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ARTICLE 2. ADMINISTRATION

2.1 PURPOSE

The purpose of this Article is to set forth the powers and duties of the Development Ordinance Administrator, Technical Review Committee, Planning Board, Board of Adjustment, and Town Council as they relate to this Ordinance and its enforcement.

2.2 ADMINISTRATOR

- A. The Town Council shall appoint an administrative official or officials to enforce and administer this Ordinance and to serve as staff to the Planning Board and Board of Adjustment as requested.
- B. It shall be the duty of the Ordinance Administrator to interpret and enforce this Ordinance under the general supervision of the Town Council.
- C. The Administrator may provide written interpretations, and may issue such permits, orders and take such other enforcement actions as may be set forth in this Ordinance.
- D. Routine Zoning Permits may be issued by such other persons as appointed by the Town Council in the absence of the Administrator, provided that no investigative action is required to interpret the provisions of this Ordinance.
- E. The Administrator may be referred in this Ordinance as "Planning Director", "Zoning Administrator", "Subdivision Administrator", "Development Ordinance Administrator", or "Ordinance Administrator".
- F. The Administrator shall maintain a record of all Zoning Permits, development approvals, Certificates of Compliance, and amendments on file in the Town Hall, and copies shall be made available on request to interested parties.
- G. In accordance with NCGS 160D-109 (c), the Administrator shall not make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the Administrator or if the applicant or other person subject to that decision is a person with whom the Administrator has close family, business, or associated relationship.

2.3 TECHNICAL REVIEW COMMITTEE (TRC)

A. The Technical Review Committee (TRC) is hereby established in order to assist the Administrator with the review of site development plans, other than single-family and two-family residential development. The TRC shall consist of the following representatives or their designees, as applicable:

1. Administrator
2. Contract Town Engineer
3. Union County Public Works representative
4. Union County Fire Marshal representative
5. Union County Emergency Management representative
6. Mineral Springs Volunteer Fire Department representative
7. Union County Building Code Enforcement representative
8. Union County Health Department representative
9. North Carolina Department of Transportation representative
10. Other local, state, or federal agencies that have an interest in the proposed development

B. The TRC shall meet or confer on an as needed basis as determined by the Administrator.

2.4 PLANNING BOARD

2.4.1 ESTABLISHMENT AND COMPOSITION

- A. A Planning Board for the Town is hereby created under the authority of NCGS 160D-301. The Planning Board shall consist of seven (7) regular members. At the discretion of the Town Council, the same members of the Planning Board may serve as the Board of Adjustment.
- B. Planning Board members shall be residents of the Town and shall be appointed for three (3) year staggered terms. Upon expiration of a member's term of office, that member is may be reappointed by the Town Council and may continue to serve until a new member is appointed.
- C. Vacancies occurring on the Planning Board shall be filled by the Town Council for the remaining portion of an unexpired term.
- D. The Town Council may remove members for cause upon written charges.

2.4.2 RULES OF PROCEDURE

- A. The Planning Board shall prescribe rules and regulations and by-laws for the conduct of its meetings and other proceedings.
- B. Regular meetings of the Planning Board shall be held at such times and places as the Planning Board shall determine, and special meetings of the Board shall be held upon call of the chairman at such time and place as he may designate, reasonable notice of such meeting being given to each member and to the public.
- C. Any member of the Planning Board who misses more than three (3) consecutive regular meetings or more than half of the regular meetings in a calendar year may lose his or her status as a member of the Planning Board as decided by the Town Council and replaced by the Town Council. Absences due to sickness, death, or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the Board; except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

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- D. The Planning Board shall select from its membership a chairman and vice chairman to serve for a period of one (1) year, or until their successors are elected. Elections shall take place each year at the first meeting held after July 1.
- E. All meetings of the Planning Board shall be open to the public. The Planning Board shall keep a full record of its proceedings and minutes of its meetings showing the business transacted at each meeting, and shall submit copies thereof to the Town Clerk. Regular updates on the actions of the Planning Board shall be provided to the Town Council.
- F. In accordance with NCGS 160D-109(b), members of the Planning Board shall not vote on an advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member. Members of the Planning Board 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 who the member has a close familial, business or associational relationship. 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.

2.4.3 POWERS AND DUTIES

- A. The Planning Board shall serve in an advisory capacity to the Town Council, providing recommendations to the Town Council pertaining to Zoning Map or Text Amendments and Major Subdivision Preliminary Plats.
- B. The Town Council may request the Planning Board to advise them on other matters as designated in NCGS 160D-301 including:
 - 1. To prepare, review, maintain, monitor, and periodically update and recommend to the Town Council a comprehensive plan, and such other plans deemed appropriate, and conduct ongoing related research, data collection, mapping and analysis.
 - 2. To facilitate and coordinate citizen engagement and participation in the planning process.
 - 3. To develop and recommend to the Town Council policies, ordinances, development regulations, administrative procedures and other means for carrying out plans in a coordinated and efficient manner; and

4. To advise the Town Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by NCGS 160D-604.
5. 5. To exercise any functions in the administration and enforcement of various means for carrying out plans that the Town Council may direct.
6. To perform any other related duties that the Town Council may direct.

2.5 BOARD OF ADJUSTMENT

2.5.1 ESTABLISHMENT AND COMPOSITION

- A. A Board of Adjustment is hereby created as provided in NCGS 160D-3-2. The Board of Adjustment shall consist of five (5) members and two (2) alternate members to serve in the absence of regular members. At the discretion of the Town Council, the same members of the Planning Board may serve as the Board of Adjustment.
- B. Appointments to the Board of Adjustment made by the Town Council and shall be residents of the Town. 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 such regular members.
- C. Board of Adjustment members shall be appointed for three (3) year terms. Terms shall be staggered so as to allow the appointment of new members each year. Upon expiration of a member's term of office, that member is expected to continue service until a replacement is appointed by the Town Council.
- D. Vacancies occurring on the Board of Adjustment shall be filled by the Town Council for the remaining portion of an unexpired term.

2.5.2 RULES OF PROCEDURE

- A. The Board of Adjustment shall prescribe rules and regulations and by-laws for the conduct of its meetings and other proceedings.
- B. Regular meetings of the Board of Adjustment shall be held at such times and places as the Board of Adjustment shall determine, and special meetings of the Board shall be held upon call of the chairman at such time and place as he may designate, reasonable notice of such meeting being given to each member and to the public.
- C. Any member of the Board of Adjustment who misses more than three (3) consecutive regular meetings or more than half of the regular meetings in a calendar year may lose his or her status as a member of the Board of Adjustment and shall be replaced or by the Town Council. Absences due to sickness, death other emergencies of like nature shall be recognized as

approved absences and shall not affect the member's status on the Board; except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

- D. The Board of Adjustment shall select from its membership a chairman and vice chairman to serve for a period of one (1) year, or until their successors are elected. Elections shall take place each year at the first meeting held after July 1.
- E. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact. The final disposition of appeals, variances and special uses shall be made by recorded resolution indicating the reasons of the Board therefor and all pertinent findings of fact, all of which shall be a public record.
- F. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of a majority of the total members of the Board. Four-fifths (4/5) of the Board 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 shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates to take the place of such members.
- G. In accordance with NCGS 160D-109(d). Members of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional right 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 communication, 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.

2.5.3 POWERS AND DUTIES

The Board of Adjustment shall have the following powers and duties pursuant to NCGS 160D-302:

- A. To hear and decide requests for Special Use Permits, acting in the capacity as a Board of Adjustment in accordance with Section [3.4](#) and pursuant to NCGS 160D-406;
- B. To authorize, in specific cases, Variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, in accordance with Section [3.5](#);
- C. To hear and decide Appeals from any order, requirement, decision or determination made by an administrative official charged with the enforcement of this Ordinance, in accordance with Section [3.6](#);
- D. To hear and decide requests for Certificates of Nonconformity Adjustment as set forth in Section [3.7](#);
- E. To perform the powers and duties as set forth in the Flood Damage Prevention regulations as set forth in Section [5.3.3](#); and
- F. The Board of Adjustment 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, persons with standing under NCGS 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 appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment 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.

2.6 TOWN COUNCIL

- A. The Town Council shall hold the following powers and duties related to this Ordinance:
1. To review, hold public hearings and make decisions for Map Amendments in accordance with Section [3.9](#);
 2. To review, hold public hearings and make decisions for Text Amendments in accordance with Section [3.10](#);
 3. To review and approve Major Subdivision Preliminary Plats in accordance with Section [3.3](#);
 4. To hear and decide request for Alternative Design Proposals, acting in the capacity as a Board of Adjustment in accordance with Section [3.8](#) and pursuant to NCGS 160D-406;
 5. To enter into development agreements in accordance with Section [3.11](#) and pursuant to Chapter 160D, Article 10; and
 6. To make decisions on all issues related to the Development Ordinance, Zoning Map, Comprehensive Plan and other land use plans which may be adopted from time to time.
- B. The duties of the Town Council in connection with this Ordinance shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as prescribed in this Ordinance.
- C. In accordance with NCGS 160D-109 (a), a Town Council member shall not vote on any legislative decision regarding a development regulation adopted 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 Town 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.

2.7 ENFORCEMENT

2.7.1 VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Section and by State law, specifically NCGS 160A-175, 160D-404, and NCGS 14-4:

2.7.1.1 DEVELOPMENT OR USE WITHOUT PERMIT

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificates, or other forms of authorization as set forth in this Ordinance.

2.7.1.2 DEVELOPMENT OR USE INCONSISTENT WITH DEVELOPMENT APPROVAL

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form or authorization granted for such activity.

2.7.1.3 VIOLATION BY ACT OR OMISSION

To violate, by act or omission, any term, deviation, modification, condition, or qualification placed by the Town Council or its agent Boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

2.7.1.4 USE OR STRUCTURE IN VIOLATION

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building, structure, or sign or to use any land in violation or contravention of this Ordinance or any other regulation made under the authority conferred thereby.

2.7.1.5 CONTINUING A VIOLATION

Each day's continuance of any of the above violations is a separate and distinct offense. 2.7.2 enforcement procedures

2.7.2 ENFORCEMENT PROCEDURES

2.7.2.1 INSPECTION AND INVESTIGATION

A. When a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written or verbal complaint. Such complaint shall state fully the cause and basis thereof

and shall be filed with the Administrator or designee. An investigation shall be made within 10 days. Actions as provided in these regulations shall be taken.

- B. The Administrator or designee shall be authorized upon presentation of proper credentials and the consent of the property owner or an inspection warrant, if necessary, to enter any premises (not open to the public) within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.
- C. The Administrator shall have the power to conduct such investigations, as he or she may reasonably deem necessary to carry out his or her duties as prescribed in this Ordinance and, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.
- D. The Administrator shall have the power to require written statements; certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

2.7.2.2 NOTICE OF VIOLATION

- A. Violators include any person who owns, leases, occupies, manages, designs or builds any structure or land development activity in violation of this Ordinance and any person who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator. However, the property owner is ultimately responsible for violations on his or her property.
- B. Subject to NCGS 160D-404 (a), the Administrator or designee shall give the property owner written notice (by certified mail to his or her last known address, by personal service, or by posting notice conspicuously on the property) of the following:
 1. That the land, building, structure, sign, or use is in violation of this Ordinance;
 2. The nature of the violation and citation of the Section(s) of the Ordinance being violated;
 3. The general measures necessary to remedy the violation;
 4. Notice of right to appeal; and

5. The time period in which the violation needs to be corrected before civil penalties are incurred, in accordance with Section [2.7.3](#). If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.

2.7.2.3 APPEAL

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Administrator to the Board of Adjustment within 30 days following the date of the Notice of Violation. The Board of Adjustment shall hear an appeal subject to the provisions set forth in NCGS 160D-405 and Section [3.6](#) of this Ordinance. The Board of Adjustment may affirm, modify or revoke the Notice of Violation. In the absence of an appeal, the decision of the Administrator shall be final. Citations that follow the original Notice of Violation may not be appealed.

2.7.2.4 FAILURE TO COMPLY WITH NOTICE

If the owner or occupant of a property fails to comply with a Notice of Violation within 10 days and no appeal has been made, the owner or occupant shall be subject to the remedies and penalties as set forth in Section [2.7.3](#) or to such remedies and penalties as may be provided by the State law.

2.7.3 REMEDIES & PENALTIES

- A. Subject to NCGS 160A-175, 160D-106, 160D-404, and NCGS 14-4, any person, firm or corporation violating any provision of this Ordinance shall be subject to a civil penalty of fifty dollars (\$50.00) per day for each calendar day that the violation exists. Violations of this Ordinance shall not constitute a misdemeanor or infraction. Proceeds from civil penalties collected under this Ordinance shall go into the Town's general fund.
- B. The Town may file a civil action to recover said penalty, if the offender does not pay said penalty within five (5) days after the offender has been cited for violation of the Ordinance.
- C. The Town may also seek any appropriate equitable relief issuing from a court of competent jurisdiction that it deems necessary to ensure compliance with the provisions of this Ordinance. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

- D. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance or other regulation made under authority conferred thereby, the Town in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land or to prevent any illegal act, conduct, business or use in or about the premises. Such action may include the issuance of a stop-work order, subject to NCGS 160D-404 (b).
- E. The Town may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- F. For development or use of a property inconsistent with the development approval, the Town may revoke the development approval in the same manner in which the approval was given, subject to NCGS 160D-403 (f).
- G. The above remedies are cumulative, and the Town may pursue any or all of the same as its direction. Each calendar day that the violation exists shall constitute a separate offense.