

ARTICLE 16. PERMIT REVIEW PROCESS AND DEVELOPMENT
AGREEMENTS

Table of Contents

16.1. Applicability..... 1

16.2. Definitions.....2

16.3. General..... 4

16.4. Zoning Permits.....6

16.5. Development Agreements..... 6

16.6. Rezoning (Zoning Map Amendment)..... 14

16.7. Sign Permit.....14

16.8. Site Plan - Minor..... 14

16.9. Site Plan - Major..... 15

16.10. Special Use Permit..... 18

16.11. Temporary Use Permit..... 18

16.12. Variance..... 19

16.13. Vested Rights Certificate..... 20

16.14. Zoning Text Amendment.....21

16.15. Inspections.....21

16.16. Pre-Application Meeting with Administrative Staff.....22

16.1. Applicability.

The purpose of this Article is to establish an orderly process to develop land within the Town of Clarkton. It is also the intent of this Article to provide a clear and understandable development process that is fair and equitable to all interests, including the applicants/petitioners, affected neighbors, Town staff, related agencies, the Planning Board and the Town Board of Commissioners. The development review process applies to all development actions within the planning jurisdiction.

16.1.1. **Permit Required.** No building, dwelling, or any other structure shall be erected, moved, extended, enlarged, or structurally altered until a zoning permit and special use permit, where required, for such work has been issued unless the building or structure is specifically exempted.

(Ord. 11/05/2013, Section 1)

- 16.1.2. **No Work Permitted Prior to Issuance of Permit.** No land shall be used or occupied, and the use of any land shall not be changed, until a zoning permit and any other applicable permit to be issued by Town of Clarkton for such work has been issued.
- 16.1.3. **No Movement of Structure Prior to Issuance of Permit.** No building or structure, including a manufactured home, shall be moved from an area outside the Town 's zoning jurisdiction to any lot within the Town 's jurisdiction or from one lot to another lot, or on the same lot within the Town 's zoning jurisdiction unless such building shall subsequently be made to conform to the then existing building, plumbing, electrical, manufactured home, and zoning codes of the Town. If a building, excluding a manufactured home, is moved from outside the Town 's zoning jurisdiction, the zoning permit fee shall include a mileage fee for each mile of distance from the Town Hall to the house to be moved. Any building or manufactured home so moved shall be made to conform to the required codes of the Town within twelve months from the earlier of either (i) the date of the receipt of a zoning permit issued by the Zoning Official, or (ii) the date the building or manufactured home is moved into the Town limits.
- 16.1.4. **Work Only as Approved in Permit.** Zoning permits and other development permits are issued under this Ordinance only when a review of the application submitted, including the site 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 herein, all development shall occur strictly in accordance with such approved plans and applications.
- 16.1.5. **Exemption from Zoning Permit.** The following are exempt from zoning permit requirements:
- (a) Farm buildings (other than residences and buildings used in animal feeder/breeder operations) used for bona fide farm purposes;
 - (b) Facilities (other than buildings) of a public utility; and
 - (c) Signs specifically exempted in Article 10.
- 16.1.6. **Exemption from Site Plan Review.** Single-family homes on conforming lots, temporary uses, and internal construction that does not increase gross floor area or building height, the density or intensity of use, or affect parking requirements are exempt from Site Plan Review as outlined in **Sections 16.8 and 16.9**, but are still subject to the standards of this Ordinance.

16.2. Definitions.

- 16.2.1. As used under this Article and consistent with the definitions contained in **Article 2**, the following terms shall mean:
- A. **Site Plan.** A scaled drawing which shows what already exists on the property and shows what is proposed for the property. For example, a residential site plan depicts everything within the property lines; namely, a footprint of any existing structures, driveways and parking areas, pathways, trails and easements, drainage ways, utility lines, landscaping and other natural features.

- 1) **Minor Site Plans.** As used under this Article and consistent with the definitions contained in **Article 2**, the term “Minor Site Plan” shall mean a scaled drawing which shows what already exists on the property and what is proposed for the property. A Minor Site Plan shall be reviewed by the Zoning Administrator and include the following types of development:

- I. Changes in use.
- II. New single-building non-residential development or additions of less than 2,500 square feet in gross floor area.
- III. New single-building, multi-family development with five to eight dwelling units.

- 2) **Major Site Plans.** As used under this Article and consistent with the definitions contained in **Article 2**, the term “Major Site Plan” shall mean a scaled drawing developed from a survey of the property which details the structures and conditions existing on the property and what is proposed for the property. A Major Site Plan shall be reviewed by the Zoning Administrator and referred to the Planning Board for their review and approval. Major Site Plans shall apply to the following:

- I. New nonresidential or multi-family development with two or more buildings.
- II. New single-building nonresidential development or additions with 2,500 square feet or more in gross floor area.
- III. New single-building multi-family development with nine or more dwelling units.
- IV. Development that results in a new street connection with an existing street or street stub in a single-family residential neighborhood.
- V. Zero-lot-line developments.

- B. **Plat.** As used under this Article and consistent with the definitions contained in **Article 2**, the term “Plat” shall mean a surveyed map or plan of a parcel of land which is to be, or has been subdivided.
- C. **Zoning Permit.** As used under this Article and consistent with the definitions contained in **Article 2**, the term “Zoning Permit” shall mean a permit issued by the Zoning Administrator that certifies compliance with the Zoning Ordinance and authorizes the recipient to make use of property in accordance with the requirements of this Ordinance.
- D. **Quasi-Judicial Decision.** A decision involving the finding of facts regarding a specific application of development regulation and that requires the exercise of discretion when applying the standards of the regulation.

Statutory Reference – NCGS 160D-132.

- E. **Variance.** A request to deviate from current *zoning* requirements. If granted, it permits the owner to use his land in a way that is ordinarily not permitted by the *zoning* ordinance. It is not a change in the *zoning* law, but a waiver from the requirements of the *zoning* ordinance. Variances run with the land and are not a personal right of any individual applicant, therefore the personal circumstances of

an applicant are irrelevant. If, however, the applicant is a person with disabilities, the Federal Fair Housing Act requires that the Town make reasonable accommodation for that person.

Statutory Reference – NCGS 160D-132, Note 381

- F. **Appeal.** A request for a review of the interpretation of any provision of this Ordinance.
- G. **Special Use Permit.** A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as “conditional use permits” or “special exceptions.”

Statutory Reference – NCGS 160D-132.

16.3. General.

- 16.3.1. **Review Process and Permit.** *Table 16-1* shows which decision-making and review bodies have roles in the process of approving or appealing development permits issued by the Town .
- 16.3.2. **Submission:** Unless otherwise specified, all applications for permits under this Ordinance shall be submitted by the owner of the property or the authorized agent of such owner to the Zoning Administrator.
- 16.3.3. **Form of Submission:** An application for any permit under this Ordinance shall be submitted in such form and format as required by Town of Clarkton, together with such fees as required.
- 16.3.4. **Waiver of Submission Requirements:** The Zoning Administrator may waive submission of required elements of information when, in his/her opinion, such information is otherwise available or is not necessary to review the application. The Zoning Administrator may refuse to process an incomplete application.
- 16.3.5. **Processing:** All applications for permits shall be submitted, reviewed and processed as expeditiously as possible in accordance with the requirements of this Ordinance.
- 16.3.6. **Approved Plans:** A copy of required plans or information submitted with the application shall be returned to the applicant after the Zoning Administrator has marked the copy either approved or disapproved and attested to same. A similarly marked copy shall be retained by Town of Clarkton.
- 16.3.7. **Health Department Improvements Permit Required:** A permit for any building or use for which a State or Town Health Department permit for installation of a well or a sewage disposal system is required or for which approval by the State or Town Health Department of an existing well or sewage disposal system is required, shall not be issued until such permit or approval has been issued by the State or Town Health Department.

Table 16-1

Development Review Process and Permits/Development Agreements

Key: A = Appeal D = Decision R = Recommendation S= Staff Review PH = Public Hearing Required				
Procedure	Town Board of Commissioners	Planning Board	Planning and Zoning Staff	Other
Administrative Decisions by Zoning Administrator			D	Appeal is to the Board of Adjustment (See Section 5.14)
Zoning Permit			D	See Section 12.4.
Building Permit				Issued by Town of Clarkton Building Inspections Dept.
Certificate of Occupancy				Issued by Town of Clarkton Building Inspections Dept.
Development Agreement	D,A	R	R	See Section 12.5.
Floodplain Development Permit			D	See Floodplain Regulations
Planned Unit Development (PUD)	PH,D,A	R	R	See Town of Clarkton Subdivision Regulations
Re-Zoning (Zoning Map Amendment)	PH,D,A	R	R	See Section 12.6.
Sign Permit		A	D	See Section 12.7.
Site Plan - Minor		A	D	See Section 12.8.
Site Plan - Major	PH, D, A	R	R	See Section 12.9.
Special Use Permit	PH, D, A	R	R	See Section 12.10.
Subdivisions - Minor		A	D	See Town of Clarkton Subdivision Regulations
Subdivisions - Major	PH, D, A	R	R	See Town of Clarkton Subdivision Regulations
Temporary Use Permit		A	D	See Section 12.11
Variance	PH, D, A	R	R	See Section 12.12.
Vested Rights Certificate		A	D	See Section 12.13.
Zoning Text Amendment	PH, D, A	R	R	See Section 12.14.

16.4. Zoning Permits.

- 16.4.1. **Permit Required:** Compliance with the Town 's zoning ordinance (development regulations) must be verified by the Zoning Administrator. Compliance shall be evidenced by a Zoning Permit issued in accordance with the requirements of **Section 5.3**.

Cross Reference – Section 5.3, Zoning Permit Procedure

- 16.4.2. **Minor or Major Site Plan Required.** The Zoning Permit shall also include a site plan, the specifications for which are determined by whether the proposed development project requires a Minor or Major Site Plan. The applicant should first check to see that the zoning is in compliance for the proposed development project by requesting/attending a Pre-Application Meeting with the Administrative staff as described in **Section 16.16** then proceed with submittal of a site plan or construction drawings. Requirements for Minor Site Plans are outlined in **Section 16.8**. Requirements for Major Site Plans are outlined in **Section 16.9**.
- 16.4.3. **If Proposed Development Project is not Zoning Compliant.** If the proposed development project is not zoning compliant, the applicant should consult the Zoning Administrator to determine if a request for or a variance is required before proceeding with the submittal of a site plan or construction drawings. This may also be discussed at a Pre-Application Meeting as described in **Section 16.16**.
- 16.4.4. **Issuance.** The issuance of a zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, except as provided in **Section 16.1.1**, the intended use may not be commenced and no building may be occupied until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a special use permit have been met.
- 16.4.5. **Display of Zoning Permits.** Zoning permits (and building permits) shall be displayed during all construction and may not be removed until the Town of Clarkton Zoning Officer and the Town of Clarkton Building Inspector have issued a Certificate of Compliance.

16.5. Development Agreements.

Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources, creating community impacts and opportunities that are difficult to accommodate within traditional zoning processes, and require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development. Recognizing this, the NC General Assembly has authorized local governments to enter into development agreements with developers, subject to the procedures outlined in this Section.

When entering into such agreements, Town of Clarkton may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the Town 's development regulations. When the Town Board of Commissioners approves the rezoning of any property associated with a development agreement executed and recorded pursuant to this Section, the provisions of G.S. 160D-6-5(a) apply. Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.

Statutory Reference – N.C.G.S. Chapter 160D- 1001 (a)-(d)

16.5.1. Definitions.

- (a) Development. The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels.
- (b) Public Facilities. Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

Statutory Reference – N.C.G.S. Chapter 160D- 1002.

16.5.2. Authority. The Town may enter into a Development Agreement with a developer, subject to the procedures and standards of this section. In entering into such a Development Agreement, the Town may not exercise any authority or make any commitment not authorized by general or local act, and may not impose any tax or fee not authorized by otherwise applicable law. If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the Development Agreement.

Statutory Reference – N.C.G.S. Chapter 160D- 1001(b) and 160D-1006(c).

16.5.3. Applicability. The Development Agreement procedure allows the Town and the developer to enter into an agreement for completion of the development, subject to compliance with specific requirements set down in the agreement. A Development Agreement may be applied to a development of any size, however, all proposed developments of at least 3 buildable acres shall be subject to a development agreement. The terms of a Development Agreement apply to all successors in interest.

Statutory Reference – N.C.G.S. Chapter 160D- 1004.

16.5.4. Duration. Development Agreement issued by the Town shall be of a reasonable length of time based upon the complexity of the development proposed in the agreement.

Statutory Reference – N.C.G.S. Chapter 160D- 1004.

16.5.5. Development Agreement Standards. For consideration of the Town to participate in a Development Agreement, a development subject to the agreement must meet the following criteria:

- (a) Planned Development. The information regarding the property subject to the Development Agreement shall contain details of the property and the planned development in accordance with the NC State General Statute requirements.
- (b) Phasing and Duration of Development. The development shall demonstrate phasing and participation in the proposed agreement shall be of reasonable terms that shall be specified in the agreement.
- (c) Impact on Capital Improvements. The development shall demonstrate the impact on existing and future provisions of capital improvements by the Town including at least one of the following: transportation, potable water, sanitary sewer, solid waste, stormwater management, educational, parks and recreational, and health systems and facilities.

16.5.6. Contents of Application. An application for a Development Agreement shall include a proposed Development Agreement that shall, at a minimum, address all of the following:

- (a) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.
- (b) The duration of the agreement.
- (c) A development schedule, including commencement dates and interim completion dates at no greater than five-year intervals.
- (d) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (e) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.
- (f) If the Development Agreement provides that the Town shall provide certain public facilities, the Development Agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).
- (g) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- (h) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
- (i) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety, or welfare of its citizens.

- (j) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
- (k) An indemnification and "hold harmless" clause whereby the developer/property owner holds the Town and its agents harmless from liability for damages, injury, or death that may arise from the direct or indirect operations of the owner, developers, contractors, and subcontractors that relate to the project.
- (l) The proposed Development Agreement may include the following:
 - i. A provision that the entire development or any phase of it be commenced or completed within a specified period of time.
 - ii. Other defined performance standards to be met by the developer.
 - iii. Other matters not inconsistent with law.
- (m) The application shall include a master plan that depicts the general configuration and relationship of the principal elements of the proposed development, including major uses, general building types, pedestrian and vehicular circulation, open space, public facilities, and phasing.
 - i. If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.
 - ii. The development agreement also may cover any other matter, including defined performance standards, not inconsistent with N.C.G.S. Chapter 160D. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government pursuant to G.S. 160D-8-4 shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

Statutory Reference – N.C.G.S. Chapter 160D- 1006.

- iii. Modifications. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. Changes which constitute a major modification may be determined as provided for in the development agreement. Changes which are deemed Minor may be processed administratively.

Statutory Reference – N.C.G.S. Chapter 160D- 1006(e).

16.5.8. Procedure for Entering into Development Agreements with Developers.

- (a) Submittal.

- i. The Application for a Development Agreement shall be submitted, together with all other related permit/development approval applications, to the Zoning Administrator.
 - ii. The Zoning Administrator shall review the contents to ensure that the application is complete. If the application is not completed, the applicant shall be notified within ten (10) calendar days.
 - iii. When the completed application is received and verified, the Zoning Administrator shall request and place the consideration of this application on the agenda for the next meeting of the Planning Board.
- (b) Review and Recommendation of the Planning Board. Following consideration and review, the Planning Board shall make on the following recommendations:
- i. The Town enter into the Development Agreement as submitted;
 - ii. The Town enter into the Development Agreement application subject to modifications agreed to by the applicant, in writing; or
 - iii. The Town not enter into the Development Agreement.
- (c) Consideration of the Development Agreement by the Board of Commissioners.
- i. Before entering in to a development agreement, the Town Board of Commissioners shall conduct a legislative hearing. The Town Clerk shall schedule a public hearing before the Town of Clarkton Board of Commissioners for the Development Agreement application. The notice provisions of G.S. 160D-6-2 applicable to zoning map amendments shall be followed for this hearing. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. This hearing may be held jointly with any hearing required for other permits and approvals necessary of this same project.

Statutory Reference – N.C.G.S. Chapter 160D- 1005.

- ii. Following consideration and review of the recommendation from the Planning Board, the Board of Commissioners shall take one of the following actions:
 - 1) Enter into the Development Agreement as submitted;
 - 2) Enter into the Development Agreement, subject to modifications agreed to by the applicant, in writing;
 - 3) Not enter into the Development Agreement; or

- 4) Remand of the application back to the Planning Commission for further consideration.

16.5.9. Recordation. The developer shall record the agreement with the Town of Clarkton Register of Deeds within 14 days after the local government and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

Statutory Reference – N.C.G.S. Chapter 160D- 1011.

16.5.10. Approval of Debt. In the event that any of the obligations of the local governments in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt. The agreement shall be signed by the Town Attorney, Finance Director, and Mayor.

Statutory Reference – N.C.G.S. Chapter 160D- 1012.

16.5.11. Vesting.

- (a) 12.5.11.1. Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.
- (b) 12.5.11.2. Except for grounds specified in G.S. 160D-1-8(e), Town of Clarkton may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.
- (c) 12.5.11.3. In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, Town of Clarkton may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement.

Statutory Reference – N.C.G.S. Chapter 160D- 1007.

16.5.12. Termination. Development agreements may be terminated by mutual consent of the parties.

Statutory Reference – N.C.G.S. Chapter 160D- 1009.

16.5.13. Annual Review, Breach and Cure

- (a) Annual Review. During any period of time in which a development permit is active, the Town shall review the development at least once every 12 months for compliance with the agreement. The developer shall be required to demonstrate good faith compliance with the terms of the Development Agreement.

Statutory Reference – N.C.G.S. Chapter 160D- 1009.

(b) Breach and Cure

- i. A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

- ii. Material Breach: If the Town finds and determines that the developer has committed a material breach of the terms or conditions of the Development Agreement, the Town shall serve written notice of the breach upon the developer

within a reasonable time after the periodic review. Such notice shall set forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and shall provide the developer a reasonable time in which to cure the material breach.

- iii. Failure to Cure Material Breach. If the developer fails to cure the material breach within the time given, then the Town unilaterally may terminate or modify the Development Agreement.

- iv. Appeal. The notice of termination or modification may be appealed to the Board of Adjustment for review and decision.

- v. Other Penalties for Breach. An ordinance adopted pursuant to G.S. 160D-10.3 or the development agreement may specify other penalties for breach in lieu of termination, including but not limited to, penalties allowed for violation of a development regulation. Nothing in this Article shall be construed to abrogate or impair the power of the local government to enforce applicable law.

Statutory Reference – N.C.G.S. Chapter 160D- 1008.

16.5.14. Amendments to Development Agreement.

- (a) Mutual Consent. A Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.
- (b) Major Modification. Consideration of a proposed major modification of a Development Agreement shall follow the same procedures as required for initial approval of the agreement.
- (c) Minor Modification. The Town Board of Commissioners delegates these to the Zoning Administrator who may approve minor modifications of the Development Agreement with the mutual consent of the other parties to the agreement, without following the same procedures as required for initial approval of the agreement, upon making written findings that the proposed modifications would not significantly change the use, intensity, or design of the development, would be consistent with the purposes and goals of the agreement, would comply with this Ordinance, and would not adversely affect the public health, safety, or general welfare.

Cross Reference – Section 12.5.7.

16.5.15. Assumption of Jurisdiction over Development Agreements.

- (a) Town Assumes Planning Jurisdiction. If the Town assumes planning jurisdiction over property subject to a Development Agreement established by another jurisdiction, such development agreement shall be valid for the duration of the agreement, or eight years from the effective date of the Town 's assumption of planning jurisdiction over the subject property, whichever is earlier.
- (b) Rights and Obligations. The parties to the development agreement and the Town shall have the same rights and obligations with respect to each other regarding matters addressed in the Development Agreement as if the property had remained in the previous jurisdiction.
- (c) Modification or Suspension. The Town may modify or suspend the provisions of the Development Agreement if the Town determines that the failure to do so would place the residents of the area subject to the Development Agreement, or the residents of the Town 's planning jurisdiction, or both, in a condition dangerous to their health or safety, or both.

16.5.16. Change of Jurisdiction.

- (a) A development agreement entered into by Town of Clarkton before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.
- (b) In assuming jurisdiction, Town of Clarkton may modify or suspend the provisions of the development agreement if the Town determines that the failure to do so would place the residents of the territory subject to the development agreement, or the

residents of the Town, or both, in a condition dangerous to their health or safety, or both.

Statutory Reference – N.C.G.S. Chapter 160D- 1010.

16.6. Rezoning (Zoning Map Amendment).

16.6.1. Procedure. The procedure for an amendment to the Official Zoning Map shall include:

- (a) Initiation of amendment and filing with the Town Clerk.
- (b) Planning Board review and recommendation.
- (c) Hearing held by the Board of Commissioners.
- (d) Board of Commissioners review and action.
- (e) A written determination by the Board of Commissioners.

Cross Reference - The details for the procedures above are outlined in **Section 7.3** of this Ordinance -
PROCEDURE FOR TEXT OR ZONING MAP AMENDMENT (REZONING).

16.7. Sign Permit.

16.7.1. Permit Required. Except as otherwise provided, no sign shall be erected, altered, constructed, moved, converted or enlarged except in accordance with the provisions of this chapter and pursuant to issuance of a Sign Permit. No Sign Permit shall be issued unless plans and supporting information have been submitted to clearly demonstrate that the sign will conform to all applicable requirements of this Article, or to clearly demonstrate that the sign is exempt from issuance of a Sign Permit.

16.7.2. Permit Form. Application for permits shall be submitted on forms obtainable at the Office of the Zoning Administrator.

16.7.3. The detailed procedures for securing a sign permit are included in **Article 10 Part 2**.

Cross Reference – **Article 10**

16.8. Site Plan - Minor.

16.8.1. A Minor Site Plan shall be reviewed by the Zoning Administrator and shall be a scaled drawing which shows what already exists on the property and what is proposed for the property. The Minor Site Plan Review Process shall apply to all development not covered by a Major Site Plan as outlined in **Section 16.9**.

16.8.2. A Minor Site Plan shall include the following:

- (a) A scale.
- (b) Clear identification of the structure or use proposed.
- (c) Property boundaries, lot dimension, setbacks, and Property Identification Number for the subject property.

- (d) Major physical features including water bodies, creeks, wetlands, buildings, streets, and the like.
- (e) Proposed land use, streets, rights-of-way, buildings, and/or lot arrangements, including proposed lot sizes, common areas, and the buffers required.
- (f) Name, address, and telephone number of applicant, owner, and persons (firm) preparing the development plan.

16.8.3. Submittal. Applicants eligible for Minor Site Plan review shall submit the Zoning Permit Application and the Minor Site Plan to the Town Clerk unless otherwise instructed by the Zoning Administrator. One print and one digital copy of the application and plan is required. Payment of the applicable fee is also required.

16.8.4. As-Built Site Plan Required. For Minor Site Plans, an as-built site plan shall be submitted to the Zoning Administrator by the applicant upon completion of the building foundation(s) to ensure that setbacks and building orientation match the approved site plan. If the survey shows that the placement of the building is incorrect, then the Zoning Administrator shall issue a stop-work order and all construction shall be halted until the problem is remedied.

16.9. Site Plan - Major.

16.9.1. A Major Site Plan shall be a scaled drawing developed from a survey of the property which details the structures and conditions existing on the property and what is proposed for the property. A Major Site Plan shall be reviewed by the Zoning Administrator and referred to the Planning Board for their review and approval. Major Site Plans shall apply to the following:

- (a) New multi-family development with two or more buildings.
- (b) New non-residential development with two or more buildings.
- (c) New non-residential development which is a single building or additions with 2,500 square feet or more in gross floor area.
- (d) New single-building multi-family development with three or more dwelling units.
- (e) Development that results in a new street connection with an existing street or street stub in a single-family residential neighborhood.
- (f) Zero-lot-line developments.

16.9.2. Major Site Plan review may take place in two stages: first, review of a voluntary Preliminary Site Plan, and second, review of a more detailed Final Site Plan. There is no requirement to prepare a Preliminary Site Plan, and applicants may file a Site Plan application that meets the Final Site Plan requirements without undergoing the Preliminary Site Plan step.

- (a) The Preliminary Site Plan is not required to include highly-detailed, fully-engineered elements. It is intended to show general compliance with Zoning requirements and

conditions of approval. Town staff will provide comments or information to be included on the Final Site Plan as part of the review of a voluntary Preliminary Site Plan.

- (b) The Final Site Plan is required to include all details and required engineering necessary to demonstrate full compliance with the Zoning requirements and other applicable Town Code, as appropriate.

16.9.3. A Major Site Plan shall be survey grade and shall include the following:

- (a) A scale that shall be the same scale as required for development plan submittal.
- (b) Property boundaries and total acreage, including NC PINs (Property Identification Numbers) for all properties.
- (c) Major topographical and physical features including water bodies, creeks, wetlands, buildings, streets, and the like.
- (d) Proposed streets, rights-of-way, buildings, and/or lot arrangements, including proposed lot sizes, common areas, and the buffers required.
- (e) Existing and proposed land use, drawn to scale, with brief project description including proposed structures, yard setbacks, building sizes, unit sizes, lot sizes, open space, amenities, the amount of impervious surfaces in square feet and the percentage of impervious surface of the entire development and the like.
- (f) Name, address, and telephone number of applicant, owner, and persons (firm) preparing the development plan.
- (g) Adjacent street names, numbers, and right-of-way widths.
- (h) Zoning district classification of site and surrounding properties, including any water supply watershed(s) and zoning of properties located across adjacent streets.
- (i) The boundaries of any proposed phasing.
- (j) Sites, if any, for schools, parks, churches, and playgrounds.
- (k) Acreage in public uses.
- (l) Approximate number of lots.
- (m) Sketch vicinity map showing the relation of the proposed site to existing uses of the land.

- 16.9.4. Major Site Plan and Construction Drawings Submitted for Review. Three (3) hard copies and one (1) digital copy of all major site plans shall be submitted in accordance with **Subsection 16.9.3**, as applicable, and shall be accompanied by the completed application and payment of a fee as adopted by the Town Board of Commissioners. All major site plans shall be submitted twenty-one (21) days in advance of the Planning Board meeting at which they are to be reviewed.
- 16.9.5. Construction Drawings. The Construction Drawings for Major Site Plans shall be submitted with the site plan. The construction drawings shall be reviewed concurrent with the major site plan. Construction drawings shall be approved administratively prior to the issuance of a zoning permit.
- 16.9.6. Submittal Requirements. Construction Drawings shall include the following:
- (a) Site Plan;
 - (b) Existing Conditions;
 - (c) Grading Plan;
 - (d) Soil and Erosion Control Plan;
 - (e) Landscaping Details;
 - (f) Lighting Plan;
 - (g) Street Details, if applicable;
 - (h) Infrastructure Details; and
 - (i) Stormwater Control Plan NOTE: Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross sections, design details, and dimensions.
- 16.9.7. Staff Review. The Zoning Administrator will circulate the plan to relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but not necessarily be limited to the following: Police Department, Fire Department, Scotland Building Inspections Department, Public Works, Town Attorney, Other Utilities Providers, Town of Clarkton Health Department, and the US Army Corps of Engineers. The Zoning Administrator will prepare a staff recommendation for the proposed development and forward this to the Planning Board for consideration.
- 16.9.8. Review by Planning Board. Following a complete review by the staff and preparation of the staff recommendation, the Zoning Administrator shall schedule the application for review by the Planning Board at the next regularly scheduled meeting. The Planning Board shall review the proposed project and either approve or deny the proposed project. A written determination from the Planning Board shall be forwarded to the Town Board of Commissioners within thirty (30) days of application review. for consideration. If a recommendation is not made within 30 days, the application shall be forwarded to the Town Board without a recommendation from the Planning Board.
- 16.9.9. Action by Town Board. Once the recommendation of the Planning Board has been made, or the 30-day period elapses without a recommendation, the Town Board shall follow the quasi-judicial procedures outlined in **Article 6**. The Town Board may take the following actions:
- (a) Approve the application as received.
-

- (b) Approve the application with conditions.
- (c) Deny the application.
- (d) Table the application for a specific number of days. The Town Board may also request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the request.
- (e) Return the application to the Planning Board for further consideration. This deferral does not restart the initial Planning Board 30-day review period. The Town Council may direct that the Board return a decision by a certain date.

16.9.10. Appeal of Town Board Decisions. When considering action on subdivision plats or site plans, the Town Board of Commissioners is making a quasi-judicial decision. Any appeal of the decision of the Town Board shall be made to Superior Court as outlined in **Section 6-8**.

16.10. Special Use Permit.

16.10.1. Definition. A Special use permit is a permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as “conditional use permits” or “special exceptions.”.

Statutory Reference – N.C.G.S. Chapter 160D-102.

16.10.2. Applicability. Through the application of Special Use Permits certain property uses may be allowed in several districts where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, property uses which may otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.

16.10.3. Procedure. The procedure for application, review and decisions on Special Use Permits is outlined in **Article 6**.

16.11. Temporary Use Permit.

Section 11.47. of this Ordinance outlines the types of temporary uses permitted in the zoning jurisdiction of Town of Clarkton. Temporary Use Permits issued for any such temporary use shall include the following:

16.11.1. Temporary Use Permit Required. Every use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property only after receiving a temporary use permit.

16.11.2. Filing and Contents of Application.

- (a) An application for a temporary use permit may be filed only by the owner of the property, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (b) An application for a temporary use permit shall be filed with the Zoning Administrator. Where appropriate, each application shall be accompanied by a Minor Site Plan which complies with the standards set forth in **Section 16.8** of this Ordinance.

16.11.3. Filing Deadline. All applications for temporary use permits shall be filed at least two (2) weeks prior to the date the temporary use will commence, or at least four (4) weeks prior to the date the temporary use will commence if public safety support is requested from the Town. The Zoning Administrator may waive this filing deadline requirement in an individual case, for good cause shown.

16.11.4. Approval Criteria. The Zoning Administrator shall issue a temporary use permit if the proposed temporary use satisfies the requirements set forth in **Section 11.47**

16.11.5. Duration of Permit. A temporary use permit shall be valid only for the time period stated on the permit as included in **Section 11.4.7**.

16.11.6. Temporary Structure Permit Required. No tent, trailer, or other temporary structure governed by the State Building Code shall be occupied or used in conjunction with a temporary use until and unless the applicant has received a tent permit or a building permit from the Inspections and Permits Department pursuant to the State Building Code.

16.12. Variance.

16.12.1. Definition. A request to deviate from current *zoning* requirements. If granted, it permits the owner to use his land in a way that is ordinarily not permitted by the *zoning* ordinance. It is not a change in the *zoning* law, but a waiver from the requirements of the *zoning* ordinance. Variances run with the land and are not a personal right of any individual applicant, therefore the personal circumstances of an applicant are irrelevant. If, however, the applicant is a person with disabilities, the Federal Fair Housing Act requires that the Town make reasonable accommodation for that person. (**N.C.G.S. 160D-102, Note 381**)

Statutory Authority – NCGS Chapter 160D-102.

16.12.2. Development Approval (Permit) Required. A Zoning Variance is a development approval (permit) issued by Town of Clarkton. As such, applicants for a variance are advised that no person shall commence or proceed with development within the Town 's jurisdiction without first securing any development approvals from the Town.

Statutory Authority – NCGS Chapter 160D-403(a) and 404

16.12.3. Procedure. The procedure for application, review and decisions on Special Use Permits is outlined in **Section 6.4**.

16.13. Vested Rights Certificate.

A Vested Rights Certificate allows an applicant with an approved and unexpired Site Plan, Subdivision Plan, or Final Plat to “vest” the plan or plat, in accordance with the ordinance. Such “vesting” allows development to continue on an approved plan even if certain deadlines are not met and/or there are code changes that might otherwise affect continued development of the property.

An application for a Vested Rights Certificate may be filed concurrently or following approval of a Site Plan, Subdivision Plan, or Final Plat application. In approving the vested rights certificate, the Zoning Administrator may apply conditions of approval.

Cross Reference – Section 13.1, Vested Rights

16.13.1. *Applicability.* A vested right may be established, in accordance with Chapter 160D-108 of the North Carolina General Statutes. The types of vesting plans and duration of those plans are outlined in Section 13.1 of this Ordinance.

16.13.2. *Vested Rights Certificate Procedure.*

- (a) *Pre-Application Conference Required.* A pre-application conference with the Zoning Administrator is required as outlined in **Section 16.16** of this Ordinance.
- (b) *Application Submittal and Acceptance.* Applications may be initiated by the landowner on a form approved by the Town Board of Commissioners.
- (c) *Staff Review.* The Zoning Administrator shall review the application, prepare a staff report, and provide a recommendation in accordance with the Vested Rights Certificate Review Standards in **Section 16.13.4.** of this Ordinance.
- (d) *Public Notification.* Public notification shall comply with the standards outlined in quasi-judicial hearings included in **Section 6.7.**
- (e) *Town Board of Commissioners Review and Decision.*
 - i. Conduct Hearing. The hearing shall comply with the standards outlined in quasi-judicial hearings included in **Section 6.7.**
 - ii. The Town Board of Commissioners, after the conclusion of a quasi-judicial hearing, shall decide the application in accordance with the Vested Rights Certificate Review Standards. The decision shall be one of the following:
 - 1. Approval of the vested rights certificate as proposed;
 - 2. Approval of a revised vested rights certificate;
 - 3. Denial of vested rights certificate; or
 - 4. Remand of the vested rights certificate application to the Planning and Development Director for further review.
 - 5.

16.13.4. Vested Rights Certificate Review Standards. A vested rights certificate shall be approved if the applicant demonstrates:

- (a) The vested rights certificate is for an approved site plan, group development plan, or preliminary plat;
- (b) The development is valid and unexpired; and
- (c) Any required variances have been obtained.

16.13.5. Vested Rights Certificate.

- (a) Following approval of a vested right, each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan established a zoning vested right under N.C.G.S. Chapter 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

16.13.6. Amendment. Amendment of vested rights certificate may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

16.14. Zoning Text Amendment.

16.14.1. Procedure. The procedure for an amendment to the text of the official Zoning Ordinance of Town of Clarkton shall include:

- (a) Initiation of amendment and filing with the Town Clerk.
- (b) Planning Board review and recommendation.
- (c) Hearing held by the Board of Commissioners.
- (d) Board of Commissioners review and action.
- (e) A written determination by the Board of Commissioners.

16.14.2. The details for the procedures above are outlined in Section 7.3 of this Ordinance - **PROCEDURE FOR TEXT OR ZONING MAP AMENDMENT (REZONING).**

16.15. Inspections.

16.15.1. Periodic Inspections. The Zoning Administrator shall have the right, upon presentation of proper credentials, or inspection warrant, if necessary, to enter on any premises within the planning jurisdiction of Town of Clarkton at any reasonable hour for the purposes of inspection, determination of plan compliance or other enforcement action.

16.15.2. Investigations. The Zoning Administrator shall have the power to conduct such investigation as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

16.16. Pre-Application Meeting with Administrative Staff.

Unless waived by the Zoning Administrator, a pre-application meeting is required for all business/commercial and industrial projects, triplex, quadraplex, and all other multi-family residential projects, all special use permit projects, all rezoning projects, vested rights certifications and any other project as determined by the Administrative staff. The meeting will include a non-binding and informal review of the development proposal and is intended to provide information to the applicant on the procedures and policies of the Town. The meeting does not confer upon the applicant any development rights.