

CHAPTER 2
ADMINISTRATION
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CHAPTER 2

ADMINISTRATION

2.01 GENERAL

(A) Title

The official title of this document is the Zoning Ordinance for the City of Asheboro, North Carolina and is referred to throughout this document as "this Ordinance."

(B) Affected Territory

This ordinance shall apply to all territory within the corporate limits of the City of Asheboro and to such extraterritorial area as is shown on the map entitled "2012 Revised Extra-Territorial Planning Jurisdiction Area, City of Asheboro", said map bearing the date of September 12, 2012.

(C) Effective Date

The provisions of this Ordinance shall be effective upon adoption.

(D) Purpose and Intent

This Ordinance is adopted to preserve, protect and promote the public health, safety and general welfare of residents and businesses in the City. More specifically, this Ordinance is adopted to achieve the following objectives:

- (1)** Implement the policies and goals contained within officially adopted plans, including the Comprehensive Plan
- (2)** Improve the built environment and human habitat
- (3)** Conserve and protect the City's natural beauty and setting, including trees, scenic vistas and cultural and historic resources
- (4)** Ensure that new development conserves energy, land and natural resources
- (5)** Protect water quality within designated water supply watersheds
- (6)** Encourage environmentally responsible development practices
- (7)** Promote development patterns that support safe, effective and multi-modal transportation options, including auto, pedestrian, bicycle and transit
- (8)** Provide neighborhoods with a variety of housing types to serve the needs of a diverse population
- (9)** Reinforce the character and quality of neighborhoods

- (10) Protect and promote appropriately located commercial and industrial activities in order to preserve and strengthen the City's economic base
- (11) Ensure that adequate facilities are constructed to serve new development
- (12) Provide for orderly growth and development of suitable neighborhoods with adequate transportation networks, drainage and utilities and appropriate building sites
- (13) Save unnecessary expenditures of funds by requiring the proper initial construction of transportation networks, sidewalks, drainage facilities and utilities
- (14) Establish a zoning vested right upon the approval of a site specific vesting plan

(E) Minimum Requirements, Interpretation and Conflict

In interpreting and applying the provisions of this ordinance they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this ordinance imposes a higher standard or greater restriction than is imposed or required by other ordinances, rules, regulations, statutes or by easements, covenants or agreements, the provisions of this ordinance shall govern. When the provisions of any other ordinances, rules, regulations or statutes impose higher standards than are required by the provisions of this Ordinance, the provisions of that ordinance, rule, regulation or statute shall govern.

(F) Severability

It is the legislative intent of the City Council in adopting this Ordinance that all provisions thereof shall be liberally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of the City of Asheboro. It is the further intent of the City Council that this Ordinance shall stand, notwithstanding the invalidity of any part thereof, and that should any provision of this Ordinance be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions.

2.02 REVIEW ENTITIES

(A) City Council

(1) General Authority

The City Council may exercise those powers proscribed by North Carolina general and local law, including the City Charter, and as described in the Code of Asheboro

(2) Specific Approval Authority

The City Council is responsible for final action regarding:

- (a) Zoning Map Amendment
- (b) Zoning Text Amendment

- (c) Special Use Permit
- (d) Any other process as designated by this Ordinance

(B) Planning Board

(1) General Authority

The City of Asheboro Code of Ordinances, Title III, Chapter 34 creates a Planning Board to exercise powers granted by the City Code of Ordinances, other City Ordinances, and G.S. Chapter 160D-301.

(2) Specific Review Authority

The Planning Board is responsible for:

- (a) Reviewing and making recommendations regarding Zoning Text and Map Amendments
- (b) Any other process as designated by this Ordinance

(3) Rules of Procedure

- (a) The Planning Board shall establish its own rules of procedure
- (b) The rules, minutes and actions of the Planning Board shall be maintained in the Planning & Zoning Department office in accordance with City of Asheboro Records Retention Schedule.

(C) Board of Adjustment & Watershed Review Board

(1) General Authority

The Board of Adjustment is established to exercise any and all powers prescribed by North Carolina general and local law, including the City Code of Ordinances, and to perform duties as lawfully directed by the City Council.

(2) Specific Approval Authority

The Board of Adjustment is responsible for final action regarding:

- (a) Appeals of administrative orders, requirements, decisions or determinations of the Zoning Administrator, or his authorized designees
- (b) Variance
- (c) Interpretations
- (d) Reasonable Accommodation
- (e) Any other process as designated by this Ordinance

(3) Composition & Rules of Procedure

- (a) The Asheboro Planning Board shall serve as the Board of Adjustment and/or the Watershed Review Board for this Ordinance.
- (b) The Rules of Procedure for the Asheboro Planning Board shall also apply to the Board of Adjustment and Watershed Review Board.

- (c) The rules, minutes and actions of the Board of Adjustment and Watershed Review Board shall be maintained in the Planning & Zoning Department office in accordance with City of Asheboro Records Retention Schedule.

(4) Coordination with Flood Damage Prevention Ordinance

When the Board of Adjustment is requested to consider and decide upon any issue within their power which falls within an area of a Flood Damage Prevention Zone, the foregoing regulations and those regulations in the Flood Damage Prevention Ordinance shall apply except in the case where Flood Damage Prevention Ordinance requirements conflict with the requirements of this section. In such situation, Flood Damage Prevention Ordinance requirements shall govern.

(D) Zoning Administrator

(1) Establishment

The Zoning Administrator, who shall be designated by the City Manager, shall administer the provisions of this Ordinance.

(2) Powers and Duties

The Zoning Administrator shall have the power to grant Zoning Compliance Permits, Certificates of Zoning Compliance, and to make or cause to be made inspections of buildings or premises necessary to carry out the enforcement of this Ordinance. In connection with the enforcement of this Ordinance, the Zoning Administrator shall make all necessary determinations and interpretations as required by this Ordinance.

(3) Limitations

If any proposed excavation, construction, moving, alteration, or use of land as set forth in an application for a Zoning Compliance Permit is in conformity with the provisions of this Ordinance, the Zoning Administrator shall issue a Zoning Compliance Permit; however;

- (a) Issuance of a Zoning Compliance Permit shall in no case be construed as waiving any provisions of this Ordinance.
- (b) Under no circumstance is the Zoning Administrator permitted to grant exceptions to the actual meaning of any clause, standards, or regulation contained in this Ordinance to any person making application to excavate, construct, move, alter, or use either building, structures or land.
- (c) Under no circumstance is the Zoning Administrator permitted to make changes to this Ordinance or to vary the terms of this Ordinance in carrying out his duties.
- (d) The Zoning Administrator shall issue a permit when the imposed conditions of this Ordinance are complied with by the applicant regardless of whether the use of the

permit would violate contractual or other arrangements (including, but not by way of limitation, restrictive covenants) among private parties.

- (e) If an application for such permit is disapproved, the Zoning Administrator shall state in writing the cause of such disapproval.

2.03 REVIEW PROCEDURES

(A) General Review Procedures

(1) Applicability

The following requirements are common to the procedures contained in this Chapter, and apply to applications submitted under this Chapter. Additional requirements may be included for each specific procedure.

(2) Application Requirements

(a) Initial Application Submittal

Applications are required for all review procedures. Applications shall be submitted to the Planning and Zoning Department.

(b) Forms

Applications must be submitted, fully completed with all required accompanying documents, on forms and in such numbers as required by Planning & Zoning Department. Application forms may be found on the City of Asheboro website or in the Planning and Zoning Department office.

(c) Fee Schedule

- (i) Fees for filing applications shall be set by resolution of the City Council and kept in the Planning and Zoning Department Office.
- (ii) Before review of an application, including applications for re-hearings, all filing fees must be paid in full. No refund of the fee or any part of the fee shall be made unless the application is withdrawn prior to advertisement of a hearing.
- (iii) A fee shall not be required if the application is made by the City or any agency created and appointed by the City Council to perform governmental functions.

(d) Application Deadline

Complete applications shall be submitted in accordance with the Planning & Zoning Department's filing calendar. A calendar indicating submittal dates shall be developed and maintained by the Planning and Zoning Department each year.

(e) Application Withdrawal

An applicant may withdraw their application at any time by written notice to the Zoning Administrator

(3) Public Hearing Notice Requirements & Scheduling

- (a) When published notice is required, the Planning and Zoning Department shall schedule public notice in accordance with G.S. 160D-601
- (b) When mailed notice is required, the Planning & Zoning Department shall, by first class mail, give notice of the public hearing in accordance with G.S. 160D-406 and/or G.S. 160D-602.
- (c) When posted notice is required, the Planning & Zoning Department shall prominently post notice in accordance with G.S. 160D-406 and/or G.S. 160-D-602.
- (d) A combined total of more than five (5) legislative and quasi-judicial hearings shall not be heard at any meeting of the City Council.

(B) Quasi-Judicial

(1) General Procedures

All Quasi-Judicial hearings shall be held in accordance with G.S. 160D-406.

(2) Special Use Permits

(a) Intent

It is the intention of the City Council to (1) establish the procedure for reviewing and regulating the extent, location and design of all public use facilities, and (2) create, and from time to time amend, a list of Special Uses, which, because of their inherent nature, extent and external effects, require special care in the control of their location and methods of operation. The City Council is aware of its responsibility to protect the public health, safety and general welfare and believes that certain uses which, now or in the future, may be included on this list are appropriately handled as Special Uses, subject to review in relation to general and specific requirements, rather than as uses permitted by right. Subject to the specific procedures established for reviewing public use facilities, the City Council intends that the general standards and the more specific requirements established shall be used by the City Council to direct deliberations upon applications for the approval of Special Uses. It is the express intent of the City Council to delineate the areas of concern connected with each Special Use and to provide standards by which applications for such Special Use shall be evaluated.

(b) General Standards

Except as provided in Section 2.03(B)(2)(c) of this Ordinance, the City Council shall find that the following general standards shall be met by all applicants for approval of Special Uses:

- (i) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
- (ii) That the use meets all required conditions and specifications.
- (iii) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and,
- (iv) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

The City Council shall make these general findings based upon substantial evidence contained in its proceedings. It shall be the responsibility of the applicant to present evidence in the form of testimony, exhibits, documents, models, plans and the like to support the application for approval of a Special Use.

(c) **Public Use Facilities**

Public Use Facilities shall be reviewed by utilizing one of the following options:

- (i) City Council grants the authority to staff to issue all necessary permits for public use facilities that meet all regulatory requirements of the Asheboro Zoning Ordinance.
- (ii) In cases where there is a deficiency in the ability of a Public Use Facility to meet all regulatory requirements of the Zoning Ordinance, City Council shall review the application for a Public Use Facility and evaluate whether or not a Special Use Permit shall be issued for the proposed public use facility solely on the basis of the general standards prescribed by Section 2.03(B)(2)(b) of this Ordinance. For the limited purpose of evaluating public use facilities under General Standard 2.03(B)(2)(b)(ii), a public use facility shall be deemed to have satisfied this standard if a site plan has been submitted in accordance with this Ordinance.
- (iii) Notwithstanding the preceding provisions of Section 2.03(B)(2)(c) of this Ordinance, a Special Use Permit shall not be required for Public Facilities which are developed as part of a New Residential Subdivision. However, the following standards shall be met:
 - (aa) The uses shall be restricted to waste treatment plants, water treatment, pumping stations, lift stations, telephone exchanges, electrical and distribution substation locations and similar uses required to serve the needs of the immediate residential, office and commercial districts.

Specifically excluded are energy generation plants, freight and marshaling yards, terminals and similar uses.

- (bb) Buffers and screens shall be installed and maintained per Chapter 6.
- (cc) Signs will be regulated as per Chapter 7.
- (dd) Off street parking shall be provided as per Chapter 6.
- (ee) All structures permitted under this section shall be planned and constructed to be harmonious with the area in which they are located. In addition to plans required, elevations shall be submitted indicating final appearance in compliance with this subsection.
- (ff) The parking areas and walkways shall be illuminated for public safety at night. However, such lighting shall be designed so as not to disturb adjacent properties.

Any lot created for a Public Facility that is to be in Public ownership shall not be required to meet lot area and width regulations as established in Table 4-1.

(d) Specific Procedure for Special Use Permit

- (i) The deadline for filing of applications for a Special Use Permit will be the day which is 55 days prior to the date of the City Council meeting for which the public hearing is to be set.
- (ii) Revisions may be made to required site plans and all revisions made to the site plan shall be received no later than 15 days prior to the public hearing. If site plan revisions are submitted after 15 days prior to the advertised public hearing date, they will not be considered.
- (iii) When the City Council shall have denied an application the City Council shall not receive another application for the same Special Use, affecting the same property or a portion of it until the expiration of a one-year period, extending from the date of denial.

(e) Imposed Conditions

In granting a Special Use Permit, the City Council may impose such additional reasonable and appropriate special requirements upon such permit, as it may deem necessary in order that the purpose and intent of this ordinance is served, public welfare secured and substantial justice done. If the applicant accepts all requirements and conditions, the City Council shall authorize the issuance of the Special Use Permit,

otherwise the permit shall be denied. Such conditions of a valid Special Use Permit shall run with the land and shall be binding on the original applicant(s) as well as all successors, assigns and heirs.

(f) Discontinuance of Permitted Activity or Failure to Act on a Special Use Permit

If any Special Use is discontinued for a period of 12 months; or the permit is not initiated within 12 months; *or* replaced by a use otherwise permitted in the zoning district, it shall be deemed abandoned and the Special Use Permit shall be null and void and of no effect. The owner shall demonstrate that the Special Use has not been discontinued for a period exceeding 12 months; the project has been started; or has not been replaced by a use otherwise permitted to maintain a valid Special Use Permit.

(g) Minor Changes to be Approved by Zoning Administrator/ Modifications Require Action by City Council.

The Zoning Administrator is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the approving body, but shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the City Council and shall be handled as a new application.

The following actions shall constitute a modification, unless expressly authorized by the permit:

- (i) The erection of a new structure or the addition to an existing structure that:
 - (aa) exceeds 1000 square feet, either cumulatively or non-cumulatively;
 - (bb) exceeds 10% of the useable floor area, either cumulatively or non-cumulatively, approved by the City Council as part of its review of the applicable Special Use permit; or
 - (cc) results in any portion of a structure being located closer than thirty (30) feet to an adjoining property developed with a single-family or two-family dwelling.
- (ii) An increase in number of dwelling or lodging units.
- (iii) An increase in outside land area devoted to sales, displays, or demonstrations.
- (iv) Any change in parking areas resulting in an increase or reduction of 10% or more in the number of spaces approved by the City Council. In no case shall the number of spaces be reduced below the minimum required by the ordinance.

- (v) Structural alterations significantly affecting the basic form, style, ornamentation and the like of the building as shown on the approved plan.
- (vi) Substantial change in the amount and/or location of open space, recreation facilities or landscape buffers/screens.
- (vii) A change in use
- (viii) Substantial changes in pedestrian or vehicular access or circulation

Notwithstanding any other provision within this Section, the Zoning Administrator is expressly prohibited from approving any changes that would be in conflict with the requirements of the Zoning Ordinance or significantly contrary to the Findings of Facts, Conclusions of Law, or Order as outlined the applicable Special Use Permit.

The Zoning Administrator shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for the approval of the Special Use. The Zoning Administrator shall, if he determines that the proposed action is a modification, require the applicant to file a request for approval of the modification, which shall be submitted to the City Council. The Council may approve or disapprove the application for approval of a modification.

(h) Failure to comply with Plans and Conditions of the Permit

In the event of failure to comply with the plans approved by the City Council or with any conditions imposed upon the Special Use Permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction or certificate of occupancy under this Special Use Permit shall be issued, and all completed structures shall be regarded as non-conforming uses subject to the provisions of Chapter 8 of this Ordinance; provided however, that the City Council shall not be prevented from thereafter rezoning said property for it's most appropriate use.

(3) Zoning Variance

(a) Intent and General Standards

When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

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

- (ii) 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.
- (iii) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (iv) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

All of these findings of fact shall be made in the indicated order by the Board of Adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all four categories above. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the Board.

The Board may impose appropriate conditions upon the granting of any variance provided that the conditions are reasonably related to the variance. Violation of such conditions shall be a violation of this Ordinance.

(b) Specific Procedure for Zoning Variance

- (i) Applications for variances shall be filed at least 30 days prior to the Board of Adjustment meeting at which the request will be considered.
- (ii) The Board shall refuse to hear an application previously denied if it finds there have been no substantial changes in conditions or circumstances bearing on the application.

(4) Reasonable Accommodation

- (a) The City of Asheboro Board of Adjustment (the “Board”) is authorized to grant reasonable accommodations under the Federal Fair Housing Act, Americans with Disabilities Act, and The Rehabilitation Act in the circumstances set forth in this division of the City of Asheboro Zoning Ordinance (the “Ordinance”).
- (b) An application for a reasonable accommodation may be filed only by the owner of the land affected by the requested reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such an application; or any unit of government that is not the owner of the land but proposes to acquire the property by purchase, gift, or condemnation.

- (c) An application for a reasonable accommodation shall be filed with the Zoning Administrator, or his or her designee, and the application shall contain the following information:
 - (i) The applicant's contact information (name, mailing address, telephone number, fax number, and email address);
 - (ii) The contact information for the owner(s) of the land affected by the requested reasonable accommodation, if different from the applicant's contact information;
 - (iii) The address of the property at which the reasonable accommodation is requested (this property will be hereinafter referred to as the "Zoning Lot");
 - (iv) A description of the reasonable accommodation requested;
 - (v) A statement explaining how and why the request meets the standards for a reasonable accommodation (see subsection (g) below); and
 - (vi) The signature of the applicant and the property owner(s), if different from the applicant.
- (d) No filing fee shall be required for the application for a reasonable accommodation.
- (e) The Board shall hold a quasi-judicial hearing on the proposed reasonable accommodation and shall decide the request upon a majority vote of the Board's members.
- (f) Notwithstanding any other provision in this Ordinance, the quasi-judicial hearing shall be noticed in accordance with Section 160D-406(b) of the North Carolina General Statutes.
- (g) The Board shall grant a reasonable accommodation to any provision of the Ordinance if the Board finds that the applicant has carried its burden of proof, by the greater weight of the evidence, that the proposed reasonable accommodation is both reasonable and necessary, in accordance with the following criteria:
 - (i) "Reasonable" An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the city and/or constitute a substantial or fundamental alteration of the provisions in the City of Asheboro Zoning Ordinance; and

- (ii) “Necessary” An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap and would afford disabled or handicapped persons equal opportunity to enjoy and use housing in residential districts in the city.
- (h) After the Board approves a reasonable accommodation, the applicant shall follow all applicable Ordinance procedures and regulations for the issuance of any permits, certificates, or other approvals required in order to proceed with development or use of the Zoning Lot. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation granted by the Board.

(5) Appeal of Administrative Decision

- (a) Appeals shall be filed with the Clerk to the Board of Adjustment at least 30 days prior to the Board of Adjustment meeting at which the appeal will be considered
- (b) An appeal from an order, requirement, decision or determination of the Zoning Administrator, or his authorized designee, or an appeal of a decision or determination of the Community Development Director regarding the Asheboro Subdivision Ordinance, shall be decided by the Board of Adjustment based upon its findings of fact and, to achieve the intent of the Ordinance, and in accordance with the provisions of G.S. 160D-405. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted or permissible uses in the districts.
- (c) An appeal to the Board of Adjustment from a decision or determination of the Zoning Administrator, or his authorized designee, or an appeal of a decision or determination of the Community Development Director regarding the Asheboro Subdivision Ordinance, stays all enforcement proceedings in furtherance of the decision or determination appealed from, except as provided by G.S. 160D-405.

(6) Interpretation

- (a) Applications for interpretation shall be filed at least 30 days prior to the Board of Adjustment meeting at which the request will be considered.
- (b) An interpretation of a requirement of this Ordinance shall be decided by the Board, based upon its findings of fact and to achieve the intent of this Ordinance. In exercising this power, the Board shall act in a prudent manner so that the purposes of this Ordinance shall be served. The effect of the decision shall not be to vary the terms of this Ordinance nor add to the list of permitted or permissible uses in the districts.

(C) Legislative

(1) General Procedures

- (a) All legislative hearings shall be held in accordance with G.S. 160D Article 6
- (b) The deadline for filing of applications for legislative hearings will be the day which is 55 days prior to the date of the City Council meeting for which the public hearing is to be set, provided that the deadline is no less than 17 days prior to the Planning Board's required legislative hearing; in these instances, the deadline will be 62 days prior to the date of the City Council meeting for which the public hearing is to be set.
- (c) The Zoning Administrator shall coordinate with the City Manager's office the placement of the application on the City Council's consent agenda for approval to schedule and advertise a public hearing on the requested amendment.
- (d) Consistent with Section 160D-602(e) of the North Carolina General Statutes, the applicant shall notify neighboring property owners of the requested legislative amendment as well as the location, time, and date on which the Planning Board will hold a legislative hearing on the request. This notice must be in the form of a mailed notice provided in compliance with the guidance found in Section 160D-602(a) of the North Carolina General Statutes. During the legislative hearing, the applicant shall report to the Planning Board on the delivery of the required notice and any communication with neighboring property owners and residents concerning the requested legislative amendment.
- (e) When the City Council shall have denied an application, the City Council shall not receive another application for the same legislative hearing affecting the same property or a portion of it until the expiration of a one-year period, extending from the date of denial. In addition, not more than two (2) applications may be filed for rezoning all or part of the same property within any twelve (12) month period.

(2) Zoning Text Amendment

For the purpose of establishing and maintaining sound, stable and desirable development within Asheboro and its extraterritorial planning jurisdiction, this Ordinance shall not be amended except to correct a manifest error in the Ordinance, or because of changed or changing conditions in a particular area or in the jurisdiction of the City of Asheboro generally, or to change the regulations and restrictions thereof, and then, only as reasonably necessary to the promotion of the public health, safety, or general welfare, and to achieve the purposes of the adopted Land Development Plan.

(3) Zoning Map Amendment

(a) Intent

For the purpose of establishing and maintaining sound, stable and desirable development within Asheboro and its extraterritorial planning jurisdiction, this Ordinance shall not be amended except to correct a manifest error on the official

zoning map, or because of changed or changing conditions in a particular area or in the jurisdiction of the City of Asheboro generally, to rezone an area, or extend the boundary of an existing zoning district, and then, only as reasonably necessary to the promotion of the public health, safety, or general welfare, and to achieve the purposes of the adopted Land Development Plan.

(b) **Prohibition of Certain Testimony**

It is the intent of this section that the applicant for rezoning to any district other than a Conditional Zoning District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property.

(c) **Conditional Zoning Procedures and Requirements**

Refer to Section 4.05 of this Ordinance for Conditional Zoning procedures and requirements.

(D) Administrative

(1) General Procedures

All administrative development approvals and determinations shall be made in accordance with G.S. 160D-403

(2) Zoning Compliance Permit

(a) A Zoning Compliance Permit shall be required for:

- (i) Excavation, grading, construction, reconstruction, moving, alteration, or repair, except ordinary repairs, of any structure costing more than \$500.00 or exceeding one hundred forty four (144) square feet in area,
- (ii) Establishing, changing, or enlarging a use of land, or to change the type of use or type of occupancy of any structure, or to extend any use or any zoning lot on which there is a nonconforming use

(b) A Zoning Compliance Permit shall not be required for development on zoning lots within the Airport (A) District. The Asheboro Airport Authority maintains site plan review authority on zoning lots zoned Airport (A) District.

(c) Prior to the issuance of a Zoning Compliance Permit, the Zoning Administrator shall consult with all applicable departments including, but not limited to, the Department of Public Works, the Building Inspection Department and the Fire Department.

(d) A Zoning Compliance Permit shall be valid for a period of twelve (12) months from date of issuance.

- (e) A Zoning Compliance Permit does not constitute a vested right.
- (f) In all cases where a Building Permit is required, application for a Zoning Compliance Permit shall be made coincidentally with the application for a Building Permit; in all other cases, it shall be made prior to that date when a new or enlarged use of a building or premise or part thereof is intended to begin.

(3) Certificate of Zoning Compliance

No structure or zoning lot for which a Zoning Compliance Permit has been issued shall be used or occupied until the Zoning Administrator has, after final inspection, issued a Certificate of Zoning Compliance indicating compliance has been made with all the provisions of this Ordinance. Guarantees in the form of Certified Checks, bonds, cash, or Letter of Credit may be accepted to insure the actual installation of certain landscaping, buffers and screens, paving requirements, and recreational facilities and offices for multifamily developments. Such guarantee shall be in an amount not less than 100% of the estimated costs of such requirements as estimated by professional contractors competent in their respective fields in the form of proposals or bids for the installation being guaranteed. Such guarantee shall not be for more than a period of 6 months from the date of issuance of Certificate of Zoning Compliance. However, the issuance of a Certificate of Zoning Compliance shall in no case be construed as waiving the provisions of this Ordinance.

2.04 VESTED RIGHT

(A) Site Specific Vesting Plan

The purpose of this section is to implement the provisions of G.S.160D-108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific vesting plan.

(B) Definitions

As used in this section, the following terms shall have the meaning indicated:

- (1) Approval Authority — The City Council by this ordinance is being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific vesting plan.
- (2) Site specific vesting plan — A plan of land development submitted to the City of Asheboro for purposes of obtaining one of the following zoning or land use permits or approvals:
 - (a) Zoning Compliance Permit
 - (b) Conditional Zoning
 - (c) Special Use Permit
 - (d) Subdivision Preliminary Plat Approval

- (3) Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific vesting plan.
- (4) Zoning vested right — A right pursuant to G. S. 160D-108.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific vesting plan.

(C) Establishment of a Zoning Vested Right

- (1) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the City Council of a site specific vesting plan, following notice and public hearing.
- (2) The City Council may approve a site specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- (3) Notwithstanding subsections (1) and (2), approval of a site specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- (4) A site specific vesting plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- (5) The establishment of a zoning vested right 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 regulations by the City of Asheboro, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific vesting plan upon the expiration or termination of the vested right in accordance with this section.
- (6) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(D) Approval Procedures and Approval Authority

- (1) An application for a site specific vesting plan in conjunction with a request for a Zoning Compliance Permit, Special Use Permit, or Subdivision Preliminary Plat Approval shall be processed in accordance with the procedures established by this ordinance for a Special Use Permit application. An application for a site specific vesting plan in conjunction with a request for Conditional Zoning shall be processed in accordance with the procedures

established by the Ordinance for a Conditional Zoning application. The City Council in reviewing and approving a site specific vesting plan application shall be governed by the requirements for the accompanying permit or approval for which application is made.

- (2) Notwithstanding the provisions of subsection (1) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the City Council, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the City Council following notice and a public hearing as provided in G. S.160D-602.
- (3) In order for a zoning vested right to be established upon approval of a site specific vesting plan, the applicant must indicate at the time of application, on a form to be provided by the City of Asheboro, that a zoning vested right is being sought.
- (4) Each map, plat, site plan or other document evidencing a site specific vesting plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G. S. 160D-108.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (5) Following approval or conditional approval of a site specific vesting plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (6) Nothing in this chapter 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.

(E) Duration

- (1) A zoning right that has been vested as provided in this chapter shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2) and (3) below.
- (2) Notwithstanding the provisions of subsection (1) above, the City Council may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the City Council at the time the site specific vesting plan is approved.

- (3) A multi-phased development shall be vested for the entire development with the zoning and subdivision regulations in place at the time a site plan approval is granted for the initial phase of the multi-phased development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For purposes of this subsection, “multi-phased development” means a development containing 25 acres or more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.
- (4) Upon issuance of a building permit, the expiration provisions of G. S. 160D-1111 and the revocation provisions of G. S. 160D-1115 shall 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.

(F) Termination

A zoning right that has been vested as provided in this chapter shall terminate:

- (1) at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (2) with the written consent of the affected landowner;
- (3) upon findings by the City Council, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific vesting plan;
- (4) upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (5) upon findings by the City Council, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific vesting plan; or
- (6) upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site specific vesting plan, in which case the approval

authority may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(G) Voluntary Annexation

A petition for annexation filed with the City under G. S. 160A-31 or G. S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G. S. 160D-108.1 A statement that declares that no zoning vested right has been established under G. S. 160D-108.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

(H) Limitation

Nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G. S. 160D-108.1.

(I) Repeal

In the event that G. S. 160D-108.1 is repealed, this ordinance shall be deemed repealed and the provisions hereof no longer effective.

(J) Effective Date

This chapter shall be effective November 11, 1991, and shall only apply to site specific vesting plans approved on or after November 11, 1991.

2.05 ENFORCEMENT

(A) Complaints Regarding Violations

Whenever the administrator receives a written, signed complaint alleging a violation of this Ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. Nothing in this section shall be construed to prohibit the Zoning Administrator from initiating an investigation and taking any enforcement action authorized by this Ordinance when the Zoning Administrator, regardless of whether or not a signed complaint has been received, has any reason to believe that any provision of this Ordinance is being violated.

(B) Persons Liable

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

(C) Procedures Upon Discovery of Violations

- (1)** If the administrator, or his authorized designee, finds that any provision of this Ordinance is being violated, a written notice shall be sent to the person responsible for such violation,

indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the administrator's, or his authorized designee's, discretion.

- (2) The final written notice (and the initial written notice may be the final notice) shall state what action the administrator, or his authorized designee, intends to take if the violation is not corrected and shall advise that the decision or order may be appealed to the Board of Adjustment as provided in this Chapter.
- (3) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety or welfare, the administrator, or his authorized designee, may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in this section.
- (4) A notice of violation shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice.

(D) Penalties and Remedies for Violations

- (1) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of up to five hundred (\$500) dollars for each day the violation continued unabated. The amount of the civil penalty will be based on the following criteria:
 - (a) Whether the violator has been notified of similar violations in the past;
 - (b) The potential profit to the violator in continuing the violation;
 - (c) The degree and duration of noncompliance; and
 - (d) The City's cost to investigate and pursue abatement of the violation.

If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation in accordance with Section 2.05(C)(2) and did not take an appeal to the Board of Adjustment within the prescribed time. The Enforcement Officer has the discretion to waive the penalty if the violator worked to correct the violation in good faith.

- (2) This section may also be enforced by any appropriate equitable action.
- (3) Each day that any violation continues after notification by the administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

- (4) Any permit, certificate, or other authorization for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty.
- (5) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

(E) Permit Revocation

- (1) A zoning, building, sign, or special use may be revoked by the permit issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the permit issuing board.
- (2) Before a Special Use Permit may be revoked, all requirements of this Ordinance shall be complied with. The notice of violation shall inform the permit recipient of the alleged grounds for the revocation.
- (3) Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient ten days notice of the intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefore.
- (4) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, or Special Use Permit after such permit has been revoked in accordance with this section.

(F) Judicial Review

Every decision of the City Council granting or denying any rezoning, Special Use Permit, and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Randolph County by proceedings in the nature of certioraris.