

## **An Ordinance to Amend the Belmont Land Development Code**

**WHEREAS**, the City of Belmont has a Land Development Code that provides for various rules for how land can be used and developed within Belmont’s planning and zoning jurisdiction; and

**WHEREAS**, the State reorganized and modified land use and development regulations in 2019 which will require the local governments to amend their regulations; and

**WHEREAS**, the City initiated the petition (TA2021.04) to amend Chapters 2, 15,18,19, and 20 of the Land Development Code; and

**WHEREAS**, the public hearing for this text amendment has been noticed in compliance with the North Carolina General Statutes; and

**WHEREAS**, the Belmont Planning and Zoning Board reviewed this text amendment petition (TA2021.04) at its June 17, 2021 public meeting and voted 7-0 to find the amendment a reasonable request, consistent with goal #8—Intergovernmental Relations—of the Belmont Comprehensive Land Use Plan, and to recommend approval of the amendment to the City Council; and

**WHEREAS**, the Belmont City Council held the public hearing on July 6, 2021, and, after hearing such, made the following required findings:

The petition is/is not consistent with:

- The proposed text amendment is reasonable, and in the best interest of the public, because it aligns city land use regulations in compliance with state law as required; and
- The proposed text amendment is consistent with comprehensive land use plan goal #8—Intergovernmental Relations—because these modifications are mandated by the state.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Belmont, that Chapters 2, 15, 18, 19 and 20 of the Land Development Code be/not be amended by the revision of items described on Exhibit A.

If any provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, independent provision and such holding shall not affect the validity of any other provision thereof, and to that end, the provisions of this Ordinance are hereby declared to be severable.

This Ordinance shall be effective on this 6th day of July 2021.

Attest:

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Charles R. Martin, Mayor

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City Clerk

Approved as to form:

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City Attorney

## 2.1 RULES OF CONSTRUCTION

For the purposes of these regulations, the following rules of construction apply.

1. These regulations will be construed to achieve the purposes for which they are adopted. Interpretations shall be guided by statements of intent.
2. The words "shall," "must," and "will" are mandatory in nature, implying an obligation or duty to comply with the particular provision.
3. The word "may" is permissive in nature except when used in the negative.
4. The word "should," whether used in the positive or the negative, is a suggested guideline.
5. References to "days" will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.
6. For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined below. Except as defined herein, all other words used in this ordinance shall have their dictionary definition as contained in the *American Heritage Dictionary of the English Language*.

## 2.2 DEFINITIONS

### AAA

**Abandon:** To cease the regular use or maintenance of a lot, building, or structure.

**Abandonment:** A property, use, or structure which has been physically, and objectively discontinued, relinquished, or vacated for a consecutive period of at least one-hundred eighty (180) calendar days.

**Abutting:** Having common property boundaries or lot lines that are not separated by a street, alley, or other vehicular right-of-way such as a railroad.

**Accessory Building and Use:** A structure subordinate or incidental in square footage and primary use to the principal structure. Accessory structures and uses include detached garages (with or without rental units), storage buildings, pools and pool houses, material storage areas, piers and other water related structures, etc. In no event shall "accessory use" or "accessory structure" be construed to authorize a use or structure not otherwise permitted in the district in which the principal use is located.

**Addition:**

- (1) A structure added to the original structure after the completion of the original;
- (2) An extension or increase in floor area or height of a building or structure.

### Adjacent, Adjoining Lot or Land

A lot or parcel of land that shares all or part of a common lot line or boundary with another lot or parcel of land or that is directly across a public street or right-of-way.

**Adult Bookstore:** Notwithstanding the definitions of "Adult Bookstore" contained in G.S. 14-202.10(1), "Adult Bookstore" means a business establishment that:

- a. has one of its principal business purposes the sale or rental of: or
- b. has a substantial or significant portion of its stock or trade for sale or rental of:
  - (i) "publications" that are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified anatomical areas," as defined in G.S. 14-202.10 (10), or "specified sexual activities", as defined in G.S. 14-202.10(11); and/or
  - (ii) "sexually oriented devices", as defined in G.S. 14-202.10(9).

As used in this definition, "publications" include, by way of illustration, books, magazines, compact discs other periodicals, movies, videotapes, and other

windows, plentiful parking located in front of entrances; wide road lanes with the elimination of on-street parking, sidewalks, and street trees; and large intersections.

**Automobile/Boat/Heavy**

**Equipment/Manufactured Home Sales and Service:** Any building, premises, and land, in which or upon the primary use of land is a business which involves the maintenance, servicing or sale of new or used automobiles, boats, heavy equipment and/or manufactured homes generally but may include light trucks or vans, trailers, or recreation vehicles and including any vehicle leasing, rental, parking service, preparation or repair work conducted as an accessory use. This definition includes but is not limited to auto dealerships, auto body shops, auto service stations, boat repair or sales, car washes, convenience stores, gas stations, heavy equipment leasing, sales, or service, manufactured home sales or service, and oil/lube servicing. This does not include the sale of parts or related products (i.e. auto parts store).

**Automotive repair:** A building and its premises used for the storage, care, repair, or refinishing of motor vehicles including both minor and major mechanical overhauling, paint and body work. Minor repairs shall be limited to battery and tire changes, light and fuse replacement, wiper blade changes and similar activities. Also referred to as vehicle repair.

**Awning:** A structure made of cloth, metal, or other material affixed to a building in such a manner that the structure may be raised or retracted from a building to a flat position against the building, but not a canopy.

**BBB**

**Base Flood Elevation:** The highest height, expressed in feet above sea level, of the level of floodwaters occurring in the regulatory base flood.

~~**Bedroom Unit:** A private room for sleeping quarters separated from other rooms, and accessible to a bathroom without crossing through another bedroom. A room designated as a bedroom on the plans. See definition of "sleeping room."~~

**Bed and Breakfast Inn:** A use that takes place within a building that, prior to such an establishment, was a single family residence, that consists of renting from one to eight dwelling rooms on a daily basis to tourists, vacationers, and business travelers, where meals are provided only to guests. The homeowner shall reside on site and employment shall not exceed two full time employees in addition to the owner(s).

**Berm:** A raised earth mound which is planted with ornamental vegetation

**Best Management Procedures (BMPs):** A structural or non-structural management-based practice used singularly or in combination to reduce non-point source input to receiving waters in order to achieve water quality protection goals.

**Non-structural BMPs:** Non-engineered methods to control the amount of non-point source pollution. These may include land-use controls and vegetated buffers.

**Structural BMPs:** Engineered structures that are designed to reduce the delivery of pollutants from their source or to divert contaminants away from the water supply. These may include wet detention ponds, detention basins, grass swales and ditches, and infiltration devices.

**Block:** A unit of land bounded by streets or by a combination of streets and public land, waterways, or any other barrier to the continuity of development.

**Blood Plasma Facility:** A facility where human blood plasma is collected from donors who may receive monetary compensation for the donations of their blood plasma.

**Board of Adjustment:** A quasi-judicial Board appointed by the Belmont City Council and Gaston County Commissioners which hears and decides on variances to the Regulating and Subdivision Ordinance of the City of Belmont. The Board can only grant variances according to strict interpretation of the Ordinances as adopted by City Council.

**Buffer (Non-Watershed) (See also screening)**  
An area of land, open space, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen adjacent land uses or property, or to separate development from a stream or water body, or an area intended to

preserve vegetation along a designated corridor, or to separate one use or property from another so as to visually shield or block noise, lights, or other nuisances.

**Buffer (Watershed):** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**Build Out:** The completed construction of all phases of a development as allowed by all Ordinances which regulate an area. The scale of build out can be from a single lot to the entire City's jurisdiction.

**Buildable Area:** The area of a lot remaining after the minimum yard and open space requirements of the Ordinance has been met.

**Building:** ~~Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property.~~ Any structure used or intended for supporting or sheltering any use or occupancy. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

**Building Envelope:** The three-dimensional space within which a structure is permitted to be built on a lot and that is defined by maximum height regulations, and minimum yard setbacks or build-to lines, buffers, easements, or other applicable regulations.

**Building face:** The dominant structural feature of the elevation of any side of a building. For example, the building face of a two-story dwelling with one-story porch is the two-story elevation of the structure.

**Building Footprint:** The land area on which a building is located or proposed for location.

**Building Mass:** The height, width, and depth of a structure.

**Building lines:** Lines that are tangent to the exterior surface of buildings or structures, or the surfaces of cantilevered projections therefrom, parallel to front, side, and rear lot lines, and referred to as front, side, and rear building lines, respectively.

**Building Permit:** A permit obtained from Gaston County Building Inspector as the City's agent for the construction, repair, alteration, or addition to structure, which sets the inspection schedule and construction techniques for a particular project and specified use in accordance with adopted building codes and other prevailing standards for construction, and includes the City's necessary zoning approval.

**Building, Principal:** A building in which the principal use of the lot on which it is located is conducted.

**Building site:** (See also Development.) An area of land, or property where development is undertaken.

**Building Setback Line:** A line establishing the minimum allowable distance between the nearest vertical part of any building, excluding eaves, overhangs, porches, bay windows, covered porches, and decks, to the nearest edge of a street right-of-way, property line, or easement line, when measured perpendicular thereto.

**Build-To Line:** The line at which construction of a building is to occur on a lot. A build-to line runs parallel to the front property line and is established to create an even building facade line on a street.

**Built-upon Area (B.U.):** Built-upon areas shall include that portion of a development project and/or lots that are covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

## CCC

**Caliper:** The size of tree's trunk diameter as measured six (6) inches above the ground for trees four (4) inches or less in diameter, and as measured twelve (12) inches above the ground for trees larger than four (4) inches in diameter.

**Window Sign:** Any sign attached to or directly applied onto a window or glass door of a building intended for viewing from the exterior of the building.

**Significant Tree:** Any tree other than a pine tree with a caliper of 18 inches or more.

**Significant Vegetation:** A large canopy tree over 18 inches in diameter at breast height which displays a root zone, canopy, and structure characteristic of the particular species and is in good health and vigor.

**Single Family Home(s):** Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit (exception: rental studios and apartments). Such uses include family care homes and group homes as defined in this chapter.

**Site Plan, Site Specific Plan:** A diagram to scale showing the development plans for a project and containing all information required of Site Plans and/or Subdivision Plats.

**Site Survey:** A map done by a surveyor accurately depicting the scale distances and measurements of all planned structures on a lot which may include topographical information and existing naturally occurring and constructed elements or structures, such as streams, wetlands, rock outcroppings, etc.

**Sleeping Room:** *A room designated as a sleeping or bedroom on the plans and permit application.*

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

**Small Maturing Tree:** A tree whose height is less than 35 feet at maturity and meets the specifications of "American Standards for Nursery Stock" published by the American Association of Nurserymen.

**Solid Waste:** Any hazardous or nonhazardous garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, institutional, commercial, agricultural, and land clearing operations. This term does not include the following

1. Fowl and animal fecal waste;
2. Solid or dissolved material in any of the following:
  - a. Domestic sewage, and sludge generated by the treatment thereof, in sanitary sewage disposal systems which have a design capacity of more than 3,000 gallons or which discharge effluents to the surface waters,
  - b. Irrigation return flows; or
  - c. Wastewater discharges, and the sludge incidental thereto and generated by the treatment thereof, which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 et seq.) and permits granted under G.S. 143-215.1 by the Environmental Management Commission;
3. Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the North Carolina General Statutes;
4. Any radioactive material as defined by the North Carolina Radiation Protection Act (G.S. 104E- 1 through 104E- 23); or
5. Mining refuse covered by the North Carolina Mining Act (G.S. 74-46 through 74-68) and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290).

**Special Use:** A use subject to specific provisions or which requires the approval of a special use permit by the City Council before the issuance of a zoning permit.

**Special Use Permit (SUP):** A permit issued to authorize development or land uses in a particular

**2 Final Approval by Stages:** If so, reflected on the Master Plan, the city council may allow the staging of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable CD Master Plan.

**3 Decisions:** Decisions by the city council shall be by majority vote. In considering an application for the establishment of a Conditional District, the planning board may recommend, and the city council may attach reasonable and appropriate conditions on the location, nature, and extent of the proposed use and its related design. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the planning board or the city council prior to final action.

**4 Qualifications of Applicant:** Conditional District classification shall only be considered upon the request of the owners of all the property to be included. A CD shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. "Unified control" means that all land to be included within a CD shall be owned or otherwise under the legal control of the person or legal entity which has applied for a Conditional District. Such person or entity shall be legally capable of providing a commitment to the city that the CD development will comply with all documents, plans, standards and conditions ultimately approved by the city.

**5 Standards of District to be Met:** Within an approved Conditional District, no use shall be permitted except those permitted in the underlying district and pursuant to the conditions imposed on the Conditional District in the approval of the rezoning. The city council may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare and justice. In addition to the Schematic Plan, the applicant shall provide the exact land use classifications proposed for the Conditional District. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the Conditional District is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional District.

**6 Substantial Changes:** Any substantial change to a Master Plan that results in a net increase to the number of lots or a change in building size, location or appearance, or a change in parking or traffic patterns shall be reviewed by the planning board and approved or denied by the city council as an amended Conditional District. The following changes to a Conditional District Schematic Plan shall require approval by the city council:

- Land area being added or removed from the Conditional District.
- Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
- A change in land use or development type beyond that permitted by the approved Master Plan.
- When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
- When there is an increase in the total number of residential dwelling units originally authorized by the approved Master Plan.
- When the total floor area of a commercial or industrial classification is increased more than ten percent beyond the total floor area last approved by city council.

All other changes to a CD Master Plan or subsequent Final Plan shall be considered a *minor modification* for approval by the planning director. However, if in the judgment of the planning director, the requested changes alter the basic development concept of the CD, the planning director may require concurrent approval by the city council.

**7 Rescission of Conditional Districts:** Unless the city council has approved a Conditional District which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid ~~building zoning~~ permit within a ~~twelve (12) month period from date of approval of the conditional district~~ *a two (2) year period from date of approval or as specified in G.S. 160D-108*. In addition, if the project for which a conditional district was approved is not complete and a valid ~~building zoning~~ permit is not in place at the end of said ~~twelve month time~~ period, the planning Director shall notify the applicant of either such finding, and within sixty (60) days of said notification, the planning department shall make a recommendation concerning the rescission of the conditional district to the city council *following the same process used for the approval*. The city council may then rescind the conditional district or extend the life of the conditional district for a specified period of time.

**15.7 EFFECT OF APPROVAL OF THE PRELIMINARY PLAT**

Only after receiving Preliminary Plat approval for a Minor Subdivision or Major Development Plan as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction on the development.

Approved preliminary plats are valid for 1 year from the date of approval by the City of Belmont. Reasonable and necessary extensions may be granted at the city council’s sole discretion if a written request by the developer is made to the city council forty-five (45) days prior to the 1-year anniversary of preliminary plat approval. Upon expiration of approval prior to final plat approval and recordation, a new application for subdivision will be required in accordance with the process before development can recommence.

Approval of a preliminary plat constituting an individual phase of a multi-phase project, which has not been entirely approved, does not constitute approval by the City of any remaining phases. For approved preliminary plats consisting of multiple phases, only the phase that is to be

developed for sale immediately shall be submitted for final plat approval.

Any substantial change to a Major Development Plan that results in a net increase to the number of units or heated floor area by more than 5% shall be reviewed by the planning board and approved or denied by the city council as an amended Schematic Design.

All required infrastructure improvements for the preliminary plat shall be in place within 1 year of preliminary plat approval. If circumstances beyond the control of the developer do not allow for the completion of the required work within the 1 year period or the size of the phase is such that 1 year is insufficient time to complete all required work, then the developer may file a written request for an extension with city council no later than forty-five (45) days prior to the 1 year anniversary of preliminary plat approval by the City as provided above. If infrastructure work is not completed within 1 year and/or no extension request is filed with city council and approved, preliminary plat approval becomes null and void on the day of the one (1)-year anniversary and a new application will be required.



**18.4 APPEALS AND VARIANCES****Reserved****1. Appeals Procedure**

The Board of Adjustment shall hear and decide appeals from and review any final and binding order, requirement, decision, interpretation or citation made by the Planning Director and apply such interpretation to particular fact situations.

- A. The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.
- B. The Board of Adjustment shall have all the powers of the Planning Director in making any order, requirement, decision, interpretation or determination with reference to an appeal.
- C. An appeal of a written decision made by the Planning Director may be made by the City, the owner of the property in question or other qualified party who has standing per NCGS ~~160A-393(d)~~ *160D-1402(c)*. Said decision shall be in writing and delivered to the property owner and the person who sought the decision, if different than the property owner. Said delivery shall be via personal delivery, electronic mail or by first-class mail. The owner of the property in question shall have thirty (30) days of receipt of the decision made by the Planning Director to file an appeal.  
Any other person or party with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. One means of providing “constructive notice” shall be if the party(ies) receiving a final decision post notice of said decision for a minimum of ten (10) days on the property in question with a sign containing (1) the words “Zoning Notice” or “Subdivision Notice” in letters at least six (6) inches high and (2) identifying the means to contact a City official for information about the decision. Notwithstanding the timeframe for processing hearing requests contained in Section 18.4(5) herein, the appellant may request for an expedited hearing of the appeal per NCGS ~~160A-388(b1)(6)~~ *160D1405*. If an expedited hearing request is made, a public hearing shall be held within fifteen (15) days of the filing of such request. Applications for appeals shall be on a form issued by the City and shall be filed with the City Clerk. The grounds for making the appeal request shall be stated on the application.
- D. Upon receipt and verification of a valid appeal request, the Planning Director shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The Planning Director shall also provide a copy of the record to the appellant and to the owner of the property that is subject to the appeal, if the appellant is not the owner.
- E. The City official who made the decision that is being appealed shall be present at the public hearing as a witness. The appellant shall not be limited at the public hearing to matters stated in the appeal notice referenced in Section 18.4(5). The Board of Adjustment shall have the authority to continue a public hearing if it determines that the appellant or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal.
- F. The appellant and the City may agree to mediation or other forms of dispute resolution to settle the appeal request.

## 2. Variance Procedure

The Board of Adjustment shall have the power to vary any of the provisions of this ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. (**NOTE:** It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.);
2. The hardship results from the conditions that are peculiar to the property, such as location, size or topography. (**NOTE:** Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.);
3. The hardship did not result from actions taken by the applicant or the property owner. (**NOTE:** 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,
4. 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.

No change in permitted uses may be authorized by a variance. The Board of Adjustment, in granting a variance, may prescribe conditions that are reasonably related to the variance.

Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this ordinance and shall be punishable as provided herein. Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, any order of the Board of Adjustment in granting a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within one year from the date of its decision.

## 3. Application Procedure

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

- A. Before a petition for an appeal, or, variance is heard and a quasi-judicial public hearing conducted by the Board of Adjustment, an application form provided by the City shall be submitted to the City along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by City officials on behalf of the City of Belmont. All applications shall be accompanied by a map clearly identifying the subject property, all abutting pieces of properties (i.e., all adjacent properties and properties traversed and/or separated by a road, stream, right-of-way, or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant.
- B. With respect to an application for an appeal, the filing of any application stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that event, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations, the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications affected by the issue being appealed.

- C. Within five days after having received an application for an appeal or variance, the City official receiving such application shall determine whether the application is complete. If the official determines that the application is not complete, they shall serve a written notice on the appellant or petitioner specifying the application's deficiencies. The City shall take no further action on the application until the deficiencies are remedied. If the City fails to so notify the appellant or petitioner, the application shall be deemed complete.

#### 4. Public Notification

The City of Belmont shall give notice of all Board of Adjustment public hearings. Said notice shall become a part of the record of the proceedings of the Board of Adjustment. Notice shall be given in the following manner:

- A. Notice shall be sent by the City by first class mail to the applicant and to the owners of all parcels of land abutting the parcel of land that is subject to the hearing. Said notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing;
- B. A notice of the public hearing shall be prominently displayed by the City on the site that is subject to the hearing or on an adjacent street right-of-way. Said notice shall be posted at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing; and,
- C. Notice shall also be posted by the City in a conspicuous location in the City Hall at least ten (10) days prior to the date of the public hearing.

#### 5. Decisions

- A. Except as provided in Section 18.4(1)(C), the Board of Adjustment shall hold a public hearing on an application no later than 45 days after a complete application has been filed with the City. The application shall be received by the Board of Adjustment at least fifteen (15) days prior to the Board meeting at which the application is to be considered. The public hearing shall be held in a quasi-judicial manner with either the Chairman or the Board Clerk being authorized to administer oaths to witnesses coming before the Board of Adjustment. The Board of Adjustment shall decide on the matter which was presented at the public hearing within 31 days of the close of the public hearing.

The concurrent vote of four-fifths (4/5) of the Board of Adjustment members [i.e., at least four (4) voting members] shall be necessary to grant a variance. A majority of the Board of Adjustment members [i.e., at least three (3) voting members] shall be required to decide all other matters coming before the Board. For purposes of this subsection, vacant members of the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority if there are no qualified alternate members available to take the place of such members. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

- B. Every quasi-judicial decision made by the Board shall be based upon competent, material and substantial evidence in the record. All Board decisions shall be in writing and signed by the Board chair or other duly authorized member of the Board. The written decision shall reflect the Board's determination of contested facts and their application to the applicable

standards. Any quasi-judicial decision of the Board shall become effective upon filing of the written decision with the City Clerk. All decisions of the Board of Adjustment shall be delivered by the Planning Director or his designee 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 effective date of the decision. The person who made such deliveries shall certify that proper notice of the decision as herein provided has been made.

6. Subpoenas

The Board Chairman, or in the Chairman's absence, anyone acting as Chairman, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing per NCGS ~~160A-393(d)~~ *160D-1402(c)*, may make a written request to the Chairman explaining why it is necessary for certain witnesses or evidence to be compelled. The Chairman shall issue requested subpoenas that he determined to be relevant, reasonable in nature and scope, and not oppressive. The Chairman shall rule on any motion to quash or modify a subpoena. Decisions made by the Chairman regarding a subpoena may be appealed to the full Board of Adjustment.

## 7. Variance - Effect of Approval

If an application for a variance is approved by the Board of Adjustment, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the variance or (ii) develop any other use listed as a "permitted use" for the zoning district in which it is located.

## 8. Appeals of the Board of Adjustment's Decisions

- A. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the effective date of the Board of Adjustment's decision. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board of Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least three (3) voting members. In the event that the Board of Adjustment finds that a rehearing is warranted, it shall thereupon proceed as in the original hearing except that the application fee shall be waived.
- B. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the effective date of denial of the original application.

Every decision of the Board of Adjustment under this Section shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari per NCGS ~~160A-393~~ *160D-1402*. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court by the later of thirty (30) days of the effective date of the decision, or after a written copy thereof is given in accordance with Section 18.4(5)(B). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

## 19.0 BOARDS AND COMMITTEES

### 19.1 BOARDS AND COMMITTEES ESTABLISHED

The following boards and committees are hereby established in fulfillment of the goals of the planning ordinance:

Planning Board  
Board of Adjustment  
Technical Review Committee

All boards and committees shall follow the rules of procedure outlined in *Suggested Rules of Procedure for Small Local Government Boards*, published by the Institute of Government, as amended by the City Council.

### 19.2 PLANNING BOARD

#### 19.2.1 Authority and Responsibility

The establishment of the Planning Board for the City of Belmont is granted under the authority of G.S. ~~160A-361~~ **160D-301**. The Planning Board shall have the following duties and responsibilities:

- A. To review and make a recommendation on the Schematic Design of all Major Development Plans.
- B. To render opinions and make recommendations on all issues and petitions related to the Code and other land use plans which may be adopted from time to time which require approval by the City Council.

#### 19.2.2 Membership and Terms of Office

In accordance with G.S. ~~160A-361~~ **160D-301 and 160D-307**, ~~362~~, the Planning Board shall consist of a total of eight (8) members with at least one (1) member residing in the extraterritorial jurisdiction (ETJ). The total membership of the Planning Board shall, at a minimum, be proportional to the population of City residents in relation to ETJ residents, rounded down to the nearest whole number.

Planning Board representatives from within the City limits shall be appointed by the Belmont City Council. Representatives from the ETJ area shall be appointed by the Gaston County Board of Commissioners upon consideration of a recommendation by City Council. ETJ members of the Planning Board shall have equal rights, privileges, and duties with the inside members of the Board, regardless of whether the matters to be decided arise within the corporate limits of the city or within the extraterritorial area.

Planning Board member terms shall be staggered. To allow for staggered terms, three (3) initial appointments will be for terms of three (3) years; three (3) initial appointments will be for terms of two (2) years; and two (2) initial appointments will be for terms of one (1) year. Following the initial appointments, Planning Board terms shall be three (3) years. An appointee to the Planning Board shall not serve more than two (2) consecutive terms or a maximum of seven and a half (7.5) years if a member has filled an unexpired term, after which a member must wait three (3) years before being eligible for reappointment.

Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

The Planning Board shall elect its chair from among its members. The chair shall serve a maximum of two (2) consecutive one (1) year terms. An ETJ member may be elected to serve as chair on a basis that is proportional to the number of ETJ members serving on the Board.

### **19.3 BOARD OF ADJUSTMENT**

#### **19.3.1 Authority and Responsibility**

The establishment of the Board of Adjustment for the City of Belmont is granted under the authority of G. S. ~~160A-388~~ **160D-302**. The Board of Adjustment shall have the following duties and responsibilities:

- A. To hear and decide appeals from any order, decision, determination, or interpretation made by the Planning Director pursuant to or regarding these regulations.
- B. To hear and decide petitions for variances from the requirements of these regulations.

#### **19.3.2 Membership and Terms of Office**

The Board of Adjustment shall consist of a total of five (5) members with at least one (1) member residing in the extraterritorial jurisdiction (ETJ). The total membership of the Board of Adjustment shall, at a minimum, be proportional to the population of City residents in relation to ETJ residents, rounded down to the nearest whole number.

Board of Adjustment representatives from within the City limits shall be appointed by the Belmont City Council. Representatives from the ETJ area shall be appointed by the Gaston County Board of Commissioners upon consideration of a recommendation by City Council. ETJ members of the Board of Adjustment shall have equal rights, privileges, and duties with the inside members of the Board, regardless of whether the matters to be decided arise within the corporate limits of the city or within the extraterritorial area.

The Board of Adjustment member terms shall be staggered. To allow for staggered terms, two (2) initial appointments will be for terms of three (3) years; two (2) initial appointments will be for terms of two (2) years; and one (1) initial appointment will be for a term of one (1) year. Following the initial appointments, Board of Adjustment terms shall be three (3) years. An appointee to the Board of Adjustment shall not serve more than two (2) consecutive terms or a maximum of seven and a half (7.5) years if a member has filled an unexpired term, after which a member must wait three (3) years before being eligible for reappointment. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

The Board of Adjustment shall elect the Board of Adjustment chair from among its members. The chair shall serve a maximum of two (2) consecutive one (1) year terms. An ETJ member may be elected to serve as chair on a basis that is proportional to the number of ETJ members serving on the Board.

### ***20.1 INTENT AND AUTHORITY***

The purpose of this Chapter is to set forth procedures for amending the text of these regulations and the zoning classification of land as shown on the Zoning Map. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments necessary in light of changed conditions or changes in public policy. Procedures for making amendments to the Land Development Code or Zoning Map are also set forth. When reviewing any petition to amend the Land Development Code or Zoning Map, the City staff, Planning Board, and City Council shall consider whether the requested amendment is consistent with the goals, objectives, and principles of the City of Belmont Comprehensive Land Use Plan. As used in this section, "comprehensive plan" also includes any other officially adopted plan that is applicable.

### ***20.2 CHANGES AND AMENDMENTS TO THE LAND DEVELOPMENT CODE & ZONING MAP***

#### **1. Amendments Initiated by the City of Belmont**

The City Council may from time to time, on its own motion or on the recommendation of the Planning Board, amend, supplement, change, modify, or repeal the boundaries or regulations herein or subsequently established. In addition, the City Council may take such action on the petition of a private citizen in accordance with the following procedures.

#### **2. Amendments by Petition**

The petition, including a precise description of the proposed change, shall be submitted to the Planning Director not later than three weeks prior to the meeting of the Planning Board at which the petition is to be heard. When the petition concerns a specific piece of property, the owner(s) or designee(s) must sign the petition. When considering a petition for the re-classification of property to any district neither the Planning Board nor the City Council shall evaluate the petition based on any specific proposal for the use or development of the affected property and the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development except for those which would apply to any use permitted in the requested district, provided, however, such information may be presented and considered when on an application for a Conditional District (CD).

#### **3. Content of Application**

- A. Each noncontiguous parcel of land for which rezoning is requested shall be deemed as a separate application, and said application fee shall accompany each application. For the purpose of this paragraph, land located and adjacent on either side to the rear and all property directly across any street or public right-of-way from the subject property shall be deemed to be contiguous.
- B. Each application for a rezoning of land shall be accompanied by a map, drawn to scale, with the following information either shown on the map or accompanying it:
  1. The subject property plus such additional property as to show the location of the subject property with reference to the nearest street intersection, railroad, stream or other feature easily identifiable on the ground. In addition, all property lines which abut the property, and property owners' names and addresses of all contiguous properties shall be furnished.



2. A metes and bounds survey will now only be required with a rezoning application if a portion of a lot is being proposed for rezoning. If an entire lot is proposed for rezoning, no metes and bounds survey will be required.
  3. The present and proposed zoning classification of the lot(s) in question.
  4. The property identification number(s) of the lot(s) in question as issued by the Gaston County Tax Department.
- C. An application for the rezoning of land to a Conditional District (CD) shall be submitted in accordance with **Section 16.8 Schematic Design Plan Requirements**.
- D. An application for a change in the text of the Code shall be on an application form provided by the Planning Department. The application shall contain a reference to the specific section, subsection, paragraph or item proposed to be changed, as well as the wording of the proposed change, and the reasons therefore.

#### 4. Planning Board Review and Consistency Statement

Once the petition is complete, the Planning Director shall refer the petition to the Planning Board for review and recommendation to the City Council. The Planning Board shall have a maximum of forty (40) days from the date of the first meeting to make such recommendation. If a recommendation is not made during said time period, the application shall be forwarded to the City Council without a recommendation from the Planning Board. The Planning Board, at its discretion, may receive public input at their meeting, but is not required to conduct a public hearing in accordance with Section 20.2.6 below.

The Planning Board recommendation shall be in written format, shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan, and shall address any other matters as deemed appropriate by the Planning Board.

The Planning Board ~~shall take two separate actions for each petition~~ *shall make the required findings and said action may be considered and approved in a single statement: (160D-605)*

1.) Adopt a consistency statement in one of the following formats:

- (1) A statement ~~approving~~ *describing whether* the zoning amendment ~~and describing its consistency with an adopted comprehensive~~ *is consistent or inconsistent with approved* plans and explaining why the action taken is reasonable and in the public interest.
- (2) ~~A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.~~
- (3) A statement ~~approving~~ *describing whether* the zoning ~~map~~ *map* amendment *is consistent or inconsistent with approved plans. If a map amendment is approved that is not consistent with the future land use map of an adopted plan, that plan map is deemed amended. When adopting or rejecting a petition, a statement of reasonableness is required that may consider:*
  - a. *The size, physical conditions, and other attributes of the area proposed to be rezoned.*
  - b. *The benefits and detriments to the landowners, the neighbors, and surrounding community.*

*c. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment.*

*d. Why the action taken is in the public interest.*

~~a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The city council shall not require any additional request or application for amendment to the comprehensive plan.~~

~~b. An explanation of the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.~~

~~c. Why the action was reasonable and in the public interest.~~

2.) Make a recommendation as outlined in section 20.2.5.

### 5. Planning Board Recommendation

A. When a recommendation is made to the City Council by the Planning Board concerning a petition for rezoning, said recommendation shall be as follows:

1. Grant the rezoning as requested, or
2. Grant the rezoning with a reduction of the area requested, or
3. Grant the rezoning to a more restrictive general zoning district or districts, or
4. Grant the rezoning with a combination of 1 and 2 above, or
5. In the case of a Conditional District rezoning petition, grant the rezoning subject to approved conditions enumerated on the accompanying Schematic Design, or
6. Recommend that the application be denied.

B. If a recommendation is made to the City Council by the Planning Board concerning a petition to amend the text of this Code, it shall be as follows:

1. Adoption of the amendment as written, or
2. Adoption of the amendment as revised by the Planning Board, or
3. Rejection of the amendment.

### 6. City Council Public Hearing Notification and Written Statements

In order for an amendment to the Land Development Code or Zoning Map to be made in accordance with this Section, a public hearing must first be held by the City Council. Notification of the public hearing shall be as follows:

A. A notice shall be published in a newspaper having general circulation in the town once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.

B. A notice of a proposed Zoning Map amendment shall be *provided in two forms:*

1. *A public hearing notice shall be sent by first class mail by the Planning Director to the affected property and to all contiguous property owners. Contiguous properties include properties separated from the subject property by street, railroad, or other transportation*

*corridor. The notice shall be deposited in the mail at least 10 but not more than 25 days prior to the date of hearing. (160D-602)*

2. *A posted notice of hearing on the site proposed for the map amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. (160D-602(c))*

The first class mail notice required under 20.2.6 part (B) of this section shall not be required when the zoning reclassification action directly affects more than 50 properties, owned by a total of at least 50 different property owners.

In any case where this section eliminates the notice required by subsection part 20.2.6 (B) of this section the City shall publish a notice once a week for four successive calendar weeks in a newspaper having general circulation in the area with a map showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the City's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the City Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the city shall post one or more prominent signs on or immediately adjacent to the subject property area reasonably calculated to give public notice of the proposed rezoning.

If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. ~~160A-388~~ 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

## **7. City Council Review and Approval (or Denial)**

Once the public hearing has been conducted the City Council shall render a decision on the petition. The decision of the City Council shall be in the form of any of the various options listed in Sections 20.2.5 (A) and (B). Alternatively, the City Council may send the application back to the Planning Board for further study and consideration. The petitioner shall have the right to withdraw his petition at any time prior to the final decision being rendered by the City Council. The City Council shall have the authority to call for additional public hearings on any amended petition brought before them.

**Prior to adopting or rejecting any zoning amendment, the City Council shall also adopt a consistency statement in the format outlined in 20.2.4.**

### ***20.3 REHEARING***

An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of the City Council decision. In addition, specific information to enable the City Council to determine whether or not there has been a substantial

change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the City Council, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the City Council to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members. In the event that the City Council finds that a rehearing is warranted, it shall thereupon proceed as in the original hearing except that the application fee shall be waived.

Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application. For purposes of this section, if a request for rezoning of property to a general zoning district is denied by the City Council, submittal of a request for rezoning to a conditional zoning district for that property shall not be considered to be a "similar application."

Decisions of City Council shall be subject to review according to NCGS ~~160-A-364.1~~ *160D-1405* and/or any other applicable laws.