

ARTICLE 7. ADMINISTRATIVE PROVISIONS

ARTICLE 7. DIVISION 1. GENERALLY APPLICABLE PROCEDURES

Section 18-565: General procedures

A. Procedural requirements

The requirements and procedures identified in this division are common to many of the processes prescribed in this chapter and apply to various applications submitted for development and land use-related purposes. This article also includes various appeals procedures. Applications are typically processed in accordance with the following steps, shown in Figure 18-565: Overview of procedural requirements.

B. Administrative manual

The city manager may compile the requirements for application contents, forms, fees, submission materials, and review schedule in an administrative manual, which shall be made available to the public.

C. Specific application procedural steps

Common procedural steps that apply to specific types of land development applications, from pre-submission to city action, are summarized in Table 18-565: Summary of review authority.

1. Posted notice is to be provided between 10 and 25 calendar days before the hearing.
2. Unless otherwise stated, mailed notice shall be provided between 10 and 25 calendar days before the hearing to the applicant, the owner(s) of the subject property, and all property owners adjacent to the subject property.
3. Unless otherwise stated, published notices shall be advertised at least three days, but not more than 10 days preceding the meeting.

Figure 18-565: Overview of procedural requirements

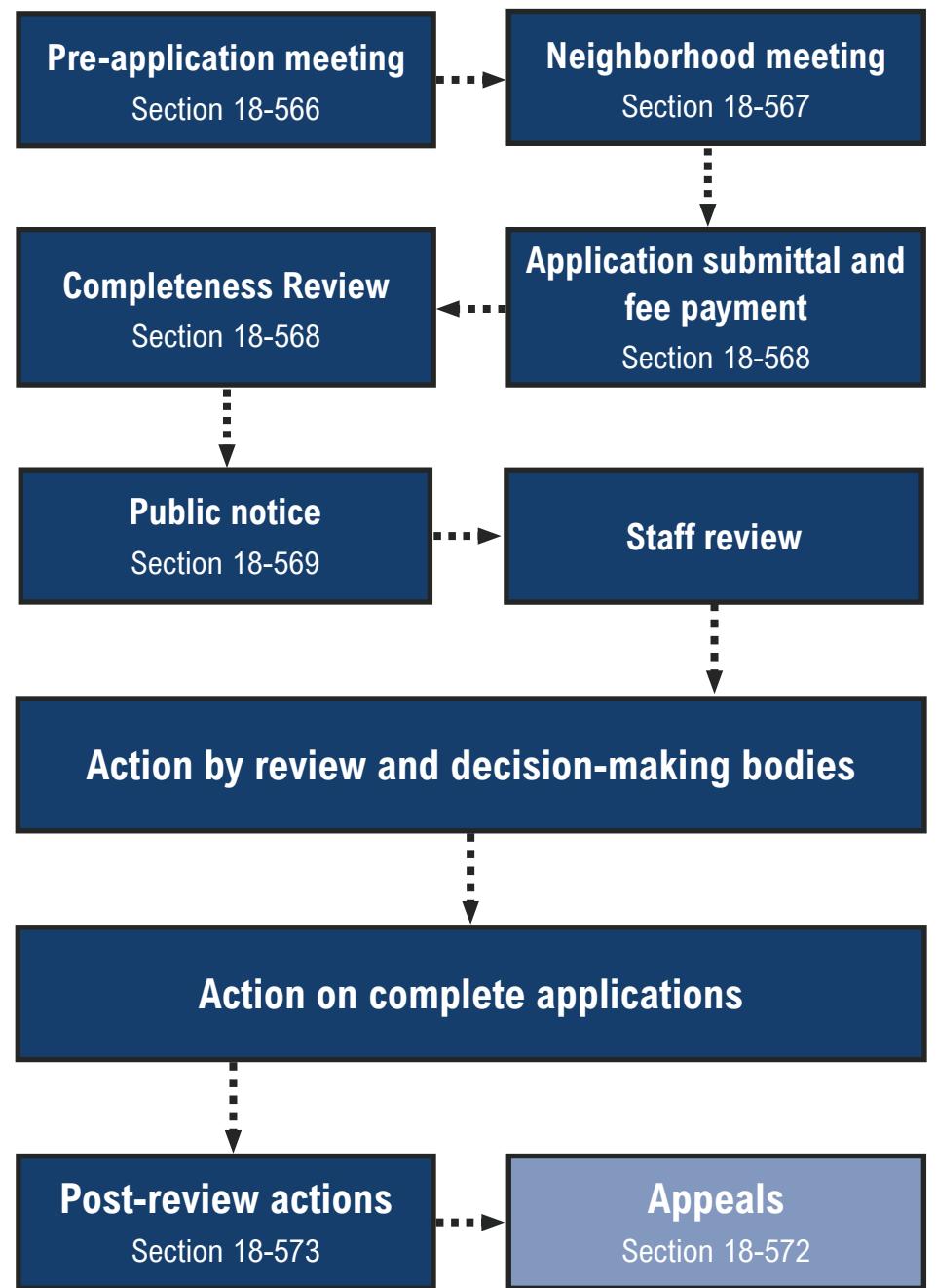


Table 18-565 Summary of review authority

Key: R = Review, RR = Review & recommendation, D = Final decision, A = Appeal,

LH = Legislative hearing, EH = Evidentiary hearing, Y = Required

Administration			Review bodies					
Approval process	Section reference	City official	Planning Commission	Board of Adjustment	Historic Preservation Commission	Technical Review Committee	Design Adjustment Committee	City Council
Land development code amendment	18-587	RR	RR					D-LH
Zoning map amendment - general	18-585	RR	RR					D-LH
Zoning map amendment - conditional	18-586	RR	RR			R		D-LH
Special use permit	18-589	R						D-LH
Variance	18-591	R		D-EH				
Site plan	18-588	R		A-EH		D		
Design adjustment (major)	18-603	R		A-EH		R	D-EH	
Design adjustment (minor)	18-603	D		A-EH				
Preliminary subdivision plan	18-593	R				D	A-EH	
Subdivision waiver or design adjustment	18-603	R		A-EH		R	D-EH	
Appeal of administrative determination	18-602	R		D-EH				
Certification of appropriateness	18-597	R						
Minor works (administrative bypass)		D			A-EH			
Major works		R		A-EH	D-EH			
Removal of height restriction in CBD	18-597	R						
Inside CBD-HDO		R			D-LH			
Outside CBD-HDO		R	RR-LH		RR-EH			D-LH
Vested rights	18-637	R						D-LH
Minor modification (CD, SUP, COA, etc.)	18-589	D						

Table 18-565 Summary of review authority

R = Review, RR = Review & Recommendation, D = Final Decision, A = Appeal,
 PH = Public Hearing, QH = Quasi-judicial hearing, Y = Required

		Public notice			
Approval process	Section reference	Neighborhood meeting	Sign posted ¹	Mailed notice ²	Published notice ³
Land development code amendment	18-587				Y ⁴
Zoning map amendment - general	18-585		Y	Y ⁵	Y ⁴
Zoning map amendment - conditional	18-586	Y	Y	Y ⁵	Y ⁴
Special use permit	18-589	Y	Y	Y ⁵	Y ⁴
Variance	18-591		Y	Y	Y
Site plan	18-588				
Design adjustment (major)	18-603		Y	Y	Y
Design adjustment (minor)	18-603				
Preliminary subdivision plan	18-593				
Subdivision waiver or design adjustment	18-603				
Appeal of administrative determination	18-602		Y	Y	Y
Certification of appropriateness	18-597				
Minor works (administrative bypass)					
Major works			Y	Y	Y
Removal of height restriction in CBD	18-597				
Inside CBD-HDO					
Outside CBD-HDO					
Vested rights	18-637		Y	Y	Y
Minor modification (CD, SUP, COA, etc.)	18-589				

4. Published notice for hearings with city council shall be advertised once a week for two successive weeks, with the first notice between 10 and 25 days before the hearing.
5. Mailed notice for zoning map amendments and special use permits shall be provided between 10 and 25 calendar days before the hearing to the applicant, the owner(s) of the subject property, and all property owners within a 300-foot buffer extending along the entire boundary of the subject property.

Section 18-566: Pre-application meeting

A. Purpose

The purpose of a pre-application meeting is to provide an opportunity for an applicant and the city to discuss the development concept prior to application submission for a project to:

1. Determine the required application(s) and, if necessary, the timing of multiple application submittals to determine if they may be processed concurrently or sequentially;
2. Provide the applicant with application materials and inform the applicant of submittal requirements;
3. Provide the applicant with an estimated time frame for the review process;
4. Discuss general compliance with the requirements of this chapter;
5. Discuss the need for neighborhood meetings and public notice requirements; and
6. Refer the applicant to other agencies to discuss potential significant issues prior to application submittal.

B. Applicability

1. Pre-application meeting recommended
A pre-application meeting is recommended prior to submitting most development applications. A pre-application meeting is designed to help the applicant understand the development approval process.
2. Pre-application meeting required
Prior to the submittal of an application for any of the following application types, a pre-application meeting shall be required:
 - a. Zoning map amendments;
 - b. Land development code text amendments;
 - c. Special use permits;
 - d. Site plans;
 - e. Certificates of appropriateness (major works);
 - f. Subdivisions;
 - g. Street closure;
 - h. Variance; and
 - i. Developments within the 100-year floodplain.

C. Record and effect

1. The city shall not be responsible for making or keeping a summary of the general topics discussed at a pre-application meeting. If a submittal waiver is approved, the city shall provide the applicant with a list of the specific submission items that were waived or otherwise modified.
2. A pre-application meeting is advisory only and does not constitute or effect approval of any aspect or item of an application.

Section 18-567: Neighborhood meetings

A. Purpose

The purposes of a neighborhood meeting are to:

1. Inform neighboring property owners of details of a proposed development;
2. Identify how the developer intends to meet the standards of this chapter; and
3. Allow an applicant to receive preliminary public comment on a proposal.

B. Applicability

1. Special use permits and zoning map amendments

Before an application will be accepted as complete for a special use permit or a zoning map amendment to a conditional zoning district, the applicant shall conduct a neighborhood meeting.

2. City manager

Where not otherwise required, the city manager shall request a neighborhood meeting where it appears that the potential uses, size, scale, traffic impacts, or operating impacts of the proposed activity or development may materially affect the residents in the surrounding area.

C. Notice

If a neighborhood meeting is held by an applicant, it shall be held at the applicant's expense and comply with the following procedures:

1. Time and place

A neighborhood meeting shall be held at a place that is convenient and generally accessible to neighbors that reside in proximity to the land subject to the application. The meeting shall be held at a time and day when the maximum number of neighbors may attend.

2. Notification

- a. An applicant shall provide notification of the neighborhood meeting a minimum of 10 days, but not more than 25 days, in advance of the meeting, by mail, to all owners within 300 feet of the tract subject to the application.
- b. The notification shall state the time and place of the meeting, include a vicinity map and short description of the project, a proposed site plan for the proposed project, and state the purpose of the meeting.
- c. At least one sign shall be placed by the applicant, at least 10 days in advance of the meeting, so that it may be seen from an abutting street. If the property has two streets frontages, a sign shall be posted on both frontages. The sign shall state the time, place, and purpose of the meeting.

3. Information provided

The applicant shall provide the following information to those attending the meeting:

- a. The purpose of the neighborhood meeting;
- b. A description of the proposed development;
- c. The development review procedure(s) the application would follow;
- d. The potential for changes in the development proposal as it proceeds through the review process;
- e. Sources of further information about the development review process; and
- f. Any additional information that would promote understanding of the development proposal.

4. Conduct of meetings

At the neighborhood meeting, an applicant shall explain the development proposal and application, answer any questions, and respond to concerns neighbors have about the application and proposed ways to resolve conflicts.

5. Staff attendance

City staff shall not attend a neighborhood meeting in a professional capacity to afford an opportunity for the meeting to focus on the merits of the project and the dialogue between the applicant and the community meeting attendees.

D. Written summary**1. Legislative hearing**

For conditional district zoning map amendment hearings and other legislative and administrative decisions, an applicant shall provide the city clerk with a written summary of the neighborhood meeting with the completed application. The written summary shall include:

- a. A list of those persons and organizations contacted about the meeting and the manner and date of contact;
- b. The date, time, and location of the meeting;
- c. A roster of those in attendance;
- d. A summary of the issues discussed; and
- e. A description of any changes made because of the meeting.

2. Evidentiary hearing

For a special use permit or other quasi-judicial decisions, the applicant shall provide the city clerk an affidavit certifying at least one neighborhood meeting was held.

E. Applicant actions

1. If an applicant is required or requested to conduct a neighborhood meeting and does not do so or does not demonstrate a reasonable effort was made in the notification of such meeting, that fact shall be noted in the staff report on the application and may be just cause for the denial of the application.
2. If an applicant makes substantive change(s) to an application following a neighborhood meeting that were not discussed at the neighborhood meeting, that fact shall be noted in the staff report and may be just cause for denial of the application.

Section 18-568: Applications, submissions, contents, fees

A. Application submittal requirements

1. All applications for all permits and approvals, including modifications of permits and approvals, shall be submitted in accordance with the application submittal schedule, required forms, and required numbers of copies of each document. Applications for any zoning map amendment shall include a description of the proposed regulation or zoning district boundary to be applied and two sets of stamped envelopes, addressed to all property owners entitled to received mailed notice.
2. An application shall also include any technical studies that the city manager deems necessary to enable the planning commission, city council, or other decision-making board to fully evaluate the application. Examples of technical studies include, but are not limited to, traffic studies, engineering studies, geologic or hydro-geologic studies, flood studies, environmental impact assessments, noise studies, photometric studies, and surface water management/drainage studies. Technical studies shall be paid for by the applicant and submitted with the application.
3. Incomplete applications shall not be processed.

B. Fees

1. Generally
 - a. The city council shall establish application fees, which shall be identified in the adopted fee schedule and may amend and update those fees, as necessary.
 - b. No action shall be taken on an application and no application shall be considered complete until all required application fees are paid in full.
 - c. No fee shall be required for applications initiated by the city.

2. Changes to complete applications

In addition to fees set forth in the fee schedule, the following shall apply:

- a. Withdrawn application: All fees shall be forfeited in the event the city has incurred any expense related to the application. Any required fees shall be paid again, in full, if the application is resubmitted.
- b. Continuance of application: Payment of fees may be required to cover the cost of additional notice.
- c. Reapplication, resubmission: Payment of fees shall be required for reapplication or resubmission when a previous application has been denied.

C. Authority to file application

1. Unless otherwise authorized in this article, the person having legal authority to act shall file an application for development review or approval under this chapter. The applicant shall be the record owner or the duly authorized agent of the record owner. Agents may only submit applications where the owner indicates consent in writing, a copy of which consent shall be submitted with the application.
2. No amendment to the land development code regulations or zoning map that downzones property, as defined in this chapter, shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the downzoning amendment, unless the downzoning amendment is initiated by the city.
3. Proposed amendments to the land development code or zoning map may be initiated by the city council, planning commission, or city manager.

D. Where to file applications

All applications required by this section shall be submitted to the department of planning or its successor, unless otherwise specified.

E. Contact person designation

1. On an application, an applicant shall designate one person as the primary contact who will be responsible for all notification, including meeting dates, deadlines, and requirements.

The city shall communicate with the contact person about the application and review procedures. It shall be the responsibility of the contact person to inform the owners or applicant of such information.

2. An applicant shall notify the city manager in writing if there is to be a change in the contact person. The city manager shall continue to communicate with the designated contact person until the notice of change has been received.

F. Concurrent applications

1. When an applicant seeks approval of two or more different requests for the same parcel simultaneously, all necessary documents, plans, maps, and other required information shall be submitted in accordance with the provisions relating to all submitted applications and pay all appropriate fees for all applications.
2. Whenever two or more forms of development approval are being processed simultaneously and different time frames for review or decision-making for the different forms of approval are prescribed, all related applications and approvals shall be completed within the longest applicable time frame.

G. Application submittal schedule

1. Unless expressly stated otherwise in this article, complete applications for board and commission review shall be submitted in accordance with the filing calendar. A calendar

Table 18-568: Land development code amendment application schedule

Application due	Planning Commission meeting
January	April
April	July
July	October
October	January

indicating submittal deadlines shall be developed, maintained, and updated each year.

2. Requests to amend the regulations of the land development code shall only be accepted quarterly, in accordance with the schedule prescribed in Table 18-568: Land development code amendment application schedule. Criteria for the submittal of such an amendment are set forth in this section.
 - a. A complete application, including justification of the proposed amendment, shall be received by city staff by the first Monday of the month indicated in Table 18-568.
 - b. Upon determination by the city manager, an application for a land development code amendment may be presented to planning commission not in accordance with this schedule. The applicant shall provide evidence that adhering to this schedule would create a situation that is detrimental to the health, safety, and welfare of the city and its residents.
3. The owner(s), or their duly authorized agent, of property included in an application for a special use permit shall submit a complete application and supplemental information by the first day of a month to be scheduled for an evidentiary hearing by city council no sooner than the second meeting date of the following month, or as scheduled by the city manager.

H. Completeness determination

1. Completeness review

Applications shall be reviewed for completeness within five business days of receipt of an application. A complete application is one that:

- a. Includes all material and information required for submittal of the application;
- b. Is in the form and number of copies required;
- c. Is legible and printed to scale (where appropriate);
- d. Is signed by the person(s) authorized to file the application;
- e. Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this chapter;
- f. Is accompanied by appropriate fee; and
- g. Does not precede a pre-application meeting, where required.

2. Complete applications

- a. When an application is determined to be complete, the applicant shall be notified, and the application shall be reviewed pursuant to the procedures and standards of this code.
- b. A determination of completeness only indicates that the information provided with the application is sufficient for processing the application. It does not indicate that the application is technically compliant with this code nor that the application will be approved.

3. Incomplete applications

- a. If an application is determined to be incomplete, the applicant shall be notified of the deficiencies. The notice shall indicate that the application has been determined to be incomplete and that no further action shall be taken by the city until a complete application has been received.
- b. The applicant may correct the deficiencies and resubmit the application for a new completeness review. The applicant may request a meeting to clarify what additional materials, or what level of detail, would be required to obtain a determination of completeness.
- c. An application shall be considered withdrawn if an applicant fails to respond to a notice of identified deficiencies within 21 days after notification.

Section 18-569: Public notice

A. General applicability

1. When a development application is subject to a legislative or evidentiary hearing, the hearing shall be scheduled for a regular meeting or a meeting specially called for that purpose by the review authority.
2. All applications for development subject to public notification shall comply with the North Carolina General Statutes and the provisions of this section regarding public notification. The required notice for each application type is identified in Table 18-565: Summary of review authority. Additional notification instructions may be in the section for the specific application type in division 2 of this article.

B. Content

Notices, whether by publication or mailed, shall, at a minimum:

1. Identify the address or location and parcel identification number of the property subject to the application;
2. Specify the date, time, and place of the hearing;
3. Describe the nature, scope, and purpose of the application or proposal;
4. Identify how the application may be reviewed; and
5. Include a statement that the public may appear at the hearing or be heard, if any, and submit evidence and written comments with respect to the application, as permissible.

C. Types of notice

1. Public notice

When a published notice is required to be provided, the notice shall be provided in a newspaper of general circulation within New Hanover County, shall include the required content, and shall meet the timing requirements prescribed in Table 18-565: Summary of review authority.

2. Mailed notice

- a. When written or mailed notice is required to be provided, the city shall be responsible for preparing and mailing notice to specific property owners of their opportunity to be heard.
 - i. For mailed notice requirements, properties shall be considered adjacent even if separated by a street, railroad, or other transportation corridor. A street right-of-way, railroad, or other transportation corridor shall not be considered in computing the required notification buffer area.
 - ii. Failure of a party to receive mailed notice shall not invalidate subsequent action. In all cases, the requirements for the timing of the notice and specifying the time, date, and place of a hearing and the location of the subject property shall be strictly followed.
1. Mailed notice to property owners shall be required only for the initial presentation of the proposed development at a hearing. Additional mailed notice shall not be required when the application is not decided at the initial hearing unless otherwise directed by the city.

2. If the hearing is deferred or continued at the applicant's request, the applicant shall be responsible for paying any additional fees for the purposes of re-notifying property owners.
3. A copy of the mailed notice shall be maintained by the city for public inspection during normal business hours.

3. Posted notice

When the North Carolina General Statutes require that public notice be posted on site, the city shall provide the required public notice signs to the applicant in accordance with the following provisions.

- a. Number and location of signs
 - i. Signs shall be posted, without visual obstruction, by the applicant on the property for which a request has been made.
 - ii. On large tracts, interior lots, or lots that are difficult to see from the exterior boundary lines, additional signs, as may be necessary to reasonably ensure that notice is provided around the property, may be required.
 - iii. At least one sign shall be placed so that it may be seen from an abutting street. If the property has more than one street frontage, a sign shall be posted on each frontage.
- b. Time of posting
 - i. Notification signs shall be posted as required by the time frames established in Table 18-476: Summary of review authority.

- ii. If the signs are not posted in accordance with the preceding requirements, the decision-making body shall delay action on the petition.

c. Reposting

If the decision-making body continues a meeting or hearing at which the application is being considered to a later date, or if the decision-making body decides to consider the application at any time other than that specified on the notification signs, the applicant shall be required to post new signs with the new dates.

d. Sign removal

Signs shall be removed by the applicant within five days after the posted hearing date and properly disposed of or returned to the city.

4. Electronic notice

- a. The city may, as a courtesy, send electronic notice to any persons or organization, or to any governmental, public, or quasi-public organization regarding any matter related an application that may affect the interests of that person or organization, or on any matter on which any such person or organization has requested notice.
- b. Failure to send such notice or failure of any resident or property owner to receive such notice shall not affect the validity of any action with respect to an application or permit.

5. Constructive notice

- a. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice include, but are not limited to:
 - i. Errors such as property name, title, or address in the county tax listing; and
 - ii. Errors in legal descriptions, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to the affected parties.
- b. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, the requirements for the timing of notice and for specifying the time, date, and place of a hearing and the location of the subject property shall be strictly followed.
- c. If questions arise at a hearing regarding the adequacy of notice, the decision-making body shall make a formal finding as to whether there was substantial compliance with notice requirements.
- d. When city records document the publication, mailing, or posting of notices as required by this section, it shall be presumed that notice of a hearing complies with this section.

Section 18-570: Legislative and evidentiary hearings

A. Legislative hearings

1. The types of development applications for which a legislative public hearing shall be required are identified in Table 18-565: Summary of review authority. Legislative hearings shall be processed in accordance with division 2 of this article.
2. Legislative hearings shall not be conducted until after requirements public notification have been satisfied.
3. If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a legislative land use decision to the city clerk at least two business days prior to the proposed vote on such change, the clerk shall deliver such written statement to city council.

B. Evidentiary hearings

1. The types of development applications for which an evidentiary hearing shall be required are identified in Table 18-565: Summary of review authority. Evidentiary hearings shall be processed in accordance with division 2 of this article.
2. Evidentiary hearings shall not be conducted until after the requirements for public notification have been satisfied.
3. Ex parte communications between an applicant or an affected party and a member of the decision-making body shall be prohibited. If it occurs, it shall be disclosed prior to the beginning of the evidentiary hearing.

4. A member of the decision-making body 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.
 - a. 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 family, business, or other associated relationship with an affected person, or a financial interest in the outcome of the matter.
 - b. If an objection is raised to a member's participation and the member does not recuse themselves, the remaining members shall, by majority vote, rule on the objection.
5. All persons presenting evidence to the decision-making body shall only do so under oath.
6. All persons shall offer only competent, material, and substantial evidence in any presentation. Competency shall be determined by the decision-making body in its decision.
7. All persons with standing, as determined by the decision-making body, shall have an opportunity to cross-examine witnesses and to inspect any evidence presented.
8. All parties or persons with standing shall be allowed the opportunity to offer competent evidence in explanation or rebuttal to objecting participants.
9. Following the presentation of all evidence both for and against an application, the hearing may be continued until the next regularly scheduled meeting of the decision-making body, or as soon thereafter as possible, at which time the decision-making body shall act up the application.

10. When rendering a decision on an application, the decision-making body shall state its reasons, orally or in writing, for approving or disapproving the application.

C. Parties and witnesses

1. Only the applicant, city staff, and those persons who have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party. Others may be called as witnesses by the parties or the board that conducts the hearing.
2. It shall be presumed that any person that holds an ownership interest in any real property that abuts the subject property has standing and may participate as a party.
 - a. Upon objection of any other party to such presumption, the board shall determine whether the abutting property owner has standing under NCGS 160D-1402(c). If the presumption of standing is rebutted, that person shall not participate as a party.
 - b. For purposes of this subsection, if a property would abut except for the presence of a public right-of-way, such property shall still be considered to abut.
3. Any person claiming standing to be a party, other than the applicant or city staff, shall notify the city clerk of their claim and whether it is based on ownership of abutting property or alleged special injury, before the first evidence is taken in the evidentiary hearing.
 - a. A claim based on property ownership shall identify the abutting property that is owned.
 - b. Anyone that fails to timely notify the city clerk shall have waived their right to participate as a party in the evidentiary hearing.

- The decision-making body shall only be required to determine standing if there is an objection to a person's standing by another person with standing.

D. Timeframe for action

1. Regularly scheduled meeting

If a hearing is required, the hearing shall not occur earlier than the next regularly scheduled meeting of the board, as applicable, following the publication of required notice.

2. Approval timeframe

When a legislative or evidentiary hearing and decision are required by a decision-making board, the decision shall be made within the timeframe prescribed in Table 18-570: Timeframe for decision by application type, unless such dates are extended by mutual consent of the applicant and the decision-making body. Such timeframes shall not commence until a determination of a complete application has been made.

3. Continuation of hearings

- The review or decision-making body may continue the hearing for consideration of an application for a definite time, not to exceed 60 days, unless a longer period is agreed to by the applicant in writing or at a hearing.
- A continuance may be granted by the review or decision-making body on its own initiative, at the request of the applicant, or at the request of affected property owners.
- A review or decision-making body may deny a request for continuation.

E. Conditions of approval

- Conditions of approval for conditional zoning map amendments and applications reviewed through the quasi-judicial process shall be limited to those deemed necessary to ensure compliance with the review standards for an application or to mitigate

adverse impacts from the proposed development on surrounding environment.

- All conditions of approval shall be related in both type and amount to the anticipated impacts of the proposed development on the public and surrounding environment.
- All conditions of approval shall be expressly set forth in the notice of decision or development permit approval.
- For applications requiring an evidentiary hearing, unless consented to by an applicant in writing, the city shall not require, enforce, or incorporate into the zoning regulations or permit requirements any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of NCGS 160D-702(b), driveway-related improvements in excess of those allowed in NCGS 136-18(29) and NCGS 160A-307, and other unauthorized limitations on the development or use of land. For applications requiring a legislative hearing, applicant consent may be given in writing or at the hearing.
- Conditions shall be limited to those that address the conformance of development and use on the site with applicable regulations and adopted policy guidance and that address the impacts reasonably expected to be generated by the development or use of the site.

Table 18-570: Timeframe for decision by application type

Type of application	Timeframe for decision
Subdivision	Two regular meetings
Certificate of appropriateness	180 days
Variance, waivers adjustments, and appeals	365 days from close of hearing

6. Conditions of approval of and application may include dedication to the city, Cape Fear Public Utility Authority, New Hanover County, or the state, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.
7. No condition shall be made part of the application that:
 - a. Specifies the ownership status, race, religion, or other characteristics of occupants of dwelling units or excludes residents based upon race, religion, or income;
 - b. Establishes a minimum size of a dwelling unit;
 - c. Establishes a minimum value of buildings or improvements;
 - d. Obligates the city to perform in any manner relative to the approval of the conditional rezoning or development of the land; or
 - e. Deviates from any requirements of this chapter.

Section 18-571: Procedures for complete applications with changed status

A. Inactive application

1. Failure to provide requested information
 - a. An inactive application shall be any application for which the city has requested additional information or revisions and the applicant has not provided this information within six months. The time of delay on providing requested information or revisions shall commence on the date on which the city makes the request in writing.
 - b. Inactive applications shall not receive further review, shall be considered withdrawn by the applicant, and shall be terminated by the city without notice.

2. Applicant request for delay
 - a. An applicant may request that action on their application be postponed a specified length of time, not to exceed six months.
 - b. If the applicant does not restart the application process within the prescribed time, the application shall be considered withdrawn, and review shall be terminated without notice. The time of delay on restarting the application shall commence upon the date the applicant requests a delay in the review procedure.
3. Inaction city council

If the city council is the decision-making body and has not acted on an application within 180 days after receiving the request, and such time is not extended by mutual consent of the city council and the applicant, the application shall be deemed to have been denied.

B. Withdrawn application

1. An applicant may withdraw an application by providing written notice of intent to withdraw. After such withdrawal, no further action on the application shall take place.
2. If an application is withdrawn due to inactivity, delay, or at the request of an applicant, submittal of a new application shall be required to initiate review. In all respects, an application shall be treated as a new application for purposes of review and scheduling.
3. If a new application is submitted following withdrawal for any reason, the development regulations in effect at the time the new application is submitted shall be applied.

C. Postponement

1. An applicant may request an application be postponed to a future scheduled hearing date.

2. The request shall be in writing, either by mail or email, and the request must be received by the city prior to date of publication of the notice of hearing.
3. If the request is received by after the date of publication of the notice of public hearing, the applicant must request of the decision-making body that the application be continued to a future scheduled hearing date.

D. Application termination

1. If the city manager determines an applicant is not taking affirmative steps to advance a postponed application for a final determination, the application may be declared terminated.
2. Any re-submittal of a terminated application shall be treated as a new application for purposes of review, scheduling, and payment of application fees.

Section 18-572: Appeals**A. Procedures**

Appeal procedures depend on the type of application and the appropriate review and decision-making authority. This section refers only to appeals to be heard by a city decision-making authority. Nothing in this section prohibits applicants to appeal pursuant to state law. Appeals of quasi-judicial decisions shall also be subject to the standards of Section 18-602: Appeals of quasi-judicial decisions.

1. Board of adjustment

Appeals of administrative determinations, the design adjustment committee, and the historic preservation commission shall be made to the board of adjustment.

2. City council

Unfavorable recommendations by the planning commission on zoning map amendments and land development code amendments may be appealed by the applicant to the city council

by filing a written notice of appeal with the city clerk within 10 days after the rendering of the final recommendation by the planning commission. Upon filing of a written notice of appeal, the matter shall be placed on the agenda of the next regularly scheduled meeting of the city council, no later than 30 days after the notice of appeal has been filed. The city council, at its discretion, may hear the appeal at its regular meeting or set a special hearing date.

3. Court

A decision by the city council or board of adjustment may be appealed to a North Carolina court of record as permitted by North Carolina General Statutes.

B. Effect

1. The appeal of any decision or administrative action stays all proceedings in furtherance of the decision or administrative action.
2. Where a stay of proceedings would cause imminent peril to life or property, the official from whom the appeal is taken or the city manager may certify in writing to the decision maker(s) hearing the appeal that the stay would cause such harm. The stay shall be lifted pending hearing on the appeal. In such case, the action may be stayed only by a restraining order granted by a decision-making body or court of record if due cause is shown, following notice to the official or city manager.

Section 18-573: Post-review actions

A. Resubmission of a denied petition

1. Once a petition for a zoning map amendment has been denied, no resubmission of a petition for the same request may be filed within six months of the denial.
2. Once a petition for an application subject to a quasi-judicial decision has been denied, an application for the same request shall be denied by the decision-making body. The decision-making body may hear an amended application, or an application may be resubmitted if there has been substantial change in the ordinance standards, evidence, or conditions.

B. Amendments

1. All changes, modifications, removal, or release of the provisions of an approved plan or plat that do not qualify as minor modifications shall be considered major amendments. Amendments shall include, but are not limited to, changes in use, access, layout, any condition of approval, any change resulting in significant increased off-site impacts, and similar changes as determined by the city manager.
2. For purposes of review and scheduling, proposed amendments shall be treated as new applications subject to the applicable procedures and review criteria set forth in this article unless otherwise noted in the specific review procedures.

C. Modification of approvals

1. If the owner of land with an existing development approval desires to modify the terms of that approval or the conditions attached to that approval, the owner shall submit a written application requesting such revision.
2. Review and determination of major or minor modification status. Applications for modification shall be reviewed to determine whether the proposed modifications constitute a major or minor revision to the existing approval. Qualifications for major and minor modifications are prescribed in Section 18-589: Special use permit, subsection G.
3. Effect of modification
If approved, the modification shall supersede the previous approval, and subsequent development on the property shall be in accordance with such approved revised plan.

D. Termination of approval

Approvals granted under this article terminate if unused by the applicant after a reasonable period.

1. Expiration

Except as otherwise specified in a specific procedure in division 2 of this article, an approval shall lapse and shall become void one year following the date of final approval unless, prior to the expiration date, a building permit based upon such approval is issued, construction is commenced, and substantial progress is made toward completion.

2. Extension

- a. Unless otherwise prescribed in this article, an approval may be extended by up to one year by the body that issued the original approval. In requesting an extension of more than one year, an applicant shall show good cause for the need for extension.
- b. All requests for extensions shall be submitted in writing at least 30 days prior to the expiration of approval.
 - i. An extension request shall include payment of required fees and written description of the reasons for the applicant's inability to comply with the specified deadlines, listing any changes in the character of the neighborhood and any changes to applicable adopted plans or this chapter that have occurred since approval of the permit/plan as these changes relate the permit/plan, and the anticipated time schedule for completing the review project or the specific project.
 - ii. Additional review of the permit/plan may result in additional conditions.
- c. If the extension is denied, the applicant may re-submit a new application, subject to the fees and regulations in effect at the time of re-submittal, for the same project.

Sections 18-574 - 18-584: Reserved.

ARTICLE 7. DIVISION 2.

SPECIFIC ADMINISTRATIVE PROCEDURES

Section 18-585: Zoning map amendment - general

A. Purpose

The purpose of this section is to provide a uniform means for reviewing and deciding general amendments to the official zoning map, sometimes known as rezoning.

B. Authority

1. The city council may, on its own motion or petition, after public notice and hearing as provided by law, amend, supplement or change, modify, or repeal the boundaries or regulations of the official zoning map.
2. Any amendment for the reclassification of property to a conditional zoning district shall be subject to Section 18-586: Zoning map amendment—conditional.

Figure 18-585: Zoning map amendment—general procedure



C. Process

A zoning map amendment application shall be processed as described in Figure 18-585: Zoning map amendment – general procedure.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-556: Pre-application meeting.
2. Application submission and staff review
 - a. Proposed zoning map amendments may be initiated as authorized in and shall be submitted in compliance with Section 18-568: Applications, submissions, contents, fees.
 - b. The city manager may make a recommendation on a map amendment application.
3. Decision making
 - a. Planning commission review
 - i. The planning commission shall consider and make recommendations to the city council at a regularly scheduled meeting. In lieu of separate consideration, the planning commission may review a rezoning application in a joint meeting with the city council at a public hearing held in conformity with the requirements of Section 18-570: Legislative and evidentiary hearings.
 - ii. Applications for amendments that receive a favorable recommendation from the planning commission, or for which the planning commission fails to take any action within 30 days after the planning commission's meeting, shall be scheduled for public hearing before the city council.

b. City council decision making

- i. Before acting, the city council shall consider the application, relevant support materials, any staff report, the recommendation of the planning commission, and public comments. After conclusion of the legislative hearing, the city council shall decide in accordance with its rules of procedure.
- ii. The city council may change the existing zoning classification of the area covered by an application, or any part(s) thereof, to the classification requested or to a lower classification(s) without the necessity of withdrawal or modification of the application. Notices of hearings shall inform the public that such action may be taken.
- iii. In making its decision, the city council shall approve a written statement of consistency and a statement of reasonableness in accordance with NCGS 160D-605.
- iv. Applications filed as either a general zoning map amendment or conditional district map amendment may not be converted to the other form of map amendment application during the review process and shall instead be withdrawn and resubmitted as a new application.

- c. Post-decision actions - appeals

A cause of action as to the validity of this chapter, or an amendment thereto, shall be brought within 60 days, as provided in NCGS 160D-1405.

Section 18-586: Zoning map amendment - conditional**A. Purpose**

1. Conditional zoning districts are zoning districts in which the development and use of property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. Parallel conditional zoning districts, as defined in article 8, are the only permissible conditional zoning.
2. Some land uses are of such a nature that they have significant impacts on both the immediately surrounding area and on the entire community that cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, adopted land use plans, adopted area plans, and other long-range plans. The review process established in this section provides for the accommodation of such uses by a reclassification of the property into a conditional zoning district, subject to specific conditions that ensure compatibility of the use with the use and enjoyment of neighboring properties.
3. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or when it can be demonstrated that public infrastructure needed to serve the development would be made available within a reasonable time.

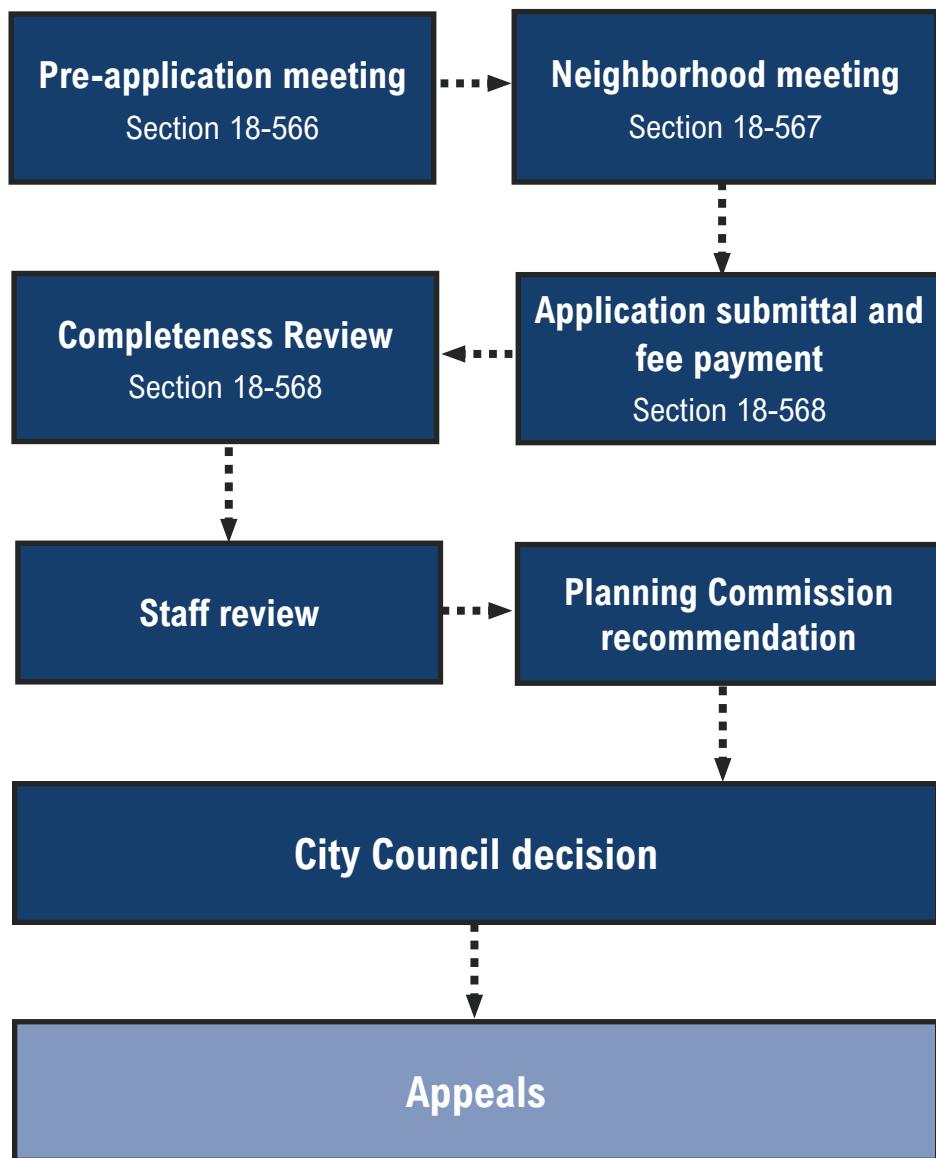
4. A separate master plan approval process as described in this section may be utilized only when a proposal is:
 - a. Part of a development project that is the subject of a development agreement between the city and a developer pursuant to NCGS 160D-1001; or
 - b. Located within an area identified as being suitable for such in an adopted comprehensive or small-area plan.

B. Process

A conditional district rezoning is processed as described in Figure 18-586: Zoning map amendment—conditional procedure.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. Applicants shall be required to hold a neighborhood meeting pursuant to Section 18-567: Neighborhood meeting.
3. Application submission and staff review
 - a. An application for a conditional zoning map amendment shall be submitted in compliance with the requirements of Section 18-568: Applications, submissions, contents, fees.
 - b. Site plan
Land may be rezoned to a conditional zoning district only in response to and consistent with an application submitted by the owners of all the property to be included in the district.
 - i. When a conditional district map amendment requires a site plan, it shall be drawn to scale, and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property.

Figure 18-586: Zoning map amendment—conditional procedure



ii. The following information shall be included in a site plan:

1. Boundary survey of the property and vicinity map showing the total acreage, existing zoning classification(s), general location in relation to major streets, railroads, and waterways, the date, and north arrow;
2. Easements, reservations, and rights-of-way, existing and proposed;
3. Approximate location on the site of proposed buildings, structures, and other improvements;
4. Approximate dimensions, including height, of proposed buildings and structures;
5. Proposed use of all land and structures, including the number of residential units, and the total square footage of any nonresidential development;
6. All required and proposed yards, buffers, screening, and landscaping;
7. All existing and proposed points of access to public streets;
8. Delineation of areas within the regulatory floodplain as shown on the official flood hazard boundary maps for the city;
9. Proposed phasing, if any;
10. The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;
11. Approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways;

- 12. Generalized traffic, parking, and circulation plans;
- 13. Tree survey; and
- 14. Traffic impact analysis, if required.

c. Master plan
When a conditional district rezoning application requires a master plan, the proposed master plan shall include:

- i. A property boundary survey and vicinity map showing the total acreage, existing zoning classification(s), the general location in relation to major streets, railroads, and waterways, the date, and north arrow;
- ii. A conceptual land area plan showing the location of all major land use types and the proposed maximum square footage for each use;
- iii. Maximum building heights;
- iv. All external access points;
- v. Conceptual internal traffic circulation plan;
- vi. Proposed buffers;
- vii. Generalize open space areas and stormwater facilities;
- viii. A text narrative indicating how the proposed plan conforms to an adopted plan; and
- ix. A traffic impact analysis, if required. If a traffic impact analysis is not required a trip generation report that is based on the generalized land uses proposed, including the establishment of maximum trip generation.

d. Staff recommendation
The city may make a recommendation on a proposed conditional zoning map amendment.

4. Changes to submission requirements
The city manager, planning commission, or city council may request additional information from an applicant. This information may include the following:

- a. Proposed screening, buffers, and landscaping over and above that required by this chapter, as well as any proposed treatment of any existing natural features;
- b. Existing and general proposed topography, at four-foot contour intervals or less;
- c. The location of significant trees on the property;
- d. Scale of buildings relative to abutting property;
- e. Proposed building elevations and exterior features;
- f. Any other information needed to demonstrate compliance with this chapter; and
- g. Proposed location and number of signs.

C. Decision making

- 1. Review criteria and conditions of approval
Conditional map amendment decisions shall be made in consideration of identified relevant adopted land use plans for the area, including comprehensive, strategic, district, area, neighborhood, corridor plans, and other land use policy documents.
- 2. Planning commission consideration
 - a. The planning commission shall consider and make recommendations to the city council concerning each proposed conditional map amendment application at a regularly scheduled meeting. In lieu of separate consideration, the planning commission may review a conditional map amendment application in a joint meeting with the city council at a legislative hearing held in conformity with the requirements of Section 18-570: Legislative and evidentiary hearings.

b. Petitions for amendments that receive a favorable recommendation from the planning commission or for which the planning commission fails to take any action within 30 days after the planning commission's meeting shall be scheduled for hearing before the city council.

3. City council decision making

- a. Before taking such lawful action as it may deem advisable, the city council shall consider the planning commission's recommendation on each proposed zoning map amendment.
- b. In making its decision, the city council shall approve a written statement of consistency and a statement of reasonableness in accordance with NCGS 160D-605.

4. Effect of approval

- a. If an application for a conditional map amendment is approved, the development and use of the subject property shall be governed by the predetermined ordinance requirements applicable to the district's classification, the approved site plan or master plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and the zoning map.
- b. If an application is approved, only those uses, buildings, and structure indicated on the approved application and site plan or land use area indicated on the master plan shall be allowed on the subject property. A change of location of buildings may be authorized pursuant to this section. An increase in the number of buildings shall be considered a major modification and subject to review in accordance with this section
- c. Following the approval of an application for a conditional map amendment, the subject property shall be identified on the official zoning map by the appropriate district designation.

A parallel conditional zoning shall be identified by the same designation as the underlying general district followed by the letters CD (e.g., RB(CD)).

- d. No permit shall be issued for any development activity within a conditional zoning district except in accordance with the approved application and site plan or master plan for the conditional district.
- e. Any violation of the approved site or master plan or any rules, regulation, and conditions for the district shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any such violation.

D. Post-decision actions

1. Alterations to approval

- a. Major amendments: except as provided in this section, changes to approved conditions or site plans shall be treated the same as amendments to these regulations or to the official zoning map and shall be processed in accordance with the procedures in this article. Any changes that would be considered major changes under Section 18-589: Special use permit, subsection G shall be subject to this section.
- b. Administrative amendments: The city manager shall have the delegated authority to approve an administrative amendment to an approved site plan. The city manager shall have no authority to amend the conditions of approval. The standard for approving or denying a change shall be that the change does not have a significant impact upon abutting properties. Any decision shall be in writing, stating the grounds for approval or denial.

- i. The city manager shall have the discretion to decline to exercise the delegated authority when:
 - 1. The city manager is uncertain about approval of the change; or
 - 2. A map amendment application for public hearing and city council consideration is deemed appropriate under the circumstances.
- ii. If the city manager declines to exercise this authority, the applicant may file a map amendment application for public hearing and city council consideration of requested changes.
- iii. Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, detailing the requested change(s). Upon request, the applicant shall provide additional information.

2. Review of approval of a conditional map amendment

Property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. No sooner than three years after the date of approval of the conditional map amendment, the planning commission may examine the property in accordance with the approved site or master plan and conditions. If the planning commission determines that progress has not been made in accordance with the approval, the planning commission shall forward to the city council a report, which may recommend that the property be rezoned to its previous zoning classification or to another district.

3. Appeals

A cause of action as to the validity of this chapter, or amendment thereto, shall be brought within 60 days, as provided in NCGS 160D-1405.

Section 18-587: Land development code amendment

A. Purpose

The purpose of this section is to provide a uniform means for reviewing and deciding amendments to the text of this chapter.

B. Process

A land development code amendment shall be processed as described in Figure 18-587: Land development code amendment process. The individual process steps are described in this section.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. Application submission and staff review
 - a. An application for an amendment shall be submitted in compliance with the requirements of Section 18-568: Application submission, contents, fees.
 - b. When reviewing and making a recommendation, the city manager may consider whether a proposed amendment:
 - i. Corrects an error or meets the challenge of some changing condition, trend, or fact;
 - ii. Responds to changes in state law;
 - iii. Is consistent with any adopted plans and policies;
 - iv. Does not conflict with any specific policy or action item of a comprehensive plan;
 - v. Is generally consistent with the stated purpose and intent of this chapter;
 - vi. Constitutes a benefit to the city as a whole and is not solely for the benefit of a particular landowner at a point in time;

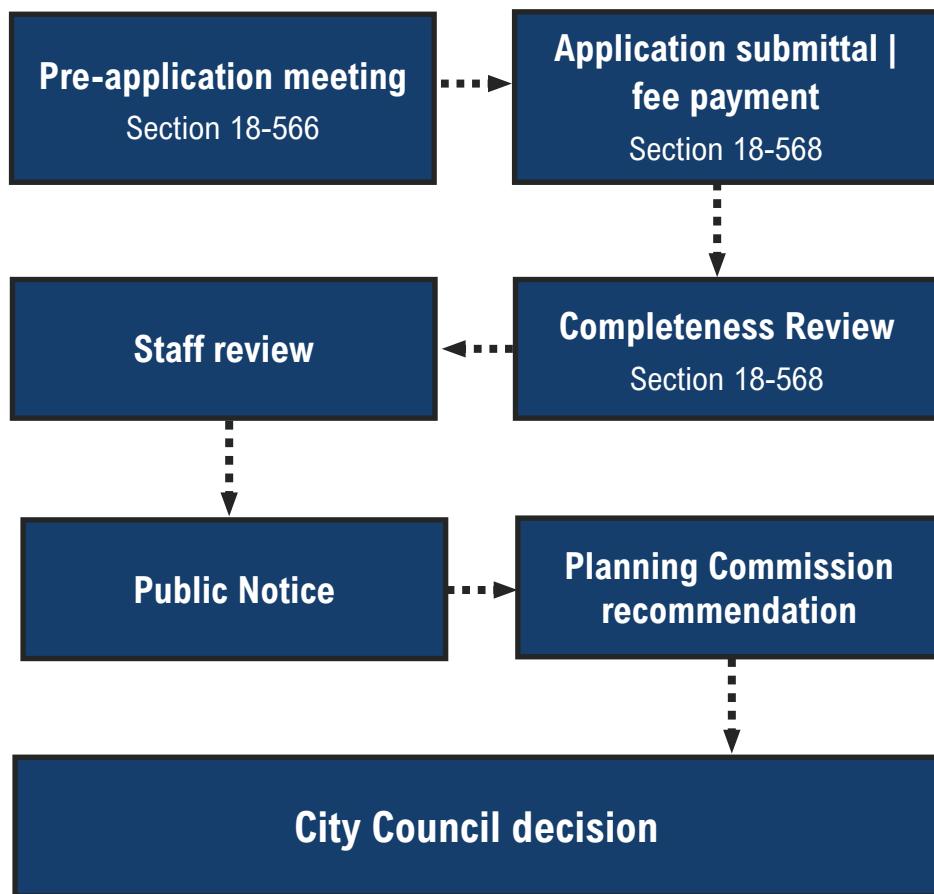
- vii. Impacts significantly the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation; and
- viii. Impacts significantly existing conforming development patterns, standards, or zoning regulations.

C. Decision making

- 1. Public notice
Public notice shall be provided as required in Section 18-569: Public notice.
- 2. Planning commission consideration
 - a. Upon acceptance of an amendment application, the planning commission shall hold a legislative hearing to discuss the proposed amendment.
 - b. Within 90 days of hearing an application for amendment, the planning commission shall make its recommendation to the city council. If no recommendation is made within 90 days, and if no extension is granted, the city council may act on the application without further involvement of the planning commission.
 - c. A recommendation by the planning commission shall include the adoption of a statement describing how the planning commission considers the action recommended to be consistent with the comprehensive plan and other applicable adopted plans and policies.
 - d. The planning commission shall make its recommendation to the city council in writing and shall recommend that an application be approved, approved as revised, denied, or request further study.

- 3. City council action
 - a. Following the recommendation of the planning commission, or expiration of the planning commission review period without a recommendation, the city council shall conduct a legislative hearing.
 - b. Before taking final action on an amendment, the city council may consider the recommendations of the city manager, planning commission, and comments made at the public hearing.
 - c. The city council shall approve, approved as revised, deny, or send a proposed amendment back to the planning commission for additional consideration.
 - d. In making its decision, the city council shall approve a written statement of consistency and a state of reasonableness in accordance with NCGS 160D-605.
- 4. Post-decision actions - appeals
A cause of action as to the validity of this chapter, or an amendment thereto, shall be brought within 60 days, as provided in NCGS 160D-1405.

Figure 18-587: Land development code amendment process



Section 18-588: Site plan review

A. Purpose

Site plan review is required to ensure adequate provision of public services, the wellbeing of citizens, and preservation of environmental quality.

B. Applicability

1. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.
2. Each application for a building permit for a development project shall be accompanied by a site plan as required in this section. No building permit shall be issued until a site plan of the development has been reviewed and approved in accordance with the procedures and standards of this chapter.

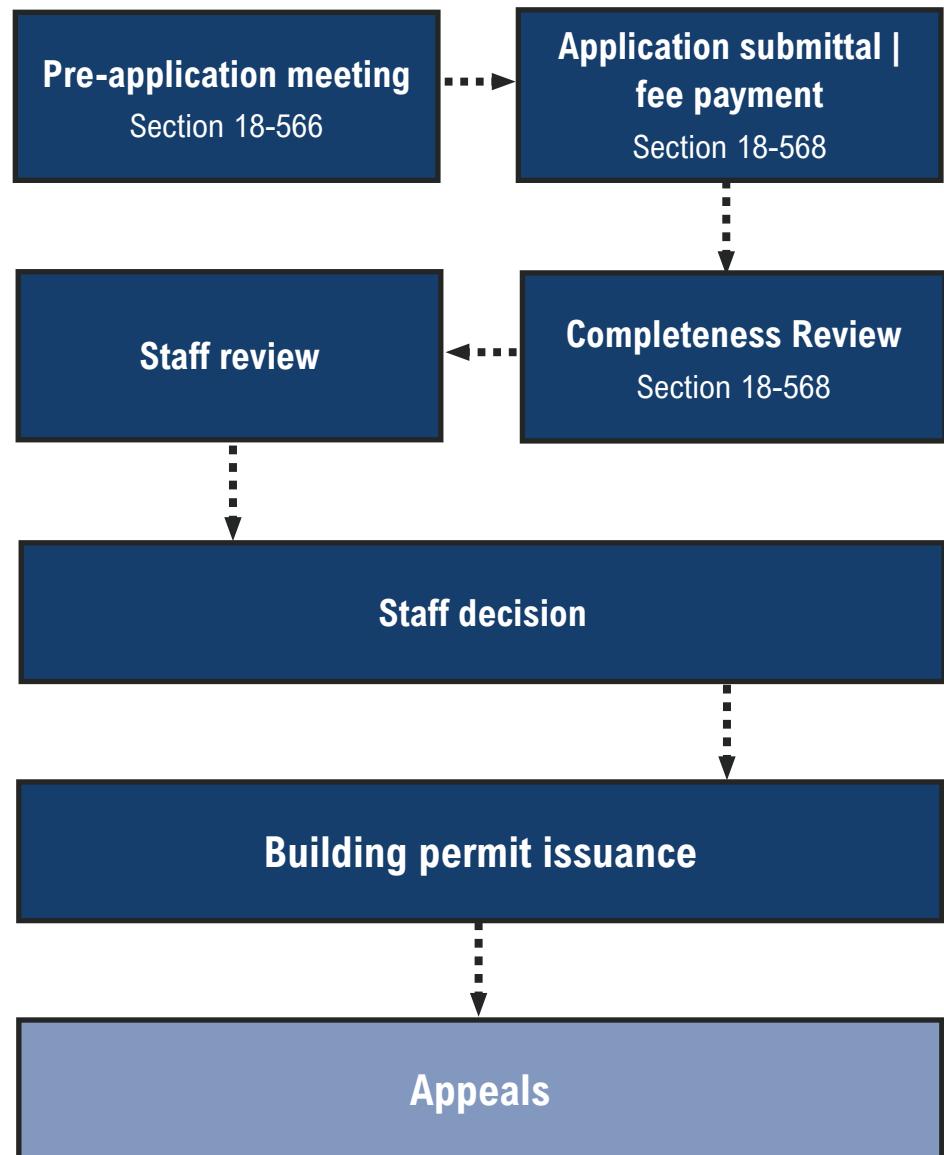
C. Process

1. Site plans shall be processed as described in Figure 18-588: Site plan review process. The individual process steps are described in this section.
2. Applicant shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
3. Application submission and staff review
 - a. An application for site plan review shall be submitted in compliance with the requirements of Section 18-568: Applications, submissions, contents, fees.

b. Site plan shall include the required information, whether improvements exist or are proposed. When applicable, proposed site improvements shall be designed in accordance with the *Technical Standards and Specifications Manual*. While the city manager may request additional information to ensure compliance with this chapter, in general, the following information shall be required:

- i. Vicinity sketch or key map at a scale of not more than 1,000 feet to the inch, showing the position of the development in relation to surrounding streets and properties, and oriented in the same direction as the site plan;
- ii. True north arrow, with north being at the top of the map;
- iii. Scale of the site plan, using an engineer's scale (1"= 10', 1" = 50', etc.), both graphic and numeric, and date of preparation, including all revision dates;
- iv. Title block with the name of the development, name of the owner and agent, name and contact information of the designer who prepared the plan and the address of the project;
- v. Site data table with the following:
 1. Parcel identification number;
 2. Zoning district;
 3. Required and proposed building setbacks;
 4. Total acreage within the project boundaries;
 5. Square footage of existing and proposed buildings;
 6. Lot coverage calculations;
 7. Number of units;
 8. Number of buildings;
 9. Building height, number of stories, and square footage per floor;

Figure 18-588: Site plan review process



10. Amount and percentage of impervious surface area before and after development, including any credit for pervious materials;
11. Off street parking calculations, including required (if applicable) and proposed number of parking spaces, and the basis for determination; and
12. CAMA land use classification.

- vi. Location of existing and proposed buildings, structures, and all proposed building expansions;
- vii. Location of existing and proposed property boundary and lot lines;
- viii. Location of on-site and proposed tie-in locations to existing public utilities (e.g., water, sewer, culverts, drains, etc.) showing size and direction of flow and soil and erosions and sedimentation control measures;
- ix. Location and dimensions of any existing and proposed public and private easements and rights-of-way;
- x. Location and dimensions of on-site pedestrian, bicycle, and vehicular access ways, parking facilities, loading and unloading facilities, design of ingress and egress of vehicles to and from the site onto streets, triangular sight distance, and curb and sidewalk lines;
- xi. Location and dimensions of all fences, walls, and non-vegetative screens;
- xii. Names of owners of adjacent properties or subdivisions of record;
- xiii. Zoning and land use of adjacent properties or subdivisions of record;
- xiv. Current topographical information based on mean sea level datum, with contour intervals of two feet or less;

- xv. Landscaping plans as required by article 5, division 1 of this chapter;
- xvi. Tree inventory, as established in article 5, division 1 of this chapter; and
- xvii. Method and location of solid waste disposal.

4. Review
 - a. Site plans shall be reviewed by the technical review committee.
 - b. The technical review committee shall either approve or reject a site plan. Rejection may be made with one or more of the following written findings with respect to the proposed development, when no approved modifications to the site plan have been made.
 - i. The provisions for vehicular loading and unloading, parking, vehicular or pedestrian circulation on the site or on adjacent public streets would create hazards to safety or would impose an unreasonable burden upon public facilities.
 - ii. The proposed use would impose undue burdens on the storm drains or similar public facilities in excess of available capacity.
 - iii. The proposed development would create fire safety hazards by not providing adequate access to the site, or buildings on the site, for emergency vehicles.
 - iv. The proposed development or use would not be consistent with this chapter, the *Technical Standards and Specifications Manual*, or a specific standard established in an official map.

5. Infrastructure improvements

- a. Site plans shall be conditioned to include requirements that street and utility or other improvements be made to the same extent as required by Section 23.12 of the city charter and Article 6, Subdivision Regulations.
- b. The approval may require payment in lieu of the dedication of property and rights-of-way or construction of improvements to the same extent as required by this chapter. This provision shall not apply to site plans for individual detached, single-dwelling and duplex dwelling units to be constructed on previously subdivided lots.
- c. This provision shall not apply to additions of less than five percent of gross floor area on an annual basis unless such addition causes an increase in the off-street parking requirement or a change in occupancy as defined by the North Carolina State Building Code.

D. Building permit issuance

Upon approval of a site plan, the building inspector may issue a building permit.

E. Effect and duration of plan approval

- 1. Approval of a site plan shall expire after 18 months from the date of such approval if the applicant has failed to make substantial progress on the site.
- 2. The city manager may grant a single, six-month extension of this time limit for site plans, for good cause shown, upon receiving a request from the applicant before the expiration of the approved plan.
- 3. In the event site plan approval has expired, for whatever reason, and the owner or applicant wishes to proceed with development, the owner or applicant shall be required to resubmit for approval of a site plan that meets current development standards, unless otherwise permitted in this article.

F. Appeals

All appeals from decisions under this section shall be to the board of adjustment.

Section 18-589: Special use permit

A. Purpose

- 1. The purpose of this section is to establish procedures for consideration of an application for a special use permit.
- 2. Special use permits add flexibility to the land development code. Subject to high standards of planning and design, certain land uses may be allowed in a district where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, land uses that would otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.

B. Authority

- 1. Following an evidentiary hearing, special use permits shall be issued or denied by resolution of the city council or resolution of the board of adjustment for those uses of land and buildings requiring a special use permit as listed in each zoning district classification.
- 2. Special use permits may only be granted by the appropriate board, as designated in this article, after an evidentiary hearing conducted in keeping with the requirements of NCGS 160D-406.

C. Process

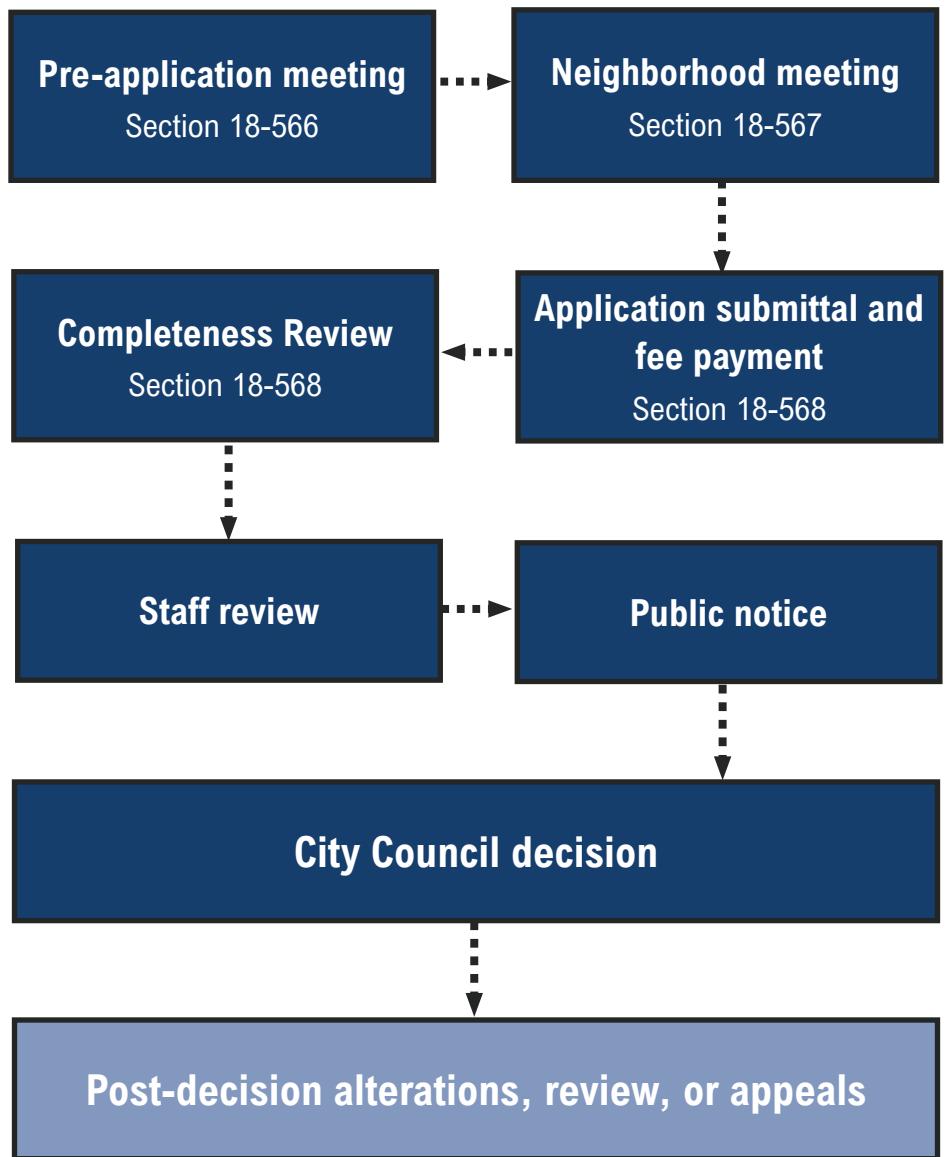
A special use permit application shall be processed as described in Figure 18-589: Special use permit process.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. Applicants shall be required to hold a neighborhood meeting pursuant to Section 18-567: Neighborhood meetings.
3. A special use permit application shall be submitted in compliance with the requirements of Section 18-568: Applications, submissions, contents, fees.

D. Decision making

1. Public notice shall be provided as required in Section 18-569: Public notice.
2. Action by board
 - a. Review factors
 - i. The appropriate board, in granting a special use permit, must find that all four of the following factors exist:
 1. That the use would not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the special use permit;
 2. That the use meets all required conditions and specifications;
 3. That the use would not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 4. That the location and character of the use, if developed according to the plan as submitted and approved, would be in harmony with the area in which it is to be located and in general conformity with adopted comprehensive plans, the CAMA plan, and adopted special area plans.

Figure 18-589: Special use permit process



- ii. A finding of the decision-making body that the four required conditions exist, or a finding that one or more of the four required conditions do not exist, shall be based on sufficient and competent evidence presented to the decision-making body at the hearing at which the special use permit is considered.
- b. When issuing or denying special use permits, the decision-making body shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of a certiorari.
- c. In issuing or denying the special use permit, city council shall enter the reasons for its action in the minutes of the meeting at which the action is taken.

E. Appeal

No appeal may be taken to the board of adjustment from the city council in granting or denying a special use permit. Any appeal from an action of the city council on a special use permit shall be in accordance with NCGS 160D-1402.

F. Permit voidance

- 1. The city manager shall ensure compliance with plans approved by the city council or with any other conditions imposed upon the special use permit. In the event of failure to comply, no building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed buildings and structures shall be regarded as nonconforming uses subject to the provisions of this chapter.
- 2. A special use permit shall become null and void if construction or occupancy of the proposed use as specified on the special use permit has not commenced within two years of the date of issuance.

- a. An extension of time for a special use permit, not to exceed two, one-year extensions may be granted by the city manager upon review and recommendation by the director of planning, development, and transportation, or its successor department.
- b. A request for extension shall be submitted in writing prior to the original expiration date.
- c. In granting an extension, the city manager shall not have the authority to amend the conditions of the special use permit nor to approve any major modifications to the approved plan as described in this section.
- 3. At any time after a special use permit has been issued, the city council may hold a hearing to determine whether the permit should be terminated. Upon findings that the conditions of a special use permit are not being fulfilled, council shall revoke it and the use of the property allowed by such permit shall be discontinued immediately. If a special use permit is terminated for any reason, it may only be reinstated after a full review and approval in accordance with the provisions of this division.

G. Modifications to approved site plan

- 1. Major changes to approved plans and conditions of development may be authorized only by city council in the same manner as outlined in this division for original submission. Major changes include, but are not limited to:
 - a. Change in use;
 - b. Increase in intensity of the development, such as increase in density, whether residential, office, commercial, or industrial; an increase in number of off-street parking or loading spaces; or an increase in impervious surface area;
 - c. An increase in overall ground coverage by buildings or structures;

- d. A change in any site dimension by more than 10 percent;
- e. A reduction in approved open space set aside, buffering, or screening;
- f. A reduction in size of public utilities;
- g. A change in the soil erosion and sedimentation controls, unless approved by the city engineer;
- h. A change in access and internal circulation design.

2. Minor changes shall be those not otherwise classified as major changes. Minor changes may be authorized by the city manager if required by engineering or other physical circumstances not foreseen at the time of approval.

(Ord. No. 0-2021-75, §7, 11-3-2021)

Section 18-590: Appeal of administration determination

A. Authority

The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by the city official charged with enforcement of this chapter.

B. Applicants

Appeals to the board of adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, department, commission, or board of the city.

C. Process

1. Appeal of administrative determinations may be taken by filing a notice of appeal specifying the grounds thereof with the city clerk within 30 days after receiving active or constructive notice

- of the decision (see Figure 18-590: Appeal of administrative determination process).
- 2. Upon proper filing of an appeal, the official who made the decision shall transmit to the board of adjustment all papers then constituting the record upon which the action appealed was taken, as provided in the rules of procedure. The official 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.
- 3. The board shall fix a reasonable time for the hearing of appeal, give public notice, and give due notice to the parties of interest, and decide the same within a reasonable time. At the hearing, any person may appear in person or by agent or attorney.

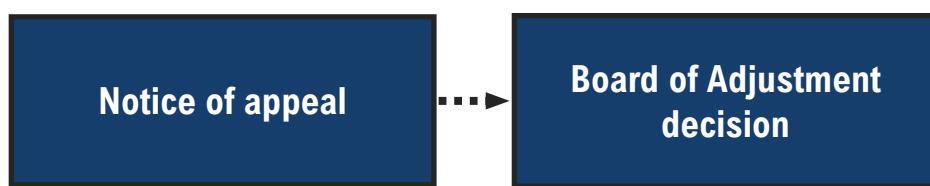
D. Decision making

1. An evidentiary hearing shall be held on an application for appeal. Any person may appear at said hearing in person or by agent or attorney.
2. Board of adjustment decision making
 - a. In denying an appeal, the board of adjustment shall make findings of fact that one or more of the requirements of this section do not exist.
 - b. The findings of fact made by the board of adjustment shall be based on evidence presented at the hearing at which the variance is considered.

E. Stay of proceedings

1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed, unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of facts stated in an affidavit, stay would cause imminent peril to life or property, or because the violation is transitory in nature, a stay would

Figure 18-590: Appeal of administrative determination process



seriously interfere with enforcement of this chapter. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

2. If enforcement proceedings are not stayed, the appellant may file with the official for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.
3. Appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this chapter shall not stay the further review of an application for permits or to use such property. In these situations, the appellant may request, and the board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.

Section 18-591: Variance

A. Authority

1. The board of adjustment shall be authorized to issue variances from the dimensional requirements of this chapter. The procedure for such is described in Figure 18-591: Variance process.
2. Variances from dimensional requirements shall not be contrary to the public interest, to the spirit of this chapter and where, owing to special conditions, a literal enforcement of the provisions

of this chapter would result in unnecessary physical, but not economic, hardship.

3. Dimensional requirements for which variance may be approved shall be limited to height, lot area, and size of building or structure, and required setbacks and open space set aside.
4. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.
5. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this chapter.

B. Process

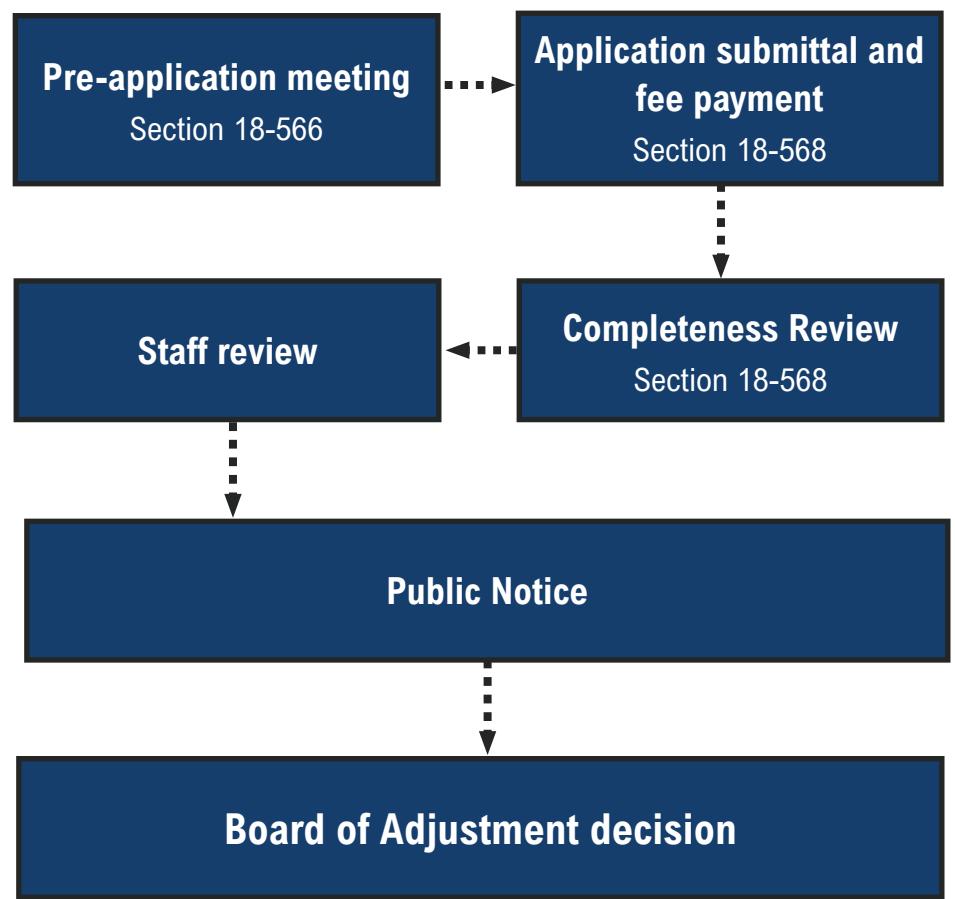
1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. Application submission and review
A written application for variance shall be demonstrate that:
 - a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
 - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance;
 - c. The hardship does not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

- d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

C. Decision making

1. An evidentiary hearing shall be held on a requested variance. Any person may appear at said hearing in person or by agent or attorney.
2. Board of adjustment decision making
 - a. In granting a variance, the board of adjustment shall make findings of fact that the requirements of this section have been met by the applicant and that the variance is the minimum variance that would make possible the reasonable use of the land, building, or structure. No change in permitted uses may be authorized by variance.
 - b. In denying a variance, the board of adjustment shall make findings of fact that one or more of the requirements of this section do not exist.
 - c. The findings of fact made by the board of adjustment shall be based on evidence presented at the hearing at which the variance is considered.
 - d. Any order or decision of the board of adjustment granting a variance shall expire if a building permit for the affected use is not obtained by the applicant within 24 months from the date the decision is filed in the planning division office or any successor office. One extension of time for the variance, not to exceed 12 months, may be granted by the board of adjustment. An application for such extension shall be submitted in writing prior to the expiration of the variance.
 - e. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this chapter.

Figure 18-591: Variance process



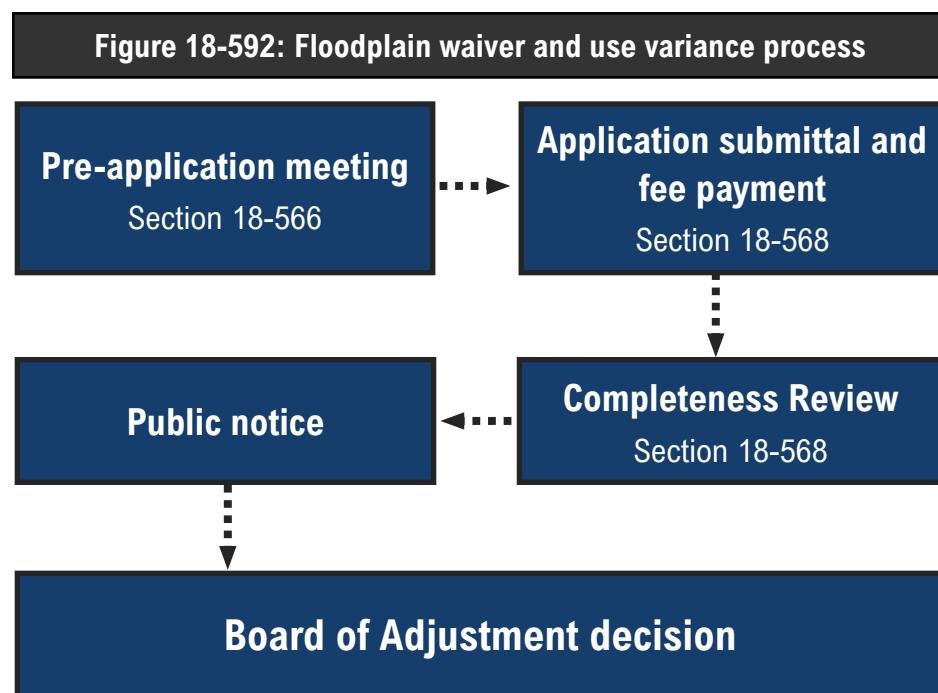
Section 18-592: Floodplain waiver and use variance

A. Authority

The board of adjustment shall hear and decide requests for waivers from the requirements of Article 4, Division 2. Floodplain Management, the process for which is described in Figure 18-592: Floodplain waiver and use variance process.

B. Process

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. The board of adjustment shall provide appropriate forms and information to persons applying for a variance to enable them to furnish all necessary information to the board. The variance request shall be in writing and shall include information as to all the factors set forth in this section and any other pertinent information.



C. Decision making

1. Public notice

An evidentiary hearing shall be held on a floodplain waiver and use variance request. Any person may appear at said hearing in person or by agent or attorney.

2. Board of adjustment decision making

- a. In considering such applications, the board of adjustment shall consider all technical evaluations, relevant factors, standards specified in this section, and the following factors:
 - i. The danger that materials may be swept onto other lands to the injury of others;
 - ii. The danger to life and property due to flooding;
 - iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - iv. The importance to the community of the services provided by the proposed facility;
 - v. The necessity to the facility of a waterfront location, where applicable;
 - vi. The availability of alternative locations, not subject to flood damage, for the proposed use;
 - vii. The compatibility of the proposed use with existing and anticipated development;
 - viii. The relationship of the proposed use to an adopted comprehensive plan and the floodplain management program for that area;
 - ix. The safety of access to the subject property in times of flood for ordinary and emergency vehicles;

- x. The expected heights, velocity, duration, rate of rise, and sediment transport of flood waters and the effects of wave action, if applicable, expected at the subject site; and
- xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities, and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

b. Generally, waivers may be issued for new construction and substantial improvements to be erected on lots of one-half-acre or less in size, contiguous to and surrounded by lots with an existing building or structure constructed below the base flood level, providing the factors set forth above have been fully considered. As the lot size increases beyond one-half-acre, the technical justification required for issuing the waiver increases.

c. Upon consideration of the factors listed above and the purposes of this chapter, the board of adjustment may attach such conditions to waivers as it deems necessary to further the purposes of this chapter.

d. Waivers shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

e. Waivers may be issued for any type of development that meets the requirements of this section.

f. Conditions for waivers:

- i. Waivers shall not be issued if the waiver would make the building or structure in violation of other federal, state, or local laws, regulations, or ordinances.
- ii. Waivers shall only be issued upon a determination that the waiver is the minimum necessary, considering the flood hazard, to afford relief.

- iii. Waivers shall only be issued upon showing:
 - 1. Good and sufficient cause;
 - 2. A determination that failure to grant the waiver would result in exceptional hardship to the applicant; and
 - 3. A determination that the granting of a waiver would not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- iv. Any applicant to whom a waiver is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building or structure is to be built and stating that the cost of flood insurance shall be commensurate with the increased risk resulting from the reduced lowest flood elevation. Such notification shall be maintained with a record of all waiver actions.
- v. The floodplain manager shall maintain the records of all appeals and report any waiver to the Federal Insurance Administration upon request.
- vi. Consistent with NCGS 143-215.54A (b), no use variance shall be approved for any new solid waste disposal facilities, hazardous waste management facilities, salvage yards, or chemical storage facilities in the 100-year floodplain except upon finding that all the following listed criteria apply.
 - 1. The use serves a critical need in the community.
 - 2. No feasible location exists for the location of the use outside the 100-year floodplain.

3. The lowest floor of any building or structure shall be elevated above the base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
4. The use complies with all other applicable laws and regulations.

vii. The city shall notify the secretary of the North Carolina Department of Public Safety, or its successor, of its intention to grant a waiver at least 30 days prior to granting a waiver.

viii. Waivers for the reconstruction, rehabilitation, or restoration of buildings or structures listed on the National Register of Historic Places or the state inventory of historic places may be issued without regard to the conditions for waivers per subsection 6 above.

ix. Waivers for water-dependent facilities, if determined to meet the definition as defined in this chapter, may be issued provided:

1. Waivers within the floodway would not increase flood levels during the base flood discharge;
2. The requested waiver is the minimum necessary to afford relief; and
3. Such facilities are protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

Section 18-593: Subdivision plat

- A. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting. The process is described in Figure 18-593.1: Subdivision plat process.
- B. **Preliminary plan**
 1. An approved preliminary plan is an official administrative guide for both a developer and the city. If alterations, changes, or redrafts are necessary, official review shall be required in the same manner as the initial approval.
 2. It shall be the intention of the city, in requiring a preliminary plan, that the plan show the feasibility of developing the subject property in the manner stipulated, and that detailed and extensive engineering work, such as final horizontal and vertical locations and descriptions of such items as listed, would not be necessary until construction plans are prepared, in accordance with this section.
 3. **Application requirements**
 - a. Initial submission of all subdivision plats shall include a completed application and a preliminary plan.
 - b. The following forms shall be completed to process an application for preliminary plan approval:
 - i. Preliminary plan application;
 - ii. Any requested waivers; and
 - iii. Traffic impact analysis, if warranted.
 - c. A preliminary plan shall be prepared by a licensed professional surveyor, registered professional landscape architect, or a licensed professional engineer.

- d. A preliminary plan shall not be required for a subdivision that:
 - i. Does not involve the dedication of rights-of-way or construction of new public or private streets;
 - ii. Does not involve construction alterations to existing streets except for alterations required solely as a condition of the issuance of a driveway permit; and
 - iii. Does not require the extension of any public utilities.
- 4. Preliminary plan review procedure

The preliminary plan review procedure is described in Figure 18-593.2: Preliminary plan review process.
- 5. Decision by technical review committee or design adjustment committee
 - a. The decision on a preliminary plan that complies with the standards of this chapter shall be made by the technical review committee based on the standards of this section.
 - b. The decision on a preliminary plan that requires a waiver from the requirements of Article 6. Subdivisions or the Technical Standards and Specifications Manual shall be made by the design adjustment committee.
 - c. If a preliminary plan is denied, the reasons for denial shall be stated in writing and the applicant may revise and resubmit the preliminary plan.
 - d. Approval of a preliminary plan shall expire 24 months from the date of such approval unless a final plat for all or part of the subdivision is officially submitted to the city manager, or an extension of the approval of the preliminary plan is granted prior to the expiration date.

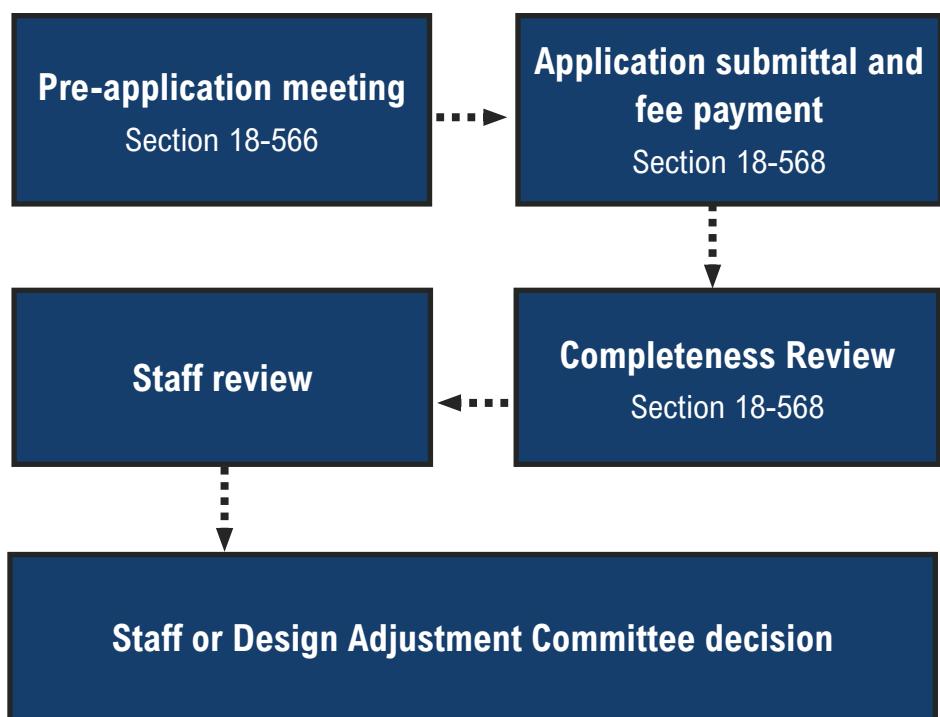
Figure 18-593.1: Subdivision plat process



6. Preliminary plan review standards
 - a. An application for a preliminary plan shall be approved if it complies with the following:
 - i. All required information as indicated in this section is included;
 - ii. The Cape Fear Public Utility Authority has certified that all lot can be served water and sewer;
 - iii. All applicable requirements in Article 6, Subdivision Regulations; and
 - iv. All standards or conditions of any prior applicable permits, development approvals, and other applicable requirements in this chapter and the city of Wilmington Code of Ordinances.
 - b. Preliminary plans for land located within the special flood hazard area shall comply with the standards in Article 4, Division 2, Floodplain Management.
 - c. Design adjustments or modifications shall be administered consistent with Section 18-603: Design adjustments.
7. Effect of preliminary plan review approval
 - a. Approval of a required preliminary plan shall not constitute the approval for recording a subdivision with the New Hanover County Register of Deeds, nor approval for the conveyance of lots.
 - b. Approval of a required preliminary plan shall authorize the submittal of street and utility construction plans and soil erosion and sedimentation control plans.
8. Preliminary plan checklist

The preliminary plan shall contain the information required in Section 18-551: Contents of preliminary plans.

Figure 18-593.2: Preliminary plan review process



C. Construction plans

1. After approval of a preliminary plan, the necessary construction permits shall be obtained for the installation of required improvements in compliance with article 7, division 2 of this chapter. A developer shall concurrently secure a sedimentation and erosion control permit from New Hanover County.
2. Construction plans shall include all required information as indicated in Section 18-538: Construction plans and permits.
3. Upon satisfactory completion of construction plans, construction release for the installation of the required improvements in accordance with the approved preliminary plan and the design standards shall be issued. Unless a surety is offered in accordance with Section 18-595: Subdivision improvements, installation of all required improvements shall require approval by the city engineer prior to the submission of a final plat.
4. After installation of improvements in accordance with an approved preliminary plan, inspection and approval shall be required prior to submission of a final plat. A final plat may be submitted prior to completion of required improvements under conditions as outlined in Section 18-595: Subdivision improvements and under any applicable condition as outlined in Section 18-553: Requirements for the final plat.

D. Final plat

1. Purpose

The purpose of the final plat procedure is to ensure proposed subdivisions of land have been completed in substantial conformity with a preliminary plat (as applicable) and all applicable regulations of this chapter prior to the conveyance of lots. These standards are intended to ensure preparation and recordation of a plat document of sufficient detail and data so as to readily determine and accurately reproduce the location,

bearing, radius, and length of the elements of a subdivision. Required elements include, but shall not be limited to, the following:

- a. Every public or private street or private access easement;
- b. Lot lines;
- c. Easement boundaries;
- d. Lands or resources dedicated or reserved for use by the general public;
- e. Land or resources owned in common by residents of the subdivision; and
- f. Unbuildable resource or conservation land.

2. Applicability

The standards in this section shall apply to a subdivision of land:

- a. That is subject to a preliminary plat;
- b. That does not include any public or private streets or extension of public water or wastewater service; and
- c. That includes a private access easement, unless otherwise exempted by this chapter.

3. Timing for submittal

- a. A final plat may be submitted after approval of a preliminary plan when:
 - i. There are no public or private improvements to be made; or
 - ii. There are public or private improvements to be made, and a majority of the improvements have been installed, inspected, and approved by the city engineer, and a surety has been posted with the city under conditions as outlined in Section 18-595: Subdivision improvements.

- b. A final plat shall depict the entire subdivision or that portion of the subdivision a developer proposes to record at the time of submittal. A final plat shall be certified by a land surveyor licensed and registered to practice in the State of North Carolina. A final plat shall substantially conform to the preliminary plan, as it was approved. The final plat shall conform to the provisions of Section 18-553: Requirements for the final plat and NCGS 47-30.
- c. All final plats may be reviewed and approved after certification by the city engineer that the final plat substantially conforms to the approved layout of the preliminary plan as it was approved, and that the improvements, if any, have been installed in accordance with all applicable requirements and specifications.
- d. Approval of a final plat shall not constitute acceptance by the city the dedication of any street or other ground, public utility line, or public facility shown on the plat. Acceptance of such dedications shall require approval by the city council in the form of a resolution and shall be requested by the developer only after recordation of the final plat with the New Hanover County Register of Deeds has been completed.

E. Plat recordation

Upon approval of a final plat a developer shall, within 30 days of the approval date, record the original plat in the New Hanover County Register.

F. Appeals

- 1. Appeals of decisions of the technical review committee or design adjustment committee shall be to the board of adjustment. Written notice of the appeal shall be filed with the city clerk no more than 30 days after the date of written notice of the determination of the decision of the technical review committee

or design adjustment committee.

- 2. The decision of the board of adjustment shall be subject to review by the superior court of New Hanover County. The final decision of the board of adjustment shall not be stayed pending review except by order granted by the superior court.

G. Nonconventional subdivision plats

Nonconventional subdivision plats shall be reviewed and approved in accordance with the procedures outlined in this section, prior to recordation.

- 1. Any nonconventional subdivision proposal shall be initiated with a pre-application conference as provided in Section 18-566: Pre-application meeting.
- 2. All cemetery plats shall conform to the final plat standards of this section.
- 3. Replats

Unless exempted by definition, all replats shall conform to the final plat standards found in this section, article 6 of this chapter, and all of the following standards.

 - a. If any individuals owning lots within the subdivision do not wish to participate in re-platting of the subdivision, the developer may only propose the re-platting of those remaining lots in the developer's ownership.
 - b. No public street, right-of-way or easement, or existing lot access not in the ownership of the developer shall be changed, altered, or adversely impacted by re-platting.
 - c. If one or both above provisions cannot be met by the proposed re-platting, the proposal shall be reclassified as a subdivision and shall be processed in accordance with the procedures established for that classification.

(Ord. No. 0-2021-75, §8, 11-3-2021)

Section 18-594: Expedited subdivision

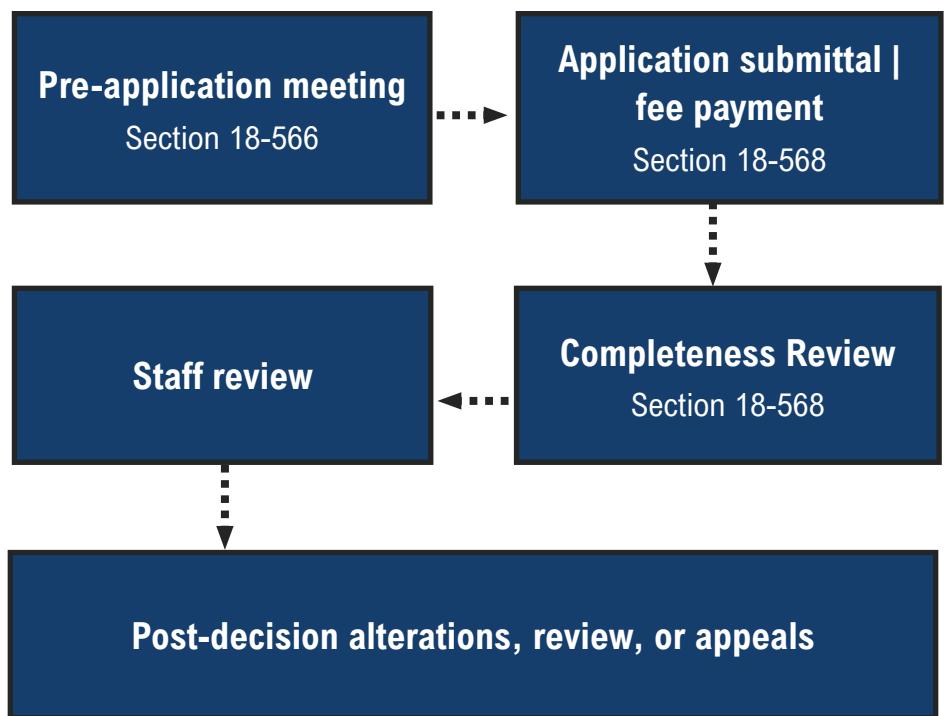
A. Purpose

The purpose for this expedited review procedure is to allow certain land divisions to be reviewed via an expedited review procedure based on their small size and limited likelihood to create significant impacts on surrounding lands.

B. Applicability

1. The standards in this section shall apply to divisions of land meeting all the following criteria:
 - a. The proposed division of land is not exempted under NCGS 160D-802(a)(2);
 - b. No land included in an expedited subdivision application shall have been the subject of an expedited subdivision application approval within the preceding 10 years;
 - c. The area of land subject to the division shall be at least five acres in size;
 - d. The proposed division would not result in more than three lots (including any residual or parent lot);
 - e. A permanent means of ingress and egress is recorded for each lot;
 - f. No extension of streets, water, sewer, or other utility is proposed; and
 - g. All lots in the expedited subdivision comply with the applicable dimensional requirements for the zoning district where located.
2. Divisions of land not meeting all these standards shall be reviewed with a preliminary plan or final plat, as appropriate.

Figure 18-594: Expedited subdivision process



3. Expedited subdivisions are not exempted from applicable zoning district dimensional requirements.

C. Expedited subdivision review procedure

An expedited subdivision application shall be processed as described in Figure 18-594: Expedited subdivision process.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.

2. Expedited subdivision review standards

An expedited subdivision shall be approved if the application:

- a. Is on a sheet or sheets suitable for recording with the New Hanover County Register of Deeds;
- b. Is prepared and sealed by a licensed professional land surveyor or licensed professional engineer;
- c. Complies with all applicable standards in this article and NCGS 47-30; and
- d. Includes all required certifications.

- D. Amendment of an expedited subdivision approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

- E. Appeals of decisions on an expedited subdivision plat shall be to the board of adjustment.

Section 18-595: Subdivision improvements

A. Purpose

1. These standards create additional flexibility necessary for development to be occupied or for lots in a subdivision to be conveyed prior to completion of all required infrastructure or site improvements, provided funds have been reserved for completion of these features. These provisions ensure that funds are available to complete required public infrastructure or private site features in the event an applicant or developer is unable to do so.
2. All improvements outlined within this article shall be installed by the developer in accordance with the following:
 - a. The approved preliminary plan;
 - b. Approved construction plans; and
 - c. The design standards specified in Article 6, Subdivision Standards, and the adopted standards of the Cape Fear Public Utility Authority.

B. Performance guarantees

A developer may provide a performance guarantee, as defined in article 8 of this chapter, in lieu of constructing required improvements in accordance with the terms and conditions of a development agreement approved by the city pursuant to NCGS 160D-1001, or with the following conditions:

1. The total cost of a performance guarantee shall not exceed \$20,000. The following facilities shall not be subject to the performance guarantee limit:
 - a. Asphalt surface course (final lift);
 - b. Pavement markings and signage;
 - c. Sidewalks;

- d. Street trees and landscaping; and
- e. Street furnishings.

2. A minimum, drainage and utility service shall be provided, as well as controlled and stabilized access to all lots or buildings and structures served by the dedication. A performance guarantee may be rejected and the installation of the public infrastructure required when deferring construction facilities proposed for performance guarantee would contribute to a public safety concern or limit service or access to the lots, buildings, or structures being dedicated.

3. A developer shall complete an application and furnish bona fide construction cost estimates for the subject improvements for verification by the city manager. The construction cost estimate shall include labor, materials, equipment, engineering, inspection, and testing services. The amount of the performance guarantee shall be equal to 125 percent of the approved construction cost estimate at the time of issuance of the performance guarantee. Upon approval of the construction cost estimate and performance guarantee amount, the developer shall deposit with the city a performance guarantee in the form elected by the developer. Any extension of the guarantee necessary to complete the required improvements shall not exceed 125 percent of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is made. 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 city, and the performance guarantee is likely to expire prior to completion of required improvements, the guarantee shall be extended, or a new one issued, for an additional period. An extension under this provision shall only be for a duration

necessary to complete required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in this section and shall include the total cost of all incomplete improvements.

- 4. A performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgment by the city that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended or a new performance guarantee issued for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are the subject of a performance guarantee or any extension. The form of any extension shall remain at the election of the developer.
- 5. If a developer has not demonstrated reasonable, good-faith progress towards completion of the subject improvements within 12 months of approval of a performance guarantee, or within the term of the performance guarantee, the city shall have the right to utilize the performance guarantee for completing the subject improvements or withhold certificate of occupancy for lots, structures, or buildings served by the subject improvements.
- 6. In the event the city uses funds available under the performance guarantee for the completion of the required improvements, any funds remaining upon completion of the improvements shall be refunded to the developer.
- 7. Any interest earned on funds deposited as a performance guarantee shall not be refunded to the developer and shall be retained by the city.

C. Building permit issuance

If a developer wishes to acquire building permits for the erection of buildings or structures simultaneously with the installation of required improvements, the following items shall be required, as applicable, prior to building permit issuance:

1. Plan approval by the city; or
2. Issuance of a construction permit for site improvements.

D. Sale or occupancy of buildings

No sale of buildings or building sites nor occupancy of buildings shall be permitted prior to full completion of required improvements, approval of the final plat, and recordation of the final plat. A final plat may be submitted for approval prior to the completion of all improvements under the conditions as described this section.

Section 18-596: Official acceptance of improvements

A. City council action

Pursuant to NCGS 160D-806, the city council, by resolution, may accept the dedication of all lands and facilities for streets, parks, public utilities, and other public purposes that have been approved for public dedication. The city council shall not accept the dedication of such lands and facilities until it determines, based upon recommendation of the city engineer, that:

1. All lands and facilities have been properly dedicated through recorded plats, deeds, or deeds of easements;
2. All lands and facilities have been inspected and approved by the city engineer or impacted departments of the city;
3. A valuation of all lands and facilities to be dedicated has been prepared; and

4. The facilities proposed for acceptance meet current street lighting standards, if applicable.

B. Conditions

The acceptance of any land and facilities through resolution of the city council shall be subject to the following terms and conditions:

1. The developer or applicant shall guarantee all materials and workmanship for a period of 18 months from the date of official acceptance;
2. Acceptance shall not be interpreted to relieve any developer, contractor, subcontractor, insurance company, owner, or other person of their individual or several obligations under any ordinance, policy, or contract or to otherwise reduce or eliminate the rights of the city, its agents, and employees against any other party connected with or in any way related to the development of the subdivision and facilities. The acceptance shall not be interpreted as a waiver of any defense or immunities that the city, its agencies, or employees may assert or be entitled to;
3. All rights, privileges, and warranties of whatsoever nature and kind, for equipment, supplies, materials, goods, and services shall be assigned to the city and all benefits derived therefrom shall inure to the city, its agents, and employees;
4. The acceptance of the lands and facilities shall be conditioned upon the owners covenanting and warranting that they are lawfully seized and possessed of all the lands and facilities dedicated to the public; that they have good and lawful authority to dedicate the same to the public for the stated purpose; that the lands and facilities are free and clear of any deeds of trust, mortgages, liens, or assessments and that the dedicators for their heirs, successors, executors, administrators, and assigns, covenant that they shall warrant and defend the dedication of such land and facilities against any and all claims and demands whatsoever; and

5. Acceptance of dedication of lands and facilities shall not obligate the city to construct, install, maintain, repair, replace, extend, improve, build, or operate any public facilities or utilities. Such acceptance shall not obligate the city to construct any main, line, pipe, lateral, or other extension or permit connection to water, sanitary sewer, storm sewer, drainage, or other public utilities.

Section 18-597: Historic preservation

A. Certificate of appropriateness

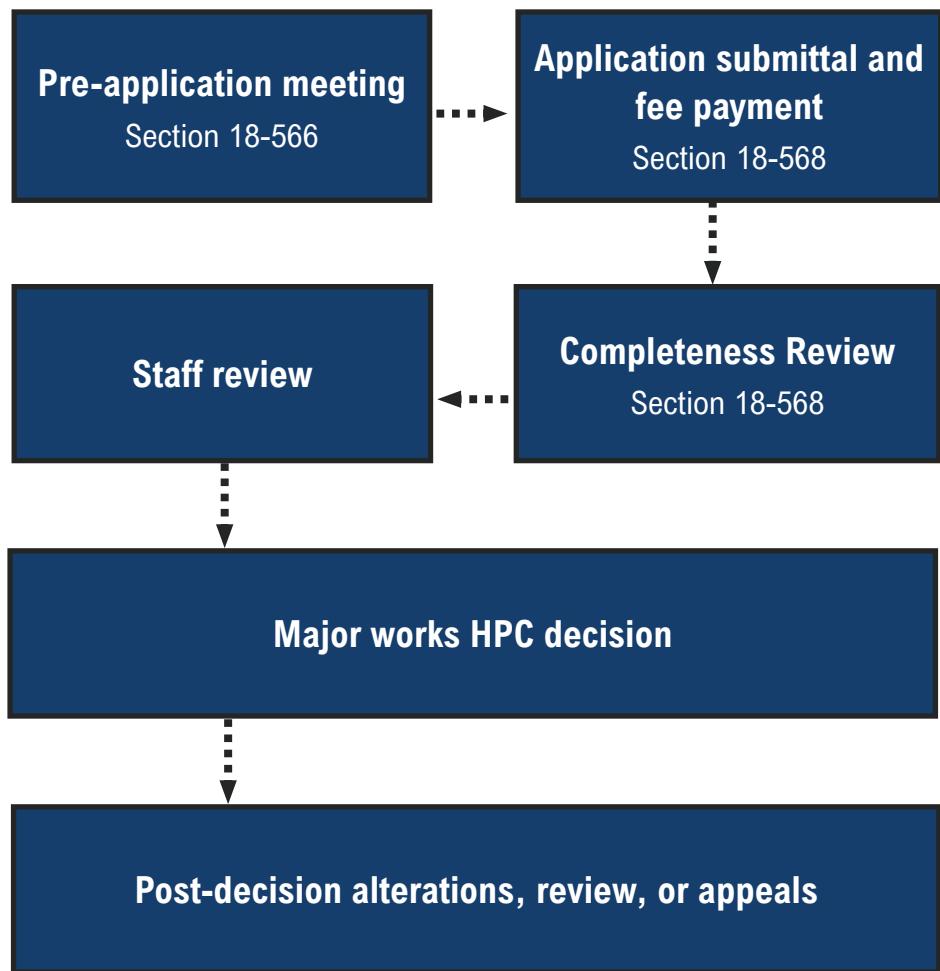
1. When required:
 - a. From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure, (including walls, fences, light fixtures, steps, pavement, and other appurtenant features), security cameras, automated teller machines, telecommunication facilities, aboveground utility structure, any type of signage, or changes to the grounds of a property, including significant landscaping, shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior feature(s) changes has been submitted to and approved by the historic preservation commission.
 - b. For purposes of this division, exterior features shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure including the kind and texture of the building materials, the size and scale of buildings and structures, and type and style of all windows, doors, light fixtures, signs, and other appurtenant features, color, significant landscaping, archaeological and natural features. For signs, exterior
- c. The demolition of a building or structure within a historic district shall require a certificate of appropriateness.
- d. A certificate of appropriateness under the provisions of this section shall be required whether a building permit is required. In all instances, when a building permit is required, the certificate of appropriateness shall be issued prior to the issuance of a building permit.
- e. To prevent destroying or seriously damaging the historic, architectural, archaeological, or aesthetic values of the physical features lying within public rights-of-way, all local and state government agencies and public utilities shall be required to obtain a certificate of appropriateness prior to initiating any changes to the character of the streetscape, paving, and sidewalks.

2. Certificate of appropriateness application requirements and procedures
An application for a certificate of appropriateness shall be filed with the secretary of the historic preservation commission. The procedure for certificates of appropriateness for major works is described in Figure 18-597.1: Certificates of appropriateness—major works process. The secretary shall determine, through the application review process, if an application meets the required submittal criteria before advancing the application.
3. Application
 - a. Applicants for major works shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting. Applicants for minor works may schedule a pre-application meeting.

features shall mean the style, material, size, and location. Minor landscaping on private property, including the planting of small flower beds, small trees, and small shrubs shall not require a certificate of appropriateness.

- b. Property owners or authorized agents applying for a certificate of appropriateness for major works shall be required to submit the following, as applicable:
 - i. Detailed description of project to include how the project complies with the Wilmington Design Standards for Historic Districts and Landmarks;
 - ii. Map showing the subject property and adjacent lots;
 - iii. Site plan drawn to scale showing the location of existing and proposed buildings and structures and property lines in relation to such buildings, structures, parking, driveways, and landscaping;
 - iv. Scaled drawings and elevations showing all exterior architectural detailing for the proposed project and streetscape;
 - v. All proposed building materials, including product information sheets and color samples (may include photographs, warranties, brochures, and manufacturer's specifications);
 - vi. Current photographs of the subject property and project area;
 - vii. List of adjacent property owners and stamped addressed envelopes; and
 - viii. Any other information specifically required to determine whether the proposed project meets the design standards.
- c. Property owners or authorized agents applying for a certificate of appropriateness for administrative bypasses for minor works review shall be required to submit the following, as applicable:

Figure 18-597.1: Certificate of appropriateness—major works process



- i. Detailed description of project to include how the project complies with the Wilmington Design Standards for Historic Districts and Landmarks;
- ii. Site plan drawn to scale showing the location of existing and proposed structures and property lines of such structures, parking, driveways, and landscaping;
- iii. All proposed building materials including product information sheets and color samples (may include photographs, warranties, brochures, and manufacturer's specifications);
- iv. Current photographs of the subject property and project area; and
- v. Any other information specifically required to determine whether the proposed project meets the design standards.

4. Staff review

The purpose of this review shall be to acquaint the property owner, developer, or agent with standards of appropriateness and design required for the proposed project and to establish a review and informal discussion with the historic preservation commission staff.
5. Administrative bypass for minor works review

If the proposed change is in accordance with the Wilmington Design Standards for Historic Districts and Landmarks, a certificate of appropriateness for minor works may be granted by the secretary of the historic preservation commission (or designee) for the following work items:

 - a. Awnings;
 - b. Doors, including entry, garage, and storm doors;
 - c. Extension of a certificate of appropriateness for six months;
 - d. Fences (except on corner lots);
 - e. Handicapped facilities;
 - f. In-kind roofing materials;
 - g. Major landscaping;
 - h. Minor exterior alterations;
 - i. Paint colors;
 - j. Rear yard decks;
 - k. Removal of siding and exposure of original materials;
 - l. Restoration of original features and materials based on photographic, physical, or other historical evidence;
 - m. Shutters;
 - n. Signs;
 - o. Sheds and play equipment not exceeding 12 feet in any dimension;
 - p. Storm windows; and
 - q. Walkways, paths, driveways, and patios.
6. Issuance of certificate of appropriateness

If the historic preservation commission determines that the proposed construction, reconstruction, alteration, restoration, moving, or demolition of a building or structure is appropriate, it shall approve and issue to the applicant a certificate of appropriateness. The historic preservation commission may issue the certificate of appropriateness subject to reasonable conditions necessary to implement the purposes of NCGS 160D Part 4.

7. Denial of certificate of appropriateness

If the historic preservation commission determines that a certificate of appropriateness should not be issued, it shall place in its records the reason for denial and shall notify the applicant of such determination, furnishing them a copy of its reasons, and its recommendations, if any, as they appear in the records of the historic preservation commission.

8. Appeals

An appeal of the action of the historic preservation commission in granting or denying any certificate of appropriateness may be taken to the board of adjustment. Such appeals:

- a. May be taken by any aggrieved party;
- b. Shall be filed with the secretary of the board of adjustment no more than 30 days from the date of written notice of the determination of the historic preservation commission's action;
- c. Shall be in the nature of certiorari.

9. Time limits of certificate of appropriateness

- a. A certificate of appropriateness issued by the historic preservation commission shall become null and void if construction, reconstruction, alteration, or restoration is not commenced within 12 months of the effective date of the certificate.
- b. A certificate of appropriateness for minor works issued by the secretary of the commission shall become null and void if approved work has not commenced within six months of the date of issuance.
- c. One extension of time for a certificate of appropriateness, not to exceed six months, may be granted by the secretary of the historic preservation commission, or designee, providing an application for such extension is submitted in writing prior to the expiration of the original certificate

of appropriateness. The secretary shall inform the historic preservation commission of any extension of time for a certificate of appropriateness. No extension of a certificate of appropriateness shall be denied by the secretary without formal action of the historic preservation commission.

Notwithstanding the secretary's authority under this section, the historic preservation commission shall be empowered to grant an extension of a certificate of appropriateness for any length of time deemed appropriate, provided an application for such extension is submitted in writing to the historic preservation commission prior to expiration of the original certificate of appropriateness or any extension thereof.

10. Design review process for certificates of appropriateness

Applications for a certificate of appropriateness shall be subject to review based upon the design standards then in effect. These standards are set forth in a manual prepared and adopted by the historic preservation commission. The historic preservation commission shall also utilize the Secretary of Interior's Standards for the Treatment of Historic Properties and other resources on architectural history, preservation, rehabilitation, reconstruction, landscaping, and restoration as may be required.

11. Demolition

- a. An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or of a building, structure, or site within a historic district may not be denied, notwithstanding the provisions for resources of statewide significance. The effective date of the certificate of appropriateness may be delayed for a period of up to 365 days from the date the application is approved by the historic preservation commission. The maximum period shall be reduced by the historic preservation commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of delay.

- b. During the period of delay, the historic preservation commission shall negotiate with the owner and any other parties involved to find a means of preserving the building or site. If the historic preservation commission finds that the building or site within a historic district has no special significance or value toward maintaining the character of a historic district, it shall waive all or part of such period and authorize earlier demolition or removal.
- c. If the historic preservation commission has voted to recommend designation of a property as a landmark or designation of an area as an historic district, and final designation has not been made by the city council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the historic preservation commission for a period of up to 180 days or until the city council takes final action on the designation, whichever occurs first.
- d. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied unless the historic preservation commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

B. Demolition by neglect of buildings and structures

1. Identification

The exterior features of any building or structure (including signs, walls, fences, light fixtures, steps, pavement, paths, or any other appurtenant feature) either designated as a historic landmark or located within a historic district shall be preserved by the owner,

or such other person who may have legal possession, custody, and control thereof, against decay and deterioration and kept free from structural defects which contribute to demolition by neglect. The owner or other person having such legal possession, custody, and control shall, upon written request by the city, repair such exterior features if they are found to be deteriorating or if their condition is contributing to deterioration and demolition by neglect, including, but not limited to, any of the following defects:

- a. Deterioration of exterior walls, foundations, flooring or floor support, roofs, chimneys, or other vertical support that causes leaning, sagging, splitting, listing or buckling, or could reasonably lead to irreversible damage to the structure;
- b. Deteriorated or ineffective waterproofing of exterior walls, roofs foundations or floors, including broken windows or doors;
- c. Defective protection or insufficient weather protection for exterior wall and roof coverings, including lack of paint or weathering due to lack of paint or other protective covering;
- d. Rot, holes, or other forms of decay;
- e. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings and architectural details that causes delamination, instability, loss of shape and form or crumbling;
- f. Heaving, subsidence or cracking of sidewalks, steps, driveways, or pathways;
- g. Deterioration of fences, walls, gates, and accessory structures;
- h. Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of a historic landmark; or

- i. Deterioration of any exterior feature to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.
2. Review and inspection of authority

The city manager shall assure compliance with the standards set forth in this section (see Figure 18-597.2: Demolition by neglect process).
3. Complaint and hearing
 - a. When further investigation determines that demolition by neglect violations exist for which no corrective action has been taken, the city manager shall issue and serve upon the owner of record a complaint stating the violations and containing a notice that a hearing will be held before the hearing officer designated in the city of Wilmington Code of Ordinances. The hearing shall be at least 10 but not more than 30 days after the serving of such complaint.
 - b. The purpose of the hearing shall be to receive evidence concerning demolition by neglect, and to consider any claim of undue economic hardship. Parties with an ownership interest may give testimony and present evidence at the hearing. The rules of evidence shall not be controlling in hearings before the hearing officer.
 - c. If after such notice and hearing, if the hearing officer determines that the building, structure, or site is undergoing demolition by neglect because it is deteriorating or if its condition is contributing to deterioration, the hearing officer shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties in interest therein an order to repair within the time specified those elements of the building, structure, or site that are deteriorating, and contributing to deterioration or deteriorated.
4. Safeguards from undue economic hardship
 - a. When a claim of undue economic hardship is made owing to the effects of demolition by neglect, the burden of proof shall be upon the owner and parties of interest to provide evidence during the hearing upon the claim, describing the circumstances of hardship, which may include:
 - i. Nature of ownership (individual, business or nonprofit) or legal possession, custody, control, residency, and a description of the building or structure;
 - ii. Financial resources of the owner and parties in interest;
 - iii. Cost of repairs;
 - iv. Assessed value of the land and improvements;
 - v. Real estate taxes for the previous two years;
 - vi. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance;
 - vii. Annual debt service, if any, for previous two years;
 - viii. Any listing of the property for sale or rent, price asked, and offers received, if any.
 - ix. If the property is income-producing:
 1. Annual gross income from the property for the previous two years;
 2. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed; and
 3. Annual cash flow, if any, for the previous two years.
 - x. The hearing officer may request additional information

that the hearing officer believes is relevant.

xi. Following the hearing on the claim, the hearing officer shall cause to be made a finding of undue or no undue economic hardship and shall state in writing the findings of fact in support of such determination.

xii. In the event of a finding of undue economic hardship, the finding may be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the city, the county or other public, private or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations or extensions of time to mitigate the undue economic hardship. The order of the hearing officer for such property to be repaired with the time specified may include the provisions of the recommended plan.

5. Methods of service

a. Complaints issued by the city manager or orders issued by a hearing officer under this article shall be served upon the owner of record either personally or by first class mail. In addition, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or parties in interest are unknown and cannot be ascertained in the exercise of reasonable diligence or if the owners have refused to accept service by first class mail, the city official shall make an affidavit to that effect. The official shall then serve such complaint or order upon such owners or other persons by publishing the same at least once in a newspaper having general circulation in the city and no later than the time at which personal service would be required. When service is made by publication,

a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order.

b. Failure on the part of any owner or party in interest to receive or have served upon him any complaint, notice, or order herein provided for shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.

6. Right of appeal

An appeal from any decision or order of the hearing officer pursuant to this section may be taken by any person aggrieved thereby or by the city to the board of adjustment. The procedures for such appeal shall be as set forth in Section 18-572: Appeals.

7. Other city powers

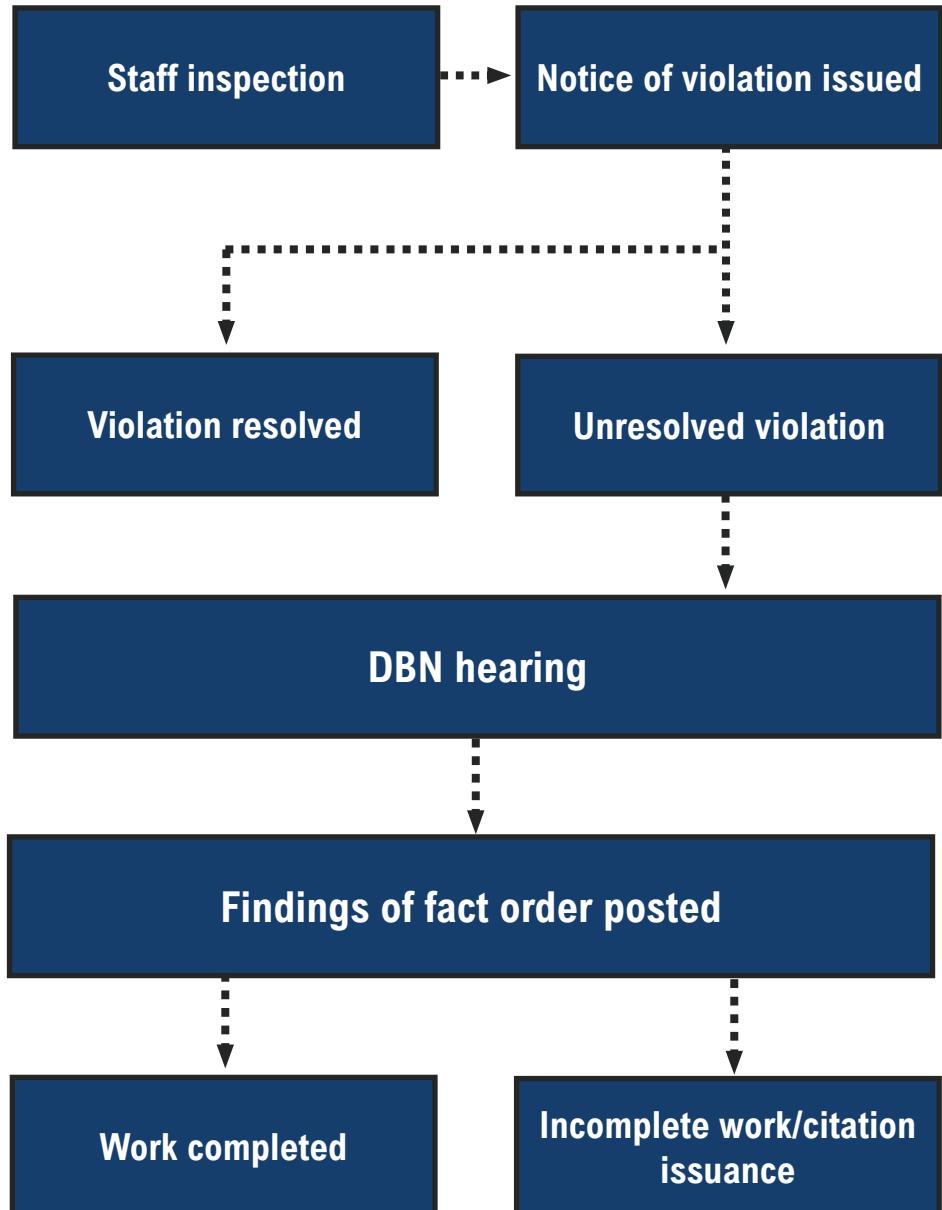
Nothing in this article addressing demolition by neglect shall be construed to impair or limit in any way the power of the city to define and declare minimum housing code and abandoned structure ordinance violations and nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement by a remedy provided herein prevent the enforcement of other remedies provided herein or elsewhere in the city of Wilmington Code of Ordinances.

C. Scope of historic preservation commission review

1. Interior arrangement not considered

a. The historic preservation commission shall not consider interior arrangement except as set forth below. The commission shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant features, signs, or other significant features in the historic districts that would be incongruous with the special character of the landmark or district.

Figure 18-597.2: Demolition by neglect process



b. The historic preservation commission shall consider specific interior features of architectural, artistic, or historical significance in publicly-owned landmarks and of privately-owned historic landmarks when the owner consents to interior review. Such consent for interior review shall bind future owners and successors in title, provided such consent has been filed with the New Hanover County Register of Deeds, and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

2. Certain changes not prohibited

Nothing in this division shall be construed to prevent any of the following measures:

- Ordinary maintenance or repair of any exterior architectural feature in a historic district or landmark that does not involve a change in design, material, or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature that the building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition;
- A property owner making any use of their property not otherwise prohibited by law;
- Maintenance, or in the event of emergency, the immediate restoration of any existing aboveground utility structures; and
- Maintenance, repair, construction, reconstruction, alteration or restoration of any city-owned utilities, streets, sidewalks, landscaping, signs, or other similar improvements located on public rights-of-way and property. Except in the event of emergency, prior to undertaking any work that involves a change in design, material, or appearance of any such features, the city manager shall obtain necessary certificates of appropriateness.

3. Buildings owned by state of North Carolina
 - a. All provisions of this division are made applicable to construction, alteration, moving, and demolition by the state of North Carolina, its political subdivisions, agencies, and instrumentalities. The interiors of such buildings shall not be the subject of review under this section.
 - b. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principals and guidelines used in reviewing application of the state for certificates of appropriateness.
 - c. The state and its agencies shall have a right of appeal to the North Carolina Historical Commission, or any successor agency, any decision of the historic preservation commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the historic preservation commission.
4. Conflict with other laws; decisions of the city council
 - a. Whenever the provisions of any other statute, charter provision, regulation, or ordinance requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or historic district than are established under this division, such other statute, charter provision, ordinance, or regulation shall govern.
 - b. Whenever a request for a certificate of appropriateness relates to a site, building, or project that is the subject of a request for a special use permit or zoning map amendment, the decision of the city council shall take precedence over the commission's decision on the issuance of such certificate to the extent of any conflict.

5. RemediesWhen any building, structure, site, area, or object designated a historic landmark or located within a historic district is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, without compliance with this division, the city, historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, site, area, or object. Such remedies are in addition to any others authorized by this chapter.

D. Removal of height restriction in the central business district

To retain all allowable building height when demolishing a building listed as contributing listed in the National Register of Historic Places in the CBD, a property owner may make application to remove the height restriction according to the steps outlined in Figure 18-597.3: Removal of height restriction in the CBD.

1. An applicant petitioning to remove height restrictions in the CBD shall demonstrate that the historic building retains little or no significance according to each of the five categories in Table 18-597: Contributing resources review categories. A building shall be considered to have retained little or no significance if, when scored in each category, scores a combined total of six or fewer points.
2. Individual buildings on recombined lots shall be scored individually.
3. Appeals of the decision of the historic preservation commission shall be to the board of adjustment.
4. Applications that receive an unfavorable recommendation from the planning commission may be appealed within 30 days of the date of the action of the planning commission. Such appeals shall be to the city council by filing with the city clerk a notice in writing stating the action of the planning commission and the reasons for the appeal.

Figure 18-597.3: Removal of height restriction in CBD

Step 1

FILE APPLICATION

- If the lot is within the CBD-HDO, file application with the historic preservation commission.
- If the lot is not within the CBD-HDO, file application with city council.

Step 2

REVIEW PROCESS

- Within the CBD-HDO, the HPC shall review and approve or deny a request to remove the height restriction.
- Outside of the CBD-HDO, the HPC shall review an application and forward a cursory recommendation to the planning commission.
- The planning commission shall review the application, hold a public hearing, and forward a formal recommendation to the city council.
- City council shall hold a public hearing and approve or deny a request to remove the CBD height restriction.

Table 18-597: Height restriction review categories

Category	Points awarded in 1/2-point increments (minimum-maximum)	Review criteria
Cultural significance	0-3	The building is associated with events or the lives of persons that have made a significant contribution to local, state, or national history.
		The building represents the work of a well-known or highly regarded builder, architect, or other person who was involved in the concept, planning, construction, or use of the building.
Architectural integrity	0-3	The building has maintained the integrity of its original architectural form.
		Changes made to the building over 50 years ago have acquired architectural significance.
Architectural style	0-4	The building has a distinctive, defined architectural style
		The building has superior craftsmanship or a degree of uncommon for the period in which it was constructed.
		The building is the last or the oldest example of a certain building type or method of construction.
		The building is one of a group of buildings that represent a stylistic type or have distinctive characteristics that are significant by their commonality during a period of history.
Structural integrity	0-3	The building shall be given a score of three points for structural integrity unless the applicant has provided a report of structural inadequacy prepared and sealed by a structural engineer licensed in the state of North Carolina. The report shall be based on the requirements of the most current version of the North Carolina Rehab Code, North Carolina Existing Buildings Code, or Chapter 34 of the North Carolina Building Code rather than the North Carolina Building Code for New Construction. by their commonality during a period of history.

(Ord. No. 0-2021-75, §9, 11-3-2021)

Section 18-598: Vested rights**A. Establishment of a vested right**

1. A vested right shall be deemed established upon the valid approval by the city council, technical review committee, design adjustment committee, or planning commission, as applicable, of a site-specific vesting plan following notice and public hearing as provided for by law for the specific approval.
2. The approval authority may approve a site-specific vesting plan upon such terms and conditions as may be reasonably necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right being established. Failure to satisfy any of the terms and conditions so imposed will result in a forfeiture of vested rights.
3. A site-specific vesting plan shall be deemed approved as of the effective date of the approval authority's final action or adoption of an ordinance relating thereto.
4. Neither a variance nor a waiver shall constitute a site-specific vesting plan and approval of a site-specific vesting plan with the condition that a variance or waiver be obtained shall not confer a vested right unless and until the necessary variance or waiver is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

B. Approval procedures and approval authority

1. Except as otherwise provided in this section, an application for site-specific vesting plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of permit or approval for which application is made.

2. Notwithstanding the provisions of subsection A, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee, or administrative official other than the city council, to obtain a zoning vested right, an applicant shall request in writing at the time of application that the application be considered and acted on by the city council following notice and a public hearing as provided in, NCGS 160D-601, in accordance with the procedures set forth in Section 18-589: Special use permit.
3. For a zoning vested right to be established upon approval of a site-specific vesting plan, the applicant shall indicate at the time of application, on a form to be provided by the city, that a zoning vested right is being sought.
4. Each map, plat, site plan, or other document evidencing a site-specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS 160D-102. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

C. Duration of vested rights

1. A vested right established pursuant to this section for a site-specific vesting plan shall remain vested for a period of two years from the effective date thereof.
2. Notwithstanding the provisions of subsection C.1, the city may provide that the vested rights shall be valid for a period exceeding two years but not exceeding five years, if warranted considering all relevant circumstances including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site-specific vesting plan is approved.

3. Nothing in this section shall be construed to exempt a site-specific vesting plan with respect to which a vested right has been established from subsequent review or approvals to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable provisions.
4. All parts of a multiphase development shall remain vested for a period of seven years with the provisions of this section in effect at the time of approval of the initial phase of the multiphase development.
5. The establishment of a vested right pursuant to this section shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right with respect thereto shall become effective upon the expiration or termination of the vested right in accordance with this section.
6. Upon issuance of a building permit, the expiration provisions of NCGS 160D-403(c) and the revocation provisions of NCGS 160D-403(f) shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

D. Termination of vested rights

A zoning right has been vested as provided in this division shall terminate:

1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;

2. Upon written request or with the written consent of the affected landowner;
3. Upon findings by the city council, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
4. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
5. Upon findings by the city council, by ordinance after notice and a hearing, that the landowner or his representative supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site-specific vesting plan; or
6. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

E. Miscellaneous provisions

1. An established vested right precludes any zoning action by the city that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific development plan.

2. Nothing in this division shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this chapter.
3. A vested right is not a personal right but shall attach to and run with the land with respect to the affected property. All successors in title and interest of the owner who obtained the vested right shall be entitled to exercise the right.

F. Voluntary annexation

A petition for annexation filed with the city pursuant to NCGS 160A-31 or NCGS 160A-58.1 shall contain a signed statement declaring whether any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160D-108 or, or the failure to sign a statement declaring whether a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

G. Limitations

Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to NCGS 160D-108.

H. Repealer

If the event that NCGS 160D-102 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

I. Effective date

This division shall only apply to site-specific vesting plans approved on or after July 1, 2021.

Section 18-599: Sign permit

A sign permit issued by the city manager becomes null and void if work is not commenced within six months of issuance. If work authorized by the permit is suspended or abandoned for six months, the permit shall be renewed, and payment of a fee equal to one-half the original fee shall be required.

Section 18-600: Building permit

- A. Except as provided in NCGS 160D-1110 and the North Carolina State Building Code, no person shall commence or proceed with any of the following activities without first applying for and receiving one or more permits covering all such work or changes:
 1. The construction, reconstruction, alteration, repair, moving, or demolition of any building, or structure;
 2. The installation, extension, or general repair of any plumbing system;
 3. The installation, extension, alteration, or general repair of any heating, air conditioning or ventilation system;
 4. The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment;
 5. The installation, alteration, or repair of any sign; or
 6. A change in the use of an existing building or structure.
- B. No building permit as required by this chapter and any North Carolina General Statutes shall be approved by the city manager except in conformity with the provisions of this chapter unless written order from the board of adjustment in the form of an administrative review or variance is issued as provided by this chapter.
- C. The city manager shall not issue a building permit unless the plans, specifications, and intended use of such building or structures or part thereof conform in all respects to the provisions of this chapter. The application for a building permit shall be accompanied by such information as the city manager may lawfully require to enable them to act upon such application.

D. Each application for a building permit shall include information as to the location of applicable areas of environmental concern. Prior to the issuance of a building permit, the permit officer shall certify that the proposed structure or facility is in accordance with the state guidelines for areas of environmental concern. For this purpose, the permit officer shall be the local permit officer designated by the North Carolina Division of Coastal Management.

Section 18-601: Certificate of occupancy

No person shall change or commence the use of any building or land, except the use of land for agricultural purposes, until a certificate of occupancy shall have been issued stating that the proposed use complies with the provisions of this chapter.

Section 18-602: Appeals of quasi-judicial decisions

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with this chapter. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office specified by ordinance. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. The person required to provide notice shall certify that proper notice has been made.

Section 18-603: Design adjustments

A. Purpose

The purpose for the design adjustments procedure is to establish clear and measurable review criteria for the consideration of major deviations from the Technical Standards and Specifications Manual, building design and material standards, and subdivision standards. The intent of the procedure is to provide relief where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by this chapter.

B. Applicability

1. Except where otherwise prohibited, a design adjustment may be requested to any of the following:
 - a. A subdivision design standard in Article 6, Subdivisions with the exception of street and subdivision names and lot access;
 - b. Building design and materials standards identified in Article 2, Zoning Districts; and
 - c. Deviations from the standards in the Technical Standards and Specifications Manual or its successor.
2. In no instance shall the design adjustment committee consider an application regarding:
 - a. Minimum or maximum dimensional requirements for lot area, building height, or buffer width;
 - b. Increases in maximum allowable residential density;
 - c. Minimum required separation distance between two use types;
 - d. Design elements required for compliance within a local historic district;
 - e. Floodplain regulations, or

- f. Any condition of approval from another board or commission with purview of the project.
3. In granting an adjustment, the design adjustment committee may prescribe appropriate conditions and safeguards in conformity with this chapter.
4. The intent of the building design and material design adjustment standards are to:
 - a. Achieve a harmony and cohesion of each building and the surrounding development area with consistent scale, materials, and orientation towards a street or public space;
 - b. Ensure the use of architectural features that provide visual interest for the community;
 - c. Deter monotonous development patterns that may conflict with the character of existing development or objectives of the city; and
 - d. Contribute to the general welfare of the city.

C. Process overview

The design adjustment shall be processed as described in Figure 18-603: Design adjustment process.

D. Application submission and staff review

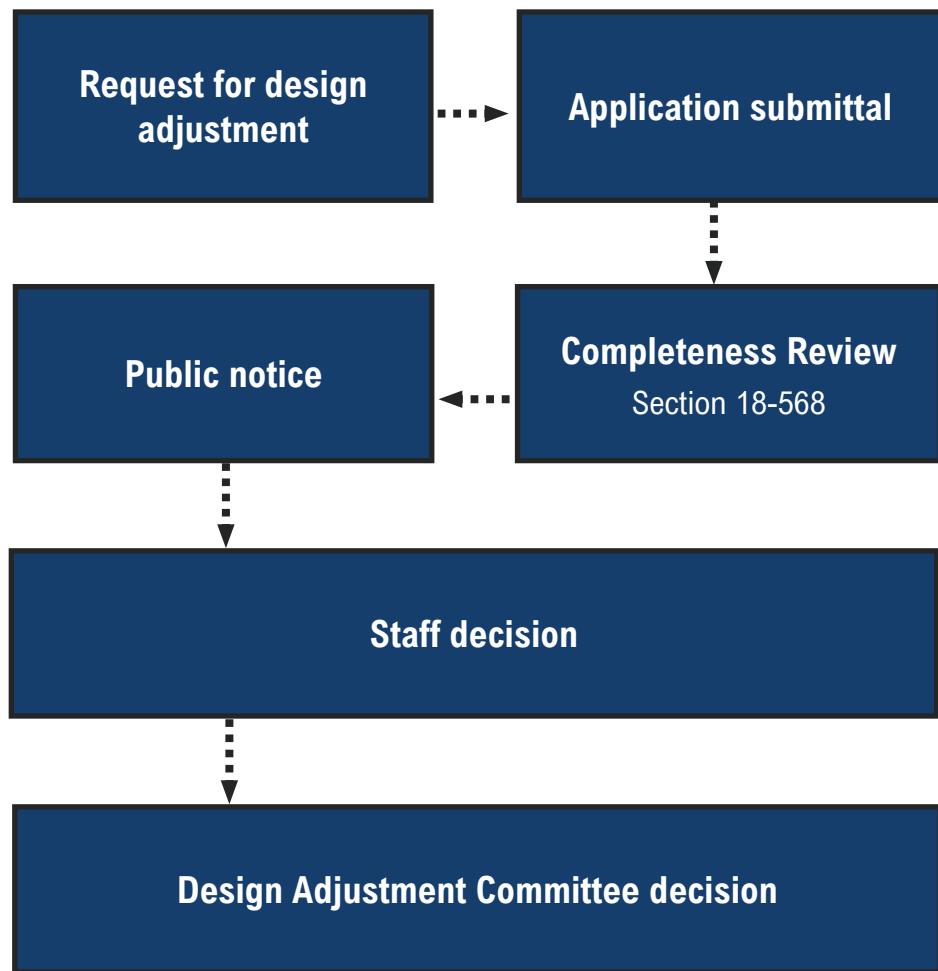
1. Requests for a design adjustment may be submitted by the property owner or duly appointed agent.
2. The applicant shall submit pertinent material necessary for review of the design adjustment, in addition to the required submittal material for a preliminary subdivision plan or site plan. This may include architectural renderings, materials samples, roadway cross-sections, site or subdivision layouts, or other project specific information.

3. If requested, an application for a design adjustment shall be submitted at the time of application for a preliminary subdivision plan or site plan.

E. Decision making

1. An evidentiary hearing shall be held on a design adjustment request. Any person may appear at said hearing, in person or by agent or attorney.
2. Design adjustment committee decision making
In granting the requested adjustment, the design adjustment committee shall make findings of fact that the following requirements have been met, where applicable.
 - a. The request meets the intent of this chapter.
 - b. The request conforms with adopted comprehensive plans and other applicable plans.
 - c. The request does not increase congestion or compromise safety.
 - d. The request does not create any lots without direct street frontage.
 - e. A request for adjustment from the subdivision design standards or the *Technical Standards and Specification Manual* shall be deemed reasonable due to one or more of the following:
 - i. Topographic constraints;
 - ii. The presence of existing buildings, stream, or other natural features;
 - iii. Site layout of adjacent adjoining properties;
 - iv. Adjoining uses or their vehicles are incompatible;
 - v. Strict compliance would pose a safety hazard; or

Figure 18-603: Design adjustment process



vi. Conflict with an approved or built roadway construction project adjacent to or in the vicinity of the site.

f. The request from the building design and materials standards shall be deemed reasonable due to one or more of the following situations:

- Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that in the absence of the adjustment no reasonable use can be made of the property.
- The adjustment would meet the intent of the standards requested for adjustment.
- The adjustment would conform with adopted comprehensive plans and any applicable adopted plans or design manual.
- The adjustment would not substantially injure the value of adjoining or abutting property.
- The character of the requested adjustment would be in harmony with the area in which the subject property is located.
- Strict compliance would pose a safety hazard.

3. Ruling
Appropriate conditions may be imposed on any design adjustment, provided that the conditions are reasonably related to the request.

4. Voting
The concurring vote of four-fifths of the committee shall be necessary to approve the design adjustment.

Section 18-604: Administrative adjustment

A. Purpose

The purpose of the administrative adjustment procedure is to establish clear and measurable review criteria for the consideration of minor deviations to certain numeric standards in the Technical Standards and Specifications Manual.

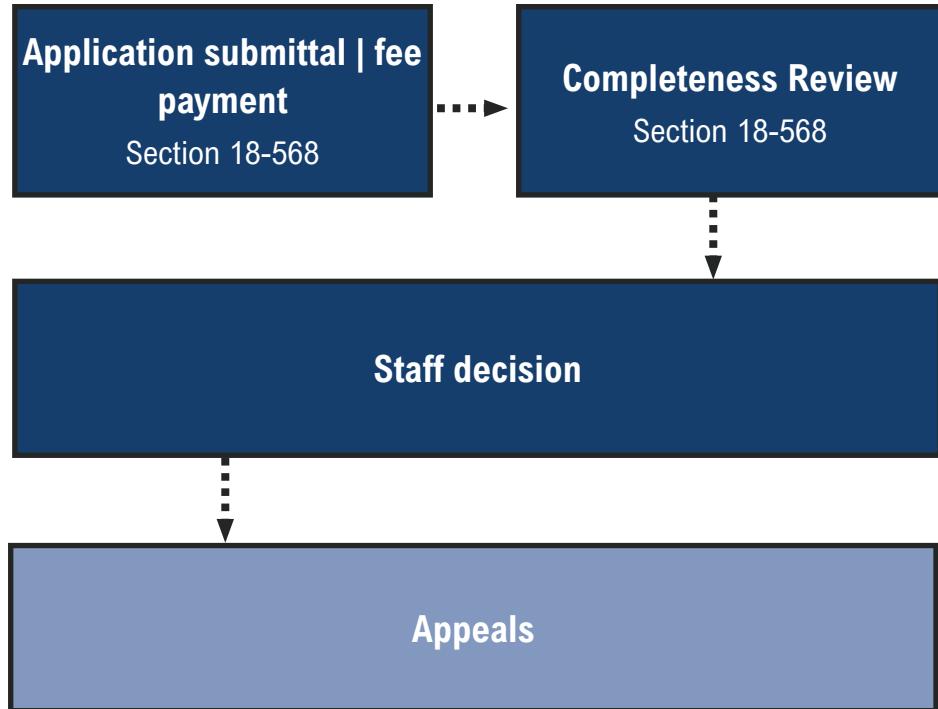
B. Applicability

1. Except where otherwise prohibited, an administrative adjustment may be requested for a numeric standard in the Technical Standards and Specifications Manual or its successor.
2. In no instance shall an administrative adjustment application be submitted for:
 - a. Minimum or maximum dimensional requirements for lot area, building height, or buffer width;
 - b. Increases in maximum allowable residential density;
 - c. Minimum required separation distance between two use types;
 - d. Design elements required for compliance within a local historic district;
 - e. Floodplain regulations, or
 - f. Any condition of approval from a board or commission with purview of the project.

C. Administrative adjustment amount

An administrative adjustment may allow a deviation from a numeric standard by up to 10 percent or 10 feet, whichever is greater.

Figure 18-604: Administrative adjustment process



D. Process

An administrative adjustment shall be processed as described in Figure 18-604: Administrative adjustment process.

E. Decision

The decision on an administrative adjustment shall be made by the city engineer based on the criteria established in this section.

F. Administrative adjustment review standards

An administrative adjustment may be approved if the applicant demonstrates all the following:

1. The adjustment would be consistent with the type and thresholds for an administrative adjustment established in this section.
2. The administrative adjustment:
 - a. Would be required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general;
 - b. Would support an objective or goal from the purpose statement of the zoning district in which the subject property is located; or
 - c. Would be necessary to allow for proper functioning of on-site private infrastructure;
 - d. Would save healthy existing trees; or
 - e. Would preserve environmentally sensitive lands.
3. Impacts resulting from an administrative adjustment would be fully mitigated; and
4. The development standard requested for adjustment is not the subject of a previously approved adjustment or condition of approval on the same site.

G. Appeal

Appeal of a decision on an administrative adjustment shall be reviewed and decided by the board of adjustment.

Sections 18-605 - 18-614: Reserved.

ARTICLE 7. DIVISION 3.

BOARDS, COMMISSIONS, AND COMMITTEES

Section 18-615: Board of adjustment

A. Establishment

The board of adjustment is established to fulfill the duties and powers prescribed by the city of Wilmington Code of Ordinances and by NCGS 160D-302.

B. Appointment and tenure

1. The board shall consist of five members and two alternate members, who shall be citizens and residents of the city, holding no other public office under the city government, and shall be appointed by the city council.
2. All members shall be appointed for staggered terms of three years, to serve in accordance with the city council policy on boards and commissions then in effect.
3. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.
4. All appointments to fill vacancies shall be for the unexpired period of the term.

C. Compensation

Members of the board shall serve without compensation and may be removed by the city council at any time.

D. Organization

1. The board shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.

2. Rules of procedure shall be adopted by the board for the conduct of its business and for the election of its officers. The city council shall approve the rules of procedure and any amendments prior to implementation.
3. All meetings held by the board shall be held in accordance with the North Carolina open meetings law.
4. The board shall keep minutes of its proceedings suitable for review in court showing:
 - a. The factual evidence presented to the board by all parties concerned;
 - b. The findings of fact and the reasons for the determinations by the board; and
 - c. The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.

E. Duties

1. The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation.
2. The concurring vote of four-fifths 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. Vacant positions on the board and members who are disqualified from voting on the quasi-judicial matter 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.

Section 18-616: Planning commission

A. Establishment

A planning commission is hereby created under the authority of NCGS 160D-301.

B. Appointment and tenure

1. The planning commission shall consist of seven members, who shall be citizens and residents of the city, holding no other public office under the city government, and shall be appointed by the city council.
2. All members shall be appointed for staggered terms of three years, to serve in accordance with the council policy on boards and commissions then in effect.
3. All appointments to fill vacancies shall be for the unexpired period of the term.

C. Compensation

Members of the planning commission shall serve without compensation and may be removed by the city council at any time.

D. Organization

1. The planning commission shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.
2. Rules of procedure shall be adopted by the planning commission for the conduct of its business and for the election of its officers. The city council shall approve the rules of procedure and any amendments prior to implementation.
3. All meetings held by the board shall be held in accordance with the North Carolina open meetings law.

E. Duties

In accordance with NCGS 160D-301, the planning commission shall perform the following duties:

1. Prepare, review, maintain, monitor, and periodically update and recommend to city council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;
2. Facilitate and coordinate citizen engagement and participation in the planning process;
3. Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
4. Advise city council concerning the implementation of plans, including, but not limited to, review and comment on all land development code and map amendments as required by NCGS 160D-604;
5. Exercise any functions in the administration and enforcement of various means for carrying out plans that the city council may direct; and
6. Perform any other related duties that the city council may direct.

Section 18-617: Historic preservation commission

A. Establishment

The historic preservation commission is established to fulfill the duties and powers prescribed to it by this chapter and by NCGS 160D-303.

B. Appointment and tenure

1. The historic preservation commission shall consist of seven members and shall be appointed by the city council. The majority of members shall have a demonstrated special interest, experience, or education in history, architecture, archeology, or related fields.
2. All members shall be appointed for staggered terms of four years, to serve in accordance with the council policy on boards and commissions then in effect.
3. All appointments to fill vacancies shall be for the unexpired period of the term.
4. All members shall be citizens and residents of the city, holding no other public office under city government. At least three members shall be residents within a locally-designated historic district. At least one member shall be a building owner or proprietor within a commercial historic district overlay. At-large members shall have expertise in areas related to historic preservation, including, but not limited to, architecture, architectural history, public history, engineering, and landscape architecture.

C. Compensation

Members of the historic preservation commission shall serve without compensation and may be removed by the council at any time.

D. Organization

1. The historic preservation commission shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.
2. Rules of procedure shall be adopted by the commission for the conduct of its business and for the election of its officers. The city council shall approve the rules of procedure and any amendments prior to implementation.
3. All meetings held by the board shall be held in accordance with the North Carolina open meetings law.
4. The commission shall keep minutes of its proceedings suitable for review in court showing:
 - a. The factual evidence presented to the board by all parties concerned;
 - b. The findings of fact and the reasons for the determinations by the board; and
 - c. The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.
5. Decisions regarding certificates of appropriateness shall be made in accordance with design standards adopted for each historic district, landmark, or overlay.

E. Duties

In accordance with NCGS 160D-942, the historic preservation commission shall perform the following duties.

1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.
2. Recommend to city council areas to be designated by ordinance as historic districts and individual structures, buildings, sites, areas, or objects to be designated by ordinance as landmarks.
3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
4. Restore, preserve, and operate historic properties.
5. Recommend to the city council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
6. Conduct an educational program regarding historic properties and districts within its jurisdiction.
7. Cooperate with the state, federal, and local governments in pursuance of the purposes of historic preservation. The commission, when authorized by city council, may contract with the state or federal government, or with any other organization provided the terms are not inconsistent with state or federal law.
8. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. No member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
9. Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.
10. Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this chapter.
11. Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

Section 18-618: Technical review committee

A. Establishment

The technical review committee is established as a non-appointed, staff-only committee for the purpose of reviewing the technical requirements for all development applications and site plans.

B. Membership

1. The technical review committee shall consist of representatives from the following departments:
 - a. Planning division;
 - b. Wilmington Metropolitan Planning Organization.
 - c. Engineering;
 - d. Traffic engineering; and
 - e. Fire.
2. In addition, the chairman of the committee may, at their discretion, or at the request of other members, invite other administrative staff members from the following to participate as non-voting members:
 - a. Other city departments;
 - b. North Carolina Department of Transportation;
 - c. Departments of New Hanover County;
 - d. Cape Fear Public Utility Authority; and
 - e. Other state and federal agencies.

C. Duties

The technical review committee shall have the following duties and responsibilities.

1. Review site plans for conditional district rezoning for compliance with all applicable provisions of this chapter and for consistency with adopted comprehensive plan, small-area, special area, and corridor plans, and forward to the planning commission any recommended conditions.
2. Evaluate, and when appropriate, approve site plans for development, subdivision plans, and other methods of development requiring compliance with this chapter. To this end, the committee may:
 - a. Approve a site plan or subdivision as submitted, upon determining compliance with all applicable provisions of this chapter;
 - b. Require a revised a site plan or subdivision pending additional information, clarification, or modification of the submittal by the applicant; or
 - c. Deny a site plan or major subdivision with a written statement of non-compliance for all applicable provisions of this chapter.

Section 18-619: Design adjustment committee

A. Establishment

The design adjustment committee shall be a quasi-judicial committee established as a non-appointed, staff-only committee for the purpose of considering major deviations from the Technical Standards and Specifications Manual, building design and material standards, and subdivision standards.

B. Membership

The design adjustment committee shall consist of representatives from the following departments:

1. Planning division;
2. Engineering;
3. Traffic engineering;
4. Fire; and
5. Cape Fear Public Utility Authority.

C. Organization

1. The design adjustment committee shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.
2. Rules of procedure shall be adopted by the committee for the conduct of its business.

3. The committee shall keep minutes of its proceedings suitable for review in court showing:
 - a. The factual evidence presented to the committee by all parties concerned;
 - b. The findings of fact and the reasons for the determinations by the committee; and
 - c. The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.

D. Duties

The design adjustment committee shall have the following duties.

1. The committee shall hear and decide on all proposed waivers for subdivision improvements as to compliance with the standards of this chapter. An application for subdivision adjustments shall be approved or denied based not only upon whether the application complies with the specific requirements set forth in this chapter, but also on whether the application complies with the generally stated standards requiring discretionary decision on the finding to be made by the committee.
2. The committee shall hear and decide on proposed modifications to site plans related to building design and materials standards, subdivision design standards, and deviations from the *Technical Standards and Specifications Manual*.
3. In granting an adjustment, the design adjustment committee may prescribe appropriate conditions and safeguards in conformity with this chapter.

Sections 18-620 - 18-630: Reserved.

ARTICLE 7. DIVISION 4.

NONCONFORMITIES AND VESTED RIGHTS

Section 18-631: General

A. Effective date

After the effective date of this chapter, land, buildings, and structures, or the lawful uses of land, buildings, and structures that would be prohibited under this chapter and that were lawfully existing prior to the effective date of this code shall be considered as nonconforming.

B. Purpose and applicability

1. It is the intent of this division to permit these nonconformities to continue, but not to encourage their perpetual use.
2. Except as otherwise provided, nonconforming buildings, structures, and uses may be continued provided they conform to the provisions of this division.

C. Completion of nonconforming projects

The construction or erection of any nonconforming building, structure, or use may be completed provided all construction is done pursuant to a valid permit.

D. Repairs and maintenance

Minor repairs to and routine maintenance of property where nonconforming situations exist shall be permitted.

Section 18-632: Nonconforming uses of land

A. Uses of undeveloped nonconforming lots

1. Nonconforming single lot of record

A vacant lot of record established prior to the effective date of this chapter that does not conform to the required dimensional standards of the zoning district in which it is located may be used as a building site for a use permitted within that district. All construction and the location of the building shall be in accordance with the applicable front, side, and rear setback requirements of the zoning district in which it is located.

2. Nonconforming contiguous lots of record

If two or more contiguous vacant lots of record established prior to the effective date of this chapter are in single ownership, such lots, at the owner's option, may be designated to form one or more lots that meet the minimum front, side, and rear setback requirements of the zoning district in which they are located.

B. Extension of nonconforming use of land

1. A nonconforming use of land may not be extended to cover more land than was occupied by that use when it became nonconforming.
2. Uses that involve the removal of natural materials from a lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if 10 percent or more of the earth products had already been removed on the effective date of this code.

Section 18-633: Extension or enlargement of nonconforming situations**A. Generally**

Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

B. Alteration of buildings and structures**1. Generally**

Physical alteration of nonconforming buildings and structures or the placement of new buildings or structures shall not:

- a. Cause an increase in the total amount of building square footage or land area devoted to a nonconforming use;
- b. Expand the nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements; or
- c. Expand the nonconformity with respect to the exterior architectural features of the building(s) if such is regulated in the applicable zoning district.

2. Detached single-dwelling and duplex residential buildings

Notwithstanding the provisions of subsection B.1, any building used for single-dwelling or duplex residential purposes and accessory buildings associated with single-dwelling residential purposes and maintained as a nonconforming use, building, or structure may be enlarged or replaced so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to setback requirements. For the

purposes of this section, manufactured housing may be replaced with larger manufactured housing, and single-wide manufactured housing may be replaced with a double-wide. This paragraph is subject to the limitations stated in Section 18-635: Abandonment and discontinuance of nonconforming situations.

3. Within the 1945 Corporate Limits

Notwithstanding the provisions of subsection B.1., any principal building or structure within the 1945 Corporate Limits maintained as a nonconforming use may be enlarged or replaced so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect setback requirements.

C. Damage or destruction

Except for on-premises and outdoor advertising signs, a building, structure, or use may be reconstructed or replaced if destroyed by fire, natural disaster, or other accidental casualty loss, subject to the following restrictions.

1. A letter of intent to reconstruct shall be received by the zoning administrator within six months from the time of destruction.
2. A building permit shall be obtained within one year from the time the damage or destruction took place.
3. The total amount of building square footage or land area devoted to a nonconforming use may not be increased, except as provided in this section.
4. The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements, and such dimensional nonconformities shall be eliminated if that can be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building.

5. The reconstructed building shall not be more nonconforming with respect to exterior architectural features than the previous building. Such exterior architectural feature nonconformities shall be eliminated if they can be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building.

D. On-premises and outdoor advertising signs

A nonconforming on-premises or outdoor advertising sign shall be subject to all requirements of this code regarding safety, maintenance, and repair.

Section 18-634: Change in kind of nonconforming use

A. Changes to conforming use

If a nonconforming use is changed to a conforming use, the property may not revert to a nonconforming use except as provided herein.

B. Combination of conforming and nonconforming use

If a nonconforming use and a conforming use, any combination of conforming and nonconforming uses, or any combination of nonconforming uses exist on one lot, the use made of the property may be changed substantially only in accordance with the issuance of a special use permit pursuant to the criteria established in Section 18-589: Special use permit.

C. Change from nonconforming use to different nonconforming use

1. A nonconforming use, including any accessory uses or structures, may be changed to another nonconforming use only in accordance with the issuance of a special use permit. Such a special use permit may be issued if all five of the following factors exist:

- a. That the proposed use would be as compatible with the surrounding neighborhood as the use in operation at the time the approval is applied for;
- b. That the proposed use would not materially endanger the public health or safety if located and developed as proposed;
- c. That the proposed use would meet all required conditions and specifications;
- d. That the proposed use would not injure the value of adjoining or abutting property, or that the proposed use is a public necessity; and
- e. That the location and character of the proposed use, if developed as proposed, would be in harmony with the area in which it is to be located and in general conformity with the applicable adopted plans and policies, including comprehensive plans, corridor plans, and area plans.

2. If a nonconforming use is changed to any use other than a conforming use without obtaining approval pursuant to this section, that change shall constitute a discontinuance of the nonconforming use and subject to the provisions of Section 18-635: Abandonment and discontinuance of nonconforming situations.

D. Timeframe for request

An application for special use permit approval pursuant to this section may be made up to 180 days following abandonment or discontinuance of the nonconforming use, provided:

1. The premises has not been used for a conforming purpose at any time following the discontinuance of the nonconforming use; and
2. This subsection shall not be construed as extending the period specified in Section 18-635: Abandonment and discontinuance of nonconforming situations.

Section 18-635: Abandonment and discontinuance of non-conforming situations

- A. When a nonconforming use is discontinued for a consecutive period of 180 days, the property involved shall thereafter be used only for conforming purposes, except for as allowed in Section 18-633: Extension or enlargement of nonconforming situations.
- B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming manufactured housing park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured housing park as a whole is continuously maintained.
- C. If a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for 180 days shall terminate the right to maintain it thereafter. For example, if manufactured housing unit is used as a nonconforming use on a residential lot where a conforming residential building is also located, removal of the manufactured housing unit for 180 days terminates the right to replace it.
- D. When a building, structure, or operation made nonconforming by this division is vacant or discontinued on the effective date of this chapter, the 180-day period, for purposes of this section, begins on the effective date of this chapter.

Table 18-636: Sign amortization schedule

Nonconforming sign type	
Flashing or animated signs	30 days
Paper, cloth, or other nondurable material	90 days
Portable sign	120 days
Any nonconforming sign, other than those listed above, located in the CBD, HDMU, or HD	3 years
Freestanding signs	10 years (see exceptions)
Signs erected without permits, prohibited signs, or signs erected illegally	30 days

Section 18-636: Amortization of on-premises signs

- A. Except as otherwise specified in this chapter, any nonconforming sign shall be removed or rendered in compliance with this section within the following times from the effective date of this ordinance. All other signs not listed below in existence on the effective date of this chapter shall not be subject to the amortization procedures provided below and shall be permitted to remain under the nonconforming provisions of this chapter.
- B. Nonconforming freestanding signs:
 1. If a sign is within 15 percent of the maximum sign area requirements and within four feet of the maximum height requirements per article 5 of this chapter. Such signs shall not be subject to amortization.
 2. If a sign is nonconforming regarding sign height and is relocated to conform to the sign location requirements of article 5, division 5 of this chapter. Name shall also be brought into conformance with sign height requirements.

- 3. Freestanding signs that are nonconforming only regarding the maximum front setback requirement shall not be subject to the amortization procedures outlined herein.
- C. The city manager shall notify the owner(s) of any freestanding sign deemed to be in violation of these regulations within two years of the effective date of this chapter. For portable and other temporary signs deemed to be in violation of these regulations, the city manager shall notify the owner(s) of the status of the signs under the provisions of this article after the effective date. Failure to give notice as provided in this subsection shall not affect any amortization period and shall not be a defense to any action to enforce sign regulations.
- D. A nonconforming sign shall not be replaced by another nonconforming sign except that the substitution or interchange of poster panels, painted boards, or demountable material on nonconforming signs shall be permitted.
- E. Minor repairs and maintenance of nonconforming signs such as repainting, electrical repairs, and neon tubing repairs shall be permitted.
- F. Nonconforming signs that are structurally altered, relocated, or replaced shall comply in all respects with the provisions of article 5 of this chapter, except as specifically excepted in this section.
- G. New signs related to legally established nonconforming uses may be erected provided they comply with the sign requirements of the zoning district in which the use is located.

Section 18-637: Vested rights

Vested rights under this division shall be established in accordance with the following.

A. Building permit

The issuance of a building permit establishes a vested right to development in accordance with NCGS 160D-108 if the building permit complies with the terms and conditions of approval.

B. Vested rights certificate

A vested right certificate granting a longer vested right duration for a site plan, subdivision, or multi-phased development may be established in accordance with this section.

C. Common law testing

A common law vested right is established only when the following can be demonstrated by the landowner.

- 1. There is an affirmative governmental act by the city in the form of an approval of a permit or development approval under this chapter; and
- 2. The landowner relies on this affirmative governmental act in good faith and makes substantial expenditures to develop the land; and
- 3. It would be inequitable to prevent the landowner from proceeding to develop the land consistent with the terms and conditions of the permit or development approval relied upon.

D. Prior vesting

Amendments, supplements, repeals, or other changes to this chapter or to the official zoning map shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits, multi-phased development approvals, or vested rights certificates have been issued (pursuant to state law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, multi-phased development approval, or vested rights certificate remain valid and unexpired.

Sections 18-638 - 18-647: Reserved

ARTICLE 7. DIVISION 5.

ADMINISTRATION, VIOLATIONS, AND ENFORCEMENT

Section 18-648: Penalties and remedies

A. Approvals necessary

No person shall commence or proceed with development without first securing any required development approval, permit, or certificate over the site of the development. A development approval shall be in writing and shall comply with all applicable state and local laws. Development approvals may be issued 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.

B. City manager responsibilities

1. The city manager shall, upon finding that any of the provisions of this code are being violated:
 - a. Notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it;
 - b. Order the discontinuance of any illegal work being done; and
 - c. Take any other action authorized by city of Wilmington Code of Ordinances or the North Carolina General Statutes to ensure compliance with or to prevent violation of the provisions of this chapter.

2. The city manager is hereby authorized to bring judicial actions on behalf of the city against actual or threatened violations of this code.
3. The failure to give notice as provided in this subsection shall not be a defense to any action to enforce this code.

C. Civil penalties

1. Except as otherwise provided in this chapter, a violation of any of the provisions of this chapter shall subject the offender to a civil penalty, the amount of which shall be determined annually as part of the city's adopted fee schedule.
2. A violation shall include failure to comply with the express or implied condition or term of any permit, order, notice, or directive issued pursuant to the provisions of this chapter.
3. Trees
 - a. Any person removing any tree in violation of article 5, division 1 of this chapter, in addition to mitigation requirements shall be subject to a civil penalty, the amount of which shall be determined annually as part of the adopted fee schedule.
 - b. Any person removing any regulated tree after notice of the requirements of article 5, division 1 of this chapter shall be subject to a civil penalty equal to three times the amount of the established by the adopted fee schedule.
4. Temporary uses

Violations of the provisions of Article 3, Division 3, Temporary Uses, shall subject the offender to civil penalties, the amount of which shall be determined annually as part of the city's adopted fee schedule.
5. Stormwater violations

Violations of article 4, division 1 of this chapter shall subject the offender to a civil penalty of up to the full amount of any civil penalty assessed against the city for violations of the city's NPDES phase II stormwater permit.

6. If any offender fails to pay the civil penalty set forth in this chapter within 10 business days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of the debt.

D. Separate offense

1. Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.
2. Each tree removed in violation of this chapter shall be a separate offense.
3. Each sign placed in violation of this chapter shall be a separate offense.

E. Remedies

1. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this chapter, in addition to other remedies, the city may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; 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.
2. In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to this chapter is about to be demolished, whether, as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the development regulation or other provisions of this chapter, the city, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with

respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by this chapter for violation of an ordinance.

Section 18-649: Withholding or revocation of permits**A. Withholding of permits and approvals**

1. All permits, certificates, or other forms of authorization on any land disturbing activity, building, structure, or improvements for which there is an uncorrected violation of a provision of this chapter, including any condition of zoning, certificate, approval, or other authorization granted by the city may be revoked or denied. Instead of withholding or denying an authorization, the such authorization subject to the condition that the violation be corrected may be granted.
2. A building permit, site plan approval, or subdivision plan approval may be denied, in accordance with applicable North Carolina General Statutes subject to the following time periods:
 - a. For a period of up to three years after the completion of a timber harvest, if the harvest results in the removal of all or substantially all regulated trees or significant trees from the lot, tract, or premises.; or
 - b. For a period up to five years after the completion of a timber harvest, if the harvest results in the removal of all or substantially all regulated or significant trees from the lot, tract, or premises if the harvest was a willful violation of city regulations.
3. This enforcement provision shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

B. Revocation of permits

1. Any permit may be revoked when the city determines that:
 - a. There is a substantial departure from the plans, specifications, or conditions as required under the terms of the permit;
 - b. There is refusal or failure to comply with requirements of any applicable city or state regulation;
 - c. The permit was procured by false statements or misrepresentation;
 - d. The approval was mistakenly issued in violation of any applicable state or local regulation; or
 - e. Any of the provisions of this chapter are being violated.
2. Written notice of such revocation shall be provided to the holder of the approval. Thereafter, no such construction shall proceed.
3. The same review and approval process required for issuance of the approval shall be followed, including any required notice or hearing, in the review and approval of any revocation of that approval.
4. The revocation of a development approval may be appealed to the board of adjustment.

C. Notices of violation

1. When work or activity has been undertaken in violation of this chapter or state law delegated to the city for enforcement purposes, a written notice of violation may be issued.
2. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity.

3. The notice of violation may be posted on the property.

4. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. A notice of violation of this chapter may be appealed to the board of adjustment.

D. Stop work orders

1. Whenever any work or activity subject to regulation pursuant to this chapter or other city regulation or any state law delegated to the city for enforcement purposes is undertaken in substantial violation of any state or local law, or in a manner that endangers life or property, the city may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped.
2. The order shall be in writing, directed to the person doing the work or activity, posted at the job site, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed.
3. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail.
4. The person delivering the stop work order shall certify that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud.
5. A stop work order may be appealed to the board of adjustment.
6. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

Sections 18-650 - 18-660: Reserved.