

Proposed Ordinance Amendment

Board of Commissioners Meeting: February 5, 2018

Planning Board Meeting: January 3, 2018

Code and Operations Committee Meeting: December 6, 2017

Project Name: OA-01-17 Quasi-Judicial Proceedings

Staff: Adam Cook, Planner II & Stacy Harper, Planner II

Purpose

To amend the Unified Development Ordinance (UDO) to allow for all quasi-judicial processes to be heard by the Board of Adjustment.

Background

Currently the UDO splits quasi-judicial proceedings between the Planning Board and Board of Adjustment. The Planning Board is the decision making authority on modifications and waivers of subdivision standards and planned compliance permits. The Board of Adjustment is the decision making authority for special use permits, zoning variances, interpretations of flood boundaries, and appeals of administrative decisions.

The proposed amendment will consolidate all quasi-judicial reviews to the Board of Adjustment instead of splitting quasi-judicial cases between the Planning Board and Board of Adjustment. The Board of Adjustment undergoes specific training for quasi-judicial proceedings and is structured with regular and alternate members which makes it much easier for the Board to ensure that a quorum will be reached for quasi-judicial procedures. Often quasi-judicial procedures require a four-fifths majority of the members of the board to take action on a case. The proposed amendment will streamline the UDO and align the UDO with current practices.

The consolidation of quasi-judicial review to the Board of Adjustment will result in changes to several sections of the UDO with the bulk of the changes taking place in the review and approval procedures of Article 19. In order to shift quasi-judicial reviews to the Board of Adjustment, Article 19 will be updated to remove the planned compliance permit section. Projects that previously required a planned compliance permit will now follow the commercial permit review process. All variance requests and appeals of administrative decisions will now be handled by the Board of Adjustment. Sections of the UDO that allowed for either Planning Board or Planning Director approval will be updated to allow for Planning Director approval with appeals of the Planning Director's decisions heard by the Board of Adjustment.

Amendment Summary

1. **Section 2-10** – updates responsibilities of the Planning Board
2. **Section 9-41** – updates process for stormwater management variances
3. **Section 19-16** – changes the review and decision-making authority summary table
4. **Section 19-22** – removes planned compliance permit section
5. **Section 19-26** – updates variance review and approval procedures

6. **Section 19-33-5** – updates staff action on variance processes
7. **Section 19-33-6-9** – removes Planning Board review and action for variances
8. **Section 19-36** – removes modification and waivers of subdivision standards section
9. **Section 19-37** – removes appeals of decisions on subdivision matters section
10. **Section 19-41-1** – updates appeals of administrative decisions
11. **Section 8, 12, & 16** – updates sections to change Planning Board to Planning Director

Proposed Ordinance Text

Note: Proposed deletions are shown in ~~striketrough~~ while proposed additions are shown in red.

2-10 Planning Board

~~2-10-3 Quasi-Judicial Proceedings (Variances and Appeals)~~

Although the Planning Board acts in a quasi-judicial capacity in the processing of modifications and waivers of subdivision standards and in the processing of appeals of subdivision-related decisions, it is not intended that proceedings before it be conducted as formally as those before courts. Nevertheless, it is necessary that the rules of procedure and evidence set forth in this ordinance be followed to protect the interests of the parties and of the public. To this end, the presiding officer may administer oaths to any witnesses and may make any rulings as are necessary to preserve fairness, order, or proper decorum in any matter before the Planning Board. In addition, any member of the Planning Board or any interested party may object to, and the presiding officer may exclude, any evidence or testimony or statement that is so incompetent, irrelevant, immaterial, or unduly repetitious as to fail to reasonably address the issues before the Planning Board.

~~2-10-4 Evidence and Testimony~~

Any interested party may be given the opportunity to present evidence or testimony, to cross-examine witnesses, to inspect documents, and to offer evidence or testimony in explanation or rebuttal. The presiding officer may determine whether testimony, oral argument, or cross-examination is to be limited in duration. Any member of the Planning Board may question any interested party with respect to the party's evidence or testimony. Persons other than interested parties may make comments. Such comments must be competent, relevant, and material.

~~2-10-5 Decisions~~

Every decision of the Planning Board with respect to modifications and waivers of subdivision standards and appeals of subdivision-related decisions must include findings of fact and conclusions of law together with the reasons therefore, and must be based upon substantial evidence or testimony which is competent, relevant, and material. Findings as to the existence or nonexistence of crucial facts must be based upon sworn evidence or testimony unless the party or parties before the Planning Board stipulate the facts or waive this requirement. Every decision of the Planning Board must also include the vote, abstention from voting, or absence of each member. The burden of producing substantial evidence or testimony is upon the party who files an appeal or petition, and if the party fails to do so, the Planning Board must deny the appeal or petition.

~~2-10-6~~ Additional Evidence

~~Notwithstanding any other provision of this ordinance, the Planning Board may require additional evidence or memoranda of authority to be submitted, and may reserve its decision until such evidence or memoranda have been submitted and considered.~~

2-10-7 2-10-3 Records

The Planning Director must see that records are maintained for all matters coming before the Planning Board.

2-10-8 2-10-4 Quorum, Minutes, Voting

All meetings of the Planning Board must be public. A majority of the full membership of the Planning Board must be present at a meeting if the Board is to transact any business other than to adjourn. The Clerk of the Planning Board must keep minutes of its proceedings, showing the vote of each member upon every question, or if failing to vote, indicating the fact. The Planning Board shall dispose of an appeal by reversing, modifying, or affirming the decision of the administrative official from who the appeal is taken. If a resolution fails to receive 4 **four** votes in favor of the appellant, the action must be deemed a denial, and a resolution denying the appeal must be entered upon the record.

~~2-10-9 Appeals to Superior Court~~

~~Any interested party may seek review of the decision of the Planning Board on modifications and waivers of subdivision standards and appeals of subdivision-related decisions in Superior Court by proceedings in the nature of certiorari. Any appeal to the Superior Court must be taken within 30 days of the date that the Planning Board's decision is filed with the Planning Director, or after a written copy of the decision is delivered to the person taking the appeal by personal service or registered mail, whichever is later.~~

2-11 Board of Adjustment

2-11-1 Board Established

A Board of Adjustment is hereby established. The Board of Adjustment consists of 5 **five** regular members and 4 **four** alternate members, each to be appointed for a term of 3 **three** years by the Board of Commissioners.

3-75-7 Variances

Any person desiring to erect a structure, or increase the height of an existing structure, or use property not in compliance with the regulations prescribed in this section may apply to the Board of Adjustment for a variance in accordance with the provisions of Section 19-26, ~~Zoning~~ Variances.

The application for a variance shall be accompanied by a determination from the Federal Aviation Administration (FAA) as to the effect of the proposal on the operation of air navigation facilities or the safe and efficient use of navigable airspace. Such variances shall be allowed where the Board of Adjustment reaches positive findings of facts as outlined in Section 19-26-7 and a determination is made that the variance will not create a hazard to air navigation.

Additionally, no application for a variance to the requirements of this section may be considered by the Board of Adjustment unless a copy of this application has been furnished to

the Franklin County Airport manager and/or the Franklin County Airport Commission for advice as to the aeronautical effects of the variance. If the airport manager and/or the airport commission do not respond to the application within 30 days after receipt, the Board of Adjustment may act on its own to grant or deny the variance request.

9-41 ~~Modifications and Waivers~~ Variances (Stormwater Management)

Requests for ~~a variance to~~ modifications or waivers of the stormwater management standards of this article must be processed in accordance with the procedures of ~~19-26~~ 19-36.

19-16 Review and Decision-making Summary

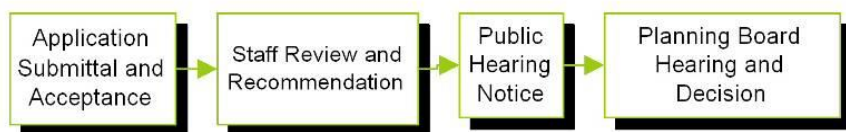
The following table provides a summary of the review and decision-making authority granted under this ordinance.

Action	Planning Director	Board of Adjustment	Planning Board	Board of Commissioners
Zoning-Related Procedures				
UDO Text Amendments	R			<DM>
Planned compliance permits	R		<DM>	
Zoning Map Amendments	R		R	<DM>
Special Use Permits	R	<DM>		
Zoning Variances		<DM>		
Exceptions		<DM>		
General Use Permits	DM			
Subdivision-Related Procedures				
Exempt Subdivisions	DM			
Minor Subdivisions	DM			
Regular Subdivisions				
Preliminary Plan	DM ^[1]			
Construction Plan	DM			
Record Plat	DM			
Modifications and Waivers of Subdivision Standards Variance		<DM>	DM	
Appeals of Subdivision Decisions				DM
Other Procedures				
Interpretations of Flood Boundaries		<DM>		
Appeals of Administrative Decisions		<DM>		

R = Review and/or Recommendation DM = Decision Making Authority < > = Public Hearing

[1] Planning Board is authorized decision making body when application is accompanied by modification or waiver request or when applicant requests Planning Board review.

19-22 ~~Planned Compliance Permits~~ **Reserved For Future Use**



~~19-22-1~~ **Overview/Description**

- ~~(A)~~ The planned compliance permit procedures of this section recognize that certain uses and developments, because of their inherent nature, extent, and external effects, require special care in the control of their location, design, and methods of operation to ensure that their location in the particular district is appropriate and the public health, safety, and general welfare is protected.
- ~~(B)~~ This section identifies the uses subject to planned compliance permit procedures and sets forth the procedures for submitting, reviewing, and approving a petition for a planned compliance permit.
- ~~(C)~~ The Planning Board acts as the permit issuing authority for all uses requiring approval of a planned compliance permit. The Planning Board hears factual evidence presented to it at an evidentiary hearing, then makes findings of fact supported by competent, substantial, and material evidence. Based on those findings, the Planning Board decides whether or not it can reach each of the required conclusions.
- ~~(D)~~ Although planned compliance permit review procedures need not be as formal as those used by the courts or the Board of Adjustment, the same constitutional due process requirements apply. Thus, interested parties have the right to offer evidence, cross-examine adverse witnesses, inspect documents, have sworn testimony, have the decision based only on evidence that is properly in the hearing record, and have written findings of fact supported by competent, substantial, and material evidence.
- ~~(E)~~ All interested parties have a right to know all the evidence being considered as part of the Planning Board's decision. Hence the Board may consider only evidence presented at the evidentiary hearing on the petition, and it is improper for the petitioner or any other interested party to communicate with Planning Board members about the petition outside of the hearing.

~~19-22-2~~ **Applicability**

~~(A)~~ **Uses Requiring Approval of Planned Compliance Permit**

The following uses require planned compliance permit approval in conditional use zoning districts. These uses may be established only after the use or development is authorized by a validly issued and recorded planned compliance permit.

- ~~(1)~~ — All industrial uses
- ~~(2)~~ — Multi-family residential developments
- ~~(3)~~ — Planned Unit Developments (PUDs)

- ~~(4) — Mixed-use developments (commercial and residential)~~
- ~~(5) — Residential uses proposed adjacent to existing industrial or heavy commercial uses~~
- ~~(6) — Schools~~
- ~~(7) — School additions or renovations that are greater than 50 % of the existing building(s) in size~~
- ~~(8) — Churches and all other assembly uses (religious and nonreligious assembly uses) greater than 2,500 square in floor area~~
- ~~(9) — Accessory uses to residential subdivisions where they are open to the public~~
- ~~(10) — Group homes~~
- ~~(11) — Major utility facilities (power plants, sub-stations, water or sewage treatment plants, water towers greater than 35 feet tall, etc....)~~
- ~~(12) — Airports, airfields~~
- ~~(13) — Public facilities such as fire stations, EMS stations, law enforcement facilities, prisons, libraries, etc.....~~
- ~~(14) — Daycare centers~~
- ~~(15) — Service uses greater than 2,500 square feet in floor area (includes health care)~~
- ~~(16) — Commercial uses greater than 2,500 square feet in floor area~~
- ~~(17) — Office uses greater than 2,500 square feet in floor area~~
- ~~(18) — Commercial establishments of any size that have gas sales or drive-thru windows~~
- ~~(19) — Restaurants~~
- ~~(20) — Special events~~
- ~~(21) — Telecommunication, radio and television towers~~
- ~~(22) — Active recreation facilities or developed parks~~
- ~~(23) — Kennels or veterinary offices~~
- ~~(24) — Wholesale, warehouse, storage~~
- ~~(25) — Hotels/motels~~
- ~~(26) — Amusements, theaters, night clubs~~
- ~~(27) — Sexually oriented businesses~~

~~(28) — Cemeteries~~

~~(29) — Automotive sales, service/repair shops~~

~~(30) — Any specific use not listed under the General Uses paragraph immediately following.~~

(B) — General Uses

~~The following uses do not require planned compliance permit approval. These uses may be processed and approved administratively by the Planning Director and will not be subject to any conditions above and beyond the otherwise applicable requirements of this ordinance. Subdivisions for only single family detached houses require approval by the Planning Board, or the Planning Director, in conformity with the subdivision approval procedures of this ordinance.~~

~~(1) — Accessory uses to residential subdivisions where they are not open to the public~~

~~(2) — Service uses less than or equal to 2,500 square feet in floor area (includes —health care) (does not include automotive)~~

~~(3) — Commercial uses less than or equal to 2,500 square feet in floor area~~

~~(4) — Office use less than or equal to 2,500 square feet in floor area~~

~~(5) — Churches less than or equal to 2,500 square feet~~

~~(6) — Water towers no more than 35 feet in height~~

~~(7) — Passive recreation facilities or parks~~

~~(8) — Bed and breakfast, rooming house~~

~~(9) — Home occupations~~

~~(10) — Daycare homes, family care homes~~

~~(11) — Collocations of telecommunication equipment on existing towers or other —existing structures.~~

19-22-3 — Authority

~~A planned compliance permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the permit's terms and conditions. A planned compliance permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the permit's terms and conditions as long as the permit remains valid. Issuance of a planned compliance permit does not relieve the permit holder of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.~~

19-22-4 Applications

A person proposing uses or development requiring a planned compliance permit must submit a planned compliance permit application to the Planning Director.

(A) The application must:

- (1)** include, with sufficient copies for necessary referrals and records, those forms, maps, plans, and other documents prescribed by the Planning Director as necessary to identify the applicant and owner of the property on which development is proposed;
- (2)** describe the development site;
- (3)** identify and notify the owners of properties adjacent to the site;
- (4)** depict the nature and scope of the proposed development, and show how the development would allow each of the required conclusions to be reached; and
- (5)** be accompanied by a traffic impact analyses if required pursuant to Sec. **Error! Reference source not found.**;

(B) Plans must be prepared by a licensed designed professional authorized by the North Carolina General Statutes to perform such work.

[Amended by OA 06-13 on 3/17/2014.]

19-22-5 Staff Review

- (A)** After accepting an application as complete, the Planning Director must refer it to appropriate staff for review.
- (B)** The review staff must determine whether the proposed development complies with all applicable regulations and standards, and identify any other significant concerns about whether the required conclusions can be reached.
- (C)** The Planning Director must notify the applicant of the staff findings and concerns, and, on determining that revisions to the application could constructively address the staff findings, invite the applicant to revise the application to address those findings.
- (D)** If a revised application is submitted, the Planning Director must cause it to be reviewed in the same manner as the original application.
- (E)** The Planning Director must then prepare a staff report that summarizes the analysis and recommends approval or denial of the application.
- (F)** At a reasonable time before the hearing, the Planning Director must send members of the Planning Board copies of the application and the staff report. The Planning Director must also send the applicant a copy of the staff report.

19-22-6 Public Hearings

(A) **Timing**

- (1)** After the staff has completed its review, the Planning Board must hold a hearing on the application at its next available regularly scheduled meeting.

- ~~(2) — Once a hearing on the application has been scheduled and advertised for a particular meeting, it must be held at that meeting unless some emergency or special circumstance requires cancellation or early recess of the meeting itself.~~

(B) — Notice

- ~~(1) — At least 10 days before the hearing, the Planning Director post notice of the hearing on the proposed development site and send written notice of the hearing to the applicant and the owner of the property on which development is proposed, and to the owners of all real property adjoining and across the street from the property on which development is proposed (as identified in County tax listings current when the application is filed).~~
- ~~(2) — On determining that the proposed development would likely have significant impacts on other properties in the neighborhood, the Planning Director must also send written notices to the owners of those properties (as identified in current County tax listings), and may require the applicant to submit the additional materials necessary to provide such notices.~~
- ~~(3) — Notices to the applicant and owner of the property on which the development is proposed must be sent via certified mail, return receipt requested. All other mailed notices must be sent via first-class mail.~~
- ~~(4) — On determining that the proposed development would likely have significant impacts on properties beyond the neighborhood of the proposed development site, the Planning Director must cause notice of the hearing to be published in a newspaper of general circulation in the County or area of the proposed development site. The notice must be published in each of 2 successive calendar weeks, with the first notice being published between 10 and 25 days before the hearing date.~~

(C) — Hearing

- ~~(1) — At the hearing, the Planning Board must receive the application and staff report as evidence, and must allow the applicant and other interested parties the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in explanation and rebuttal. Planning Board members may question any interested party with respect to testimony or evidence. Any Planning Board member who has prior or specialized knowledge relevant to the application (such as that gathered from a visit to the proposed development site) must disclose such evidence at the hearing.~~
- ~~(2) — Witnesses presenting evidence must do so under oath (sworn or affirmed). The Planning Board's presiding officer may administer oaths to witnesses. The presiding officer may also take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include barring the presentation of obvious hearsay evidence (e.g., another person's statement supporting or opposing the proposal), barring the presentation of non-expert opinion (i.e., an opinion from a person lacking sufficient experience or knowledge to form a basis for the opinion), interrupting digressions into immaterial testimony, interrupting repetitive testimony,~~

~~reasonably limiting the time allotted each witness or cross-examination, providing for the selection of spokespersons to represent groups of persons with common interests, interrupting personal attacks, and ordering an end to disorderly conduct.~~
[Amended by OA 06-13 on 3/17/2014.]

- ~~(3) The Planning Board may continue the hearing to a later meeting to accommodate additional witnesses or the presentation of additional testimony or evidence. If the time and place of the continued hearing is announced in open session during the hearing, no further notice need be given for the continued hearing.~~

19-22-7 Review and Decision

- ~~(A) Following the hearing, the Planning Board must review and discuss the evidence presented at the hearing, make specific findings of fact supported by that evidence, and determine whether or not such findings allow it to reasonably reach each of the required conclusions. In making findings of fact and reaching conclusions, the Planning Board may consider only competent, substantial, and material evidence presented at the hearing.~~
- ~~(B) The applicant bears the burden of presenting sufficient evidence in support of the application to allow the Planning Board, after weighing such evidence against that presented in opposition to the application, to make findings of fact that reasonably support each of the required conclusions. If that burden is met, the Planning Board must approve the application. If that burden is not met, the Planning Board must deny the application, provided that if the Planning Board determines that specific minor changes or additions to, or restrictions on, the proposed development are necessary and sufficient to overcome impediments to its reaching the required conclusions, it may approve the application subject to reasonable conditions requiring such changes or additions or imposing such restrictions. Such conditions may include time limits for completion of development or for the start or end of certain uses or activities.~~
- ~~(C) A resolution or motion to approve the application must state the required conclusions and include findings of fact on which the conclusions are based, plus any proposed conditions of approval. The favorable vote of at least 6 members of Planning Board is necessary to adopt such a resolution or pass such a motion. A resolution or motion to deny the application must state which of the required conclusions cannot be reached and include findings of fact on which the inability to reach the conclusions is based. The favorable vote of a majority of Planning Board members present is necessary to adopt such a resolution or pass such a motion. If a resolution or motion to approve the application fails, the application is deemed denied, and those members voting against the resolution or motion must state which of the required conclusions they could not reach as well as findings of fact on which their inability to reach the conclusions is based.~~
- ~~(D) If the Planning Board approves an application that includes one or more plans qualifying as a site-specific development plan under Section 153A-344.1(b)(5) of the North Carolina General Statutes, it must identify the approved plan as a site specific development plan that triggers a vested right pursuant to Section 153A-344.1 of the North Carolina General Statutes.~~

19-22-8 — Conclusions Required for Approval

The Planning Board may not approve a petition for a planned compliance permit unless it first reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence presented at the hearing. The considerations listed below each required conclusion are intended to suggest some of the primary concerns pertinent to reaching the conclusion, but are not intended to be all-inclusive:

- (A)** — The proposed development will not materially endanger the public health or safety, considering:
 - (1)** — Traffic conditions in the vicinity, including the effect of additional traffic on streets and street intersections, and sight lines at street intersection and curb cuts.
 - (2)** — Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
 - (3)** — Soil erosion and sedimentation.
 - (4)** — Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.
- (B)** — The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of planned compliance permit or class of planned compliance permits.

19-22-9 Revised Applications

After the Planning Board has held the hearing and fully discussed the application, but before it takes action on the application, the applicant may ask the Planning Board for permission to revise the application to address concerns raised during the hearing and Planning Board discussion. If the Planning Board grants the request, the revised application must be submitted to the Planning Director, and must be reviewed in the same manner as an original application.

19-22-10 Notice of Decision and Issuance of Planned Compliance Permit

- (A)** — The Planning Director must send the applicant written notice of the Planning Board's final decision on the application, and must file a copy of the decision in the Planning Department office. If the application is denied, the notice must state the Planning Board's reasons for its decision. This required notice must be sent via certified mail, return receipt requested.
- (B)** — If the application is approved, the Planning Director must issue the applicant a planned compliance permit identifying the property to which it applies, the development plans on which it is based, and any conditions to which it is subject. The applicant must record the planned compliance permit in the office of the Wake County Register of Deeds.

19-22-11 Appeal of Decision

Any person aggrieved by the Planning Board's decision to approve or deny an application for a planned compliance permit may appeal the decision to the Board of Commissioners, provided the appeal is made within 30 days after written notice of the decision is delivered to the applicant, or a copy of the decision is filed in the Planning Director's office, whichever is later.

19-22-12 Waiting Period for Resubmittal of Application

- (A)** — If the Planning Board denies a planned compliance permit application, or if the applicant withdraws the application after the hearing notice, the Planning Director may not accept another application for the same or similar use or development until at least one year after

~~the denial or withdrawal, unless the Planning Board first approves the applicant's request for an exemption from this provision.~~

- ~~(B) — An application for a rehearing may be considered by the Planning Board within 12 months after the date of denial or withdrawal. The application for rehearing must be accompanied by an affidavit setting forth evidence that significant physical, economic or land use changes have taken place on the subject tract or within the immediate vicinity, or newly discovered evidence that was not available at the initial hearing, or a significant ordinance amendment has been adopted.~~

19-22-13 — Final Plans

(A) — Final Plan Approval Required

~~No use or development authorized by approval of a planned compliance permit application may be established until the planned compliance permit has been recorded and the Planning Director has approved, or certified others' approval of, final plans for the authorized development, or for an approved phase thereof, as conforming to the plans, terms, and conditions of the planned compliance permit application approval and as complying with all applicable requirements of this ordinance.~~

(B) — Plan Modifications

- ~~(1) — The Planning Director may approve, or certify approval of, final plans that reflect minor modifications of the plans approved as part of the planned compliance permit application on determining that the modifications continue to be consistent with the Planning Board's approval of the planned compliance permit application (i.e., that the modifications are necessary to comply with conditions of approval or would not significantly change the development's general function, form, intensity, character, appearance, demand on public facilities, relationship to adjacent properties, impact on adjacent properties, or other characteristic from that indicated by the plans and materials approved as part of the planned compliance permit application).~~
- ~~(2) — Before making such a determination, the Planning Director must review the record of the proceedings on the planned compliance permit application and consider whether any proposed modification would require evidentiary support in addition to that on which the Planning Board based its approval of the planned compliance permit application.~~

19-22-14 Validity of Permit

(A) — Planned Compliance Permit Binding on Land

~~A planned compliance permit runs with the land covered by the planned compliance permit and is binding on the original applicant as well as any subsequent successor, heir, or assign of the property to which it applies. Once the planned compliance permit is recorded with the Register of Deeds, no use or development other than that authorized by the planned compliance permit must be approved on that land unless the planned compliance permit is first voided or revoked in accordance with this subsection.~~

~~(B) Time Limits and Extensions~~

~~(1) Starting Time Limits~~

- ~~a)~~** Approval of a planned compliance permit application, as well as any county permit or approval granted pursuant to that approval, will automatically become void if:
 - ~~i.~~** the approval authorizes development that requires a building permit, and the building permit is not been issued within 2 years after the application's approval date; or
 - ~~ii.~~** the approval authorizes a use or development that does not require a building permit, and such use or development is not substantially started within 2 years after the application's approval date.
- ~~(b)~~** If the planned compliance permit has already been recorded when the approval expires, the Planning Director must record an instrument noting the voiding of the planned compliance permit in the office of Wake County Register of Deeds.

~~(2) Extension of Starting and Completion Time Limits~~

- ~~a)~~** On request by the holder of a planned compliance permit, the Planning Director may extend the date on which the planned compliance permit would otherwise expire under a) by up to 6 months on determining that:
 - ~~i.~~** the planned compliance permit has not yet expired;
 - ~~ii.~~** the holder of the planned compliance permit has proceeded with due diligence and good faith to start or continue the authorized use or development; and
 - ~~iii.~~** conditions or applicable regulations have not changed so substantially as to warrant reconsideration of the proposed use or development with respect to the public health, safety, and general welfare.
- ~~b)~~** If a planned compliance permit application is approved subject to a condition specifying a time limit for completion of authorized development, the Planning Director may grant a single extension to that time limit for a period of up to 12 months, provided that:
 - ~~i.~~** the holder of the planned compliance permit requests such extension within 60 days of the completion date;
 - ~~ii.~~** the holder of the planned compliance permit has proceeded with due diligence and good faith to complete the authorized development by the completion date; and

- iii. ~~conditions or applicable regulations have not changed so substantially as to warrant reconsideration of the proposed use or development with respect to the public health, safety, and general welfare.~~

~~(C) Abandonment of Permit~~

- ~~(1) On request of the holder of a planned compliance permit, the Planning Director must approve the abandonment of the planned compliance permit on determining that the starting time limit has not expired, or that the use or development authorized by the planned compliance permit no longer requires a planned compliance permit.~~
- ~~(2) On approving the abandonment of a planned compliance permit, the Planning Director must issue the holder of the planned compliance permit a certification of planned compliance permit abandonment. The abandonment will not become effective until the holder of the planned compliance permit records that certification in the office of the Register of Deeds.~~

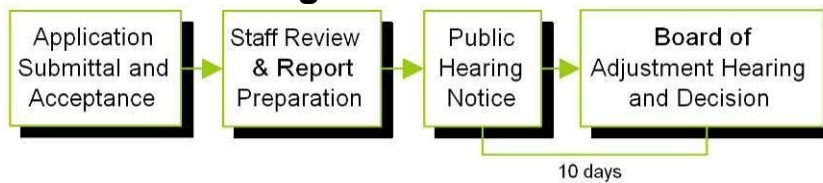
~~(D) Cessation of Use~~

~~If the use authorized by a planned compliance permit is started, but ceases for a continuous period of 12 months, the planned compliance permit will automatically become void. The Planning Director must then record an instrument noting the voiding of the planned compliance permit in the office of Wake County Register of Deeds.~~

~~(E) Revocation of Permit~~

- ~~(1) In accordance with Sec. 19-42-1(E) the Planning Director may revoke a planned compliance permit for failure to comply with the requirements of this section or the terms and conditions of the planned compliance permit. The Planning Director may also revoke a planned compliance permit in response to a request by the holder of the planned compliance permit on determining that:~~
 - ~~a) the planned compliance permit is still valid and any completion time limit has not yet expired;~~
 - ~~b) the request is made in conjunction with an application for approval of development other than that authorized by the planned compliance permit; and~~
 - ~~c) the proposed design of the new development incorporates adequate consideration of the site's already disturbed land area and previous commitments made as part of the planned compliance permit review process.~~
- ~~(2) On revoking a planned compliance permit, the Planning Director must record an instrument noting the voiding of the planned compliance permit in the office of Wake County Register of Deeds.~~

19-26 Zoning Variances



19-26-1 Purpose

The zoning variance procedures of this section authorize the Board of Adjustment to modify or vary regulations of this ordinance when strict compliance with the regulation or standard would result in practical difficulties or unnecessary hardships upon the subject property.

19-26-2 Authorized Variances

- (A) The Board of Adjustment is not authorized to grant zoning variances to any of the standards of Article 8 (Subdivision Design and Improvements) or to any of the standards of Article 10 (Erosion and Sedimentation Control).

19-26-3 Applications

A person requesting a zoning variance must submit a variance application to the Planning Director.

19-26-4 Process Generally

(B) Evidence and Testimony

Any interested party may be given the opportunity to present evidence or testimony, to cross-examine witnesses, to inspect documents, and to offer evidence or testimony in explanation or rebuttal. The presiding officer may determine whether testimony, oral argument, or cross-examination must be limited in duration. Any member of the Board of Adjustment may question any interested party. ~~Persons other than interested parties may make comments. Such comments must be competent, relevant, and material.~~

19-26-5 Public Hearing

- (A) The Board of Adjustment must hold a public hearing before taking action on a zoning variance application.
- (B) At least 10 days before a hearing on a variance, the Planning Director must post notice of the hearing on the affected property and send written notice of the hearing to the applicant, the owner of the affected property, and the owners of all real property adjoining the affected property (as shown on County tax listings current when the application is filed).
- (C) If a requested variance would result in the relaxation of any of the State Environmental Management Commission's minimum watershed management requirements for the low-density option (see 15A NCAC 2B), the Planning Director must, at the same time, send written notice of the hearing to all other local governments having jurisdiction within the same water supply watershed.

- (1) If the Board of Adjustment grants a variance that would result in the relaxation, by a factor greater than 10 percent), of any of the State Environmental Management Commission's minimum watershed management requirements for the low-density option (see 15A NCAC 2B), the Board of Adjustment's decision is subject to review and approval by the State Environmental Management Commission before it becomes final. In such cases, the Planning Director must prepare a preliminary record of the variance application, the evidence submitted to the Board of Adjustment, and the Board of Adjustment's findings and decision, and submit it to the State Environmental Management Commission.
 - (2) If the State Environmental Management Commission approves the variance as granted by the Board of Adjustment, the Board of Adjustment's decision will then be considered final and the variance granted.
 - (3) If the State Environmental Management Commission approves the variance with conditions varying from, or in addition to, those imposed by the Board of Adjustment, the Board of Adjustment must revise its decision to include the varied or added conditions.
 - (4) If the State Environmental Management Commission denies the variance, the Board of Adjustment must reverse its decision and deny variance. The Planning Director must, by January 1, submit to the State Division of Water Quality, or its successor agency, a report of any variances granted within water supply watersheds during the previous calendar year that would result in a variation from the State Environmental Management Commission's minimum watershed management requirements (see 15A NCAC 2B). The report must describe each project receiving a variance and the reason for granting the variance.
-
- (D) On determining that the application would impact non-adjoining properties in the ~~neighborhood~~ vicinity of the affected site, the Planning Director may also send written notices to the owners of those properties, and may require the applicant to submit the additional materials necessary to provide such notices.
 - (E) Notices to the applicant and the owner of the affected site must be sent via certified mail, return receipt requested. All other mailed notices must be sent via first-class mail.
 - (F) If the Planning Director determines that an application for a variance would have significant impacts on properties beyond the ~~neighborhood~~ vicinity of the affected site, the Planning Director must cause notice of the hearing to be published in a newspaper of general circulation in the county or the area of the affected site. The notice must be published in each of ~~2~~ two successive calendar weeks, with the first notice being published between 10 and 25 days before the hearing date.
 - (G) The Planning Director must make every reasonable effort to comply with these notice requirements. However, where the Planning Director has made a reasonable and good-faith attempt to comply with the requirements for notice to owners of adjoining properties, no

failure to comply with those requirements must render any decision on the application invalid.

19-26-8 Conditions of Approval

In granting ~~zoning~~ variances, the Board of Adjustment is authorized to impose conditions that secure substantially the objectives of the regulations or provisions being varied or modified.

19-33-5 Staff Action (Regular Subdivision – Preliminary Plan)

(A) If No ~~Waivers or Modifications~~ Variance Requested

(B) If ~~Waivers or Modifications~~ Variance Requested

- (1)** ~~Following the applicant's request for staff action on the original application, or staff review of a revised application, the Planning Director must review staff comments, and, make findings regarding the proposed subdivision's compliance with all applicable provisions of this ordinance. The applicant must apply for a variance in accordance with Sec. 19-26.~~
- (2)** ~~Based on those findings, the Planning Director must prepare a staff report recommending that the Planning Board approve the application as submitted, or approve the application subject to conditions, or deny the application. If a variance is granted the applicant may proceed with the preliminary subdivision noting the variance. If the variance request is denied the applicant may proceed with the preliminary subdivision meeting the terms of this ordinance.~~

19-33-6 ~~Planning Board Review And Action~~

(A) ~~Submittal to Board~~

- (1)** ~~If the applicant requests that the application be forwarded to the Planning Board in accordance with subparagraph 19-33-5(A)(4) above, or if the application is accompanied by a waiver or modification requests under Sec. 19-36, the Planning Director must schedule the application for review by the Planning Board.~~
- (2)** ~~At a reasonable time before the meeting, the Planning Director must send members of the Planning Board copies of the application and the staff report.~~
- (3)** ~~The Planning Director must also send the applicant a copy of the staff report.~~

(B) ~~Planning Board Review~~

~~At its meeting, the Planning Board must review the application and staff report in accordance with its Rules of Procedure. The Planning Board must make every reasonable effort to process, review, and decide applications for preliminary subdivision plan in a timely manner, consistent with the need to fully consider the proposed subdivision's impact with respect to applicable regulations.~~

(C) — Opportunity to Revise Application

If the Board discusses the application, the applicant may, before the Board takes final action, ask the Board for permission to revise the application to address concerns raised by the Board's discussion. If the Board grants the requests, the revised application must be submitted to the Planning Director, and must be reviewed in the same manner as an original application.

(D) — Planning Board Action

(1) — The Board must, based on findings regarding the proposed subdivision's compliance with all applicable provisions of this ordinance, take action to approve the application as submitted, approve the application subject to conditions, or deny the application.

(2) — The Board must limit any conditions of approval to requiring specific actions and/or minor changes or additions to, or restrictions on, the proposed subdivision that it deems reasonably necessary to protect the public health, safety and general welfare and ensure compliance with applicable provisions of this ordinance. Such conditions may include time limits for completion of development or for the start or end of certain activities.

(3) — If the Board denies the application, it must identify its reasons for doing so.

19-33-7 — Approval Criterion

The Planning Director or Planning Board, as appropriate, must approve an application for preliminary subdivision plan approval only if they determine that the proposed subdivision and associated development, as shown by the preliminary plan, complies with all applicable provisions of this ordinance and with all conditions imposed on the approval.

19-33-8 — Notice of Decision

The Planning Director must send the applicant written notice of the final decision on the application, and must file a copy of the decision in the Planning Department office. If the application is denied, the notice must state the reasons for denial.

19-33-9 — Appeal of Decision

Any person aggrieved by the Planning Board's decision to approve or deny an application for preliminary plan approval may appeal the decision in accordance with Sec. 19-37.

19-33-10 19-33-6 Effect of Preliminary Plan Approval; Lapse of Approval

19-33-11 19-33-7 Public Notice

19-36 — Modifications and Waivers of Subdivision Standards

(A) — Authority

(1) — Where the Planning Board finds that, because of extraordinary conditions or circumstances peculiar to the land, strict application of any provision of this ordinance would prohibit a subdivision that is otherwise in accordance with the spirit and intent of this ordinance, it may grant a waiver or modification from the provision to avoid extraordinary and unnecessary hardship, provided it

~~finds that such waiver or modification will not result in detriment to the public interest nor violate the intent and purpose of these regulations.~~

- ~~(2) In granting waivers or modifications, the Planning Board may impose such additional conditions as will, in its judgment, secure substantially the objectives of the requirements so varied.~~
- ~~(3) The Planning Board must deny any request for a waiver or modification not supported by substantial evidence.~~

(B) Watershed Management Standards

- ~~(1) If a requested waiver or modification would result in the relaxation of any of the State Environmental Management Commission's minimum watershed management requirements for the low-density option (see 15A NCAC 2B), the Planning Director must, at least 10 days before the Planning Board's review of the waiver or modification request, send written notice of the Planning Board meeting to all other local governments having jurisdiction within the same water supply watershed.~~
- ~~(2) If the Planning Board grants a waiver or modification that would result in the relaxation, by a factor greater than 10%, of any of the State Environmental Management Commission's minimum watershed management requirements for the low-density option (see 15A NCAC 2B), the Planning Board's decision is subject to review and approval by the State Environmental Management Commission before it becomes final. In such cases, the Planning Director must prepare a preliminary record of the waiver or modification application, the evidence submitted to the Planning Board, and the Planning Board's findings and decision, and submit it to the State Environmental Management Commission.~~
- ~~(3) If the State Environmental Management Commission approves the waiver or modification as granted by the Planning Board, the Planning Board's decision will then be considered final and the waiver or modification granted.~~
- ~~(4) If the State Environmental Management Commission approves the waiver or modification with conditions varying from, or in addition to, those imposed by the Planning Board, the Planning Board must revise its decision to include the varied or added conditions.~~
- ~~(5) If the State Environmental Management Commission denies the waiver or modification, the Planning Board must reverse its decision and deny the waiver or modification. The Planning Director must, by January 1, submit to the State Division of Water Quality, or its successor agency, a report of any waiver or modifications granted within water supply watersheds during the previous calendar year that would result in a variation from the State Environmental Management Commission's minimum watershed management requirements (see 15A NCAC 2B). The report must describe~~

each project receiving a waiver or modification and the reason for granting the waiver or modification.

19-37 Appeals of Decisions on Subdivision Matters



19-37-1 Authority

- (A) Any property owner or aggrieved subdivider or any officer or agency of Wake County affected by any decision of the Planning Board that relates to the interpretation or application of the standards of Article 8 may file an appeal to the Board of County Commissioners. (Note: Planning Director decisions are appealed to the Planning Board. See, for example, 19-33-6)
- (B) Any alleged error of the Planning Board in making or refusing to make a decision related to subdivisions, including the failure to make a decision within the required time, is a basis for an appeal to the Board of County Commissioners.

19-37-2 Filing

Any appeal must be filed with the Chairman of the Board of County Commissioners within 30 days of the decision complained of. The appeal must specify the grounds therefore, and a copy must be filed with the Planning Director within the same period of time.

19-37-3 Hearing

- (A) The Board of County Commissioners must fix a time and place for the hearing of an appeal which must be held no later than 90 days after filing of an appeal.
- (B) At least 10 days prior to the hearing, the Board of County Commissioners must publish a notice thereof in a newspaper of general circulation within the county.

19-37-4 Findings and Decision

- (A) No appeal may be disposed of, unless the Board of County Commissioners with respect to the specific appeal, makes a decision in writing which includes findings of fact together with the reasons therefore and a summary of the evidence or testimony presented.
- (B) The burden of producing substantial evidence or testimony is upon the party who files an appeal, and that party fails to do so, the Board of County Commissioners must deny the appeal.
- (C) The appeal proceeding before the Board of County Commissioners is de novo and quasi-judicial in nature, requiring an evidentiary hearing with due process protections. Public testimony must be sworn or affirmed and the decision based on competent and relevant evidence. The Chair, in consultation with the County

~~Attorney, is authorized to place reasonable time limitations on the proceeding. The Board of County Commissioners must determine, by simple majority vote, if the appellant has presented substantial evidence that the Planning board erred and whether the Planning Board's decision correctly interpreted this ordinance.~~

~~19-38~~ 19-36 Subdivision Plat Vacations

~~19-38-1~~ 19-36-1 Authority

~~19-38-2~~ 19-36-2 Recording

19-41 Appeals of Administrative Decisions

19-41-1 Authority

~~Except in the case of appeals of decisions on subdivision-related matters (See 19-37),~~ The Board of Adjustment is authorized to hear and decide appeals when it is alleged that there is an error in any order, requirement, decision or determination made by the Planning Director or other county staff in the administration or enforcement of this ordinance.

****The following are changes where the term Planning Director and Planning Board. In all of these instances that phrase will be changed to Planning Director and all verb tenses will also be corrected.****

8-10-3 Occasionally, proposed subdivisions are located within multiple jurisdictions (i.e., partially within unincorporated Wake County and partially within other jurisdictions). In such cases, the Planning Director ~~is and Planning Board are~~ authorized to require that the entire subdivision be designed and developed in accordance with the regulations of the jurisdiction that imposes the strictest standards. Alternatively, ~~the Planning Director and Planning Board~~ may simply allow portions of the proposed subdivision lying within multiple jurisdictions to be designed and developed in accordance with the standards of the applicable jurisdictions. The Planning Director ~~is and Planning Board are~~ not authorized to relax or waive applicable subdivision design/improvement standards unless otherwise expressly stated in this ordinance.

8-31-4 (B) Exception (Flag Lots)

- (1)** The ~~Planning Board or~~ Planning Director, as applicable, ~~are~~ **is** authorized to allow the creation of flag lots only if ~~they~~ **it is** determined ~~d~~ that a flag lot is necessary to allow reasonable use and benefit of the subject parcel or to alleviate

situations that would otherwise cause undue hardship. Flag lots may be allowed only in the following instances:

- a) when necessary to eliminate access onto thoroughfares;
- b) when necessary to make reasonable use of irregularly shaped parcels;
- c) when necessary to make reasonable use of parcels with severe topography;
or
- d) when necessary to provide suitable land area and soil for location and operation of utilities.

8-32-3 Road Frontage Required

- (C) If direct driveway access to state roads is allowed, the Planning Director ~~is and Planning Board are~~ authorized to require shared access drives and other mitigation measures to reduce the number of access points on to state roads and thereby promote public safety and efficient movement of traffic.

8-32-4 Public Roads

- (B) Within the Short-Range Urban Services Area, the Planning Director ~~is and Planning Board are~~ authorized to require that roads serving 12 or more lots be designed and constructed in accordance with applicable municipal standards.

8-32-5 (2) New or Extended Private Roads

- (b) Where an extension of an existing private road is proposed, thereby increasing the potential for additional traffic, the Planning Director ~~is or Planning Board are~~ authorized to require that the connecting private road, if any, be upgraded to comply with the private road standards of this article.

(C) 8-32-5 (C) Class A and Class B Private Roads

- (1) “Class A” private roads are allowed only when the proposed private road will provide or have the potential to provide access to an area with an ultimate development potential of ~~7~~ **seven** or more lots.
- (2) “Class B” private roads are allowed only when the proposed road will provide or have the potential to provide access to an area with an ultimate development potential of ~~6~~ **six** or fewer lots. No extension of a “Class B” private road will be allowed if such extension will provide or have the potential to provide access to an area with an ultimate development potential of more than ~~6~~ **six** lots. Extensions of such roads that will result in the provision of more than ~~6~~ **six** lots may be allowed only if the entire length of the road is brought up to applicable

“Class A” private or public road standards (depending on the number of lots to be served).

- (3) For the purpose of determining “ultimate development potential,” the Planning Director ~~and Planning Board~~ must consider the number of lots within the subject subdivision that will have access to the proposed road and to the likelihood that the proposed road will or could be extended to adjoining property.
- (4) No subdivision plat that shows lots served by private roads may be recorded unless the record plat contains the following notation: “further subdivision of any lot shown on this plat may be prohibited unless the private road is improved in accordance with applicable standards.”
- (5) Within the Short-Range Urban Services Area, the Planning Director ~~is and Planning Board are~~ authorized to require that all roads be designed and constructed in accordance with applicable municipal standards.

8-32-6 Right-of-way Dedication

- (A) Except as otherwise expressly indicated in this ordinance, whenever a tract to be subdivided includes or abuts any part of a road that has a right-of-way of less width than required by applicable state or county standards, the property owner is required to dedicate the additional right-of-way necessary to ensure compliance with minimum right-of-way width standards. ~~This dedication requirement may be waived by the Planning Board or Planning Director only if they determine that the dedication:~~
- ~~(1) — will result in the deprivation of all reasonable use of the subject property; and~~
 - ~~(2) — is not reasonably related to the traffic that will be generated by the proposed subdivision.~~

8-32-12 Road Connections to Abutting Property

(B) Additional Connections

- (1) Additional road connections or stub-out streets—in excess of the minimum requirements of Sec. 8-32-12(A) — must be provided to adjacent property or a

connecting road whenever the ~~Planning Board or~~ Planning Director determines:

(E) Road Extensions and Connections Not Feasible...

- (1) Road extensions and connections are required pursuant to this section except when the ~~Planning Board or~~ Planning Director determines that any of the following conditions exist: ...
- (2) If the ~~Planning Board or~~ Planning Director determines that a road extension or connection to abutting property is not feasible because natural barriers (e.g., rivers, lakes, ponds, steep slopes, or flood hazard areas) or other intervening man-made barriers (e.g., railroads, freeways, parks, or existing development) make it impractical to extend the road to such property, the subdivider must grant an easement for the road to the benefit of the adjacent property. The easement must: ...
- (3) In addition to the easement specified in paragraph (2) above, the Planning Director ~~is and Planning Board are~~ also authorized to require a financial guarantee or enforceable legal agreement ensuring that the subject developer participates in funding the road extension or connection in the event that such extension or connection becomes feasible in the future.

8-32-14 Access to Thoroughfares

19-26-8.1.1 Standards

No direct access from individual lots onto a thoroughfare is allowed, provided that when strict compliance with this provision is impossible or impractical due to topographic conditions, configuration of the parcel to be subdivided or other conditions beyond the control of the subdivider, the Planning Director ~~is or Planning Board are~~ authorized to approve other means of meeting the purpose of this subsection. When a tract of land to be subdivided borders on an existing or proposed thoroughfare, the Planning Director ~~is or Planning Board are~~ authorized to require any of the following: ...

19-26-8.1.2 Criteria

The ~~Planning Board or~~ Planning Director must consider the following criteria in determining which of the thoroughfare access standards of paragraph 8-32-14(B) to require:

8-32-17(A) Cul-de-sacs Length

- (2) The Planning Director ~~is and Planning Board are~~ authorized to increase the cul-de-sac length limit of paragraph **Error! Reference source not found.** by up to 35 ~~percent~~ % if they determine, based on evidence submitted by the subdivider, that:

8-32-17(C) Cul-de-sacs on “Class B” Private Roads

- (2) The Planning Director ~~is and Planning Board are~~ authorized to approve “class B” private cul-de-sac road design alternatives (to the standards in subparagraph 8-32-17(C)(1)) only if the subdivider provides evidence of all of the following:

8-33-3 (A) Long-Range Urban Services Area – Pedestrian Improvements

(1) When Improvements May Be Required

Within the Long-Range Urban Services Area, the Planning Director ~~is or Planning Board are~~ authorized to require that developers provide pedestrian improvements within the right-of-way of collector and thoroughfare roads whenever:

(2) When Improvements May Not Be Required

- (a) Within the Long-Range Urban Services Area, bicycle improvements within the right-of-way of collector or thoroughfare roads may not be required if the Planning Director ~~or Planning Board~~ determines that the provision of such improvements will not provide needed linkages or connections to existing or planned bicycle improvements.
- (b) The Planning Director ~~or Planning Board~~ may not require any combination of pedestrian, bicycle or off-road trail improvements that would constitute more than 10 percent of the allowable impervious coverage of the subject subdivision, calculated on the basis of the impervious surface area allowed without provision of stormwater management devices.

8-33-3 (C) Long-Range Urban Services Area – Off-Road Trail Improvements

(1) When Improvements May Be Required

Within the Long-Range Urban Services Area, the Planning Director ~~is or Planning Board are~~ authorized to require that developers provide off-road trail improvements whenever:

(2) When Improvements May Not Be Required

- (a) Within the Long-Range Urban Services Area, off-road trail improvements may not be required if the Planning Director ~~or Planning Board~~ determines that the provision of such improvements will not provide needed linkages or connections to existing or planned trail improvements.
- (b) The Planning Director ~~or Planning Board~~ may not require any combination of pedestrian, bicycle or off-road trail improvements that would constitute more than 10 percent of the allowable impervious coverage for the subject subdivision, calculated on the basis of the impervious surface area allowed without provision of stormwater management devices.

8-33-4 (B) Non-Urban Areas – Bicycle Improvements

(1) When Improvements May Be Required

Within the Non-Urban Area, the Planning Director ~~is or Planning Board are~~ authorized to require that developers provide bicycle improvements within the right-of-way of collector and thoroughfare roads whenever such improvements are shown on or otherwise required by the *Transportation Plan*.

(2) When Improvements May Not Be Required

Within the Non-Urban Area, the Planning Director ~~or Planning Board~~ may not require any combination of pedestrian, bicycle or off-road trail improvements that would constitute more than 10 ~~percent~~ % of the allowable impervious coverage for the subject subdivision, calculated on the basis of the impervious surface area allowed without provision of stormwater management devices.

8-33-4 (C) Non-Urban Areas – Trail Improvements

(1) When Improvements May Be Required

Within the Non-Urban Area, the Planning Director ~~is or Planning Board are~~ authorized to require that developers provide off-road trail improvements whenever:

(2) When Improvements May Not Be Required

(a) Within the Non-Urban Area, off-road trail improvements may not be required if the Planning Director ~~or Planning Board~~ determines ~~that the~~ provision of such improvements will not provide needed linkages or connections to existing or planned trail improvements.

(b) The Planning Director ~~or Planning Board~~ may not require any combination of pedestrian, bicycle or off-road trail improvements that would constitute more than 10 ~~percent~~ % of the allowable impervious coverage for the subject subdivision, calculated on the basis of the impervious surface area allowed without provision of stormwater management devices.

~~8-36-4 (Stormwater drainage)~~

~~Points of discharge must be within the site unless otherwise approved by the Planning Board and adjoining owners.~~

~~8-36-5~~ 8-36-4 The subdivider must provide retention/detention as required by the Department of Environmental Services.

8-37-2 Streams or Drainageways (Easements)

(A) Easements for streams or drainageways must be provided. Such easements must follow the existing course of such streams or drainageways. Easements for drainage of surface waters from ~~four~~ 4 lots or less may cross lots only if the ~~Planning Board~~ ~~or~~ Planning Director determines that such location will not pose a hazard to persons or property.

8-37-3 Buffer Strips (Easements)

- (B) The Planning Director ~~is and Planning Board are~~ authorized to require a buffer strip of 10 feet to 50 feet in width adjacent to a thoroughfare or to a commercial or industrial development.

8-41 Reserve Strips and Non-Access Reservations

Reserve strips or non-access reservations that control access to roads, waterways, parks, or other improvements or features may be permitted only if their purpose, location, dimensions and manner of control is approved by the ~~Planning Board or~~ Planning Director at the time of subdivision approval.

12-11-1 (C)(6) Required Connections to Municipal Systems

- (1) The Planning Director ~~is or Planning Board are~~ authorized to waive the requirements for connection to municipal water and wastewater systems if they determine that all reasonable efforts have been made to secure permission to connect to a municipal system but such permission has been denied by the municipality or that physical (e.g., topography or intervening development patterns) or legal conditions make such connections infeasible. When such waivers are approved, the Planning Director ~~is or Planning Board are~~ authorized to require that subdivisions install another form of approved community water and wastewater system.

16-12-2(B) Tree Protection Applicability; Effect

The standards of this section generally require that the tree and vegetation protection zone remain undisturbed and that trees and vegetation within the zone be preserved, except that the Planning Director ~~or Planning Board~~ may permit land disturbance and tree and vegetation removal within the protection zone when deemed necessary to allow for reasonable use and development of the property.

16-12-6 Allowed Encroachments (Tree Protection)

- (A) It is the intent of this section to permit reasonable predevelopment activity on lands that are subject to the tree and vegetation protection standards of this section. It is recognized that encroachment into the tree and vegetation protection zone may be necessary to allow for reasonable use and development of the subject parcel. The Planning Director ~~or Planning Board~~ may approve encroachments it deems necessary to permit reasonable use and development. Examples of encroachments that may be permitted include utilities, driveways, sidewalks, entrances and entrance features, supplemental landscaping, as well as access routes for construction vehicles or equipment where no alternative means of access exists on the site. Septic fields must be allowed to encroach into the tree and vegetation protection zone if a qualified soil scientist determines that such location is the only feasible and safe alternative.
- (B) At the time of consideration of a site plan or other authorized development plan for the subject site, review and decision-making bodies are authorized to approve

land disturbance, development activity and tree and vegetation removal in accordance with applicable zoning and site development regulations.

- (C) When encroachment is deemed necessary by the Planning Director ~~or Planning Board~~, any protected trees that are removed or that die within ~~4~~ **one** year after the encroachment must be replaced in accordance with Sec. 16-12-7. In addition, when encroachment must occur, care must be taken to remove and/or disturb the minimum amount of trees and vegetation, possible. Any proposed encroachment within tree and vegetation protection zones must be indicated on subdivision plans.

16-12-7(B) Replacement of Protected Trees

The ~~Planning Board or~~ Planning Director may allow replacement trees to be placed outside the tree and vegetation protection zone when adequate area does not exist within the tree and vegetation protection zone, or when placement in other areas of the site, or protection of other significant trees adjacent to the perimeter of the site, would better meet the general intent of this section.

16-12-8(B) Protective Fencing (Tree Protection)

(1) Where Required

All protected trees that are to be preserved must be surrounded by a clearly visible fence before grading begins. Required fencing must extend as far as practical from a protected tree; preferably at least 1 foot from the tree for each inch of DBH. Protective fencing is not required to extend beyond the tree's dripline. No construction, grading, equipment or material storage, or any other activity is allowed within the tree and vegetation protection zone, unless approved by the Planning Director ~~or Planning Board~~ in accordance with Sec. 16-12-6.

(2)