

**ARTICLE XI**  
**REVIEW PROCESSES AND PROCEDURES**

**Subpart A. Site Plan Review and Approval**

**§200A-295. General**

*Site Plans* shall contain all applicable information as required herein and shall adhere to the applicable review and approval process as outlined in this subpart. To lessen the time required to obtain all necessary approvals, the *Site Plan* approval processes may run concurrently with a *building* plan review, an application for a land-disturbing permit, or other applications for approvals required for the particular development. When a watershed development plan approval is required, that approval shall be a prerequisite to *Site Plan* approval. *Site Plans* are required where the individual consideration of design, configuration and/or operation of a *use* at a proposed site is/are necessary to ensure site appropriateness, compatibility with surrounding *uses* and the protection of the public health, safety and welfare.

**§200A-296. Communication Facility Site Plan Review.**

- A. Approval Authority. *Communication Facilities Administrator*.
- B. Staff Review. The *Communication Facilities Administrator* shall review the proposal and determine its completeness, finding that the regulations of this Chapter that set forth specific development standards (see SR 9.3 (Communication Facilities) and (§200A-316 (Category One (1) or Two (2) Communication Facility Permits) and §200A-317 (Category Three (3) Communication Facility Permits)) have been met.
- C. Permit Validity. The *Communication Facilities Administrator* or Zoning Board of Adjustment (*ZBA*) (as determined by facility category) shall grant the applicable *Communication Facility Permit*, in accordance with the process outlined in this section, only after review and approval of the *site plan*.

**§200A-297. Manufactured Home Park (MHP) Site Plan Review**

- A. Approval Authority. Technical Review Committee (*TRC*).
- B. Staff Review. All members of the *TRC* shall sign off on the proposal for approval. The *TRC* shall not approve a *site plan* unless it makes written findings that the regulations of this Chapter that set forth specific development standards have been met. The *TRC* shall take action within 30 days of reviewing the *site plan*.
  - (1) Approval. The proposal meets all requirements of this Chapter, and other statutes, ordinances and regulations of the County as submitted and is approved. If the *site plan* is approved by the *TRC* the *applicant* may proceed with other requirements necessary to obtain a building permit.
  - (2) Conditional Approval. The proposal exhibits only minor deficiencies with regard to this Chapter and other statutes, ordinances and regulations of the County and, after corrections have been made, can be approved. If the *site plan* is granted conditional approval by the *TRC* the *applicant* shall revise and resubmit the *site plan* to the *MHP Administrator*. The *MHP Administrator* shall review the revised

*site plan* and, if it meets the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. The *MHP Administrator* has the right to resubmit the revised *site plan* to the *TRC* for complete review if deemed necessary. If the *site plan* is not revised within 60 days to meet the approval conditions, or the *applicant* notified the *MHP Administrator* of unwillingness to revise the *site plan*, it shall be deemed denied.

- (3) Denial. The proposal cannot be approved as it exhibits deficiencies and/or is not in compliance with this Chapter or other statutes, ordinances and regulations of the County which make it completely ineligible for revision and resubmittal. If the *TRC* denies the *site plan*, reasons for the denial shall be stated in writing.
- C. Permit Validity. The *MHP Administrator* shall grant *MHP Construction Permits* and *MHP Completion of Improvement Permits* only after *TRC* review and approval of the *site plan*. Minor changes to the location, siting or character of *manufactured homes* or other *structures* may be authorized by the *MHP Administrator* if required by engineering or other circumstances not foreseen at the time the *site plan* was approved, provided that such changes adhere to the requirements set forth in this Chapter. Where such changes are major (including proposed increases to the number of units or non-*accessory structures*), the *site plan* shall be resubmitted and reviewed by the *TRC*.

#### **§200A-298. Minor Site Plan Review**

- A. Approval Authority. *Zoning Administrator*.
- B. Staff Review. The *Zoning Administrator* shall review the proposal and determine its completeness, finding that the regulations of this Chapter that set forth specific development standards have been met.
- C. Permit Validity. The *Zoning Administrator* shall issue a *zoning permit* for minor *site plans*, in accordance with the process outlined in this Chapter (see §200A-329 (*Zoning Permits*)), only after review and approval of the *site plan*.

#### **§200A-299. Major Site Plan Review**

- A. Approval Authority. Technical Review Committee (*TRC*).
- B. Staff Review. The *Zoning Administrator* shall meet with *applicants* in a pre-application conference prior to, or at the time of *site plan* submittal to provide information to the *applicant* regarding the review process and assist in the preparation of the submittal. The *Zoning Administrator*, after receiving the *site plan*, shall: (1) review the plan, (2) determine its completeness, (3) schedule the matter for consideration by the *TRC*, (4) notify the *applicant* of the *TRC*'s scheduled time, and (5) prepare a recommendation on the *site plan*. All members of the *TRC* shall sign off on the application for approval. The *TRC* shall not approve a *site plan* unless it makes written findings that the regulations of this Chapter have been met. The *TRC* shall take action within 30 days of reviewing the *site plan*. Any approval or denial of the request must be in writing and be permanently filed in the office of the *TRC* as a public record.

- (1) Approval. The proposal meets all requirements of this Chapter and other statutes, ordinances and regulations of the County as submitted and is approved. If the *site plan* is approved by the *TRC* the *applicant* may proceed with other requirements necessary to obtain a building permit.
- (2) Conditional Approval. The proposal exhibits only minor deficiencies with regard to this Chapter and other statutes, ordinances and regulations of the County and, after corrections have been made, can be approved. If the *site plan* is granted conditional approval by the *TRC* the *applicant* shall revise and resubmit the *site plan* to the *Zoning Administrator*. The *Zoning Administrator* shall review the revised *site plan* and, if it meets the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. The *Zoning Administrator* has the right to resubmit the revised *site plan* to the *TRC* for complete review if deemed necessary. If the *site plan* is not revised within 60 days to meet the approval conditions, or the *applicant* notified the *Zoning Administrator* of unwillingness to revise the *site plan*, it shall be deemed denied.
- (3) Denial. The proposal cannot be approved as it exhibits deficiencies and/or is not in compliance with this Chapter or other statutes, ordinances and regulations of the County which make it completely ineligible for revision and resubmittal. If the *TRC* denies the *site plan*, reasons for the denial shall be stated in writing and the *site plan* may be revised and resubmitted.

C. Permit Validity. No permit shall be issued by the *TRC*; however, no permit for any *use* requiring a major *site plan* may be issued without proof of *TRC* review and approval.

**§200A-300. Reserved**

**§200A-301. Reserved**

**§200A-302. Reserved**

#### **Subpart B. Soil Erosion and Sedimentation Control Plan Review and Approval**

**§200A-303. Soil Erosion and Sedimentation Control Plan Review and Approval (See §200A-224 (Erosion and Sedimentation Control Plans))**

#### **Subpart C. Subdivision Review and Approval**

**§200A-304. General**

All *subdivision* applications, plans and *plats* shall contain all applicable information as required in this Subpart and shall adhere to the applicable review and approval process.

**§200A-305. Review for Minor and Nonstandard Subdivisions**

A. Approval Authority. *Subdivision Administrator*.

B. Application.

1. Application. Each *applicant* shall submit an application to the *Subdivision Administrator*. Applications may be modified by the *Subdivision Administrator* as necessary, who may require the *applicant* to supply additional information. Development plans are required for *minor* or *phased minor subdivisions* where six (6) to ten (10) *lots* and new *right-of-way* are proposed. Development plans must be submitted to the *Subdivision Administrator* pursuant to §200A-78 (Minor Subdivisions). Where development plan review is not required the *applicant* shall submit a *final plat* in mylar form and a blue line copy of the *final plat* along with all application materials (see Article III (Subdivision Regulations)). The *final plat* must be prepared in conformance with the *final plat* requirements provided by the Planning Department, (§200A-311 (Final Plat Review)) and provisions of this Chapter.
2. Fees. Any application fee established by the Board of Commissioners shall be submitted with the application.

- C. Staff Review. The *Subdivision Administrator* shall review all *minor subdivisions* and *nonstandard subdivisions* and development plans (when applicable) in conformance with Article III (Subdivision Regulations). The *Subdivision Administrator* may refer any *minor subdivision* or *nonstandard subdivision* for review by the Planning Board in accordance with this Chapter.

**§200A-306. Review for Major Residential Subdivisions and Conservation Subdivisions of Eleven (11) to Thirty-Four (34) Lots and any Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions of Thirty-Four (34) or Fewer Lots**

- A. Approval Authority. Technical Review Committee (*TRC*).

B. Application.

1. Pre-application Conference. Each *applicant* shall meet with the *Subdivision Administrator* in a pre-application conference at least 15 days prior to the submission of any *subdivision* reviewed in accordance with this section. The purposes of the conference are to: (1) acquaint the *applicant* with the application process, (2) review the sketch of the proposed development, (3) allow for the free exchange of information between the *applicant* and the *Subdivision Administrator*, (4) explore how the *applicant* intends to design the development, and (5) identify contemplated density levels, areas proposed for preservation and existing nature features on the property to be subdivided. The *applicant* should be prepared to discuss the development plans for the entire *tract* and any adjacent property under the same ownership. Each *applicant* shall bring to the pre-application conference a site analysis sketch which shall:
  - a. Be prepared based on aerial photography, visual observations and an on-site inspection of the *tract* and which may be prepared (at the *applicant's* request) with the general guidance of Planning Staff or professionally (although neither is required);

- b. Be at a scale which is clearly legible and provides sufficient detail to describe the general location of proposed development and the stated features for discussion purposes; and
    - c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains*, *wetlands*, *steep slopes* (those greater than 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.
  2. Applications. Applications, including all application materials, master plan(s) (see §200A-309 (Master Plans)) and/or development plan(s) (see §200A-310 (Development Plans)) shall be submitted on or before the deadline date required by the Planning Department for review at the *TRC* meeting. In the opinion of the *Subdivision Administrator*, if an application is incomplete, the *Subdivision Administrator* may return the application to the *applicant* identifying the specific omissions, without invoking the review time requirement. The *applicant* shall have the automatic right to withdraw the application at any time until the *applicant* has concluded comments regarding the project before the *TRC*.
  3. Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- C. Staff Review. The *Subdivision Administrator* shall preliminarily review the application and schedule the matter for consideration by the *TRC* and notify (in writing) the *applicant* of that time. Formal review of the *subdivision* shall not begin until the *Subdivision Administrator* has verified that the application is complete. Such verification should, when possible, be made within three (3) business days of its receipt.
- D. Formal Review. The *Subdivision Administrator* shall prepare a recommendation on the application and supply a copy of the recommendation to the *applicant* before review by the *TRC*. All members of the *TRC* shall sign off on the application for approval. Any approval or denial of the request must be in writing and be permanently filed in the office of the *TRC* as a public record. The *TRC* shall take action within 30 days of reviewing the application. The *Subdivision Administrator* shall notify the *applicant* (in writing) of the decision by the *TRC* and any conditions imposed on the development within ten (10) business days of the decision. The *TRC* may refer any *subdivision* reviewed in accordance with this section for review by the Planning Board in accordance with this Chapter. The *TRC* may take the following action when reviewing an application:
  1. Approval. The proposal meets all requirements of this Chapter and other statutes, ordinances and regulations of the County as submitted and is approved.
  2. Conditional Approval. The proposal exhibits only minor deficiencies with regard to County regulations and other statutes, and is approved subject to the completion of certain conditions. If the plan is approved with conditions the Planning Staff is given administrative responsibility to grant formal approval upon satisfaction of imposed conditions. The *Subdivision Administrator* has the right to resubmit any revised master plan and/or development plan and subdivision application to the *TRC* for complete review if deemed necessary. If the application is granted conditional approval by the *TRC*, then said conditions

must be met before a *final plat* can be approved, unless specified otherwise. If the master plan and/or development plan is not revised to meet the approval conditions, or the *applicant* notified the Planning Department of unwillingness to meet the conditions, it shall be deemed denied and a *final plat* cannot be approved.

3. Denial. The proposal cannot be approved as it exhibits deficiencies and/or is not in compliance with this Chapter or other statutes, ordinances and regulations of the County. If the *TRC* denies the application, reasons for the denial shall be provided (in writing) to the *applicant*.

**§200A-307. Review for Major Subdivisions and Conservation Subdivisions of Thirty-Five (35) to Two Hundred Ninety-Nine (299) Lots**

A. Approval Authority. Planning Board.

B. Application.

1. Pre-application Conference. Each *applicant* shall meet with the *Subdivision Administrator* in a pre-application conference at least 15 days prior to the submission of any *major subdivision* application of 35 to 299 lots. The purposes of the conference are to: (1) acquaint the *applicant* with the application process, (2) review the sketch of the proposed development, (3) allow for the free exchange of information between the *applicant* and the *Subdivision Administrator*, (4) explore how the *applicant* intends to design the development, and (5) identify contemplated density levels, areas proposed for preservation and existing nature features on the property to be subdivided. The *applicant* should be prepared to discuss the development plans for the entire *tract* and any adjacent property under the same ownership. Each *applicant* shall bring to the pre-application conference a site analysis sketch which shall:
  - a. Be prepared based on aerial photography, visual observations and an on-site inspection of the *tract* and which may be prepared (at the *applicant's* request) with the general guidance of Planning Staff or professionally (although neither is required);
  - b. Be at a scale which is clearly legible and provides sufficient detail to describe the general location of proposed development and the stated features for discussion purposes; and
  - c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains*, *wetlands*, *steep slopes* (those greater than 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.
2. Application. Applications, including all application materials, master plan(s) (see §200A-309 (Master Plans)) and/or development plan(s) (see §200A-310 (Development Plans)) shall be submitted on or before the date required by the Planning Department for review at the next Planning Board meeting. In the opinion of the *Subdivision Administrator* if an application is incomplete, the *Subdivision Administrator* may return the application to the *applicant* identifying the specific omissions, without invoking the review time requirement.

3. Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- C. Staff Review. The *Subdivision Administrator* shall preliminarily review all application materials, master plan and/or development plan(s) and schedule the matter for consideration by the Planning Board and notify the *applicant* (in writing) of that time. The *Subdivision Administrator* shall schedule the matter for consideration by the *TRC* and notify (in writing) the *applicant* of that time. Formal review of the *subdivision* shall not begin until the *Subdivision Administrator* has verified that the application is complete. Such verification should, when possible, be made within three (3) business days of its receipt.
- D. Formal Review. Major *subdivisions* of 35 to 299 *lots* that do not meet the conservation subdivision standards (see §200A-86 Conservation Subdivisions (Option)) shall follow the procedures of §200A-308 (Review for Major Subdivisions and Conservation Subdivisions of Three Hundred (300) or More Lots) or seek *development agreement* approval through the Board of Commissioners.

The *Subdivision Administrator* shall prepare a recommendation on the application and supply a copy of this recommendation and the recommendation of the *TRC* to the *applicant* before review by the Planning Board. The Planning Board shall take action within 90 days from the date of its first consideration of the application. The *Subdivision Administrator* shall notify the *applicant* (in writing) of the decision by the Planning Board and any conditions imposed on the development within ten (10) business days of the decision. The *Planning Board* may refer any *subdivision* to the Board of Commissioners for review after giving due notice to the applicant. Reasons for such referral may include, but are not limited to, the size of the subdivision, location within the County, impact on the community, impact on infrastructure, or particular environmental features that make this subdivision substantially unique from other proposed subdivisions. The Planning Board may take the following action when reviewing an application:

1. Approval. The proposal meets all requirements of this Chapter and other statutes, ordinances and regulations of the County as submitted and is approved.
2. Conditional Approval. The proposal exhibits only minor deficiencies with regard to County regulations and other statutes, and is approved subject to the completion of certain conditions. If the plan is approved with conditions the Planning Staff is given administrative responsibility to grant formal approval upon satisfaction of imposed conditions. The *Subdivision Administrator* has the right to resubmit the revised plan(s) to the Planning Board for complete review if deemed necessary. If the application is granted conditional approval by the Planning Board, then said conditions must be met before a *final plat* can be approved, unless specified otherwise. If the master plan and/or development plan are not revised to meet the approval conditions or the *applicant* notified the Planning Department of unwillingness to meet the conditions, it shall be deemed denied and a *final plat* cannot be approved.

3. Denial. The proposal cannot be approved as it exhibits deficiencies and/or is not in compliance with this Chapter or other statutes, ordinances and regulations of the County.
- E. Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §200A-338 (Legislative Process Standards) B(5) (Posted Notice), for posted notices. Planning Staff shall be responsible for all necessary public notifications.

**§200A-308. Review for Major Subdivisions and Conservation Subdivisions of Three Hundred (300) or More Lots**

- A. Approval Authority. Board of Commissioners.
- B. Approval Type. Map Amendment approval as a Conditional Zoning District.
- C. Application.
  - (1) Pre-application Conference. Each *applicant* shall meet with the *Planning Director* in a pre-application conference at least 15 days prior to the submission of any application for a major subdivision of 300 or more lots and accompanying map amendment application. The purposes of the conference are to: (1) acquaint the *applicant* with the application process, (2) review the sketch of the proposed development, (3) allow for the free exchange of information between the *applicant* and the *Planning Director*, (4) explore how the *applicant* intends to design the development, and (5) identify contemplated density levels, areas proposed for preservation and existing nature features on the property to be subdivided. The *applicant* should be prepared to discuss the development plans for the entire *tract* and any adjacent property under the same ownership. Each *applicant* shall bring to the pre-application conference a site analysis sketch which shall:
    - a. Be prepared based on aerial photography, visual observations and an on-site inspection of the *tract* and which may be prepared (at the *applicant's* request) with the general guidance of Planning Staff or professionally (although neither is required);
    - b. Be at a scale which is clearly legible and provides sufficient detail to describe the general location of proposed development and the stated features for discussion purposes; and
    - c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains*, *wetlands*, *steep slopes* (those greater than 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.
  - (2) Application. Applications, including all application materials (subdivision and map amendment), master plan(s) (see §200A-309 (Master Plans)) and/or development plan(s) (see §200A-310 (Development Plans)) shall be submitted on or before the date required by the Planning Department for review at the next Planning Board meeting. The map amendment application shall also include: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the

location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description/statement of the present and proposed district; (5) a description of the property in question sufficient to unequivocally describe and identify said property (such description may take the form of a property survey, a legal description or a legible copy of a County cadastral or composite tax map clearly annotated with district lines which follow political boundaries, geographical features or property lines); and where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. In the opinion of the *Planning Director* if an application is incomplete, the *Planning Director* may return the application to the *applicant* identifying the specific omissions, without invoking the review time requirement. The *Planning Director* may modify applications as necessary. Incomplete applications must be resubmitted on or before the date required by the Planning Department for review at the next Planning Board meeting.

- (3) Review Schedule. Applications for major subdivisions of 300 or more lots shall have a minimum 45 day processing period for review by the *Planning Director* before the first consideration by the Planning Board. Applications involving more than one (1) parcel not under common ownership by the *applicant* shall be forwarded to the Board of Commissioners at its first regularly scheduled monthly meeting. (The Board of Commissioners will review the application and determine if it should proceed or, due to the size of the area, number of parcels or number of property owners, if the scope of the application will require a *Small Area Zoning Study*. If the Board of Commissioners agrees that the application calls for a *Small Area Zoning Study*, a directive for such will be issued by the Commissioners and direction will be provided as to how to proceed with the amendment application).
  - (4) Withdrawal of Application. Each application for a major subdivision of 300 or more lots which is withdrawn by the *applicant* after the first newspaper notice appears, shall not be considered for a *map amendment* within the following six (6) months.
  - (5) Application Resubmittal. The Planning Board and the Board of Commissioners will not consider an application (by a property owner or owner's agent) when, within the previous 12 months, the *map amendment* request was denied by the Commissioners.
  - (6) Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- D. Staff Review. The *Planning Director* shall: (1) process and review the subdivision application, master plan and/or development plan(s), and map amendment request; (2) present the application to the *TRC* for its comments and recommendations; (3) schedule the matter for consideration by the Planning Board and notify the *applicant* (in writing) of that time; (4) forward a copy to any review agency for information purposes or for comment; and (5) prepare a recommendation on the proposed amendment. Formal review of the major subdivision of 300 or more lots shall not begin until the *Planning Director* has verified that the application is complete. Such verification should, when possible, be made within three (3) business days of its receipt.

- E. Formal Review. The *Planning Director* shall prepare a recommendation on the application and supply a copy of the recommendation to the *applicant* before review by the Planning Board. Prior to amending the Official Zoning Map, the Commissioners shall consider the Planning Board's recommendation which must be in writing and must address consistency with the *Comprehensive Plan*. The Planning Board shall have 45 days after the first consideration of an application for a major subdivision of 300 or more lots to submit its written recommendation to the Commissioners. Failure of the Planning Board to submit a written recommendation within the 45 day period shall constitute a favorable recommendation, except that, if by agreement of the Planning Board and the *applicant* that 45 days is insufficient due to the size of the area, the complexity of the request or similar circumstances, the Planning Board shall have 60 days to submit its written recommendations.
- F. Public Hearing. Prior to amending the *zoning map* the Commissioners shall hold a public hearing on the amendment in accordance with *NCGS* §153A-323, as amended (See §200A-338 (Legislative Process Standards)).
- G. Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §200A-338 (Legislative Process Standards) B(5) (Posted Notice), for posted notices. Public notification of the Commissioners public hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-338 (Legislative Process Standards)). Planning Staff shall be responsible for all necessary public notifications.
- H. Amendment Validity. The amendment is effective immediately following the decision of the Commissioners. The Commissioners shall issue a written statement on all *map amendment* decisions (both adoptions and rejections) addressing reasonableness, consistency with the *Comprehensive Plan*, and public interests furthered. Subsequent development plans shall be reviewed and approved by the Board of Commissioners. However, the *Commissioners* may delegate this approval authority, on a project by project basis, to the *Planning Board* or *Subdivision Administrator* provided all conditions of approval are met and the development plan is consistent with the approved master plan. Development plans shall meet all requirements of this Chapter. *Final plats* shall be reviewed following the processes and procedures outlined in §200A-76 (Approval for Subdivision Plats) and §200A-311 (Final Plat Review).

**§200A-309. Master Plans**

- A. Plan Preparation. Master plans must be prepared in conformance with this subpart and master plan requirements provided by the Planning Department. A master plan is required during review of all *major subdivisions*. The *applicant* shall submit four (4) full-sized copies and one (1) reduced-sized copy of the master plan, at a scale appropriate to clearly depict the proposed project. Reduced size copies should be legible and reproducible. If a reduced size copy of the plan (no larger than 11 inches by 17 inches in size) cannot be provided, at least 30 large copies shall be submitted in its place. The master plan may consist of multiple sheets, if needed. *Applicants* proposing single section or *phased subdivisions* may submit a combined master plan and development plan ("master/development plan") that shall be prepared in conformance with this subpart and

the requirements of a development plan provided by the Planning Department and §200A-310 (Development Plans).

- B. Purpose of the Plan. The master plan is intended to provide general information about the proposed development to allow for an assessment of its impact on the orderly growth and development of the County, environmental quality, land values, natural features identified on the site analysis sketch and the County's *roads* and governmental services.
- C. Review of the Plan. During review of the master plan for a *major subdivision* application, the reviewing agency shall take into consideration: (1) applicable recommendations of the *Comprehensive Plan*, (2) the potential *use* of the land to be subdivided and (3) the impact of the *subdivision* and proposed *use* whether residential, commercial or industrial.
- D. Revisions to the Plan. If during the development of the project, the master plan is revised to affect any of the following: increase the number of *lots* to be created or units to be constructed; create a substantive change in the *subdivision* configuration, *road* layout, etc.; substantially change the *use* of any portion of the *tract*; develop or build in areas that were identified as features in the site analysis sketch (see Article III (Subdivision Regulations) and Article XI (Review Processes and Procedures) Subpart C (Subdivision Review and Approval)) and that were identified in the master plan as *open spaces* or *protected areas*, the *applicant* shall then submit a revised master plan for the reviewing agency to review in accordance with Article III (Subdivision Regulations) and the applicable review process as outlined in this Article XI (Review Process and Procedures) Subpart C (Subdivision Review and Approval).
- E. Land Disturbing and Improvement Activities. The *applicant* may only proceed with the establishment of *erosion* and *sedimentation* control measures, clearing and other *land-disturbing activities* and improvement activities associated with the project upon receipt of approval of the development plan (See §200A-310 (Development Plans)).
- F. Approval Validity. Master plan approval is valid for two (2) years and shall be annotated on the plan. If, at the completion of the two-year period, no development plan has been submitted, the *applicant* must reapply under the current applicable requirements. Upon completion of a development plan, where no new development plan had been submitted for a period of four (4) years, the *applicant* must reapply under the current applicable requirements for the remainder of the project.

**§200A-310. Development Plans**

- A. Plan Preparation. Development plans must be prepared in conformance with this subpart and development plan requirements provided by the Planning Department. Development plan(s) are required during review of all *major subdivisions*. The development plan may be submitted for the entire *subdivision* or any section thereof. The *applicant* shall submit four (4) full-sized copies and one (1) reduced-sized copy of the development plan, at a scale appropriate to clearly depict the proposed project. Reduced size copies should be legible and reproducible. If a reduced size copy of the plan (no larger than 11 inches by 17 inches in size) cannot be provided, at least 30 large copies shall be submitted in its place. The development plan may consist of multiple sheets, if needed.
- B. Purpose of the Plan. A development plan is a graphic representation or map of the *tract* of land to be developed indicating all proposed divisions of land, their *uses*,

improvements and other information as may be required to fully disclose the *applicant's* intentions. The purpose of the plan is to provide general and specific information and is not intended to be a recordable document.

- C. Review of the Plan. Upon approval of the master plan and the development plan of the first section of a *subdivision* by the reviewing agency, if successive sections are submitted for review (and (1) each substantially conforms with the master plan, (2) no new *lots* are created, and (3) all technical requirements and development standards have been met) the *Subdivision Administrator* may approve the development plans for all *major subdivisions* for successive sections administratively. Under such review, the action deadlines for the reviewing agency shall be the same for the *Subdivision Administrator*.
- D. Land Disturbing and Improvement Activities. The *applicant* may, only upon receipt of approval of the development plan proceed with the establishment of *erosion* and *sedimentation* control measures, clearing and other *land-disturbing activities* and improvement activities associated with the project.
- E. Approval Validity. Development plan approval is valid for two (2) years and shall be annotated on the plan. The approving agency may, for just cause, grant up to two (2) one-year extensions for development plan approval. If, at the completion of the first one-year extension period, less than 50 percent of improvements are complete, the *applicant* must reapply under the current applicable requirements. If more than 50 percent of improvements are complete after the one-year extension period, the *applicant* may apply for a single additional one-year extension and thereafter must reapply under current applicable requirements.

**§200A-311. Final Plat Review**

- A. Final Plat Review for Minor and Nonstandard Subdivisions.
  - (1) Approval Authority. *Subdivision Administrator*.
  - (2) Purpose. A *final plat* must be prepared and approved pursuant to this subpart and *final plat* requirements provided by the Planning Department, whenever a *subdivision* of land occurs.
  - (3) Staff Review. If the *subdivision* complies with the standards set forth herein the *Subdivision Administrator* shall provide approval in writing on the face of the *final plat* and shall retain a "blue line" copy for departmental records. Once the *plat* has been approved, the *final plat* must be recorded in a timely manner.
- B. Final Plat Review for All Major Subdivisions.
  - (1) Approval Authority. *Subdivision Administrator*.
  - (2) Purpose. A *final plat* must be prepared and approved pursuant to this subpart and *final plat* requirements provided by the Planning Department, whenever a *subdivision* of land occurs.
  - (3) Staff Review. The *Subdivision Administrator* shall review the *final plat* and determine its completeness, finding that the regulations of this Chapter that set forth specific standards have been met for *final plats*. The *Subdivision*

*Administrator* shall review the *final plat* for conformance with all applicable standards and conformance to any associated master plans and development plans. The *final plat* may be approved administratively if the *plat* meets all requirements of the Chapter and satisfies all conditions imposed by the reviewing agency. Upon approval, and before any *lots* are transferred, the *applicant* shall record the *final plat* at the office of the Register of Deeds. Incidental changes to the *final plat*, which do not in any way affect the character of the development, may be submitted prior to, or after, recordation and may be approved for re-recordation by the *Subdivision Administrator*. No *lots* governed by this Chapter may be conveyed until a *final plat* is approved and recorded in the office of the Register of Deeds of Henderson County.

### **Subpart D. Amendment Processes**

#### **§200A-312. General**

Amendment requests/applications may run concurrently with permit applications, *site plan* review or other applications for approvals required for the particular development. Amendments to the *Comprehensive Plan* and this Chapter shall adhere to the applicable review and approval process as outlined in this Article.

#### **§200A-313. Comprehensive Plan Amendments**

- A. Purpose. The Comprehensive Plan Amendment process is designed to allow for: (1) regularly scheduled amendment evaluation; (2) consistency in how amendments are handled; (3) the consideration of the current plan and the proposed amendment to the plan concurrently, with an evaluation of the consequences of each; (4) the consideration of land *use* changes in a countywide context by simultaneous amendment review; (5) the separation of land *use* issues from specific zoning issues; (6) thorough staff and board analysis and evaluation; and (7) meaningful public input. All actions taken to amend, supplement, change or repeal the *Comprehensive Plan* shall follow the appropriate process as outlined below.
- B. Administrative Amendments.
  - (1) Approval Authority. Board of Commissioners.
  - (2) Initiation. The Commissioners, County Manager, Planning Board and Planning Staff may submit *administrative amendments* to the *Planning Director*.
  - (3) Staff Review. The *Planning Director* drafts submitted amendments and provides them to the County Manager for review, consideration and action by the Commissioners.
  - (4) Review Schedule. As needed.
  - (5) Public Hearing. None required.
  - (6) Public Notification. None required.
  - (7) Amendment Validity. The amendment is effective immediately following the decision of the Commissioners.

C. Substantive Amendments.

- (1) Approval Authority. Board of Commissioners
- (2) Initiation. The Commissioners, County Manager, Planning Board and *Planning Director* may initiate *substantive amendments*.
- (3) Review Schedule. Amendments shall be considered annually, and shall be reviewed based on the following:
  - a. Interim Review, Community Plan Begun, not Yet Adopted. Where the site of a proposed rezoning or *special use* permit request is located in the area under study, the Planning Department will not initiate consideration of whether the site's current formally adopted land *use* classification should be changed to allow the proposed development, but encourage the landowner to participate in the development of the applicable *Community Plan*. If the landowner continues with the rezoning or *special use* permit request, review of *Comprehensive Plan* consistency will be based on the site's current or assumed classification (until the *Community Plan* is adopted).
  - b. Interim Review, Community Plan not Yet Begun. Where a proposed rezoning or *special use* permit request is located in the area scheduled for study, the Planning Department will initiate an ad hoc consideration of whether the site's current formally adopted land *use* classification should be changed. This process shall occur concurrently with the review process of the proposed rezoning or *special use* permit request.
  - c. Annual Review. The County will review amendment requests as submitted in January. Planning Staff assesses suggested revisions within the context of the plan as a whole, proposes plan amendments deemed appropriate to address them, and submits the proposed amendments to the Planning Board for review and recommendation to the Commissioners. The Commissioners hold a public hearing and decide whether to adopt the proposed amendments.
  - d. Five-Year Review. The *Comprehensive Plan* is subject to a review every five (5) years, with the first review scheduled after the last *Community Plan* is complete. Planning Staff prepares draft amendments and submits them to the Planning Board for initial review. Planning Staff distributes copies of the draft amendments widely, invites public comment, addresses received public comments and submits amendments as revised to the Planning Board for review and recommendation to the Commissioners. The Commissioners hold a public hearing on the proposed amendments, review and decide whether to adopt the amendments. If the Commissioners direct that further modifications to the proposed amendments be made, and such modifications are deemed by the Commissioners to be significant, the modified proposal shall be resubmitted to the Planning Board for further review and recommendation before the Commissioners take action.

- (4) Public Hearing. Prior to amending the *Comprehensive Plan* substantively, the Commissioners shall hold a public hearing on the amendment(s) in accordance with *NCGS* §153A-323, as amended (See §200A-338 (Legislative Process Standards)).
- (5) Public Notification. Public notification of such hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-338 (Legislative Process Standards)). Planning Staff shall be responsible for all necessary public notifications.
- (6) Amendment Validity. The amendment is effective immediately following the decision of the Commissioners.

**§200A-314. Ordinance Amendments**

A. Purpose. The regulations, restrictions and boundaries set forth in this Chapter may from time to time be amended, supplemented, changed or repealed by the Board of Commissioners. Prior to final action by the Commissioners under this Chapter, the Planning Board shall review the amendment and offer any comments or recommendations as appropriate. All actions to amend, supplement, change or repeal this Chapter shall follow the appropriate process as outlined below.

B. Text Amendments.

- (1) Initiation. The Commissioners, Planning Board, Zoning Board of Adjustment (*ZBA*), Watershed Review Board and Flood Damage Prevention Board may initiate amendments to the text of this Chapter through adopted motion and submittal to the *Planning Director*. The County Manager, *Zoning Administrator*, *Planning Director*, or an affected owner of property in Henderson County may initiate an amendment to the text of this Chapter.
- (2) Application. Each *applicant* shall submit a copy of the proposed amendment which explains the purpose for the amendment to the *Planning Director*.
- (3) Staff Review. Planning Staff shall: (1) process and review the amendment request, (2) present the application to the Technical Review Committee (*TRC*) for its comments and recommendations, (3) forward the application on to the appropriate departments and agencies for their review, and (4) prepare a recommendation on the proposed amendment.
- (4) Formal Review. Prior to amending the text of this Chapter, the Commissioners shall consider the Planning Board's recommendation which must be in writing and must address consistency with the *Comprehensive Plan*.
- (5) Public Hearing. Prior to amending the text of this Chapter the Commissioners shall hold a public hearing on the amendment in accordance with *NCGS* §153A-323, as amended (See §200A-338 (Legislative Process Standards)).
- (6) Public Notification. Public notification of such hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-338 (Legislative Process Standards)). Planning Staff shall be responsible for all necessary public notifications.

- (7) Amendment Validity. The amendment is effective immediately following the decision of the Commissioners.

C. Map Amendments.

- (1) Initiation. The Commissioners, Planning Board, ZBA, Watershed Review Board and Flood Damage Prevention Board may initiate amendments to the Official Zoning Map through the adoption of a motion. The County Manager, *Planning Director*, *Zoning Administrator* and any County Department Director/Head may initiate an amendment to the *zoning map*. A property owner may initiate an amendment to the Official Zoning Map on property that he/she owns, but may not initiate a *map amendment* on another individual's property without that property owner's consent.
- (2) Application.
  - a. Pre-application Conference. Each *applicant* for an amendment shall meet with Planning Staff in a pre-application conference at least 15 days prior to the application submission deadline. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - b. Application. Each *applicant* for an amendment shall submit the application to the Planning Department on or before the first business day of the month. The application shall include: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description/statement of the present and proposed district; (5) a description of the property in question sufficient to unequivocally describe and identify said property (such description may take the form of a property survey, a legal description or a legible copy of a County cadastral or composite tax map clearly annotated with district lines which follow political boundaries, geographical features or property lines); and where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. Planning Staff may modify applications as necessary. Incomplete applications must be resubmitted on or before the first business day of the month or will not be processed until the proceeding month.
  - c. Review Schedule. Applications for amendments shall have a 45 day processing period for review by Planning Staff before the first consideration by the Planning Board. Applications involving more than one (1) parcel not under common ownership by the *applicant* shall be forwarded to the Planning Board at its first regularly scheduled monthly meeting. (The Planning Board will review the application and determine if it should proceed or, due to the size of the area, number of parcels or number of property owners, if the scope of the application will require a *Small Area Zoning Study*. If the Planning Board agrees that the application calls for a *Small Area Zoning Study*, then the application will be tabled and

the request is forwarded to the Commissioners for direction on how to proceed with the amendment application).

- d. Withdrawal of Application. Each application for an amendment which is withdrawn by the *applicant* after the first newspaper notice appears, shall not be considered for a *map amendment* within the following six (6) months.
  - e. Application Resubmittal.
    - A. Resubmittal of Any Application. The Planning Board and the Commissioners will not consider an application (by a property owner or owner's agent) when, within the previous 12 months, the *map amendment* request was denied by the Commissioners.
    - B. Resubmittal of Application After Completion of a Small Area/Community Plan. Applications for *map amendments* located in an area that is currently undergoing or (within the previous 12 months) has completed a Small Area/Community Plan, shall not be considered by the Planning Board or the Commissioners unless the *Planning Director* initiates such application.
  - f. Fees. Any review fee established by the Commissioners shall be submitted with the application.
- (3) Staff Review. Planning Staff: (1) shall process and review the amendment request, (2) shall present the application to the *TRC* for its comments and recommendations, (3) may forward the application to the appropriate departments and agencies for their review, and (4) shall prepare a recommendation on the proposed amendment.
- (4) Formal Review. Prior to amending the Official Zoning Map, the Commissioners shall consider the Planning Board's recommendation which must be in writing and must address consistency with the *Comprehensive Plan*. The Planning Board shall have 45 days after the first consideration of an application for an amendment to submit its written recommendation to the Commissioners. Failure of the Planning Board to submit a written recommendation within the 45 day period shall constitute a favorable recommendation, except that, if by agreement of the Planning Board and the *applicant* that 45 days is insufficient due to the size of the area, the complexity of the request or similar circumstances, the Planning Board shall have 60 days to submit its written recommendations. Time limitations shall not be applied to applications for amendments initiated by the Commissioners.
- (5) Public Hearing. Prior to amending the *zoning map* the Commissioners shall hold a public hearing on the amendment in accordance with *NCGS* §153A-323, as amended (See §200A-338 (Legislative Process Standards)).
- (6) Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §200A-338 (Legislative Process Standards) B(5) (Posted Notice), for posted notices. Public notification of the Commissioners public hearing shall comply with the provisions of *NCGS* §153A-323 and §153A-343, as amended (See §200A-338 (Legislative Process

Standards)). Planning Staff shall be responsible for all necessary public notifications.

- (7) Amendment Validity. The amendment is effective immediately following the decision of the Commissioners. The Commissioners shall issue a written statement on all *map amendment* decisions (both adoptions and rejections) addressing reasonableness, consistency with the *Comprehensive Plan*, and public interests furthered.

D. Water Supply Watershed Text and/or Map Amendments.

- (1) Initiation. The Commissioners may initiate amendments to the text of this Chapter related to the *watershed* and amendments to the *Watershed Map* through adopted motion and submittal to the *Planning Director*.
- (2) Application, Formal Review, Public Hearing and Public Notification. An amendment to the text of this Chapter related to the *water supply watershed* shall adhere to the review and approval process for *Text Amendments* (see §200A-314 (Ordinance Amendments) subsection B (excluding (1) “Initiation”)). An amendment to the *watershed* map shall adhere to the review and approval process for *Map Amendments* (see §200A-314 (Ordinance Amendments) subsection C (excluding (1) “Initiation”)). The Commissioners may incorporate the minimum requirements of the North Carolina Environmental Management Commission (*NCEMC*) into this Chapter without undertaking the official amendment processes; this may include identifying the boundaries of *watershed* districts proposed by the *NCEMC* on the Watershed Protection Map and may include *text amendments* necessary to conform to the minimum requirements of the *NCEMC*.
- (3) Amendment Validity. The Commissioners may not adopt any amendment, supplement, change or modification that is less stringent than the minimum requirements imposed by the *NCEMC* without approval of said Commission. The amendment is effective immediately following the decision of the Commissioners. All amendments must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health and the North Carolina Division of Community Assistance.

### Subpart E. Permit Approval Processes

#### §200A-315. General

All permit applications shall include, at minimum: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. Permit applications may run concurrently with *site plan* review, amendment requests or other applications for approvals required for the particular development. All permit applications shall adhere to the applicable review and approval process as outlined in this Article.

**§200A-316. Category One (1) or Two (2) Communication Facility Permits**

- A. Purpose. Category One (1), or Two (2) *Communication Facility Permits* are required for any construction, alteration or expansion of a communication facility of these categories.
- B. Permit Issuance. The *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*.
- C. Application.
  - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Communication Facilities Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the communication facility. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a permit shall be submitted with a communication facility *site plan* to the *Communication Facilities Administrator*. The application shall be filed on a form provided by the *Communication Facilities Administrator*. The *applicant* shall be notified within 15 days if the application is deemed incomplete. A full description of deficiencies shall be identified for the applicant with the understanding that if these deficiencies are cured, the application will be deemed complete. Incomplete applications must be resubmitted within ten (10) business days or will not be processed until the following month. Applications may be modified by the *Communication Facilities Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the communication facility. Applications for a *Communication Facility Permit Two (2)* shall also include the following:
    - a. Statement Regarding Accommodation of Additional Users. A statement which indicates the number of additional users the proposed facility will accommodate, as signed and sealed by an active, registered North Carolina Professional Engineer.
    - b. Statement Regarding Collocation. A written statement, by the *applicant*, which indicates willingness to allow future *collocations*, available at fair *market value*.
    - c. Evidence of Mailing of Notices of Intent. A document, submitted by the *applicant*, which shows that the *applicant* has sent required notices of intent to file an application for a *Communication Facility Permit Two (2)* to all owners of property immediately adjacent to the parcel containing the facility site and all owners of property within a 500 foot radius as measured from the facility site perimeter. *Mailed notices of intent* shall be mailed no fewer than ten (10) days and no more than 30 days prior to the date on which an application for a *Communication Facility Permit Three (3)* is filed. *Mailed notices of intent* shall include a: (1) vicinity map showing the proposed facility location; (2) sketch of the facility with dimensions which indicate the proposed tower type and height; and (3)

statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.

- d. Evidence of Lack of Alternative Antenna Sites. A document, submitted by the *applicant*, which demonstrates that a reasonable effort has been made to collocate the proposed *antenna* on an existing communication facility/*alternative structure*, and that there are no feasible alternatives to constructing the proposed communication facility.
- e. Evidence of Compliance with Regulations. Documentation, submitted by the *applicant*, which demonstrates compliance with all applicable state and federal statutes, ordinances and regulations which is satisfactory to the *Communication Facilities Administrator*.
- f. Easement Acquisition Documents. Statements of intent, submitted by the *applicant*, from adjacent property owners (where any portion of said property is within a distance of the tower height from the tower base) to grant an *easement* to the *applicant*.

(3) Review Schedule. None established.

(4) Fees. Any review fee established by the Commissioners shall be submitted with the application.

(5) Streamlined Collocation Process. Applications for collocation that meet the following requirements shall have a streamlined process/

- a. The collocation does not increase the overall height of the *communication tower* or wireless support structure to which the wireless facilities are attached;
- b. The collocation does not increase the ground space area approved in the *communication facility site plan* for equipment enclosures and ancillary facilities; and
- c. The wireless facilities in the proposed collocation comply with application regulations, restrictions, or conditions, if any applied to the initial wireless facilities placed on the *communication tower* or other wireless support structure.

Applications entitled to the streamlined process shall be reviewed for conformance with applicable building permit requirements, if any, but shall not otherwise be subject to zoning requirements, including design or placement requirements or public hearing review.

D. Staff Review. The *Communication Facilities Administrator* shall process all applications for a permit and approve, approve conditionally or deny the approval of the application within 15 business days from the date the application is filed. If the permit application is denied, the *Communication Facilities Administrator* shall notify the *applicant* in writing stating the reasons for denial. Any denial shall be supported by substantial evidence and set forth reasons for denial with sufficient particularity that a reviewing authority may review the evidence supporting denial.

- E. Formal Review. None required.
- F. Permit Validity. Upon the issuance of a permit, the communication facility will be issued a Communication Facility Registration Number. The *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Communication Facilities Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

**§200A-317. Category Three (3) Communication Facility Permits**

- A. Purpose. Category Three (3) *Communication Facility Permits* are required for any construction, alteration or expansion of a communication facility of this category.
- B. Permit Issuance. The Zoning Board of Adjustment (*ZBA*) shall grant the permit and the *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. No *Communication Facility Permit Three (3)* shall be issued without the approval of the *ZBA* in accordance with the requirements and procedures set forth in this subsection.
- C. Application.
  - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Communication Facilities Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the communication facility. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a permit shall be submitted along with the appropriate fee(s), *site plan*, statements, evidences and *easement* acquisition documents to the *Communication Facilities Administrator*. Applications shall also include the following:
    - a. Statement Regarding Accommodation of Additional Users. A statement which indicates the number of additional users the proposed facility will accommodate, as signed and sealed by an active, registered North Carolina Professional Engineer.
    - b. Statement Regarding Collocation. A written statement, by the *applicant*, which indicates willingness to allow future *collocations*, available at fair *market value*.
    - c. Evidence of Mailing of Notices of Intent. A document, submitted by the *applicant*, which shows that the applicant has sent required notices of intent to file an application for a *Communication Facility Permit Three (3)* to all owners of property immediately adjacent to the parcel containing the facility site, and all owners of property within a 1,000 foot radius as measured from the facility site perimeter. *Mailed notices of intent* shall be

mailed no fewer than ten (10) days and no more than 30 days prior to the date on which an application for a permit is filed. *Mailed notices of intent* shall include a: (1) vicinity map showing the proposed facility location; (2) sketch of the facility with dimensions which indicate the proposed tower type and height; and (3) statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.

- d. Evidence of Lack of Alternative Antenna Sites. A document, submitted by the *applicant*, which demonstrates that a reasonable effort has been made to collocate the proposed *antenna* on an existing communication facility/*alternative structure*, and that there are no feasible alternatives to constructing the proposed communication facility.
- e. Evidence of Compliance with Regulations. Documentation, submitted by the *applicant*, which demonstrates compliance with all applicable state and federal statutes, ordinances and regulations which is satisfactory to the *Communication Facilities Administrator*.
- f. Easement Acquisition Documents. Statements of intent, submitted by the *applicant*, from adjacent property owners (where any portion of said property is within a distance of the tower height from the tower base) to grant an *easement* to the *applicant*.

Applications may be modified by the *Communication Facilities Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the communication facility.

- (3) Review Schedule. As per NCGS §62A-42, a written decision approving or denying the application shall be given within 30 days in the case of collocation and modification applications, and within 45 days in the case of other applications. This time shall be measured from the date the application is deemed complete.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *Communication Facilities Administrator* shall process and review all applications for a permit and prepare a staff recommendation for the *ZBA* on the permit application. An application shall be deemed complete unless the *applicant* is notified in writing within 15 days of submissions of the application. Specific deficiencies in the application must be identified and if cured the resubmission must be deemed complete.
  - E. Formal Review. Prior to taking any action on a permit, the *ZBA* shall consider the *Communication Facilities Administrator's* recommendation on the permit application.
  - F. Public Hearing. Prior to considering a *communication facility permit* application the *ZBA* shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).

- G. Public Notification. Public notification of such hearing shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Communication Facilities Administrator* shall be responsible for all necessary public notifications.
- H. Quasi-judicial Proceeding. The concurring vote of a majority of the *ZBA* shall be necessary to grant the permit. As per NCGS §62A-42, a written decision approving or denying the application shall be given within 30 days in the case of collocation and modification applications, and within 45 days in the case of other applications. This time shall be measured from the date the application is deemed complete.
- (1) Standards of Review. The *ZBA* shall not approve a permit unless it makes written findings that the regulations of this Chapter that set forth specific standards for the communication facility have been met. Any approval or denial of the request must be in writing and be permanently filed with the office of the *ZBA* and with the *Communication Facilities Administrator* as a public record.
    - a. Any decision denying an application must be supported by substantial evidence in the record before the authority and must set forth the reasons for the denial with sufficient particularity to allow a reviewing entity to review the evidence supporting the reasons for denial.
    - b. An authority may deny an application to construct a new wireless support structure based upon an *applicant's* unwillingness to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure within the *applicant's* search ring according to NCGS §62A-43
  - (2) Conditions. The *ZBA* shall, in granting a permit, prescribe that required *easement* documents be recorded and copies of said recorded *easements* be submitted to the *Communication Facilities Administrator*.
- I. Permit Validity. Upon the approval of the *ZBA* and the submittal of recorded *easements*, the *Communication Facilities Administrator* may issue the permit and the required County Communication Facility Registration Number. The *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Communication Facilities Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.
- (1) Permit Revocation. The *Communication Facilities Administrator* and/or *ZBA* may revoke a permit for *violations* of any part of this Chapter. Failure to secure and record any of the required *easements* shall be grounds for revocation. If the *Communication Facilities Administrator* finds a communication facility to be in *violation*, he/she shall notify the *applicant* in writing, stating the specific *violations* and setting reasonable time limits for corrective actions and subsequent inspections. In the event that the *applicant* takes no action to correct *violations*, the *Communication Facilities Administrator* shall notify him/her, by certified mail, that the permit will be revoked at the close of ten (10) business days from

the date of the written notice. Should the *applicant* correct the *violations* prior to the permit being revoked, he shall request that the *Communication Facilities Administrator* conduct an inspection. If the *Communication Facilities Administrator* finds that the communication facility is no longer in *violation*, he/she shall notify the *applicant* that the permit will continue to be valid. If the *violations* have not been remedied, the permit shall be revoked. Where use of a communication facility is discontinued, such notice of discontinuance shall be made in writing by the *applicant* and submitted to the *Communication Facilities Administrator*; further, where the *use* of the communication facility is discontinued for a 12 month period, such permit shall be revoked. Such revocation and the reasons for such shall be made in writing to the *applicant*.

(2) Implications of Revoked Permit. Where a permit has been revoked:

- a. The operation of the communication facility shall be terminated, and the *use* may only be reinstated upon application as in the case of a new matter.
- b. The *applicant* (facility owner/operator and/or site owner) shall not be allowed to *collocate* any additional communication facilities at that site, erect another communication facility or obtain any additional permits.
- c. The facility owner/operator and/or site owner shall be jointly and severally responsible for the required removal of the communication facility within 180-days of receipt of written notification of *Communication Facility Permit Three* (3) revocation.

**§200A-318. Floodplain Development Permits**

- A. Purpose. A Floodplain Development Permit shall be required for any new development in a *Special Flood Hazard Area (SFHA)*, except for *watercourse* alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for *watercourse* alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).
- B. Permit Issuance. The *Floodplain Administrator* shall issue Floodplain Development Permits.
- C. Application.

- (1) Application. Application for a Floodplain Development Permit shall be made to the *Floodplain Administrator* prior to any development activities proposed to be located within an *SFHA*. The following items/information shall be presented to the *Floodplain Administrator* to apply for a Floodplain Development Permit:
  - a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed *floodplain* development:
    1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed *structures*, utility

- systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
2. The boundary of the *Special Flood Hazard Area* as delineated on the *FIRM* or other flood map as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
  3. *Flood zone(s)* designation of the proposed development area as determined on the *FIRM* or other flood map as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas); or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
  4. The boundary of the *flood fringe* area, if any, as set out in the *FIRM*;
  5. The boundary of the *floodway(s)* or *non-encroachment area(s)* as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas);
  6. The *Base Flood Elevation (BFE)*, where provided, as set forth in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas); §200A-279 (Henderson County Floodplain Administrator A (Powers and Duties Pursuant to this Chapter) (14), (17), and (18)); §200A-203.4 (Standards for Floodplains without Established Base Flood Elevations); and/or §200A-203.5 (Standards for Riverine Floodplains with BFE Data but Without Established Floodways);
  7. The old and new location of any *watercourse* that will be altered or relocated as a result of the proposed development; and
  8. Certification of the plot plan by, or under the direct supervision of, a registered land surveyor or professional engineer.
- b. Proposed elevation, and method thereof, of all development within a *Special Flood Hazard Area* including but not limited to:
1. Elevation in relation to *mean sea level* of the proposed reference level (including *basement*) of all *structures*;
  2. Elevation in relation to *mean sea level* to which any nonresidential *structure* in Zone AE, A or AO will be floodproofed; and
  3. Elevation in relation to *mean sea level* to which any proposed utility systems will be elevated or floodproofed;
- c. If *floodproofing*, a *Floodproofing Certificate (FEMA Form 81-65)* with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures. Back-up plans from a registered professional engineer or architect certifying that the nonresidential

floodproofed development will meet the floodproofing criteria in Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are also required.

- d. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met. These details include but are not limited to:
  1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/*shear walls*); and
  2. Details of sufficient openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with §200A-203.2 (Specific Standards) D (Elevated Structures) (3) when solid foundation perimeter walls are used in Zones A, AO, and AE.
- e. Usage details of any enclosed space below the *lowest floor*.
- f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- g. Copies of all other Local, State and Federal permits required prior to Floodplain Development Permit issuance (*Wetlands*, Endangered Species, , *Riparian Buffers*, Mining, etc.).
- h. Documentation for placement of *recreational vehicles* and/or *temporary structures* to ensure the provisions of §200A-203.2 (Specific Standards) F (Recreational Vehicles) are met.
- i. Where the *base flood elevation* data is not provided, the application for a development permit must show construction of the *lowest floor* at least two (2) feet above the *highest adjacent grade*.
- j. A description of proposed *watercourse* alteration or relocation when applicable, including an engineering report on the effects of the proposed project on flood-carrying capacity of the *watercourse* and the effects to properties located both upstream and d downstream; and a map (if not shown on plot plan) showing the location of the proposed *watercourse* alteration or relocation.

(2) Certification Requirements.

- a. Elevation Certificates.
  1. An Elevation Certificate (*FEMA* Form 81-31) is required prior to the actual start of any *new construction*. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level*. Elevation certification shall be prepared by, or under the direct supervision of, a professional land surveyor or

professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted.

Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit.

2. An Elevation Certificate (*FEMA* Form 81-31) is required after the *reference level* is established. Within seven (7) calendar days of establishment of the *reference level* elevation, it shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level*. Elevation certification shall be prepared by or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a *stop-work order* for the project.
  3. A Final As-Built Elevation Certificate (*FEMA* Form 81-31) is required after construction is completed and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of final as-built construction of the elevation and all attendant utilities. Said elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.
- b. Floodproofing Certificates. If nonresidential *floodproofing* is used to meet the *regulatory flood protection elevation* requirements, a Floodproofing Certificate (*FEMA* Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the floodproofed

design elevation of the *reference level* and all attendant utilities, in relation to *mean sea level*. Said *floodproofing* certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The *Floodplain Administrator* shall review the certificate data, the operational plan, and the inspection and maintenance plan submitted. Deficiencies detected by such review shall be corrected by the *applicant* prior to Floodplain Development Permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.

- c. Engineered Foundation Certificates. If a *manufactured/mobile home* is placed within Zone A, AO, or AE and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per §200A-203.2 (Specific Standards) B (Manufactured/Mobile Homes).
- d. Certification Exemptions. The following *structures*, if located within Zone A, AO, or AE are exempt from the elevation/*floodproofing* certification requirements specified in item C(1) and C(2) above:
  - 1. *Recreational Vehicles* meeting the requirements of §200A-203.2 (Specific Standards) F (Recreational Vehicles)
  - 2. *Temporary structures* meeting requirements of §200A-203.2 (Specific Standards) G (Temporary Nonresidential Structures); and
  - 3. *Accessory structures* less than 150 square feet meeting requirements of §200A-203.2 (Specific Standards) H (Accessory Structures).

- (3) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.

D. Permit Issuance. The Floodplain Development Permit shall include, but not be limited to:

- (1) A description of the development to be permitted under the Floodplain Development Permit issuance.
- (2) The *Special Flood Hazard Area* determination for the proposed development in accordance with available data specified in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).

- (3) The *Regulatory Flood Protection Elevation* required for the *reference level* and all attendant utilities.
  - (4) The *Regulatory Flood Protection Elevation* required for the protection of all public utilities.
  - (5) All certification submittal requirements with timelines.
  - (6) A statement that no fill materials or other development shall encroach into the *floodway*, *non-encroachment area*, or the *flood fringe* area of any *watercourse*, if applicable, except as permitted in §200A-203.1 (General Standards), or pursuant to a *Special Fill Permit* issued pursuant to §200A-323 (Special Fill Permits).
  - (7) The flood opening requirements, if in Zones A, AO, or AE.
  - (8) A statement of limitations of below *BF E* enclosure *uses* (if applicable), including but not limited to parking, *structure* access and limited storage only.
- E. Permit Validity. A Floodplain Development Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (1) Permit Revocation. The *Floodplain Administrator* may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any Floodplain Development Permit mistakenly issued in *violation* of an applicable State or local law may also be revoked.

**§200A-319. Manufactured Home Park (MHP) Construction Permits.**

- A. Purpose. *Manufactured Home Park (MHP)* Construction Permits are required for any construction, alteration or expansion of an *MHP*.
- B. Permit Issuance. The *MHP Administrator* shall issue the permit. No permit shall be issued until the *MHP Site Plan* has been reviewed and approved by the Technical Review Committee (*TRC*).
- C. Application.
  - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *MHP Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the *MHP*. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a permit shall be submitted along with the appropriate fee(s) and *site plan*, to the *MHP Administrator*. Applications may be

modified by the *MHP Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *MHP*.

- (3) Review Schedule. Applications shall be submitted on or before the date required by the Planning Department for review of the *MHP Site Plan* at the meeting of the *TRC*.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. Provided the *MHP Site Plan* is approved by the *TRC*, the *MHP Administrator* shall approve the application, noting any site improvements that must be made prior to the issuance of an *MHP Completion of Improvements (COI) Permit* (see §200A-320 (MHP COI Permits)). Site improvements required prior to the issuance of a COI may include: *buffers, internal roads, vertical clearance on roads, driveways, parking, erosion and sedimentation controls, stormwater drainage, culverts, sewage disposal systems, water supply systems, fire protection, solid waste disposal areas, electrical hookup and/or MHP identification signs.*
- E. Formal Review. None required.
- F. Permit Validity. Upon the issuance of a permit, the *applicant* shall have two (2) years to complete construction of site improvements as stated in such permit for the *MHP* or *phase* thereof, except as otherwise noted below. The *MHP Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for this extension.

**§200A-320. Manufactured Home Park (MHP) Completion of Improvements (COI) Permits.**

- A. Purpose. Completion of Improvements (COI) Permits are required for the leasing of spaces and/or the ability to obtain set-up and building permits for *manufactured/mobile homes* and other *structures* within a *Manufactured Home Park (MHP)*.
- B. Permit Issuance. The *MHP Administrator* shall issue the permit. No permit shall be issued until the *MHP Site Plan* (see §200A-297 (Manufactured Home Park Site Plan Review)) has been reviewed and approved by the Technical Review Committee (*TRC*) through the issuance of an *MHP* construction permit by the *MHP Administrator* (see §200A-319 (MHP Construction Permits)).
- C. Application
  - (1) Pre-Application Conference. None required.
  - (2) Application. Each application for a permit shall be submitted, along with the appropriate fee(s) and *site plan*, to the *Manufactured Home Park Administrator*. Applications shall additionally include one (1) as-built drawing (at a scale of one (1) inch equals 100 feet) of the completed *MHP* or *phase* thereof. Applications may be modified by the *MHP Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *MHP*. If the application is found to be incomplete, the *MHP Administrator* shall notify the *applicant* of any deficiencies.

- (3) Review Schedule. Applications shall only be accepted when site improvements for the *MHP* or *phase* thereof are complete and the *applicant* has provided evidence that property addresses have been assigned to each *manufactured/mobile home* and any other *structures*.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *MHP Administrator* shall process and review all applications for the permit after submitted. The *MHP Administrator* shall: (1) make an inspection of the *MHP* to ensure compliance with this Chapter; (2) verify that required site improvements as listed on the *MHP* construction permit (see §200A-319 (MHP Construction Permits)) have been made; and, if the inspection shows the *MHP* adheres to those standards outlined in the *MHP Site Plan* and contains all site improvements required by the *MHP* construction permit, and (3) approve the application.
- E. Formal Review. None required.
- F. Permit Validity. Upon the issuance of a permit, the *applicant* shall have the ability to lease spaces and/or the ability to obtain set-up and building permits for *manufactured/mobile homes* and other *buildings* within the *MHP*. The permit may be reinstated if the *MHP applicant* applies to the *MHP Administrator* and the *MHP Administrator* finds that the *MHP* is in compliance with the requirements of this Chapter.
- (1) Permit Revocation. The *MHP Administrator* may revoke a permit for *violations* of any part of this Chapter, except for those regulated by the Health, Inspections or Solid Waste Departments. In these cases, the *MHP Administrator* shall work with the other departments regarding the revocation of a permit. If the *MHP Administrator* finds a *MHP* to be in *violation*, he shall notify the *applicant* in writing, stating the specific *violations* and setting reasonable time limits for corrective actions and subsequent inspections. In the event that the *applicant* takes no action to correct *violations*, the *MHP Administrator* shall notify him/her, by certified mail, that the permit for the *MHP* will be revoked at the close of ten (10) business days from the date of the written notice. Should the *applicant* correct the *violations* prior to the permit being revoked, he shall request that the *MHP Administrator* conduct an inspection. If the *MHP Administrator* finds that the *MHP* is no longer in *violation*, he/she shall notify the *applicant* that the permit will continue to be valid. If the *violations* have not been remedied, the permit shall be revoked. Such revocation and the reasons for such shall be made in writing to the *MHP applicant*.
  - (2) Implications of Revoked Permit. Where a permit has been revoked, the *applicant* shall:
    - a. Not rent or lease any vacant spaces until the *violations* have been corrected and the permit is reinstated; and
    - b. Notify each renter/lessee of a space within the *MHP* within ten (10) days after receiving written notification that the permit has been revoked. The *applicant* shall provide the *MHP Administrator* with a signed statement from each renter/lessee indicating that notice from the *applicant* has been

received. Any lease that is renewed after revocation of the permit shall be at the renter's/lessee's own risk.

**§200A-321. Sign Permits**

- A. Purpose. Sign Permits are required for the erection, movement, *addition* to or structural alteration of any *sign* not exempt by this Chapter.
- B. Permit Issuance. The *Zoning Administrator* shall issue the permit.
- C. Application.
  - (1) Pre-application Conference. None required.
  - (2) Application. Each application for a permit shall be filed on a form provided by the *Zoning Administrator*. Applications shall additionally include the following: (1) location of the *sign* on the *lot* in relation to the property lines and any existing or proposed *signs* or *structures*; (2) *sign* structural specifications; and (3) additional information needed to determine if the *sign* will be erected in conformance with this Chapter. Applications may be modified by the *Zoning Administrator* as necessary, who may require the *applicant* to supply additional information.
  - (3) Review Schedule. None established.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *Zoning Administrator* shall process and review all applications for a permit. If the application is found to be incomplete, the *Zoning Administrator* shall notify the *applicant* of any deficiencies. The *Zoning Administrator* shall approve, approve conditionally or deny the approval of the application.
- E. Permit Validity. Upon the issuance of a permit, the *applicant* shall have six (6) months from the date of issuance thereon to begin erecting the *sign*. Failure to make construction progress within six (6) months shall render the permit void. The *Zoning Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

**§200A-322. Soil Erosion and Sedimentation Control Permits** (See §200A-224 (Erosion and Sedimentation Control Plans))

**§200A-323. Special Fill Permits**

- A. Purpose. *Special Fill Permits* in the *flood fringe* may be granted by the Flood Damage Prevention Board in particular cases meeting specific community need and subject to appropriate conditions and safeguards.
  - (1) Proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; and,
  - (2) *Special Fill Permit*, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
  - (3) Proposed *encroachment* will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,

- (4) *Special Fill Permit*, if granted, will comply with the *Comprehensive Plan*, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the *Special Fill Permit*.

Any grant of a *Special Fill Permit* by the Flood Damage Prevention Board may include conditions, which must be satisfied by the *applicant*. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

B. Permit Issuance. The Flood Damage Prevention Board shall have the power to grant permits for special fill in the *flood fringe*. In order to grant a *Special Fill Permit*, the Flood Damage Prevention Board must conclude that the:

C. Application.

- (1) Application. The application for the permit shall be on a form provided by the *Floodplain Administrator*, and shall be submitted prior to any fill activity requiring a *Special Fill Permit*. The application shall include the following:

- a. Certification, on a form as published by *FEMA*, or acceptable alternative form approved by *FEMA*, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; or
- b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
- c. An alternative method currently approved by *FEMA* for use in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; and,
- d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.
- e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the *Special Fill Permit*, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
- f. The application shall include information demonstrating compliance with the *Comprehensive Plan*, and demonstrating the substantial public or community purpose(s) which the *Special Fill Permit*, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the *Special Fill Permit*, if granted, which must be demonstrated include:

1. Advancing a governmental purpose, which includes promoting and preserving *use* of land for *agriculture*.
  2. Meeting public infrastructure needs.
  3. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
  4. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
- g. A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the *Special Fill Permit* is proposed.
- (2) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.
- D. Staff Review. The *Floodplain Administrator* shall review the application for compliance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. The *Floodplain Administrator* shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.
- E. Formal Review. Neither the review by the Planning Board nor the hearing before the Flood Damage Prevention Board shall be quasi-judicial in nature.
- (1) Henderson County Planning Board Review and Recommendation.
- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
  - b. The Planning Board shall hear a summary and review of the application by the *Floodplain Administrator*, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
  - c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the Flood Damage Prevention Board as to the grant or denial of the application.
- (2) Flood Damage Prevention Board Public Hearing.
- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The

*Floodplain Administrator* shall be responsible for all necessary public notifications.

- b. The Flood Damage Prevention Board shall consider a summary of the proposed project from the *Floodplain Administrator*, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the *applicant*, evidence from adjacent property owners, and such other evidence as the Flood Damage Prevention Board finds useful.
  - c. At the conclusion of the public hearing, the Flood Damage Prevention Board shall issue its decision within the time limits established in Rule 47 of the Board of Commissioners' Rules of Procedure.
- F. Permit Validity. A *Special Fill Permit* shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

**§200A-324. Special Intensity Allocation (SIA)**

- A. Purpose. Special Intensity Allocation (*SIA*) is permitted on up to ten (10) percent of the total acreage within the balance of a WP-*WS-II-BW* Colt Creek and Mills River, WP-*WS-III-BW* Lower Mills River or a WP-*WS-IV-PA* Upper French Broad River watershed overlay sub-district. Acreage approved as a special intensity allocation may be developed with up to 70 percent *built-upon area*.
- B. Allocation Issuance. Any request for an *SIA* shall be granted by the *Watershed Administrator* or the Board of Commissioners.
- C. Application.
  - (1) Pre-application Conference. Each *applicant* for an *SIA* shall meet with the *Watershed Administrator* prior to, or at the time of, the submittal of an application. The purposes of this conference are to provide additional information regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for an *SIA* shall be submitted along with the appropriate fee(s) and *site plan* to the *Watershed Administrator*. Applications shall additionally show the following: minimized *built-upon surface area*, stormwater directed away from surface waters, and the incorporation of *best management practices* to minimize water quality impacts. Applications may be modified by the *Watershed Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *SIA*.
  - (3) Review Schedule. None established.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.

- D. Staff/Formal Review. The *Watershed Administrator* shall process all applications for an *SIA* after submitted. The *Watershed Administrator* shall refer *SIAs* (when appropriate) as determined below, to the Commissioners.
- (1) Categories and Approval of Special Intensity Allocation. Upon receipt of a formal application and review of a development plan for conformance with the terms of this Chapter, the *Watershed Administrator* or the Commissioners, as appropriate, shall approve the *SIA*, provided that acreage is still available in the appropriate category below. Applications shall be made in one (1) of the following categories:
    - a. Category 1: Applications for Commercial, Office, Institutional, Industrial or Multifamily Residential Development. These applications shall be reviewed and approved by the *Watershed Administrator*. No more than six (6) percent of acreage within the balance of the *watershed* outside the *critical area* may be allocated for this category.
    - b. Category 2: Applications for Nonresidential Community Service Uses. Such *uses* include, but are not limited to: *schools, religious institutions, community centers, park facilities* and nonprofit agencies serving the immediate community. These applications shall be reviewed and approved by the *Watershed Administrator*. No more than two (2) percent of the acreage within the balance of the *watershed* outside the *critical area* may be allocated for this category.
    - c. Category 3: Applications for *Nonresidential Development*. Applications for *nonresidential development* that come in after the allocations in the other categories are exhausted, shall be reviewed by the Commissioners following a recommendation by the *Watershed Administrator*. Allocations from this category shall not be drawn upon unless the application cannot be approved under Category 1 or 2 due to exhaustion of acreage allocations. No more than two (2) percent of the acreage within the balance of the *watershed* outside of the *critical area* may be allocated from this category. The Commissioners may set any criteria under which allocations for this category may be drawn.
  - (2) Award of Special Intensity Allocation. *SIAs* shall be awarded in the order of applications received that are in compliance with all conditions of this Chapter. Project applications that are deemed to pose a threat to water quality and public health, safety and welfare shall not be awarded.
- E. Validity of Special Intensity Allocation. Upon the approval of an *SIA*, the *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the *SIA* void. The approving authority (*Watershed Administrator* or the Commissioners) may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension via written request. Expiration of time limits stated herein shall require reapplication for an *SIA* under the provisions of this Chapter. An *SIA* may not be transferred to another parcel of land.

**§200A-325. Special Use Permits**

- A. Purpose. *Special Use* Permits are required where individual consideration of location, design, configuration and/or operation of a *use* at a proposed site are necessary to ensure site appropriateness, compatibility with surrounding *uses* and the protection of the public health, safety and welfare. Development standards shall be used as the basis for developing conditions for a permit; however, individualized conditions may also be imposed throughout the application process. Any *use* identified which requires a permit shall not be permitted without the approval of the Zoning Board of Adjustment (*ZBA*) in accordance with the requirements and procedures set forth in this subsection.
- B. Permit Issuance. The *ZBA* shall grant permits. The *Zoning Administrator* shall issue permits.
- C. Application.
- (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Zoning Administrator* in a pre-application conference no later than two (2) calendar weeks prior to the date the application is due. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a permit shall be submitted along with the appropriate fee(s) and *site plan*, to the *Zoning Administrator* on or before the first business day of the month. Applications may be modified by *Zoning Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the permit. Incomplete applications must be resubmitted on or before the first business day of the month or will not be processed until the following month.
  - (3) Review Schedule. Applications for a permit have a 60 day processing period for notification requirements and review by the *Zoning Administrator* and Technical Review Committee (*TRC*) prior to the public hearing.
  - (4) Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- D. Staff Review. Code Enforcement Services Staff shall: (1) process and review all applications for a permit; (2) present the application to the *TRC* for its comments and recommendations; (3) forward the application on to the appropriate departments and agencies for their review; and (4) prepare a staff recommendation for the *ZBA* on the permit application.
- E. Formal Review. Prior to taking any action on a permit, the *ZBA* shall consider the *Zoning Administrator's* recommendation on the permit application.
- F. Public Hearing. Prior to considering a permit application the *ZBA* shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).
- G. Public Notification. Public notification of such hearing shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Zoning Administrator* shall be responsible for all necessary public notifications.

H. Quasi-judicial Proceeding. The concurring vote of a four-fifths (4/5) of the members of the *ZBA* shall be necessary to grant the permit. Vacant seats and disqualified members are not counted in computing the simple majority. Any approval or denial of the request must be in writing and be permanently filed with the office of the *ZBA* and with the *Zoning Administrator* as a public record.

(1) Standards of Review. The *ZBA* shall not approve a permit unless it makes written findings that the regulations of this Chapter that set forth specific standards for the *use* have been met. The *ZBA* may consider the type of *use*, size of the *use*, size of the property and other relevant factors in evaluating the permit application. The *applicant* will not bear the burden of proving that all of the site standards (as listed below) have been met; however, the *applicant* will be required to produce evidence sufficient to rebut any evidence presented that the site standards would not be met or that a condition is necessary. The *applicant* may be required, in his/her rebuttal, to show that the proposed *use* will:

- a. Not materially endanger the public health, safety or welfare;
- b. Not substantially injure the value of property or improvements in the area; and
- c. Be in harmony with the surrounding area.

Additionally the *applicant* may be required, in his/her rebuttal, to show that the proposed *use* shall be located and developed in such a manner as to:

- a. Comply with all applicable local, state and federal statutes, ordinances and regulations;
- b. Be in accordance with the *Comprehensive Plan*, Long Range Transportation Plans and Comprehensive Transportation Plans of the County and/or Long Range Transportation Plans and Comprehensive Transportation Plans of any municipality of the County;
- c. Minimize the effects of noise, glare, dust, solar access and odor on those *persons* residing or working in the *neighborhood* of the proposed *use*; and
- d. Minimize the environmental impacts on the *neighborhood* including the following groundwater, surface water, *wetlands*, endangered/threatened species, archeological sites, historic preservation sites and *unique natural areas*.

Finally, the *applicant* may be required, in his/her rebuttal, to show that satisfactory provision/arrangement has been made (where applicable or required) concerning:

- a. Ingress and egress to property and proposed *structures* thereon (with particular reference to automotive/pedestrian safety/convenience and traffic flow/control);
- b. Off-street parking and loading areas;
- c. Utilities (with particular reference to locations, availability and compatibility);

- d. Buffering and landscaping (with particular reference to type, location and dimensions); and
  - e. *Structures* (with particular reference to location, size and *use*).
- (2) Conditions. The *ZBA* may, in granting a permit, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the *use* shall be begun; and/or (4) a time limit within which a *use* shall be completed.
- I. Permit Validity. Upon the issuance of a permit a signed order detailing the conditions of the permit shall be submitted to the *Zoning Administrator*. The *Zoning Administrator* may then issue related permits.
- (1) Permit Revocation. The *Zoning Administrator* and/or *ZBA* may revoke a permit if, at any time after the issuance of the permit, it is found that the conditions imposed on/agreements made with the *applicant* have not been or are not being fulfilled by the holder of the permit.
  - (2) Implications of Revoked Permit. Where a permit has been revoked the operation of such *use* shall be terminated and the *use* may only be reinstated upon application as in the case of a new matter.

#### **§200A-326. Temporary Use Permits**

- A. Purpose. *Temporary Use* Permits are required for (1) the erection of any *structure* for temporary purposes and (2) the expansion of or change in any *use* for temporary purposes.
- B. Permit Issuance. The *Zoning Administrator* shall issue permits. All permits shall be issued in conformity with the provisions of this Chapter, except where the *Zoning Administrator* receives a written order from (1) the Zoning Board of Adjustment (*ZBA*) in the form of an interpretation involving error, *special use* or *variance*; or (2) the Board of Commissioners in the form of the issuance of approval for a vested right. A *Temporary Use* Permit must be issued prior to the issuance of a building permit, which shall comply with the *Temporary Use* Permit and all conditions of approval attached thereto.
- C. Application.
- (1) Pre-application Conference. None required.
  - (2) Application. Each application for a permit shall be filed on a form provided by the *Zoning Administrator*. Applications may be modified by the *Zoning Administrator* as necessary, who may require the *applicant* to supply additional information.
  - (3) Review Schedule. Applications for permits shall adhere to one (1) of two (2) review schedules based upon duration of the *temporary use*. The *Zoning Administrator* shall approve or deny a permit application: (1) within seven (7) business days for an application requesting duration of a *use* for no more than two (2) weeks; or (2) within 15 business days on all applications requesting duration of a *use* for more than two (2) weeks.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.

- D. Staff Review. The *Zoning Administrator* shall process and review all applications for a permit. If the application is found to be incomplete, the *Zoning Administrator* shall notify the *applicant* of any deficiencies. Where the *Zoning Administrator* denies the permit, reasons for the denial shall be stated.
- E. Permit Validity. Upon the issuance of a permit, the *applicant* will be allowed the *temporary use* for the specified length of time on the specified dates. Permits shall not be issued for any duration to exceed two (2) years.

**§200A-327. Water Supply Watershed Use Permits**

- A. Purpose. Water Supply Watershed Use Permits are required for: (1) the erection, movement, additional or structural alteration of any *structure*, (2) the expansion of or change in any *use* and (3) the change of any land surface to an *impervious surface*.
- B. Permit Issuance. The *Watershed Administrator* shall issue permits.
- C. Application.
  - (1) Pre-application Conference. None required.
  - (2) Application. Each application for a permit shall be filed on a form provided by the *Watershed Administrator*. Applications may be modified by the *Watershed Administrator* as necessary, who may require the *applicant* to supply additional information.
  - (3) Review Schedule. None established.
  - (4) Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- D. Staff Review. The *Watershed Administrator* shall process and review all applications for a permit. If the application is found to be incomplete, the *Watershed Administrator* shall notify the *applicant* of any deficiencies. The *Watershed Administrator* may consult with qualified personnel for assistance to determine if the application meets the requirements of this Chapter. The *Watershed Administrator*, for projects not involving some other form of review, shall approve, approve conditionally or deny the approval of the application. Where the *Watershed Administrator* denies the permit, reasons for the denial shall be stated.
- E. Permit Validity. Upon the issuance of a Water Supply Watershed Use Permit, the *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit. Failure to obtain a building permit within six (6) months shall render the *Water Supply Watershed Use Permit* void. The *Watershed Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension. A Water Supply Watershed Use Permit must be issued prior to the issuance of building permit, which shall comply with the Water Supply Watershed Use Permit and all conditions of approval attached thereto.
  - (1) Revocation of Water Supply Watershed Use Permits. *Violations* of the sections of this Chapter relating to *water supply watershed* protection may also constitute grounds for revocation of Water Supply Watershed Use Permits if such *violations* are not corrected within 30 days following notification of such *violations*. No

such permit shall be reinstated until the *Watershed Administrator* finds that all provisions of this Chapter relating to *water supply watershed* protection have been met. Any revocation may be appealed to the Water Supply Watershed Review Board if filed within 30 days of the effective date of the revocation. Following a hearing on the matter, the Water Supply Watershed Review Board may concur with the revocation or order the reinstatement of the permit.

- F. Appeals. Questions arising in connection with the enforcement of this Chapter shall be presented first to the *Watershed Administrator* and that such questions shall be presented to the Water Supply Watershed Review Board only on *appeal* from the *Watershed Administrator*.

**§200A-328. Watershed Protection Compliance Permits**

- A. Purpose. Watershed Protection Compliance Permits are required for the ability to obtain occupancy of a *structure* hereafter erected, altered or moved and/or prior to the change of *use* of any *structure* or land in the *watershed*. The *Watershed Administrator* shall issue a Watershed Protection Compliance Permit.
- B. Application.
  - (1) Pre-Application Conference. No pre-application conference is required for a Watershed Protection Compliance Permit.
  - (2) Application. No formal application is required for a Watershed Protection Compliance Permit
  - (3) Review Schedule. Watershed protection compliance permit applications (where the water supply watershed use permit allowed for the erection, alteration or movement of a *structure*) will be approved or denied within ten (10) days of the erection, alteration or movement of said *structure* (upon the inspection by the *Watershed Administrator*). *Watershed* protection compliance permit applications (where the *water supply watershed use* permit allowed for a change of *use*) will be approved or denied before the commencement of the *use*.
  - (4) Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- C. Staff Review. The *Watershed Administrator* shall process and review all applications for a Watershed Protection Compliance Permit (via the water supply watershed use permit process above). The *Watershed Administrator* shall issue a Watershed Protection Compliance Permit certifying that all requirements of this Chapter have been met. If the Watershed Protection Compliance Permit is denied, the *Watershed Administrator* shall notify the *applicant* in writing stating the reasons for denial.
- D. Permit Validity. Upon the issuance of a Watershed Protection Compliance Permit, the *applicant* shall have the ability to occupy and/or change the *use* of a *structure*. No *structure* which has been erected, moved or altered may be occupied until the *Watershed Administrator* has approved and issued a Watershed Protection Compliance Permit.
  - (1) Permit Revocation. *Violations* of the sections of this Chapter relating to *water supply watershed* protection may also constitute grounds for revocation of permits if such *violations* are not corrected within 30 days following notification of such

*violations*. No such permit shall be reinstated until the *Watershed Administrator* finds that all provisions of this Chapter relating to *water supply watershed* protection have been met. Any revocation may be *appealed* to the Water Supply Watershed Review Board if filed within 30 days of the effective date of the revocation. Following a hearing on the matter, the Water Supply Watershed Review Board may concur with the revocation or order the reinstatement of the permit.

**§200A-329. Zoning Permits**

- A. Purpose. *Zoning Permits* are required for (1) the erection, movement, *addition* to or structural alteration of any *structure* and (2) the expansion of or change in any *use*.
- B. Permit Issuance. The *Zoning Administrator* shall issue permits. No *Zoning Permit* shall be issued until the appropriate *site plan* has been reviewed and approved by the appropriate staff or reviewing agency. All permits shall be issued in conformity with the provisions of this Chapter, except where the *Zoning Administrator* receives a written order from (1) the Zoning Board of Adjustment (*ZBA*) in the form of an interpretation involving error, *special use* or *variance*; or (2) the Board of Commissioners in the form of the issuance of approval for a vested right.
- C. Application.
  - (1) Pre-application Conference. None required.
  - (2) Application. Each application for a permit shall be filed on a form provided by the *Zoning Administrator*. Applications may be modified by the *Zoning Administrator* as necessary, who may require the *applicant* to supply additional information.
  - (3) Review Schedule. None established.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *Zoning Administrator* shall process and review all applications for a permit. If the application is found to be incomplete, the *Zoning Administrator* shall notify the *applicant* of any deficiencies. The *Zoning Administrator*, for projects not involving some other form of review, shall approve, approve conditionally or deny the approval of the application. Where the *Zoning Administrator* denies the permit, reasons for the denial shall be stated. A *zoning permit* must be issued prior to the issuance of a building permit, which shall comply with the *zoning permit* and all conditions of approval attached thereto.
- E. Permit Validity. Upon the issuance of a permit, the *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Zoning Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

**§200A-330. Reserved**

## Subpart F. Vested Rights

### §200A-331. General

All requests for a Vested Right shall include, at minimum: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. All Vested Right requests shall adhere to the review and approval process as outlined in this subpart.

### §200A-332. Vested Rights

- A. Purpose. A Vested Right is a right established pursuant to *NCGS* §153A-344.1 to undertake and complete the development and *use* of property under the terms and conditions of an approved *site-specific development plan*. Any request for a Vested Right shall be granted by the Zoning Board of Adjustment (*ZBA*) in accordance with the requirements and procedures set forth in this subsection.
- B. Application.
- (1) Pre-application Conference. Each *applicant* for a Vested Right shall meet with the *Planning Director* prior to, or at the time of, the submittal of an application. The purposes of this conference are to provide additional information regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a Vested Right shall be submitted along with the appropriate fee(s) and *site plan* to the Planning Department. Applications shall additionally include: (1) a letter indicating the intent to obtain a Vested Right for the particular *use* or development proposed and (2) a *site-specific development plan*. Applications may be modified by Planning Staff as necessary, who may require the *applicant* to supply additional information pertaining to the Vested Right.
  - (3) Review Schedule. Applications for a Vested Right have a 30 day processing period for notification requirements and review by Planning Staff (and, if necessary, the Technical Review Committee (*TRC*)) prior to the public hearing.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- C. Staff Review. Planning Staff shall process and review all applications for a Vested Right. Planning Staff may present the application to the *TRC* for its comments and recommendations and may forward the application on to the appropriate departments and agencies for their review. Planning Staff shall prepare a staff recommendation for the *ZBA* on the vested right application.
- D. Public Hearing. Prior to considering a vested right application the *ZBA* shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).

- E. Public Notification. Public notification of such hearing shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). Planning Staff shall be responsible for all necessary public notifications.
- F. Quasi-Judicial Proceeding.
- (1) Standards of Review. The *ZBA* shall grant a Vested Right upon finding that all provisions of this Chapter are met in the proposed *use* or development plan and that the granting of the Vested Right does not materially endanger the public health, safety and welfare. The *Zoning Administrator* is directed to issue all required permits subject to the changes in the *site plan* (see §200A-332 (Vested Rights) subsection F(2)) to be made by the developer. A *variance* shall not constitute a *site-specific development plan* and approval of a *site-specific development plan* with the condition that a *variance* is obtained shall not confer a Vested Right unless and until the necessary *variance* is obtained.
  - (2) Conditions. The *ZBA* may approve a Vested Right request subject to conditions that are necessary to protect the public health, safety and welfare.
  - (3) Review. The *ZBA* shall reach a decision within 45 days of the conclusion of the Vested Rights hearing. The *ZBA* shall issue an order within 45 days of reaching its decision.
- G. Vested Right Validity. Upon the *ZBA* approving a *site-specific development plan*, there shall be a vest on such *site-specific development plan* for a period of two (2) years from the date of approval. A Vested Right shall confer upon the terms and conditions of the *site-specific development plan* as provided for in this section.
- (1) Vested Right Extension. The *ZBA* may approve a vesting period not to exceed five (5) years from the date of approval at the request of the landowner if it is found that the development cannot be secured within two (2) years because of the:
    - a. Size of the development,
    - b. Level of investment required, or
    - c. Current lack of, but potential future need for, the development.
  - (2) Vested Right Minor Modification. The *Zoning Administrator* may authorize minor modifications to the *site-specific development plan* provided that the changes in the plan do not change the basic relationship of the conditions set forth by the *ZBA*. Changes in detail that may be modified shall include, but not be limited to, the reduction in:
    - a. Square footage of *signs*,
    - b. Square footage of *buildings* and
    - c. The number of *buildings*.
- Applications for a minor modification shall include a new *site-specific development plan* and a detailed description of the proposed changes. Each *applicant* may *appeal* the decision of the *Zoning Administrator* regarding the Vested Right to the *ZBA*.

- (3) Vested Right Revocation. The *ZBA* may conclude forfeiture of a Vested Right previously recorded where there is failure to abide by the terms and conditions placed upon the original approval.

**§200A-333. Common Law Vested Rights**

- A. Purpose. A Common Law Vested Right is a right established by common law to undertake and complete the development and *use* of property based on substantial expenditures in good faith reliance on a valid governmental approval. Any request for a Common Law Vested Right will be reviewed and acted upon by the *Planning Director* in accordance with the requirements and procedures set forth in this subsection.
- B. Application. The *applicant* must provide proof of each of the following provisions:
  - (1) A valid governmental permit has been obtained for the specific project;
  - (2) The developer made a substantial expenditure in reliance upon the permit;
  - (3) The developer was acting in good faith; and
  - (4) The developer suffers harm if required to comply with the new rules.
- C. Staff Review. The *Planning Director* shall review the evidence submitted as proof demonstrating the existence of each of the four (4) provisions above. All of these provisions shall be met in order to approve a Common Law Vested Right.
- D. Appeals. An *appeal* of the *Planning Director's* determination of the existence of a Common Law Vested Right shall be heard in a quasi-judicial hearing conducted by the Zoning Board of Adjustment (*ZBA*).

**Subpart G. Variances**

**§200A-334. General**

All applications for a *Variance* shall include, at minimum: (1) the name(s) and address(es) of the owner(s) of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. All applications for a *variance* shall adhere to the applicable review and approval process as outlined in this Subpart.

**§200A-335. Variances**

- A. Purpose. *Variances* are intended to provide limited relief from the requirements of this Chapter in those cases where the strict application of the provisions of this Chapter would result in unnecessary hardship. Any *use* which requires a *Variance* shall not be permitted without the approval of the Zoning Board of Adjustment (*ZBA*) in accordance with the requirements and procedures set forth in this section.
- B. Application.
  - (1) Pre-application Conference. Each *applicant* for a *Variance* shall meet with the appropriate Administrator (within this section "Administrator" shall refer to any of the following: *Communication Facilities, Manufactured Home Park, Soil*

*Erosion and Sedimentation Control, Subdivision, or Zoning Administrator*) in a pre-application conference no later than one (1) calendar week prior to the date the application is due. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.

- (2) Application. Each application for a *Variance* shall be submitted along with the appropriate fee and *site plan*, to the Administrator on or before the first business day of the month. Applications may be modified by the Administrator as necessary, who may require the *applicant* to supply additional information pertaining to the *Variance*. Incomplete applications must be resubmitted on or before the first business day of the month or will not be processed until the proceeding month.
  - (3) Review Schedule. Applications for a *Variance* have a 45 day processing period for notification requirements and review by the Administrator (and, if necessary the Technical Review Committee (*TRC*)) prior to the public hearing.
  - (4) Fees. Any review fee established by the Board of Commissioners shall be submitted with the application.
- C. Staff Review. The Administrator shall process and review all applications for *Variances*. The Administrator may present the application to the *TRC* for its comments and recommendations and may forward the application on to the appropriate departments and agencies for their review. The Administrator shall also prepare a staff recommendation for the *ZBA* on the application for a *Variance*.
- D. Formal Review. Prior to taking any action on a *Variance*, the *ZBA* shall consider the Administrator's recommendation on the *Variance*.
- E. Public Hearing. Prior to considering a *variance* application the *ZBA* shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).
- F. Public Notification. Public notification of such hearing shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The Administrator shall be responsible for all necessary public notifications.
- G. Quasi-Judicial Proceeding. The concurring vote of four-fifths (4/5) of the *ZBA* shall be necessary to grant a *Variance*. Any approval or denial of the request must be in writing and permanently filed with the office of the *ZBA* and with the Administrator as public record.
- (1) Standards of Review. The *ZBA* shall not grant a *Variance* the effect of which would be to: (1) allow the establishment of a *use* not otherwise permitted in a general *use district*, (2) extend physically a *nonconforming use* of land or (3) change the district boundaries shown on the Official Zoning Map. No *Variance* shall be granted or considered where the fact that the property could be used more profitably is the reason for the request for the *Variance*. The following written findings must be made in order for the *ZBA* to grant a *Variance*:

- a. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this Chapter, as demonstrated by:
  1. The fact that, if the *applicant* complies with the literal terms of this Chapter, he/she cannot secure a reasonable return from, or make a reasonable *use* of, the property.
  2. The hardship of which the *applicant* complains results from unique circumstances related to the *applicant's* land.
  3. The hardship is not the result of the *applicant's* own action.
- b. The *Variance* is in harmony with the general purpose and intent of this Chapter and will preserve its spirit.
- c. The *Variance* will secure the *public safety* and welfare and will do substantial justice.
- d. The *Variance* shall not be based on the existence of a *nonconforming use* of neighboring land or *structures* in the same district, or permitted *nonconforming uses* in other districts, and shall in no way constitute a reason for the requested *Variance*.
- e. The *Variance* shall not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or *subdivision* regulations.

(2) Conditions. The *ZBA* may, in granting a *Variance*, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the action for which a *Variance* is sought shall be begun; (4) a time limit within which the action for a *Variance* is sought shall be completed; and (5) a time duration within which construction, operation or installation shall commence on the project for which the *Variance* was obtained.

H. Variance Validity. Upon issuance of a *Variance*, the *applicant* shall have 12 months within which (unless otherwise specified by the *ZBA*) to commence construction, operation or installation. If construction, operation or installation is commenced within the specified time period the *Variance* shall continue in force as long as the *structure*, operations or installation remains.

(1) Variance Revocation. If construction or operation is not commenced within 12 months (or other specified time period), the *Variance* shall no longer be valid.

#### **§200A-336. Variances (Flood Damage Prevention)**

A. Purposes. Flood Damage Prevention Variances are intended to provide limited relief from the requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

B. Application.

(1) Application. Each application for a Flood Damage Prevention Variance shall be submitted along with a written report addressing each of the factors identified by §200A-336 (Variances (Flood Damage Prevention)) E(1) (Granting Variances).

- (2) Fees. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for Flood Damage Prevention Variances and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a Flood Damage Prevention Variance, shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full.
- C. Eligibility for Flood Damage Prevention Variance. Flood Damage Prevention Variances may be issued for:
- (1) The repair or rehabilitation of historic *structures* upon the determination that the proposed repair or rehabilitation will not preclude the *structure's* continued designation as an historic *structure* and the Flood Damage Prevention Variance is the minimum necessary to preserve the historic character and design of the *structure*;
  - (2) Functionally dependent facilities if determined to meet the definition as stated in Article XIV, provided provisions of §200A-336 (Variances (Flood Damage Prevention)) have been satisfied, and such facilities are protected by methods that minimize flood damages during the *base flood* and create no additional threats to *public safety*; or
  - (3) Any other type of development, provided it meets the requirements of §200A-336 (Variances (Flood Damage Prevention)) and Article VIII (Natural Resources) Subpart A (Flood Damage Prevention); or
  - (4) *Solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities* that are located in *Special Flood Hazard Areas* provided that all of the following conditions are met:
    - a. The *use* serves a critical need in the community;
    - b. No feasible location exists for the *use* outside the *Special Flood Hazard Area*;
    - c. The *reference level* of any *structure* is elevated or floodproofed to at least the *regulatory flood protection elevation*;
    - d. The *use* complies with all other applicable Federal, State and local laws;
    - e. Henderson County has notified the Secretary of the North Carolina department of Crime Control and Public Safety of its intention to grant a *variance* at least 30 calendar days prior to granting the *variance*.
  - (5) But not for *special fill permits*, pursuant to §200A-323 (Special Fill Permits) herein.
- D. Public Hearing. Prior to considering the Flood Damage Prevention Variance application, the Flood Damage Prevention Board shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).
- E. Granting Flood Damage Prevention Variances.

- (1) In determining whether to grant or deny Flood Damage Prevention Variances, the Flood Damage Prevention Board shall consider all technical evaluations, all relevant factors, all standards specified in Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), and:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or *erosion* damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. The importance of the services provided by the proposed facility to the community, including the retention of land for *agriculture*;
  - e. The necessity to the facility of a waterfront location as defined under Article XIV (Definitions) as a *functionally dependent facility*, where applicable;
  - f. The availability of alternative locations, not subject to flooding or *erosion* damage, for the proposed *use*;
  - g. The compatibility of the proposed *use* with existing and anticipated development;
  - h. The relationship of the proposed *use* to the *Comprehensive Plan* and *floodplain management* program for that area;
  - i. The safety of access to the property in times of flood for ordinary and emergency *vehicles*;
  - j. The expected heights, velocity, duration, rate of rise, and *sediment* transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and *roads* and bridges.
- (2) Upon consideration of the factors listed above and the purposes of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), the Flood Damage Prevention Board may attach such conditions to the granting of Flood Damage Prevention Variances as it deems necessary to further the purposes and objectives of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (3) There are additional considerations of the Flood Damage Prevention Board in determining whether to grant or deny a Flood Damage Prevention Variance. Flood Damage Prevention Variances shall:
  - a. Not be issued when the Flood Damage Prevention Variance will make the *structure* in *violation* of other Federal, State, or local laws, regulations, or ordinances.

- b. Not be issued within any designated *floodway* or *non-encroachment area* if any increase in flood levels during the *base flood* discharge would result.
- c. Only be issued upon a determination that the Flood Damage Prevention Variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Only be issued prior to Floodplain Development Permit (see §200A-318 (Floodplain Development Permits)) approval.
- e. Only be issued upon:
  - 1. A showing of good and sufficient cause;
  - 2. A determination that failure to grant the Flood Damage Prevention Variance would result in exceptional hardship; and
  - 3. A determination that the granting of a Flood Damage Prevention Variance will not result in increased flood heights, additional threats to *public safety*, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

F. Written Notice. Any *applicant* to whom a *variance* is granted shall be given written notice specifying the difference between the *Base Flood Elevation (BFE)* and the elevation to which the *structure* is to be built and a written statement that the cost of *flood insurance* will be commensurate with the increased risk resulting from the reduced *reference level* elevation. Such notification shall be maintained with a record of all *variance* actions.

**§200A-337. Variances (Watershed)**

- A. Purpose. *Watershed Variances* are intended to provide limited relief from the requirements of Article VIII Subpart B. *Water Supply Watershed* Protection in those cases where the strict application of the provisions of this Chapter would result in unnecessary hardship. Any *use* which requires a *Watershed Variance* shall not be permitted without the approval of the Watershed Review Board in accordance with the requirements and procedures set forth in this section.
- B. Application.
  - (1) Pre-application Conference. Each *applicant* for a *Watershed Variance* shall meet with the *Watershed Administrator* in a pre-application conference no later than one (1) calendar week prior to the date the application is due. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
  - (2) Application. Each application for a *Watershed Variance* shall be submitted along with the appropriate fee and *site plan*, to the *Watershed Administrator* on or before the first business day of the month. Applications may be modified by the *Watershed Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *Watershed Variance*. Incomplete

applications must be resubmitted on or before the first business day of the month or will not be processed until the proceeding month.

- (3) Review Schedule. No formal review schedule is established for a *Watershed Variance* from Article VIII Subpart B. *Water Supply Watershed Protection*.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- C. Staff Review. The *Watershed Administrator* shall process and review all applications for *Watershed Variances*. The *Watershed Administrator* shall notify in writing each *local government* having jurisdiction in the *watershed* of the *Watershed Variance* request, the notice for which shall include a description of the *Watershed Variance* being requested. *Local governments* receiving notice of the *Watershed Variance* request may submit comments to the *Watershed Administrator* prior to a decision by the Watershed Review Board. The *Watershed Administrator* shall prepare a staff recommendation for the Watershed Review Board on the application for a *Watershed Variance*.
- D. Formal Review. Prior to taking any action on a *Watershed Variance*, the Watershed Review Board shall consider the *Watershed Administrator's* recommendation on the *Watershed Variance*. Comments received from *local governments* (if applicable) shall become a part of the record of proceedings of the Watershed Review Board. The Watershed Review Board shall refuse to hear an application for a *Watershed Variance* previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the *appeal* or application. The Watershed Review Board shall not grant a *Watershed Variance* without making the following three (3) findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:
- (1) Finding One (1). There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter, specifically Article VIII (Natural Resources) Subpart B. (Water Supply Watershed Protection). In order to determine that there are practical difficulties or unnecessary hardships, the Watershed Review Board must find that the following conditions exist:
    - a. If the *applicant* complies with the provisions of this Chapter, the *applicant* can secure no reasonable return from, nor make reasonable *use* of, his/her property. Merely proving that the *Watershed Variance* would permit a greater profit to be made from the property will not be considered adequate to justify the Watershed Review Board in granting a *Watershed Variance*. Moreover, the Watershed Review Board shall consider whether the *Watershed Variance* is the minimum possible deviation from the terms of this Chapter that will make possible the reasonable *use* of the property;
    - b. The hardship results from the application of this Chapter to the property rather than from other factors, such as deed restrictions or other hardship;
    - c. The hardship is due to the physical nature of the *applicant's* property, such as its size, shape or topography, which is different from that of neighboring property;

- d. The hardship is not the result of the actions of an *applicant* who knowingly or unknowingly violates this Chapter or who purchases the property after the effective date of this Chapter then comes to the Watershed Review Board for relief; and/or
  - e. The hardship is peculiar to the *applicant's* property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a *Watershed Variance* would be a special privilege denied to others and would not promote equal justice.
- (2) Finding Two (2). The *Watershed Variance* is in harmony with the general purpose and intent of this Chapter, specifically Article VIII (Natural Resources) Subpart B (Water Supply Watershed Protection), and preserves its spirit.
- (3) Finding Three (3). In the granting of the *Watershed Variance*, the *public safety* and welfare have been assured and substantial justice has been done. The Watershed Review Board shall not grant a *Watershed Variance* if it finds that doing so would in any respect impair the public health, safety or general welfare.
- E. Environmental Management Commission Review. Where the application calls for the granting of a Major *Variance*, and if the Watershed Review Board decides in favor of granting the *Watershed Variance*, the Watershed Review Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include the: (1) *Watershed Variance* application; (2) hearing notices; (3) evidence presented; (4) motions, offers of proof, objections to evidence and rulings on them; (5) proposed findings and exceptions; and (6) proposed decision, including all conditions proposed to be added to the *Watershed Variance*. The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
- (1) Situation One (1). If the Environmental Management Commission concludes from the preliminary record that the *Watershed Variance* qualifies as a Major *Variance* and that the property owner can secure no reasonable return from, nor make any practical *use* of, the property unless the proposed *Watershed Variance* is granted and that the *Watershed Variance*, if granted, will not result in a serious threat to the water supply, then the Environmental Management Commission may approve the *Watershed Variance* as proposed or approve the proposed *variance* with conditions and stipulations. The Environmental Management Commission will prepare a Commission decision and send it to the Watershed Review Board. If the Environmental Management Commission approves the *Watershed Variance* as proposed, the Watershed Review Board shall prepare a final decision granting the proposed *Watershed Variance*. If the Commission approves the *variance* with conditions and stipulations, the Watershed Review Board shall prepare a final decision, including such conditions and stipulations, granting the proposed *Watershed Variance*.
  - (2) Section Two (2). If the Commission concludes from the preliminary record that the *Watershed Variance* qualifies as a Major *Variance* and that the property owner can secure a reasonable return from or make a practical *use* of the property without the *Watershed Variance* or that the *Watershed Variance*, if granted, will

result in a serious threat to the water supply, then the Commission may deny approval of the *Watershed Variance* as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Watershed Review Board will prepare a final decision denying the *Watershed Variance* as proposed.

- F. Conditions. The Watershed Review Board may, in granting a *Watershed Variance*, prescribe: (1) additional conditions regarding the location, character and other features of the proposed *building, structure* or *use*; (2) additional safeguards; (3) a time limit within which the action for which a *Watershed Variance* is sought shall be begun; (4) a time limit within which the action for a *Watershed Variance* is sought shall be completed; and (5) a time duration within which construction, operation or installation shall commence on the project for which the *variance* was obtained. If a *Watershed Variance* for the construction, alteration or *use* of property is granted, such construction, alteration or *use* shall be in accordance with the approved *site plan*.
- G. Variance Validity. Upon issuance of a *Watershed Variance*, it shall then be considered as a *Water Supply Watershed Use Permit* (see §200A-327 (WSW Use Permits)), and shall adhere to the permit validity outlined therefore.

#### **Subpart H. Legislative and Quasi-Judicial Process Standards**

##### **§200A-338. Legislative Process Standards**

###### **A. Text Amendments and Comprehensive Plan Amendments**

- (1) Public Hearing. Before adopting or amending any ordinance the Board of Commissioners shall hold a public hearing on the ordinance or amendment.
- (2) Newspaper Notice. In accordance with *NCGS* 153A-323, the Commissioners shall cause notice of such hearing to be published in a newspaper of general circulation in the County once a week for two (2) successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than 25 days prior to the date fixed for the hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to map. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

###### **B. Map Amendments.**

- (1) Public Hearing. Before adopting or amending any ordinance the Board of Commissioners shall hold a public hearing on the ordinance or amendment.
- (2) Newspaper Notice. In accordance with *NCGS* 153A-323, the Commissioners shall cause notice of such hearing to be published in a newspaper of general circulation in the County once a week for two (2) successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than 25 days prior to the date fixed for the hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to map. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

- (3) Mailed Notice. In accordance with *NCGS 153A-343*, whenever there is a *zoning map amendment*, the owner of that parcel of land as shown on the County tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the County tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the County tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than 25 days prior to the date of the public hearing. The *person* or *persons* mailing such notices shall certify to the Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. The first class mail notice requirement shall not be required if the *zoning map amendment* directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the County elects to *use* the Expanded Published Notice (see subsection (4)).
- (4) Expanded Published Notice. In accordance with *NCGS 153A-343*, and in that situation described above (see subsection (3)), the County may elect to publish once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area an advertisement of the public hearing that shows the boundaries of the area affected by the proposed *zoning map amendment* and explains the nature of the proposed change. These advertisements shall comply with and be deemed to satisfy the provisions of *NCGS 153A-323* (subsection (1)). The advertisement shall not be less than one-half ( $\frac{1}{2}$ ) of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this section. The *person* or *persons* mailing the notices shall certify to the Commissioners that fact, and the certificates shall be deemed conclusive in the absence of fraud.
- (5) Posted Notice. In accordance with *NCGS 153A-343*, whenever there is a *zoning map amendment*, the County shall post one or more prominent *signs* on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed rezoning. In the event that more than one (1) parcel is involved in a particular *map amendment*, at least one (1) *sign* shall be posted in a central location; however, the Planning Staff may post multiple *signs*. Said *sign(s)* shall be posted at least ten (10) days prior to the public hearing date.

**§200A-339. Quasi-Judicial Process Standards**

A. Category Three (3) Communication Facility Permits, Special Use Permits, Vested Rights, Variances, and Appeals

- (1) Public Hearing. Before taking any action, the appropriate Zoning Board of Adjustment (*ZBA*) shall hold a public hearing (quasi-judicial) on the application, in accordance with established procedures for quasi-judicial hearings.
- (2) Newspaper Notice. The *ZBA* shall cause notice of such hearing to be published in a newspaper of general circulation in the County once a week for two (2) successive calendar weeks. The notice shall be published the first time not less than ten (10) days nor more than 25 days prior to the date fixed for the hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to map. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- (3) Mailed Notice. The owner of that parcel of land (related to the application) as shown on the County tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the County tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the County tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than 25 days prior to the date of the public hearing. The *person* or *persons* mailing such notices shall certify to the *ZBA* that fact, and such certificate shall be deemed conclusive in the absence of fraud.
- (4) A member of the *ZBA* 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 conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected *person*, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

**§200A-340. Reserved**

**§200A-341. Reserved**

**§200A-342. Reserved**

**§200A-343. Reserved**