current zoning map in digital format as well as copies of all previous zoning maps for public inspection upon request. (G.S. 160D-105)
3. To maintain copies, either digital or paper, of any state or federal agency map incorporated by reference into the zoning map.
4. To review all land development applications for compliance with the terms of this ordinance.

5. To make determinations and decisions related to development regulations contained herein
6. To approve minor modifications to development approvals as outlined in Section 9.6.F.
7. To provide the Elkin Board of Commissioners, the Planning Board, and Board of Adjustment, with reports and recommendations regarding matters before these bodies, either as required by this ordinance, other laws or regulations or at the request of the body.
8. To serve as staff to the various Boards and Commissioners as outlined in this Chapter.
9. To inspect work undertaken pursuant to a development approval to assure work is being done in accordance with State and local laws and terms of approval.
10. To enforce compliance with the terms of this ordinance, unless otherwise specified.
11. To review all development plans for compliance with street and utility requirements of the Town of Elkin.
12. To administer the Flood Damage Prevention Ordinance for the Town.

C. Conflict of Interest

1. The Administrator shall not make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the Administrator or if the applicant or other person subject to that decision is a person with whom the Administrator has a close familial, business, or other associational relationship. If the Administrator has a conflict of interest under this section, the decision shall be assigned to the supervisor of the Administrator or such other staff person as may be designated by the development regulation or other ordinance.
2. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter 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.

9.2 PLANNING BOARD

A. Authority

The authority to establish a Planning Board for the Town of Elkin is granted under the authority of G.S. 160D-301.

B. Composition and Tenure

- 1. Board Membership.** The Planning Board shall consist of five (5) sitting members from the Town, and one (1) sitting member from its Extraterritorial Jurisdiction (ETJ) area. There shall also be two (2) alternates, one (1) from the Town and one (1) from the ETJ. Representation from the ETJ shall be a proportional representation based on population of ETJ. The population estimates for this calculation shall be updated no less frequently than after each decennial census. The representatives of the extraterritorial area shall have equal rights, privileges, and duties with the other members of the Planning Board.
- 2. Appointment.** The members of the Planning Board that reside in the Town of Elkin shall be appointed by the Board of Commissioners and the ETJ resident member(s) shall be appointed by the Surry County Board of Commissioners.
- 3. Terms of Office.** All members of the Planning Board shall serve three (3) year terms which shall alternate and overlap, so that no more than three (3) terms expire within the same year. Vacancies shall be filled by the Elkin Board of Commissioners or the Surry County Board of Commissioners, as applicable, as they occur, for the period of the unexpired term.
- 4. Oath of Office.** All Planning Board members are required to take an Oath of Office prior to any action or entering their duties, as required by G.S. 160D-309.
- 5. Removal.** Any member of the Planning Board shall be removed by the Town Council upon written charge for neglect of duty, malfeasance, misconduct, missing three (3) consecutive meetings, or missing fifty percent (50%) or more of the official meetings in a twelve (12) month period.
- 6. Officers.** Officers shall be internally elected at the first official meeting after December 1 of each year and shall serve a term of one (1) year.

C. Responsibilities

The Planning Board is responsible for the following actions and duties:

- 1.** To review, monitor, and periodically recommend updates to the Commissioners, a comprehensive plan, and such other plans as deemed appropriate.
- 2.** To facilitate citizen engagement and participation in the planning process.
- 3.** To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a

coordinated and efficient manner.

4. To advise the Commissioners concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
5. To exercise any functions in the administration and enforcement of various means for carrying out plans that the Commissioners may direct.
6. To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board. Where the Board of Adjustments is the deciding board, the Planning Board shall not engage in preliminary discussions.
7. To review and make recommendations on certain development plans.
8. To keep minutes of all Board proceedings.
9. To perform any other related duties that the Commissioners may direct.

9.3 BOARD OF ADJUSTMENT

A. Authority

The authority to establish a Board of Adjustment for the Town of Elkin is granted under the authority of G.S. 160D-302. Further, G.S. 160D-302 also authorizes the Planning Board to perform the duties of the Board of Adjustment in addition to its other duties. However, the Planning Board shall comply with all the procedures and processes applicable to a Board of Adjustment in making quasi-judicial decisions.

B. Composition and Tenure

1. **Board Membership.** All members of the Planning Board also serve as members of the Board of Adjustment, either as a sitting member or as an alternate. There shall be six (6) sitting members and two (2) alternates.
2. **Appointment.** The six (6) sitting members of the Planning Board shall serve as the Board of Adjustment and shall include one (1) ETJ representative. The Planning Board Alternates shall also serve as alternates to the Board of Adjustment.
3. **Terms of Office.** The terms of office for the members of the Board of Adjustment shall be concurrent with their terms as members of the Planning Board. Vacancies shall be filled by the Elkin Board of Commissioners or the Surry County Board of Commissioners, as applicable, as they occur for the period of the unexpired term.
4. **Oath of Office.** All Board of Adjustment members are required to take an Oath of Office prior to any action or entering their duties, as required by G.S. 160D-309.

5. **Removal.** Any member of the Board of Adjustment shall be removed by the Town Council upon written charge for neglect of duty, malfeasance, misconduct, missing three (3) consecutive meetings, or missing fifty percent (50%) or more of the official meetings in a twelve (12) month period.
6. **Officers.** Officers shall be internally elected at the first official meeting after December 1 of each year and shall serve a term of one (1) year.

C. Responsibilities

The Board of Adjustment is responsible for the following actions and duties:

1. To hear and decide appeals from any order, decision, determination, or interpretation made by the Administrator pursuant to or regarding these regulations.
2. To hear and decide petitions for variances from the requirements of these regulations.
3. To keep minutes of all Board proceedings.

9.4 BOARD OF COMMISSIONERS

A. Responsibilities

The Board of Commissioners is responsible for the legislative duties of the Town, including:

1. To conduct any and all business in accordance with their Charter and North Carolina General Statutes.
2. To keep minutes of all Board proceedings.
3. To adopt and amend the Comprehensive Plan and other plans as necessary.
4. To review, hear, and decide the approval or disapproval of, including the placement of conditions upon, a Special Use Permit.
5. To review, approve, or deny a zoning map, text amendments, rezonings, or Conditional Districts.
6. To review, hear, and decide upon developer agreements.
7. **UDO Decisions:** The Board of Commissioners shall render final decisions regarding the following development approvals:
 - a. Major Site or Subdivision Plans

- b. Designation of historic landmarks/districts
- c. Vested Right

9.5 BOARDS: POLICIES AND MEETINGS

A. Conflict of Interest for Boards

1. Members of the Planning Board and Board of Adjustment shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter 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.
2. A member of any Board when exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
3. A member of the Board of Commissioners shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter 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 member of the Board of Commissioners 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.
4. If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

B. Board Procedures

Rules of procedures, consistent with the provisions of this Chapter, may be adopted by any of the Board identified in the Chapter, with the approval of the Board of Commissioners. At a minimum these procedures shall include a process for the election of Officers, an attendance policy, and meeting procedures. A copy of any adopted rules of procedure shall be maintained by the Town clerk and posted on the Town web site.

C. All Meetings Shall be Open

All meetings of the Board of Commissioners or appointed Boards under this ordinance shall be open to the public in accordance with G.S. 143-318 (Meetings of Public Bodies) and shall be conducted in accordance with the procedures set forth in these regulations.

D. Minutes

Accurate minutes of every Board meeting and any collected audio/visual recordings shall be maintained by each Board identified in this chapter, showing the vote of each member on each question, or if absent, abstained, or failing to vote, indicating such fact. Each Board identified in this chapter shall keep records of its examinations and official actions. All of these minutes and records shall be filed in the office of the Clerk of the Town of Elkin for the public record. At the discretion of the Administrator, audio/video records of each meeting will be made available through the Town of Elkin's web site or social media account.

E. Meetings

1. All Boards authorized under this ordinance shall meet at regularly scheduled times and at such other times as determined by the Chairman as provided for in the rules of procedure.
2. Special meetings may be called at any time by the Chairperson, Assistant Chairperson, or by request of a majority of members of the board.

9.6 DEVELOPMENT APPROVAL PROCEDURES

In order to establish an orderly process to develop land within the jurisdiction of the Town of Elkin, consistent with standard development practices and terminology this section provides a clear and comprehensible development process that is fair and equitable to all interests including the applicants, affected neighbors, the Administrator, staff, related agencies, and the Board of Commissioners.

A. General Provisions

1. No Construction to Commence Without Permit

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

2. Application Required

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

3. Exemptions / Expedited Reviews for Certain Subdivisions

The following divisions of land are either exempt or subject to different submittal and review processes. The final recorded plats shall meet the drafting requirements contained in Section 9.6.C.6 and bear the appropriate certificates contained in Appendix A.

a. The following shall be exempt and not subject to the subdivision or development regulations prescribed within this ordinance:

- (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 contained in the Town of Elkin's UDO.
- (2) The division of land into parcels greater than ten (10) acres if no street right-of-way dedication is involved, and if the resultant lots are equal to or exceed the standards within the Town of Elkin's UDO.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets.
- (4) The division of a tract in single ownership whose entire area is no greater than (2) acres into not more than three (3) lots, if no street right-of-way dedication is involved, and if the resultant lots are equal to or exceed the standards within the Town of Elkin's UDO.
- (5) Division of land ordered by a court of law, to include division of property in a divorce decree, in condemnation proceedings, or in the settlement of a decedent's estate.

b. **Expedited Reviews.** Only a plat for recordation (Final Plat) is required for the division of a tract or parcel of land in single ownership if all the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under Section 9.6.A.3.a.(2).
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five (5) acres.

- (4) After division, no more than three (3) lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
 - (i) All lot dimension size requirements of the applicable land-use regulations, if any.
 - (ii) The use of the lots is in conformity with the applicable zoning requirements, if any.
 - (iii) A permanent means of ingress and egress is recorded for each lot.

c. Administrative Approval. The following plats shall be approved by the Administrator without following the review procedures specified for major or minor subdivision plats:

- (1) The division of an existing tract or parcel of land into not more than two (2) lots within a two (2) year period, if said tract or parcel fronts on an existing municipal or state-maintained street and if no new right-of-way dedication is involved and the resultant lots are equal to or exceed the standards specified in this UDO of the Town of Elkin.
- (2) The division of a tract or parcel of land in a cemetery into grave sites.

4. Completeness Review

a. Completeness Determination

Applicants shall submit applications to the Administrator in accordance with the applicable published schedule of submittal dates. Until an application is determined to be complete in accordance with the requirements of this Chapter, an application has not been submitted.

On receiving a development application, the Administrator shall, within five (5) business days, determine whether the application is complete or incomplete. A complete application is one that:

- (1) Contains all information and materials required by this Unified Development Ordinance for submittal of the applicable type of application, and in sufficient detail, format, and readability for the Town of Elkin staff to evaluate the application for compliance with applicable review standards; and
- (2) Is accompanied by the fee established for the applicable type of application.

b. Application Incomplete

- (1) On determining that the application is incomplete, the Administrator shall, as appropriate, provide the applicant written notice of the submittal

deficiencies. The applicant may correct the deficiencies and resubmit the application for a completeness review.

- (2) If the applicant fails to resubmit an application within fifteen (15) calendar days after being first notified of submittal deficiencies, the application submittal shall be considered abandoned. If an applicant submits a request in writing to the Administrator within fifteen (15) calendar days of the application abandonment date, fifty percent (50%) of the application fee paid for the withdrawn application shall be refunded.

c. Application Complete

On determining that the application is complete, the Administrator shall:

- (1) Accept the application as submitted in accordance with the procedures and standards of this Ordinance in effect at the time of the submittal; and
- (2) Provide the applicant written notice of application submittal acceptance.

B. Review Process

The following Review Process Outline indicates the steps for submittals, reviews, and development approvals in accordance with the requirements of the Town of Elkin Unified Development Ordinance. It should be noted that some of these processes may run concurrently, such as a Special Use Permit and Site Plan Approval or Major Subdivision and Rezoning.

1. Pre-Submittal / Sketch Plan

- STEP 1: Application
Fees
Sketch Plan
- STEP 2: Administrative Review
- STEP 3: Applicant Meeting

2. Permitting Processes (Zoning, Sign, Temporary Uses, Home Occupation, Accessory Uses, Fences)

- STEP 1: Application
Fees
Sketch Plan or Site Plan
Architectural Drawings / sign Details / Building Construction Drawings, if applicable
- STEP 2: Completeness Review
- STEP 3: Administrative Review and Decision
Building permits subject to County Inspections Department Review
- STEP 4: Permit Approved or Denied
If denied, applicant may consider variance or appeal. May need Conditional District or Rezoning, as well.

- 3. Minor Site Plan.** The Minor Site Plan process shall apply to all land development applications where the proposed building area is less than 50,000 square feet and no public infrastructure is proposed.

- STEP 1: Application
 - Fees
 - Existing Conditions
 - Project Description
 - Site Plan (Master Plan, if developed in phases)
 - Landscape Plan
- STEP 2: Completeness Review
- STEP 3: Administrative Review and Decision
- STEP 4: TRC Review
- STEP 5: Site Construction Plan/ Preliminary Plat
- Environmental Permits
- STEP 6: Building Permit

- 4. Major Site Plan.** The Major Site Plan process shall apply to all land development applications where the proposed building area is 50,000 square feet of floor area or greater or where a minor site plan proposes public infrastructure.

- STEP 1: Application
 - Fees
 - Existing Conditions
 - Project Description
 - Site Plan (Master plan if developed in phases)
 - Landscape Plan
- STEP 2: Completeness Review
- STEP 3: Administrative Review
- STEP 4: TRC Review
- STEP 5: Planning Board Review
- STEP 6: Board of Commissioners Review and Decision
- STEP 7: Site Construction Plan / Preliminary Plat
- Environmental Permits
- STEP 8: Building Permit
- STEP 9: Construction
- STEP 10: Final Plat (required if any public infrastructure).

- 5. Minor Subdivision.** Subdivision involving no new public or private streets or roads, or right-of way dedication, no easements, no utility extension and where six (6) or fewer lots result after the subdivision is completed.

- STEP 1: Application
 - Fees
 - Sketch Plan
- STEP 2: Completeness Review
- STEP 3: Administrative Review and Decision
- STEP 4: Final Plat / Signatures
- STEP 5: Recorded at County Register of Deeds

- 6. Major Subdivision.** All subdivisions not considered a minor subdivision, an exempted subdivision, an expedited review, or an administratively approved subdivision.

- STEP 1: Application
 - Fees
 - Existing Conditions
 - Project Description
 - Site Constructions Plans / Preliminary Plat
 - Drainage Calculations
 - Landscape Plans
- STEP 2: Completeness Review
- STEP 3: Administrative Review
- STEP 4: TRC Review
- STEP 5: Planning Board Review
- STEP 6: Board of Commissioners Review and Decision
- STEP 7: Environmental Permits
- STEP 8: Construction of Required Improvements
- STEP 9: Performance Guarantees
- STEP 10: Final Plat / Signatures
- STEP 11: Recorded at County Register of Deeds

- 7. Special Use Permit.** A special use which shall only permitted when meeting a prescribed set of standards in a quasi-judicial process to ensure the project meets the requirements of this ordinance as well as the protection of the health, safety, investment, and welfare of the community.

- STEP 1: Application
 - Fees
 - Existing Conditions
 - Project Description
 - Site Plan (Master Plan when developed in Phases)
 - Landscape Plan
- STEP 2: Completeness Review
- STEP 3: Administrative Review / Public Notice
- STEP 4: TRC Review
- STEP 5: Planning Board Review
- STEP 6: Evidentiary Hearing and Board of Commissioners Decision

- 8. Variance.** This process shall be followed when site conditions do not allow for the proposed land development to be constructed as outlined in this ordinance. A variance would allow for a deviation for the provisions of the UDO as long as it meets prescribed criteria.

- STEP 1: Application
 - Fees
 - Sketch Plan or Site Plan
 - Project Description
- STEP 2: Completeness Review
- STEP 3: Administrative Review / Public Notice

STEP 4: Evidentiary Hearing and Board of Adjustment Decision

- 9. Amendments (Zoning Map or Text).** Amendments to the zoning map or text of this ordinance allows for a change in use, zoning district, or development regulation.

- STEP 1: Application
Fees
Proposed Map of Area (if Map Amendment)
Proposed Text Changes (if Text Change)
Project Description
- STEP 2: Completeness Review
- STEP 3: Administrative Review / Public Notice
- STEP 4: Planning Board Review and Statement
- STEP 5: Legislative Hearing and Board of Commissioners Decision

- 10. Conditional Zoning.** Conditional Zoning is more fully described in Section 9.8.C. A Conditional District shall be adopted by the Board of Commissioners, which allows a specific development with reasonable conditions. While the applicant for a conditional planning area must accept any conditions placed on the approval, all such conditions do become binding with the land, and development of the site can only proceed in accordance with those conditions.

- STEP 1: Application
Fees
Existing Conditions
Project Description
Site Plan (Master Plan if developed in Phases)
Landscape Plan
- STEP 2: Completeness Review
- STEP 3: Administrative Review / Public Notice
- STEP 4: TRC Review
- STEP 5: Planning Board Review
- STEP 6: Legislative Hearing and Board of Commissioners Decision
Developers Agreement may be considered as a portion of the approval.

C. Plan Requirements

Required plan sheets submitted as a part of an application shall have the required information in order for the Administrator and Boards to make an adequate and informed decision on the proposed land development.

- 1. General.** Unless otherwise noted, plans required by this Chapter, or any portion thereof, with the exception of sketch plans, shall be prepared:
- a.** By an engineer, architect, landscape architect or land surveyor who is authorized by the State of North Carolina to practice as such;
 - b.** To a scale of one (1) inch equal to fifty (50) feet or larger;

- c. In one or more sheets to show clearly the information required by this section and to facilitate the review and approval of the site plan;
 - d. Showing all horizontal dimensions in feet;
 - e. Indicating decimal fractions of a foot shall be rounded to the closest one hundredth of a foot (0.00); all bearings shall be in degrees, minutes and seconds; and,
 - f. Showing the name and address of the owner or developer, the north arrow, the date, the scale of the drawing, and the number of sheets. In addition, it shall reserve a blank space three (3) inches in width by five (5) inches in length for the use of the approving authority.
2. **Sketch Plan.** A sketch plan is drawn to approximate scale on the appropriate sheet or sheets of Surry County's tax map series and shall show: tentative street layout, approximate right-of-way widths, lot arrangements, drainage and utility easements, sites for schools, parks, churches, and other non-residential uses, existing structures, water courses, wooded areas, number of acres devoted to each use, total acreage, approximate number of lots, the name, address, and telephone number of the owner; the name, if any of the proposed subdivision; and existing zoning of the land to be subdivided and the land immediately adjacent to the proposed development. The sketch plans shall not be a binding document nor shall its submission or review be construed as an approval.
3. **Existing Conditions Plan.** The existing conditions plan is a necessary part of the application process as it highlights the conditions of the subject site and allows both the applicant and the Town's decision makers to take every effort to preserve environmental features prior to site design.
- a. **Survey / Existing Development.** The boundary, as determined by survey, of the area to be developed with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets, rights-of-ways, bridges, culverts, railroad lines, water courses, cemeteries, easements, utilities, driveway and curb cuts, sidewalks, parking, loading, brownfields or any known contaminated areas, any building restriction areas (i.e. flood hazard areas, stream buffers, watershed protection districts, and/or jurisdictional wetlands), or any other environmentally-significant areas. Additionally, surveys must show the location of any historic or cultural resources.
 - b. **Scale.** Denote the scale both graphically and numerically with north arrow and declination.
 - c. **Vicinity Map.** Include a vicinity map at a scale no smaller than one (1) inch equals 1,200 feet showing the location of the development with respect to adjacent streets and properties.
 - d. **Significant Vegetation.** Provide a description and location of significant vegetation twelve (12) inches in diameter at breast height (DBH) or greater.

Include the average size and height of stands of homogenous trees. State the typical tree species, size, spacing, and general health and vigor of forest stands. Identify all free standing open grown or field-grown specimen trees located on the site.

- e. **Natural Features.** Show all important natural features influencing site design such as the location of wetlands, upland areas, rock outcropping, site topography at two-foot intervals, slopes steeper than twenty percent (20%), perennial streams, stream buffers, post-construction buffers water quality buffers, natural drainage ways, lakes and other water bodies, floodplains indicating both the flood fringe and the floodway, soil types (including prime agricultural soils), and historical or cultural features, as well as designated open space or conservation easements on adjoining properties. . Identify connections to existing or future contiguous open space and additionally, provide a study of viewsheds related to the site.
4. **Site Plan or Master Plan.** The Site Plan or Master Plan (of developed in phases) shall show the basic but detailed form of the proposed layout of streets, lots, buildings other than detached house, public and private open spaces and other features in relation to existing conditions. It shall also include the following information:
- a. **Survey.** The boundary, as determined by survey, of the area to be developed with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets, railroad lines, water courses, easements, or other significant features of the tract.
 - b. **Scale.** Denote the scale both graphically and numerically with north arrow and declination.
 - c. **Vicinity Map.** Include a vicinity map at a scale no smaller than one (1) inch equals 1,200 feet showing the location of the development with respect to adjacent streets and properties.
 - d. **Site Design.** Depict the location of proposed buildings, parking and loading areas, streets, alleys, greenway connections, easements, lots, parks or other open spaces, reservations (i.e. transit shelter), property lines and building setback lines with street dimensions, proposed lot dimensions, and the location of any building restriction area as described in the Environmental Inventory. Publicly accessible open space must show access points, trail locations, and any improvements proposed.
 - e. **Site Calculations.** Site calculations shall include total acreage of the tract, acreage in parks, public and private open space and other non-residential uses, total number and acreage of parcels, and total number of housing units, including the amount that will be affordable. All necessary pervious / impervious calculations required for compliance with the watershed overlay must be included.

- f. **Site Details.** Provide street names, the owner's name and address, current on-site uses, the names and uses of adjoining property owners, the name of the county and state which the development is located, the date of plan preparation, and the zoning classification of the tract to be developed and adjoining properties.
- g. **Street Cross-Sections.** Provide typical cross-sections of proposed streets. Where a proposed street is an extension of an existing street, a cross-section of the existing street will be required. Where a proposed street abuts a tract of land that adjoins the development and may be expected to extend into the adjoining tract of land, the profile shall be extended to include three hundred (300) feet of the adjoining tract.
- h. **Timetable.** A timetable for estimated project completion for each phase proposed.
- i. **Topography.** Original contours at intervals not greater than five feet for the entire area to be subdivided. Contours are to extend into adjacent property for a distance of three hundred (300) feet at all points where street rights-of-way connect to the adjoining property, and fifty (50) feet at all other points of common project boundaries. County digital topography may be used to satisfy this requirement.
- j. **Illustrative Renderings.** Provide illustrative renderings of all proposed buildings, including views from the public rights-of-way, illustrating the character of the neighborhood.
- k. **Restrictions.** Describe any intended conservation easements, deed restrictions prohibiting further subdivision or development, or instruments reducing development rights.
- l. **Landscape Plan.** See requirements in Subsection 5 below.
- m. **Lighting Plan.** Details required to determine compliance with the requirements of Section 3.7.

In addition to the required information listed on the previous page, the following information may be required by the Planning Director on discretionary, site-specific bases if necessary:

- n. **Environmental Impact Statement.** If required by Chapter 130A (Pollution Control and the Environment) of North Carolina General Statutes.
 - o. **Watershed Protection Permit Application.** Permit application and supporting calculations and plans in accordance with Section 5.1, Watershed Overlay Districts.
5. **Landscape Plan.** The Landscape Plan shall include, at a minimum, the following information at a scale no smaller than one (1) inch equals one hundred (100) feet:

- a. **Existing Landscape.** General location, type, and quantity of existing plant materials, including those areas to be left in a natural state.
- b. **Proposed Landscape.** Locations, sizes, and labels for all proposed plants, including those in rights of-way.
- c. **Proposed Hardscape Improvements.** Location of other hardscape improvements such as walls, paving, courtyards, and walks.
- d. **Landscape Protection.** Methods and details for preserving the critical root zone (CRZ) of existing plant materials during construction.
- e. **Plant Lists.** Plant lists with common name, botanical name, quantity, spacing, and size of all proposed landscape material at the time of planting.
- f. **Proposed Landscape Improvements.** Location, size, and labels for all proposed plants outside of rights-of way. Include the location and description of other landscape improvements, such as earth berms, walls, fences, screens, sculptures, fountains, street lights and parking area lights, courtyards, walks, or paved areas.
- g. **Installation Data.** Planting and installation details as necessary to ensure conformance with all required standards.

6. Preliminary Plat / Site Construction Plans

The Site Construction Documents constitute the complete submittal requirements for preliminary plats. The Site Construction Documents shall be submitted at a scale no smaller than one (1) inch equals fifty (50) feet for preliminary plats. The following certifications are required on preliminary plats:

- Certificate of Survey and Accuracy
- County approval
- Town of Elkin approval

Preliminary plats must be drawn to the following specifications and must contain or be accompanied by the applicable information listed below. No review of a Site Construction Documents will proceed without all of the following information:

- a. **Survey.** The boundary, as determined by survey, of the area to be developed with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets, railroad lines, water courses, easements, or other significant features of the tract.
- b. **Scale.** Denote the scale both graphically and numerically with north arrow and declination.
- c. **Vicinity Map.** Include a vicinity map at a scale no smaller than one (1) inch equals 1,200 feet showing the location of the development with respect to adjacent streets and properties.

- d. **Site Calculations.** Site calculations shall include total acreage of the tract, acreage in parks, public and private open space and other non-residential uses, total number and acreage of parcels, and total number of housing units, including the amount that will be affordable. All necessary pervious/impervious calculations required for compliance with the watershed overlay must be included.
- e. **Site Details.** Provide street names, the owner's name and address, the name of the surveyor, the names and uses of adjoining property owners, the name of the county and state in which the development is located, the date of plan preparation, and the zoning classification of the tract to be developed and adjoining properties.
- f. **Site Design.** Depict the location of proposed buildings, parking and loading areas, streets, alleys, greenway connections, easements, lots, parks or other open spaces, reservations (i.e. transit shelter), property lines and building setback lines with street dimensions, proposed lot dimensions, and the location of any building restriction area as described in the Environmental Inventory. Publicly accessible open space must show access points, trail locations, and any improvements proposed.
- g. **Topography.** Existing topography and finish grading with contours drawn at two-foot intervals. At the Administrator's discretion, the use of County topographic data in five-foot (5') intervals on a site-specific basis may be permitted. This requirement may be waived for developments smaller than one acre where the Administrator determines that there is insufficient topographic change to warrant such information.
- h. **Water and Sewer.** A statement from the Public Works Utilities Director regarding the availability of adequate water and sewer capacity for the proposed development.
- i. **Utility Design.** The plans for utility layouts, including sanitary sewer system, storm sewer system, water lines and hydrants, illustrating connections to existing systems. All water supply systems and sewer collection systems noted on construction documents shall conform to current County Land Development Standards. All storm drain systems shall conform to the County Land Development Standards.
- j. **Utility Location.** The location and size of all utility lines, easements, and rights-of-way including water, sewer, storm sewer, natural gas, and electric.
- k. **Easements.** Easements shall be shown as follows:
 - (1) **Utility Easements.** Easements for underground or above-ground utilities shall be provided for and centered along rear or side lot lines and shall be a minimum of ten (10) feet in width. Easements for water lines, sanitary sewers, and storm drains shall be centered on the pipe and a minimum determined by the County or the utility.

- (2) **Drainage Easements.** Where a development is traversed by a stream or drainage way, an easement shall be provided conforming with the lines of such stream and of sufficient width as shall be adequate to maintain the overall integrity of the drainage area and provide for its periodic maintenance.
- (3) **Landscape Easements.** Landscape easements may be used to ensure the protection of preserved trees, buffer, and other landscape requirements in accordance with the provisions of Sections 6.8.
- (4) **Public Access Easements.** Public access easements shall be provided for sidewalks, trails, greenways, and other pedestrian and bicycle facilities that provide connections other than within public rights-of-way.
- (5) **Existing Conservation Easements.** Deed restrictions prohibiting further subdivision or development, or instruments reducing development rights.
1. **Landscape Plan.** See Subsection 5., above.
- m. **Parking.** The location and dimensions of off-street parking and loading spaces, and walkways indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided.
- n. **Signage.** The location, size, height, and orientation of proposed signs.
- o. **Open Space.** The location of proposed recreation areas, active and passive open space, and required amenities and improvements, including the calculated area of all required open space dedication in accordance with Section 6.15.
- p. **Streetscape Improvements.** The location and dimensions of any sidewalks, curb and gutters to be installed along public street frontages, and other required street improvements detailed in Section 3.5, on the Elkin Land Use Plan, or on any other relevant transportation plan prepared by the Town of Elkin, County, or Regional or State Organization. Required right-of-way shall be shown on any official plan at the width specified in this ordinance.
- q. **Street Cross-Sections.** Typical cross-sections of proposed streets showing rights-of-way, pavements widths, grade, and design engineering data for all corners and curves. Where a proposed street is an extension of an existing street, a cross-section of the existing street will be required. Where a proposed street abuts a tract of land that adjoins the development and may be expected to extend into the adjoining tract of land, the profile shall be extended to include three hundred (300) feet of the adjoining tract.
- r. **Landfills.** The location of any existing or proposed demolition landfills on the site. Such locations shall not be used for building.

- s. **Erosion Control.** A letter stating approval of a Sedimentation and Erosion Control Plan from NCDENR, if applicable prior to site plan or preliminary plat approval.
- t. **Building Elevations.** Final proposed elevations of all non-single family residential buildings proposed for construction as part of this site plan approval. Subsequent buildings within the development may be handled as separate site plans. Elevations shall include all façades visible from public streets.

In addition to the required information listed above, the following information may be required by the Administrator, on discretionary, site-specific bases if necessary:

- u. **Watershed Protection Permit Application.** Permit application and supporting calculations and plans in accordance with Section 5.1, Watershed Overlay Districts.
- v. **Floodplain Permit Application.** Development permit and certification application with supporting documentation as required by the floodplain overlay.

7. Final Plat

The Final Plat shall be prepared by a registered land surveyor, licensed to practice in the State of North Carolina and must be drawn to a scale no smaller than one (1) inch equals one hundred (100) feet, and shall meet the requirements of the County Register of Deeds office. The Final Plat shall constitute all portions of the preliminary plat site, which the applicant proposes to record at the time.

No Final Plat shall be approved unless and until the applicant has installed in the platted area all improvements required by this ordinance or has posted improvement guarantees in accordance with this Chapter.

The Final Plat shall contain the following:

- a. **Purpose.** In the Notes section, list the purpose of the plat as the first note. For example, the purpose should state: “The purpose of this plat is to...”
- b. **Survey.** The boundary, as determined by survey, of the area to be developed with all bearings and distances shown and the location within the area, or contiguous to it, of any existing streets, railroad lines, water courses, easements, buffers, or other significant features of the tract. The Town of Elkin, unless located in the ETJ, and then the County name shall be listed, the name of the owner, the name, registration number, and seal of the registered surveyor under whose supervision the plat was prepared, and the date of the plat.
- c. **Scale.** Denote the scale both graphically and numerically with north arrow and declination.

- d. **Vicinity Map.** Include a vicinity map at a scale no smaller than one (1) inch equals 1,200 feet showing the location of the development with respect to adjacent streets and properties.
- e. **As-Built Drawings.** As-built drawings and plans of all water, sewer, and storm drainage system facilities, illustrating their layouts and connections to existing systems. Such plans shall show easements and rights-of-way, to demonstrate that facilities are properly placed, and the location of all fire hydrants, blowoff valves, manholes, pumps, force mains, and gate valves. This information shall not be placed on the Final Plat, but must be submitted at the time of the request for Final Plat approval or release of any surety for required improvements, whichever comes later.
- f. **Site Design Data.** The accurate locations and descriptions of all monuments, markers, and control points. Sufficient data to readily determine and reproduce accurately on the ground the location, bearing, and length of every street, alley line, lot line, building line, easement line, and setback line. All dimensions shall be measured to the nearest one-hundredth of a foot and all angles to the nearest second.
- g. **Site Details.** The lines and names of all streets, alley lines, lot lines, lot and block numbers, lot addresses, lots designated for affordable units, building setback lines, easements, designated tree save areas, reservations, on-site demolition landfills, and areas dedicated to public purpose with notes stating their purposes.
- h. **Floodplain.** All lots subject to flooding shall be noted with the following statement: "Any construction or use within the areas delineated as floodway is subject to the restrictions imposed by Section 5.3.
- i. **Restrictions.** Any intended conservation easements, deed restrictions prohibiting further subdivision or development, or instruments reducing development rights.
- j. **Certifications.** All of the appropriate certifications must appear on the final plat

D. Development Approval Type Chart

Development Approval	UDO Section	Process Type	Reviewer	Public Notice	Approving Body	Appeal	Valid	Extension
Temporary Use Permit	9.6.B.2	Admin	Admin	N	Admin	BOA	See Supplemental Standards	
Zoning Permit	9.6.B.2	Admin	Admin & TRC	N	Admin	BOA	1 year	1 year
Minor Site Plan (less than 50,000 sq ft)	9.6.B.3 9.6.C.4	Admin	Admin & TRC	N	Admin	BOA	2 years	1 year
Major Site Plan (50,000 sq ft or greater)	9.6.B.4 9.6.C.4	Admin	Admin, TRC, & PB	N	BOC	Superior Court	2 years	1 year
Minor Subdivision	9.6.B.5 9.6.C.7	Admin	Admin	N	Admin	BOA	1 year	Resubmit
Major Subdivision	9.6.B.6 9.6.C.6	Admin	Admin, TRC, & PB	N	BOC	Superior Court	1 year	1 year
Construction Plans	9.6.C.6	Admin	Admin & TRC	N	Admin	BOA	2 years	1 year
Final Plat	9.6.C.7	Admin	Admin	N	Admin	BOA	30 days to file	Resubmit
Special Use Permit	9.6.B.7 9.7.C	Quasi-Judicial	Admin & PB	Y	BOC	Superior Court	2 years	1 year
Appeal of Administrative Decision	9.7.A	Quasi-Judicial	BOA	Y	BOA	Superior Court	30 days to appeal	N/A
Variance	9.6.B.8 9.7.B	Quasi-Judicial	Admin	Y	BOA	Superior Court	30 days to appeal	N/A
Text Amendment	9.6.B.9 9.8.B	Legislative	PB	Y	BOC	Superior Court	N/A	N/A
Map Amendment	9.6.B.9 9.8.B	Legislative	PB	Y	BOC	Superior Court	N/A	N/A
Conditional Zoning	9.6.B.10 9.8.C.	Legislative	Admin, TRC, & PB	Y	BOC	Superior Court	May rescind after 2 years	N/A
Developer Agreement	9.8.D	Legislative	PB	Y	BOC	Superior Court	Varies	Varies
Building Permit	Applications and Process handled by the County						6 months	1 year
Certificate of Occupancy							--	N/A

Admin = Administrator or Administrative
 PB= Planning Board
 TRC = Technical Review Committee

BOC= Board of Commissioners
 BOA = Board of Adjustment

All Legislative and Quasi-Judicial Processes require public hearings in accordance with the procedures contained within this Chapter.

E. Performance Guarantees

- 1. Type.** The type of the performance guarantee shall be at the election of the developer.
 - a.** Surety bond issued by any company authorized to do business in NC
 - b.** Letter of credit issued by any financial institution licensed to do business in NC
 - c.** Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- 2. Duration.** The duration of the performance guarantee shall initially be one (1) year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.
- 3. Extension.** A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements. If the improvements are not completed to the specifications contained within the UDO or other development regulation, and the current performance guarantee is likely to expire prior to completion, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements.
- 4. Release.** The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Town Administrator that the improvements for which the performance guarantee is being required are complete. This shall be as 25%, 50%, 75% and 100% of the project is completed; a corresponding percentage can be released, unless the Town Board of Commissioners and the developer agree to an alternative schedule at the time of approval.
- 5. Amount.** The amount of the performance guarantee shall not exceed one hundred ten percent (110%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Town Administrator may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional ten percent (10%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred ten percent (110%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.
- 6. Timing.** Performance guarantee are to be posted at the time the plat is recorded.

7. **Coverage.** The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
8. **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:
 - a. The Town of Elkin to whom the performance guarantee is provided.
 - b. The developer at whose request or for whose benefit the performance guarantee is given.
 - c. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.
9. **Multiple Guarantees.** The developer shall have the option to post one type of a performance guarantee in lieu of multiple securities, for all development matters related to the same project requiring performance guarantees.
10. **Review and Approval.** Performance guarantees and any renewal of performance guarantees shall be reviewed by the Planning Board and approved by the Town Board of Commissioners. All approved performance guarantees shall be noted on the Final Plat.
11. **Exclusion.** Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

F. Administrative and Major Modifications to Development Approvals

The Administrator is authorized to review and approve administratively a minor modification to an approved permit or development approval. Major modifications, those which are not considered minor by this section, shall require resubmission and approval in the same process as the original approval. Minor modifications are subject to the limitations below:

1. **General Limitations.** The minor modification must meet the following requirements:
 - a. Does not involve a change in uses permitted or the density of overall development permitted.
 - b. Does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval.
 - c. Meets all other ordinance requirements.
2. **Site Design.** Site design minor modifications are limited adjustments to the terms or design of an approved development plan or plat, including a site plan attached

as a condition to a Conditional District. In addition to the general limitations for minor modifications, a site design minor modification must:

- a. Comply with underlying zoning standards and other applicable conditions of the approval.
 - b. Be limited to a minor modification such as, without limitation, a minor adjustment to road configuration or internal circulation, a minor adjustment to building location, or a minor adjustment to utility alignment.
3. **Dimensional Standards.** Dimensional standard minor changes are adjustments to the dimensional standards of this chapter. Dimensional standards may only be modified upon a finding by the Administrator, based on evidence from the permit holder, that the change is needed to address a site characteristic or technical design consideration not known at the time of initial approval. In addition to the general limitations for minor changes, dimensional standard minor changes are limited to:
 - a. Changes to the location of entrances or driveways, the rearrangement of internal streets, turn lanes, drives, or access restrictions.
 - b. Changes to the configuration of parking areas, but not the number of parking spaces.
 - c. Changes to the configuration or location of open space or placement of required amenities, provided the amount of open space is unchanged.
 - d. Changes to the configuration of landscape yards, including types of materials, provided minimum width and planting requirements are met.
 - e. Changes to proposed building elevations or facades, including materials, provided that the change retains the same general architectural character and provided the development still complies with the applicable design requirements.
 - f. Changes to the arrangement or location of buildings provided there is no increase in the number of buildings, size, or amount of impervious surface.
4. **Appeals and Variances.** A decision on minor modification may be appealed to the Board of Adjustment as an administrative determination. An application for a minor modification does not preclude an applicant from seeking a variance from the Board of Adjustment.

9.7 QUASI-JUDICIAL PROCEDURES

A. Appeals of Administrative Decisions

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

1. **Application Procedure.** An appeal of an administrative decision may be taken by any person who has standing under G.S. 160D-1402(c) or by an entity of the Town of Elkin, to the Board of Adjustment. Such an appeal shall be made within 30 days of the receipt of the written notice of decision from the Administrator, or of the filing of the written notice with the Town Clerk. If notice is sent via first-class mail, it is deemed received on the third business day following deposit of the notice, for mailing with the United States Postal Service.
2. **Stay of Proceedings.** The filing of an appeal shall stay enforcement of the action appealed from and accrual of any fines assessed during the length of time of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the length of time of any civil proceeding authorized by law or appeals therefrom unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order or preliminary injunction granted by the Superior Court of Surry or Wilkes County in accordance with Rule 65 of the North Carolina Rules of Civil Procedure.
3. **Required Appeal Application Information.** Upon submission of an appeal application to the Town of Elkin, the application shall be deemed complete. Such relevant information as may reasonably allow the Board of Adjustment to understand the basis for the applicant's appeal shall be included. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.
4. **Review Process**
 - a. Upon receiving the application and being deemed complete, the Administrator or designated staff for the Board of Adjustment shall conduct a public, evidentiary hearing on the appeal. The applicant, the local government, 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. Refer to Section 9.7.E for hearing procedures.
 - b. After conducting the public hearing, the Board of Adjustment shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. It shall take a simple

majority vote of the Board of Adjustment to reverse or modify the contested action.

- c. The Board of Adjustment, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
- d. The decision of the Board of Adjustment must be in writing and permanently filed in the minutes as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board of Adjustment, which must be delivered to parties of interest by certified mail.

B. Variances

The variance process administered by the Board of Adjustment is intended to provide limited relief from the requirements of this ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this ordinance. However, in no event shall the Board of Adjustment grant a variance which would conflict with any state code, would allow the establishment of a use which is not otherwise allowed in a particular zoning district or which would change the zoning district classification or the district boundary of the property in question.

1. **Application Procedure.** An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the Board of Adjustment. The Administrator shall prepare a staff report regarding the submitted variance application.
2. **Review Process:**
 - a. Upon receipt of the request for a variance from the Administrator, the Board of Adjustment shall hold a public, evidentiary hearing on the request.
 - b. After conducting the hearing and within forty-five (45) days, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; approve the application; or approve the application with additional conditions. A concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to grant a variance.
 - c. In granting any variance, the Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the purposes and objectives of this ordinance. The Board of Adjustment may also attach conditions in order to reduce or minimize any injurious effect of such variance upon other property in the neighborhood and to ensure compliance with other terms of this ordinance. Such conditions and safeguards must be reasonably

related to the condition or circumstance that gives rise to the need for a variance.

- d. Any approval or denial of the request shall be accompanied by written findings of fact supporting the conclusion that the variance meets or does not meet each of the standards set forth in Section 9.7.B.3.

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

- a. Carrying out the strict letter of the ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. 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.
- c. The hardship did not result from actions taken by the applicant of the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.

C. Special Use Permits

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

- 1. Application Procedure.** An application for a Special Use Permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Each application for a Special Use Permit shall contain legal descriptions, a site plan (Section 9.6.C.3) and other information necessary to show that the use or structure complies with the standards set forth in this ordinance shall also be provided. The Administrator shall review the application to ensure that it is complete and if complete, prepare a report and recommendation on the application, and schedule the matter for review before the Planning Board and for an evidentiary hearing before the Board of Commissioners.

2. Review Process

- a. Planning Board Review.** The Planning Board shall review the application, conduct only an informal, preliminary discussion, and make a recommendation to the Board of Commissioners within forty-five (45) days of its first consideration on the matter. If no recommendation is received from the Planning Board within forty-five (45) days, the Board of Commissioners shall proceed without a recommendation from the Planning Board. ***The recommendation must not be used as a basis for the decision of the Board of Commissioners. The decision of the Commissioners must be based solely on the evidence presented at the evidentiary hearing.***
- b. Board Hearing and Decision.** The Board of Commissioners shall hold an evidentiary hearing. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. Upon reviewing all of the pertinent information, the Board of Commissioners may approve, deny or approve with conditions the Special Use Permit by a majority vote.
- c. Conditions.** The Board of Commissioners may place conditions on the use as part of the approval to assure that mitigation measures are associated with the use. The conditions shall become part of the Special Use Permit approval and shall be included in the final site plan application. However, the Board must not impose conditions on special use permits that the Town Board of Commissioners does not otherwise have the statutory authority to impose. Further, there must be written consent by the applicant to the related conditions.
- d. Findings of Fact.** In addition to determining that the application meets all other requirements of this ordinance, the Board of Commissioners must find the following in order to grant approval of a Special Use Permit:

 1. The proposed special use conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site.
 2. The proposed use will not cause undue traffic congestion or create a traffic hazard.
 3. Adequate utilities (water, sewer, drainage, electric, etc.) are available for the proposed use.
 4. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
 5. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property.
 6. The establishment, maintenance or operation of the proposed use shall not be detrimental to or endanger the public health, safety or general welfare.

7. The proposed use will not substantially injure the value of adjoining or abutting property.
 8. The proposed use is consistent with the officially adopted plans and policies of the Town of Elkin.
- e. **Permit Validity.** Special Uses that have been granted approval must begin development within one (1) year following approval or the approval becomes invalid.
- f. **Permit Extension.** The Board of Commissioners may grant one (1) extension of this time period of up to one (1) year, upon submittal by the applicant of sufficient justification for the extension, prior to the actual expiration of the permit. Sufficient justification may include, but is not limited to, delays in other outside agency permits, financing institution delays, or other similar reasons beyond the control of the applicant.

D. Evidentiary Hearing Notice

1. **Mailed Notice.** Notice of evidentiary hearings required to be held in accordance with this Chapter shall be mailed to the applicant, the owner of the property (if not the applicant) and to the owners of all parcels of land abutting the subject property. The applicant or the Town Administrator may use county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing.
2. **Posted Notice.** The Town Administrator shall also prominently post a notice of the hearing on the subject site that is the subject of the hearing or on an adjacent street or highway right-of-way no more than twenty-five (25) days but no less than ten (10) days prior to the hearing.
3. **Continuation of Hearing with Notice.** The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

E. Evidentiary Hearing Procedures

1. **Materials.** The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials shall become a part of the hearing record.
2. **Presentation of Evidence.** The applicant, the local government, 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. This includes presenting evidence, cross-examination of witnesses, objecting to evidence, and

making legal arguments. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Further, the Board may subpoena witnesses and compel the production of evidence.

- 3. Objections.** Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party or the inclusion or exclusion of administrative materials, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.
- 4. Administrator as Witness.** The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness.
- 5. 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.
- 6. Voting.** A simple majority is needed for all quasi-judicial decisions with the exception of variances which require a concurring vote of four-fifths (4/5) of the Board. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the majority if there are no qualified alternates available to take the place of such members.
- 7. Decisions.** Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be in writing, reflect the board's determination of contested facts and their application to the applicable standards. Each decision approved by the board shall be signed by the chair.
- 8. Effective Date.** A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy of the decision.
- 9. 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.

F. Appeals from Quasi-Judicial Decisions

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

9.8 LEGISLATIVE PROCEDURES

A. Comprehensive Plan Approval and Updates

As a condition of adopting and applying zoning regulations, the Town Board of Commissioners, with recommendation from the Planning Board, shall adopt and maintain a comprehensive plan or land use plan, in accordance with the requirements of Section 1.10 of this Ordinance and G.S. 160D-501.

B. Zoning Map and Text Amendments

The Board of Commissioners may from time to time amend any part of the text of this ordinance or amend the Zoning Map of the Town of Elkin. Any development regulation adopted subject to this Ordinance shall be adopted by Ordinance as a legislative procedure.

1. Application Procedure

- a.** An application meeting the requirements of Section 9.8.B.1.b, shall be submitted to the Town Administrator for completeness review. Upon being deemed complete, the Administrator shall review, prepare a staff report, and schedule the matter before the Planning Board prior to scheduling a public hearing.
- b. Initiation.** The Board of Commissioners, any Town of Elkin agency, or any resident or landowner within the land use jurisdiction of the Town of Elkin may initiate a rezoning, except that no amendment to a zoning regulation or a zoning map that down-zones property shall be initiated nor enforceable without the written consent of all property owners subject to the amendment, unless initiated by an entity of the Town of Elkin. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:
 - (1)** By decreasing the development density of the land to be less dense than was allowed under its previous usage.
 - (2)** By reducing the permitted uses of the land that are specified in a zoning

ordinance or land development regulation to fewer uses than were allowed under its previous usage."

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

3. Planning Board Review

- a. All proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within thirty (30) days of referral of the amendment to that board, the Board of Commissioner may act on the amendment without the planning board report. The Board of Commissioners is not bound by the recommendations, if any, of the planning board.
- b. **Review of Other Ordinances.** Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the planning board for review and comment.
- c. **Plan Consistency.** When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency.
 - (1) A comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners
 - (2) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b) by proposing a zoning change to over fifty (50) properties owned by at least fifty (50) different property owners, the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made
- d. The review and comment required of the Planning Board by this section shall not be assigned to the Board of Commissioners and must always be performed by a separate board, even if the Board of Commissioners is acting on behalf of the Planning Board.

4. Board of Commissioners Statement

a. Plan Consistency. When adopting or rejecting any zoning text or map amendment, the Board of Commissioners must approve a brief statement describing whether its action is consistent or inconsistent with the comprehensive plan. The requirement may also be met by a clear indication in the minutes of the Board of Commissioners that the Board of Commissioners was aware of and considered the planning board's recommendations and any relevant portions of the comprehensive plan.

- (1) If a zoning map amendment is adopted and the action was deemed inconsistent with the plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required.
- (2) A comprehensive plan amendment and a zoning amendment may be considered concurrently.
- (3) The comprehensive plan consistency statement is not subject to judicial review.
- (4) If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Commissioners' statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

b. Additional Reasonableness Statement for Rezonings. 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 governing board. This statement of reasonableness may consider, among other factors:

- (1) The size, physical conditions, and other attributes of the area proposed to be rezoned;
- (2) The benefits and detriments to the landowners, the neighbors, and the surrounding community;
- (3) 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;
- (4) Why the action taken is in the public interest; and
- (5) 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.

- c. **Single Statement Permissible.** The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

C. Conditional Districts.

A conditional district is a zoning district designated to a property in which a site plan is created and individualized development conditions are imposed for that specific lot. Conditional districts are permitted by and in accordance with the requirements of G.S.160D-703. Chapter 2 of this Ordinance contains regulations regarding its applicability.

1. Conditional zoning is a legislative process.
2. Property may be placed in a conditional district only in response to a petition or application by all the owners of the property to be included.
3. Specific conditions may be proposed by an entity of the Town, the Town Board of Commissioners or the applicant, but only those conditions approved by the Town Board of Commissioners and consented to by the petitioner in writing, may be incorporated into the zoning regulations.
4. The Board of Commissioners may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, unless consented to by the petitioner in writing.

5. Modifications

- a. Minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively in accordance with Section 9.6.F.
- b. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments.
- c. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

D. Developer Agreements

1. **Authorization.** As authorized by N.C.G.S. 160D-1001, the Town Board of Commissioners may enter into development agreements with developers subject to the procedures of Article 10 of N.C.G.S. 160D, and the established procedures and requirements included below.

2. General

- a. The Town of Elkin Board of Commissioners or other Town of Elkin department or staff, may not exercise any authority, make any commitment, or impose any tax or fee not authorized by law.
 - b. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's development regulations.
 - c. Development shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including permitted uses, density, intensity, design, and improvements.
3. **Hearing.** A development agreement must be approved by the Board of Commissioner following a legislative hearing on the proposed agreement. Notice of the hearing shall be made in accordance with Section 9.8.E. of this Chapter. The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.
4. **Agreement Incorporated into Ordinance.** Further, the development agreement may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the Town Board of Commissioners.
 - a. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement.
 - b. A development agreement may be concurrently considered with and incorporated by reference with a plan or preliminary plat required under a subdivision or zoning regulation.
 - c. If incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.
5. **Contents.** A development agreement shall, at a minimum, include subsections a.-g. below. Items contained in subsections h.- j. below are at the discretion of the Board of Commissioners for the specific development:
 - 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. However, the parties may enter into subsequent development agreements that may extend the original duration period. Any action requiring an extension shall be requested prior to the actual expiration date to ensure there is no lapse in coverage.

- c. The development uses permitted on the property, including 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 Town of Elkin 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, where appropriate, 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, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
- g. A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
- h. A development schedule, including start dates and interim completion dates at no greater than five (5) year intervals. Modifications to dates may be requested by the developer.
- i. If another government entity is made party to the agreement, the agreement must specify which government body is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.
- j. Performance guarantees in accordance with G.S. 160D-804.1 and Section 9.6.E of this ordinance.

E. Notice and Hearing Procedures

1. Hearing Notice for Zoning Map Amendments, Developer Agreements

a. Mailed Notice

The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. If the hearing is for a development agreement the notice must specify the location of the property, the development uses

proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

b. Published Notice for Large-Scale Zoning Map Amendments

If the zoning map amendment proposes to change the zoning designation of more than fifty (50) properties, owned by at least fifty (50) different property owners, the Town of Elkin may opt instead of mailing notice as in Subsection a., above, to provide an expanded published notice. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The advertisement shall not be less than one-half (1/2) of a page in size. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Property owners who reside outside of the newspaper circulation area, shall be notified according to the provisions of subsection a. of this section.

c. Posted Notice

The Town Administrator shall post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are a portion of the amendment or agreement, a posting on each individual parcel is not required but sufficient notices shall be posted to provide notice to interested persons.

2. Hearing Notice for Text Amendments

A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

3. Voting

The Board of Commissioners shall permit adoption of a legislative decision for development regulations on the first reading by simple majority.

F. Declaratory Judgements

Challenges of legislative decisions of the Board of Commissioners, including the validity or constitutionality of development regulations adopted pursuant to this Chapter, may be brought pursuant to Article 26 of Chapter 1 of the General Statutes. The Board of Commissioners shall be named a party to the action.

9.9 VESTED RIGHT

A. The zoning vested right is a right which is established pursuant to G.S. 160D-108 to undertake and complete the development and use of property under the terms and conditions of an approved site-specific vesting plan. Obtaining development approval through the vested rights precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations. As such, amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

1. Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.
2. Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.
3. A site-specific vesting plan pursuant to G.S. 160D-108.1 and subsection H, below.
4. A multi-phased development pursuant to subsection D.
5. A vested right established by the terms of a development agreement

B. Duration of Vested Rights

1. Upon issuance of a development permit, the vesting granted for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid. Unless otherwise specified, building permits expire after six (6) months and development permits expire one (1) year after issuance unless work authorized by the permit has substantially commenced.
2. Except where a longer vesting period is provided by statute or land development regulation, the vesting granted expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than twenty-four (24) consecutive months. The vesting period for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than twenty-four (24) consecutive months.

C. Multiple Permits

Where multiple local development permits are required to complete a development project, the applicant may choose the version of each of the local land development regulations applicable to the project, upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within eighteen (18) months of the date following the approval of an initial permit.

D. Multi-Phased Developments

A multi-phased development is a development containing over twenty-five (25) acres that is both submitted for a development approval to occur in more than one (1) phase and subject to a master development plan with committed elements showing the type and intensity of each phase.

1. A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development.
2. A right which has been vested as provided for herein remains vested for a period of seven (7) years from the time a site plan approval is granted for the initial phase of the multi-phased development.

E. Continuing Review

Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original approval.

F. Process to Claim Vested Right

A person claiming a vested right may submit information to the zoning administrator, who shall make an initial determination as to the existence of the vested right. The decision of the administrator may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

G. Runs with the Land

Vested rights run with the land except for the use of land for outdoor advertising governed by G.S. 136-136.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of the permit issued by the North Carolina Department of Transportation.

H. Site-Specific Vesting Plans

1. A site-specific vesting plan consists of a plan submitted to the Town in which the applicant may vesting, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The development approvals listed below are determined by the Town of Elkin Board of Commissioners to qualify as site-specific vesting plans.
 - a. Preliminary Plat
 - b. Minor Subdivision
 - c. Major Subdivision

- d. Special Use Permit
- e. Planned Unit Development
- f. Conditional Zoning

2. Establishment of Vested Right

A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

3. Approval Process for a Site-Specific Vesting Plan

- a. Each site-specific vesting plan shall include the information required by the Board of Commissioners and outlined in Section 9.6.C for the underlying type of development plan.
- b. Each site-specific vesting plan shall provide the notice and hearing required for the underlying type of development plan. If the vesting plan is not based on such an approval, a legislative hearing as required by NCGS 160D-602 shall be held.
- c. A local government may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare.
- d. A site-specific vesting plan is deemed approved upon the effective date of the Board of Commissioner's decision approving the plan
- e. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town in the same manner as required for the underlying type of development plan. Minor modifications may be approved administratively in accordance with Section 9.6.F.

4. Duration and Termination of a Vested Right

- a. A vested right for a site-specific vesting plan remains valid for two (2) years. Upon following the same process as required for the original approval, the Board of Commissioners or the Administrator may extend the vesting of a site-specific vesting plan up to three years (with total length of vesting not to exceed five years) upon finding that:
 - (1) The permit has not yet expired;
 - (2) Conditions have not changed so substantially as to warrant a new application; and

(3) The extension is warranted in light of all other relevant circumstances—including, but not limited to the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations.

b. Upon issuance of a building permit, the expiration provisions of G.S. § 160D-1111 and 160D-1115 apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

c. A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

I. Limits of Site-Specific Vesting Plans

1. Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance. The development remains subject to subsequent review and approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable regulations.

2. The establishment of a vested right pursuant to this ordinance shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town of Elkin, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

3. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right shall become effective upon the expiration or termination of the vested rights period provided for in this ordinance.

4. Any vested rights for a site-specific vesting plan are subject to the exceptions specified at G.S. §160D-108.1.

9.10 PERMIT CHOICE

An applicant for a development permit may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application if a land development regulation is amended between the time the application was submitted and deemed complete and the permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal. 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. The provisions contained in G.S. 143-755 apply.

- A.** When a development required multiple permits under the development regulations of this Code, the applicant may choose the regulations applicable to the project at the time of their initial permit application. The applicant must submit the subsequent applications within eighteen (18) months of approval of the initial permit in order to claim permit choice.
- B.** If a permit application is on hold for six (6) or more consecutive months at the request of the applicant, then permit choice is waived and the rules in effect at the time of resuming consideration of the application apply.