

## Article 2: Administrative Mechanisms

### Part 1: Planning and Zoning Board

#### **Section 2.01: Creation and Composition of Planning and Zoning Board**

There shall hereby be created a Planning and Zoning Board consisting of eight (8) members. Six (6) members shall be appointed by the City Council and shall reside inside the city limits of Rockingham. Two members (2) members shall be appointed by the Richmond County Board of Commissioners and shall reside inside the City's extraterritorial planning jurisdiction. If, despite good faith efforts, residents of the extraterritorial jurisdiction cannot be found to fill the seats reserved for such area, then the Richmond County Board of Commissioners may appoint other residents of the County, including residents of the City, to fill such seats. If the Richmond County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the City Council requesting that they be made, the City Council shall make such appointments.

#### **Section 2.02: Terms of Office**

- (A) Members of the Planning and Zoning Board shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. Initially, two in-city members and one extraterritorial member shall be appointed for a three-year term; two in-city members and one extraterritorial member shall be appointed for a two-year term; and two in-city members shall be appointed for a one-year term.
- (B) Members of the Planning and Zoning Board may be appointed to successive terms.

#### **Section 2.03: Vacancy and Removal**

- (A) Members of the Planning and Zoning Board may be removed by the City Council at any time for failure to attend three (3) consecutive meetings or for failure to attend thirty (30) percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the City Council shall hold a public hearing prior to the removal becoming effective.
- (B) Any vacancy in the membership of the Planning and Zoning Board shall be filled for the remainder of the unexpired term as soon as may reasonably be accomplished by the City Council in the same manner as the initial appointment.
- (C) If an in-city member moves outside the city or if an extraterritorial member moves outside the extraterritorial jurisdiction, then such move shall constitute a resignation from the Planning and Zoning Board effective upon the date a replacement is appointed by the City Council.

#### **Section 2.04: Organization**

The Planning and Zoning Board shall elect by majority vote a Chairperson and Vice-chairperson from among its members at the regular August meeting of each year. The term of office for the Chairperson and Vice-chairperson shall be one (1) year. If a vacancy occurs in an office prior to the expiration of the full term, another election to fill the remainder of the term of office shall be conducted at the first meeting thereafter. The Chairperson and Vice-chairperson may take part in all deliberations and vote on all matters considered by the Board. The Board shall appoint a Secretary who may be an officer or employee of the City. The Board shall adopt rules for the transaction of business (See Appendix A).

#### **Section 2.05: Meetings and Quorum**

A majority of the Planning and Zoning Board membership (excluding vacant seats) shall constitute a quorum for conducting business. Meetings of the Planning and Zoning Board shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote, indicating facts, and shall keep records of its examinations and other

official actions, all of which shall be filed in the Planning and Inspections Department. Such minutes and records shall be a public record. All meetings of the Board shall be open to the public.

### **Section 2.06: Voting**

- (A) Decisions shall be made by a majority vote of members present. All members whether in-city or extraterritorial shall be permitted to vote on all matters considered by the Board whether in the city or the extraterritorial jurisdiction.
- (B) Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).
- (C) A member may be excused from voting on a particular issue by a majority vote of the remaining members present under the following circumstances:
  - (1) If the member has a direct financial interest in the outcome of the matter at issue; or
  - (2) If the matter at issue involves the member's own official conduct; or
  - (3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
  - (4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (D) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (E) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected; provided however, if an objection is raised to a member's participation at or prior to the hearing or vote on a matter and that member does not recuse himself, the remaining members of the Board shall by majority vote rule on the objection.

### **Section 2.07: Powers and Duties of the Planning and Zoning Board**

The Planning and Zoning Board shall be vested with the authority to:

- (A) Prepare, review, maintain, monitor, and periodically update and recommend to the City Council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (B) Facilitate and coordinate citizen engagement and participation in the planning process.
- (C) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (D) Advise the City Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-6-4.
- (E) Exercise any functions in the administration and enforcement of various means for carrying out plans that the City Council may direct.

- (F) Perform any other related duties that the City Council may direct.

### **Section 2.08: Advisory Committees**

- (A) The City Council may appoint one or more individuals to assist the Planning and Zoning Board in carrying out its planning responsibilities with respect to a particular subject or issue. By way of illustration, without limitation, the City Council may appoint advisory committees to consider such issues as thoroughfare plans, bikeway plans, housing plans, economic development plans or other documents that the Planning and Zoning Board may need assistance in preparing.
- (B) Members of such advisory committees shall sit as nonvoting members of the Planning and Zoning Board when such issues are under consideration and lend their talents, energies, and expertise to the Planning and Zoning Board. However, the Planning and Zoning Board shall make all formal recommendations to the City Council.
- (C) Nothing in this section shall prevent the City Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the City Council.

## **Part 2: Board of Adjustment**

### **Section 2.09: Creation and Composition of Board of Adjustment**

- (A) There shall hereby be created a Board of Adjustment consisting of five (5) regular members and three (3) alternate members. Four (4) regular members and two (2) alternate members shall be appointed by the City Council and reside inside the city limits of Rockingham. One (1) regular member and one (1) alternate member shall be appointed by the Richmond County Board of Commissioners and shall reside inside the extraterritorial planning jurisdiction. If, despite good faith efforts, residents of the extraterritorial jurisdiction cannot be found to fill the seats reserved for such area, then the Richmond County Board of Commissioners may appoint other residents of the County, including residents of the City, to fill such seats. If the Richmond County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the City Council requesting that they be made, the City Council shall make such appointments.
- (B) In-city alternates shall be designated as "in-city alternate one" and "in-city alternate two" by the City Council at the time of appointment. In-city alternate one shall be the first in-city alternate to fill in for an absent or abstaining in-city regular member. In-city alternate two may fill in only in the absence or abstention of in-city alternate one or in the absence or abstention of two or more in-city regular members.
- (C) An in-city alternate shall sit only in lieu of a regular in-city member, and the extraterritorial alternate member shall sit only in lieu of the extraterritorial member. When so seated, alternate members shall have the same powers and duties as the regular member they replace.

### **Section 2.10: Terms of Office**

- (A) Regular and alternate members of the Board of Adjustment shall be appointed for three-year staggered terms, but both regular and alternate members may continue to serve until their successors have been appointed. Initially, two (2) in-city regular members and one (1) extraterritorial alternate member shall be appointed for a three-year term; one (1) in-city regular member, one (1) extraterritorial regular member, and one (1) in-city alternate member shall be appointed for a two-year term; and one (1) in-city regular member and one (1) in-city alternate member shall be appointed for a one-year term.

- (B) Members of the Board of Adjustment may be appointed to successive terms.

### **Section 2.11: Vacancy and Removal**

- (A) Members of the Board of Adjustment may be removed by the City Council at any time for failure to attend three (3) consecutive meetings or for failure to attend thirty (30) percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the City Council shall hold a public hearing prior to the removal becoming effective.
- (B) Any vacancy in the membership of the Board of Adjustment shall be filled for the remainder of the unexpired term as soon as may reasonably be accomplished by the City Council in the same manner as the initial appointment.
- (C) If an in-city member moves outside the city or if an extraterritorial member moves outside the extraterritorial jurisdiction, then such move shall constitute a resignation from the Board of Adjustment effective upon the date a replacement is appointed by the City Council.

### **Section 2.12: Organization**

The Board of Adjustment shall elect by majority vote a Chairperson and Vice-chairperson from among its members at the regular August meeting of each year. The term of office for the Chairperson and Vice-chairperson shall be one (1) year. If a vacancy occurs in an office prior to the expiration of the full term, another election to fill the remainder of the term of office shall be conducted at the first meeting thereafter. The Chairperson and Vice-chairperson may take part in all deliberations and vote on all matters considered by the Board. The Board shall appoint a Secretary who may be an officer or employee of the City. The Board shall adopt rules for the transaction of business (See Appendix B).

### **Section 2.13: Meetings and Quorum**

A four-fifths (4/5) majority of the Board of Adjustment regular membership (excluding vacant seats) shall constitute a quorum for conducting business. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as the Board may determine. The Board shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the Planning and Inspections Department. Such minutes and records shall be a public record. All meetings of the Board shall be open to the public.

### **Section 2.14: Voting**

- (A) The concurring vote of four-fifths (4/5) of the Board of Adjustment regular membership (excluding vacant seats) shall be necessary to grant a variance. A concurring majority vote shall be necessary to decide any other quasi-judicial matter or to determine an appeal. For purposes of this subsection, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are not qualified alternates available to take the place of such members.
- (B) Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).
- (C) A member shall be excused from voting on a particular issue by a majority vote of the remaining members present under the following circumstances:

- (1) If the member has a direct financial interest in the outcome of the matter at issue; or
  - (2) If the matter at issue involves the member's own official conduct; or
  - (3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
  - (4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (D) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (E) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected; provided however, if an objection is raised to a member's participation at or prior to the hearing or vote on a matter and that member does not recuse himself, the remaining members of the Board shall by majority vote rule on the objection.
- (F) Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial 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 Chairperson or other duly authorized member of the Board. A quasi-judicial decision shall be effective upon filing the written decision with the Board Secretary. The decision of the Board shall be delivered by personal delivery, electronic mail, or first-class mail to the applicant, property owner, and to any other person who has submitted written request for a copy, prior to the date the decision becomes effective. The Board Secretary shall certify proper notice was made.

### **Section 2.15: Powers and Duties of the Board of Adjustment**

- (A) The Board of Adjustment shall be vested with the authority to hear and decide:
- (1) Appeals from any final and binding order, decision, or requirement, made by the Administrator;
  - (2) Applications for special use permits;
  - (3) Applications for variances; and
  - (4) Any other matter the Board is required to act on by the provisions of this Ordinance.
- (B) The Board of Adjustment shall also act as the Watershed Review Board in accordance with the Watershed Protection Regulations set forth in this Ordinance.

## **Part 3: Administrator**

### **Section 2.16: Administrator**

Except as otherwise specifically provided, the responsibility for administering and enforcing the requirements and provisions of this Ordinance may be assigned by the City Manager to one or more individuals. The person or persons to whom such functions may be assigned shall be referred to in this

Ordinance as the "administrator", "code enforcement officer", "Planning Director", "land-use administrator", "planning staff", or "staff". Such terms shall be interchangeable.

## **Part 4: City Council**

### **Section 2.17: City Council**

- (A) In considering and acting upon proposed changes to the text of this Ordinance or the Official Zoning Map, the City Council shall act in its legislative capacity and shall proceed in accordance with the requirements set forth in Part 9 of this Article and any other applicable provisions of the city code, the city charter, or general law.
- (B) It is the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as set forth in this Ordinance. Under this Ordinance, the City Council shall have the duties of considering and adopting any proposed amendment or repeal of this Ordinance, as provided by law.

## **Part 5: Permits**

### **Section 2.18: Applications to be Processed Expeditiously**

Since inordinate delays in acting upon permit applications may impose unnecessary costs on the applicant, the permit-issuing authority shall make every reasonable effort to process permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance and to follow established permitting procedures.

### **Section 2.19: Permit Required**

- (A) Except as otherwise set forth herein, no use of property shall be substantially changed or altered; no clearing, grading, or excavation shall occur; and no building or structure shall be commenced, erected, moved, or substantially altered except in accordance with one of the following permits:
  - (1) A zoning permit or sign permit issued by the Administrator;
  - (2) A special use permit issued by the Board of Adjustment; or
  - (3) A floodplain development issued by the Administrator.
- (B) Zoning permits, special use permits, sign permits, and floodplain development permits shall be issued pursuant to this Ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved shall hereby be incorporated into any permit issued, and except as otherwise provided in Section 2.27, all development shall occur strictly in accordance with such approved plans and applications.
- (C) A zoning permit, special use permit, sign permit, or floodplain development permit shall be issued in the same name as the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority.

**Section 2.20: Permit Applications**

- (A) To minimize development-planning costs, avoid misunderstanding or misinterpretation of rules and regulations, and ensure compliances with the requirements of this Ordinance, a pre-application consultation between the applicant and the administrator shall be encouraged.
- (B) Applications for zoning permits, special use permits, sign permits, or floodplain development permits shall be accepted only from persons having legal authority to act in accordance with the permit. By way of illustration, in general this means that applications shall be made by the owners or lessees of the property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Ordinance, or agents of such persons who may make applications in the name of such owners, lessees, or contract purchasers.
- (C) The administrator may require an applicant to provide evidence of this authority to submit the application in accordance with subsection (B) above, whenever there appears to be a reasonable basis for questioning this authority.
- (D) All applications for zoning permits, special use permits, sign permits, or floodplain development permits shall be complete before the permit-issuing authority is required to consider the application.
- (E) Subject to subsection (F), an application is complete when it contains all the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Ordinance.
- (F) In this Ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to this Ordinance. It shall not be necessary for applications for special use permits to contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the Board of Adjustment to evaluate the application in the light of the substantive requirements set forth in this text of this Ordinance. However, whenever this Ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation or other penalty as provided for in this Ordinance.
- (G) The presumption established by this Ordinance is that all the information set forth in Appendix C is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit-issuing authority may allow less information or require more information to be submitted according to the needs of the case. For applications submitted to the Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix C should be submitted.

**Section 2.21: Zoning Permits**

- (A) A completed application form for a zoning permit shall be submitted to the Administrator by filing a copy of the application with the Administrator in the Planning and Inspections Department.
- (B) The administrator shall issue the zoning permit unless he reviews the application and determines that:
  - (1) The application is incomplete; or

- (2) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance (excluding those requirements for which a variance has been authorized by the Board of Adjustment).
- (C) If the administrator denies the application for a zoning permit, the administrator shall notify the applicant in writing as to the reasons for denial.

**Section 2.22: Special Use Permits**

- (A) Special uses are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.
- (B) No special use permit shall be authorized, developed, or otherwise carried out until the applicant has secured approval of the special use by the Board of Adjustment and the Administrator has approved a final site plan.
- (C) Applications for special use permits shall be filed with the Administrator in the Planning and Inspections Department.
- (D) The Board of Adjustment shall conduct a quasi-judicial hearing on each request and shall approve the request; or approve the request with conditions; or deny the request. In order to approve or approve with conditions any application for a special use permit, the Board of Adjustment shall be required to conclude by majority vote all of the following:
  - (1) The application is complete; and if the development is completed as proposed in the application, it will comply with all applicable conditions, standards, and regulations set forth in this Ordinance.
  - (2) The use will not materially endanger the public health or safety if located where proposed and developed according to the plans submitted.
  - (3) The use will not substantially injure the value of adjacent or abutting properties.
  - (4) The location and character of the use, if developed according to the plans as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the City of Rockingham and its extraterritorial jurisdiction.
- (E) The Board of Adjustment may place reasonable and appropriate conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the special use permit approval and shall be included in the final site plan submitted to the Administrator. Such additional conditions shall be enforceable in the same manner and to the same extent as any other applicable requirements set forth in this Ordinance.
- (F) An application for a special use permit that has been denied may be resubmitted only if there has been a substantial change in circumstances, as determined by the Administrator, or if substantial revisions have been made to the application.
- (G) Minor field alterations or minor revisions to approved special uses may be approved by the Administrator if the special use still meets the intent of the standards established with the original approval. Minor alterations or revisions shall be limited to changes that do not involve change in

uses permitted, increases to the intensity or density of the use, or substantial changes in the character of the use. If the Administrator determines that the change is not minor, the applicant shall be required to apply for a revised special use permit. If a revised special use permit is requested, the Board shall have the authority to impose new or additional conditions, provided however the applicant shall retain the right to reject such new or additional conditions by withdrawing the request for a revised special use permit and may proceed in accordance with the previously issued permit.

### **Section 2.23: Burden of Presenting Evidence and Burden of Persuasion**

- (A) The burden of presenting a complete application to the Board of Adjustment shall be upon the applicant. However, unless the Board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application, either at that meeting or at a continuation hearing, the application shall be presumed to be complete.
- (B) Once a completed application has been submitted, the burden of presenting evidence to the Board of Adjustment sufficient to lead it to conclude that the application should be denied for lack of compliance with any criteria set forth in Section 2.22 (D) shall be upon the party or parties urging such 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.
- (C) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this Ordinance shall remain at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for lack of compliance with any of the criteria set forth in Section 2.22 (D) shall be upon the party or parties urging that the requested permit be denied.

### **Section 2.24: Effects of Permit Approval**

- (A) The approval of an application for a zoning permit, sign permit, or floodplain development permit by the Administrator shall authorize the recipient to commence the activity authorized in such permit, provided a building permit is obtained, if applicable.
- (B) The approval of an application for a special use permit by the Board of Adjustment shall authorize the recipient to prepare and submit to the Administrator, the final site plan with any changes or modifications as may be required by the Board, and construction drawings as may be required by the provisions of this Ordinance. Upon review and verification by the Administrator that the final site plan complies with all applicable provisions of this Ordinance and additional requirements imposed by the Board, and the construction drawings comply with the minimum construction standards set forth in this Ordinance or other City specifications, the recipient may commence the activity authorized in such permit, provided a building permit is obtained, if applicable.

### **Section 2.25: Expiration of Permits**

- (A) Zoning permits, special use permits, sign permits, and floodplain development permits shall expire automatically if, within one year after the issuance of such permits:
  - (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
  - (2) Less than ten (10) percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has

been completed on the site. With respect to phased development, this requirement shall apply only to the first phase.

- (B) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire.
- (C) The permit-issuing authority may extend for a period up to six (6) months the date when a permit would otherwise expire pursuant to subsection (A) or (B) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.
- (D) For the purposes of this section, the permit within the jurisdiction of the Board of Adjustment shall be considered issued when the Board votes to approve the application and issue the permit. A permit within the jurisdiction of the Administrator shall be considered issued when the earlier of the following occurs:
  - (1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand-delivered or mailed to the permit applicant; or
  - (2) The Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner.
- (E) This section shall be applicable to permits issued prior to the date this Ordinance becomes effective.

#### **Section 2.26: Effect of Permit on Successors and Assigns**

Zoning permits, special use permits, sign permits, and floodplain development permits authorize the permit recipient to make use of land and structures in a particular way. Such permits shall be transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

- (A) No person (including successors or assigns of the person who obtained the permit) shall make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and
- (B) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain an interest in the property.

#### **Section 2.27: Amendments and Modifications to Permits**

- (A) Insignificant and minor deviations from the permit (including approved plans) issued by the Board of Adjustment or the Administrator shall be permissible, and the Administrator may authorize such insignificant deviations. A deviation is insignificant and minor if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

- (B) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Board of Adjustment, new conditions may be imposed in accordance with Section 2.22, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.
- (C) The Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (A) and (B) above.
- (D) A developer requesting approval of changes shall submit a written request for such approval to the Administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

**Section 2.28: Reconsideration of Board Action**

- (A) Whenever the Board of Adjustment disapproves an application for a special use permit on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the board at a later time unless the applicant clearly demonstrates that:
  - (1) Circumstances affecting the property that is the subject of the application have substantially changed; or
  - (2) New information is available that could not with reasonable diligence have been presented at a previous hearing.
- (B) Notwithstanding subsection (A), the Board of Adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

**Section 2.29: Maintenance of Required Improvements and Facilities**

The recipient of any zoning permit, special use permit, sign permit, or floodplain development permit or his successor shall be responsible for maintaining all improvements and facilities required by this Ordinance or any permit issued pursuant to the provisions of this Ordinance, except those improvements and facilities with respect to which an offer of public dedication has been accepted by the appropriate public authority. By way of illustration and without limiting the generality of the foregoing, this shall mean that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

## **Part 6: Appeals and Variances**

**Section 2.30: Requests to be Heard Exeditiously**

The Board of Adjustment shall hear and decide all appeals, requests for interpretations, and variance requests as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide public notice in accordance with standards set forth in Section 2.38, and obtain the necessary information to make sound decisions.

**Section 2.31: Appeals**

- (A) Any person with standing pursuant to NCGS 160D-14-2(c) aggrieved by a final, binding order or decision of the Administrator may appeal such order or decision to the Board of Adjustment. An appeal shall be initiated by filing with the City Clerk a written notice of appeal specifying the basis for such appeal. An appeal must be filed within 30 days from receipt of the written notice of the

order or decision of the Administrator. A notice of appeal shall be considered filed with the City Clerk upon delivery to the office of the City Clerk.

- (B) Whenever an appeal is filed, the Administrator shall forthwith transmit to the Board of Adjustment all documents and exhibits constituting the record relating to the action appealed from.
- (C) An appeal shall stay all actions by the Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril of life or property. In that case, proceedings shall not be stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal with the Administrator, and the Board shall meet to hear the appeal within 15 days after such a request is filed.
- (D) The Board of Adjustment shall reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion should be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

### **Section 2.32: Reserved**

### **Section 2.33: Variances**

- (A) An application for a variance from any regulations set forth in this Ordinance shall be submitted to the Board of Adjustment by filing a completed application with the Administrator in the Planning and Inspections Department.
- (B) A variance may be granted by the Board of Adjustment if the Board concludes all the following conditions exist:
  - (1) 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.
  - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
  - (3) 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.
  - (4) 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.
  - (5) The variance will not authorize the initiation of a nonconforming use of land.
- (C) In granting variances, the Board of Adjustment may impose reasonable conditions, provided the conditions are reasonably related to the variance.
- (D) A variance may be issued for an indefinite duration or for a specified duration only.

- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the applicable permit, or such permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

**Section 2.34: Variances from Watershed Protection Regulations**

- (A) In variance requests that pertain to Watershed Protection Regulations as set forth in this Ordinance, the Administrator shall notify in writing all other local governments having jurisdiction in the designated watershed and any entity using the water supply for water consumption of the requested variance and allow a reasonable period for comments. Such notice shall include a description of the requested variance.
- (B) If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include the following:
- (1) The variance application;
  - (2) The hearing notices;
  - (3) The evidence presented;
  - (4) Motions, offers of proof, objections to evidence, and rulings on them;
  - (5) Proposed findings and exceptions; and
  - (6) The proposed decision, including all conditions proposed to be added to the permit.
- (C) The preliminary record shall be sent to the Environmental Management Commission for review as follows:
- (1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from nor make any practical use of the property unless the proposed variance is granted; and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
  - (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

**Section 2.35: Burden of Proof in Appeals and Variances**

- (A) Regarding appeals, the Administrator shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) In regard to variance requests, the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusion set forth in Section 2.33, as well as the burden of persuasion on those issues, shall remain with the applicant seeking the variance.

**Section 2.36: Reserved****Part 7: Hearing Procedures and Notification Requirements for Quasi-Judicial Decisions****Section 2.37: Public Hearing Required**

- (A) Before making a decision on an appeal, variance request, special use permit application, or a petition to revoke a special use permit, the Board of Adjustment shall hold a public hearing on such matter.
- (B) Subject to subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the matter shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.
- (C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six (6) weeks or more elapses between hearing dates.

**Section 2.38: Notice of Public Hearing**

The Administrator shall give notice of any hearing required by Section 2.37, as follows:

- (A) Notice shall be given to the appellant or applicant, the owner of property that is the subject of the hearing, if different than the appellant or applicant, and any other person who makes a written request for such notice by mailing to such persons a written notice at least ten (10) days, but not more than twenty-five (25) days prior to the date of the public hearing.
- (B) Notice shall be given to all owners of property abutting the parcel of land that is the subject of the hearing by mailing a written notice to such persons as listed in the Richmond County Tax Registry at least ten (10) days, but not more than twenty-five (25) days prior to the date of the public hearing.
- (C) In all cases regarding variances and special use permits, notice shall be given to other potentially interested persons by prominently posting a notice of the public hearing on the property that is the subject of the public hearing or on an adjacent street or highway right-of-way.

- (D) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal and give a brief description of the action requested or proposed.

**Section 2.39: Evidence**

The following provisions shall apply to any hearing required by Section 2.37:

- (A) The Administrator to the Board shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board, a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.
- (B) The applicant, City, and any person who would have standing to appeal the decision pursuant to Section 2.43 shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board.
- (C) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, shall be made to the Board. The Board Chairperson shall rule on any objections, and the Chairperson's rulings may be appealed to the full Board. These rulings are also subject to judicial review pursuant to Section 2.43.
- (D) The Chairperson of the Board or any member acting as Chairperson and the Clerk to the Board shall be authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board determining a quasi-judicial matter, willfully swears falsely shall be guilty of a Class 1 misdemeanor.
- (E) All persons who intend to present evidence to the Board of Adjustment, rather than arguments only, shall be sworn.
- (F) All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

**Section 2.40: Modification to Request or Application at Public Hearing**

- (A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Administrator.

**Section 2.41: Record**

- (A) A recording shall be made of all hearings required by Section 2.37 and such recordings shall be kept for at least two (2) years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
- (B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the city for at least two (2) years.

**Section 2.42: Written Decision**

- (A) Any decision made by the Board of Adjustment regarding an appeal, variance or issuance or revocation of a special use permit shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.
- (B) In addition to a statement of the Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts, whenever this Ordinance requires the same as a prerequisite to taking action.

**Section 2.43: Judicial Review**

- (A) All final decisions of the Board of Adjustment regarding appeals, variances, and special use permits shall be subject to review by the Superior Court of Richmond County by proceedings in the nature of certiorari.
- (B) The petition for the writ of certiorari must be filed with the Richmond County Clerk of Court within thirty (30) days after the later of the following occurrences:
  - (1) A written copy of the Board's decision has been filed in the Planning and Inspections Department; and
  - (2) A written copy of the Board's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.
- (C) A copy of the writ of certiorari shall be served upon the City of Rockingham.

**Part 8: Enforcement****Section 2.44: Violations**

Any of the following shall constitute a violation of this Ordinance and shall be subject to the enforcement remedies and penalties set forth herein and by State law.

- (A) To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits or other forms of authorization as set forth in this Ordinance.
- (B) To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, or other form of authorization granted for such activity.

- (C) To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the permit-issuing authority upon any required permit, or other form of authorization for the use, development, or other activity upon land or improvements thereon.
- (D) To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this Ordinance or any other regulation made under the authority conferred thereby.
- (E) To subdivide land in violation of this Ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this Ordinance and recorded in the Richmond County Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.
- (F) To continue any of the above violations is a separate and distinct offense.

**Section 2.45: Complaints Regarding Violations**

- (A) Whenever the Administrator receives a written, signed complaint alleging a violation of this Ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what action have been or will be taken. Notwithstanding the foregoing, the Administrator may investigate a violation that he suspects or has knowledge of existing.
- (B) The Administrator may investigate violations of this Ordinance on his own initiative or upon receipt of oral complaints.

**Section 2.46: Person Liable**

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

**Section 2.47: Procedures Upon Discovery of Violations**

- (A) If the Administrator finds that any provisions of this Ordinance is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion.
- (B) The final written notice (and the initial written notice may be the final notice) shall state what action the Administrator intends to take if the violation is not corrected and shall advise that the Administrator's decision or order may be appealed to the Board of Adjustment as provided in Section 2.31.
- (C) If the owner or occupant of the property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be authorized in Section 2.48.
- (D) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 2.48.

**Section 2.48: Penalties for Violation**

- (A) Violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor, punishable as authorized by NC General Statute 14-4 or any amendments thereto.
- (B) Violation or failure to comply with any of the provisions or requirements of this Ordinance, including a violation of any conditions and safeguards established in connection with the grants of variances or special use permits shall also subject the offender to a civil penalty of \$50.00 for the first violation, and \$100.00 for the second and each succeeding violation. If the offender fails to pay this penalty within ten (10) days after being cited for a violation, the penalty may be recovered by the City in a civil action in the nature of debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation in accordance with Section 2.47 and did not take an appeal to the Board of Adjustment within the prescribed time.
- (C) Each day that any violation continues after notification by the Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.
- (D) This Ordinance may also be enforced by an appropriate equitable action. Anyone, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

**Section 2.49: Permit Revocation**

- (A) A zoning permit, sign permit, special use permit, or flood plain development permit may be revoked by the permit-issuing authority (in accordance with the provisions of this Ordinance) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.
- (B) Before a special use permit may be revoked, all of the requirements for notification and a public hearing set forth in Part 7 of this Article shall be complied with. The notification shall inform the permit recipient of the alleged grounds for the revocation.
  - (1) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in subsection (A) shall be upon the party advocating such position. The burden of persuasion shall also be upon that party.
  - (2) A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- (C) Before a zoning permit, sign permit, or flood plain development permit may be revoked, the Administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the Administrator shall provide to the recipient a written statement of the decision and the reasons therefore.
- (D) No person may continue to make use of land or buildings in the manner authorized by any zoning permit, sign permit, special use permit, flood plain development permit after such permit has been revoked in accordance with this section.

**Section 2.50: Stop Work Order**

Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Administrator may order the specific part of the work in violation of this Ordinance to be immediately stopped.

- (A) A stop work order issued under this Section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner or the property where the work is taking place and the developer, if different from the owner.
- (B) Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Section 2.31. However, an appeal shall not stay the operation of the stop work order except as provided in subsection (C) below.
- (C) The Board of Adjustment shall meet and act upon the appeal within fifteen (15) working days after the receipt of the appeal notice. If the Board fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of the fifteen (15) working day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.
- (D) The notice of hearing requirements set forth in Part 7 of this Article shall not apply to appeals of stop work orders. However, the administrator shall orally notify the applicant of the date, time, and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
- (E) Neither the person to whom a stop work order is served nor an owner or developer served with a copy under subsection (A) above may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under subsection (C) above.

**Part 9: Amendments****Section 2.51: Amendments in General**

Amendments to the text of this Ordinance or to the Official Zoning Map shall be made in accordance with the provisions of this Part.

**Section 2.52: Initiation of Amendments**

- (A) Whenever a request to amend this Ordinance is initiated by the City Council, the Planning and Zoning Board, the Board of Adjustment, or the city administration, the Planning Director in consultation with the City Attorney shall draft an appropriate ordinance and present such ordinance to the City Council so that a date for a public hearing may be set.
- (B) Any other person or entity may also petition the City Council to amend this Ordinance. The petition shall be filed with the Planning Director on a form provided by the Planning and Inspections Department.
- (C) Upon receipt of a petition as provided in Subsection (B), the Planning Director shall either:
  - (1) Treat the proposed amendment as one initiated by the city administration and proceed in accordance with Subsection (A) if he believes the proposed amendment has significant merit and will benefit the general public; or

- (2) Forward the petition to the City Council with or without written comment for a determination of whether an ordinance should be drafted and a public hearing set in accordance with Subsection (D).
- (D) Upon receipt of a proposed ordinance amendment as provided in Subsection (A), the City Council may establish a date for a public hearing for such amendment. Upon receipt of a petition for an ordinance amendment as provided in subsection (B), the City Council may summarily deny the petition, or set a date for a public hearing on the requested amendment and order the Planning staff, in consultation with the City Attorney, to draft an appropriate ordinance.

**Section 2.53: Planning and Zoning Board Consideration of Proposed Amendments**

- (A) If the City Council sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment to the Planning and Zoning Board for its consideration.
- (B) The Planning and Zoning Board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations by the Board can be presented to the City Council at the public hearing on the proposed amendment. However, if the Planning and Zoning Board is not prepared to make recommendations at the public hearing, it may request that the City Council delay final action on the amendment until such time as the Planning and Zoning Board can present its recommendations.
- (C) The City Council shall not be required to await the recommendations of the Planning and Zoning Board before taking action on a proposed amendment, nor shall the City Council be bound by any recommendations of the Planning and Zoning Board in regards to the proposed amendment.
- (D) Nothing in the Section shall be interpreted or construed to mean that the Planning and Zoning Board cannot review and make recommendations on a proposed amendment prior to the City Council setting a public hearing for such amendment.

**Section 2.54: Public Hearing Notice Required**

- (A) No ordinance that amends any of the provisions of this Ordinance may be adopted until a public hearing has been held on such ordinance.
- (B) The City Clerk shall publish a notice of the public hearing on any ordinance that amends the provisions of this Ordinance or the Official Zoning Map once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.
- (C) For proposed amendments to the Official Zoning Map, the City Clerk shall mail written notice of the public hearing by first class mail to the owners of all properties included in the proposed map amendment and the owners of all properties abutting the properties included in the proposed map amendment. Property ownership and mailing addresses shall be obtained from the Richmond County Tax Records. Such notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
- (D) The notice required by subsection (C) shall contain the following information:
  - (1) The date, time, and location of the public hearing;
  - (2) Summary of the nature and character of the proposed amendment;

- (3) In regards to map amendments, reasonably identify the property included in the proposed amendment;
  - (4) In regards to text amendment, state that the full text of the proposed amendment can be obtained from the City Clerk; and
  - (5) State that substantial changes in the proposed amendment may be made following the public hearing.
- (E) For proposed amendments to the Official Zoning Map, notice shall also be given by prominently posting a sign on the property proposed for the amendment or on an adjacent public street or right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing set forth in subsection (C) above. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient signs to provide reasonable notice to interested persons shall be posted.

**Section 2.55: City Council Action on Amendments**

- (A) At the conclusion of the public hearing on a proposed amendment, the City Council may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- (B) The City Council shall not be required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- (C) Voting on amendments to this Ordinance shall proceed in the same manner as other ordinances, subject to Section 2.57.

**Section 2.56: Ultimate Issue Before City Council on Amendments**

In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the City Council is whether the proposed amendment advances the public health, safety, and welfare, and is consistent with adopted plans for the city's development. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and excluded. In particular, when considering proposed map amendments:

- (A) The City Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one of the possible range of uses permitted in the requested classification; but rather, the City Council shall consider whether the entire range of uses in the proposed classification is more appropriate than the range of uses in the existing classification.
- (B) The City Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change but shall consider the impact of the proposed change on the public at large.
- (C) If any resident or property owner submits a written statement regarding a proposed amendment to the City Clerk at least two business days prior to the proposed vote on such change, the City Clerk shall deliver such written statement to the City Council.

**Section 2.57: Plan Consistency and Statement of Reasonableness**

- (A) Plan Consistency Statement: When adopting or rejecting any zoning text or map amendment, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with the adopted comprehensive plan. If the amendment is adopted and the action

is deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending the future land use map in the comprehensive plan and no additional request or application for a plan amendment shall be required. The plan consistency statement shall not be subject to judicial review.

- (B) Statement of Reasonableness: When adopting or rejecting any petition for map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by the City Council. The statement or reasonableness may consider among other factors:
- (1) The size, physical conditions, and other attributes of any area proposed to be rezoned;
  - (2) The benefits and detriments to the landowners, the neighbors, and the surrounding community;
  - (3) The relationship between the current actual and permissible development and the development permissible under the proposed amendment;
  - (4) Why the action taken is in the public interest; and
  - (5) Any changed conditions warranting the amendment.
- (C) Single Statement Permissible: The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

## **Part 10: Site-specific Vesting Plans**

### **Section 2.58: Purpose**

Pursuant to NCGS 160D-108, the City Council recognizes that approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. Additionally, the City Council finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation. The following provisions are intended to provide a balance between private expectations and the public interest.

### **Section 2.59: Establishment of Zoning Vested Right**

- (A) A zoning vested right shall be deemed established upon the valid approval or conditional approval by the City of Rockingham Board of Adjustment, of a site-specific vesting plan, following notice and public hearing.
- (B) The Board of Adjustment may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- (C) Notwithstanding subsections (A) and (B), approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- (D) A site-specific vesting plan shall be deemed approved upon the effective date of the Board of Adjustment's action relating thereto.
- (E) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or

ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the City of Rockingham, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific vesting plan upon the expiration or termination of the vested right in accordance with this Section.

- (F) A zoning vested right is not a personal right and shall attach to and run with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

### **Section 2.60: Approval Procedures**

- (A) Except as otherwise provided in this Section, an application for the approval of a site-specific development plan shall be processed in accordance with the procedures established by this Ordinance regarding the specific type of permit or approval being sought. Following such approval, the Board of Adjustment shall consider the application for approval of a site-specific vesting plan.
- (B) Notwithstanding the provisions of subsection (A), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to another City board or administrative official other than the City of Rockingham Board of Adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the City of Rockingham's Board of Adjustment, following notice and a public hearing as provided in Article 2, Part 7.
- (C) For a zoning vested right to be established upon approval of a site-specific vesting plan, the applicant must indicate at the time of application, on a form to be provided by the City of Rockingham, that a zoning vested right is being sought.
- (D) All applications for the approval of a site-specific vesting plan shall contain at a minimum the following information:
- (1) A site plan drawn to a scale of no less than 1:100;
  - (2) The dimensions and size of the site including any easements, right-of-ways, and its geographical relation to surrounding properties;
  - (3) The location, size, spacing, and dimensions of all existing and proposed buildings, structures, improvements, and utilities;
  - (4) Any existing or proposed vehicular access, internal drives, parking layouts, and existing and proposed landscaping;
  - (5) Any natural features including bodies of water, flood hazard areas, and wetlands; and
  - (6) A title, north arrow, scale, name of surveyor (if any), person preparing site plan, and date of preparation.
- (E) Each map, plat, site plan, or other document evidencing a site-specific vesting plan shall contain the following notation:

*"Approval of this plan establishes a zoning vested right pursuant to NCGS 160D-1-8 and the City of Rockingham Unified Development Ordinance. Unless terminated at an earlier date, the zoning vested right shall be valid until \_\_\_\_\_."*

- (F) Following approval or conditional approval of a site-specific development plan, nothing in this Part shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (G) Nothing in this Part shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this Ordinance.

**Section 2.61: Duration**

- (A) A zoning right that has been vested as provided in this Section shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (B). This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Board of Adjustment at the time the amendment or modification is approved.
- (B) Notwithstanding the provisions of subsection (A), the Board of Adjustment may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the Board of Adjustment at the time the site-specific vesting plan is approved.
- (C) Upon issuance of a building permit, the expiration provisions of NCGS 160D-11-9 and the revocation provisions of NCGS 160D-11-13 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

**Section 2.62: Termination**

A zoning right that is vested as provided in this Part shall terminate:

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

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

**Section 2.63: Voluntary Annexation**

A petition for annexation filed with the City of Rockingham pursuant to NCGS 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established pursuant to NCGS 160D-1-8. A statement that declares that no zoning vested right has been established pursuant to NCGS 160D-1-8, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

**Section 2.64: Limitations**

Nothing in this Part is intended or shall be deemed to create any vested right other than those established pursuant to NCGS 160D-1-8.