

## ARTICLE 7

### PERMITS AND PROCEDURES

#### 7.1 Permits and Procedures for New and/or Expanded Use(s) and/or Development

7.1-1 Permit Approval Required. No person shall undertake any land use and/or development activity subject to this Ordinance without first obtaining approval from the Town. Upon approval by the Town, a permit shall be issued for the approved land use and/or development activity. Certain permits associated with land use and/or development are issued by agencies other than the Town of Rutherfordton, as noted below.

In any case where an application is made to operate more than one (1) use on a property, the *Planning, Zoning & Subdivision Administrator* shall determine either which use or uses shall be the principal use or uses, or if there are multiple principal uses, and the type of Zoning Compliance Permit (zoning permit) that is required for the following categories of use(s) appearing in Table 8.1 located in Article 8 of this Ordinance: ***Listed Use, Special Use Permit, or Use Listed with Additional Standards***. Upon determination of the use(s) and the type of zoning permit(s) required shall indicate such decision to the applicant.

In accordance with G.S. 160D-108(b) “**Permit Choice**”, if a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

The permits and/or approvals listed below are required, depending upon the type(s) of development proposed:

- (A.) ***Zoning Compliance Permits*** (also known as *Zoning Permits*) are issued by the Town of Rutherfordton for all new or expanded use of property (See Table 8.1, Sections 1-3), building and/or development projects. Types of Zoning Compliance Permits for various types of development required appear in Sections 7.5 through 7.12 of this Article. A *Zoning Compliance Permit* may also be obtained as part of a *Development Agreement* in accordance with Section 7.15 of this Article.
- (B.) ***Building Permits*** – Rutherford County Building Inspections Department issues building permits following issuance of *Zoning permit* by the Town of Rutherfordton.

(C.) *Certificate of Occupancy* – The Rutherford County Building Inspections Department issues upon final building inspections and site plan compliance approval by the Town.

(D.) *Environmental Impact and Infrastructure* – The State of North Carolina and various agencies of the United States require specific permits for the impact of natural resources and/or areas deemed sensitive and/or protected. In addition, the State of North Carolina requires specific permits for the expansion of public infrastructure including streets, potable water, wastewater, and storm water. Professional engineers licensed to perform services in the State of North Carolina shall be consulted by applicants for assistance in preparation of plans and studies required before impacting natural resources and expanding public infrastructure.

7.1-2 Fees. The Town Council shall establish a Schedule of Fees, Charges and Expenses, and a collection procedure, for zoning permits and plan approvals issued by the Town. No approval, permit, certificate, variance, etc. shall be processed and/or issued unless or until such charges have been paid in full.

## **7.2 Periodic Inspections**

The *Planning, Zoning & Subdivision Administrator*, or their designee shall have the right, upon presentation of proper credentials to enter on any premises within the Town's jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

## **7.3 Permit Expiration**

7.3-1 Expiration of Zoning Permits and Approvals. Permits and approvals, other than those identified in section 7.3-2 below, shall run with the land and expire as set forth in the process for each permit and/or approval based upon permit and approval type detailed in Sections 7.5 through 7.12 of this Article.

7.3-2 Building Permit Expiration. The Rutherford County Building Inspections Department may void a building permit for a project within the Town jurisdiction if the authorized work has not begun within six months after issuance of the permit, or work was commenced but was discontinued for a period of 12 months per G.S. 160D-1111.

## **7.4 Certificates Issued by Rutherford County**

The Town of Rutherfordton in conjunction with the Rutherford County Building Inspections Department issues certificates of occupancy, temporary certificates of occupancy, and certificates of floor elevation/flood proofing upon completion or partial completion of a building project.

## 7.5 Zoning Compliance Permits and Expedited Procedure for Small Projects

7.5-1 Zoning Compliance Permit. A *Zoning Compliance Permit* (*zoning permit*) is required for the construction or development of any new use within the planning and regulation jurisdiction of the Town of Rutherfordton. In addition to new uses, a *zoning permit* shall also be required for expansions of existing uses, as well as for changes of use. The types of zoning compliance Permits below apply based upon the characteristics of the development proposed:

- (A.) *Special Events/Temporary Structures* – See Section 7.6 of this Article.
- (B.) *Site Development and Construction Plan Approval(s)* for development not eligible for Expedited Procedure for Small Projects appearing in Sub-section 7.5-2 of this Article. See Sub-section 7.7 of this Article for required information and procedures.
- (C.) *Special Use Approvals* – See Section 7.8 of this Article for required information and procedures.
- (D.) *Uses Listed with Additional Standards* – See Section 7.9 of this Article for required information and procedures.
- (E.) *Sign Permits* – See Section 7.10 of this Article for required information and procedures.
- (F.) *Subdivision Plat Approval* – See either Sub-section 7.11-1 (page 17) of this Article for required information and procedures for Major Subdivisions or Sub-section 7.11-2 (page 22) of this Article for required information and procedures for Minor Subdivisions. Additional details for the subdivision of land appear in Article 16 of this Ordinance.
- (G.) *Floodplain Development and Certification Permit* – See Article 18 of this Ordinance, as referenced by Section 7.12 of this Article.

7.5-2 Expedited procedure for Small Projects. An expedited procedure for the following types of projects is set forth below shall be followed to obtain a *Zoning Compliance Permit* for the construction of one single-family or one two-family (duplex) residential structure and expansions of uses and changes of use that do not require approvals described in Section 7.7 of this Ordinance.

(A.) Application for Expedited Procedure for Small Projects.

- (1.) Filing of application. An application for a *zoning permit* may be filed by the landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent files the application, the agent shall provide documentation that the owner of the property

has authorized the filing of the application. The application for a *zoning permit* shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator*.

(2.) Information required. Each application for a *zoning permit* shall contain the information required on the application form. Other information necessary to show that the use or structure complies with the standards set forth in this Ordinance shall also be provided to confirm compliance. Such additional information may be a sketch of the property and locations of proposed improvements.

(B.) Staff review. The *Planning, Zoning & Subdivision Administrator* shall review the application and determine whether it is complete within ten (10) working days of its submittal, including the fulfillment of applicable fees duly paid. If the application is found to be incomplete, the *Planning, Zoning & Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The review of complete applications may vary depending upon the applicability of technical plans and specifications as outlined in this Article. In any event the *Planning, Zoning & Subdivision Administrator* shall issue a *zoning permit* only upon finding that the proposed development, use and/or structure satisfies the requirements set forth in this Ordinance.

(C.) Permit validity. Upon the approval of a *zoning permit* authorized by G.S. 160D-403 the applicant shall have one year to obtain the required building permit(s) if any, unless a greater timeframe is authorized by G.S. 160D-108. Failure to obtain requisite building permit(s) within this time shall render the *zoning permit* void. Upon issuance of a building permit(s), a *zoning permit* for improvements shall remain valid as long as a valid building permit exists for the project. A *zoning permit* issued for the use of a premises in accordance with then current adopted ordinance(s) shall run with the land and remain valid for the duration of said use, or temporary period as stipulated in said permit. Any unapproved change, as determined by the *Planning, Zoning & Subdivision Administrator* in the approved plans shall render the *zoning permit* invalid and in violation of this Ordinance. Violations of this Ordinance are subject to the remedies and penalties pursuant to Article 23 of this Ordinance.

## **7.6 Special Events/Temporary Structures Zoning Permit**

7.6-1 Purpose. To insure that proposed special events and temporary structures comply with the requirements of Article 15 and any other applicable standards and specifications of this Ordinance, no use that is classified as a special event requiring a permit, and/or no structure that is classified as a temporary structure and permitted as

such in the zoning district in which it is located shall be placed or established on the property without first receiving a special event/temporary structure *zoning permit* from the *Planning, Zoning & Subdivision Administrator*.

7.6-2 Plan submittal.

(A.) Filing of application. An application for a special event/temporary structure *zoning permit* may be filed by the landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent, files the application, the agent shall provide the *Planning, Zoning & Subdivision Administrator* with documentation that the owner of the property has authorized the filing of the application. The application for a special event/temporary structure *zoning permit* shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator*.

(B.) Information required. Each application for special event/temporary structure *zoning permit* shall contain the information required on the application form. The application shall be accompanied by a *Sketch Plan* showing the boundaries of the property, the use of adjacent properties, the location of the special event or structure on the property, access and parking provisions, restroom facilities, and other information sufficient to show that the special event or structure complies with the standards set forth in Article 15 and any other applicable standards and specifications of this Ordinance. Persons seeking issuance of a special event/temporary structure *zoning permit* for an event shall file an application with a minimum of five (5) days prior to the proposed event date, unless this time frame is reduced in writing by the *Planning, Zoning & Subdivision Administrator*.

7.6-3 Staff review. The *Planning, Zoning & Subdivision Administrator* shall review the application and determine whether it provides the information required. The *Planning, Zoning & Subdivision Administrator* shall issue a special event/temporary structure *zoning permit* only upon finding that the proposed special event or temporary structure satisfies the requirements set forth in Article 15 and any other applicable standards and specifications of this Ordinance.

7.6-4 Permit validity. The special event/temporary structure *zoning permit* shall run with the land and be valid only for the date(s) stated on the permit.

7.6-5 Public emergencies. In the event of a natural disaster, catastrophic event or public emergency the *Planning, Zoning & Subdivision Administrator* or their designee may waive any special event/temporary structure permit procedures and authorize the placement of temporary structures and other facilities that are deemed necessary or desirable in conjunction with the management of the emergency in accordance with Section 1.15.

## 7.7 Site Development and Construction Plan Approval(s)

### 7.7-1 Site Development and Construction Plans.

- (A.) Purpose. The site development and construction plan review process is required for development projects located within the Town of Rutherfordton in order to prepare for expected impacts upon public services and facilities. This review process is established to assure that adequate services and facilities can be provided for these developments and to assure that they do not negatively impact the area in which they are proposed to be located or the Town as a whole. Proposed developments involving new construction, additions, renovations, and changes of use which fall into one or more of the following categories are subject to the Site Development Plan review process:
- (1.) New construction and changes of use.
    - (a.) Non-residential buildings, structures, or developments with a gross floor area of more than 100 square feet;
    - (b.) Any residential development containing more than two (2) individual units; and/or
    - (c.) Any development where public streets are extended.
  - (2.) Additions to existing buildings increasing gross floor area by more than 100 square feet of *Floor Area (Gross)*.
  - (3.) Properties located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
- (B.) Exemptions. Projects within the Town of Rutherfordton involving new construction, additions, renovations, and changes of use which do not meet the minimum size requirements of the *Site Development Plan* review processes as set forth in subsection 7.7-1(A) above shall be reviewed as *Zoning Permit* in accordance with the provisions of Section 7.5 of this Article.
- (C.) Pre-application procedure. All applicants for Site Development Plan review are required to schedule a predevelopment conference with the *Planning, Zoning & Subdivision Administrator* prior to the preparation of development plans. This conference allows the applicant and *Planning, Zoning & Subdivision Administrator* an opportunity to discuss the review process, the requirements for completing the review schedule, contact persons for services and permits, and information regarding *Site Development Plans* and development requirements.

(D.) Site Development Plan submittal.

- (1.) Application required. An application shall be required for all Site Development Plan review requests. This application shall contain pertinent information regarding the proposed project and shall be accompanied by a *Site Development Plan*. The *Site Development Plan* shall contain the following:
  - (a.) Property boundaries with dimensions
  - (b.) PIN for property
  - (c.) Location of adjacent streets, right of ways, and utility easements
  - (d.) Dimensioned footprint and setbacks of the existing and proposed structures with gross floor area indicated
  - (e.) Dimensions of existing and proposed impervious surfaces
  - (f.) Location and number of parking spaces
  - (g.) Location and size of buffer and landscape areas
  - (h.) Location of existing and proposed driveways and/or streets
  - (i.) Location of all flood zones
  - (j.) Location of adjoining properties and both the existing zoning designation and use of these properties
  - (k.) Names and addresses of adjoining property owners
  - (l.) Number of stories and overall height of all existing and proposed structures
  - (m.) Location of proposed stormwater facilities
  - (n.) Location of existing and proposed dumpster and recycling containers
  - (o.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc., and
  - (p.) Other information determined by the *Planning, Zoning & Subdivision Administrator* as necessary to evaluate the request.
- (2.) Preparation by professional. *Site Development Plans* for developments requiring Site Development Plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which they are trained and licensed to perform.

(E.) Staff review.

(1.) Planning Department staff review.

Plans for development requiring Site Development Plan review shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for compliance with the requirements of this Article and standards and specifications of this Ordinance and the Technical Standards & Specifications Manual.

(2.) Submittal of plans to Planning, Zoning & Subdivision Administrator.

The *Planning, Zoning & Subdivision Administrator* reviews the *Site Development*

*Plans* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective jurisdiction applies. This review shall be made by the *Planning, Zoning & Subdivision Administrator* and by any other agencies or officials as requested by the *Planning, Zoning & Subdivision Administrator*.

(F.) Permit validity. Approval of *Site Development Plans* and *zoning permits* authorized by G.S. 160D-403 for developments requiring Site Development Plan review shall run with the land and constitute approval of a site-specific vesting plan in accordance with G.S. 160D-108(d) and be valid for two (2) years from the date of approval unless a greater timeframe is authorized by G.S. 160D-108. Failure to submit construction plans, initiate construction, or otherwise begin the permitted use, within this time shall render the Site Development Plan approval void. The *Planning, Zoning & Subdivision Administrator* may grant a single extension of this time period of up to three (3) years upon submittal by the applicant of sufficient justification for the extension. Multi-phased development containing 25 acres or more remains vested for a period of seven (7) years from the time a site plan approval is granted as authorized in G.S. 160D-108(f).

(G.) Site Construction Plans.

- (1.) Site Construction Plan required. A complete and comprehensive set of Site Construction Plans shall be required for all Site Development Plan review requests. This submittal shall contain pertinent information regarding the proposed project and shall be accompanied by the approved *Site Development Plan* per 7.7-1(E.) herein above illustrating any and all deviations from the approved Site Development Plan. The *Site Construction Plan* shall contain the following:
- (a.) Property boundaries with dimensions
  - (b.) Location of adjacent streets/roads including existing right-of-way and/or easement(s)
  - (c.) Location and design of proposed streets including cross-sections in accordance with the Rutherfordton Technical Standards & Specifications Manual, centerline profile(s), and the proposed right-of-way
  - (d.) Location of existing and proposed utilities, including easements associated with both
  - (e.) A grading plan showing existing and proposed contours demonstrating both positive drainage characteristics and smooth grade transitions to avoid abrupt “v” ditches, swales and other disruptions to the landscape, particularly between buildings where open space enhancements for use by persons actively utilizing the landscape and/or yard area. The use of crawl-space construction techniques in detached residential structures and professional

- landscape design is required to meet this characteristic of site development.
- (f.) Location of existing and proposed stormwater detention, retention, collection, and conveyance facilities
  - (g.) Dimensions of existing and proposed impervious surfaces
  - (h.) Location of existing structures and either proposed structures or proposed building envelopes
  - (i.) Location and number of existing and proposed parking spaces, including loading spaces, maneuvering areas, and fire lane(s)
  - (j.) Location and size of buffer and landscape areas
  - (k.) Location of existing and proposed driveways and/or streets
  - (l.) Location of all flood zones
  - (m.) Location of adjoining properties and both the current zoning designation and use of these properties
  - (n.) Names and addresses of adjoining property owners
  - (o.) Number of stories and overall height of all existing and proposed structures
  - (p.) Location of existing and proposed dumpster and recycling container area(s)
  - (q.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc., and
  - (r.) Other information determined by the *Planning, Zoning & Subdivision Administrator* as necessary to evaluate the request.
- (2.) Preparation by professional. *Construction Plans* for developments requiring Site Development Plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which the professional is trained and licensed to perform.

7.7-2 RESERVED

**7.8 Special Use Approvals**

- 7.8-1 Purpose. Special uses are established to provide for the location of those uses which are generally compatible with other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts on the surrounding *Neighborhood* and the Town of Rutherfordton as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may also identify cause(s) for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. Any use identified in Section 10.2 of this Ordinance as a special use in a zoning district shall not be permitted without the approval of the *Board of*

*Adjustment* in accordance with the requirements and procedures set forth in this section 7.8.

7.8-2 Pre-application conference procedure. Every applicant for a special use *zoning permit* is required to meet with the *Planning, Zoning & Subdivision Administrator* in a pre-application conference prior to the submittal of a request for approval of a special use. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application

7.8-3 Plan submittal.

(A.) Filing of application. An application for a special use *zoning permit* may be filed by the landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a special use *zoning permit* shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator*.

(B.) Information required. Each application for a special use *zoning permit* shall contain all information identified as required by the *Planning, Zoning & Subdivision Administrator*. The application shall be accompanied by an electronic file copy plus at least two paper copies of a *Site Development Plan* containing all information required by Section 7.7 of this Ordinance for filing(s) on the subject property.

7.8-4 Staff review.

(A.) *Planning, Zoning & Subdivision Administrator* review. Following submittal of the application and *Site Development Plans* for the special use, they shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for compliance with the requirements of section 7.8 of this Ordinance.

(B.) Submittal of plans to *Planning, Zoning & Subdivision Administrator*.

This review shall be made by the *Planning, Zoning & Subdivision Administrator* and by any other agencies or officials as requested by the *Planning, Zoning & Subdivision Administrator*. The *Planning, Zoning & Subdivision Administrator* shall review the *Site Development Plans* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective departmental role applies.

7.8-5 Formal review.

(A.) Evidentiary hearing. Upon receipt of a notice from the *Planning, Zoning & Subdivision Administrator* of the applicant requesting an evidentiary hearing on the application and *Site Development Plan* for a special use *zoning permit*, an evidentiary

hearing shall be scheduled. An evidentiary hearing before the *Rutherfordton Board of Adjustment* shall be held for all special use *zoning permit* applications.

(B.) Action by the Rutherfordton Board of Adjustment.

- (1.) The Rutherfordton *Board of Adjustment* shall consider the request within 35 days of receiving information regarding the special use *zoning permit* application from the *Planning, Zoning & Subdivision Administrator*.
- (2.) The Rutherfordton *Board of Adjustment*, after conducting the quasi-judicial evidentiary hearing, may: (1) deny approval; (2) continue the application pending submittal of additional information; or (3) approve the proposed special use *zoning permit*.
- (3.) The decision on the special use *zoning permit* application shall be by a simple majority vote of those members of the Rutherfordton *Board of Adjustment* present at the meeting at which the action is taken.
- (4.) The minutes of the Rutherfordton *Board of Adjustment* shall state if the proposed special use meets or does not meet each of the conditions set forth in section 7.8-5.(D), the standards set forth in Article 10 of this Ordinance for the proposed special use, and all other requirements set forth by this Ordinance for the proposed special use.

(C.) Findings and Conditions. In granting the *zoning permit*, the *Board of Adjustment* shall find there to be competent, material, and substantial evidence in the record to support these conclusions and the *Board of Adjustment* must find that all the below listed facts exist or the application shall be denied.

- (1.) That the use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2.) That the use or development complies with all required regulations and standards of this Ordinance and with all other applicable regulations;
- (3.) That the use or development is located, designed, and proposed to be operated so as not to substantially injure the value of adjoining or abutting property, or that the use or development is a public necessity; and
- (4.) That the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of Town of Rutherfordton and its environs.

(D.) Additional Conditions. In granting the special use *zoning permit*, the *Board of Adjustment* may designate only those conditions, in addition and in connection therewith, as will, in its opinion, assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this Ordinance and clearly in keeping with the public welfare. All such additional

conditions shall be entered into the minutes of the meeting, at which the special use *zoning permit* is granted, on the special use *zoning permit* itself, and on the approved plans. All specific conditions shall run with the land and shall be binding on the original applicants, their heirs, successors, and assigns. The special use *zoning permit*, as approved, shall be recorded by the *Planning, Zoning & Subdivision Administrator* with the Register of Deeds for the county in which the subject property is located the same as a deed restriction. The *zoning permit* recipient shall be responsible for paying the recording fee. No *building permit* shall be issued for the subject property until the recording is made.

7.8-6 Transfer of approval. A special use approval is not transferable from one property to another but is transferred to a subsequent owner of the property to which applied.

7.8-7 Resubmission of denied applications. No application for approval of a special use shall be filed with, or accepted by, the *Planning, Zoning & Subdivision Administrator* that is identical or substantially similar to an application that has been denied by the Rutherfordton *Board of Adjustment* within one year of the final action by the *Board of Adjustment* denying the request. This waiting period may be waived in an individual case, for good cause shown, by the affirmative vote of a majority of the members of *Board of Adjustment*.

7.8-8 Notice of hearing. Notice of evidentiary hearings required under this section for special use approvals shall be provided in accordance with the requirements established by G.S. 160D-406 for evidentiary hearing notification.

7.8-9 Project phasing. If a project approved as a special use is to be developed in phases, a master plan for the entire development site must be approved by the Rutherfordton *Board of Adjustment* at the same time and in the same manner the special use *zoning permit* application is considered.

(A.) Final plans for phases of the special use may be submitted in stages and shall be approved by the *Planning, Zoning & Subdivision Administrator* provided that the following requirements are met:

(1.) All stages shall be shown with precise boundaries on the master plan and shall be numbered in the expected order of development.

(2.) Each phase must be able to exist independently of subsequent phases by meeting all applicable laws and regulations as if the phase were a separate project.

(3.) All the data required for the project as a whole shall be given for each stage shown on the plan.

(4.) A proportionate share of the open space, common facilities, amenities, play areas, etc. shall be included in each stage of the development, except that centralized common facilities shall be guaranteed by bond or other irrevocable financial

instrument valid for the duration of the project implementation period.

(5.) The phasing shall be consistent with the traffic circulation, drainage, and utilities plan for the entire master plan for the special use.

(6.) Each phase of the special use must comply with any and all conditions attached to the approval of the special use *zoning permit* by the Rutherfordton *Board of Adjustment*.

7.8-10 Variances. In issuing special use *zoning permits*, the Rutherfordton *Board of Adjustment* may prescribe dimensional requirements (height, setback, etc.) that are different from the requirements of the corresponding general zoning classification, and may prescribe development and design standards that are different from those set out in Article 9; provided, that any request for a modification to a dimensional requirement or development and design standard that is less restrictive than would be applicable for the underlying general zoning classification must be specifically described in any notices required for the evidentiary hearing on the special use *zoning permit* application, and must be set out separately in any Ordinance issuing said special use *zoning permit*, together with an explanation of the reason for the modification. Except as modified pursuant to this paragraph, all standards and requirements applicable to the underlying general zoning district must be met. Variances, per Article 6 of this Ordinance, to the standards established by any special use permit shall not be allowed. Minor modifications per Sub-section 7.8-14 of this Article are eligible.

7.8-11 Appeals. An appeal from the decision of the Rutherfordton *Board of Adjustment* regarding a special use application and *Site Development Plan* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court no later than 30 days after a written copy of the decision of the *Board of Adjustment* is received by the applicant.

7.8-12 Permit validity. Approval(s) of a special use *zoning permit* application and *Site Development Plan* shall run with the land and constitute approval of a site-specific vesting plan in accordance with G.S. 160D-108(d) and be valid for a minimum of not less than two (2) years from the date of approval by the Rutherfordton *Board of Adjustment*. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the special use approval null and void. Multi-phased development of a special use project containing 25 acres or more remains vested for a period of seven (7) years from the time a site plan approval is granted as authorized in G.S. 160D-108(f).

7.8-13 Failure to Comply with Plans or Conditions. In the event of failure to comply with the plans approved by the *Board of Adjustment* or with any other conditions imposed upon the special use *zoning permit*, the *zoning permit* shall thereupon immediately become void and of no effect. No building permits for further construction or certificates of occupancy under this special use *zoning permit* shall be issued. If a failure to comply with conditions in a special use *zoning permit* occurs after occupancy, the owner, lessee, or other responsible person shall be notified in writing of the violation. No earlier than five days after the receipt of the written notice, the body issuing the special use *zoning permit* may issue a finding of fact that a violation of the requirements of this Ordinance exists. If such finding of fact is made, it shall be unlawful for any person, firm or corporation to continue the special use until the responsible party makes the necessary corrections and the *Board of Adjustment* conducts an evidentiary hearing and finds that the violation no longer exists.

7.8-14 Minor modifications. Minor modifications to the approved special use permit may be approved by the *Planning, Zoning & Subdivision Administrator* per authorization under G.S. 160D-705(c). The minor modifications authorized herein are intended to provide relief where conditions established by the special use permit create a hardship based upon a unique physical attribute of the property itself or some other factor unique to the property which was not known at the time of special use permit approval and which has subsequently rendered the property difficult or impossible to use due to the condition(s) imposed by the special use permit. The special use permit holder shall bear the burden of proof to secure the modification(s). Such modifications shall be limited to the following:

1. A deviation of up to ten percent or 24 inches, whichever is greater, from the approved setback, provided that the conditions for approving a deviation from the required setback established by Article 14 (Flexible Development Standards) of this Ordinance are met.
2. A reduction of up to 25 percent in the number of parking spaces required for the use provided that the proposed development is located within ½ mile of either the Main Street District (MS) or the Mixed Use (MU-1 and MU-2) and on-street parking is available.
3. Any other minor modification in accordance with the limitations and procedures prescribed in this Ordinance, unless restricted by G.S. 16D-703(b), or the special use permit adopted pursuant to this section specifies otherwise.

Any other modifications must be approved by the *Board of Adjustment* as an amendment to the special use permit and may be referred to the Planning Board or *Planning, Zoning & Subdivision Administrator* as appropriate. The *Planning, Zoning & Subdivision Administrator* shall in every case have the discretion to decline to

exercise the power to approve or deny modifications as provided for herein, and may require the applicant to seek an amendment to the Special Use Permit.

7.8-15 Special Use Permit recorded. Special Use Permits shall be recorded by the holder of the permit with the Rutherford County Register of Deeds within 60 days of approval. Modifications to Special Use Permits shall be recorded in the same manner in which the original permit was recorded.

## **7.9 Uses Listed with Additional Standards**

7.9-1 Purpose. Uses listed with additional standards are uses permitted by right, provided that the additional standards set forth in Section 10.1 of this Ordinance are met. The additional standards are intended to ensure that the uses fit the intent of the zoning districts within which they are permitted, and that the uses are compatible with other development permitted within the zoning districts. Review and approval of these uses are the authority of the *Planning, Zoning & Subdivision Administrator*, who has no discretion to modify the additional standards.

7.9-2 Plan submittal.

(A.) Filing of application. An application for a *zoning permit* for a use with additional standards may be filed by landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a *zoning permit* for a use with additional standards shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator*.

(B.) Information required. Each application for a *zoning permit* for a use with additional standards shall contain all information required by the *Planning, Zoning & Subdivision Administrator*. The application shall be accompanied by a *Site Development Plan* meeting the requirements for *Site Development Plans* as established by section 7.7 of this Ordinance.

7.9-3 Staff review. Notwithstanding the procedures applicable in section 7.7 of this Ordinance, the *Planning, Zoning & Subdivision Administrator* shall review the proposed use and determine if the additional standards for that use have been met. If the additional standards have been met, the use shall be approved provided all other applicable standards and procedures have been met. Failure to meet all the additional standards shall result in denial of a *zoning permit* for the proposed use. The *Planning, Zoning & Subdivision Administrator* shall approve or deny the proposed use with additional standards or request more information, if needed, within ten (10) working days of submittal. If the application is found to be incomplete, the *Planning, Zoning*

& *Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps will be taken to process the application until the applicant corrects the deficiencies. The *Planning, Zoning & Subdivision Administrator* shall approve the use only upon finding that the proposed use satisfies all applicable requirements set forth in this Ordinance.

- 7.9-4 Permit validity. Upon the approval of a *zoning permit* for a use with additional standards authorized by G.S. 160D-403 the applicant shall have one year to obtain the required building permit(s) if any, unless a greater timeframe is authorized by G.S. 160D-108. Failure to obtain requisite building permit(s) within this time shall render the *zoning permit* void. Upon issuance of a building permit(s), a *zoning permit* for improvements shall run with the land and remain valid as long as a valid building permit exists for the project. A *zoning permit* issued for the use of a premises in accordance with then current adopted ordinance(s) shall remain valid for the duration of said use, or temporary period as stipulated in said permit. Any unapproved change, as determined by the *Planning, Zoning & Subdivision Administrator* in the approved plans shall render the *zoning permit* invalid and in violation of this Ordinance. Approval of *Site Development Plans* for a use with additional standards authorized by G.S. 160D-403 for developments requiring Site Development Plan review required by Section 7.7 of this Article shall constitute approval of a site-specific vesting plan in accordance with G.S. 160D-108(d) and be valid for two (2) years from the date of approval unless a greater timeframe is authorized by G.S. 160D-108. Failure to submit construction plans, initiate construction, or otherwise begin the permitted use, within this time shall render the Site Development Plan approval void. The *Planning, Zoning & Subdivision Administrator* may grant a single extension of this time period of up to three (3) years upon submittal by the applicant of sufficient justification for the extension. Violations of this Ordinance are subject to the remedies and penalties pursuant to Article 23 of this Ordinance. Multi-phased development of a special use project containing 25 acres or more remains vested for a period of seven (7) years from the time a site plan approval is granted as authorized in G.S. 160D-108(f).

## **7.10 Sign permits**

- 7.10-1 Purpose. In order to regulate the provision of sign standards and sign restrictions within the planning and regulation jurisdiction of the Town of Rutherfordton, it shall be unlawful to erect or maintain any sign or sign structure without first obtaining a sign *zoning permit*.

- 7.10-2 Application submittal.

(A.) Filing of application.

- (1.) An application for a sign *zoning permit* may be filed by landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized

agent of the landowner. The application for a sign *zoning permit* shall be filed with the Town of Rutherfordton *Planning Department* on a form provided by the *Planning, Zoning & Subdivision Administrator*.

(2.) Sign contractor's license. No person shall engage in the business of erecting or maintaining signs in the Town of Rutherfordton unless said person has been issued a sign contractor's license which has not expired at the time said work is done. This requirement shall exclude those persons who construct and erect a principal use identification sign when that sign is used at that person's place of business, provided all construction and installation is properly permitted and inspected for compliance with the applicable building codes of the Town of Rutherfordton and other sections of this Ordinance.

(B.) Information required. Each application for a sign *zoning permit* shall be accompanied by complete information as required by the *Planning, Zoning & Subdivision Administrator* and shall include, without being limited to, a *Site Development Plan* and elevation drawings of the proposed sign, a drawing of the building facade indicating the proposed location of the sign (if the sign is to be attached to a building), height, dimensions and square footage of the proposed sign and any other data as the *Planning, Zoning & Subdivision Administrator* may determine to be necessary for review of the application.

7.10-3 Staff review. Provided the application for a sign *zoning permit* is complete, the *Planning, Zoning & Subdivision Administrator* shall review the application and determine whether it is complete within ten (10) working days of its submittal. If the application is incomplete, the *Planning, Zoning & Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The *Planning, Zoning & Subdivision Administrator* shall issue a sign *zoning permit* only upon finding that the proposed sign or sign structure satisfies the requirements of Article 17.

7.10-4 Permit validity. Upon issuance of a sign *zoning permit*, the applicant will have 12 months to commence work on the approved signage, after which the *zoning permit* shall automatically become null and void. Signs included in a Site Development Plan application and approval are subject to Permit Validity of Section 7.7 of this Article.

## **7.11 Subdivision Plat Approval**

### 7.11-1 Major Subdivisions.

(A.) Purpose. The *Major Subdivision* review process is required for those divisions of land meeting the definition of “*Subdivision, Major*” appearing in Article 3 of this Ordinance. Review and approval of the *Preliminary Plat* by the *Planning, Zoning & Subdivision Administrator* following input by the *Planning Board* is required under

the *Major Subdivision* review process, with review and approval of the *Final Plat* made by the *Planning, Zoning & Subdivision Administrator*. *Major Subdivisions* proposing the development of new street infrastructure are required to enter into a *Development Agreement* in accordance with Section 7.15 of this Article.

(B.) Pre-application procedure.

- (1.) Conference. It is required that every applicant for a *Major Subdivision* meet with the *Planning, Zoning & Subdivision Administrator* in a conference prior to the submittal of a *Subdivision Plat*. The purpose of this conference is to provide clarification and assistance in the preparation and submission of *Plats* for approval.
- (2.) Sketch Plan. A *Sketch Plan* shall be submitted to the *Planning, Zoning & Subdivision Administrator* prior to or at the pre-application conference. Upon submittal of the *Sketch Plan*, the *Planning, Zoning & Subdivision Administrator* shall conduct an initial review to determine whether the proposed *Subdivision* is a *Major Subdivision*.

(C.) Application and Preliminary Plat/Site Development Plan submittal.

- (1.) Preliminary Plat(s) required. A *Preliminary Plat and Site Development Plan* for a proposed *Major Subdivision* shall be prepared by a registered architect, engineer, landscape architect, and/or land surveyor licensed in the State of North Carolina for the work in which the professional is trained and licensed to perform; and shall be prepared in accordance with the standards set forth by the *Planning Department* and applicable state standards.
- (2.) Filing of application. A complete application containing all information as required by the Town of Rutherfordton shall be submitted, along with applicable fees, to the *Planning, Zoning & Subdivision Administrator*.

(D.) Preliminary Plat/Site Development Plan for Major Subdivisions submittal requirements.

- (1.) Application required. An application shall be required for all *Preliminary Plat/Site Development Plan* for *Major Subdivisions* review requests. This application shall contain pertinent information regarding the proposed project and shall be accompanied by a *Preliminary Plat/Site Development Plan* for *Major Subdivisions*. The *Preliminary Plat/Site Development Plan* for *Major Subdivisions* shall contain the following:
  - (a.) Property boundaries with dimensions
  - (b.) PIN for property
  - (c.) Location of adjacent streets, right of ways, and utility easements

- (d.) Dimensioned footprint and setbacks of the existing structures
- (e.) Location and size of buffer and landscape areas
- (f.) Location of existing and proposed streets
- (g.) Location of all flood zones
- (h.) Location of adjoining properties and both the existing zoning designation and use of these properties
- (i.) Names and addresses of adjoining property owners
- (j.) Location of proposed stormwater facilities
- (k.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc., and
- (l.) Other information determined by the *Planning, Zoning & Subdivision Administrator* as necessary to evaluate the request.

(E.) Staff review and Planning Board input.

(1.) *Planning Department* staff review.

Plans for *Preliminary Plat/Site Development Plan for Major Subdivisions* review shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for compliance with the requirements of this Article.

(2.) Submittal of plans to *Planning, Zoning & Subdivision Administrator*.

This review shall be made by the *Planning, Zoning & Subdivision Administrator* and by any other agencies or officials set forth in G.S. 160D-803(b) as requested by the *Planning, Zoning & Subdivision Administrator*. The *Planning, Zoning & Subdivision Administrator* shall review the *Preliminary Plat/Site Development Plan for Major Subdivisions* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective departmental role applies.

(3.) Submittal of plans to *Planning Board*.

This review shall be made by the *Planning Board* as requested by the *Planning, Zoning & Subdivision Administrator*. The *Planning Board* shall review the *Preliminary Plat/Site Development Plan for Major Subdivisions* only in accordance with the applicable requirements of this Ordinance.

(F.) Permit validity. Approval of the *Preliminary Plat/Site Development Plan for Major Subdivisions* authorized by G.S. 160D-403 for developments requiring Site Development Plan review shall run with the land and constitute approval of a site-specific vesting plan in accordance with G.S. 160D-108(d) and be valid for two (2) years from the date of approval unless a greater timeframe is authorized by G.S. 160D-108. The *Planning, Zoning & Subdivision Administrator* may grant a single

extension of this time period of up to three (3) years upon submittal by the applicant of sufficient justification for the extension. The *Final Plat* for the *Major Subdivision* shall be presented for approval prior to the end of the two-year period. Failure to submit construction plans, initiate construction, or otherwise begin the permitted use, within this time shall render the *Preliminary Plat/Site Development Plan* approval void. Multi-phased development of subdivisions containing 25 acres or more remains vested for a period of seven (7) years from the time a site plan approval is granted as authorized in G.S. 160D-108(f).

(G.) Site Construction Plans.

- (1.) Site Construction Plan required. A complete and comprehensive set of Site Construction Plans shall be required for all *Preliminary Plat/Site Development Plan* for *Major Subdivisions* review requests. This submittal shall contain pertinent information regarding the proposed project listed below and shall be accompanied by the approved *Preliminary Plat/Site Development Plan for Major Subdivisions* per 7.11-1(E.) herein above illustrating any and all deviations from the approved *Preliminary Plat/Site Development Plan for Major Subdivisions*. The *Site Construction Plans* shall contain the following:
  - (a.) Property boundaries with dimensions
  - (b.) Location of adjacent streets/roads including existing right-of-way and/or easement(s)
  - (c.) Location and design of proposed streets including cross-sections in accordance with the Rutherfordton Technical Standards & Specifications Manual, centerline profile(s), and the proposed right-of-way
  - (d.) Location of existing and proposed utilities, including easements associated with both
  - (e.) A grading plan showing existing and proposed contours demonstrating both positive drainage characteristics and smooth grade transitions to avoid abrupt “v” ditches, swales and other disruptions to the landscape, particularly between dwellings. The use of crawl-space construction techniques in detached residential structures and professional landscape design is required to meet this characteristic of site development.
  - (f.) Location of existing and proposed stormwater detention, retention, collection, and conveyance facilities
  - (g.) Dimensions of existing and proposed impervious surfaces
  - (h.) Location of existing structures and either proposed structures or proposed building envelopes
  - (i.) Location and number of existing and proposed parking spaces, including loading spaces, maneuvering areas, and fire lane(s)
  - (j.) Location and size of buffer and landscape areas

- (k.) Location of existing and proposed driveways and/or streets
  - (l.) Location of all flood zones
  - (m.) Location of adjoining properties and both the current zoning designation and use of these properties
  - (n.) Names and addresses of adjoining property owners
  - (o.) Number of stories and overall height of all existing and proposed structures
  - (p.) Location of existing and proposed dumpster and recycling container area(s) if applicable
  - (q.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc., and
  - (r.) Other information determined by the *Planning, Zoning & Subdivision Administrator* as necessary to evaluate the request.
- (2.) Preparation by professional. *Construction Plans* for developments requiring Site Development Plan review shall be prepared by a registered architect, engineer, landscape architect, and/or land surveyor licensed in the State of North Carolina for the work in which the professional is trained and licensed to perform; and shall be prepared in accordance with the standards set forth by the *Planning Department* and applicable state standards.

(H.) Final Plat. *Plats* for recording *Major Subdivisions* shall be prepared by a professional land surveyor in accordance with the standards set forth by the applicable state standards and in accordance with the standards and specifications of this Ordinance. The *Final Plat* of a *Major Subdivision* shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for compliance with the requirements of this Ordinance and for conformity with the approved *Preliminary Plat*. Substantial changes from the *Preliminary Plat*, as determined by the *Planning, Zoning & Subdivision Administrator*, shall require an additional review by the *Planning, Zoning & Subdivision Administrator*, to ensure compliance. No *Final Plat* shall be approved by the *Planning, Zoning & Subdivision Administrator* until all improvements are installed, fees paid in lieu, or their execution guaranteed as permitted by this Ordinance and all certificates required for final *Plats* by this Ordinance or approvals by state law have been properly completed and signed. Provided the *Final Plat* is complete, and no further review is determined to be required, the *Planning, Zoning & Subdivision Administrator* shall act on the *Final Plat* of *Major Subdivisions* within ten (10) working days of receipt of the Mylar *Plat*. The *Planning, Zoning & Subdivision Administrator* is authorized to approve the *Final Plat* for recording and to present the *Final Plat* to the Town Council to grant approval and acceptance of dedications by resolution. Following *Final Plat* approval, the applicant shall record the *Plat* for a *Major Subdivision* in accordance with this subsection and return a Mylar to the Town.

(I.) Signatures and recordation.

- (1.) Signatures. Upon approval of a *Final Plat* for *Major Subdivisions*, the *Plat* shall be signed in the appropriate place by the *Planning, Zoning & Subdivision Administrator* and by the owner(s). Additionally, approval shall be shown by a Certificate of Approval; Certificate of Review Officer; Certificate of Professional Land Surveyor; and Certificate of Ownership for recording. For Major Subdivisions installing new public infrastructure the following certificates shall also be shown where applicable: Certificate of Dedication; Certificate of Approval for Street and Road Maintenance; Certificate of Streets and Other Public Infrastructure Improvements; and Certificate of Water and Sewer System Approval. The language for these certificates appears at the end of Article 7 of this Ordinance.
- (2.) Recordation. A *Final Plat* for *Major Subdivisions* shall be recorded in the office of the register of deeds for the county in which the subject property is located in compliance with North Carolina General Statutes within 60 days following approval by the Town of Rutherfordton. No *Subdivision Plat* shall be considered finally approved until the *Plat* has been recorded. If the *Final Plat* of all or part of the area shown on an approved *Preliminary Plat* for a *Major Subdivision* is not recorded in the office of the register of deeds within two years of the approval by the Town of the *Preliminary Plat*, the *Preliminary Plat* shall be resubmitted to the *Planning, Zoning & Subdivision Administrator* for consideration following the process set forth in this Article. *Final Plats* for *Subdivisions* developed in phases shall be recorded in accordance with the schedule presented by the applicant during the *Preliminary Plat* approval and approved as part of the *Preliminary Plat* approval process. If the *Final Plat* of all or part of the area shown on an approved *Preliminary Plat* for a *Major Subdivision* to be developed in phases is not recorded in the office of the register of deeds within the schedule approved by the Town, the *Preliminary Plat* shall be resubmitted to the *Planning, Zoning & Subdivision Administrator* for consideration following the process set forth in this Article. No lots in a *Subdivision* shall be sold prior to approval by the *Planning, Zoning & Subdivision Administrator* and recording of a *Plat* for the *Subdivision*.

7.11-2 Minor Subdivisions.

- (A.) Purpose. The *Minor Subdivision* review process is required for those divisions of land meeting the definition of “*Subdivision, Minor*” appearing in Article 3 of this Ordinance. Review and approval of the preliminary and *Final Plat* by the staff permits a speedy review in accordance with G.S.160D-802(b) while ensuring that the proposed *Subdivision* meets all requirements established by the Town of Rutherfordton.

(B.) Pre-application conference. It is required that every *Subdivision* applicant meet with the *Planning, Zoning & Subdivision Administrator* prior to the submittal of a *Minor Subdivision Plat*. The purpose of this conference is to provide clarification and assistance in the preparation and submission of *Plats* for approval.

(C.) Plat submittal.

(1.) Plat required. *Plats* for *Minor Subdivisions* shall be prepared by a professional land surveyor licensed in the State of North Carolina for the work in which the professional is trained and licensed to perform; and shall be prepared in accordance with the standards set forth by the *Planning Department* and applicable state standards.

(2.) Filing of application. A complete application containing all information as required by the Town of Rutherfordton shall be submitted, along with applicable fees, to the *Planning, Zoning & Subdivision Administrator*.

(D.) Staff review.

(1.) Planning Department staff review.

Plans for development not requiring Site Development Plan review shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for compliance with the requirements of this Article.

(E.) Final Plat approval.

(1.) Recordation and signatures.

(a.) Signatures. Upon approval of a *Plat* for *Minor Subdivisions*, said *Plat* shall be signed in the appropriate place by the *Planning, Zoning & Subdivision Administrator* and by the owner(s). Additionally, approval shall be shown by a Certificate of Approval; Certificate of Review Officer; Certificate of Professional Land Surveyor; and Certificate of Ownership for recording. The language for these certificates appears at the end of this Article.

(b.) Recordation. A *Plat* for *Minor Subdivisions* shall be recorded by the developer of Rutherfordton in the office of the register of deeds for the county in which the subject property is located within 60 days following approval by the *Planning, Zoning & Subdivision Administrator*. No *Plat* shall be considered finally approved until the *Plat* has been recorded. No lots in a *Subdivision* shall be sold prior to approval by the *Planning, Zoning & Subdivision Administrator* and recording of a *Plat* for the *Subdivision*.

(F.) Permit validity. *Minor Subdivision Plats* which have been granted approval shall be recorded as set forth in section 7.11-2(E)(1)(b) above within 60 days following approval or the approval becomes invalid.

## **7.12 Floodplain Development and Certification Permit**

Permitting procedures and requirements for Floodplains appear in Article 18 of this Ordinance.

## **7.13 Zoning Vested Rights**

Vested rights and permit choice are inherent rights established by G.S. 160D and applied herein accordingly. Each approval procedure stipulated in this Article establishes criteria in accordance with G.S. 160D-108 and G.S. 160D-108.1 for ensuring due process in the vesting of rights to develop, use and enjoy real property in accordance with applicable standards & specifications.

## **7.14 Notices and Hearings**

### 7.14-1 General notice requirements.

(A.) All notices which this Article requires for hearings or public meetings shall identify the date, time and place of the hearing/public meeting and the nature and character of the proposed action. Where the action being taken concerns a particular property or properties, the notice shall also identify the location of the subject property.

(B.) Where specific notice requirements are set forth in the North Carolina General Statutes for a particular type of hearing, the requirements set forth in the North Carolina General Statutes shall be followed. Where these requirements conflict with procedures as stipulated in this subsection or elsewhere in this Article, the requirements contained in the North Carolina General Statutes will control. Evidentiary hearing notices appear in G.S. 160D-406(b) and legislative hearing notices appear in G.S. 160D-602.

7.14-2 Notice procedure. The following guidelines detail the notification procedure to be followed for hearings required by this Article unless otherwise set forth in this Article. Failure to follow procedures set forth in this section, other than those required by the North Carolina General Statutes, shall not affect the validity of any action taken at a hearing or public meeting. See G.S. 160D-406 (applicable to quasi-judicial procedures), 160D-602 (applicable to legislative actions).

7.14-3 Special notice requirements for telecommunications towers/structures. For any evidentiary hearing for special use applications for telecommunication towers as required by section 10.2-14 hereinafter, additional notice and evidentiary hearing requirements shall be provided as set forth in section 10.2-14 of this Ordinance.

## 7.15 Development Agreements

### 7.15-1 Authorization and Applicability

- (A.) The North Carolina General Statutes authorize the use of Development Agreements for the development of land in accordance with the criteria and procedures established in sections G.S. 160D-1001 through G.S. 160D-1012.
- (B.) In addition to any *Development Agreement* proposed for an eligible project, a *Development Agreement*, established pursuant to Sub-section 7.15-3 of this Ordinance, shall be required as part of all applications for the following:
  - (1.) Traditional Neighborhood Development Overlay (TNDO) District, Main Street (MS) District, and Mixed Use (MU-1 and MU-2) District and apply to all new development projects within the TNDO, MS, MU-1, and MU-2 Districts.
  - (2.) *Major Subdivisions* in any district where new street infrastructure will be developed.
  - (3.) *High density development* as provided for in Section 19.4-4(B)(3) of this Ordinance.

### 7.15-2 Content of Development Agreement

- (A.) The development agreement shall establish the period of time for completion of the development and construction of the project subject to the agreement.
- (B.) The development agreement shall establish the property to which the agreement shall apply by metes and bounds description attached to the agreement as “Exhibit A”.
- (C.) The development agreement shall cite all terms and conditions applicable to the development of the land subject to the agreement including standards and/or specifications that differ from the provisions of this Ordinance.
- (D.) 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.

### 7.15-3 Procedures for Entering into Development Agreements

- (A.) The development agreement shall be drafted in a format as directed by the Planning, Zoning & Subdivision Administrator. The development agreement shall then be presented to the *Planning Board* for a formal recommendation at a regularly scheduled meeting. Said meeting shall be held prior to notification for a legislative hearing by the Town Council.

- (B.) The development agreement and the *Planning Board* recommendation shall be published for public inspection and notification shall be made in accordance with the provisions of G.S. 160D-601.
- (C.) The notice for the legislative 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.
- (D.) The development agreement shall be presented at a legislative hearing allowing an opportunity for the public to comment on the proposed development agreement. The information presented at the legislative hearing shall be considered by the Town Council in formulating its decision on the approval of an ordinance authorizing approval of said agreement.
- (E.) Upon finding that said agreement is in the best interest of the Town of Rutherfordton, the Town Council may by adoption of an ordinance adopting the development agreement and authorizing it's execution by the Mayor, approve such agreement to be administered in full force and effect by the *Planning, Zoning & Subdivision Administrator*.
- (F.) The development agreement shall be recorded in the office of the Register of Deeds of the county in which the subject property is located within fourteen (14) days of execution and prior to the issuance of any development permits authorizing development activities to commence.

7.15-4 Administration of Development Agreements and Termination for Material Breach

- (A.) The development agreement shall run with the land obligating the parties to the agreement to any and all stipulations therein and may only be amended in accordance with the laws of North Carolina governing such agreements as stipulated in section 7.15-1 herein.
- (B.) The *Planning, Zoning & Subdivision Administrator* shall conduct a periodic review at least every 12 months, at which time the developer is required to demonstrate good faith compliance with the terms of the development agreement. If, as a result of a periodic review, the *Planning, Zoning & Subdivision Administrator* finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the *Planning, Zoning & Subdivision Administrator* shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

- (C.) If the developer fails to cure the material breach within the time given, then the Town of Rutherfordton may unilaterally terminate or modify the development agreement. In accordance with G.S. 160D-1008(c) the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. 160D-405.
- (D.) A development agreement adopted pursuant to this Section 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 this Ordinance.