

Article 12. ZONING CERTIFICATE OF COMPLIANCE AND CONDITIONAL USE PERMITS

Section 12-1: Permits Required

(A) It shall be unlawful to commence the excavation for or the construction of any building or other structure including accessory structures or to commence the moving, alteration, or repair of any structure or the use of any land or building including accessory structures, until the Administrator has issued a Zoning Certificate of Compliance for such work or use including a statement that the plans, specifications, and intended use of such land, or structure in all respects conforms with the provisions of this Ordinance. Existing construction is any structure for which the start of construction commenced before the effective date of this Ordinance. Application for a Zoning Certificate of Compliance shall be made in writing to the Administrator on forms provided for that purpose. Zoning Certificates of Compliance shall be void after six (6) months from date of issue unless substantial progress on the project has been made by that time or unless a statutory zoning vested right exists as described in Article 15. Zoning Certificates of Compliance, for interior repair, alteration, or renovations, where the exterior of the building footprint does not change, only the following information on the zoning certificate of compliance will be required: Owner's name, contact information, address of the property, and the type of use and/or type of repair.

A Zoning Certificate of Compliance application shall be presented to the Administrator prior to applying for a Building Permit from the Town of Ayden and Pitt County for stormwater control and floodplain compliance approval. No Building Permit shall be issued for any activity in a zoned area until such Town of Ayden Zoning Certificate of Compliance is approved by the Town and presented to the county.

(B) Zoning certificates of compliance, conditional use permits, and sign permits are issued under this Ordinance only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 12-11, all development shall occur strictly in accordance with such approved plans and applications.

(C) A zoning certificate of compliance, conditional use permit, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal and shall be accompanied by a signed affidavit designating such agent), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority.

Section 12-2: No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled.

Issuance of a zoning certificate of compliance authorizes the recipient to commence the activity resulting in a change in use of the land. A building permit is required to commence work designed to construct, erect, move, or substantially alter a building or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Section 12-8, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a conditional use permit have been complied with.

Section 12-3: Who May Submit Permit Applications

- (A) Applications for zoning, conditional use, or sign permits or subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Ordinance, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees). A tenant may submit an application provided a valid lease agreement is submitted.
- (B) The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with Subsection (A) whenever there appears to be a reasonable basis for questioning this authority.

Section 12-4: Applications To Be Complete

- (A) All applications for zoning, conditional use, or sign permits must be completed before the permit-issuing authority is required to consider the application.
- (B) An application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this Ordinance.
- (C) The Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In cases where a minimal amount of information is necessary to enable the administrator to determine compliance with this Ordinance, such as applications for zoning certificates of compliance to construct single-family or two-family houses, or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 12-5: Staff Consultation After Application Submitted

Upon receipt of a formal application for a zoning or conditional use permit, or subdivision plat approval, the administrator shall review the application and confer with the applicant to ensure that he understands the planning staff's interpretation of the applicable requirements of this Ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

Section 12-6: Zoning Certificates of Compliance

- (A) A completed application form for a zoning certificate of compliance shall be submitted to the administrator by filing a copy of the application with the administrator in the Town Hall.
- (B) The administrator shall issue the zoning certificate of compliance unless he finds, after reviewing the application, that:
 - (1) The requested permit is not within his jurisdiction according to the Table of Permissible Uses, or
 - (2) The application is incomplete, or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance (not including those requirements when a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article 19, Nonconforming Situations).

Section 12-7: Authorizing Use or Occupancy Before Completion of Development Under Zoning Certificate of Compliance

In cases when, because of weather conditions or other factors beyond the control of the zoning-permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning-permit recipient to comply with all requirements of this Ordinance prior to commencing the intended use of the property or occupying any buildings, the administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this Ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the administrator to ensure that all of the requirements of the Ordinance will be fulfilled within a reasonable period (not to exceed 12 months) determined by the Administrator.

Section 12-8: Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use or Conditional Use Permits

- (A) In cases when, because of weather conditions or other factors beyond the control of the conditional use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this Article before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the permit-issuing Board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this section are concerned) if the permit recipient provides a performance bond or other security satisfactory to the Board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed 12 months).
- (B) When the developer proposes in the plans submitted to install amenities beyond those required by this Article, the Board of Commissioners may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
- (1) A performance bond or other security satisfactory to the Board is furnished;
 - (2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made;
 - (3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 18-5 (Civil Remedies) and Section 18-8 (Permit Revocation).
- (C) With respect to subdivisions in which the developer is selling only undeveloped lots, the Board of Commissioners may authorize final plat approval and the sale of lots before all the requirements of this Article are fulfilled if the subdivider provides a performance bond or other security satisfactory to the Board to ensure that all of these requirements will be fulfilled within not more than 12 months after final plat approval.

Section 12-9: Completing Developments in Phases

- (A) If a development is constructed in phases or stages in accordance with this section, then, subject to Subsection (C), the provisions of Section 12-2 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 12-8 (exceptions to Section 12-2) shall apply to each phase as if it were the entire development.

- (B) As a prerequisite to taking advantage of the provisions of Subsection (A), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this Article that will be satisfied with respect to each phase or stage.
- (C) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:
- (1) If the improvement is one required by this Article then the developer may utilize the provisions of Section 12-9(A) or (C).
- (2) If the improvement is an amenity not required by this Article or is provided in response to a condition imposed by the Board, then the developer may utilize the provisions of Section 12-9(B).

Section 12-10: Expiration of Permits. (Vested Right Provisions are provided in Article 15)

- (A) Zoning, conditional use, watershed, floodplain, and sign permits shall expire automatically if, within six (6) months after the issuance of such permits, the use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use.
- (B) If, after some physical alteration to land or structures begins to take place, and such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire.

Section 12-11: Effect of Permit on Successors and Assigns.

- (A) Zoning, conditional use, watershed, floodplain, and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:
- (1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes

authorized in the permit except in accordance with all the terms and requirements of that permit, and;

(2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit is obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property.

(B) Whenever a zoning or conditional use permit is issued to authorize development (other than single-family or two-family residences) on a tract of land, nothing authorized by the permit may be done until the record owner of the property signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Pitt County Registry and indexed under the record owner's name as grantor.

Section 12-12: Amendments to and Modifications of Permits.

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

(B) Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(C) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Board of Commissioners or Board of Adjustment or Planning Board, new conditions may be imposed, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

(D) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in Subsections (A), (B), and (C).

(E) A developer requesting approval of changes shall submit a written request for such approval to the administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

Section 12-13: Reconsideration of Board Action.

(A) Whenever (i) the Board of Commissioners disapproves a conditional use permit application, or (ii) the Board of Adjustment disapproves an application for a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective Board at a later time unless the applicant clearly demonstrates that:

- (1) Circumstances affecting the property that is the subject of the application have substantially changed, or
- (2) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the administrator within the time period for an appeal to superior court (see Section 18-9). However, such a request does not extend the period within which an appeal must be taken.

(B) Notwithstanding Subsection (A), the Board of Commissioners or Board of Adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

Section 12-14: Applications to be Processed Expeditiously

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance.

Section 12-15: Maintenance of Common Areas, Improvements, and Facilities

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

Section 12-16: Conditional Use Permits Objectives and Purpose

Conditional uses add flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in the several districts where those uses would not otherwise be applicable. By means of controls exercised through the conditional use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any bad effects they might have on surrounding properties. Approval of a conditional use permit is made the duty of the Town Board of Commissioners subject to recommendations of the Planning Board. Both Planning Board and Board of Commissioners' meetings related to conditional use applications will be conducted using quasi-judicial procedures.*

The uses for which conditional use permits are required are listed in the Table of Permitted Uses. Uses specified in this section shall be permitted only upon the issuance of a conditional use permit.

Section 12-17: Procedure for Conditional Use Permit Granted by the Town Board of Commissioners on Recommendation of the Planning Board

(A) *Application and Fees.* Applications for Conditional Use Permits, signed by the applicant, shall be addressed to the Planning Board and Board of Commissioners. A fee for such application shall be paid at the time of application according to the Town's Schedule of Fees. Each application shall contain or be accompanied by such legal descriptions, maps, plans, and other information so as to completely describe the proposed use and existing conditions; and shall contain the following:

(1) *Structures.* Location of all structures within fifty (50) feet of the property lines; location and depth, if known, of any existing utility lines in the property or along any adjacent street.

(2) *Other Requirements.*

(a) Location of property boundaries, location of any easements for utility lines which cross or occupy any portion of the property or location of easements for proposed lines;

(b) Detailed construction plans shall be submitted;

(c) Where public water or sewer is not available, written approval of proposed water supply and/or sewage disposal facilities by County Health Officer; and

(d) A list of names and addresses of all adjoining property owners as shown on the county tax records along with one (1) set of envelopes stamped and with typed addresses to each person on the list. These addressed envelopes and the list shall be submitted at least fifteen (15) working days prior to the Town Board meeting at which the matter is to be considered. The Zoning Administrator shall then mail a copy of the legal notice to each adjoining property owner not less than ten (10) nor more than twenty-five (25) days prior to the public hearing. Notice shall be published in a newspaper of general local circulation for two successive weeks, the first publication being not less than ten (10) days no more than twenty-five (25) days prior to the hearing. Additionally, notice may also be made (but not substituted for) by posting the property involved for a period of one week prior to the hearing.

(B) *Procedures for Reviewing Applications.* A conditional use, as specified in the various districts, may be granted only after review by the Planning Board and approval by the Board of Commissioners.

An application for a Conditional Use Permit shall be considered by the Planning Board at its next regular monthly meeting or any called special meeting, provided it has been filed, complete in form and content, at least two (2) weeks prior to such meeting. Otherwise, consideration may be deferred until the following monthly meeting.

The Planning Board shall render its decision on any properly filed application within forty (40) days after the filing of such application and shall transmit its recommendation to approve, modify, or deny the application including the reasons for its recommendations, to the Board of Commissioners.

The Board of Commissioners shall take such lawful action as it may deem advisable. The Board of Commissioners shall consider the Planning Board's recommendations. The Board of Commissioners shall approve, modify, or deny the application for a Conditional Use Permit. In approving a Conditional Use Permit, the Board, with due regard to the nature and state of all adjacent structures and uses in the district within which same is located, shall make written findings that the following are fulfilled:

- (1) The use requested is listed among the conditional uses in the district for which application is made, or is similar in character to those listed in that district;
- (2) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
- (3) The requested use is essential or desirable to the public convenience or welfare;
- (4) The requested use will be in conformity with the Town's land use plan;

- (5) Adequate utilities, access roads, drainage, sanitation, or other necessary facilities have been or are being provided;
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public streets; and
- (7) The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

Appeals from any action of the Board of Commissioners shall be taken directly to the Superior Court as provided by law, G.S. 160A-381.

(C) *General Provisions Concerning Conditional Use Permits.*

- (1) *Compliance with Other Codes.* Granting of a Conditional Use Permit does not exempt the applicant from complying with all of the requirements of building codes and other ordinances.
- (2) *Revocation.* After approval has been granted for a conditional use, the Board of Commissioners may reverse any decision upon finding:
 - (a) That the approval was obtained by fraud.
 - (b) That the use for which such approval was granted is not being executed.
 - (c) That the use for which such approval was granted has ceased to exist or has been suspended for six months.
 - (d) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
 - (e) That the permit granted is in violation of an ordinance or statute.
 - (f) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or as to constitute a nuisance.

The Zoning Administrator shall give the permittee written notice of intention to revoke such permit at least ten (10) days prior to the meeting at which the revocation is to be reviewed. After conclusion of the review, the Board of Commissioners may revoke the permit.

- (3) *Expiration.* In a case where a Conditional Use Permit has not been exercised within the time limit set by the Board of Commissioners or within six (6) months if no specific

time limit has been set, then without further action, the permit shall be null and void. "Exercised" as set forth in this section shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

- (4) *Duration of Conditional Use.* Any conditions imposed on a conditional use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the Conditional Use Permit or subsequently changed or amended by the Board of Commissioners after a public hearing.

- (5) *Conditions and Guarantees.* Prior to the granting of any conditional use, the Board of Commissioners may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the conditional use as it deems necessary for the protection of the public and to secure compliance with the intent, standards, and requirements specified in this Ordinance. In all cases in which conditional uses are granted, the Board of Commissioners shall require such evidence and guarantees as it may deem necessary to assure that the conditions stipulated in connection therewith are being and will be complied with.
 - (a) Such conditions may include a time limitation or expiration date.

 - (b) Prerequisite conditions may be imposed which must be met before the required use can be initiated, such as buffers.

 - (c) Conditions of a continuing nature may be imposed, such as hours of operation or noise levels.