3. ADMINISTRATIVE PROCEDURES

3.1 ADMINISTRATIVE MANUAL

The Town of Hillsborough's *Administrative Manual*, provides information relevant to the day-to-day use of this Ordinance. The Manual provides guidance in the use of this Ordinance, consolidates information on the development review processes, and explains review procedures and requirements. References to the *Administrative Manual* are made in this Ordinance. This Manual is intended to supplement, and not as a substitute for, this Ordinance.

3.2 APPLICABLE TO ALL REVIEW PROCESSES

3.2.1 COMPLETE APPLICATIONS

All applications for any approval required by this Ordinance must be complete. Planning Director will establish application deadlines to allow time to review applications for completeness before continuing the application process. Applicants who submit incomplete applications will receive a written notice stating the information needed to complete the application and a date by which the information must be submitted to maintain the review schedule. No application will be considered complete until all fees required by the Town's fee schedule have been paid in full. Application Packets including application deadlines, submittal requirements, and application forms can be found in the *Administrative Manual*.

3.2.2 EXPEDITIOUS REVIEW

Town shall make every reasonable effort to process applications expeditiously, consistent with the need to ensure that all development conforms to the requirements of this chapter.

3.2.3 FEES

Filing fees for all development approvals pursuant to this ordinance shall be established by the Fee Schedule adopted by the Town Board. The fee schedule can be found in the *Administrative Manual*.

3.2.4 AUTHORITY TO FILE

Applications for any approval or permit required by this Ordinance must be signed by the property owner, a designated owner's agent, or a contract purchaser of a property with authorization of the property owner. Written proof of authority must be submitted with every application.

3.3 COMPREHENSIVE REVIEW OF CHAPTER

The Planning Board shall, from time to time, but not less frequently than every five (5) years, examine the provisions of this Ordinance and the location of Zoning District boundary lines, and shall submit a

report to the Town Board recommending changes and amendments, if any, which are desirable in the interest of public health, safety, and general welfare, mindful of the intent expressed in Section 1.3, *General Purpose and Intent*.

3.4 TYPOGRAPHICAL ERRORS

Typographical errors, spelling changes, numerical reference errors, errors in section or page numbering or other purely non-substantive editorial changes may be corrected by the Planning Director without formal adoption by the Town Board provided that such corrections do not change the meaning of the Ordinance.

Any correction made pursuant to this section shall be reported in writing to the Town Board and made a part of the Board's regular meeting minutes.

3.5 CREATION OF NEW LOTS/DIVISION OF LAND

3.5.1 REVIEW REQUIRED

Subsequent to the effective date of this Ordinance, no land within the Town of Hillsborough planning jurisdiction shall be subdivided, or re-subdivided and offered for sale, gifted, exchanged, or in any other way conveyed until a plat thereof has been approved as herein provided. No plat shall be recorded by the Orange County Register of Deeds until this approval is entered in writing on the face of the plat as herein provided.

3.5.2 THE REVIEW REQUIRED IS DETERMINED BY THE NUMBER OF NEW LOTS TO BE CREATED AS FOLLOWS:

3.5.2.1 Exempt plats: Staff review, must meet standards in Section 3.5.3 below.

3.5.2.2 Minor subdivisions: Staff review to create 4 or fewer lots.

3.5.2.3 Conditional subdivisions: Conditional Use Permit review by Board of Adjustment to create 5-19 lots.

3.5.2.4 Special subdivisions: Special Use Permit review by Planning and Town Boards to create 20 or more lots.

3.5.2.5 Conservation subdivisions: Special Use Permit review by Planning and Town Boards to create 20 or more lots, but less than 100 lots with reduced lot sizes and additional open space

3.5.3 EXEMPT PLATS

3.5.3.1 Property owners or their authorized agents must present a paper or recordable map to the Planning Department for determination of whether the action created by the recording of the map meets the Ordinance standards to be exempt.

3.5.3.2 If the proposal meets the exemptions listed in this Ordinance or in N.C. Gen. Stat. § 160A-376, the Planning Director shall sign an exemption note on the face of the recordable map before it is recorded.

3.5.3.3 In addition to the divisions of land identified in N.C. Gen. Stat. § 160A-376(a)(1) through (4), the following divisions of land shall not be included within the definition of the term "subdivision" and shall not be subject to this Ordinance: (1) the division of land for the purpose of creating a lot for use as a site for a utility pump station; (2) the recordation of a plot of lots created by deeds recorded in the Orange County Registry prior to March 13, 1978; (3) the creation of a lot to be conveyed to the Town or to a non-profit entity for the purpose of creating public parks or public open space, provided that the plat and the deed creating such parcel shall specifically state that the parcel created may not be used for any other purpose, (4) the division of land owned by a governmental entity to facilitate the conveyance of a portion of said land to another governmental entity for governmental or public use, and (5) the recordation of a plat consistent with Section 7.3.3, *Multiple Detached Dwellings on a Single Parcel*.

3.5.3.4 If the proposal does not meet the exemptions, the Planning Director shall return the unsigned map to the property owner or authorized agent with a written description of why the map does not qualify to be exempt.

3.5.4 MINOR SUBDIVISION

Property owners or agents must present a paper map to the Planning Department to review any division of land into 4 or fewer lots from a single tract of land in any five (5) year period. Such a division may only be approved by staff if no new public road is necessary to create the lots. If a new public road is proposed as part of the project, the Planning Director shall refer the request to the Technical Review Committee (TRC) for final review and approval. If no public or private road right of way or construction is part of the proposal, the Planning Director may approve the minor subdivision by signing the approval certificate on the recordable map.

The application will be processed according to the procedure details in Section 5.2.43, *Subdivisions, Minor*.

3.5.5 CONDITIONAL SUBDIVISIONS

Divisions of land resulting in the creation of between five (5) and nineteen (19) new lots from a single tract of land in any five (5) year period shall require a Conditional Use Permit, with review criteria as set forth in Section 5.2.41, *Subdivisions, Conditional or Special*.

3.5.5.1 Sketch Plan

Before submitting a Conditional Use Permit application, the applicant shall submit a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision

proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.5.2 Conditional Use Permit Required

The preliminary plan will be processed according to the Conditional Use Permit procedure and details found in Section 3.9, *Conditional Use Permits*.

3.5.6 SPECIAL SUBDIVISIONS

Divisions of land resulting in the creation of twenty (20) or more new lots from a single tract of land in any five (5) year period shall require a Special Use Permit, with review criteria as set forth in Section 5.2.41, *Subdivisions, Conditional or Special*.

3.5.6.1 Sketch Plan

Prior to submitting a Special Use Permit application, the applicant shall submit a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.6.2 Special Use Permit Required

The preliminary plan will be processed according to the Special Use Permit procedure and details found in Section 3.8.

3.5.7 CONSERVATION SUBDIVISIONS (SECTION 9.2 FOR DEFINITION)

Divisions of land into twenty (20) or more new lots from a single tract of land in any five (5) year period, with special features as set forth in Section 5.2.42 for conservation subdivisions, shall require a Special Use Permit.

3.5.7.1 Sketch Plan

Prior to submitting a preliminary plat, the applicant shall submit to a sketch design plan, the elements of which are discussed in the *Administrative Manual*. In reviewing the proposal the Planning Department may consider existing development in the area, compatibility with the comprehensive plan for the Town, and the suitability of the land to avoid the unnecessary expense of redesigning unacceptable subdivision proposals. The Planning Department shall make available to the applicant maps, studies, and reports which indicate land suitability including maps of flood prone areas, soil, conditions, location of historic sites and unique natural areas.

3.5.7.2 Special Use Permit Required

The preliminary plan will be processed according to the Special Use Permit procedure and details found in Section 3.8.

3.6 UNIFIED DEVELOPMENT ORDINANCE, FUTURE LAND USE PLAN, AND COMPREHENSIVE PLAN AMENDMENTS

3.6.1 INTENT

It is the intent of this section to set forth the procedures for amending this Ordinance, including the Official Zoning Map, as well as the *Future Land Use Plan* and the Comprehensive Plan. Amendments shall be made by formal action of the Town Board. All proposed amendments shall be referred to the Planning Board for its consideration and recommendation. In no case shall final action be taken to amend this Ordinance until a duly advertised public hearing is held.

3.6.2 GENERAL STANDARDS/FINDINGS OF FACT

Before amending this Ordinance or the Official Zoning Map, the Town Board must find, after conducting the process below, that the request is not inconsistent with the adopted Comprehensive Plan for the Town of Hillsborough.

Amending the Official Zoning Map (Rezoning) is a matter committed to the legislative discretion of the Town Board. In determining whether to adopt a proposed amendment, the Town Board shall consider and weigh the relevance of the following factors:

(a) The extent to which the proposed amendment is consistent with all applicable Town-adopted plans;

(b) The extent to which there are changed conditions that require an amendment;

(c) The extent to which the proposed amendment addresses a demonstrated community need;

(d) The extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and is the appropriate zoning district for the land;

(e) The extent to which the proposed amendment would result in a logical and orderly development pattern, or deviate from logical and orderly development patterns;

(f) The extent to which the proposed amendment would encourage premature development;

(g) The extent to which the proposed amendment would result in strip or ribbon commercial development;

(h) The extent to which the proposed amendment would result in the creation of an isolated zoning district unrelated to or incompatible with adjacent and surrounding zoning districts;

(i) The extent to which the proposed amendment would result in significant adverse impacts on the property values of surrounding lands; and

(j) The extent to which the proposed amendment would result in significantly adverse environmental impacts , including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

3.6.3 AUTHORITY TO APPLY

3.6.3.1 Amendments to the *Unified Development Ordinance*

Subject to the limitations of the foregoing statement of intent, an amendment to this Ordinance, including the Official Zoning Map, may be initiated by:

(a) The Town Board on its own motion;

(b) The Planning Board;

(c) The Board of Adjustment;

(d) Any person or agency

3.6.3.2 Amendments to the *Future Land Use Plan*

Any property owner or other person or entity establishing a sufficient legal interest in a parcel may apply to amend the *Future Land Use Plan* designation on the parcel. Any advisory board of the town may request the Planning Board or Town Board to sponsor an amendment to the *Future Land Use Plan* related to the duties and authority of the advisory board.

3.6.3.3 Amendments to the Comprehensive Plan

Any resident of the town may apply to amend any component of the Comprehensive Plan. Any property owner or other person or entity establishing a sufficient legal interest in a parcel may apply to amend any component of the Comprehensive Plan. Any advisory board of the town may request the Planning Board or Town Board to sponsor an amendment to any component of the Comprehensive Plan related to the duties and authority of the advisory board.

3.6.4 PRE-APPLICATION

Applicants seeking to amend the Official Zoning Map shall, before submitting an application for a Zoning Map Amendment, participate in a pre-application meeting with the Planning Director to ensure the application does not require additional, parallel reviews for Land Use Plan amendments.

3.6.5 APPLICATION REQUIREMENTS

Applicants shall refer to the *Administrative Manual* for the requirements for a complete application to amend this Ordinance, the Official Zoning Map, the *Future Land Use Plan*, or the Comprehensive Plan.

3.6.6 STAFF REVIEW

Upon receipt of an application to amend this Ordinance, the Official Zoning Map, the *Future Land Use Plan*, or the Comprehensive Plan, the Planning Director shall first determine if the application is complete (including the submission of the required application fee). Applications which are not complete, or which otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant with a notation by the Planning Director of the deficiencies in the application.

An application to amend the zoning map to a Special Use district impacting any parcel within the Historic Overlay District shall be referred to the Historic District Commission for review before the public hearing as described in section 3.8.9.

Once the application is deemed complete, it will be placed on the next available public hearing agenda.

3.6.7 PUBLIC HEARING

The Town Board and the Planning Board generally shall hear applications for amendments to these documents at a quarterly, joint Public Hearing. The Town Board may, in its discretion, schedule public hearings on applications at times other than the quarterly public hearing. The *Administrative Manual* includes the schedule of quarterly public hearing dates and filing deadlines.

3.6.7.1 Notice of Public Hearing

All notices required under this Ordinance shall comply with the North Carolina General Statutes. In addition, all notices shall, unless otherwise specified in this Ordinance, comply with the following.

3.6.7.1.a *Published Notice*

Notice of each public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the Town, stating the time and place of such hearing and the substance of the proposed amendment, in accordance with the provisions of N.C. Gen. Stat. § 160A-364. This notice shall appear in said newspaper for two (2) successive weeks prior to the public hearing, the first publication not less than ten (10) days nor more than twenty-five (25) days prior to the hearing.

3.6.7.1.b *Mailed Notice*

In the case of a proposed Zoning Map amendment, in addition to the public notice requirement established in Section 3.6.7.1.a above, the Planning Director shall give notice by first class mail to owner of the subject property and to the owners of all parcels any part of which lies within five hundred (500) feet of the property boundaries of the subject property. The Planning Director shall certify to the Town Board that such notice was given.

3.6.7.1.c *Posted Notice*

In the case of a proposed Zoning Map amendment, the Planning Director shall post notice on the subject property(ies) notice of the time, date, and location of the public hearing, and a summary of the requested amendment in a form established by the Planning Director, at least ten (10) days before the date fixed for public hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. The posted notice shall remain in place until after a final decision is rendered on the application. The posted notice shall be placed in a manner to provide visibility from the public right-of-way. The applicant shall ensure that the posted notice is maintained on the land until completion of the public hearing on the application.

3.6.7.2 Post-hearing Process

The public hearing on an amendment to this Ordinance, the Zoning Map, the *Future Land Use Plan*, or the Comprehensive Plan is formally closed by a motion and vote of the Board members present at the hearing.

The Planning Director shall prepare a recommendation following the Public Hearing to be submitted to the Planning Board and the Town Board.

3.6.8 PLANNING BOARD RECOMMENDATION

The Planning Board shall within thirty (30) days after the public hearing is closed, prepare and submit for the Town Board a recommendation concerning the application.

3.6.9 TOWN BOARD ACTION

The Town Board shall not take action on the proposed amendment until thirty (30) days after the date of the Public Hearing or until the Planning Board makes its recommendation, whichever comes first.

3.6.10 FORMALIZING THE OUTCOME

The Town Board's action on a proposed amendment shall be in the form of an ordinance amending the applicable document. An amendment is effective immediately, unless some other effective date is specified in the amending ordinance.

The applicant shall receive written notice of the Town Board's decision on the application, including a copy of the Ordinance adopted by the Town Board if the application is approved, within 30 days of the effective date of the ordinance.

3.6.11 APPEAL

Text and map amendments are legislative actions of the Town Board. Any person seeking to challenge the validity of any amendment to this Ordinance may challenge such amendment by filing an appropriate action in the Orange County Superior Court within the time established by N.C. Gen. Stat. § 160A-364.1.

3.6.12 EFFECT OF DENIAL OR WITHDRAWAL

An applicant may withdraw his or her application for an amendment at any time by written notice to the Planning Director.

When the Town Board shall have acted upon an application or the application shall have been withdrawn after the first notice of the public hearing thereon, the Town shall not accept another application for the same or similar text or Official Zoning Map amendment, affecting the same property or a portion of it, until the expiration of a one (1) year period, extending from the date of action or withdrawal. The Town Board may on its own motion, however, initiate an amendment of this nature prior to the expiration of the one (1) year period.

3.6.13 VESTING

Amendments to this Ordinance, the Zoning Map, the *Future Land Use Plan*, or the Comprehensive Plan do not qualify as site specific development plans and do not establish statutory vested rights.

3.6.14 DEVIATIONS, MODIFICATIONS, REVOCATION, EXPIRATION

Text and map amendments enacted by the Town Board are legislative actions and are not subject to deviations, modifications, revocation, or expiration except through specific action to further amend these documents.

3.7 MASTER PLAN

3.7.1 INTENT

The intent of the Master Plan review is to establish a process limited to Special Use Zoning Districts for considering requests for approval of significant, large or multi-phase projects which may include complex infrastructure improvements, and/or variety of different uses, and/or a variety of different lot or parcel sizes, and/or other features not ordinarily easily addressed in other processes available under this Ordinance. An approved Master Plan provides a framework within which a large project can proceed to more specific plans for all, or one or more smaller portions of, the property included in the Master Plan. An approved Master Plan provides the authorization to install infrastructure only, not the construction of buildings or parking. Typically, a site specific development plan shall be submitted for review and approval of phases or component parts of an approved Master Plan.

3.7.2 APPLICABILITY

An application for a Master Plan may only be filed with an application for rezoning to a special use district for a unified project involving at least twenty (20) acres of land or for the remainder of a site seeking a special use permit involving at least five (5) acres of land.

3.7.3 GENERAL STANDARDS/FINDINGS OF FACT

The Town Board shall not approve a Special Use Permit application unless it makes each of the following findings concerning the proposal:

3.7.3.1 The proposal meets the intent of the zoning district being requested;

3.7.3.2 The proposal meets the application criteria for the zoning district being requested; and

3.7.3.3 The proposal contains sufficient detail to guide future Special Use Permit applications that will generally be able to comply with provisions of this Ordinance

3.7.4 PROCESS

A Master Plan application shall be processed concurrently with a rezoning request for a Special Use District, and shall be reviewed in accordance with the procedures established by this Ordinance for Zoning Map amendments (Section 3.6). The Planning Board shall make separate recommendations on the rezoning request and the Master Plan. The Town Board shall take separate action on the rezoning request and the Master Plan. If the Town Board denies the rezoning request, the Master Plan application is rendered moot and no further Town Board action is required. Action to approve or deny a Master Plan shall be by resolution and may include reasonable conditions.

3.7.5 MASTER PLAN AND VESTED RIGHTS

Approval of a Master Plan establishes a vested right for development of the property consistent with the approved Master Plan, and remains valid for five years.

3.7.6 MODIFICATIONS

A Master Plan may be modified through specific Town Board action, following the Zoning Map amendment process, upon the application of the property owner or authorized representative as specified in Section 3.6.14, *Deviations, Modifications, Revocation, Expiration.* Town Board approval of a Special Use Permit that is inconsistent with an approved Master Plan shall be considered to be an amendment to the Master Plan.

3.7.7 REVOCATION

An approved Master Plan may be revoked upon action by the Town Board, after notice to the property owner, if the Town Board finds that conditions of approval have not been or are not being satisfied, or that material representations made in the application materials are false or misleading.

3.7.8 EXPIRATION OF VESTED RIGHT

The vested right associated with an approved Master Plan shall expire after the period established upon approval as set forth in Section 3.7.3, *Master Plan and Vested Rights* unless

improvements have been made to the property in reliance on the approval sufficient to establish common law vested rights.

An approved Master Plan that is timely pursued and constructed by the applicant or successors runs with the land.

3.8 SPECIAL USE PERMIT

3.8.1 INTENT

Special Uses, because of their inherent nature, extent of development, or external effects, require special consideration of their location, design and methods of operation, in order to protect the public health, safety and welfare. This section sets forth the information to be submitted with applications for Special Use Permits (SUP) and states the standards by which each application shall be judged.

The criteria and procedures established in this section are intended to ensure that the design and construction of site elements include appropriate consideration of the relationship and balance among site elements, the relationship of the proposed development to natural features and neighboring developments, access and circulation systems, mitigation of erosion and sedimentation, mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring development and streets, and mitigation of traffic impacts.

3.8.2 APPLICABILITY

An application for a Special Use Permit (SUP) may be submitted when the use is designated Special Use in the Permitted Use Table or in compliance with an approved Master Plan in a Special Use district.

If a Special Use Permit application is submitted simultaneously with a rezoning request to a Special Use District, hearings on both matters shall be held concurrently. The Town Board must act on the rezoning request before it may act on the Special Use Permit application. If the rezoning request is denied, the Special Use Permit application is moot, and no Board action is required on such request.

3.8.3 GENERAL STANDARDS/FINDINGS OF FACT

The Town Board shall not approve a Special Use Permit application unless it makes each of the following findings concerning the proposed special use:

(a) That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.

(b) That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations;

(c) That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and

(d) That the use or development conforms with the general plans for the physical development of the Town and is consistent with the Town's Comprehensive Plan.

3.8.4 APPLYING THE ORDINANCE TO DETERMINE COMPLIANCE WITH STANDARDS TO MAKE FINDINGS OF FACT

3.8.4.1 All of the requirements in this ordinance apply to applications for Special Use Permits.

3.8.4.2 Certain uses require specialized information, which is contained in Section 5, *Use Standards*. To the extent that an applicant seeks a Special Use Permit for a use not specifically listed in Section 5, the requirements in Section 5.2.48 shall apply.

3.8.4.3 To the extent that an applicant seeks a Special Use Permit for a parcel which does not have a specified development standard based on the zoning designation assigned to that parcel, the standard for the Office Institutional zoning district shall apply.

3.8.4.4 As Special Uses may have unique characteristics that may not be adequately addressed with development standards for routine uses, an applicant may request a waiver or modification to any provision in Section 6 (excluding Section 6.20), together with an explanation of why the wavier or modification is appropriate, including testimony as to why the proposed solution included in the application is equal or superior to the result achieved through the strict application of the provisions in Section 6. The Planning Director, Technical Review Committee and the Planning Board may offer recommendations to the Town Board regarding any requested waiver or modification and the sufficiency of the evidence in support of granting the waiver or modification. Any approval of a Special Use Permit shall specifically detail any and all waiver(s) or modification(s) granted to the applicant.

3.8.5 SPECIALIZED INFORMATION AND FINDINGS REQUIRED FOR ALL SPECIAL USE PERMITS

3.8.5.1 The Town of Hillsborough recognizes that the Special Use Permit process affords the town and applicant a unique opportunity to cooperate and encourage development that is mutually beneficial. The Town requires applicants for Special Use Permits to provide additional information and amenities within their projects to offset the possible waiver of strict ordinance compliance and to recognize the impacts of sizable or unique developments can have on quality of life for Hillsborough residents. All applicants for Special Use Permits shall include information about the following in their submittals and shall address how their proposal satisfies each of the findings of fact in Section 3.8.3, *General Standards/Findings of Fact*:

3.8.5.1.a Applicants shall consult with the State Department of Cultural resources to determine if there are known archeological resources in the vicinity of their site. If

resources are expected based on the known database, applicants shall indicate how those resources will be protected or documented if protections is not practicable as part of their development plan.

3.8.5.1.b Applicants shall indicate a preferred green building or sustainable building rating system for their project and indicate the performance level they intend to meet for the development site or structures in their application materials.

3.8.5.1.c Applicants shall indicate their expected water use for the daily operations of their site upon completion. Projects will be required to demonstrate water saving or reuse measures that will be employed. (show baseline & their use)

3.8.5.1.d Applicants proposing 20 or more dwelling units shall indicate the provisions they intend to make in support of maintaining the diversity of housing types and housing price points in Hillsborough.

3.8.6 BURDEN OF PRESENTING EVIDENCE

The burden of presenting a complete application shall at all times be upon the applicant. However, unless the Planning Director informs the applicant at or before the hearing on the application that, and in what way, the application is incomplete, and offers the applicant an opportunity to complete the application, the application shall be presumed to be complete.

Once a completed application has been submitted, the burden of presenting evidence to the permit-issuing board sufficient to allow the permit-issuing board to conclude that the application should be denied for any reasons stated in Section 3.8.3, *General Standards/Findings of Fact,* shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any other reasons set for in Section 3.8.3, *General Standards/Findings of Fact,* rests on the party or parties urging the requested permit should be denied.

3.8.7 PRE-APPLICATION

Applicants are encouraged to meet with Planning Director before filing a Special Use Permit application to review specific permit and application requirements.

3.8.8 APPLICATION REQUIREMENTS

Special Use Permit applications shall be filed with the Planning Director.

The Planning Director shall prescribe the form(s) on which applications are made. Application requirements and necessary submittals are set forth in the *Administrative Manual*.

3.8.9 STAFF REVIEW

Upon receipt of a Special Use Permit application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case.

In preparing their analysis, the Planning Director shall refer a Special Use Permit application to the next available Technical Review Committee meeting to facilitate the outside agency review and collection of comments.

If a Special Use Permit application is filed for a parcel located within the Historic Overlay District, the application shall be referred to the Historic District Commission for its review prior to the public hearing on the Special Use Permit application. The applicant shall present a conceptual plan of the proposal to the Historic District Commission and shall discuss how the application fits into the historic district in terms of site organization, circulation, structure, form, massing, scale, height, orientation, roof form, and proportion. The Commission may offer comments and recommendations on the application to the applicant and shall formulate a formal statement to be provided in writing to the Planning Board and Town Board during the public hearing on the application. The Planning Board and the Town Board shall consider any comments or recommendations provided by the Commission when determining the findings of fact for the application. The Commission's comments and/or recommendations, if any, shall not be binding on the Commission when it considers any application for a Certificate of Appropriateness with respect to the property, which application shall be processed and reviewed pursuant to Section 3.12.

3.8.10 TECHNICAL REVIEW COMMITTEE

The Technical Review Committee shall review all applications for Special Use Permits, and make a recommendation on each such application, which recommendation may include recommended conditions of approval. Once the Technical Review Committee has made its written recommendation, the Special Use Permit application shall be scheduled for the next available public hearing agenda.

3.8.11 PUBLIC HEARING

After notice in accordance with Section 3.8.12, *Notice of Public Hearing,* is given the Town Board and the Planning Board shall hold a joint public hearing on the application at the next quarterly joint hearing. The Town Board may, in its discretion, schedule a public hearing on a

Special Use Permit application at a time other than the regularly scheduled quarterly joint hearing.

The public hearing on a Special Use Permit application shall be a quasi-judicial hearing open to the public. At the hearing, the applicant and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions. Reasonable and equitable limitations may be placed on the presentation of evidence and arguments, and the cross-examination of witnesses, so that the application may be heard without undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

When the applicant presents substantial and competent evidence that the proposed development will satisfy the general standards established by Section 3.8.3, *General Standards/Findings of Fact,* above and will conform to all specific provisions applicable to that particular special use as established by this Ordinance, persons opposed to the application shall have the burden of presenting substantial and competent evidence contrary to the applicant's evidence or substantial and competent evidence that the proposed development will violate one or more of the general standards set forth in Section 3.8.3, *General Standards/Findings of Fact,* or any of the specific standards for the particular special use established by this Ordinance. If no such evidence is submitted, the applicant shall be granted the permit. If substantial and competent evidence in opposition to the application is submitted, the applicant shall have the burden of overcoming that evidence with further evidence of his/her own.

A record of the proceedings of the hearing shall be made and shall include all application materials and documentary evidence presented at the hearing.

3.8.12 NOTICE OF PUBLIC HEARING

Notice of the public hearing on a Special Use Permit application shall be given once a week for two (2) consecutive calendar weeks in a newspaper of general circulation in Orange County. The notice shall be published the first time not less than ten (10) days no more that twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Written notice shall be sent to all adjacent property owners not less than ten (l0) days before the hearing date. Adjacent property owners are those whose property lies within five hundred (500) feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

3.8.13 POST-HEARING PROCESS

The public hearing on a Special Use Permit application is formally closed by a motion and vote of the Board members present at the hearing. The Planning Director shall prepare a

recommendation following the Public Hearing to be submitted to the Planning Board and the Town Board.

3.8.14 PLANNING BOARD RECOMMENDATION

The Planning Board, shall within thirty (30) days after the public hearing is closed, prepare and submit for the Town Board a written recommendation concerning the application.

3.8.15 TOWN BOARD ACTION

The Town Board shall not consider the approval of the Special Use Permit until thirty (30) days after the date of the Public Hearing or until the Planning Board makes its recommendation, whichever comes first.

The Town Board shall review the record of the public hearing, the Technical Review Committee's recommendation, the Planning Board's recommendation, and the Planning Director's report and shall take action on the application based on findings of fact as to the determinations required in Section 3.8.3, *General Standards/Findings of Fact,* and the applicable standards for the specific special use as established by this Ordinance. All findings shall be based on competent evidence presented at the public hearings.

The Town Board may impose such reasonable conditions upon approval of a SUP as will afford protection of the public health, safety, and general welfare, ensure that substantial justice is done, and equitable treatment provided.

All conditions of approval shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Town Board denies the permit, the reasons for its action shall be recorded in the minutes of the meeting.

3.8.16 FORMALIZING THE OUTCOME

The Planning Director shall cause notice of the disposition of the application to be delivered by certified mail to the applicant and any party who has filed a written request for a copy with the Planning Director at the time of the hearing, and shall cause a copy of the decision to be filed in the Planning Department.

In the case of approval or approval with conditions, the staff shall issue the Special Use Permit in accordance with the action of the Town Board and the applicant shall record it in the office of the Orange County Register of Deeds within ten (10) days of receipt. No Special Use Permit will be effective, and no further permits or approvals for the development may be issued, until the Special Use Permit has been filed with the Register of Deeds. A copy of the Special Use Permit, with proof of filing with the Orange County Register of Deeds, shall be delivered to the Planning Director within ninety (90) days after the Special Use Permit is issued to the applicant.

Any construction authorized by a Special Use Permit must receive construction drawing approval and a Zoning Compliance Permit as detailed in Section 3.14, *Zoning Compliance Permits*.

3.8.17 APPEAL

An aggrieved party may appeal a decision by the Town Board on an application for a Special Use Permit to the Superior Court. Such appeal shall be in the nature of certiorari and must be filed within the time provided by N. C. Gen. Stat. § 160A-388(e2).

3.8.18 EFFECT OF DENIAL OR WITHDRAWAL

When the Town Board shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in Section 3.8.12, *Notice of Public Hearing*, the Planning Director shall not accept another application for the same or similar Special Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

3.8.19 VESTING

A vested right pursuant to Section 1.8, *Vested Rights* is established by the issuance of a Special Use Permit pursuant to this section.

3.8.20 DEVIATIONS

After a Special Use Permit has been approved, the Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the Town Board but the Planning Director shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Town Board. If the Planning Director is uncertain whether a requested deviation is a “minor change” or a “modification”, it shall be treated as a modification and referred to the Town Board for review and approval.

3.8.21 CRITERIA USED FOR DETERMINATION

The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification:

(a) Any change in a specific condition imposed during the approval of a Special Use Permit shall constitute a modification.

(b) A substantial change in use or enlargement by greater than ten (10) percent of an authorized use shall constitute a modification.

(c) A ten (10) percent or greater increase in intensity of use shall constitute a modification. An increase in the number of dwelling units is an example of an increase in intensity of use.

(d) An increase of intensity of less than ten (10) percent may be considered a minor change if the Planning Director finds that the development, as changed or modified, will continue to be in general conformance with the approved Special Use Permit.

(e) Structural alterations which significantly affect the basic size, form, style, ornamentation, and/or character of buildings shown on an approved plan or described in the applicant's narrative shall be considered a modification.

(f) Substantial change in the amount and/or location of open space, recreation facilities or landscape screening shall constitute a modification. Changes to signage which increase the number of signs, or increase the sign face area, beyond that approved as part of the Special Use permit process shall be considered modifications.

(g) Any change in parking areas resulting in an increase or reduction of ten (10) percent or more in number of spaces shall constitute a modification.

(h) Substantial change in pedestrian and/or vehicular access or circulation patterns shall constitute a modification.

(i) Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval shall constitute a modification.

(j) Substantial change in the location or extent of street and utility improvements or rights-of-way, including water, sewer, and storm drainage facilities, which would result in a different level of service than was represented to the Town Board during the public hearing process, shall constitute a modification.

(k) Any combination of minor changes that in the determination of the Planning Director are, taken together, substantial in nature.

3.8.22 REVIEW OF RECORD REQUIRED

The Planning Director shall, before deciding whether a proposed change to a special use is a minor change or modification, review the record of the proceedings of the original Special Use Permit approval. The Planning Director's decision shall be based upon the applicant's request, a review of the record of the original request, and the Planning Director's findings under the criteria of Section 3.8.21, *Criteria Used for Determination*.

3.8.23 ACTION REQUIRED ON PROPOSED MINOR CHANGES

If the Planning Director determines that the proposed action is a minor change, they shall state their findings in writing to the applicant. The applicant shall file with the Planning Director an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the originally approved site plan.

3.8.24 ACTION REQUIRED ON PROPOSED MODIFICATIONS

If the Planning Director determines that the proposed action is a modification, he shall require the applicant to submit a request for modification of the approved Special Use Permit. The applicant shall provide an amended site plan and written narrative outlining the specific changes requested. The Planning Director shall submit the request to the Town Board. If the Town Board finds the modification substantial in its impact, or wishes to have additional public input, it may set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a request for a modification of an approved SUP shall be held in conformity with the requirements of Section 3.8.11, *Public Hearing*. The Town Board may approve, approve with conditions or disapprove the application for a modification. The Planning Director shall file the Town Board's action as an amendment to the original application.

Modifications to Special Use Permits for properties located in the historic overlay district which impact the site organization, form, massing, scale, height, orientation, roof form, and proportion of the site shall be referred to the Historic District Commission, as described in Section 3.8.9 before any public hearing on the modification.

3.8.25 REVOCATION

The Town Board may revoke a Special Use Permit if it finds that any one, or more, of the following conditions:

(a) That any governmental license or permit required for the activity authorized by a Special Use Permit has not been obtained or has been terminated; or

(b) That any of the applicable requirements of this Ordinance or any conditions attached to the Special Use Permit, or modification thereof, have been violated.

The Town Board may consider reapplication for a Special Use Permit on property on which a previous permit has expired pursuant to Section 3.8.26, *Expiration* or has been revoked under this section, provided that all of the standards which are set forth in this Ordinance are met.

3.8.26 EXPIRATION

An approved Special Use Permit expires 24 months from the date of approval if the Zoning Permit has not been issued for the project unless an extension of the expiration date has been granted by the Town Board. Extensions may be in the form of a longer expiration time approved with the initial Special Use Permit, or a separate request made in writing before the expiration of the standard 24 months.

3.9 CONDITIONAL USE PERMIT

3.9.1 INTENT

Conditional Uses because of their inherent nature, extent of development, or external effects, require special care in the control of their location, design and methods of operation, in order to insure protection of the public health, safety and welfare.

Those uses listed as P/C uses in the Permitted Use Table (Section 5.1) for a particular zoning district may be established in that district only after the approval of a Conditional Use Permit (CUP), established here, and approved by the Board of Adjustment, if the development exceeds the threshold for a site plan review in Section 3.13.2.

It is the intent of this section to set forth the information to be submitted with applications for Conditional Use Permits and to state the standards by which each application shall be judged.

3.9.2 APPLICABILITY

Those uses listed as conditional uses in the Permitted Use Table (Section 5.1) for a particular zoning district may be established in that district only after the approval of a Conditional Use Permit (CUP), established here, and approved by the Board of Adjustment.

3.9.3 GENERAL STANDARDS/FINDINGS OF FACT

The Board of Adjustment shall not approve an application for a Conditional Use permit unless it makes each of the following findings concerning the proposed conditional use:

(a) That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.

(b) That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5 and 6 and all applicable regulations;

(c) That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and

(d) That the use or development confirms with the general plans for the physical development of the Town as embodied in the Town's Comprehensive Plan.

3.9.4 APPLYING THE ORDINANCE TO DETERMINE COMPLIANCE WITH STANDARDS TO MAKE FINDINGS OF FACT

3.9.4.1 All of the requirements in this ordinance apply to applications for Conditional Use Permits.

3.9.4.2 Certain uses require specialized information, which are contained in Section 5, *Use Standards*. To the extent that any person applies for a Conditional Use Permit not individually listed in Section 5, the requirements in Section 5.2.52 shall apply.

3.9.4.3 As Conditional Uses may have unique characteristics that may not be adequately addressed with development standards for routine uses, an applicant may request a waiver to any provision in Section 6 (excluding Section 6.20), together with an

explanation of why the waiver or modification is appropriate, including testimony as to why the proposed solution included in the application is equal or superior to the result achieved through the strict application of the provisions in Section 6. The Planning Director and Technical Review Committee may offer recommendations to the Board of Adjustment regarding any requested waiver or modification and the sufficiency of the evidence in support of granting the waiver or modification. Any approval of a Conditional Use Permit shall specifically detail any and all waiver(s) or modification(s) granted to the applicant.

3.9.5 PROCEDURE

3.9.5.1 Authority to apply

Applications for conditional use permits may be made by the owner of the property or the owners authorized representative (including but not limited to a contract purchaser of the property, provided that such contract purchaser or other authorized representative produces evidence of authority to proceed with the application).

3.9.5.2 Pre-application

Applicants are encouraged to meet with Planning Director before filing a Conditional Use Permit application to review specific permit and application requirements.

3.9.5.3 Application requirements

Applications for Conditional Use permits shall be filed with the Planning Director.

The Planning Director shall prescribe the form(s) on which applications are made. Application requirements and necessary submittals are set forth in the *Administrative Manual*.

3.9.5.4 Staff Review

Upon receipt of a Conditional Use permit application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case.

If a Conditional Use Permit application is filed for a parcel located within the Historic Overlay District, the application shall be referred to the Historic District Commission in advance of the public hearing on the Conditional Use Permit application. The applicant shall present a conceptual plan of the proposal to the Historic District Commission and shall discuss how the application fits into the historic district in terms of site organization, circulation, structure, form, massing, scale, height, orientation, roof form, and proportion. The Commission may offer comments and recommendations on the

application to the applicant and shall formulate a formal statement to be provided in writing to the Board of Adjustment during the public hearing on the application. The Board of Adjustment shall consider any comments or recommendations provided by the Commission when determining the findings of fact for the application. The Commission's comments and/or recommendations, if any, shall not be binding on the Commission when it considers any application for a Certificate of Appropriateness with respect to the property, which application shall be processed and reviewed pursuant to Section 3.12.

In preparing their analysis, the Planning Director shall refer a Conditional Use Permit application to the next available Technical Review Committee meeting to facilitate the outside agency review and collection of comments.

3.9.6 TECHNICAL REVIEW COMMITTEE

The Technical Review Committee shall review all applications for Conditional Use Permits, and make a recommendation on each such application, which recommendation may include recommended conditions of approval. Once the Technical Review Committee has made its written recommendation, the Conditional Use Permit application shall be scheduled for the next available public hearing agenda.

3.9.7 PUBLIC HEARING

After notice in accordance with Section 3.9.7.1, *Notice of Public Hearing,* is given, the Board of Adjustment shall hold a public hearing on the application at the Board of Adjustment's next regularly scheduled meeting.

The public hearing is a quasi-judicial hearing and shall be open to the public. All interested persons shall be given the opportunity to present evidence and arguments and to ask questions. The Board of Adjustment may establish reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the application may be heard without undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

When the applicant presents substantial and competent evidence that the proposed development satisfies the general requirements established by Section 3.9.3, *General Standards/ Findings of Fact* and will conform to all specific provisions of this Ordinance applicable to the proposed Conditional Use, persons opposed to the granting shall have the burden of presenting substantial and competent evidence contrary to the applicant's evidence, or substantial and competent evidence that the proposed development will violate one or more of the general standards set forth in Section 3.9.3.1 through 3.9.3.4 or any of the specific standards established by this ordinance for the conditional use proposed. If no such substantial and competent evidence is submitted, the applicant shall be granted the permit. If substantial and competent evidence is submitted, the applicant shall have the burden of overcoming that evidence with further substantial and competent evidence of his/her own.

A record of the proceedings of the hearing shall be made and shall include all application materials and documentary evidence presented at the hearing.

3.9.7.1 Notice of Public Hearing

Notice of the public hearing shall be given once a week for two (2) consecutive calendar weeks in a newspaper of general circulation in Orange County. The notice shall be published the first time not less than ten (10) days no more that twenty-five (25) days before the date fixed or the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Written notice shall be mailed to the applicant, owner of the property subject to the request, any other persons entitled to receive notice as provided by this Ordinance, and all adjacent property owners. The notice must be deposited in the mail at least ten (l0) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Adjacent property owners are those whose property lies within five hundred (500) feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (l0) days, but not more than twenty-five (25) days before the hearing date.

3.9.7.2 Post-hearing Process

The public hearing on a Conditional Use Permit application is formally closed by a motion and vote of the Board members present at the hearing.

3.9.7.3 Board or Adjustment Action

The Board of Adjustment shall not consider the approval of the Conditional Use Permit until after the Public Hearing is closed.

The Board of Adjustment shall review the record of the public hearing, the Technical Review Committee's recommendation (if any), the Planning Director's report, determine contested facts and substantial evidence in the record and make its decision within a reasonable time. The Board shall then take action on the application based on the findings required in Section 3.9.3.1 through 3.9.3.4, and the applicable standards for the specific conditional use as established by this Ordinance. All findings shall be based on competent, material and substantial evidence presented at the public hearings. The Board's decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

An affirmative vote of a majority of the members of the Board of Adjustment who are eligible to vote is required to grant a Conditional Use Permit.

The Board of Adjustment may impose such reasonable conditions upon approval of a Conditional Use permit as will afford protection of the public health, safety, and general welfare, ensure that substantial justice is done, and equitable treatment provided.

All conditions of approval shall run with the land and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Board of Adjustment denies the permit, the reasons for its action shall be recorded in the minutes of the meeting.

3.9.8 FORMALIZING THE OUTCOME

The Planning Director shall cause notice of the disposition of the application to be delivered by either personal delivery, electronic mail, first class mail or certified mail to the applicant, the property owner and any party who has filed a written request for a copy with the Board at the time of the hearing, and shall cause a copy of the decision to be filed in the Planning Department. The Planning Director shall certify in writing that the notice required by section has been given.

In the case of approval or approval with conditions, the staff shall issue the Conditional Use Permit in accordance with the action of the Board of Adjustment and the applicant shall record it in the office of the Orange County Register of Deeds within ten (10) days of receipt. No Conditional Use Permit will be effective, and no further permits or approvals for the development may be issued, until the Conditional Use Permit has been filed with the Register of Deeds.

Any construction authorized by a Conditional Use Permit must receive construction drawing approval and a Zoning Compliance Permit as detailed in Section 3.14, *Zoning Compliance Permits* before construction begins.

3.9.9 APPEAL

An aggrieved party may appeal a decision by the Board of Adjustment on an application for a Conditional Use Permit to Superior Court in the nature of certiorari, pursuant to N.C. Gen. Stat. § 160A-393. Such appeal must be filed within the time provided by N.C. Gen. Stat. § 160A-388(e2)(2).

3.9.10 EFFECT OF DENIAL OR WITHDRAWAL

When the Board of Adjustment shall have denied an application or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in Section 3.9.7.1, *Notice of Public Hearing*, the Planning Director shall not accept another application for the same or similar Conditional Use, affecting the same property or a portion thereof, until the expiration of one year from the date of denial or withdrawal.

3.9.11 VESTING

A vested right pursuant to Section 1.8, *Vested Rights* is established by the issuance of a Conditional Use Permit pursuant to this section.

3.9.12 DEVIATIONS

After a Conditional Use Permit has been approved, the Planning Director is authorized to approve minor changes in the approved plans of Conditional Uses, as long as they are in harmony with action of the Board of Adjustment, but the Planning Director shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Board of Adjustment. If the Planning Director is uncertain whether a requested deviation is a “minor change” or a “modification”, it shall be treated as a modification and referred to the Board of Adjustment for review and approval.

3.9.13 CRITERIA USED FOR DETERMINATION

The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification:

(a) Any change in a specific condition imposed during the approval of a Conditional Use Permit shall constitute a modification.

(b) A substantial change in use or enlargement greater than ten (10) percent of an authorized use shall constitute a modification.

(c) A ten (10) percent or greater increase in intensity of use shall constitute a modification. An increase in the number of dwelling or lodging units is an example of an increase in intensity of use.

(d) An increase of intensity of less than ten (10) percent may be considered a minor change if the Planning Director finds that the development, as changed or modified, will continue to be in general conformance with the approved Conditional Use Permit.

(e) Structural alterations which significantly affect the basic size, form, style, orientation, and/or character of buildings shown on an approved site plan or described in the applicant's narrative shall be considered a modification.

(f) Substantial change in the amount and/or location of open space, recreation facilities or landscape screening shall constitute a modification. Changes to signage which increase the number of signs, or increase the sign face area, beyond that approved as part of the Conditional Use Permit process shall be considered modifications.

(g) Any change in parking areas resulting in an increase or reduction of ten (10) percent or more in number of spaces shall constitute a modification.

(h) Substantial changes in pedestrian and/or vehicular access or circulation patterns shall constitute a modification.

(i) Any change in a setback required by the provisions of this Ordinance or imposed as a condition of approval shall constitute a modification.

(j) Substantial change in the location or extent of street and utility improvements or rights-of-way, including water, sewer, and storm drainage facilities, which would result in a different level of service than was represented to the Board of Adjustment during the public hearing process, shall constitute a modification.

(k) Any combination of minor changes that, in the determination of the Planning Director are, taken together, substantial in nature.

3.9.14 REVIEW OF RECORD REQUIRED

The Planning Director shall, before deciding whether a proposed change to a conditional use is a minor change or modification, review the record of the proceedings of the original Conditional Use Permit approval. The Planning Director's decision shall be based upon the applicant's request, a review of the record of the original request, and the Planning Director's findings under the criteria of Section 3.9.13, *Criteria Used for Determination*.

3.9.15 ACTION REQUIRED ON PROPOSED MINOR CHANGES

If the Planning Director determines that the proposed action is a minor change, they shall state their findings in writing to the applicant. The applicant shall file with the Planning Director an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the originally approved site plan.

3.9.16 ACTION REQUIRED ON PROPOSED MODIFICATIONS

If the Planning Director determines that the proposed action is a modification, it shall require the applicant to submit a request for modification of the approved Conditional Use Permit. The applicant shall provide an amended site plan and written narrative outlining the specific changes requested. The Planning Director shall submit the request to the Board of Adjustment. If the Board finds the modification substantial in its impact, or wishes to have additional public input, it may set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a request for a modification of an approved Conditional Use Permit shall be held in conformity with the requirements of Section 3.9.7, *Public Hearing*. The Board may approve, approve with conditions or disapprove the application for a modification. The Planning Director shall file the Board's action as an amendment to the original application in the same manner as the original Conditional Use Permit in accordance with Section 3.9.8, *Formalizing the Outcome*.

Modifications to Conditional Use Permits for properties located in the historic overlay district which impact the site organization, form, massing, scale, height, orientation, roof form, and proportion of the site shall be shared with the Historic District Commission, as described in Section 3.9.5.4 before any public hearing on the modification.

3.9.17 REVOCATION

The Board of Adjustment may revoke a Conditional Use Permit if it finds that any one, or more, of the following conditions exist:

(a) That any governmental license or permit required for the activity authorized by a Conditional Use Permit has not been obtained or has been terminated; or

(b) That any of the applicable requirements of this Ordinance or any conditions attached to the Conditional Use Permit, or modification thereof, have been violated.

The Board of Adjustment may consider reapplication for a Conditional Use Permit on property on which a previous permit has expired pursuant to Section 3.9.18, *Expiration* or has been revoked under this section, provided that all of the standards which are set forth in this Ordinance are met.

3.9.18 EXPIRATION

An approved Conditional Use Permit expires 24 months from the date of approval if a Zoning Compliance Permit has not been issued for the project.

3.10 VARIANCE

3.10.1 INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers requests for relief relating to the requirements of this Ordinance. Nothing in this section shall be construed to authorize the Board if Adjustment to permit a use in a district where that use is neither a permitted, Conditional, nor Special Use.

3.10.2 APPLICABILITY

When a property owner claims that he or she will be subject to an unnecessary hardship if they are required to comply with the strict application of this Ordinance, they may seek a variance from such requirement. Only the Board of Adjustment has authority to grant such variances, and then only upon application of established legal standard as set forth in this Ordinance.

3.10.3 GENERAL STANDARDS/FINDINGS OF FACT

3.10.3.1 A Variance from all provisions of this Ordinance, with the exception of Section 4.5.1, *Upper Eno Watershed District*; Section 4.5.2, *Upper Eno Protected Watershed, Critical Area District* and Section 6.20.16, *Riparian Buffers* (which contain their own separate findings required to receive a variance), shall be approved only upon a finding that all of the following standards are met:

(a) Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property; and

(b) The hardship results from conditions that are peculiar to the property such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance shall not be regarded as a self-created hardship; and

(d) The requested Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.

3.10.3.2 WATERSHED PROTECTION DISTRICT VARIANCE FINDINGS

Development activities within the Upper Eno and Upper Eno Protected Watershed, Critical Area Districts may be granted minor and major variances by the Board of Adjustment in accordance with Section 4.5.5.2, Variances, of this Ordinance.

3.10.3.3 RIPARIAN BUFFER VARIANCE FINDINGS

Variances from the provisions of Section 6.20.16, *Riparian Buffers*, shall be approved only upon a finding that all of the following standards are met:

(a) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(1) If the applicant complies with the provisions of the riparian buffer protection requirements, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the buffer requirements that shall make reasonable use of the property possible.

(2) The hardship results from application of the riparian buffer protection rules to the property rather than from other factors such as deed restrictions or other hardship.

(3) 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.

(4) The applicant did not cause the hardship by knowingly or unknowingly violating the riparian buffer protection requirements.

(5) The applicant did not purchase the property after the effective date of the riparian buffer protection requirements (July 22, 1997), and then requesting a variance.

(6) The hardship is unique 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 variance would be a special privilege denied to others, and would not promote equal justice.

(b) The variance is in harmony with the general purpose and intent of the riparian buffer protection requirements and preserves their spirit; and

(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

3.10.3.3.1 **Minor And Major Variances**

A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Zone 2 begins at the outer edge of Zone 1 and extends landward 20 feet as measured horizontally on a line perpendicular to the surface water.

A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. For intermittent and perennial streams, Zone 1 begins at the most landward limit of the top of bank or the rooted herbaceous vegetation and extends landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water. For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 begins at the most landward limit of the normal water level or the rooted herbaceous vegetation and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 is 50 feet on all sides of the surface water.

Additional requirements for processing of major variances are found in Section 3.10.6.5.2.

3.10.4 INSUFFICIENT JUSTIFICATION FOR VARIANCE

The following do not constitute grounds for a Variance:

(a) The existence of other nonconforming or conforming uses of land or structures in the same or other districts;

(b) The request for a particular use expressly, or by inference, prohibited in the district; or

(c) Economic hardship or the fact that property may be utilized more profitably with a Variance; or

(d) Hardships resulting from personal circumstances and/or conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.

3.10.5 SUBSEQUENT DEVELOPMENT

Development authorized by the Variance shall not be carried out until the applicant has secured all other permits required by this Ordinance and/or any other applicable regulations. The granting of a Variance does not constitute and shall not be deemed to constitute a forecast that the development receiving a Variance will receive any other required approval.

3.10.6 PROCEDURE

3.10.6.1 Application requirements

The application requirements, checklists, and timeline are provided in the *ADMINISTRATIVE MANUAL.*

3.10.6.2 Staff Review

Upon receipt of a variance application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the applicant in writing of the reasons for such determination. Once a complete application has been received, the Planning Director shall analyze the application in conjunction with qualified representatives of the Town and such other agencies or officials as may be appropriate, to determine conformity with the Land Use Plan and the Comprehensive Plan, the provisions of this Ordinance, the provisions of any Master Plan approved for the property, and other regulations applicable in the case. The Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

3.10.6.3 Public Hearing

Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application.

3.10.6.4 Notice of Public Hearing

Notification of hearings on variance applications shall be provided in the same manner as hearings on Conditional Use Permit applications as detailed in Section 3.9.7.1, *Notice of Public Hearing.*

In cases where a variance is requested from the provisions of Section 4.5.1, Upper Eno Watershed District; Section 4.5.2, Upper Eno Protected Watershed, Critical Area District of this Ordinance, all local governments having jurisdiction within the watershed area and the entity using the water supply for consumption shall be notified of the proposed variance. Comments from these entities shall be submitted to the Planning Director before the Board of Adjustment decision and shall be made a part of the record of the Board of Adjustment decision.

3.10.6.5 Public Hearing

3.10.6.5.1 Following receipt of the application from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application. After close of the hearing, the Board of Adjustment shall consider the application, relevant support materials, any testimony or evidence given at the hearing and included in the record, determine contested facts and substantial evidence in the record and make its decision within a reasonable time. The Board of Adjustment shall take one of the following actions, based on the standards in Section 3.10.3, *General Standards/Findings of Fact*:

(a) Approve the application as submitted;

(b) Approve the application subject to conditions; or

(c) Deny the application.

The affirmative vote of at least four-fifths (4/5) of the members of the Board of Adjustment who are eligible to vote is required to grant a variance.

Appropriate conditions may be imposed on a Variance provided that the conditions are reasonably related to the Variance.

3.10.6.5.2 If the Board of Adjustment determines that a major variance request meets the requirements in Section 3.10.3.3, Riparian Buffer Variance Findings, then it shall prepare a preliminary finding and submit it to the State Environmental Management Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. The purpose of the Commission's review is to determine if it agrees that the requirements for granting of a variance have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

(a) Upon the Commission's approval, the Board of Adjustment shall issue a final decision granting the major variance.

b) Upon the Commission's approval with conditions or stipulations, the Board of Adjustment shall issue a final decision, which includes these conditions or stipulations.

(c) Upon the Commission's denial, the Board of Adjustment shall issue a final decision denying the major variance.

3.10.6.5.3 The Board’s decision on a Variance shall be reduced to writing and reflect the Board’s determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

3.10.7 FORMALIZING THE OUTCOME

The Planning Director shall cause notice of the disposition of the application to be delivered by either personal delivery, electronic mail, first class mail or certified mail to the applicant, the property owner and any party who has filed a written request for a copy with the Board at the time of the hearing prior to the date the Board's decision becomes effective, and shall cause a copy of the decision to be filed in the Planning Department.

The applicant will also be required to record a notice of the Variance, which will be provided by the Planning Director, with the Orange County Register of Deeds.

3.10.8 APPEAL

An aggrieved party may appeal a decision by the Board of Adjustment on an application for a Variance to Superior Court. Such appeal shall be in the nature of certiorari, pursuant to N.C. Gen. Stat. § 160A-393, and must be filed within the time provided by N.C. Gen. Stat. § 160A-388(e2)(2).

3.10.9 MODIFICATIONS

A Variance may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

3.10.10 EXPIRATION

Variance approval shall automatically expire if the applicant does not record the Variance with the Orange County Register of Deeds within 30 days after the date the Variance is approved.

Except where required as a prerequisite for a Site Plan associated with new development, an approved and recorded Variance shall run with the land. In cases where a Variance is a prerequisite to site plan approval, failure of an applicant to apply for a Zoning Compliance Permit and commence construction within one year of receiving Variance approval shall automatically render the decision of the Board of Adjustment null and void. Such time period shall not be extended with transfer of ownership.

3.11 APPEAL

3.11.1 INTENT

This section establishes the process to be followed by the Board of Adjustment when it considers appeals from any order, requirement, decision or determination made by the Planning Director, Technical Review Committee or Historic District Commission, concerning the enforcement of this Ordinance.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If

enforcement proceedings are not stayed, the appellant may file with the Planning Director a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications affected by the issue being appealed.

3.11.2 APPLICABILITY

The Board of Adjustment shall hear an appeal taken by any person with standing pursuant to G.S. 160A-393(d) or the Town regarding a decision or determination made by the Planning Director, the Technical Review Committee, or the Historic District Commission, concerning the enforcement of this Ordinance in this Ordinance, within the times provided by this Ordinance.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Planning Director a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications affected by the issue being appealed.

3.11.3 GENERAL STANDARDS

In deciding appeals, the Board of Adjustment may hear those arguments based upon an allegedly improper or erroneous interpretation of the ordinance. The Board of Adjustment will:

3.11.3.1 Interpret the meaning of parts of this Ordinance, and

3.11.3.2 Apply the Ordinance provisions to particular fact situations in the application.

3.11.4 PROCEDURE

3.11.4.1 Appeal requirements

The appeal requirements, checklists, and time for filing an appeal are provided in the *Administrative Manual*. Unless another time is specifically established by this Ordinance, appeals shall be filed with the Town Clerk (with a copy to the Planning Director) within thirty (30) days from the receipt of the written notice regarding the matter subject to appeal. Any other person with standing to appeal shall have 30 days from receipt from

any source of actual or constructive notice of the decision, (as described below) within which to file an appeal.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

3.11.4.2 Staff Review

Upon receipt of an appeal, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. If the Planning Director determines that the application is not complete, they shall notify the appellant in writing of the reasons for such determination. The Planning Director shall prepare a staff report detailing the situation involved in the appeal. If the appeal involves the action of the Historic District Commission, minutes of the relevant Historic District Commission meeting shall be included in the materials provided to the Board of Adjustment. Once a complete application has been received, the Planning Director shall schedule the complete application for the next available meeting of the Board of Adjustment.

A copy of the staff report and record of the case shall be delivered to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

3.11.4.3 Public Hearing

Following receipt of the appeal from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the appeal.

3.11.4.4 Notice of Public Hearing

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), to the owners of all parcels of land abutting the parcel of land that is subject to the hearing (including those across a public or private street), to any other persons entitled to receive notice as provided by this Ordinance, and the Planning Director, the Technical Review Committee, or the Historic District Commission (as appropriate). The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (l0) days, but not more than twenty-five (25) days before the hearing date.

3.11.4.5 Public Hearing

3.11.4.5.1 Following receipt of the appeal from the Planning Director, the Board of Adjustment shall conduct a quasi-judicial public hearing on the application. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. After close of the hearing, the Board of Adjustment shall consider the application, relevant support materials, and any testimony or evidence given at the hearing and included in the record. The Board of Adjustment shall take one of the following actions:

(a) Affirm, wholly or partly, the determination being appealed;

(b) Reverse, wholly or partly, the determination being appealed; or

(c) Modify the determination which is being appealed.

The Board shall have all the powers of the official who made the decision. The Board of Adjustment may include direction to the appealed entity for how it should carry out the direction from the Board.

The Board of Adjustment shall review the record of the public hearing, and the Planning Director's report, and determine contested facts and substantial evidence in the record and make its decision within a reasonable time.

3.11.4.5.2 The affirmative vote of a majority of the members of the Board of Adjustment who are eligible to vote is required to grant an appeal (overturn a determination).

3.11.4.5.3 The Board's decision on an Appeal shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

3.11.5 FORMALIZING THE OUTCOME

The Board of Adjustment's decision on the appeal shall be reduced to writing and transmitted to the appellant, the property owner and any party who has filed a written request for a copy by either personal delivery, electronic mail, first class mail or certified mail prior to the date the Board's decision becomes effective.

3.11.6 APPEAL

An aggrieved person may appeal a decision by the Board of Adjustment on an application for appeal to Superior Court. Such appeal shall be in the nature of certiorari, pursuant to N.C. Gen. Stat. § 160A-393, and must be filed within the time provided by N.C. Gen. Stat. § 160A-388(e2)(2).

3.11.7 EXPIRATION

The decision on an appeal before the Board of Adjustment, if attached to a development approval, shall run with the approval period of that permit or approval.

3.12 CERTIFICATE OF APPROPRIATENESS

3.12.1 INTENT

As authorized by NC Gen. Stat. § 160A-400.1 *et seq*, the Town has established an historic overlay district, the purpose and intent of which is to protect the historic and culturally important and significant structures located in the historic district. The Town may, in the future, designate historic landmarks or establish additional historic districts. Consistent with N.C. Gen. Stat. § 160A-400.9, the erection, alteration and improvement of the exterior features of buildings and structures designated as landmarks or located in an historic district may not be undertaken until after an application for a Certificate of Appropriateness for the work has been submitted to and approved by the Historic District Commission.

3.12.2 APPLICABILITY

It shall be unlawful to begin construction, moving, demolition, alteration, or restoration of any structure or site which has been designated as a landmark or is located within an Historic District until a Certificate of Appropriateness has been issued.

3.12.3 STANDARDS OF EVALUATION

The Commission, in deliberating upon an application for a property located within an Historic District or a local landmark, shall consider, among other things, the general scale, design, arrangement, texture, material, and color of the building, structure, or site in question and the relation of such factors to similar features of buildings in the immediate vicinity or buildings of a similar architectural style or age in the Historic District. The Commission shall not consider the interior arrangement, nor shall it make any requirements except for the purpose of preventing developments which are obviously incongruous to the historic character of the landmark or Historic District.

To provide reasonable standards to assist the Commission in its review of design and to guide and limit the discretion of the Commission, the report entitled *"Hillsborough Historic District Guidelines,"* as adopted by the Town Board, is hereby adopted and incorporated by reference as part of this Ordinance to guide the review of applications for Certificates of Appropriateness for properties located within the historic district.

Designated landmarks located outside an historic district shall be held to the Secretary of the Interior's standards for Rehabilitation.

3.12.4 CERTAIN CHANGES NOT PROHIBITED

Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any architectural feature on any property designated as a landmark or located in an Historic District which does not involve a change in design, material, color, or other appearance nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the County Building Inspector shall certify to the Commission is required for the public safety because of an unsafe or dangerous condition.

A list of examples of projects for which no Certificate of Appropriateness is required is listed in Historic District Design Guidelines Exempt Works List.

3.12.5 PROCEDURE

3.12.5.1 Authority to apply

The owner of property designated as a landmark or located in a Historic District, or their authorized representative may apply to the Planning Director for a Certificate of Appropriateness for their property.

3.12.5.2 Pre-application

Applicants for certificates of appropriateness are encouraged to schedule and participate in a pre-application conference with the Planning Director to review the proposal for the property and the Hillsborough Historic District Guidelines.

3.12.5.3 Application requirements

Applications for certificates of appropriateness shall be filed with the Planning Director. The forms for such applications and other submittal requirements shall be as set forth in the *Administrative Manual*.

No application shall be accepted by the Planning Director unless it complies with all submittal requirements of this Ordinance, including payment of the applicable fee. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

In the case of an application for a Certificate of Appropriateness for a property encumbered with a Preservation Easement or Agreement regarding the exterior of the structure, the written concurrence of the Preservation Easement holder shall be submitted with the application. The decision of the Commission shall be binding on the property owner and Preservation Easement/Agreement holder equally.

3.12.6 DELAY IN DEMOLITION

An application for Certificate of Appropriateness authorizing the demolition, destruction, or relocation of a building, structure, or site designated as a landmark or located within an Historic District may not be denied except as provided in Section 3.12.6.4. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section maybe reduced by the Commission based upon a finding that the property owner would suffer extreme hardship or be permanently deprived of beneficial use of or a reasonable return from such property by virtue of the delay.

3.12.6.1 During such period the Commission may negotiate with the owner and with other parties in an effort to find a means of preserving the building or site. If the Commission finds that a building or site has no special significance or value toward maintaining the character of the landmark or the historic landmark property or in the proposed District, it may waive all or part of such period and authorize earlier demolition or removal.

3.12.6.2 If the Commission or Planning Board has voted to recommend the designation of an area as a landmark or as an historic district and final designation has not been made by the Town Board, the demolition or destruction of any building, site, or structure located on the proposed district may be delayed up to 180 days or until the Town Board takes final action on the designation, whichever occurs first.

3.12.6.3 The Town Board may enact an Ordinance to prevent the demolition by neglect of any building or structure designated as a landmark or located within the Historic District. Such Ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

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

3.12.7 STAFF REVIEW

3.12.7.1 Action Required on Proposed Minor Works

The applicant shall file with the Planning Director a written statement outlining in detail the minor works(s) proposed. If the Planning Director determines that the work proposed in an application for a Certificate of Appropriateness is a minor work, such determination shall be made in written findings. The Planning Director shall file this statement in the Planning Department.

A list of examples of types of projects that are considered minor works is listed in the Historic District Design Guidelines Minor Works List.

3.12.8 PUBLIC HEARING

The Commission is not required to conduct public hearings on applications for certificates of appropriateness. However, all meetings of the Commission are public meetings, notice of which shall be provided as otherwise required by law. In cases where the Commission deems it appropriate, a public hearing shall be held concerning an application, and notice of such hearing shall be given in the same manner as Special Use Permits established in Section 3.8.

3.12.9 HISTORIC DISTRICT COMMISSION ACTION

The Commission may approve, approve with conditions, or deny an application for a Certificate of Appropriateness. The Commission shall review the record of the meeting or hearing and the application and make its decision on the application based on the standards of evaluation listed in Section 3.12.3, *Standards of Evaluation*.

3.12.10 IMPOSED CONDITIONS

The Commission may impose such reasonable conditions upon approval of a Certificate of Appropriateness as will afford protection of the public health, safety, and general welfare; insure that substantial justice is done; and equitable treatment provided. Such conditions shall run with the land and use and shall be binding on the original applicant(s) as well as all successors, assigns, and heirs. If the Commission denies the Certificate, the reasons for its action shall be recorded in the minutes of the meeting and a copy sent to the applicant by certified mail, return receipt requested.

3.12.11 NOTICE OF DECISION AND ISSUANCE OF CERTIFICATE OF APPROPRIATENESS

Upon approval, approval subject to conditions, or denial of any application, the Commission shall forthwith transmit a report to the Planning Director stating its decision, and cause a copy of the decision to be transmitted to the applicant.

The Planning Director shall periodically inspect the construction or alteration, and immediately report to the Commission any work not in accordance with the Certificate.

All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date that a complete application for a Certificate of Appropriateness is filed, unless an extension of time is agreed to by the applicant.

3.12.12 APPEAL

A decision of the Commission on an application for a Certificate of Appropriateness may be appealed to the Board of Adjustment by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in Section 3.12.11, whichever is later. Such appeals to the Board of Adjustment are in the nature of certiorari and the Board of Adjustment shall determine such appeals based on the record generated before the Commission. Any appeal from a decision of the Board of Adjustment shall be heard by the Orange County Superior Court, and shall be filed in the time prescribed in N.C. Gen. Stat. § 160A-388(e2).

3.12.13 EXPIRATION

A Certificate of Appropriateness approved pursuant to this section shall expire one year after the date of approval if the work authorized by the approval has not begun, unless the time is extended by the Commission. The process for extending approvals is addressed in the Rules of Procedure for the Historic District Commission.

3.13 SITE PLAN REVIEW

3.13.1 INTENT

It is the intent of this section to address the specific conditions and standards of evaluation for the review of site plans.

3.13.2 APPLICABILITY

Site Plan review is the general term used to describe review of projects other than (a) the construction of single family dwellings on lots zoned for single family uses and (b) uses requiring a Special Use or Conditional Use Permit.

The Site Plan Review process is applicable only to proposed development:

(a) Involving the disturbance of 10,000 sf or more of land and/or involving the construction of new structures or additions in any general purpose non-residential zoning district

(b) Involving the disturbance of 3 acres or less and/or involving the construction of new structures or additions consisting of 10,000 square feet or less of gross floor area in any general purpose residential zoning district. Any development exceeding this threshold are required to pursue a Conditional Use Permit in accordance with the standards and provisions established by Section 3.9, Conditional Use Permit of this Ordinance

(c) Involving the construction of attached dwelling units in any general purpose zoning district that does not otherwise exceed a threshold above.

3.13.3 GENERAL STANDARDS/FINDINGS OF FACT

The following specific standards shall apply to the review of a site plan:

(a) The use is a permitted use according to the Use Table for the district in which the property is situated.

(b) The lot area satisfies the minimum requirement for the district, or, if legal nonconforming, is of sufficient size that all applicable provision of this ordinance are met without any variance or waiver.

(c) The plan demonstrates compliance with all applicable provisions of this ordinance without variance or waiver.

(d) A traffic impact analysis (TIA), if required by Section 3.1 of the Street Design Standards, demonstrates that the proposed site development will not cause a reduction in the Level of Service (LOS) at any intersection studied in the TIA, or that any measurable reduction in LOS has been or will be mitigated by site plan design features.

3.13.4 PROCEDURE

3.13.4.1 Authority to Apply

The owner of any property, or their authorized representative, may apply to the Planning Director for site plan approval.

3.13.4.2 Pre-application Conference

Before submitting an application for site plan approval, the applicant should first meet with the Planning Director to review the proposed plan and the requirements of this Ordinance.

3.13.5 APPLICATION REQUIREMENTS

The Planning Director shall provide forms for applications for site plan approval, which shall be submitted by the applicant. Applicants for site plan approval shall submit all information required to be submitted as set forth in the *Administrative Manual*, and any additional information needed to demonstrate and support compliance with the standards of evaluation. No application shall be accepted as complete unless accompanied by all required fees as set forth in the Schedule of Fees.

3.13.6 REVIEW PROCESS

3.13.6.1 The Planning Director shall review and, if the site plan submitted otherwise meets all of the standards of this Ordinance, approve site plans for uses permitted as of right where (a) less than 1 acre of land will be disturbed by the proposed development, (b) no new structure consists of more than 2,500 square feet of gross floor area, and/or (c) no addition to an existing structure consists of more than 5,000 square feet of gross floor area.

3.13.6.2 The Technical Review Committee shall review, and, if the site plan submitted otherwise meets all of the standards established in this Ordinance, approve site plans for uses permitted as of right exceeding the threshold of 3.13.6.1.

3.13.6.3 The Planning Director shall have the authority to refer a site plan to the Technical Review Committee if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral.

3.13.6.4 The Technical Review Committee shall have the authority to refer a site plan to the Board of Adjustment if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral. A majority of Technical Review Committee members with reviewing jurisdiction of the application referred must concur with the referral.

3.13.6.5 If a Site Plan is denied for lack of compliance with provisions in Section 6 of this Ordinance, the applicant shall have the option to file an appeal with the Board of Adjustment consistent with Section 3.13.8, *Appeal*. The Board of Adjustment may apply its authority to grant waivers of provisions in Section 6 during its review of an appeal of this type.

3.13.7 DECISIONS ON SITE PLAN APPLICATIONS

The Planning Director and/or the Technical Review Committee shall have the authority to approve site plans, or to deny site plan approval on the grounds that:

(a) The site plan submitted fails to comply with any specific requirements of this Ordinance;

(b) The site plan submitted fails to adequately protect residentially zoned property, or property in a residential use; or

(c) The site plan submitted fails to provide safe conditions for pedestrians or motorists. All such decisions shall be made in writing, and the written decision shall be filed with the Planning Director and sent to the applicant by first class mail.

3.13.8 APPEAL

A decision of the Planning Director or Technical Review Committee on an application for a Site Plan Review may be appealed to the Board of Adjustment by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in Section 3.13.7, *Decision of Site Plan Applications* whichever is later.

3.13.9 VESTING

No statutory vested right is established by approval of a site plan.

3.13.10 MODIFICATIONS

Approval of modifications can be made to the approved Site Plan by applying the procedures and criteria found in Sections 3.9.15, Actions Required of Proposed Minor Changes and 3.9.16, Actions Required on Proposed Modifications of this Ordinance.

3.13.11 REVOCATION

Site Plan Approval may be revoked by the issuing authority following the same procedure and applying the same criteria as established for revocation of conditional use permits in Section 3.9.17, *Revocation* of this Ordinance.

3.13.12 EXPIRATION

Site plan approval expires twenty-four (24) months from the date of approval if a Zoning Compliance Permit has not been issued for the project.

3.14 ZONING COMPLIANCE PERMIT

3.14.1 INTENT

The intent of the Zoning Compliance Permit is to provide written documentation of the completion of the development review processes under this Ordinance. This permit is a pre-requisite to securing an Orange County Building Permit. A Zoning Compliance Permit documents a project's compliance with this Ordinance and with the *Administrative Manual* without regard to any contractual or other arrangements (including, but not limited to restrictive covenants) among private parties which may also affect the use of the property.

3.14.2 APPLICABILITY

It shall be unlawful to begin construction, place, or move any structure (including signs) or to begin to grade or excavate for immediate construction until the Planning Director has issued for such work a Zoning Compliance Permit. A Zoning Compliance Permit signifies a determination that the site plan, building specifications and the intended use of such structure conform in all respects to the provisions of this Ordinance.

Also, it shall be unlawful to change the type of use or type of occupancy of any building, or to alter or extend any use of any lot on which there is a non-conforming use, until the Planning Director has issued for such intended use a Zoning Compliance Permit, including a determination that the proposed use conforms in all respects to the provisions of this Ordinance.

3.14.3 GENERAL STANDARDS/FINDINGS OF FACT

The application materials, as specified in the *Administrative Manual*, when taken together provide sufficient evidence for the Planning Director to conclude that the project, with reasonable conditions, will comply with the provisions of this ordinance and the *Administrative Manual*.

3.14.4 PROCEDURE

If the proposed excavation, construction, relocating, alteration, or use of land as set forth in the application is in conformity with the provisions of this Ordinance, the Planning Director shall issue a Zoning Compliance Permit; however,

(a) Issuance of a Zoning Compliance Permit shall in no case be construed as waiving any provision of this Ordinance.

(b) Under no circumstances is the Planning Director permitted to vary the terms of this Ordinance, deviate from the apparent meaning of any clause, standard, or

regulation contained in this Ordinance, or otherwise afford special treatment to any person making application to excavate, construct, move, alter, or use either buildings, structures, or land.

(c) Under no circumstances is the Planning Director permitted to make any changes to this Ordinance.

(d) The Planning Director shall issue a Stop Work Order if a project is found to be under construction without a Zoning Compliance Permit, if a Zoning Compliance Permit is revoked in accordance with Section 3.14.10, *Revocation*, or if work being undertaken is contrary to this Ordinance or any permit issued pursuant to this Ordinance.

3.14.5 FORMALIZING THE OUTCOME

The Planning Director shall issue a permit when the applicable provisions of this Ordinance are satisfied.

If an application for such a permit is not approved, the Planning Director shall state in writing the reason(s) for such denial.

3.14.6 APPEAL

Persons aggrieved by a decision or a determination made by the Planning Director may appeal that action to the Board of Adjustment, following the procedures established in Section 3.11, *Appeal*.

3.14.7 VESTING

A Zoning Compliance Permit does not confer a statutory vested right.

3.14.8 DEVIATIONS

If a site inspection reveals work undertaken does not comply with conditions and specifications of an approved Zoning Compliance Permit, the approved permit may be revoked or a stop work ordered issued. Such stop work order shall remain in effect until the Planning Director determines that the work is in compliance with the provisions of this Ordinance and the *Administrative Manual*.

3.14.9 MODIFICATIONS

A Zoning Compliance Permit may be modified at the request of the applicant at any time before it expires. Such modification must comply with all provisions of this ordinance and the *Administrative Manual*. All modifications must be documented in writing.

3.14.10 REVOCATION

The Planning Director shall revoke a Zoning Compliance Permit if it is found to be issued in violation of any provisions of this Ordinance, or if the conditions stated on the permit are not satisfied.

3.14.11 EXPIRATION

A Zoning Compliance Permit shall be valid for 12 months from the date of issuance. In the case that the Zoning Compliance Permit authorizes a construction project that takes more than 12 months to complete, the permit shall be valid so long as the Orange County Building Permit for the project remains active and unexpired.