OR-2021-06-03

AN ORDINANCE OF THE VILLAGE OF MARVIN, NORTH CAROLINA

AN ORDINANCE AMENDING THE CODE OF ORDINANCES TO BE COMPLIANT WITH NC G.S. §160D AND OTHER MISCELLANEOUS BOOKKEEPING AMENDMENTS IN THE VILLAGE OF MARVIN, NORTH CAROLINA

WHEREAS, The State of North Carolina has updated the Statutes that give authority to municipalities to conduct planning and zoning activities, in the new NC G.S. 160D; and

WHEREAS, The Village of Marvin must update all applicable ordinances to be compliant with NC G.S. §160D;

WHEREAS, The Village of Marvin also desires to keep the ordinance updated and free of errors in general; and

WHEREAS, this ordinance is being adopted in order to effect proper compliance with the provisions of North Carolina General Statutes and the Village of Marvin Land Usage Ordinances and for the purpose of promoting public health, safety and general welfare; and promoting orderly growth of the Village of Marvin.

NOW, THEREFORE, BE IT ORDAINED by the Village Council for the Village of Marvin, North Carolina that Title IX, General Regulations, Chapter 93, and Title XV, Land Usage, Chapters 150 and 151 of the Code of Marvin, North Carolina is hereby amended by replacing, adding, or deleting certain sections of the existing text and inserting in lieu thereof the following: Exhibit A attached hereto.

This ordinance shall be effective upon adoption and ordered published as provided by law.
Adopted this day of 24th of June 2021.

Joseph E. Pollino, Mayor
Village of Marvin

Attest:

Austin W. Yow
Clerk and Assistant to the Manager,
Village of Marvin

VILLAGE OF MARVIN
SEAL
N. C.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and City Council

FROM: Rohit Ammanamanchi, Planning/Zoning Administrator

SUBJECT: Discussion and Consideration of Changes to Ordinance required by NC G.S. 160D and other minor miscellaneous amendments

DATE: June 17, 2021

Background

North Carolina has recently updated the chapter of State Statutes that allows Municipalities and Counties to administer Planning and Zoning, by adding a new consolidated Section: NC G.S. 160D. Therefore, the State has given until July 1st, 2021 for municipalities to adopt any changes to their ordinances that are needed to bring our ordinances into compliance with their new Statutes. At this time, Staff has also identified 8 miscellaneous amendments to the ordinance, not related to 160D, which will be presented. All 160D-related changes and 6 of 8 miscellaneous changes were recommended for approval as presented by Planning Board at their May 18th, 2021 meeting. Only the 6 changes recommended for approval are presented at this Council meeting. The other 2 will be considered at the July 13th meeting.

The Action Requested is to approve all changes, with any modification if desired to changes not related to 160D. The Changes are summarized below:

160D-Required Changes:

Items #1-8:	Discussion and Consideration of Text Amendments to Amend and Add Conflict of Interest Provisions to Comply with NCGS §160D
Item #9:	Discussion and Consideration of Text Amendments to Update References to Former NCGS §160A to Comply with NCGS §160D
Item #10:	Discussion and Consideration of Text Amendments to Amend to Change Conditional Use Permits to Special Use Permits to Comply with NCGS §160D
Item #11:	Discussion and Consideration of Text Amendments to Amend, Delete, and Add Definitions to Comply with NCGS §160D
Items #12-14:	Discussion and Consideration of Text Amendments to Add Requirement for Appointed Board Members to Take an Oath of Office to Comply with NCGS §160D
Item #15:	Discussion and Consideration of Text Amendments to Add Requirement to Maintain Zoning Maps and State or Federal Agency Maps Incorporated by Reference for Public Inspection to Comply with NCGS §160D
Item #16:	Discussion and Consideration of Text Amendments to Add Procedure to Issue Notices of Violation (NOVs) to Comply with NCGS §160D
Item #17:	Discussion and Consideration of Text Amendments to Amend §151.290 to: Require Inspector Obtains Consent of Premises Owner or an Administrative Search Warrant to Inspect Areas Not Open to the Public to Comply with §160D; and Require the Same

Process for Approval when Conducting a Revocation of Development Approval or Other Permits to Comply with NCGS §160D.

Item #18: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Substance of Other Development Ordinances to Comply with NCGS §160D

Items #19-22: Discussion and Consideration of Text Amendments to Amend and Add Provisions to Legislative Procedures to Comply with NCGS §160D

Item #23: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Certain Legislative Decisions to Comply with NCGS §160D

Item #24: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Quasi-Judicial Procedures to Comply with NCGS §160D

Item #25: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Quasi-Judicial Decisions to Comply with NCGS §160D

Item #26: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Administrative Development Approvals to Comply with NCGS §160D

Item #27: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Administrative Determinations to Comply with NCGS §160D

Item #28: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Appeals of Administrative Decisions to Comply with NCGS §160D

Item #29: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Vested Rights and Permit Choice to Comply with NCGS §160D

Miscellaneous Changes:

- Amendment to add Marvin Gardens to list of I-CD in §151.092,
- Amendments to fix typographical errors in
  - §151.103(B) and
  - §151.054(E),
- Amendment to correct the title of §151.152,
- Amendment to Change Guidelines to Regulations in §151.046(H)(2), and
- Amendment to Change the Applications of 160D-required definitions Dwelling and Dwelling Unit to Match the Intent of the Village in §151.049 and §151.054

Current

Per NCGS § 160D-605, all changes to zoning regulations shall be adopted in accordance with a comprehensive plan and prior to approval or rejection, the board must adopt one of the following consistency or inconsistency statements in conjunction with ordinance.

CONSISTENCY STATEMENT

The Village of Marvin Council finds the action to amend the Village's Zoning to be consistent with the adopted 2020 Land Use Plan. The 2020 Land Use Plan calls to "ensure future development will add to the overall quality and uniqueness of the community, and builds upon the existing foundation the defines Marvin". The proposed changes will help reach intended goal of enhancing the Village's development ordinances therefore being reasonable and in the public interest.

INCONSISTENCY STATEMENT

The Village of Marvin Council finds the action to amend the Village's Zoning to be inconsistent with the adopted 2020 Land Use Plan. The 2020 Land Use Plan calls to "ensure future development will add to the overall quality and uniqueness of the community, and builds upon the existing foundation the defines Marvin". The proposed changes will not help reach intended goal of enhancing the Village's development ordinances therefore not being reasonable and in the public interest.

Requested Action

Review the Ordinance Text Amendments and consider adoption.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Conflict of Interest Provisions to Comply with NCGS §160D

DATE: June 16, 2021

Sections

Item #1. Amend §151.251.D(9)(j)
Item #2. Amend §151.252.D(7)(d)
Item #3. Amend §151.234(B)
Item #4. Add §151.005
Item #5. Add §151.180(C)
Item #6. Add §151.202
Item #7. Add §151.215(D)(7)(o)
Item #8. Add §151.230(D)

Current

[Excerpt from §151.251 Zoning Amendments; Conditional Districts as follows]
§151.251.D(9)(j)
(j) Conflicts of interest. A Village Council member shall not vote on any zoning amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

[Excerpt from §151.252. Zoning Amendments; Text Amendments as follows]
§151.252.D(7)(d)
(d) Conflicts of interest. A Village Council member shall not vote on any zoning amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

[Excerpt from §151.234(B) as follows]
(B) Any member(s) of the Board who declares that a potential conflict of interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining

members shall by majority vote rule on the objection. In the event fewer than three members remain, no reversal of any prior decision may be made.

Redlines

[Item #1. Amend §151.251.D(9)(j) as follows]

~~(j) Conflicts of interest. A Village Council member shall not vote on any zoning amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.~~

(j) Conflicts of interest. Village Council members, appointed boards, and administrative staff shall comply with conflicts of interest standards in §151.005(A) on all zoning amendments.

[Item #2. Amend §151.252.D(7)(d) as follows]

~~(d) Conflicts of interest. A Village Council member shall not vote on any zoning amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.~~

(d) Conflicts of interest. Village Council members, appointed boards, and administrative staff shall comply with conflicts of interest standards in §151.005(A) on all zoning amendments.

[Item #3. Amend §151.234(B) as follows]

(B) ~~Any member(s) of the Board who declares that a potential conflict of interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. In the event fewer than three members remain, no reversal of any prior decision may be made~~. Board of Adjustment members staff shall comply with conflicts of interest standards in §151.005.

[Item #4. Add §151.005 CONFLICTS OF INTEREST]

§151.005 CONFLICTS OF INTEREST

(A) Village Council. A Village Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Village Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) Village of Marvin Appointed Boards. Members of appointed boards of the Village of Marvin, including the Planning Board, Board of Adjustment and Design Review Board, shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(C) Administrative Staff. Administrative staff, including the Zoning Administrator, shall not make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Village of Marvin to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Village of Marvin, as determined by the Village.

(D) Quasi-Judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(E) Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(F) Familial Relationship. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

[Item #5. For the Zoning Administrator, add §151.180(C) CONFLICTS OF INTEREST]

Conflicts of interest. Administrative Staff, including the Zoning Administrator, staff shall comply with conflicts of interest requirements in §151.005.

[Item #6. For the Planning Board, add §151.202 CONFLICTS OF INTEREST]

Conflicts of interest. Planning Board members staff shall comply with conflicts of interest requirements in §151.005.

[Item #7. For the Design Review Board, add §151.215(D)(7)(o) CONFLICTS OF INTEREST]

Conflicts of interest. Design Review Board members staff shall comply with conflicts of interest requirements in §151.005.

[Item #8. For the Board of Adjustment, add §151.230(D) CONFLICTS OF INTEREST]

Conflicts of interest. Board of Adjustment members staff shall comply with conflicts of interest requirements in §151.005.

Reason
§160D-109 requires local governments to adopt broadened conflict-of-interest standards for governing and advisory boards.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Update References to Former NCGS §160A to Comply with NCGS §160D

DATE: June 16, 2021

Sections
Item #9. §151.280(A)

Current
[Excerpt from § 151.280]

§ 151.280 STATUTORY AUTHORIZATION; FINDINGS OF FACT.
(A) The Legislature of the State of North Carolina has in G.S. Chapter 143, Article 21, Part 6; and Chapter 160A, Article 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety and general welfare.

Redlines

[Item #9. Amend §151.280(A) as follows]

§ 151.280 STATUTORY AUTHORIZATION; FINDINGS OF FACT.
(A) The Legislature of the State of North Carolina has ~~in G.S. Chapter 143, Article 21, Part 6; and Chapter 160A, Article 8,~~ delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety and general welfare.

Reason
§160D require updates to any references to former NCGS Chapter 160A.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend to Change Conditional Use Permits to Special Use Permits to Comply with NCGS §160D

DATE: June 16, 2021

Sections

Item #10. Change Conditional Use Permit' to 'Special Use Permit' and 'CUP' to "SUP' throughout the Code of Ordinances

Current

[Excerpt of § 93.05 (E) as follows]

§ 93.05 ENFORCEMENT AND ADMINISTRATIVE RESPONSIBILITIES.

(E) All site plans, zoning permit applications, applications for subdivision plat approval or ~~conditional use permit~~ submitted to the village shall comply with this chapter. No grading, demolition, trenching, land clearing, tree removal or other land disturbing activity that is subject to this chapter, may proceed before approval of a land development permit contained in § 150.103 of this Code of Ordinances or tree removal permit per § 93.36 by the Zoning Administrator.

[Excerpt of § 93.20(A) as follows]

TREE PRESERVATION STANDARDS

§ 93.20 GENERAL PROVISIONS.

(A) Existing trees shall be preserved and protected whenever feasible. New trees shall be planted to enhance the tree canopy within the village. The Administrator, in approving a site plan or zoning permit, or the Village Council (in approving a ~~conditional use permit~~ or subdivision plat), may grant exceptions to the standards contained in §§ 93.20 through 93.22 based on unique circumstances found on the lot/tract in question such as steep topography, property shape, grading requirements or unavoidable site work or utility installations, provided that compensatory mitigation planting of new trees is provided, as specified in this chapter.

[Excerpt of § 93.22(C)(3) as follows]

§ 93.22 LARGE AND SMALL TRACT SUBDIVISIONS.

(C) Interior preservation areas.

(3) Perimeter preservation strips and interior preservation areas may be located within common open space or within deeded lot areas with a permanent preservation easement recorded on the lots. The subdivider shall designate their recommended locations for perimeter preservation strips, interior preservation areas, new tree planting, trees to be removed under §§ 93.35 through 93.38, tree protection measures under §§ 93.50 and 93.51 and mitigation tree planting under § 93.65 on all zoning permits, site plans and subdivision plat applications (and, where applicable, conditional use permits.)

[Excerpt of § 93.36(C)(3) as follows]

§ 93.36 TREE REMOVAL PERMIT.

(C) Standards for the granting of tree removal permits.

(3) The Administrator, Planning Board and/or Village Council in connection with zoning permit, site plan or subdivision application, or conditional use permit approval, may require the planting of additional trees to replace trees removed from the affected property associated with the development under consideration, and/or may require moving or relocating existing structures in order to preserve specimen trees.

(Ord. OR-2004-10-01, passed 10-19-2004; Ord. passed 2-9-2010)

[Excerpt of § 93.50(A) as follows]

TREE PROTECTION

§ 93.50 SITE PLANS AND SUBDIVISION PLATS.

(A) Proposed tree protection measures shall be shown on any zoning permit, site plan conditional use permit, subdivision plat, grading and demolition plan that is submitted for approval. Notwithstanding, individual owned residentially zoned lots of record that existed at the time of adoption of this chapter that are less than five acres in area or any non-subdividable lot shall not be subject to §§ 93.50 and 93.51.

[Excerpt of Table of Contents in Chapter 151, ZONING as follows]

151.052 Temporary structures and uses requiring a temporary conditional use permit issued by the Village Council

151.107 Change in conditional use permit

151.108 Implementation of conditional use permit

[Excerpt of § 151.016 as follows]

§ 151.016 DEFINITIONS OF THE SPECIFIC TERMS AND WORDS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CONDITIONAL USE. Any use authorized by a conditional use permit (CUP). See §§ 151.100 through 151.109.

CONDITIONAL USE PERMIT (CUP). A special authorization for a specific use, other than a permitted use within the zoning district, which is subject to any special restrictions or conditions on its location, size, extent, character of use as determined by the Village Council in order to ensure consistency with the intent and character of the zoning district in which the use is located. See §§ 151.100 through 151.109.

[Excerpt of § 151.030(A) as follows]

ZONING DISTRICTS

§ 151.030 ZONING DISTRICTS.

(A) Generally. In order to achieve the purpose of this chapter, the following districts, based on the concepts and proposals of the Land Use Plan of the village are hereby established. In addition to the primary uses that are permitted by right or through the issuance of a conditional use permit, other uses including accessory uses, off-street parking and signs are permitted as listed in this chapter.

[Excerpt of § 151.046(J)(2)(f) and § 151.046(J)(3)(o) as follows]

§ 151.046 LANDSCAPING, SCREENING AND BUFFERS.

(J) Screening methods & minimum requirements.

(2) General provisions.

(f) conditional use permits. The minimum screening provisions of this section shall also be considered the minimum screening standards required for the issuance of a conditional use permit outlined in §§ 151.100 through 151.109. However, the Village Council or Design Review Authorities may impose additional, reasonable screening requirements as part of a conditional use permit approval process.

(3) Evergreen screening wall.

(o) Plans and elevations upon request. When screening is required for a non-residential use or conditional use permit, or upon request of the Zoning Administrator, Planning Board or Village Council, an elevation shall be provided which illustrates and indicates the following: the type of evergreens proposed; the number of rows; the planting arrangement; the spacing between planting; the height of evergreens at planting; and the height expected at maturity.

[Excerpt of § 151.052(A) & (B) as follows]

§ 151.052 TEMPORARY STRUCTURES AND USES REQUIRING A TEMPORARY CONDITIONAL USE PERMIT ISSUED BY THE VILLAGE COUNCIL.

(A) Temporary mobile homes for care of immediate family member.

(1) In the R zoning district, a temporary conditional use permit (CUP) may be granted by the Village Council for not more than one mobile home to be placed on a residential lot as an accessory use when conditions exist of the need to care for an immediate family member due to medical reasons.

(2) The CUP shall be granted only after the Village Council has made all of the following findings:

(a) The mobile home is an accessory use to a principal residential use;

(b) The mobile home will be placed on the lot on a temporary basis;

(c) There exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certificate of need from a medical doctor and other evidence the Village Council may desire);

(d) The person(s) responsible for providing the care will live in either the principal dwelling or the mobile home and that the person(s) needing the care shall live in the structure not occupied by the person(s) providing the care;

(e) There exists sufficient reason(s) justifying separate quarters and the reasons shall be limited to either contagious disease or serious illness;

(f) The person(s) in need of care is an immediate family member of the person(s) to be responsible for providing the care;

(g) The mobile home will have adequate access to a well and septic tank or public water and sewer as verified by permits from the County Health Department;

(h) The mobile home will be placed in the rear yard and will be no closer than 20 feet from any property line or, if it is not feasible to locate the mobile home in the rear yard, that the mobile home will be located in the non-required side yard behind the building line of the principal dwelling and no closer than 20 feet from the principal dwelling; and

(i) The granting of the CUP will not materially endanger the public health, safety and welfare.

(3) The following additional requirements shall be applicable.

(a) The CUP shall be valid for one year after issuance or for shorter period as specified by the Village Council, however, no such CUP shall be valid beyond 30 days after any of reason(s) justifying the CUP cease to exist.

(b) The CUP may be renewed prior to the expiration date with proper application to and approval by the Village Council when the hardship warranting the original permit remains and is verified.

(c) The permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use or other item covered by the CUP.

(d) When granting the CUP, the Village Council may impose reasonable conditions, restrictions and safeguards as considered necessary to protect the public health, safety and general welfare in accordance with the purpose and intent of this chapter. Violation of these conditions, restrictions and safeguards shall be considered a violation of this chapter.

(B) Temporary classrooms requiring a temporary conditional use permit.

(1) In the event of overcrowded permanent classroom facilities, a temporary CUP may be issued by the Village Council to any school or church, using permanent classroom buildings at the time of the application, for one or more temporary classrooms pending construction of additional permanent facilities. Applicant shall complete and submit an application and a fee in accordance with the fee schedule adopted by the Village Council.

(a) The Village Council may issue a temporary CUP only after a public hearing has been conducted as herein provided.

1. Notices shall be sent by the village by first class mail to the applicant and to owners of all contiguous pieces of property and to all other property owners whose properties lie within 200 feet of any portion of the property in question, at least ten days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur. The applicant shall provide the village with a list of all affected property owners and shall reimburse the village for all expenses incurred for the notifications.

2. Notice shall also be posted by the Village Clerk in a conspicuous location at the Village Hall at least ten days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.

3. A sign shall also be placed by the village in a conspicuous location on the subject property(ies) indicating the nature of the public hearing and date, time and place at which it is to occur. The sign shall be placed on the property(ies) in question at least ten days prior to the public hearing.

(b) Before issuing any temporary CUP, the Village Council shall make the following determinations:

1. The proposed temporary classroom(s) will not materially endanger the public health, welfare and safety;

2. The proposed temporary classroom(s) will not have a substantial negative effect on adjoining properties; and

3. The proposed temporary classroom(s) is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

(2) In addition, the Village Council may authorize conditions regarding hours of operation, signage, lighting, screening and buffers and the like and the conditions shall be made part of the temporary CUP issued. The temporary CUP shall be issued for a period of up to one year and may be renewed by the Village Council for subsequent periods of one year. Any temporary classroom permitted shall be constructed pursuant to the State Building Code for mobile or modular buildings as defined in § 151.016 of this chapter. The applicant shall be responsible for acquiring any permits required by other local, state or federal agencies prior to the issuance of the temporary CUP by the village. Violations of these conditions shall be considered a violation of this chapter.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 8-8-2006)

[Excerpt of § 151.053(A) as follows]

§ 151.053 HEIGHT EXEMPTION.

The maximum heights as indicated in the various districts may be exceeded for specific uses as provided in the following:

(A) Roof structures not intended for human occupancy, such as skylights, transmission or television towers, communication towers, stairways, water tanks, ventilating fans, air conditioning equipment or similar equipment, steeples, spires, belfries, cupolas or chimneys, may exceed the maximum allowable height as provided for in any of the zoning district regulation by no more than 90 feet. Any structure

exceeding 35 feet in height, which requires the issuance of a conditional use permit, should be architecturally compatible with its surroundings. Once a television or communication tower has been erected and is abandoned, it shall be removed within 60 days of the date of abandonment; and

[Excerpt of § 151.054(C) & (D) as follows]

§ 151.054 ACCESSORY USES AND STRUCTURES.

(C) On lots greater than three acres, accessory structures that exceed the maximum height or size permitted are subject to a conditional use permit as provided for in § 151.100 . Accessory structures that exceed the maximum height or size permitted shall meet the following:

(1) No accessory structure shall exceed 5,000 square feet.

(2) Maximum height of any accessory structure shall be 35 feet.

(D) Agricultural buildings. Agricultural buildings may be located within the rear yard of any residential lot, the side yard of any residential lot containing five acres or more in size, or located on contiguous lots owned by the same entity provided that the agricultural buildings comply with all applicable setback requirements of this chapter provided for below. Agricultural buildings located outside the setbacks are subject to a conditional use permit as provided for in § 151.100.

(2) A swimming pool may be located in the side yard provided that the principal structure has a minimum 200 foot front setback and the pool will have a minimum 150 foot side yard setback. Swimming pools to be located in the side yard not meeting the setbacks described herein, shall be subject to a conditional use permit as provided for in § 151.100.

(3) All swimming pools located on lots where a rear yard abuts a side yard of an adjacent lot shall be subject to a conditional use permit as provided for in § 151.100.

(4) Fencing for all swimming pools shall be subject to § 151.047(B).

[Excerpt of § 151.054(F) as follows]

(F) Accessory use dwellings. Accessory use dwellings shall be subject to the issuance of a conditional use permit by the Village Council and shall be in accordance with the following criteria.

(1) The accessory dwelling unit must be physically attached to the principal dwelling unit via a common wall or floor. The accessory dwelling unit may not be in a separate structure or be attached to the principal structure via a breezeway or similar appurtenance.

(2) The accessory dwelling unit shall have a size limitation of 1,000 square feet or 30 of living area of the principal residence, whichever is the smallest dimension.

(3) The exterior appearance of the accessory dwelling unit shall be similar to the principal residence.

(4) The structure housing the accessory dwelling unit must have a driveway parking area wide enough to simultaneously accommodate two parked vehicles side by side.

(5) The owner of the principal residence shall file any conditions associated with the CUP pertaining to the accessory dwelling unit with the County Register of Deeds.

[Excerpt of § 151.061(E)(5) as follows]

§ 151.061 EARLY VESTING OF DEVELOPMENT RIGHTS UPON APPROVAL OF A DEVELOPMENT PLAN.

Not withstanding any other provision of this chapter or Excerpt of ment thereto, a landowner may apply for a site specific development plan approval which shall entitle the landowner to develop property in accordance with the site specific development plan. The procedure for establishing a vested right is set forth in this section.

(E) Village Council action.

(5) If the use or development for which the site specific development plan is submitted is a conditional use, the Village Council may approve the site specific development plan concurrently with the approval of the conditional use permit. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

[Excerpt of § 151.064 (A)-(D) as follows]

§ 151.064 OUTDOOR STORAGE.

(A) A natural materials stockpile is viewed as a temporary use and regulations contained herein are designed to ensure that the stockpile remains on the piece of property for the shortest period of time necessary to serve its particular purpose. The owner of the property upon which the stockpile is located shall be responsible for ensuring that the stockpile is situated on the property so as not to materially impact or impair any adjacent properties and/or nearby streams, creeks or bodies of water.

(B) The materials shall be held for future use on the lot or development in question. Stockpiling that results from the excavation of dirt from one lot or development and placing it on another lot or development shall not be allowed unless the stockpile is necessary to meet the requirements of a site plan approved by the village.

201+ cubic feet	N/A	Greater than 60 days	conditional use permit issued by the Village Council
201+ cubic feet	Greater than 4 feet	N/A	conditional use permit issued by the Village Council

(C) In addition to the findings contained in § 151.103, the additional findings indicated below must be approved before a conditional use permit for a material stockpile may be granted:

(1) The length of time which the material stockpile is allowed to remain on the property is the shortest time necessary to reasonably serve its intended need; and

(2) Precautions are in place to ensure that the stockpile will have minimal effect on neighboring and nearby properties.

(D) Materials are often stockpiled in association with new developments. Accordingly, a conditional use permit (or the creation of a new conditional district) for a development may contain fair and reasonable conditions related to stockpiling that equal or exceed the standards set forth herein.

[Excerpt of § 151.065(C)(2) & (3) as follows]

§ 151.065 TELECOMMUNICATION TOWERS AND FACILITIES.

In recognition of the Federal Telecommunications Act of 1996, it is the intent of the village to allow communication providers the opportunity to locate telecommunication towers and related facilities within its jurisdiction while protecting the health, safety and welfare of the citizens of the village and of those in its extraterritorial jurisdiction. Wireless towers may be considered incompatible with other types of uses, most notably residential uses; therefore special regulations are necessary to ensure that any adverse affects created

(C) Co-location.

(2) Co-location of additional providers on an existing tower or an upgrade of the equipment on an existing tower requires review and approval by the Zoning Administrator to ensure the tower will continue to satisfy this chapter and other applicable requirements (including any requirements in an existing conditional use permit governing the tower). The Zoning Administrator has 45 days from submission of an application, unless the village and applicant can agree on a different timeframe, to notify the applicant that the application is incomplete, to approve the application or to deny the application.

(3) Notwithstanding any other language in this division, any change to an existing tower that will increase the tower's height, alter the tower's lighting or alter the painting or exterior appearance of the tower requires the issuance of a new conditional use permit for the tower.

[Excerpt of § 151.065(E) as follows]

(E) Compliance with federal standards. The village recognizes that a telecommunications tower cannot be prohibited nor can a conditional use permit/conditional district application for a tower be denied on the basis of environmental or health concerns relating to radio emissions from the tower as long as that tower complies with Federal Communications Commission (FCC) regulations concerning radio frequency emissions. The village requires that the applicant seeking to develop or modify a telecommunications tower must provide documentation showing that the tower will comply with all FCC regulations concerning radio frequency emissions.

[Excerpt of § 151.065(J)-(O) as follows]

(J) Discontinued use of tower. If the use of a telecommunications tower is discontinued for a period over 90 consecutive days, the conditional use permit or other zoning approval for that tower shall be deemed to have expired, and the applicant and property owner are jointly and severally responsible for removing the tower and its associated facilities from the property within a reasonable time. It shall be the joint and several responsibility of the applicant and the property owner to notify the village when the use of a tower has been discontinued for over 90 consecutive days. Minimal use of a tower that appears intended to avoid the application of this section shall be disregarded when determining whether a tower's use has been discontinued for a period of over 90 consecutive days.

(K) Maintenance. Normal maintenance and repair of a telecommunications tower can be performed without the issuance of a conditional use permit or the amendment of an existing conditional use permit.

(L) Freestanding signs. Freestanding signs are prohibited. Wall signs, limited to identification area, shall be allowed on equipment structures or fences surrounding the telecommunication tower, provided

that each sign does not exceed nine square feet in size. The location, size and copy of any signage must be specifically depicted in the conditional use application and permit.

(M) Proof of insurance. The applicant must show proof of adequate insurance coverage for any potential damage caused by or to the tower prior to the issuance of a conditional use permit. Once approved, every 12 months thereafter, the applicant must provide documentation to the village confirming that this insurance coverage remains in effect.

(N) Storage of equipment. The outdoor storage of equipment or other related items are prohibited.

(O) conditional use permit/conditional district application requirements. All applications for a conditional use permit/conditional district for a telecommunication tower must include the following information, in addition to any other applicable information required by this section:

(1) Identification of any intended provider(s);

(2) Radiated signal strength and direction of signal;

(3) Documentation by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user;

(4) A statement from the applicant explaining how potential use of the tower by multiple providers could be accommodated;

(5) The applicant shall provide names and addresses of the owners of all adjacent properties and all property owners within 500 feet of the parcel where the proposed tower will be located. The village will notify these property owners of the Village Council's public hearing on the application;

(6) Documentation that the telecommunication tower would comply with FCC regulations concerning radio frequency emissions;

(7) Screening, if applicable, must be shown on the site plan that details the type and location of the screening and the amount of plantings;

(8) Documentation of the tower's collapse area; and

(9) If the application is for a new tower, documentation that the applicant has explored all reasonable means for co-location and all reasonable means to use stealth or camouflaged tower siting or construction.

[Excerpt of § 151.081(G)(2) as follows]

§ 151.081 STANDARDS FOR DEVELOPMENTS LOCATED IN LARGE TRACT SUBDIVISIONS.

(G) Conservation land uses. Except as provided herein, most types of structural development are not allowed on designated conservation land and/or viewsheds or viewshed buffers within a large tract subdivision. Uses allowed within designated conservation land, viewsheds and viewshed buffers are limited to the following:

(2) Agricultural uses (see definition) including corrals. Notwithstanding the above, a new or expanded barn, stable or related agricultural building, may only be constructed in the conservation land subject to the issuance of a conditional use permit by the Village Council. The buildings shall be limited to those that are specifically needed to support an active, viable agricultural or horticultural operation, and are architecturally compatible with the neighborhood setting. Specifically excluded, however, are any buildings associated with commercial livestock operations involving swine, poultry and mink;

[Excerpt of § 151.090(B)(1)(b) &(c) as follows]

§ 151.090 EO - EDUCATION OVERLAY DISTRICT.

(B) As a part of the Union County Board of Education's adopted "Building Program Cost Saving Principles", UCPS is endeavoring to establish a standard zoning classification and standardized requirements for school construction regardless of the schools locale in Union County. Such standardization will result in equitable school facilities throughout the county; more efficient permitting of school facilities and cost savings for the benefit of the taxpayers of Union County.

(1) Cooperative planning. Staffs from UCPS, Union County and local municipalities have met and have agreed to make recommendations to their elected boards as follows:

(b) Allow all new schools, additions, or renovation uses by right with supplemental standards. This will eliminate the costly and time-consuming discretionary conditional use permit/ (CUP) zoning process and site-by-site negotiations. All local government entities benefit by having expectations regarding school design and construction identified in advance.

(c) Jurisdictions will consider an optional CUP review process if unique conditions exist as determined by the Zoning/Planning Administrator. The Administrator shall consider if the proposed project poses a negative impact on the public health and safety.

[Excerpt of § 151.090(B)(4)(d) as follows]

(4) Mobile classrooms (MCR) or temporary classrooms.

(d) MCR's will require a CUP.

[Excerpt of § 151.090(B)(11) as follows]

(11) Sports field, sports field lighting. A new sports field proposed as an accessory use to the school will require a conditional use permit if that sports field was not included in the original Education Overlay District rezoning. A conditional use permit is also required for new sports field lighting for proposed, approved, or existing sports fields if that sports field lighting was not included in the original Education Overlay District rezoning.

[Excerpt of § 151.100 as follows]

SPECIAL CONDITIONAL USES

§ 151.100 INTENT.

This chapter provides for certain uses to be located by right in certain districts where the uses are compatible with the purpose of the district and with the other uses to be located in certain district only by complying with additional development standards to insure that same compatibility. However, certain uses that are basically in keeping with the intent and purposes of the district may have substantial impacts on the surrounding area and should only be allowed after a review of the specific proposal. In order to ensure that these uses would be compatible with surrounding development and be in keeping with the purposes of the district in which they are proposed to be placed, they are not allowed to be established as a matter of right. They may be established only after a review and approval of a conditional use permit as required by this chapter.

[Excerpt of § 151.101 as follows]

§ 151.101 SPECIAL CONDITIONAL USES.

Certain uses listed in this chapter require the issuance of a conditional use permit by the Village Council prior to the issuance of a zoning permit by the Zoning Administrator. In certain cases, a change in the zoning district of the property(ies) in question will also be necessary. The following information details the procedure that shall be followed under these circumstances.

(Ord. OR-1996-02-01, passed 2-13-1996)

[Excerpt of § 151.102 as follows]

§ 151.102 PROCEDURES.

The Village Council shall consider conditional use permits by either of the following methods.

(A) No zoning change required. When a conditional use permits being requested for a use in a zoning district for which a rezoning is not required, the following procedure shall be followed.

(1) A completed written application for a conditional use permit shall be filed with the Zoning Administrator. The application, at a minimum, shall include the following items:

[Excerpt of § 151.102(A)(5)&(6) as follows]

(5) When dealing with the conditional use permit process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board and/or Village Council may request needed additional information as they deem necessary.

(6) Once the application is forwarded to the Village Council from the Planning Board, the Village Council shall consider conducting a public hearing as prescribed in § 151.250(G) (a public hearing is required if CUP is to be approved). In the event the Village Council deems a public hearing appropriate, due notice of the public hearing shall be as prescribed in § 151.250(G)(1)(a) and (G)(2)(b) of this chapter.

[Excerpt of § 151.102(B)(1)-(3) as follows]

(B) Zoning changes required.

(1) When a conditional use permit is being requested for a use in a zoning district for which a rezoning is required, the following procedures shall be followed:

(a) Requirements listed in division (A) above shall be met; and

(b) The applicant shall also complete a rezoning application which together with the conditional use permit application shall be submitted at the same time to the Zoning Administrator as set forth in § 151.250(B).

(2) Once the conditional use permit application and zoning change application have been properly completed, they shall both be reviewed by the Planning Board and the Village Council in compliance with division (A) above for conditional uses and §§ 151.250(D) through (J) for zoning changes.

(3) The withdrawal of the conditional use permit application by the applicant after it has been accepted by the Zoning Administrator shall immediately terminate review of the zoning change application by either the Planning Board or Village Council. Any fee paid by an applicant shall be forfeited to the village unless the application for a conditional use permit is withdrawn prior to submission of the application to the Planning Board. All recommendations made by the Planning Board concerning the proposed zoning change shall be in accordance with §§ 151.250 and 151.251.

[Excerpt of § 151.103(A)-(D) as follows]

§ 151.103 VILLAGE COUNCIL DECISION.

(A) Generally. If the Village Council should find, after conducting a public hearing, that the proposed conditional use permit and, where requested, zoning change should be granted, the Village Council may impose additional reasonable and appropriate special conditions upon the conditional use permit, as it may deem necessary. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the same zoning district. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, preservation of open space, the timing of development and other matters that the Village Council may find appropriate or the petitioner may propose. The conditions may include sign controls and may include architectural review or controls. Conditions placed on a conditional use permit may also address time limits for receiving zoning and/or building permits for a particular use. The screening provisions of this chapter shall be minimum screening standards required for the issuance of a CUP, however, the Village Council may impose additional reasonable screening requirements as a condition for awarding a CUP as the Council considers necessary to protect the public health, safety and welfare in accordance with the purpose and intent of this chapter. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Village Council. The Village Council shall give due regard to the intent and purpose of this section of this chapter and that the public safety and welfare will be secured and substantial justice done.

(B) Burden of proof. The applicant has the burden of producing competent material and substantial evidence, tending to establish the existence of the facts and conditions that the appropriate section of this chapter requires for the issuance of the conditional use permit.

(C) Voting. When deciding conditional use permits, the Village Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Council to issue the permits. For the purposes of this section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Council" for calculation of the requisite majority. Every decision of the Village Council shall be subject to review of the superior court in the nature of certiorari.

(D) Findings to be made by Village Council. The Village Council shall issue a conditional use permit only after having made each of the following findings:

(1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan;

(2) The use meets all required conditions and specifications;

(3) The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity;

(4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this chapter and the Village Land Use Plan; and

(5) Additional review criteria, as stated in this chapter, shall also be considered and addressed where required.

[Excerpt of § 151.104(A)&(C) as follows]

§ 151.104 BINDING EFFECT.

(A) Any conditional use permit so authorized shall be likewise binding to the property included in the permit unless subsequently changed or amended by the Village Council. A copy of the letter notifying the applicant of Council approval of a conditional use permit shall be forwarded to the County Register of Deeds for recordation.

(C) Any applicant may appeal the decision of the Zoning Administrator to the Board of Adjustment for a decision as to whether an amendment to the conditional use permit shall be required.

[Excerpt of § 151.105 as follows]

§ 151.105 CERTIFICATE OF COMPLIANCE.

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a conditional use permit unless the building or structure is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the Village Council. In the event that only a segment of a proposed development has been approved, the certificate of compliance shall be issued only for that portion of the development as approved.

[Excerpt of § 151.106(A)&(B) as follows]

§ 151.106 ONE-YEAR LIMITATION.

(A) If a conditional use permit request is denied by the Village Council, a similar application for a conditional use permit for the same property or any portion thereof shall not be filed until the expiration of a 12-month period from the date of most recent determination by the Village Council.

(B) This waiting period shall not be applicable or otherwise be involved in the filing of a new application for rezoning of all or any part of the property previously considered by the Village Council where the new application requests rezoning to a different zoning district and/or where the application for a conditional use permit is substantially different from the original application.

[Excerpt of § 151.107 as follows]

§ 151.107 CHANGE IN CONDITIONAL USE PERMIT.

The request to materially change the conditional use permit shall be reviewed by the Planning Board as required by § 151.102(A). The Village Council may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of public hearing shall be in accordance with § 151.250(G). Amendment by the Village Council of a conditional use permit shall be subject to the same considerations as provided for in § 151.103(D).

[Excerpt of § 151.108 as follows]

§ 151.108 IMPLEMENTATION OF CONDITIONAL USE PERMIT.

Implementation of an activity authorized by a conditional use permit shall begin within 12 months after the date of approval, unless otherwise specified by the Council. Failure to implement the conditional use permit within the time period shall require a reapplication for the permit. Implementation, at a minimum means that the applicant must demonstrate that substantial progress has been made toward the realization of the project.

[Excerpt of § 151.140 (D)(4) as follows]

(4) Conflicts with zoning rules. No sign shall be erected or used to advertise any use or matter in conflict with the regulations for the district in which it is located, or in conflict with codified use regulations, or in conflict with regulations pursuant to a zoning permit, conditional use permit or certificate of occupancy for the property.

[Excerpt of § 151.165(G)(4)(e) as follows]

(e) conditional use permits. The term or form 'CUP' shall mean " conditional use permit", obtained through processes outlined in §§ 151.100 through 151.109.

Table 1: Off-Street Parking Requirements

1 per second dwelling unit; a minimum of 2 enclosed per site (in accord with the primary unit) as determined by a CUP

Live/work units

2 per unit; plus customer parking as determined by a CUP

As required by conditional use permit

Parking as determined by a CUP through a parking study

Parking as determined by a CUP through a parking study

[Excerpt of § 151.182(C)(2) as follows]

(2) No zoning permit shall be issued until all requisite approvals for subdivisions, non-residential uses, development or conditional use permits have been obtained by the Council. No zoning permit shall be issued for an individual building, structure, sign or use in a conditional district, or for a nonresidential use, until the Planning Board and the Council have approved specific site & design plans in accord with § 151.215.

[Excerpt of § 151.182(D)(3)(d) as follows]

(d) A permit shall be issued or denied within ten working days of receipt by the Zoning Administrator of a complete application pursuant to division (D)(3) of this section, unless a conditional use permit is required pursuant to §§ 151.100 through 151.109, in which case the applicant

shall be provided with the relevant information. Failure to issue a zoning permit shall constitute denial of the permit application.

[Excerpt of § 151.215(D)(7)(d) as follows]

(d) Compliance with standards. The Planning Board shall consider the degree to which the application complies with Conditional District standards and conditions, as applicable, conditional use permit conditions; as applicable, village ordinances, the adopted Land Use Plan, other adopted land use policy documents and the North Carolina General Statutes.

[Excerpt of § 151.215(D)(7)(g)(1) as follows]

(g) Design review deliberation. The Planning Board will approve submitted plans unless it finds one or more of the following statements to be true:

1. Plans violate standards or conditions delineated or depicted in an approved Conditional District Site Plan or conditional use permit, as applicable;

Redlines

[Amend § 93.05 (E) as follows]

§ 93.05 ENFORCEMENT AND ADMINISTRATIVE RESPONSIBILITIES.

(E) All site plans, zoning permit applications, applications for subdivision plat approval or special use permit ~~conditional use permit~~ submitted to the village shall comply with this chapter. No grading, demolition, trenching, land clearing, tree removal or other land disturbing activity that is subject to this chapter, may proceed before approval of a land development permit contained in § 150.103 of this Code of Ordinances or tree removal permit per § 93.36 by the Zoning Administrator.

[Amend § 93.20(A) as follows]

TREE PRESERVATION STANDARDS

§ 93.20 GENERAL PROVISIONS.

(A) Existing trees shall be preserved and protected whenever feasible. New trees shall be planted to enhance the tree canopy within the village. The Administrator, in approving a site plan or zoning permit, or the Village Council (in approving a special use permit ~~conditional use permit~~ or subdivision plat), may grant exceptions to the standards contained in §§ 93.20 through 93.22 based on unique circumstances found on the lot/tract in question such as steep topography, property shape, grading requirements or unavoidable site work or utility installations, provided that compensatory mitigation planting of new trees is provided, as specified in this chapter.

[Amend § 93.22(C)(3) as follows]

§ 93.22 LARGE AND SMALL TRACT SUBDIVISIONS.

(C) Interior preservation areas.

(3) Perimeter preservation strips and interior preservation areas may be located within common open space or within deeded lot areas with a permanent preservation easement recorded on the lots. The subdivider shall designate their recommended locations for perimeter preservation strips, interior preservation areas, new tree planting, trees to be removed under §§ 93.35 through 93.38, tree protection measures under §§ 93.50 and 93.51 and mitigation tree planting under § 93.65 on all zoning permits, site plans and subdivision plat applications (and, where applicable, special use permit ~~conditional use permit~~s.)

[Amend § 93.36(C)(3) as follows]

§ 93.36 TREE REMOVAL PERMIT.

(C) Standards for the granting of tree removal permits.

(3) The Administrator, Planning Board and/or Village Council in connection with zoning permit, site plan or subdivision application, or special use permit ~~conditional use permit~~ approval, may require the planting of additional trees to replace trees removed from the affected property associated with the development under consideration, and/or may require moving or relocating existing structures in order to preserve specimen trees.

(Ord. OR-2004-10-01, passed 10-19-2004; Ord. passed 2-9-2010)

[Amend § 93.50(A) as follows]

TREE PROTECTION

§ 93.50 SITE PLANS AND SUBDIVISION PLATS.

(A) Proposed tree protection measures shall be shown on any zoning permit, site plan special use permit ~~conditional use permit~~, subdivision plat, grading and demolition plan that is submitted for approval. Notwithstanding, individual owned residentially zoned lots of record that existed at the time of adoption of this chapter that are less than five acres in area or any non-subdividable lot shall not be subject to §§ 93.50 and 93.51.

[Amend Table of Contents in Chapter 151, ZONING as follows]

151.052 Temporary structures and uses requiring a temporary special use permit ~~conditional use permit~~ issued by the Village Council

151.107 Change in special use permit ~~conditional use permit~~

151.108 Implementation of special use permit ~~conditional use permit~~

[Amend and add definitions in § 151.016 as follows]

§ 151.016 DEFINITIONS OF THE SPECIFIC TERMS AND WORDS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~CONDITIONAL USE. Any use authorized by a conditional use permit (CUP). See §§ 151.100 through 151.109.~~

~~CONDITIONAL USE PERMIT (CUP). A special authorization for a specific use, other than a permitted use within the zoning district, which is subject to any special restrictions or conditions on its location, size, extent, character of use as determined by the Village Council in order to ensure consistency with the intent and character of the zoning district in which the use is located. See §§ 151.100 through 151.109.~~

SPECIAL USE. Any use authorized by a special use permit (SUP). See §§ 151.100 through 151.109.

SPECIAL USE PERMIT (SUP). A special authorization for a specific use, other than a permitted use within the zoning district, which is subject to any special restrictions or conditions on its location, size, extent, character of use as determined by the Village Council in order to ensure consistency with the intent and character of the zoning district in which the use is located. See §§ 151.100 through 151.109.

[Amend § 151.030(A) as follows]

ZONING DISTRICTS

§ 151.030 ZONING DISTRICTS.

(A) Generally. In order to achieve the purpose of this chapter, the following districts, based on the concepts and proposals of the Land Use Plan of the village are hereby established. In addition to the primary uses that are permitted by right or through the issuance of a special use permit ~~conditional use permit~~, other uses including accessory uses, off-street parking and signs are permitted as listed in this chapter.

[Amend § 151.046(J)(2)(f) and § 151.046(J)(3)(o) as follows]

§ 151.046 LANDSCAPING, SCREENING AND BUFFERS.

(J) Screening methods & minimum requirements.

(2) General provisions.

(f) Special use permit ~~conditional use permit~~s. The minimum screening provisions of this section shall also be considered the minimum screening standards required for the issuance of a special use permit ~~conditional use permit~~ outlined in §§ 151.100 through 151.109. However, the Village Council or Design Review Authorities may impose additional, reasonable screening requirements as part of a special use permit ~~conditional use permit~~ approval process.

(3) Evergreen screening wall.

(o) Plans and elevations upon request. When screening is required for a non-residential use or special use permit ~~conditional use permit~~, or upon request of the Zoning Administrator, Planning Board or Village Council, an elevation shall be provided which illustrates and indicates the following:

the type of evergreens proposed; the number of rows; the planting arrangement; the spacing between planting; the height of evergreens at planting; and the height expected at maturity.

[Amend § 151.052(A) & (B) as follows]

§ 151.052 TEMPORARY STRUCTURES AND USES REQUIRING A TEMPORARY SPECIAL USE PERMIT ~~CONDITIONAL USE PERMIT~~ ISSUED BY THE VILLAGE COUNCIL.

(A) Temporary mobile homes for care of immediate family member.

(1) In the R zoning district, a temporary special use permit (SUP) ~~conditional use permit (CUP)~~ may be granted by the Village Council for not more than one mobile home to be placed on a residential lot as an accessory use when conditions exist of the need to care for an immediate family member due to medical reasons.

(2) The SUP ~~CUP~~ shall be granted only after the Village Council has made all of the following findings:

(a) The mobile home is an accessory use to a principal residential use;

(b) The mobile home will be placed on the lot on a temporary basis;

(c) There exists a medically related need for the proximate care of an immediate family member (this finding must be substantiated by a certificate of need from a medical doctor and other evidence the Village Council may desire);

(d) The person(s) responsible for providing the care will live in either the principal dwelling or the mobile home and that the person(s) needing the care shall live in the structure not occupied by the person(s) providing the care;

(e) There exists sufficient reason(s) justifying separate quarters and the reasons shall be limited to either contagious disease or serious illness;

(f) The person(s) in need of care is an immediate family member of the person(s) to be responsible for providing the care;

(g) The mobile home will have adequate access to a well and septic tank or public water and sewer as verified by permits from the County Health Department;

(h) The mobile home will be placed in the rear yard and will be no closer than 20 feet from any property line or, if it is not feasible to locate the mobile home in the rear yard, that the mobile home will be located in the non-required side yard behind the building line of the principal dwelling and no closer than 20 feet from the principal dwelling; and

(i) The granting of the SUP ~~CUP~~ will not materially endanger the public health, safety and welfare.

(3) The following additional requirements shall be applicable.

(a) The SUP ~~CUP~~ shall be valid for one year after issuance or for shorter period as specified by the Village Council, however, no such SUP ~~CUP~~ shall be valid beyond 30 days after any of reason(s) justifying the SUP ~~CUP~~ cease to exist.

(b) The SUP ~~CUP~~ may be renewed prior to the expiration date with proper application to and approval by the Village Council when the hardship warranting the original permit remains and is verified.

(c) The permit is granted to a particular owner on the basis of circumstances peculiar to that owner and it shall not remain in effect in the event of a change of ownership of any land structure, use or other item covered by the SUP ~~CUP~~.

(d) When granting the SUP ~~CUP~~, the Village Council may impose reasonable conditions, restrictions and safeguards as considered necessary to protect the public health, safety and general welfare in accordance with the purpose and intent of this chapter. Violation of these conditions, restrictions and safeguards shall be considered a violation of this chapter.

(B) Temporary classrooms requiring a temporary special use permit ~~conditional use permit~~.

(1) In the event of overcrowded permanent classroom facilities, a temporary SUP ~~CUP~~ may be issued by the Village Council to any school or church, using permanent classroom buildings at the time of the application, for one or more temporary classrooms pending construction of additional permanent facilities. Applicant shall complete and submit an application and a fee in accordance with the fee schedule adopted by the Village Council.

(a) The Village Council may issue a temporary SUP ~~CUP~~ only after a public hearing has been conducted as herein provided.

1. Notices shall be sent by the village by first class mail to the applicant and to owners of all contiguous pieces of property and to all other property owners whose properties lie within 200 feet of any portion of the property in question, at least ten days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur. The applicant shall provide the village with a list of all affected property owners and shall reimburse the village for all expenses incurred for the notifications.

2. Notice shall also be posted by the Village Clerk in a conspicuous location at the Village Hall at least ten days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.

3. A sign shall also be placed by the village in a conspicuous location on the subject property(ies) indicating the nature of the public hearing and date, time and place at which it is to occur. The sign shall be placed on the property(ies) in question at least ten days prior to the public hearing.

(b) Before issuing any temporary SUP ~~CUP~~, the Village Council shall make the following determinations:

1. The proposed temporary classroom(s) will not materially endanger the public health, welfare and safety;

2. The proposed temporary classroom(s) will not have a substantial negative effect on adjoining properties; and

3. The proposed temporary classroom(s) is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

(2) In addition, the Village Council may authorize conditions regarding hours of operation, signage, lighting, screening and buffers and the like and the conditions shall be made part of the temporary SUP ~~CUP~~ issued. The temporary SUP ~~CUP~~ shall be issued for a period of up to one year and may be renewed by the Village Council for subsequent periods of one year. Any temporary classroom permitted shall be constructed pursuant to the State Building Code for mobile or modular buildings as defined in § 151.016 of this chapter. The applicant shall be responsible for acquiring any permits required by other local, state or federal agencies prior to the issuance of the temporary SUP ~~CUP~~ by the village. Violations of these conditions shall be considered a violation of this chapter.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 8-8-2006)

[Amend § 151.053(A) as follows]

§ 151.053 HEIGHT EXEMPTION.

The maximum heights as indicated in the various districts may be exceeded for specific uses as provided in the following:

(A) Roof structures not intended for human occupancy, such as skylights, transmission or television towers, communication towers, stairways, water tanks, ventilating fans, air conditioning equipment or similar equipment, steeples, spires, belfries, cupolas or chimneys, may exceed the maximum allowable height as provided for in any of the zoning district regulation by no more than 90 feet. Any structure exceeding 35 feet in height, which requires the issuance of a special use permit ~~conditional use permit~~, should be architecturally compatible with its surroundings. Once a television or communication tower has been erected and is abandoned, it shall be removed within 60 days of the date of abandonment; and

[Amend § 151.054(C) & (D) as follows]

§ 151.054 ACCESSORY USES AND STRUCTURES.

(C) On lots greater than three acres, accessory structures that exceed the maximum height or size permitted are subject to a special use permit ~~conditional use permit~~ as provided for in § 151.100 . Accessory structures that exceed the maximum height or size permitted shall meet the following:

(1) No accessory structure shall exceed 5,000 square feet.

(2) Maximum height of any accessory structure shall be 35 feet.

(D) Agricultural buildings. Agricultural buildings may be located within the rear yard of any residential lot, the side yard of any residential lot containing five acres or more in size, or located on contiguous lots owned by the same entity provided that the agricultural buildings comply with all applicable setback requirements of this chapter provided for below. Agricultural buildings located outside the setbacks are subject to a special use permit ~~conditional use permit~~ as provided for in § 151.100.

(2) A swimming pool may be located in the side yard provided that the principal structure has a minimum 200 foot front setback and the pool will have a minimum 150 foot side yard setback. Swimming pools to be located in the side yard not meeting the setbacks described herein, shall be subject to a special use permit ~~conditional use permit~~ as provided for in § 151.100.

(3) All swimming pools located on lots where a rear yard abuts a side yard of an adjacent lot shall be subject to a special use permit ~~conditional use permit~~ as provided for in § 151.100.

(4) Fencing for all swimming pools shall be subject to § 151.047(B).

[Amend § 151.054(F) as follows]

(F) Accessory use dwellings. Accessory use dwellings shall be subject to the issuance of a special use permit ~~conditional use permit~~ by the Village Council and shall be in accordance with the following criteria.

(1) The accessory dwelling unit must be physically attached to the principal dwelling unit via a common wall or floor. The accessory dwelling unit may not be in a separate structure or be attached to the principal structure via a breezeway or similar appurtenance.

(2) The accessory dwelling unit shall have a size limitation of 1,000 square feet or 30 of living area of the principal residence, whichever is the smallest dimension.

(3) The exterior appearance of the accessory dwelling unit shall be similar to the principal residence.

(4) The structure housing the accessory dwelling unit must have a driveway parking area wide enough to simultaneously accommodate two parked vehicles side by side.

(5) The owner of the principal residence shall file any conditions associated with the SUP ~~CUP~~ pertaining to the accessory dwelling unit with the County Register of Deeds.

[Amend § 151.061(E)(5) as follows]

§ 151.061 EARLY VESTING OF DEVELOPMENT RIGHTS UPON APPROVAL OF A DEVELOPMENT PLAN.

Not withstanding any other provision of this chapter or amendment thereto, a landowner may apply for a site specific development plan approval which shall entitle the landowner to develop property in accordance with the site specific development plan. The procedure for establishing a vested right is set forth in this section.

(E) Village Council action.

(5) If the use or development for which the site specific development plan is submitted is a conditional use, the Village Council may approve the site specific development plan concurrently with the approval of the special use permit ~~conditional use permit~~. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a special use permit ~~conditional use permit~~ without the special use permit ~~conditional use permit~~ having first been issued.

[Amend § 151.064 (A)-(D) as follows]

§ 151.064 OUTDOOR STORAGE.

(A) A natural materials stockpile is viewed as a temporary use and regulations contained herein are designed to ensure that the stockpile remains on the piece of property for the shortest period of time necessary to serve its particular purpose. The owner of the property upon which the stockpile is located shall be responsible for ensuring that the stockpile is situated on the property so as not to materially impact or impair any adjacent properties and/or nearby streams, creeks or bodies of water.

(B) The materials shall be held for future use on the lot or development in question. Stockpiling that results from the excavation of dirt from one lot or development and placing it on another lot or development shall not be allowed unless the stockpile is necessary to meet the requirements of a site plan approved by the village.

201+ cubic feet	N/A	Greater than 60 days	Special use permit ~~conditional use permit~~ issued by the Village Council
201+ cubic feet	Greater than 4 feet	N/A	Special use permit ~~conditional use permit~~ issued by the Village Council

(C) In addition to the findings contained in § 151.103, the additional findings indicated below must be approved before a special use permit ~~conditional use permit~~ for a material stockpile may be granted:

(1) The length of time which the material stockpile is allowed to remain on the property is the shortest time necessary to reasonably serve its intended need; and

(2) Precautions are in place to ensure that the stockpile will have minimal effect on neighboring and nearby properties.

(D) Materials are often stockpiled in association with new developments. Accordingly, a special use permit ~~conditional use permit~~ (or the creation of a new conditional district) for a development may contain fair and reasonable conditions related to stockpiling that equal or exceed the standards set forth herein.

[Amend § 151.065(C)(2) & (3) as follows]

§ 151.065 TELECOMMUNICATION TOWERS AND FACILITIES.

In recognition of the Federal Telecommunications Act of 1996, it is the intent of the village to allow communication providers the opportunity to locate telecommunication towers and related facilities within its jurisdiction while protecting the health, safety and welfare of the citizens of the village and of those in its extraterritorial jurisdiction. Wireless towers may be considered incompatible with other types of uses, most notably residential uses; therefore special regulations are necessary to ensure that any adverse affects created

(C) Co-location.

(2) Co-location of additional providers on an existing tower or an upgrade of the equipment on an existing tower requires review and approval by the Zoning Administrator to ensure the tower will continue to satisfy this chapter and other applicable requirements (including any requirements in an existing special use permit ~~conditional use permit~~ governing the tower). The Zoning Administrator has 45 days from submission of an application, unless the village and applicant can agree on a different timeframe, to notify the applicant that the application is incomplete, to approve the application or to deny the application.

(3) Notwithstanding any other language in this division, any change to an existing tower that will increase the tower's height, alter the tower's lighting or alter the painting or exterior appearance of the tower requires the issuance of a new special use permit ~~conditional use permit~~ for the tower.

[Amend § 151.065(E) as follows]

(E) Compliance with federal standards. The village recognizes that a telecommunications tower cannot be prohibited nor can a special use permit ~~conditional use permit~~/conditional district application for a tower be denied on the basis of environmental or health concerns relating to radio emissions from the tower as long as that tower complies with Federal Communications Commission (FCC) regulations concerning radio frequency emissions. The village requires that the applicant seeking to develop or modify a telecommunications tower must provide documentation showing that the tower will comply with all FCC regulations concerning radio frequency emissions.

[Amend § 151.065(J)-(O) as follows]

(J) Discontinued use of tower. If the use of a telecommunications tower is discontinued for a period over 90 consecutive days, the special use permit ~~conditional use permit~~ or other zoning approval for that tower shall be deemed to have expired, and the applicant and property owner are jointly and severally responsible for removing the tower and its associated facilities from the property within a reasonable time. It shall be the joint and several responsibility of the applicant and the property owner to notify the village when the use of a tower has been discontinued for over 90 consecutive days. Minimal use of a tower that appears intended to avoid the application of this section shall be disregarded when determining whether a tower's use has been discontinued for a period of over 90 consecutive days.

(K) Maintenance. Normal maintenance and repair of a telecommunications tower can be performed without the issuance of a special use permit ~~conditional use permit~~ or the amendment of an existing special use permit ~~conditional use permit~~.

(L) Freestanding signs. Freestanding signs are prohibited. Wall signs, limited to identification area, shall be allowed on equipment structures or fences surrounding the telecommunication tower, provided that each sign does not exceed nine square feet in size. The location, size and copy of any signage must be specifically depicted in the conditional use application and permit.

(M) Proof of insurance. The applicant must show proof of adequate insurance coverage for any potential damage caused by or to the tower prior to the issuance of a special use permit ~~conditional use permit~~. Once approved, every 12 months thereafter, the applicant must provide documentation to the village confirming that this insurance coverage remains in effect.

(N) Storage of equipment. The outdoor storage of equipment or other related items are prohibited.

(O) Special use permit ~~conditional use permit~~/conditional district application requirements. All applications for a special use permit ~~conditional use permit~~/conditional district for a telecommunication tower must include the following information, in addition to any other applicable information required by this section:

(1) Identification of any intended provider(s);

(2) Radiated signal strength and direction of signal;

(3) Documentation by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user;

(4) A statement from the applicant explaining how potential use of the tower by multiple providers could be accommodated;

(5) The applicant shall provide names and addresses of the owners of all adjacent properties and all property owners within 500 feet of the parcel where the proposed tower will be located. The village will notify these property owners of the Village Council's public hearing on the application;

(6) Documentation that the telecommunication tower would comply with FCC regulations concerning radio frequency emissions;

(7) Screening, if applicable, must be shown on the site plan that details the type and location of the screening and the amount of plantings;

(8) Documentation of the tower's collapse area; and

(9) If the application is for a new tower, documentation that the applicant has explored all reasonable means for co-location and all reasonable means to use stealth or camouflaged tower siting or construction.

[Amend § 151.081(G)(2) as follows]

§ 151.081 STANDARDS FOR DEVELOPMENTS LOCATED IN LARGE TRACT SUBDIVISIONS.

(G) Conservation land uses. Except as provided herein, most types of structural development are not allowed on designated conservation land and/or viewsheds or viewshed buffers within a large tract subdivision. Uses allowed within designated conservation land, viewsheds and viewshed buffers are limited to the following:

(2) Agricultural uses (see definition) including corrals. Notwithstanding the above, a new or expanded barn, stable or related agricultural building, may only be constructed in the conservation land subject to the issuance of a special use permit ~~conditional use permit~~ by the Village Council. The buildings shall be limited to those that are specifically needed to support an active, viable agricultural or horticultural operation, and are architecturally compatible with the neighborhood setting. Specifically excluded, however, are any buildings associated with commercial livestock operations involving swine, poultry and mink;

[Amend § 151.090(B)(1)(b) &(c) as follows]

§ 151.090 EO - EDUCATION OVERLAY DISTRICT.

(B) As a part of the Union County Board of Education's adopted "Building Program Cost Saving Principles", UCPS is endeavoring to establish a standard zoning classification and standardized requirements for school construction regardless of the schools locale in Union County. Such standardization will result in equitable school facilities throughout the county; more efficient permitting of school facilities and cost savings for the benefit of the taxpayers of Union County.

(1) Cooperative planning. Staffs from UCPS, Union County and local municipalities have met and have agreed to make recommendations to their elected boards as follows:

(b) Allow all new schools, additions, or renovation uses by right with supplemental standards. This will eliminate the costly and time-consuming discretionary special use permit/zoning process ~~conditional use permit/zoning process~~ and site-by-site negotiations. All local government entities benefit by having expectations regarding school design and construction identified in advance.

(c) Jurisdictions will consider an optional SUP ~~CUP~~ review process if unique conditions exist as determined by the Zoning/Planning Administrator. The Administrator shall consider if the proposed project poses a negative impact on the public health and safety.

[Amend § 151.090(B)(4)(d) as follows]

(4) Mobile classrooms (MCR) or temporary classrooms.

(d) MCR's will require a SUP ~~CUP~~.

[Amend § 151.090(B)(11) as follows]

(11) Sports field, sports field lighting. A new sports field proposed as an accessory use to the school will require a special use permit ~~conditional use permit~~ if that sports field was not included in the original Education Overlay District rezoning. A special use permit ~~conditional use permit~~ is also

required for new sports field lighting for proposed, approved, or existing sports fields if that sports field lighting was not included in the original Education Overlay District rezoning.

[Amend § 151.100 as follows]

SPECIAL CONDITIONAL USES

§ 151.100 INTENT.

This chapter provides for certain uses to be located by right in certain districts where the uses are compatible with the purpose of the district and with the other uses to be located in certain district only by complying with additional development standards to insure that same compatibility. However, certain uses that are basically in keeping with the intent and purposes of the district may have substantial impacts on the surrounding area and should only be allowed after a review of the specific proposal. In order to ensure that these uses would be compatible with surrounding development and be in keeping with the purposes of the district in which they are proposed to be placed, they are not allowed to be established as a matter of right. They may be established only after a review and approval of a special use permit ~~conditional use permit~~ as required by this chapter.
(Ord. OR-1996-02-01, passed 2-13-1996)

[Amend § 151.101 as follows]

§ 151.101 SPECIAL CONDITIONAL USES.

Certain uses listed in this chapter require the issuance of a special use permit ~~conditional use permit~~ by the Village Council prior to the issuance of a zoning permit by the Zoning Administrator. In certain cases, a change in the zoning district of the property(ies) in question will also be necessary. The following information details the procedure that shall be followed under these circumstances.
(Ord. OR-1996-02-01, passed 2-13-1996)

[Amend § 151.102 as follows]

§ 151.102 PROCEDURES.

The Village Council shall consider special use permit ~~conditional use permit~~s by either of the following methods.

(A) No zoning change required. When a special use permit ~~conditional use permit~~s being requested for a use in a zoning district for which a rezoning is not required, the following procedure shall be followed.

(1) A completed written application for a special use permit ~~conditional use permit~~ shall be filed with the Zoning Administrator. The application, at a minimum, shall include the following items:

[Amend § 151.102(A)(5)&(6) as follows]

(5) When dealing with the special use permit ~~conditional use permit~~ process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the

surrounding area. Therefore, the Planning Board and/or Village Council may request needed additional information as they deem necessary.

(6) Once the application is forwarded to the Village Council from the Planning Board, the Village Council shall consider conducting a public hearing as prescribed in § 151.250(G) (a public hearing is required if SUP ~~CUP~~ is to be approved). In the event the Village Council deems a public hearing appropriate, due notice of the public hearing shall be as prescribed in § 151.250(G)(1)(a) and (G)(2)(b) of this chapter.

[Amend § 151.102(B)(1)-(3) as follows]

(B) Zoning changes required.

(1) When a special use permit ~~conditional use permit~~ is being requested for a use in a zoning district for which a rezoning is required, the following procedures shall be followed:

(a) Requirements listed in division (A) above shall be met; and

(b) The applicant shall also complete a rezoning application which together with the special use permit ~~conditional use permit~~ application shall be submitted at the same time to the Zoning Administrator as set forth in § 151.250(B).

(2) Once the special use permit ~~conditional use permit~~ application and zoning change application have been properly completed, they shall both be reviewed by the Planning Board and the Village Council in compliance with division (A) above for conditional uses and §§ 151.250(D) through (J) for zoning changes.

(3) The withdrawal of the special use permit ~~conditional use permit~~ application by the applicant after it has been accepted by the Zoning Administrator shall immediately terminate review of the zoning change application by either the Planning Board or Village Council. Any fee paid by an applicant shall be forfeited to the village unless the application for a special use permit ~~conditional use permit~~ is withdrawn prior to submission of the application to the Planning Board. All recommendations made by the Planning Board concerning the proposed zoning change shall be in accordance with §§ 151.250 and 151.251.

[Amend § 151.103(A)-(D) as follows]

§ 151.103 VILLAGE COUNCIL DECISION.

(A) Generally. If the Village Council should find, after conducting a public hearing, that the proposed special use permit ~~conditional use permit~~ and, where requested, zoning change should be granted, the Village Council may impose additional reasonable and appropriate special conditions upon the special use permit ~~conditional use permit~~, as it may deem necessary. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the same zoning district. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, preservation of open space, the timing of development and other matters that the Village Council may find appropriate or the petitioner may propose. The conditions may include sign controls and may include architectural review or controls. Conditions placed on a special use permit ~~conditional use permit~~ may also address time limits for receiving zoning and/or building permits for a particular use. The screening provisions of this chapter shall be minimum screening standards required for the issuance of a SUP ~~CUP~~, however, the Village Council may impose additional reasonable screening requirements as a condition for awarding

a SUP ~~CUP~~ as the Council considers necessary to protect the public health, safety and welfare in accordance with the purpose and intent of this chapter. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Village Council. The Village Council shall give due regard to the intent and purpose of this section of this chapter and that the public safety and welfare will be secured and substantial justice done.

(B) Burden of proof. The applicant has the burden of producing competent material and substantial evidence, tending to establish the existence of the facts and conditions that the appropriate section of this chapter requires for the issuance of the special use permit ~~conditional use permit~~.

(C) Voting. When deciding special use permit ~~conditional use permit~~s, the Village Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Council to issue the permits. For the purposes of this section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Council" for calculation of the requisite majority. Every decision of the Village Council shall be subject to review of the superior court in the nature of certiorari.

(D) Findings to be made by Village Council. The Village Council shall issue a special use permit ~~conditional use permit~~ only after having made each of the following findings:

(1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan;

(2) The use meets all required conditions and specifications;

(3) The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity;

(4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this chapter and the Village Land Use Plan; and

(5) Additional review criteria, as stated in this chapter, shall also be considered and addressed where required.

[Amend § 151.104(A)&(C) as follows]

§ 151.104 BINDING EFFECT.

(A) Any special use permit ~~conditional use permit~~ so authorized shall be likewise binding to the property included in the permit unless subsequently changed or amended by the Village Council. A copy of the letter notifying the applicant of Council approval of a special use permit ~~conditional use permit~~ shall be forwarded to the County Register of Deeds for recordation.

(C) Any applicant may appeal the decision of the Zoning Administrator to the Board of Adjustment for a decision as to whether an amendment to the special use permit ~~conditional use permit~~ shall be required.

[Amend § 151.105 as follows]

§ 151.105 CERTIFICATE OF COMPLIANCE.

No certificate of compliance shall be issued for any building or land use on a piece of property which has received a special use permit ~~conditional use permit~~ unless the building or structure is constructed or used, or the land is developed or used, in conformity with the special use permit ~~conditional use permit~~ approved by the Village Council. In the event that only a segment of a proposed development

has been approved, the certificate of compliance shall be issued only for that portion of the development as approved.

[Amend § 151.106(A)&(B) as follows]

§ 151.106 ONE-YEAR LIMITATION.

(A) If a special use permit ~~conditional use permit~~ request is denied by the Village Council, a similar application for a special use permit ~~conditional use permit~~ for the same property or any portion thereof shall not be filed until the expiration of a 12-month period from the date of most recent determination by the Village Council.

(B) This waiting period shall not be applicable or otherwise be involved in the filing of a new application for rezoning of all or any part of the property previously considered by the Village Council where the new application requests rezoning to a different zoning district and/or where the application for a special use permit ~~conditional use permit~~ is substantially different from the original application.

[Amend § 151.107 as follows]

§ 151.107 CHANGE IN SPECIAL USE PERMIT ~~CONDITIONAL USE PERMIT~~.

The request to materially change the special use permit ~~conditional use permit~~ shall be reviewed by the Planning Board as required by § 151.102(A). The Village Council may thereafter change or amend any previously approved special use permit ~~conditional use permit~~, only after having held a public hearing. Notice of public hearing shall be in accordance with § 151.250(G). Amendment by the Village Council of a special use permit ~~conditional use permit~~ shall be subject to the same considerations as provided for in § 151.103(D).

[Amend § 151.108 as follows]

§ 151.108 IMPLEMENTATION OF SPECIAL USE PERMIT ~~CONDITIONAL USE PERMIT~~.

Implementation of an activity authorized by a special use permit ~~conditional use permit~~ shall begin within 12 months after the date of approval, unless otherwise specified by the Council. Failure to implement the special use permit ~~conditional use permit~~ within the time period shall require a reapplication for the permit. Implementation, at a minimum means that the applicant must demonstrate that substantial progress has been made toward the realization of the project.

[Amend § 151.140 (D)(4) as follows]

(4) Conflicts with zoning rules. No sign shall be erected or used to advertise any use or matter in conflict with the regulations for the district in which it is located, or in conflict with codified use regulations, or in conflict with regulations pursuant to a zoning permit, special use permit ~~conditional use permit~~ or certificate of occupancy for the property.

[Amend § 151.165(G)(4)(e) as follows]

(e) Special use permit ~~conditional use permit~~s. The term or form 'CUP' shall mean "Special use permit ~~conditional use permit~~", obtained through processes outlined in §§ 151.100 through 151.109.

Table 1: Off-Street Parking Requirements

1 per second dwelling unit; a minimum of 2 enclosed per site (in accord with the primary unit) as determined by a SUP ~~CUP~~

Live/work units

2 per unit; plus customer parking as determined by a SUP ~~CUP~~

As required by special use permit ~~conditional use permit~~

Parking as determined by a SUP ~~CUP~~ through a parking study

Parking as determined by a SUP ~~CUP~~ through a parking study

[Amend § 151.182(C)(2) as follows]

(2) No zoning permit shall be issued until all requisite approvals for subdivisions, non-residential uses, development or special use permit ~~conditional use permit~~s have been obtained by the Council. No zoning permit shall be issued for an individual building, structure, sign or use in a conditional district, or for a nonresidential use, until the Planning Board and the Council have approved specific site & design plans in accord with § 151.215.

[Amend § 151.182(D)(3)(d) as follows]

(d) A permit shall be issued or denied within ten working days of receipt by the Zoning Administrator of a complete application pursuant to division (D)(3) of this section, unless a special use permit ~~conditional use permit~~ is required pursuant to §§ 151.100 through 151.109, in which case the applicant shall be provided with the relevant information. Failure to issue a zoning permit shall constitute denial of the permit application.

[Amend § 151.215(D)(7)(d) as follows]

(d) Compliance with standards. The Planning Board shall consider the degree to which the application complies with Conditional District standards and conditions, as applicable, special use permit ~~conditional use permit~~ conditions; as applicable, village ordinances, the adopted Land Use Plan, other adopted land use policy documents and the North Carolina General Statutes.

[Amend § 151.215(D)(7)(g)(1) as follows]

(g) Design review deliberation. The Planning Board will approve submitted plans unless it finds one or more of the following statements to be true:

1. Plans violate standards or conditions delineated or depicted in an approved Conditional District Site Plan or special use permit ~~conditional use permit~~, as applicable;

Reason

§160D-102 requires local governments to change Conditional Use Permits to Special Use Permits.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend, Delete, and Add Definitions to Comply with NCGS §160D

DATE: June 16, 2021

Sections

Item #11. Amend definitions of:

- Building

Remove definitions of:

- Accessory Use Dwelling
- Dwelling, Single Family

Add definitions for:

- Dwelling
- Dwelling Unit
- Sleeping Unit
- Development
- Legislative decision
- Subdivision regulation
- Zoning regulation

Current

Building. A structure, temporary or permanent, having a roof or other covering, supported by constructed columns or exterior walls designed or used for the shelter, housing or enclosure of persons, animals or property. The term BUILDING shall be construed as if followed by the words OR PARTS THEREOF which include but are not limited to: uncovered attached decks and other appurtenances of the structure such as stairs, roofs, chimneys, eaves, heating and air conditioning fixtures, bay windows, balconies and the like. Any structure that is a mere appendage to a building such as a flagpole, trellis, perimeter wall or fence shall not be considered as part of the building.

DWELLING, SINGLE-FAMILY. A detached building designed for or occupied exclusively by one family, but not to include mobile homes as defined by this chapter.

Redlines

[Item #11. Amend §151.016 DEFINITION OF THE SPECIFIC TERMS AND WORDS as follows]

Building Any structure used or intended for supporting or sheltering any use or occupancy. ~~A structure, temporary or permanent, having a roof or other covering, supported by constructed columns or exterior walls designed or used for the shelter, housing or enclosure of persons, animals or property. The term BUILDING shall be construed as if followed by the words OR PARTS THEREOF which include but are not limited to: uncovered attached decks and other appurtenances of the structure such as stairs, roofs, chimneys, eaves, heating and air conditioning fixtures, bay windows, balconies and the like. Any structure that is a mere appendage to a building such as a flagpole, trellis, perimeter wall or fence shall not be considered as part of the building.~~

[Delete the following definition:]

~~Accessory Use Dwelling – A complete housekeeping unit with a kitchen, sleeping area, bathroom facilities and a separate external entrance attached to the primary dwelling.~~

~~DWELLING, SINGLE-FAMILY. A detached building designed for or occupied exclusively by one family, but not to include mobile homes as defined by this chapter.~~

[Add the following definitions:]

Dwelling. A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes

Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not for both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Development. Any of the following:
a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
b. The excavation, grading, filling, clearing, or alteration of land.
c. The subdivision of land as defined in G.S. 160D-802.
d. The initiation or substantial change in the use of land or the intensity of use of land.

Legislative decision. The adoption, amendment, or repeal of a regulation under this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement

Subdivision Regulation. A subdivision regulation authorized by 160D-801.

Zoning Regulation. A subdivision regulation authorized by 160D-702.

Reason

§160D-706 (b) states, "When adopting regulations under this Article, a local government may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council." The source for definitions proposed in this text amendment were from the 2018 State Building Code.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Add Requirement for Appointed Board Members to Take an Oath of Office to Comply with NCGS §160D

DATE: June 16, 2021

Sections

- Item #12. Amend § 151.201
- Item #13. Add § 151.205(F)
- Item #14. Add § 151.230(D)

Current
[Excerpt from §151.201]

§ 151.201 APPOINTMENTS AND TERMS.
The Planning Board shall consist of seven members, all of whom are residents of the village and whom the Village Council has duly appointed for designated staggered terms.

Redlines

[Item #12. Amend §151.201 as follows]

§ 151.201 APPOINTMENTS AND TERMS.
The Planning Board shall consist of seven members, all of whom are residents of the village and whom the Village Council has duly appointed for designated staggered terms. All appointed members shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

[Item #13. Add §151.205(F) as follows]

(F) Design Review Board Oath of Office.
All Design Review Board members shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

[Item #14. Add §151.205(F) as follows]

§ 151.230(D) Oath of Office.
All Board of Adjustment members shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

Reason
§160D-309 requires local governments to adopt a requirement for board members to take an oath of office before starting his or her duties.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Add Requirement to Maintain Zoning Maps and State or Federal Agency Maps Incorporated by Reference for Public Inspection to Comply with NCGS §160D

DATE: June 16, 2021

Sections
Item #15. Add §151.032

Current
[This is a new section]

Redlines

[Item #15. Add §151.032 as follows]

§151.032 Maintenance of Maps
(A) Zoning Map. – The Village of Marvin's adopted current and prior Zoning Maps shall be maintained for public inspection in the office of the Village Clerk. The maps may be in paper or a digital format.
(B) Maps Incorporated by Reference. – Flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies referenced in the Village of Marvin Zoning Ordinance are incorporated by reference as part of this Zoning Ordinance. For these maps, a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps. When zoning district boundaries are based on these maps, the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map shall be maintained for public inspection in the Office of the Village Clerk.
(C) Map Copies. – Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the Village Clerk in accordance with G.S. 160A-79 or G.S. 153A-50, shall be admissible into evidence and shall have the same force and effect as would the original map.

Reason
§160D-105 requires local governments to maintain Zoning Maps and State or Federal Agency Maps Incorporated by Reference for Public Inspection.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Add Procedure to Issue Notices of Violation (NOVs) to Comply with NCGS §160D

DATE: June 16, 2021

Sections
Item #16. Add §150.014(C)(5)

Current
[This is a new subsection]

Redlines

[Item #1. Add 150.014(C)(5) as follows]

(5) Issuing notices of violation in conformance with statutory procedures must be delivered to the permittee and the landowner if different. It may be delivered to an occupant or person undertaking the activity. Delivery can be by hand, email, or first-class mail. It may be posted onsite. An administrator shall certify NOV for the file.

Reason
§160D-404(a) and 160D405 requires local governments to adopt procedure to issue notices of violations.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Planning Board

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend §151.290 to: Require Inspector Obtains Consent of Premises Owner or an Administrative Search Warrant to Inspect Areas Not Open to the Public to Comply with §160D; and Require the Same Process for Approval when Conducting a Revocation of Development Approval or Other Permits to Comply with NCGS §160D.

DATE: June 16, 2021

Sections
Item #17. Amend §151.290

Current
[Excerpt from §151.290]

Redlines

[Item #17. Amend §151.290 as follows]

§ 151.290 ADMINISTRATIVE PROCEDURES.

(A) Inspections of work in progress. As the work pursuant to a permit progresses, the Zoning Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of these regulations and the terms of the zoning permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action, provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(B) Stop orders. Irrespective of all other administrative procedures contained in these regulations, whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of these regulations, the Administrator may order the work to be immediately stopped. The stop work order shall be in writing and be directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage and the conditions under which the work may be resumed.

(C) Revocation of development approvals or other permits. In addition to initiation of enforcement actions under G.S. 160D-404, development approvals or other permits may be revoked by the Village of Marvin by notifying the holder in writing stating the reason for the revocation. The Village of Marvin shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals or other permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable Village of Marvin regulation or any State law delegated to the Village of Marvin for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval or other permits mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development or other permits approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by the Village of Marvin, the owner may appeal the administrative decision to the Board of Adjustment. ~~Revocation of permits. The Zoning Administrator may revoke and require the return of the zoning permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.~~

(D) Periodic inspections. The Zoning Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises at any reasonable hour for the purposes of inspection or other enforcement action, provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured. .

Reasons

§160D—403(e) requires local governments to obtain consent of premises owner or an administrative search warrant to inspect areas not open to the public.

§160D—403(f) requires local governments to use the same process for approval when conducting a revocation of development approval.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Substance of Other Development Ordinances to Comply with NCGS §160D

DATE: June 16, 2021

Sections

Item #18. [Formerly #30 on previous agenda package]

- Amend § 150.045
- Repeal and replace § 150.090 in its entirety
- Add § 150.091
- Amend § 151.080

Current

[Excerpt of § 150.090]

BONDS: SURETY REQUIREMENTS

§ 150.090 BONDS.

(A) Authorizing use, occupancy, or sale before completion of development. Each subdivision shall contain the improvements specified hereinabove which shall be installed in accordance with the requirements of this chapter and paid for by the applicant. Land shall be dedicated and reserved in each subdivision as specified in this and all other subchapters of this chapter. In lieu of requiring the completion, installation and dedication of all required improvements within the subdivision prior to final plat approval, a final plat may be approved if the applicant provides security for such obligations in accordance with the provisions of this section.

(B) Bond or other surety required to secure construction of required improvements.

(1) Agreement and guarantee security required. In lieu of requiring the completion, installation and dedication of all required improvements within the subdivision prior to final plat approval, the village may enter into an agreement with the applicant whereby the applicant shall agree to complete all required improvements in the subdivision within two years of final plat approval, unless this time period is extended by the Village Council. Alternatively, the agreement can call for the completion of improvements for only a portion (i.e., phase) of the subdivision. Once the agreement is signed by both parties and the security required herein is provided, the final plat, or portion thereof, may be approved by the Village Council, if all other requirements of this chapter are met.

(2) (a) Types of acceptable security. To secure this agreement, the applicant shall provide to the Village Council, either one, or a combination of the following guarantees shown. The amount of the guarantee shall be equal to one and one-quarter times the cost of installing all required improvements to be installed, as verified by the Consulting Engineer and subject to the approval of the Village Council. To assist the village in its review, the applicant shall cause a licensed engineer to submit a written cost estimate of the required improvements for its review and consideration. The village shall be reimbursed by the applicant for costs associated with the review in accordance with the most recently adopted fee schedule.

(b) The type of surety shall be chosen by the applicant and shall be made payable to the village on such terms and conditions as approved by the Village Council. Such surety shall be filed on approved forms.

1. Surety performance bond(s). The applicant shall obtain one or more performance bond(s) from a surety bonding company authorized to do business in the state. The surety performance bond shall not expire until a time as the Village Council or the responsible agency approves or accepts the improvements and provides for the release of the surety as provided in division (B)(4) of this section.

2. Cash or equivalent security. The applicant shall deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value, either with the village or in escrow with a financial institution designated as an official depository of the village. Irrevocable letters of credit or other instruments shall not expire until such a time as the Village Council or the responsible agency approves or accepts the improvements and provides for the release of the surety as provided in division (B)(4) of this section. If cash or other instrument is deposited in escrow with a financial institution as herein provided, the applicant shall then file with the Village Council an agreement between the financial institution and himself or herself guaranteeing the following:

a. The escrow account shall be held in trust until released by the Village Council and may not be used or pledged by the applicant in any other matter during the term of the escrow; and

b. In case of a failure on the part of the applicant to complete the improvements, the financial institution shall, upon notification by the Village Council and submission of the Engineer's estimate of the amount needed to complete the improvements by the Village Council to the financial institution immediately either pay to the village the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the village any other instruments fully endorsed or otherwise made payable in full to the village.

(3) (a) Default. Failure on the part of the applicant to complete the required improvements within the generally-accepted standards for the type of improvement, or any defects in workmanship and materials, or applicant's failure to comply with the agreement or applicant's failure to complete required improvements within two years of the final plat approval, unless this time period is extended by the Village Council, will be deemed to be in default. The following conditions, occurrences, omissions or actions shall also constitute a default:

1. Applicant's insolvency, the appointment of a receiver for applicant, or the filing of a voluntary or involuntary petition in bankruptcy respecting applicant; or

2. Foreclosure of any lien against the subdivided property, or assignment or conveyance of the subdivided property in lieu of foreclosure.

(b) If a default occurs, then the surety, or the financial institution, holding the escrow account, shall, if requested by the Village Council, pay all or any portion of the bond or escrow fund to the village up to the amount needed to complete the improvements. Upon payment, the Village Council, in its discretion, may expend all or a portion of the funds as it deems necessary to complete all or any portion of the required improvements. The village shall return to the bonding firm any funds not spent in completing the improvements. Should the amount of funds needed to complete the installation of all

required improvements exceed the amount in the bond or escrow account, the applicant shall nonetheless be responsible for providing the funds to cover the costs. The applicant shall at all times bear the financial burden for the installation of all required improvements.

(4) Release of guarantee security. The Village Council may authorize the Zoning Administrator to release any security or a portion of any security posted as the improvements are completed and approved by the responsible agencies. The applicant shall submit the request for releasing any security or a portion thereof and provide an engineer certified copy of the "as built" preliminary/construction plans of all infrastructure to the Zoning Administrator prior to the release of any funds being held by the village. The "as-built" plans shall be subject to review by the Zoning Administrator and consulting engineer. The village shall be reimbursed by the applicant for costs associated with the review in accordance with the most recently-adopted fee schedule. The funds shall then be released within ten days after the approval of the release by the Village Council.

(C) Maintenance of dedicated areas until acceptance. All facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

[Excerpt of § 151.080]

§ 151.080 R MARVIN RESIDENTIAL DISTRICT.

(A) Generally. The R District is established to provide for residential development at low densities consistent with the rural character of the village. However, the following exception applies to a lot in a subdivision if the final plat including that lot was properly recorded in the Register of Deeds before January 1, 2007. If the final plat unambiguously shows a setback smaller than the setback this chapter would require, a single-family dwelling on that lot may comply with the final plat's setback rather than with this chapter's setback.

(B) Permitted uses.

(1) Single-family dwelling;

(2) Mobile home, class A and B;

(3) Agricultural use. A structure housing poultry or livestock and waste removed from any structure shall be located no closer than 150 feet from any property line except that structures housing horses shall be located no closer than 60 feet from any property line;

(4) Family care home for up to six clients, provided the home is not located within one-half mile radius from an existing family care home;

(5) Essential service, class 1;

(6) Customary home occupation in accordance with § 151.045;

(7) Horse stable riding academy;

(8) Day care centers, small group;

(9) Village government building; government facility;

(10) Non-school function as defined in this chapter;

(11) Post office;

(12) Large tract subdivision;

(13) Small tract subdivision and

(14) Yard sale.

Redlines

[Repeal and replace § 150.090 in its entirety as follows]

SUBDIVISIONS; PERFORMANCE GUARANTEES

§ 150.090 PERFORMANCE GUARANTEES.

Authorizing use, occupancy, or sale before completion of development. Each subdivision shall contain the improvements specified hereinabove which shall be installed in accordance with the requirements of this chapter and paid for by the applicant. Land shall be dedicated and reserved in each subdivision as specified in this and all other subchapters of this chapter. In lieu of requiring the completion, installation and dedication of all required improvements within the subdivision prior to final plat approval, a final plat may be approved if the applicant provides performance guarantees for such obligations in accordance with the provisions of this section. To assure compliance with G.S. 160D-804 and other development regulation requirements, a subdivision regulation may provide for performance guarantees to assure successful completion of required improvements.

For purposes of this section, all of the following apply with respect to performance guarantees:

(A) Type. The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee: a. Surety bond issued by any company authorized to do business in this State. b. Letter of credit issued by any financial institution licensed to do business in this State. c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(a) Duration. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

(b) Extension. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the Village of Marvin, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.

(B) Release. The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Village of Marvin that the improvements for which the performance guarantee is being required are complete. The Village of Marvin shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to Village of Marvin acceptance. When required improvements that are secured by a bond are completed to the specifications of the Village of Marvin, or are accepted by the Village of Marvin, if subject to its acceptance, upon request by the developer, the Village of Marvin shall timely provide written acknowledgement that the required improvements have been completed.

(C) Amount. The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Village of Marvin may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(D) Timing. Village of Marvin requires performance guarantees to be posted before or at the time the plat is recorded.

(E) Coverage. The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(F) Legal responsibilities. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

1. The Village of Marvin to whom the performance guarantee is provided.

2. The developer at whose request or for whose benefit the performance guarantee is given.

3. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.

(G) Multiple guarantees. The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.

(H) Exclusion. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section. (2020-25, s. 20(b).)

~~BONDS: SURETY REQUIREMENTS~~

~~§ 150.090 BONDS.~~

~~(A) Authorizing use, occupancy, or sale before completion of development. Each subdivision shall contain the improvements specified hereinabove which shall be installed in accordance with the requirements of this chapter and paid for by the applicant. Land shall be dedicated and reserved in each subdivision as specified in this and all other subchapters of this chapter. In lieu of requiring the completion, installation and dedication of all required improvements within the subdivision prior to final plat approval, a final plat may be approved if the applicant provides security for such obligations in accordance with the provisions of this section.~~

~~(B) Bond or other surety required to secure construction of required improvements.~~

~~(1) Agreement and guarantee security required. In lieu of requiring the completion, installation and dedication of all required improvements within the subdivision prior to final plat approval, the village may enter into an agreement with the applicant whereby the applicant shall agree to complete all required improvements in the subdivision within two years of final plat approval, unless this time~~

~~period is extended by the Village Council. Alternatively, the agreement can call for the completion of improvements for only a portion (i.e., phase) of the subdivision. Once the agreement is signed by both parties and the security required herein is provided, the final plat, or portion thereof, may be approved by the Village Council, if all other requirements of this chapter are met.~~

~~(2) (a) Types of acceptable security. To secure this agreement, the applicant shall provide to the Village Council, either one, or a combination of the following guarantees shown. The amount of the guarantee shall be equal to one and one-quarter times the cost of installing all required improvements to be installed, as verified by the Consulting Engineer and subject to the approval of the Village Council. To assist the village in its review, the applicant shall cause a licensed engineer to submit a written cost estimate of the required improvements for its review and consideration. The village shall be reimbursed by the applicant for costs associated with the review in accordance with the most recently adopted fee schedule.~~

~~(b) The type of surety shall be chosen by the applicant and shall be made payable to the village on such terms and conditions as approved by the Village Council. Such surety shall be filed on approved forms.~~

~~1. Surety performance bond(s). The applicant shall obtain one or more performance bond(s) from a surety bonding company authorized to do business in the state. The surety performance bond shall not expire until a time as the Village Council or the responsible agency approves or accepts the improvements and provides for the release of the surety as provided in division (B)(4) of this section.~~

~~2. Cash or equivalent security. The applicant shall deposit cash, an irrevocable letter of credit, or other instrument readily convertible into cash at face value, either with the village or in escrow with a financial institution designated as an official depository of the village. Irrevocable letters of credit or other instruments shall not expire until such a time as the Village Council or the responsible agency approves or accepts the improvements and provides for the release of the surety as provided in division (B)(4) of this section. If cash or other instrument is deposited in escrow with a financial institution as herein provided, the applicant shall then file with the Village Council an agreement between the financial institution and himself or herself guaranteeing the following:~~

~~a. The escrow account shall be held in trust until released by the Village Council and may not be used or pledged by the applicant in any other matter during the term of the escrow; and~~

~~b. In case of a failure on the part of the applicant to complete the improvements, the financial institution shall, upon notification by the Village Council and submission of the Engineer's estimate of the amount needed to complete the improvements by the Village Council to the financial institution immediately either pay to the village the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the village any other instruments fully endorsed or otherwise made payable in full to the village.~~

~~(3) (a) Default. Failure on the part of the applicant to complete the required improvements within the generally accepted standards for the type of improvement, or any defects in workmanship and materials, or applicant's failure to comply with the agreement or applicant's failure to complete required improvements within two years of the final plat approval, unless this time period is extended by the Village Council, will be deemed to be in default. The following conditions, occurrences, omissions or actions shall also constitute a default:~~

~~1. Applicant's insolvency, the appointment of a receiver for applicant, or the filing of a voluntary or involuntary petition in bankruptcy respecting applicant; or~~

~~2. Foreclosure of any lien against the subdivided property, or assignment or conveyance of the subdivided property in lieu of foreclosure.~~

~~(b) If a default occurs, then the surety, or the financial institution, holding the escrow account, shall, if requested by the Village Council, pay all or any portion of the bond or escrow fund to the village up to the amount needed to complete the improvements. Upon payment, the Village Council, in its discretion, may expend all or a portion of the funds as it deems necessary to complete all or any portion of the required improvements. The village shall return to the bonding firm any funds not spent in completing the improvements. Should the amount of funds needed to complete the installation of all required improvements exceed the amount in the bond or escrow account, the applicant shall nonetheless be responsible for providing the funds to cover the costs. The applicant shall at all times bear the financial burden for the installation of all required improvements.~~

~~(4) Release of guarantee security. The Village Council may authorize the Zoning Administrator to release any security or a portion of any security posted as the improvements are completed and approved by the responsible agencies. The applicant shall submit the request for releasing any security or a portion thereof and provide an engineer certified copy of the "as built" preliminary/construction plans of all infrastructure to the Zoning Administrator prior to the release of any funds being held by the village. The "as-built" plans shall be subject to review by the Zoning Administrator and consulting engineer. The village shall be reimbursed by the applicant for costs associated with the review in accordance with the most recently adopted fee schedule. The funds shall then be released within ten days after the approval of the release by the Village Council.~~

~~(C) Maintenance of dedicated areas until acceptance. All facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.~~

[Add § 150.091 as follows]

POWER LINE EXEMPTION.

§ 150.091 POWER LINE EXEMPTION. Pursuant to G.S. 160D-804(h), the Village of Marvin shall not require a developer or builder to bury power lines meeting all of the following criteria:
(1) The power lines existed above ground at the time of first approval of a plat or development plan by the Village of Marvin, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan.
(2) The power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.

[Amend § 151.080 as follows]

§ 151.080 R MARVIN RESIDENTIAL DISTRICT.

(A) Generally. The R District is established to provide for residential development at low densities consistent with the rural character of the village. However, the following exception applies to a lot in a subdivision if the final plat including that lot was properly recorded in the Register of Deeds before January 1, 2007. If the final plat unambiguously shows a setback smaller than the setback this chapter would require, a single-family dwelling on that lot may comply with the final plat's setback rather than with this chapter's setback.

(B) Permitted uses.

(1) Single-family dwelling;

(2) Mobile home, class A and B. The Village of Marvin shall not exclude manufactured homes based on the age of the home pursuant to G.S. 160D-910(c);

(3) Agricultural use. A structure housing poultry or livestock and waste removed from any structure shall be located no closer than 150 feet from any property line except that structures housing horses shall be located no closer than 60 feet from any property line;

(4) Family care home for up to six clients, provided the home is not located within one-half mile radius from an existing family care home;

(5) Essential service, class 1;

(6) Customary home occupation in accordance with § 151.045;

(7) Horse stable riding academy;

(8) Day care centers, small group;

(9) Village government building; government facility;

(10) Non-school function as defined in this chapter;

(11) Post office;

(12) Large tract subdivision;

(13) Small tract subdivision and

(14) Yard sale.

Reasons

§160D-804 requires local governments to adopt subdivision performance guarantee requirements that conform with statutory standards.

§160D-804(h) prohibits local governments from requiring a developer, as a condition to subdivision approval, to bury a power line existing above ground and outside of property to be subdivided.

§160D-910(c) prohibits local governments from excluding manufactured homes based on the age of the home.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions to Legislative Procedures to Comply with NCGS §160D

DATE: June 16, 2021

Sections

Item #19. Amend §151.250(D)(4)
Item #20. Amend §151.250(D)(6)(d)
Item #21. Amend §151.250(D)(9)(h)
Item #22. Add §151.250(D)

Current

[Item #19. Excerpt from §151.250(D)(4)as follows]

(4) Planning Board review and recommendation.

[Item #20. Excerpt from §151.250(D)(6)(d)]

(d) At least ten days, but not more than 25 days before the date established for the public hearing, a notice of the proposed zoning change shall be sent by first class mail to the owner(s) of the affected parcel(s) as shown on the county tax listing and all adjacent and abutting property owners as shown on the county tax listing.

[Item #21. Excerpt from§151.250(D)(9)(h)]

(h) Land Use Plan consistency. Prior to adopting or rejecting the zoning map amendment, the Village Council shall adopt a statement describing whether its action is consistent with the adopted Land Use Plan and why the Village Council considers the action taken to be reasonable and in the public interest. The adopted statement is not subject to judicial review.

Redlines

[Item #19. Amend §151.250(D)(4) as follows]

(4) Planning Board review and recommendation. According to North Carolina GS 160D-604, all zoning amendments must be referred to the Planning Board for review and comment. The procedures shall be as follows:

[Item #20. Amend §151.250(D)(6)(d) as follows]

(d)The Village must provide posted notice during the time period running from twenty-five days prior to the hearing until ten days prior to the hearing, a notice of the proposed zoning change shall be sent by first class mail to the owner(s) of the affected parcel(s) as shown on the county tax listing and all adjacent and abutting property owners as shown on the county tax listing. For zoning map amendments, the Village must provide notice not only to immediate neighbors but also to properties separated from the subject property by the subject property by street, railroad, or other transportation corridor.

[Item #21. Amend §151.250(D)(9)(h) as follows]

(h) Land Use Plan consistency. Prior to adopting or rejecting the zoning map amendment, the Village Council shall adopt a statement describing whether its action is consistent with the adopted Land Use Plan and why the Village Council considers the action taken to be reasonable and in the public interest. The adopted statement is not subject to judicial review. If the Council approves an amendment that is not consistent with the plan, a note shall be made on the future land use map and it shall also be deemed amended. Additional Reasonableness Statement for Rezonings. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Council. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

[Item #22. Add §151.250(D) as follows]

(D) Refer zoning amendments to the Planning Board for review and comment; must not have governing board handle Planning Board duty to review and comment on zoning amendments. (G.S. 160D-604(c), (e).)

Reasons

§160D-602 requires local governments to adopt procedures to expand notices beyond immediate neighbors.

§160D-602(c) requires local governments to adopt procedures to post notices with specific duration periods.

§160D-604(c), (e) requires local governments to adopt procedures to have Planning Boards review zoning map amendments and comment.

§160D-604(d) requires local governments to adopt procedures to have Planning Boards consider any plan adopted when making a comment on plan consistency.

§160D-605(a) requires local governments to adopt procedures to adopt a brief statement describing whether the action is consistent or inconsistent with approved plans. Must note on the applicable future land use map is deemed amended when an inconsistent rezoning is approved.

§160D-605(b) requires local governments to adopt procedures to adopt a statement of reasonableness for zoning map amendments.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Certain Legislative Decisions to Comply with NCGS §160D and §160A-75

DATE: June 16, 2021

Item #23. Amendments to Amend and Add Provisions for Certain Legislative Decisions

Sections

Item #23(a). § 151.250(C)
Item #23(b). § 151.251(C)(2)
Item #23(c). § 151.252
Item #23(d). § 151.252(D)(7)(e)
Item #23(e). § 151.252(D)(7)(e)

Current

[Excerpt of § 151.250]

§ 151.250 ZONING MAP AMENDMENTS; CONVENTIONAL DISTRICTS.

(A) Overview.

(1) Conventional districts are zoning districts in which all established regulations uniformly apply to the class of development within the zoning district. This section provides the means and processes by which a conventional zoning district may be established, amended, supplemented, modified or repealed in the Village of Marvin.

(2) The following provides an outline of the steps involved in a conventional district map amendment:

(a) Initial meeting;
(b) Application;
(c) Staff and outside agency review;
(d) Planning Board recommendation;
(e) Notice of public hearing;
(f) Public hearing; and

(g) Village Council action.

(B) Purpose. Zoning map amendments are used to make necessary adjustments to the boundaries or locations of zoning districts within the village's jurisdictional limits, in response to changed conditions or changes in public policy. Zoning map amendments shall not be used to relieve particular hardships nor shall it be used to confer special privileges or rights on any person or party. This section pertains to amendments to permissible conventional zoning districts listed in § 151.030. Zoning map amendment petitions seeking to reclassify land to a conditional district are subject to the provisions of § 151.251.

(C) General provisions.

(1) The Village Council or the Planning Board may initiate zoning map amendments involving conventional zoning districts. No fee shall be charged for zoning map amendments initiated by a governmental agency.

(2) A petition to amend the zoning map, which is initiated by a member of the public, shall require an application, signed by the property owner or his or her authorized agent, and the application shall proceed through all review procedures outlined herein.

(3) Each non-contiguous parcel of land, for which conventional district considerations are requested, shall require the submission of a separate application, along with requisite fees and submittal requirements, pursuant to division (E) of this section. Land traversed and separated by a public or private road, right-of-way, stream, or similar natural or human-made feature shall be considered contiguous.

(4) The Zoning Administrator, Planning Board and Village Council may require that particular plans or studies receive engineering, consultant or outside agency review. Prior to Village Council approval, applicants shall be responsible for reimbursing the village for all engineering and consulting services with respect to review of the plans, in accord with the adopted fee schedule.

(5) The process outlined herein confers approval upon rezoning of the land only. A proposal to build upon the land requires the submission of a site plan subject to review and approval pursuant to other sections of the Marvin Code.

[Excerpt of § 151.252]

§ 151.252 ZONING AMENDMENTS; TEXT AMENDMENTS.

(A) Overview. The following is a summary of the steps required to amend zoning and subdivision ordinance text regulations.

(1) Initial meeting with staff;
(2) Application;
(3) Staff and outside agency review;
(4) Planning Board recommendation;
(5) Notice of public hearing;
(6) Public hearing;
(7) Village Council action.

(B) Purpose. The zoning text amendment process is used to make necessary adjustments to zoning regulations in response to clarification requirements, changed conditions or changes in public policy. Zoning text amendments shall not be used to relieve particular hardships, nor to confer special privileges or rights on any person or party.

(C) General provisions.

(1) The Village Council or the Planning Board may initiate zoning text amendments. No fee shall be charged for zoning text amendments initiated by a governmental agency.

(2) A member of the public may also initiate a zoning text amendment. An application to amend zoning regulations, initiated by a member of the public, shall proceed through review procedures outlined herein.

(3) The Zoning Administrator, Planning Board and Village Council may require that particular plans or studies receive engineering, consultant or outside agency review. Prior to Village Council approval, applicants shall be responsible for reimbursing the village for all engineering and consulting services with respect to review of the plans, in accord with the adopted fee schedule.

(4) For the purpose of interpreting this subchapter, the term ZONING TEXT AMENDMENT(S) or ZONING REGULATIONS shall also mean and refer to an amendment, or amendments to the subdivision ordinance, Chapter 150, pursuant to § 150.013.

[Excerpt of §151.252(D)(7)(e)]

(e) Village Council action. The Village Council shall have the authority to issue the following determinations with regard to the proposed text amendment:

1. Approve the zoning text amendment as submitted;
2. Deny approval of the text amendment as submitted;
3. Approve the zoning text amendments with modifications; and
4. Submit the zoning text amendment to the Planning Board for further study.

Redlines

[Amend §151.250(C)(2) and add 151.250(C)(6)(a) and (b) as follows]

§ 151.250 ZONING MAP AMENDMENTS; CONVENTIONAL DISTRICTS.

(A) Overview.

(1) Conventional districts are zoning districts in which all established regulations uniformly apply to the class of development within the zoning district. This section provides the means and processes by which a conventional zoning district may be established, amended, supplemented, modified or repealed in the Village of Marvin.

(2) The following provides an outline of the steps involved in a conventional district map amendment:

(a) Initial meeting;
(b) Application;
(c) Staff and outside agency review;
(d) Planning Board recommendation;
(e) Notice of public hearing;
(f) Public hearing; and
(g) Village Council action.

(B) Purpose. Zoning map amendments are used to make necessary adjustments to the boundaries or locations of zoning districts within the village's jurisdictional limits, in response to changed conditions or changes in public policy. Zoning map amendments shall not be used to relieve particular hardships nor shall it be used to confer special privileges or rights on any person or party. This section pertains to amendments to permissible conventional zoning districts listed in § 151.030. Zoning map

amendment petitions seeking to reclassify land to a conditional district are subject to the provisions of § 151.251.

(C) General provisions.

(1) The Village Council or the Planning Board may initiate zoning map amendments involving conventional zoning districts. No fee shall be charged for zoning map amendments initiated by a governmental agency.

(2) A petition to amend the zoning map, which is initiated by a member of the public, shall require an application, signed by the property owner or his or her authorized agent, and the application shall proceed through all review procedures outlined herein. No amendment to the zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Village Council or Planning Board, pursuant to § 160D-601.

(3) Each non-contiguous parcel of land, for which conventional district considerations are requested, shall require the submission of a separate application, along with requisite fees and submittal requirements, pursuant to division (E) of this section. Land traversed and separated by a public or private road, right-of-way, stream, or similar natural or human-made feature shall be considered contiguous.

(4) The Zoning Administrator, Planning Board and Village Council may require that particular plans or studies receive engineering, consultant or outside agency review. Prior to Village Council approval, applicants shall be responsible for reimbursing the village for all engineering and consulting services with respect to review of the plans, in accord with the adopted fee schedule.

(5) The process outlined herein confers approval upon rezoning of the land only. A proposal to build upon the land requires the submission of a site plan subject to review and approval pursuant to other sections of the Marvin Code.

(6) For the purpose of interpreting this subchapter, term DOWN-ZONING shall mean a zoning ordinance that affects an area of land in one of the following ways:

(a) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(b) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

[Amend §151.251(C)(2) as follows]

(C) General provisions.

(1) Detailed application requirements. A rezoning to a Conditional District shall require the submittal of a detailed application pursuant to division (E) of this section, illustrating uses, setbacks, architectural design elements, open space, active and passive recreational opportunities, landscaping, screening and buffering, parking and vehicular circulation, signage and tree preservation.

(2) ~~Petition by owner. Petitioning to rezone property to a Conditional District is a voluntary procedure, which can only be initiated by the owner(s) of the land in question, or his or her authorized agent.~~ Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the Village Council, but only those conditions approved by the Village Council and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, the Village Council may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by

otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to Village of Marvin ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved apply only to those properties whose owners petition for the modification.

[Amend §151.252 as follows]

§ 151.252 ZONING AMENDMENTS; TEXT AMENDMENTS.

(A) Overview. The following is a summary of the steps required to amend zoning and subdivision ordinance text regulations.

(1) Initial meeting with staff;
(2) Application;
(3) Staff and outside agency review;
(4) Planning Board recommendation;
(5) Notice of public hearing;
(6) Public hearing;
(7) Village Council action.

(B) Purpose. The zoning text amendment process is used to make necessary adjustments to zoning regulations in response to clarification requirements, changed conditions or changes in public policy. Zoning text amendments shall not be used to relieve particular hardships, nor to confer special privileges or rights on any person or party.

(C) General provisions.

(1) The Village Council or the Planning Board may initiate zoning text amendments. No fee shall be charged for zoning text amendments initiated by a governmental agency.

(2) A member of the public may also initiate a zoning text amendment. No amendment to the zoning regulations that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Village Council or Planning Board, pursuant to § 160D-601.

An application to amend zoning regulations, initiated by a member of the public, shall proceed through review procedures outlined herein.

(3) The Zoning Administrator, Planning Board and Village Council may require that particular plans or studies receive engineering, consultant or outside agency review. Prior to Village Council approval, applicants shall be responsible for reimbursing the village for all engineering and consulting services with respect to review of the plans, in accord with the adopted fee schedule.

(4) For the purpose of interpreting this subchapter, the term ZONING TEXT AMENDMENT(S) or ZONING REGULATIONS shall also mean and refer to an amendment, or amendments to the subdivision ordinance, Chapter 150, pursuant to § 150.013. For the purpose of interpreting this

subchapter, term DOWN-ZONING shall mean a zoning ordinance that affects an area of land in one of the following ways:
(a) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
(b) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

[Amend §151.252(D)(7)(e) as follows]

(e) Village Council action. When voting to adopt a zoning text amendment or adopt a zoning text amendment with modifications, the Village Council must permit adoption on first reading by simple majority pursuant to G.S. 160A-75; S.L. 2019-111, §2.5(n). When approving a zoning text amendment, the Village Council must adopt the amendment by ordinance. The Village Council shall have the authority to issue the following determinations with regard to the proposed text amendment:

1. Approve the zoning text amendment as submitted;
2. Deny approval of the text amendment as submitted;
3. Approve the zoning text amendments with modifications; and
4. Submit the zoning text amendment to the Planning Board for further study.

Reasons

Item #23(a): §160D-601(d) requires local governments to adopt provisions that prohibit third-party down-zonings; may process down-zonings initiated by local governments or landowner(s).

Item #23(b): §160D-703(b) requires local governments to adopt provisions that requires applicant's/landowner's written consent to conditions related to a conditional zoning approval to ensure enforceability.

Item #23(c): §160D-601(d) requires local governments to adopt provisions that prohibit third-party down-zonings; may process down-zonings initiated by local governments or landowner(s).

Item #23(d): §160A-75, S.L. 2019-111, §2.5(n) requires local governments to adopt provisions that permit adoption of a legislative decision for development regulation on first reading by simple majority; no need for two-thirds majority on first reading, as was required for cities under prior law.

Item #23(e): §160D-601 requires local governments to adopt zoning text amendments by ordinance, not be resolution.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Add Provisions for Quasi-Judicial Procedures to Comply with NCGS §160D

DATE: June 16, 2021

Item #24. Amendments to Add Provisions for Certain Quasi-Judicial Procedures

Sections
Item #24.
Amend §151.230
Amend § 151.233
Amend § 151.234
Amend § 151.236
Amend § 151.237

Current

BOARD OF ADJUSTMENT

§ 151.230 BOARD OF ADJUSTMENT POWERS, DUTIES AND PROCEDURE.

(A) Powers and duties. A Board of Adjustment is hereby established and shall have all the powers and duties provided for in this chapter. Generally, the powers and duties shall include, but not be restricted to the following:

(1) Hearing and deciding all appeals from decisions made by the Zoning Administrator;
(2) Hearing and deciding appeals that require interpretation of this zoning regulations;
(3) Hearing and granting variances from the provisions of this chapter; and
(4) Any other duties herein called for.

(B) Establishment of Zoning Board of Adjustment. The Board of Adjustment shall consist of five regular members who are residents of the village and shall be appointed by the Village Council. In addition, three alternate members shall serve on the Board of Adjustment, all shall be residents of the village and appointed by the Village Council. Alternate members shall serve in the absence for any cause of any regular member. Initial appointment of the regular members

shall be as follows: three regular members and one alternate member appointed by the Village Council for terms to expire on March 1, 1999, and two regular members and one alternate member appointed by the Village Council for terms to expire on March 1, 1998. Thereafter, the Village Council shall appoint all members and alternate members for terms of three years each. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. The alternate members while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member shall have and may exercise all the powers and duties of the regular members.

(C) Jurisdiction. Each member of the Board of Adjustment shall have equal rights, privileges and duties in all matters coming under the Boards purview.

(Ord. OR-1996-02-01, passed 2-13-1996)

§ 151.233 APPLICATION PROCEDURE.

The following regulations apply to all applications submitted to the Board of Adjustment.

(A) Before a petition for an interpretation, appeal or variance shall be considered, a completed application on a form provided by the village, accompanied by a fee (as established by the Village Council) shall be submitted to the Zoning Administrator. The fee shall be waived for any petition or other application submitted by a village official acting on behalf of the village. The application shall contain the name, address and telephone number of the applicant(s), and property owners if different from applicant(s), a description of the subject property with reference to deed book and page. The application shall also contain a list of names and addresses of adjoining and contiguous property owners on all sides and across any street and public right-of-way from the subject property. This information shall be based upon the current year Union and Mecklenburg County tax records. A map clearly showing the subject property and all contiguous property on either side and all property across any street or public right-of-way from the subject property shall accompany the application.

(B) The filing of any application stays all proceedings unless the Zoning Administrator certifies to the Board of Adjustment that a stay in his or her opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this chapter. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment, or by a court of record, on application, on notice to the Zoning Administrator, and on due cause shown.

(C) The Board of Adjustment shall hold a hearing on all applications no later than 40 days after the application has been filed with the Zoning Administrator.

(D) The Board of Adjustment shall give notice of the public hearing by sending notices by first class mail to the parties to the hearing and to all property owners contiguous or adjacent to the property (as defined in § 151.250(B)). Said notices shall be mailed at least seven days prior to the public hearing. In addition, the village shall prominently post a notice of the public hearing on the subject site or on an adjacent public street right-of-way. When multiple parcels are included, a posting on each individual parcel is not required, but the village shall post sufficient notices to provide reasonable notice to interest persons. Said sign shall be placed on the property(ies) at least seven days prior to the public hearing and shall remain standing until the Board of Adjustment has reached its final decision.

(E) A written application for a variance must also demonstrate in detail, the following:

(1) The special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;

(2) How a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

(3) How the circumstances do not result from the actions of the applicant;

(4) How granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district; and

(5) No nonconforming use of neighboring land, structures or buildings in the same district and no permitted use of land, structures or buildings in other districts will be considered grounds for the issuance of a variance.

(F) In all matters before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 1-13-2009)

§ 151.234 BOARD OF ADJUSTMENT ACTION.

(A) The concurrent vote of four-fifths of the members of the Board of Adjustment, not otherwise vacant or excused, shall be necessary to grant any variance from the provisions of this chapter. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this division, 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 supermajority if there are no qualified alternates available to take the place of the members.

(B) Any member(s) of the Board who declares that a potential conflict of interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. In the event fewer than three members remain, no reversal of any prior decision may be made.

(C) All decisions of the Board of Adjustment shall be made within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later.

(D) All decisions of the Board of Adjustment shall be filed with the Zoning Administrator and a written copy thereof shall be sent to the applicant by certified mail return receipt requested, or hand delivered within 15 business days following the hearing.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 2-14-2006; Ord. passed 3-13-2007; Ord. OR-2016-03-01, passed 3-8-2016)

§ 151.236 ADMINISTRATION OF OATHS TO WITNESSES.

The Chairperson of the Board of Adjustment or any member temporarily acting as Chairperson is authorized in his or her official capacity to administer oaths to witnesses in any manner coming before the Board.

(Ord. OR-1996-02-01, passed 2-13-1996)

§ 151.237 RULES OF PROCEDURE.

The Board of Adjustment shall adopt rules of procedure to govern its actions.

(Ord. OR-1996-02-01, passed 2-13-1996)

Redlines

[Item #24]

[Amend §151.230 as follows.]

BOARD OF ADJUSTMENT

§ 151.230 BOARD OF ADJUSTMENT POWERS, DUTIES AND PROCEDURE.

(A) Powers and duties. A Board of Adjustment is hereby established and shall have all the powers and duties provided for in this chapter. Generally, the powers and duties shall include, but not be restricted to the following:

(1) Hearing and deciding all appeals from decisions made by the Zoning Administrator;

(2) Hearing and deciding appeals that require interpretation of this zoning regulations;

(3) Hearing and granting variances from the provisions of this chapter; and

(4) Any other duties herein called for.

(B) Establishment of Zoning Board of Adjustment. The Board of Adjustment shall consist of five regular members who are residents of the village and shall be appointed by the Village Council. In addition, three alternate members shall serve on the Board of Adjustment, all shall be residents of the village and appointed by the Village Council. Alternate members shall serve in the absence for any cause of any regular member. Initial appointment of the regular members shall be as follows: three regular members and one alternate member appointed by the Village Council for terms to expire on March 1, 1999, and two regular members and one alternate member appointed by the Village Council for terms to expire on March 1, 1998. Thereafter, the Village Council shall appoint all members and alternate members for terms of three years each. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. The alternate members while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member shall have and may exercise all the powers and duties of the regular members.

(C) Jurisdiction. Each member of the Board of Adjustment shall have equal rights, privileges and duties in all matters coming under the Boards purview.

<u>(D) Quasi-Judicial Decision. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving</u>

variances, special use permits, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

(E) Pause of Enforcement. Any enforcement action, including fines, being pursued by the Village shall be paused during the appeal per G.S. 160D-405.

[Amend §151.233 as follows.]

§ 151.233 APPLICATION PROCEDURE.

The following regulations apply to all applications submitted to the Board of Adjustment.

(A) Before a petition for an interpretation, appeal or variance shall be considered, a completed application on a form provided by the village, accompanied by a fee (as established by the Village Council) shall be submitted to the Zoning Administrator. The fee shall be waived for any petition or other application submitted by a village official acting on behalf of the village. The application shall contain the name, address and telephone number of the applicant(s), and property owners if different from applicant(s), a description of the subject property with reference to deed book and page. The application shall also contain a list of names and addresses of adjoining and contiguous property owners on all sides and across any street and public right-of-way from the subject property. This information shall be based upon the current year Union and Mecklenburg County tax records. A map clearly showing the subject property and all contiguous property on either side and all property across any street or public right-of-way from the subject property shall accompany the application.

(B) The filing of any application stays all proceedings unless the Zoning Administrator certifies to the Board of Adjustment that a stay in his or her opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this chapter. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment, or by a court of record, on application, on notice to the Zoning Administrator, and on due cause shown.

(C) The Board of Adjustment shall hold a hearing on all applications no later than 40 days after the application has been filed with the Zoning Administrator.

(D) Notice of Hearing. Notice of evidentiary hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the Village may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Village shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(E) Administrative Materials. The administrator or staff 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.

(F) Presentation of Evidence. The applicant, the Village, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) 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. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(G) Appearance of Official New Issues. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Village of Marvin, shall be present at the evidentiary hearing as a witness. The appellant shall not be NC General Statutes - Chapter 160D 27 limited at the hearing to matters stated in a notice of appeal. If any party or the Village would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(H) Subpoenas. The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the Village, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(I) Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

(J) Decisions. The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. 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,

reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the Village that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

(K) Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

~~(D) The Board of Adjustment shall give notice of the public hearing by sending notices by first class mail to the parties to the hearing and to all property owners contiguous or adjacent to the property (as defined in § 151.250(B)). Said notices shall be mailed at least seven days prior to the public hearing. In addition, the village shall prominently post a notice of the public hearing on the subject site or on an adjacent public street right-of-way. When multiple parcels are included, a posting on each individual parcel is not required, but the village shall post sufficient notices to provide reasonable notice to interest persons. Said sign shall be placed on the property(ies) at least seven days prior to the public hearing and shall remain standing until the Board of Adjustment has reached its final decision.~~

(L)~~(E)~~ A written application for a variance must also demonstrate in detail, the following:

(1) The special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;

(2) How a literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

(3) How the circumstances do not result from the actions of the applicant;

(4) How granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district; and

(5) No nonconforming use of neighboring land, structures or buildings in the same district and no permitted use of land, structures or buildings in other districts will be considered grounds for the issuance of a variance.

(M)~~(F)~~ In all matters before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

[Amend §151.234 as follows.]

§ 151.234 BOARD OF ADJUSTMENT ACTION.

(A) (J) Voting. The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for

calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

~~The concurrent vote of four-fifths of the members of the Board of Adjustment, not otherwise vacant or excused, shall be necessary to grant any variance from the provisions of this chapter. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this division, 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 supermajority if there are no qualified alternates available to take the place of the members.~~

(B) Any member(s) of the Board who declares that a potential conflict of interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. In the event fewer than three members remain, no reversal of any prior decision may be made.

(C) The board shall determine contested facts and make its decision within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. 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, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the Village that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

~~(C) All decisions of the Board of Adjustment shall be made within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later.~~

~~(D) All decisions of the Board of Adjustment shall be filed with the Zoning Administrator and a written copy thereof shall be sent to the applicant by certified mail return receipt requested, or hand delivered within 15 business days following the hearing.~~

[Amend §151.236 as follows.]

§ 151.236 ADMINISTRATION OF OATHS TO WITNESSES.

The Chairperson of the Board of Adjustment or any member temporarily acting as Chairperson is authorized in his or her official capacity to administer oaths to witnesses in any manner coming

before the Board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

[Amend §151.237 as follows.]

§ 151.237 RULES OF PROCEDURE.

The Board of Adjustment shall adopt rules of procedure to govern its actions. Under G.S. 160D-406, it shall:

1. Hold an evidentiary hearing to gather competent, material, and substantial evidence to establish the facts of the case;
2. Have testimony under oath; must establish written findings of fact and conclusions of law;
3. Have the Board chair rule at the evidentiary hearing on objections to inclusion or exclusion of administrative material with such a ruling eligible for appeal the full board;
4. Allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments, and may allow non-parties to present competent, material, and substantial evidence that is not repetitive.

Reasons

§160D-102(28), §160D-406, and §160D-406(d) require local governments to adopt provisions for certain quasi-judicial procedures.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Quasi-Judicial Decisions to Comply with NCGS §160D

DATE: June 16, 2021

Item #25. Amendments to Amend and Add Provisions for Certain Quasi-Judicial Decisions

Sections
Item #25.
Amend § 151.103(A),(B),(C), and (D)
Amend § 151.107
Amend §151.180

Current
[Excerpt from § 151.103(A),(B),(C), and (D), § 151.107 as follows. Amend 151.180 as follows] follows]

§ 151.103 VILLAGE COUNCIL DECISION.

(A) Generally. If the Village Council should find, after conducting a public hearing, that the proposed conditional use permit and, where requested, zoning change should be granted, the Village Council may impose additional reasonable and appropriate special conditions upon the conditional use permit, as it may deem necessary. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the same zoning district. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, preservation of open space, the timing of development and other matters that the Village Council may find appropriate or the petitioner may propose. The conditions may include sign controls and may include architectural review or controls. Conditions placed on a conditional use permit may also address time limits for receiving zoning and/or building permits for a particular use. The screening provisions of this chapter shall be minimum screening standards required for the issuance of a CUP, however, the Village Council may impose additional reasonable screening requirements as

a condition for awarding a CUP as the Council considers necessary to protect the public health, safety and welfare in accordance with the purpose and intent of this chapter. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Village Council. The Village Council shall give due regard to the intent and purpose of this section of this chapter and that the public safety and welfare will be secured and substantial justice done.

(B) Burden of proof. The applicant has the burden of producing competent material and substantial evidence, tending to establish the existence of the facts and conditions that the appropriate section of this chapter requires for the issuance of the conditional use permit.

(C) Voting. When deciding conditional use permits, the Village Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Council to issue the permits. For the purposes of this section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Council" for calculation of the requisite majority. Every decision of the Village Council shall be subject to review of the superior court in the nature of certiorari.

(D) Findings to be made by Village Council. The Village Council shall issue a conditional use permit only after having made each of the following findings:

(1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan;

(2) The use meets all required conditions and specifications;

(3) The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity;

(4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this chapter and the Village Land Use Plan; and

(5) Additional review criteria, as stated in this chapter, shall also be considered and addressed where required.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 2-14-2006)

§ 151.107 CHANGE IN CONDITIONAL USE PERMIT.

The request to materially change the conditional use permit shall be reviewed by the Planning Board as required by § 151.102(A). The Village Council may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of public hearing shall be in accordance with § 151.250(G). Amendment by the Village Council of a conditional use permit shall be subject to the same considerations as provided for in § 151.103(D).

(Ord. OR-1996-02-01, passed 2-13-1996)

§ 151.180 ZONING ADMINISTRATOR.

(A) The Village Council shall appoint an administrative official(s) to enforce and administer this chapter.

(B) It shall be the duty of the Zoning Administrator to interpret and enforce this chapter under the general supervision of the Village Council. All decisions of the Zoning Administrator shall be in writing and shall be reported to the Planning Board at its regularly scheduled meetings. Each Zoning Administrator shall have full authority to enforce and administer this

chapter, except that the Village Council may prescribe a more limited authority in any Zoning Administrator's job description.

Redlines

[Item #25. Amend: § 151.103(A),(B),(C), and (D): § 151.107; and § 151.180 as follows]

§ 151.103 VILLAGE COUNCIL DECISION.

(A) Generally. If the Village Council should find, after conducting a public hearing, that the proposed special ~~conditional~~ use permit and, where requested, zoning change should be granted, the Village Council may impose additional reasonable and appropriate special conditions upon the special ~~conditional~~ use permit, as it may deem necessary. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the Village of Marvin does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the Village, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the same zoning district. Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, preservation of open space, the timing of development and other matters that the Village Council may find appropriate or the petitioner may propose. The conditions may include sign controls and may include architectural review or controls within the scope of G.S. 160D-702(b). Conditions placed on a special ~~conditional~~ use permit may also address time limits for receiving zoning and/or building permits for a particular use. The screening provisions of this chapter shall be minimum screening standards required for the issuance of a SUP ~~CUP~~, however, the Village Council may impose additional reasonable screening requirements as a condition for awarding a SUP ~~CUP~~ as the Council considers necessary to protect the public health, safety and welfare in accordance with the purpose and intent of this chapter. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Village Council. The Village Council shall give due regard to the intent and purpose of this section of this chapter and that the public safety and welfare will be secured and substantial justice done.

(B) Burden of proof. The applicant has the burden of producing competent material and substantial evidence, tending to establish the existence of the facts and conditions that the appropriate section of this chapter requires for the issuance of the special ~~conditional~~ use permit.

(C) Voting. When deciding special ~~conditional~~ use permits, the Village Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Council to issue the permits. For the purposes of this section, vacant positions on the Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered

"members of the Council" for calculation of the requisite majority. The Village must obtain the applicant's/landowner's written consent to conditions related to a special use permit, as part of the application or during the Board of Adjustment, to enforce enforceability per 160D-1402(k)(3)(a) and 160D-1403.2. Every decision of the Village Council shall be subject to review of the superior court in the nature of certiorari.

(D) Findings to be made by Village Council. The Village Council shall issue a special ~~conditional~~ use permit only after having made each of the following findings:

(1) The use will not materially endanger the public health or safety if located where proposed and developed according to plan;

(2) The use meets all required conditions and specifications;

(3) The use will not substantially injure the value of adjoining or abutting property or the use is a public necessity;

(4) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this chapter and the Village Land Use Plan; and

(5) Additional review criteria, as stated in this chapter, shall also be considered and addressed where required.

§ 151.107 CHANGE IN SPECIAL C~~ONDITIONAL~~ USE PERMIT.

Any modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification.

The request to materially change the special ~~conditional~~ use permit shall be reviewed by the Planning Board as required by § 151.102(A). The Village Council may thereafter change or amend any previously approved special ~~conditional~~ use permit, only after having held a public hearing. Notice of public hearing shall be in accordance with § 151.250(G). Amendment by the Village Council of a special ~~conditional~~ use permit shall be subject to the same considerations as provided for in § 151.103(D).

§ 151.180 ZONING ADMINISTRATOR.

(A) The Village Council shall appoint an administrative official(s) to enforce and administer this chapter.

(B) It shall be the duty of the Zoning Administrator to interpret and enforce this chapter under the general supervision of the Village Council. All decisions of the Zoning Administrator shall be in writing and shall be reported to the Planning Board at its regularly scheduled meetings. The landowner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. Each Zoning Administrator shall have full authority to enforce and

administer this chapter, except that the Village Council may prescribe a more limited authority in any Zoning Administrator's job description.

Reasons

§ 160D-705(c); S.L. 2019-111, Pt. I. prohibits local governments to impose conditions on special use permits that local governments do not have statutory authority to impose.

§ 160D-1402(k);§ 160D-1403.2; S.L. 2019-111, Pt. I. requires local governments to obtain applicant's/landowner's written consent to conditions related to a special use permit to ensure enforceability.

§ 160D-405(c) requires local governments to set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Administrative Development Approvals to Comply with NCGS §160D

DATE: June 16, 2021

Item #26. Amendments to Amend and Add Provisions for Administrative Development Approvals and Determinations

Item #27. Amendments to Amend and Add Provisions for Administrative Development Determinations

Sections
Item #26.
Amend §150.005
Add § 151.267

Item #27.
Add § 151.267

Current

[Excerpt from §150.005]

§ 150.005 APPLICATION OF CHAPTER.
This chapter is applicable to all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development whether immediate or future and shall include all divisions of land involving the dedication of a new street or a change in existing streets, except as permitted in § 150.006 below.
151.267

Redlines

[Items #26 and #27. Amend 150.005; Add 151.267 as follows]

§ 150.005 APPLICATION OF CHAPTER.

This chapter is applicable to all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development whether immediate or future and shall include all divisions of land involving the dedication of a new street or a change in existing streets, except as permitted in § 150.006 below. Applicants seeking development approvals in this Chapter must be a person with a property interest in the property or a contract to purchase the property. For development approvals, the Village of Marvin shall provide approvals in writing in either print or electronic form. If electronic form is used, the electronic form must be protected from further editing. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land in accordance with G.S. § 160D-104. The Village of Marvin shall follow the same process for revocation of development approval as was used for the approval.

§ 151.267 DEVELOPMENT APPLICATIONS, APPROVALS, NOTICES, AND REVOCATIONS.

(A). Development Applications. Applicants seeking development approvals in this Chapter must be a person with a property interest in the property or a contract to purchase the property.

(B) Approvals Required Prior to Commencement. To the extent consistent with the scope of regulatory authority granted by this Chapter, no person shall commence or proceed with development without first securing any required development approval from the Village of Marvin.

(C) Approval in Writing. A development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State and local laws. The Village of Marvin may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(D) Determinations and Notice of Determinations. The Zoning Administrator shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

(E) Sign Posted of Zoning or Subdivision Decision. It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify the means to contact the Zoning Administrator about the determination. Posting of signs is not the only form of constructive notice. Any such posting is the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the Zoning Administrator.

(F) Development Approvals Run with the Land. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land in accordance with G.S. § 160D-104.

(G) Revocation. In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The Village of Marvin shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the Village of Marvin for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by the Village of Marvin pursuant to this Chapter, the provisions of G.S. 160D-405(e) regarding stays apply.

Reasons

§ 160D-403(a) requires local governments provide development approvals in writing; may provide in print or electronic form; if electronic form is used, then it must be protected from further editing.

§ 160D-403(a) requires that applications for development approvals must be made by a person with a property interest in the property or a contract to purchase the property.

§ 160D-403(b) requires local governments to provide written notice of determination by personal delivery, electronic mail, or first-class mail to the property owner and party seeking determination, if different from the owner.

§ 160D-104 requires that development approvals by local governments run with the land.

§160D-403(f) requires local governments follow the same process for revocation of development approval as was used for the approval.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Appeals of Administrative Decisions to Comply with NCGS §160D

DATE: June 16, 2021

Item #28. Amendments to Amend and Add Provisions for Appeals for Administrative Decisions

Sections
Item #28. Repeal and replace § 151.231 in its entirety

Current
[Excerpt of § 151.231]

§ 151.231 ADMINISTRATIVE REVIEW.

(A) The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, and apply interpretation to particular fact situations.

(B) A written appeal may be taken by any person who has first requested and received a ruling from the Zoning Administrator. An appeal to the Board of Adjustment shall be made within 30 days of the mailing or hand delivery of the written decision of the Zoning Administrator.

(C) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him or her, that because of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this chapter. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

(D) A duplicate written application for an appeal, specifying the grounds thereof, shall be filed with the Zoning Administrator who shall immediately transmit all papers constituting the record to the Board of Adjustment, the record to include the application, the Zoning Administrator's decisions, and the written application for appeal.

(E) The Board of Adjustment must review the appeal of the Zoning Administrator decision within 40 business days following the hearing.

(F) Notice of the proposed hearing of the appeal shall be given to the applicant and the Zoning Administrator by first class mail, which mailing must be made at least seven days prior to the date of the hearing.

(G) The Board of Adjustment must decide the matter which is the subject of the appeal within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later. The decision of the Board of Adjustment shall be in writing within five working days and shall be mailed by certified mail return receipt requested, or hand delivered to the appellant.

(H) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.

(I) The Board of Adjustment shall have all the powers of the Zoning Administrator from whom the appeal is taken in making any order, requirement, decision or determination with reference to the appeal.

(J) All applications (except those submitted by the Zoning Administrator or other village official acting on behalf of the village) may be processed only if deemed complete and accompanied by a fee in accordance with a fee schedule adopted by the Village Council.

Redlines

[Item #28. Repeal and replace § 151.231 in its entirety as follows]

§ 151.23 APPEALS OF ADMINISTRATIVE DECISIONS

(A) Appeals. Except as provided in G.S. 160D-1403.1, appeals of administrative decisions made by the staff under this section shall be made to the Board of Adjustment unless a different board is provided by statute or a Village of Marvin ordinance. If this function of the Board of Adjustment is assigned to any other board, that board shall comply with all of the procedures and processes applicable to a Board of Adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the Board of Adjustment unless required by a Village of Marvin ordinance or code provision.

(B) Standing. Any person who has standing under G.S. 160D-1402(c) or the Village of Marvin may appeal an administrative decision to the Board. An appeal is taken by filing a notice of appeal with the Zoning Administrator. The notice of appeal shall state the grounds for the appeal.

(C) Time to Appeal. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(D) Record of Decision. The Zoning Administrator or other Village official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the decision appealed from is taken and shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(E) Village of Marvin Witness. The Zoning Administrator or other Village official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Village of Marvin, shall be present at the evidentiary hearing as a witness.

(F) Stays. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the Board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations, the appellant or the Village of Marvin may request and the Board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(G) No Estoppel. G.S. 160D-1403.2, limiting the Village of Marvin's use of the defense of estoppel, applies to proceedings under this section.

(H) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.

(I) The Board of Adjustment shall have all the powers of the Zoning Administrator from whom the appeal is taken in making any order, requirement, decision or determination with reference to the appeal.

(J) All applications (except those submitted by the Zoning Administrator or other Village official) may be processed only if deemed complete and accompanied by a fee in accordance with a fee schedule adopted by the Village Council.

~~§ 151.231 ADMINISTRATIVE REVIEW.~~

~~(A) The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, and apply interpretation to particular fact situations.~~

~~(B) A written appeal may be taken by any person who has first requested and received a ruling from the Zoning Administrator. An appeal to the Board of Adjustment shall be made within 30 days of the mailing or hand delivery of the written decision of the Zoning Administrator.~~

~~(C) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him or her, that because of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this chapter. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.~~

~~(D) A duplicate written application for an appeal, specifying the grounds thereof, shall be filed with the Zoning Administrator who shall immediately transmit all papers constituting the record to the Board of Adjustment, the record to include the application, the Zoning Administrator's decisions, and the written application for appeal.~~

~~(E) The Board of Adjustment must review the appeal of the Zoning Administrator decision within 40 business days following the hearing.~~

~~(F) Notice of the proposed hearing of the appeal shall be given to the applicant and the Zoning Administrator by first class mail, which mailing must be made at least seven days prior to the date of the hearing.~~

~~(G) The Board of Adjustment must decide the matter which is the subject of the appeal within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever occurs later. The decision of the Board of Adjustment shall be in writing within five working days and shall be mailed by certified mail return receipt requested, or hand delivered to the appellant.~~

~~(H) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.~~

~~(I) The Board of Adjustment shall have all the powers of the Zoning Administrator from whom the appeal is taken in making any order, requirement, decision or determination with reference to the appeal.~~

~~(J) All applications (except those submitted by the Zoning Administrator or other village official acting on behalf of the village) may be processed only if deemed complete and accompanied by a fee in accordance with a fee schedule adopted by the Village Council.~~

Reasons

§160D-405 requires local governments to adopt provisions for appeals of administrative decisions of any development regulations (not just zoning) to be appealed to the Board of Adjustment, unless provided otherwise by statute or ordinance.

§160D-405(c) requires local governments to set a thirty-day period to file an appeal of any administrative determination under a development regulation; must presume that if notice of determination is sent by mail, it is received on the third business day after it is sent.

§160D-406 requires local governments to require the official who made the decision (or his or her successor if the official is no longer employed) to appear as a witness in the appeal.

§160D-405 requires local governments to pause enforcement actions, including fines, during the appeal.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendments to Amend and Add Provisions for Vested Rights and Permit Choice to Comply with NCGS §160D

DATE: June 16, 2021

Item #29. Amendments to Amend and Add Provisions for Vested Rights and Permit Choice

Sections
Item #29.
Amend § 150.009
Amend § 151.061
Add § 151.061.1
Amend § 151.182(D)(4)(d)

Current

[Excerpt from § 150.009]

§ 150.009 PERMITS NOT ISSUED.

The Zoning Administrator of the village shall not issue any permit for the construction of any building, approval of electrical installation or other improvements requiring a permit, upon any land for which a subdivision plat is required unless and until the requirements of this chapter have been complied with and approval granted in accordance with this chapter.

[Excerpt from § 151.061]

§ 151.061 EARLY VESTING OF DEVELOPMENT RIGHTS UPON APPROVAL OF A DEVELOPMENT PLAN.

Notwithstanding any other provision of this chapter or amendment thereto, a landowner may apply for a site specific development plan approval which shall entitle the landowner to develop property in accordance with the site specific development plan. The procedure for establishing a vested right is set forth in this section.

(A) Definitions. For the purpose of this section only, the following definitions shall apply. Definitions of other words are found in § 151.016.

LANDOWNER. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representatives of the owner. The LANDOWNER may allow a person holding a valid option to purchase to act as his or her agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this chapter.

PROPERTY. All real property subject to zoning regulations and restrictions of the village.

SITE SPECIFIC DEVELOPMENT PLAN. A plan of land development submitted to the village for purposes of obtaining a zoning vested right for a particular development. The plan shall describe with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

VESTED RIGHT. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(B) Submission of a site specific development plan.

(1) The landowner submitting a site specific development plan shall make known to the Village Council all current vested rights applicable to the tract of land under consideration. A site specific developed plan may be approved by the Village Council after public hearings have been conducted individually by the Planning Board and the Village Council. To apply for a vested right, a landowner shall first submit to the Zoning Administrator a site specific development plan. The plan shall be submitted in completed form (i.e., contain all information as herein prescribed) at least three weeks prior to a public hearing conducted by the Planning Board.

(2) The site specific development plan shall be considered complete if submitted with a fee (in accordance with a fee schedule adopted by the Village Council) and an accompanying application that, at a minimum, contains and adequately describes the following information:

(a) Type of use; intensity of use (i.e., dwelling units/acre for each section of a residential development; square footage of total floor area and impervious surface area per gross acre for nonresidential development); boundaries of site; location of significant topographical and other natural features affecting development of the site; and location on the site of proposed buildings, structures and other improvements, including driveways and parking areas; and

(b) Additional information necessary to properly review the application may also be requested by the Planning Board and/or the Village Council during their deliberations.

(C) Public hearing notification. Notice of the Village Council public hearing shall be given as follows:

(1) A notice shall be published in a newspaper having general circulation in the village once a week, for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the date established for the Village Council public hearing. The notice shall state the nature of the public hearings and dates, times and locations at which they are to be held.

(2) At least one notice shall be conspicuously posted on the subject property at least ten days prior to the Village Council public hearing. The notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held. In lieu of any or all of the information to be contained on this posted notice, the notice may give a phone number where interested parties may call during normal business hours to get further information on the vested rights request.

(3) A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to the applicant and to all contiguous property owners at least ten days prior to the public hearing. The notice shall state the nature of the public hearing and the date, time and location at which it is to be held.

(D) Planning Board Review and recommendation. The Planning Board shall be given an opportunity to review the application and make a recommendation to the Village Council prior to the

public hearing. The Planning Board shall have up to 60 days from the day it met to consider the matter to make the recommendation. The 60 days may be extended by the Village Council upon request of the Planning Board. If a recommendation is not made during the time period, the application shall be forwarded to the Village Council without a recommendation from the Planning Board.

(E) Village Council action.

(1) The Village Council shall conduct a public hearing on the site specific development plan. The Village Council may only render a decision after having conducted this public hearing and after having received a recommendation from the Planning Board or the 60-day Planning Board comment period has expired.

(2) The public hearing shall be held in a quasi-judicial manner. In approving an application for vested rights of a site specific development plan, the Village Council may attach fair and reasonable conditions. The conditions shall not be less restrictive than any requirements that would pertain to that particular development found in that zoning district in which the property is located. The conditions may exceed any performance criteria or minimum requirements listed elsewhere in this chapter that pertain to that development. The applicant shall have reasonable opportunity to consider and respond to any of these conditions prior to a final decision being rendered by the Village Council. The Village Council may not require the landowner to waive the vested right applied for as a condition of developmental approval.

(3) The Village Council may only approve a site specific development plan (with or without conditions attached), after having made each of the following findings in the affirmative:

(a) The use meets all required specifications of the zoning regulations;

(b) The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the site specific development plan by the Village Council shall be adequate to meet this requirement; and

(c) If the site specific development plan is vested for a period of greater than two years, this shall be based on one or more factors so described in division (F) below.

(4) The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the site plan would be contrary to one or more of these findings) shall rest entirely with the applicant.

(5) If the use or development for which the site specific development plan is submitted is a conditional use, the Village Council may approve the site specific development plan concurrently with the approval of the conditional use permit. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

(F) Effect of approval.

(1) The effect of the Village Council approving a site specific development plan shall be to vest the site plan for a period of two years from the date of approval. If the applicant requests, however, the Village Council may approve a vesting period not to exceed five years from the date of approval. The vesting of any site plan beyond a two-year period may only be authorized by the Village Council where it is found that due to:

(a) The sizing and phasing of the development;

(b) The level of investment;

(c) The need for the development;

(d) Economic cycles; and

(e) Market conditions, building permits for all phases of the development cannot reasonably be expected to be secured within two years.

(2) A vested right shall confer upon the landowner the right to undertake and complete the development and use the property under the terms and conditions of the site specific development plan as provided for in this section. Failure to abide by the terms and conditions placed upon the approval will result in the forfeiture of the vested right previously accorded.

(3) A vested right, once established as herein provided, shall preclude any zoning action by the village which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development except under the following conditions:

(a) The affected landowner provides written consent to the village of his or her desire to terminate the vested right;

(b) The village determines, after having advertised and held a public hearing, that natural or human-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the approved site specific development plan;

(c) Compensation is made by the village to the landowner for all costs, expenses and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid;

(d) The village determines, after having advertised and held a public hearing, that the applicant or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Village Council of the site specific development plan; or

(e) Upon the enactment or promulgation of a state or federal law or regulations that precludes development as contemplated in the site specific development plan. In that case the village may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

(4) Once a vested right is granted to a particular site specific development plan, nothing in this section shall preclude the village from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided the reviews and approvals are not inconsistent with the original approval.

(G) Revocation or expiration of a vested right.

(1) The vested right resulting from the approval of a site specific development plan may be revoked by the Village Council as provided for in division (F) above. In addition, a revocation may occur if the Village Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the zoning regulations.

(2) A vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(H) Revocation of building permit. A building permit issued by the county may not be revoked because of the running of time on a piece of property for which a site specific development plan has been approved and the vested right period has not otherwise expired.

(I) Amendments to the zoning chapter. The establishment of a vested right on a piece of property for a site specific development plan shall not preclude the village from establishing and putting into place one or more overlay districts which may impose additional restrictions on the property, provided the restrictions do not affect the allowable type or intensity or use. Otherwise the regulations shall become effective with respect to the subject property upon the expiration or termination of the vested right. The village may also enforce on the property any additional regulations (adopted during the time

the vested right was in effect) that are general in nature and applicable to all property subject to the regulations of this chapter.

(Ord. OR-1996-02-01, passed 2-13-1996; Ord. passed 9-11-2007; Ord. passed 2-12-2008; Ord. passed 12-9-2008)

[Excerpt from § 151.182(D)(4)(d)]

(d) Expiration of zoning permit. Any zoning permit shall become invalid unless the work authorized by the permit has substantially begun within six months from the date of issue. Once a zoning permit has expired, construction work on the lot(s) in question may not proceed until a new zoning permit is issued.

Redlines

Item #29.

[Amend § 150.009 as follows]

§ 150.009 BUILDING PERMITS ~~NOT ISSUED~~.

The Zoning Administrator of the village shall not issue any permit for the construction of any building, approval of electrical installation or other improvements requiring a permit, upon any land for which a subdivision plat is required unless and until the requirements of this chapter have been complied with and approval granted in accordance with this chapter. Building permits shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any building permit that has expired shall thereafter be performed until a new permit has been secured.

[Amend § 151.061 as follows]

§ 151.061 VESTED RIGHTS OF SITE-SPECIFIC VESTING PLANS. ~~EARLY VESTING OF DEVELOPMENT RIGHTS UPON APPROVAL OF A DEVELOPMENT PLAN.~~

Notwithstanding any other provision of this chapter or amendment thereto, a landowner may apply for a site-specific vesting ~~development~~ plan approval which shall entitle the landowner to develop property in accordance with the site-specific vesting ~~development~~ plan. The procedure for establishing a vested right is set forth in this section.

(A) Definitions. For the purpose of this section only, the following definitions shall apply. Definitions of other words are found in § 151.016.

LANDOWNER. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns and personal representatives of the owner. The LANDOWNER may allow a person holding a valid option to purchase to act as his or her agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this chapter.

PROPERTY. All real property subject to zoning regulations and restrictions of the village.

SITE-SPECIFIC VESTING ~~DEVELOPMENT~~ PLAN. A plan of land development submitted to the village for purposes of obtaining a zoning vested right for a particular development. The plan shall

describe with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

VESTED RIGHT. The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific vesting ~~development~~ plan.

(B) Submission of a site-specific vesting ~~development~~ plan.

(1) The landowner submitting a site-specific vesting ~~development~~ plan shall make known to the Village Council all current vested rights applicable to the tract of land under consideration. A site-specific vesting ~~development~~ plan may be approved by the Village Council after public hearings have been conducted individually by the Planning Board and the Village Council. To apply for a vested right, a landowner shall first submit to the Zoning Administrator a site-specific vesting ~~development~~ plan. The plan shall be submitted in completed form (i.e., contain all information as herein prescribed) at least three weeks prior to a public hearing conducted by the Planning Board.

(2) The site-specific vesting ~~development~~ plan shall be considered complete if submitted with a fee (in accordance with a fee schedule adopted by the Village Council) and an accompanying application that, at a minimum, contains and adequately describes the following information:

(a) Type of use; intensity of use (i.e., dwelling units/acre for each section of a residential development; square footage of total floor area and impervious surface area per gross acre for nonresidential development); boundaries of site; location of significant topographical and other natural features affecting development of the site; and location on the site of proposed buildings, structures and other improvements, including driveways and parking areas; and

(b) Additional information necessary to properly review the application may also be requested by the Planning Board and/or the Village Council during their deliberations.

(C) Public hearing notification. Notice of the Village Council public hearing shall be given as follows:

(1) A notice shall be published in a newspaper having general circulation in the village once a week, for two successive weeks, the first notice to be published not less than ten days nor more than 25 days prior to the date established for the Village Council public hearing. The notice shall state the nature of the public hearings and dates, times and locations at which they are to be held.

(2) At least one notice shall be conspicuously posted on the subject property at least ten days prior to the Village Council public hearing. The notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held. In lieu of any or all of the information to be contained on this posted notice, the notice may give a phone number where interested parties may call during normal business hours to get further information on the vested rights request.

(3) A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to the applicant and to all contiguous property owners at least ten days prior to the public hearing. The notice shall state the nature of the public hearing and the date, time and location at which it is to be held.

(D) Planning Board Review and recommendation. The Planning Board shall be given an opportunity to review the application and make a recommendation to the Village Council prior to the public hearing. The Planning Board shall have up to 60 days from the day it met to consider the matter to make the recommendation. The 60 days may be extended by the Village Council upon request of the Planning Board. If a recommendation is not made during the time period, the application shall be forwarded to the Village Council without a recommendation from the Planning Board.

(E) Village Council action.

(1) The Village Council shall conduct a public hearing on the site-specific vesting ~~development~~ plan. The Village Council may only render a decision after having conducted this public hearing and

after having received a recommendation from the Planning Board or the 60-day Planning Board comment period has expired.

(2) The public hearing shall be held in a legislative ~~quasi-judicial~~ manner pursuant to G.S. 160D-1001. The Village of Marvin must be a party to development agreements, while a water and/or sewer authority may enter an agreement as a party, but not independently pursuant to G.S. 160E-1001(b). In approving an application for vested rights of a site-specific vesting ~~development~~ plan, the Village Council may attach fair and reasonable conditions. The conditions shall not be less restrictive than any requirements that would pertain to that particular development found in that zoning district in which the property is located. The conditions may exceed any performance criteria or minimum requirements listed elsewhere in this chapter that pertain to that development. The applicant shall have reasonable opportunity to consider and respond to any of these conditions prior to a final decision being rendered by the Village Council. The Village Council may not require the landowner to waive the vested right applied for as a condition of developmental approval.

(3) The Village Council may only approve a site specific development plan (with or without conditions attached), after having made each of the following findings in the affirmative:

(a) The use meets all required specifications of the zoning regulations;

(b) The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the site-specific vesting ~~development~~ plan by the Village Council shall be adequate to meet this requirement; and

(c) If the site-specific vesting ~~development~~ plan is vested for a period of greater than two years, this shall be based on one or more factors so described in division (F) below.

(4) The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the site plan would be contrary to one or more of these findings) shall rest entirely with the applicant.

(5) If the use or development for which the site-specific vesting ~~development~~ plan is submitted is a conditional use, the Village Council may approve the site-specific vesting ~~development~~ plan concurrently with the approval of the conditional use permit. In no case, however, may a site-specific vesting ~~development~~ plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

(F) Effect of approval.

(1) The effect of the Village Council approving a site-specific vesting ~~development~~ plan shall be to vest the site plan for a period of two years from the date of approval. If the applicant requests, however, the Village Council may approve a vesting period not to exceed five years from the date of approval. The vesting of any site plan beyond a two-year period may only be authorized by the Village Council where it is found that due to:

(a) The sizing and phasing of the development;

(b) The level of investment;

(c) The need for the development;

(d) Economic cycles; and

(e) Market conditions, building permits for all phases of the development cannot reasonably be expected to be secured within two years.

(2) A vested right shall confer upon the landowner the right to undertake and complete the development and use the property under the terms and conditions of the site-specific vesting ~~development~~ plan as provided for in this section. Failure to abide by the terms and conditions placed upon the approval will result in the forfeiture of the vested right previously accorded.

(3) A vested right, once established as herein provided, shall preclude any zoning action by the village which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development except under the following conditions:

(a) The affected landowner provides written consent to the village of his or her desire to terminate the vested right;

(b) The village determines, after having advertised and held a public hearing, that natural or human-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the approved site-specific vesting ~~development~~ plan;

(c) Compensation is made by the village to the landowner for all costs, expenses and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid;

(d) The village determines, after having advertised and held a public hearing, that the applicant or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Village Council of the site-specific vesting ~~development~~ plan; or

(e) Upon the enactment or promulgation of a state or federal law or regulations that precludes development as contemplated in the site-specific vesting ~~development~~ plan. In that case the village may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

(4) Once a vested right is granted to a particular site-specific vesting ~~development~~ plan, nothing in this section shall preclude the village from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided the reviews and approvals are not inconsistent with the original approval.

(G) Revocation or expiration of a vested right.

(1) The vested right resulting from the approval of a site-specific vesting ~~development~~ plan may be revoked by the Village Council as provided for in division (F) above. In addition, a revocation may occur if the Village Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the zoning regulations.

(2) A vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(H) Revocation of building permit. A building permit issued by the county may not be revoked because of the running of time on a piece of property for which a site-specific vesting ~~development~~ plan has been approved and the vested right period has not otherwise expired.

(I) Amendments to the zoning chapter. The establishment of a vested right on a piece of property for a site-specific vesting ~~development~~ plan shall not preclude the village from establishing and putting into place one or more overlay districts which may impose additional restrictions on the property, provided the restrictions do not affect the allowable type or intensity or use. Otherwise the regulations shall become effective with respect to the subject property upon the expiration or termination of the vested right. The village may also enforce on the property any additional regulations (adopted during the time the vested right was in effect) that are general in nature and applicable to all property subject to the regulations of this chapter.

[Add § 151.061.1 as follows]

§ 151.061.1 PERMIT CHOICE AND VESTED RIGHTS.

(A) Permit Choice. If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(B) Vested Rights. Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

(4) A multi-phased development pursuant to subsection (E) of this section.

(5) A vested right established by the terms of a development agreement.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by the Village of Marvin that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating the Village of Marvin enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(C) Duration of Vesting. Upon issuance of a development permit, the statutory vesting granted by subsection (B) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, Village of Marvin permits expire one year after issuance unless work authorized by the permit has substantially commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the Village of Marvin or by the Village of Marvin as a court directive.

Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any Board of Adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(D) Multiple Permits for Development Project. Subject to subsection (C) of this section, where multiple Village of Marvin development permits are required to complete a development project, the development permit applicant may choose the version of each of the Village of Marvin land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For

purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(E) Multi-Phased Development. A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(F) Continuing Review. Following issuance of a development permit, the Village of Marvin may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.

(G) Process to Claim Vested Right. A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Zoning Administrator, who shall make an initial determination as to the existence of the vested right. The decision of the Zoning Administrator may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(H) Miscellaneous Provisions. The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(I) Definitions. As used in this section, the following definitions apply:

(1) Development. As defined in G.S. 143-755(e)(1).

(2) Development permit. As defined in G.S. 143-755(e)(2).

(3) Land development regulation. As defined in G.S. 143-755(e)(3).

(4) Multi-phased development. A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 5(a), 50(b), 51(a), (b), (d).)

[Amend § 151.182(D)(4)(d) as follows]

(d) Expiration of zoning permit. Unless otherwise specified in this Chapter, Village of Marvin permits expire one year after issuance unless work authorized by the permit has substantially commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the Village of Marvin or by the applicable governmental agency as a court directive.

~~Any zoning permit shall become invalid unless the work authorized by the permit has substantially begun within six months from the date of issue.~~ Once a zoning permit has expired, construction work on the lot(s) in question may not proceed until a new zoning permit is issued.

Reasons

§ 160D-102(19) and §160D-1001 require local governments to process development agreements as a legislative decision.

§ 160D-108(d) requires local governments recognize that building permits are valid for six months, as under prior law. (G.S. 160D-1111)

§ 160D-108 requires local governments to identify site-specific vesting plans (formerly site-specific development plans) with vesting for two to five years, as under prior law, except for specified exceptions. Marvin's ordinance already identified plans with vesting for two to five years, but the terminology "site specific development plan" was revised throughout to "site-specific vesting plan" to align with the new terminology in §160D-108.

§ 160D-108(d) requires local governments to recognize the default rule that development approvals/permits are valid for twelve months unless altered by a statute or extended by local rule adjusted by statute or local rule.

§ 160D-108(c)(d)(4); -108(f) requires local governments to recognize multi-phase developments, i.e., long-term projects of at least 25 acres, with vesting up to seven years, except for specified exceptions.

§ 160D-108(b) requires local governments to adopt provisions for permit choice [if a development regulation is amended between the time a development permit was submitted and a development permit decision is made or if a land development regulation is amended after a development decision has been challenged and found to be wrongfully denied or illegal. (G.S. 143.755)

§ 160D-1001 require local governments as a party to development agreements.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment for Adding Marvin Gardens to the List of Existing Individual Conditional Districts

DATE: June 17, 2021

Section
§151.092

Current
The following Individual Conditional Districts are established:
(A) ICD - Courtyards at Marvin; and
(B) ICD - Amber Meadow.

Redlines
The following Individual Conditional Districts are established:
(A) ICD - Courtyards at Marvin,~~; and~~
(B) ICD - Amber Meadow; and
(C) ICD - Marvin Gardens.

New Text
The following Individual Conditional Districts are established:
(A) ICD - Courtyards at Marvin,
(B) ICD - Amber Meadow; and
(C) ICD - Marvin Gardens.

Reason
Marvin Gardens was approved as an Individual Conditional District in 2016

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment to correct a typographical error in §150.103 LAND DEVELOPMENT PERMITS.

DATE: June 17, 2021

Section
§150.103

Current
(B) On approved copy shall be returned to the applicant. The second copy shall be retained by the Village Administrator.

Redlines
(B) One approved copy shall be returned to the applicant. The second copy shall be retained by the Village Administrator.

New Text
(B) One approved copy shall be returned to the applicant. The second copy shall be retained by the Village Administrator.

Reason
Typographical Error

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment to correct a typographical error in §151.054 ACCESSORY USES AND STRUCTURES.

DATE: June 17, 2021

Section
§151.054

Current
(E) Swimming pools. A swimming pool shall be considered an accessory use.
(1) Swimming pools shall be locate in the rear yard and shall have the following setbacks:

Redlines
(E) Swimming pools. A swimming pool shall be considered an accessory use.
(1) Swimming pools shall be located in the rear yard and shall have the following setbacks:

New Text
(E) Swimming pools. A swimming pool shall be considered an accessory use.
(1) Swimming pools shall be located in the rear yard and shall have the following setbacks:

Reason
Typographical Error

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment to correct the title of §151.152 to read "SUBDIVISION ENTRYWAY SIGNAGE, MONUMENTS AND APPURTENANCES."

DATE: June 17, 2021

Section
§151.152

Current
§ 151.152 SIGNS PERMITTED IN CC COMMERCIAL DISTRICT AND MX MIXED-USE DISTRICT.

Redlines
§ 151.152 ~~SIGNS PERMITTED IN CC COMMERCIAL DISTRICT AND MX MIXED-USE DISTRICT.~~ SUBDIVISION ENTRYWAY SIGNAGE, MONUMENTS AND APPURTENANCES.

New Text
§ 151.152 SUBDIVISION ENTRYWAY SIGNAGE, MONUMENTS AND APPURTENANCES.

Reason
Title was recorded incorrectly.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment to cause the guidance in the Roadway Median Landscaping section to instead be regulation.

DATE: June 17, 2021

Section
§151.046(H)(2)

Current
(2) *Roadway median landscaping.*
(a) The following information is to be used as general guidelines for designing parkway medians. It is intended for use as a resource to develop median designs. Several recommendations are subjective in nature and may require modification to fit median openings, width or stopping site distances. It is important that significant deviations from the guide be based on operational experience and objective engineering analysis. These guidelines do not pertain to the design of bioswales.
(b) Landscape elements within a median should include shade trees, ornamental trees, shrubs, low-growing evergreens, perennials, grasses and groundcovers. Species shall be heat and drought tolerant.

Redlines
(2) *Roadway median landscaping.*
(a) The following information is to be used as general ~~guidelines~~regulation for designing parkway medians. ~~It is intended for use as a resource to develop median designs.~~ Several ~~recommendations~~regulations are ~~subjective~~generic in nature and may require modification to fit median openings, width or stopping site distances. It is important that significant deviations from ~~the guide~~this section be based on operational experience and objective engineering analysis. These ~~guidelines~~regulations do not pertain to the design of bioswales.
(b) Landscape elements within a median ~~should~~shall include shade trees, ornamental trees, shrubs, low-growing evergreens, perennials, grasses and groundcovers. Species shall be heat and drought tolerant.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

New Text

(2) Roadway median landscaping.

(a) The following information is to be used as general regulation for designing parkway medians. Several regulations are generic in nature and may require modification to fit median openings, width or stopping site distances. It is important that significant deviations from this section be based on operational experience and objective engineering analysis. These regulations do not pertain to the design of bioswales.

(b) Landscape elements within a median shall include shade trees, ornamental trees, shrubs, low-growing evergreens, perennials, grasses and groundcovers. Species shall be heat and drought tolerant.

Reason

Manager pointed out that no ordinances should be guidelines, and should be regulations.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

TO: Mayor and Village Council

FROM: Rohit Ammanamanchi, Village Planning & Zoning Administrator

SUBJECT: Discussion and Consideration of Text Amendment to clarify dwelling allowances in §151.049(A) ONE PRINCIPAL BUILDING and 151.054(F) ACCESSORY USES AND STRUCTURES.

DATE: June 17, 2021

Section
§151.049 and §151.054

Current

§151.049

(A) In any single-family residential district, one single-family dwelling or one mobile home and accessory structure(s) shall be permitted on a single lot (except as permitted under § 151.052(A)) which meets at least the minimum requirements of this chapter.

§151.054

(F) *Accessory use dwellings.* Accessory use dwellings shall be subject to the issuance of a conditional use permit by the Village Council and shall be in accordance with the following criteria.

Redlined

§151.049

(A) In any single-family residential district, one ~~single-family~~ dwelling or one mobile home and accessory structure(s) shall be permitted on a single lot (except as permitted under § 151.052(A)) which meets at least the minimum requirements of this chapter. One Accessory Dwelling Unit attached to the principal dwelling unit is allowed per §151.054(F), but detached dwelling units are not allowed.

VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

§151.054

(F) *Accessory ~~use~~ dwelling~~s~~ unit.* Accessory ~~use~~ dwelling~~s~~ units shall be subject to the issuance of a conditional use permit by the Village Council and shall be in accordance with the following criteria.

New Text

§151.049

(A) In any single-family residential district, one dwelling or one mobile home and accessory structure(s) shall be permitted on a single lot (except as permitted under § 151.052(A)) which meets at least the minimum requirements of this chapter. One Accessory Dwelling Unit attached to the principal dwelling unit is allowed per §151.054(F), but detached dwelling units are not allowed.

§151.054

(F) *Accessory dwelling unit.* Accessory dwelling units shall be subject to the issuance of a conditional use permit by the Village Council and shall be in accordance with the following criteria.

Reason

Application of the 160D-required definitions of Dwelling and Dwelling Unit must match the intent of the Planning Board and Village Council, which is to continue allowing one primary dwelling unit, and one attached dwelling unit by Conditional Use Permit but not allow detached dwelling units.

NOTE: Instances of "CUP" and "Conditional Use Permit" in §151.054 shall be considered for amendment to "SUP" and "Special Use Permit" in a different Text Amendment, as required by 160D.