

Article 15. ADMINISTRATION

15.1 Administration

A. Purpose and Intent

In order to establish an orderly process to develop land within the jurisdiction of the Town of Fletcher consistent with standard development practices and terminology it is the purpose of this Article to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, Town staff and related agencies, the Planning Board, and the Town Council. The intent of this Article is as follows:

- To ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Code;
- To ensure that development is in a manner generally harmonious with surrounding properties and without the endangerment of the health, safety, and general welfare of existing, prospective, or future owners, users, surrounding and adjoining properties, and the public; and
- To provide for the adequate and efficient provision of facilities and/or infrastructure, and the dedication of land, rights-of-way, and easements, so as not to burden the fiscal resources of the Town. This includes the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces, and other provisions required for the public good of the Town of Fletcher.

The Fletcher Town Council shall adopt from time to time, a schedule of fees and review schedule for application and processing as specified in this Code.

B. Duties of the Administrator

1. **General Responsibilities:** The various provisions of this Code shall be administered by the Town of Fletcher Planning Department under the primary direction of the Planning Director. For the purposes of the administration of this Code, the Planning Director and related Planning, Zoning, Departmental staffs are collectively referred to as the Administrator.
2. **Maintain Records and Files:** The Administrator shall maintain a record of all permits and approvals on file and copies shall be made available on request to interested parties.
3. **Conflicts of Interest for Administrative Staff:** No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

C. General Applicability

The Provisions of this Article shall be applicable to all development activity under the jurisdiction of the Town of Fletcher. No building, sign or other structure (except as otherwise provided for in this Code) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the building change, nor shall any excavation or filling of any lot for the construction of any building be commenced, nor shall any change in the use of a property be commenced until the Administrator has issued a zoning permit for such work. The issuance of a zoning permit is subject to the required development review process as applicable for the development petition.

Notwithstanding any other provisions of this Code, a zoning permit is not required for the following uses:

1. Street construction or repair.
2. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
3. Specific signs exempted in Article 11.
4. Mailboxes, newspaper boxes, walls, fences, birdhouses, flag poles, pump covers, and doghouses.

In addition, the Administrator may waive the required development review process only in the following cases when he determines that the submission of a Development Plan in accordance with Article 16 would serve no useful purpose.

5. Interior alterations and renovations requiring a county building permit which do not alter the footprint or height of an otherwise conforming use and/or structure such as AC/HVAC, re-roofing, steps, siding, etc.
6. Accessory structures for all building types; or
7. Any enlargement of a principal building by less than twenty percent (20%) of its existing size provided such enlargement will not result in site or landscaping improvements or the expansion of parking areas; or
8. A change in principal use where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics.

D. Fees

The fee for a request for a variance, or special use, or for an appeal to the Board of Adjustment shall be determined by the Town Council payable to the Town of Fletcher.

15.2 Zoning Permits/Sign Permits/Certificates of Occupancy

- A. Required Application for a Zoning Permit:** Upon receipt of a complete application, the Administrator shall approve, approve with conditions, or deny the application.

Applications that are denied shall have the reasons for denial, in writing, attached to the application. Denial of a zoning permit may be appealed to the Zoning Board of Adjustment as per Section 15.11. The Administrator (or designee) shall have ten business days to approve, deny, or request additional information/revisions concerning the permit application. Such approval, denial, or other communication regarding the permit application shall be in writing.

- B. Expiration of a Permit:** Any zoning permit issued in accordance with this Code will lapse and become invalid unless the work for which it was issued is started within one (1) year of the date of issue, or if the work authorized by it is suspended or abandoned for a period of at least one (1) year (as per G.S. 160D-108(d)(2)).

- C. Compliance and Violations:** Zoning permits issued on the basis of dimensional plans approved by the Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction which differ from that authorized by the zoning permit shall be deemed a violation of this Code and shall be subject to penalties per Article 17.

- D. Certificate of Occupancy:**
 - 1. No structure shall be erected, moved, structurally altered, used, or occupied until a Certificate of Occupancy has been issued by the Henderson County Building Inspection Department.
 - 2. Any Certificate of Occupancy issued shall state that the structure or portion of a structure is in compliance with the information stated on the zoning permit and with all applicable provisions of this Code.
 - 3. A record of all certificates of occupancy shall be kept on file in the office of the Henderson County Building Inspection Department and copies shall be furnished, on request, to all interested parties.
 - 4. If a Certificate of Occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant.
 - 5. Where certain infrastructure elements have not been installed (i.e. landscaping due to time of year), a temporary Certificate of Occupancy, for a maximum period of 180 days, may be issued by Henderson County with permission from the Administrator.

- E. Procedure**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.2)	Administrator	Zoning Permit Issued -or- Denial and Request for Resubmission	n/a Zoning Board of Adjustment

15.3 SITE PLANS

- A. Applicability:** A Site Plan is a development application for an individual building or buildings on previously platted lots. Site Plans shall be reviewed and approved (or denied) by the Administrator.
- B. Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.2))	Staff	For Non-Binding Review Only	n/a
Site Plan (16.3)	Administrator	Review for Completeness & Code Compliance	n/a
Site Plan (16.3)	Technical Review / Staff Committee	Review for Completeness & Code Compliance Zoning Permit Issued -or- Denial and Request for Resubmission	n/a

No grading or infrastructure construction work may commence prior to issuance of a Zoning Permit.

For site plans within the Heart of Fletcher Overlay, see Section 15.14.

15.4 Minor Subdivisions

- A. Applicability:** A Minor subdivision, as defined per Article 18, will be reviewed and approved (or denied) by the Administrator.
- B. Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.2)	Administrator	Review for Completeness & Code Compliance	n/a
Preliminary Plat (16.3)	Administrator	Review for Completeness & Code Compliance	n /a
Preliminary Plat (16.3)	Administrator	Approved Preliminary Plat- or- Denial and Request for Resubmission	n/a
Final Plat (16.4)	Administrator	Approved Final Plat	n/a

No grading or infrastructure construction work may commence prior to approval of a Preliminary Plat.

15.5 Major Subdivisions

- A. Applicability:** A Major Subdivision, as defined per Article 18, shall be reviewed and approved (or denied) by the Administrator upon review and approval by the Planning Board.
- B. Procedure:**

Sketch Plan (16.2)	Administrator/TRC	Review for Completeness & Code Compliance	n/a
Preliminary Plat (16.3)	Planning Board	Review for Completeness & Code Compliance <i>(with notification to affected and abutting property owners)</i>	n/a
Preliminary Plat (16.3)	Planning Board	Approved Preliminary Plat- or- Denial and Request for Resubmission	n/a
Final Plat (16.4)	Administrator/TRC	Approved Final Plat	n /a

No grading or infrastructure construction work may commence prior to approval of a Preliminary Plat.

Following approval of the Preliminary Plat, a pre-construction meeting with the Administrator (or designee) and the Town’s Consulting Engineer is required prior to the start of construction.

15.6 Additional Procedures for Minor & Major Subdivisions & Planned Residential Developments (PRD's)

A. Preliminary Plats

- 1. Notice to Proceed with Construction Activity:** Only after receiving Preliminary Plat approval for a Minor or Major Subdivision or Planned Residential Development (PRD) as prescribed by this Article and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction for the development. For major subdivisions, following approval of the Preliminary Plat, a pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer is required prior to the start of construction.
- 2. Approval Duration:** Approved Preliminary Plats are valid for one (1) year from the date of approval by the Town of Fletcher. Reasonable and necessary extensions may be granted at the Administrator's sole discretion if a written request by the developer is made to the Administrator forty-five (45) days prior to the one (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.
- 3. Multiple Phases Not Approved:** 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 Town 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.
- 4. Infrastructure Required within One Year:** All required infrastructure improvements for the preliminary plat shall be in place within 1 year of approval of the preliminary plat unless the improvement has been guaranteed in accordance with Section 12.8. If circumstances beyond the control of the developer do not allow for the commencement of the required work within the 1 year period or the size of the phase is such that one (1) year is insufficient time to commence all required work, then the developer may file a written request for an extension with Administrator no later than forty-five (45) days prior to the one (1) year anniversary of zoning permit approval by the Town as provided above. If infrastructure work is not commenced within one (1) year and/or no extension request is filed with Administrator and approved, zoning permit approval becomes null and void on the day of the one (1) year anniversary and a new application will be required.

B. Final Plats

- 1. Review Period:** The developer shall initiate the final subdivision plat approval process by submitting the Final Plat and copies of any required surety or improvement guarantees (as specified in Section 12.8) to the Administrator or other departments as required. The Administrator or designee will then have forty-five (45) calendar days to approve or deny the Final Plat. During the review period, the Administrator will confirm the accuracy of the Final Plat. If

substantial errors are found, including inconsistencies with the approved preliminary plat, the plat shall not be approved and the review period suspended until the applicant has corrected such errors. A list of the needed corrections shall be provided to the applicant. Any conditions placed by the Town on the approval of the Final Plat shall be addressed by the developer within forty-five (45) days. Failure of the developer to meet the forty-five (45)-day response period shall cause the conditional approval of the Town to be null and void. Once complete, the Final Plat shall be approved or denied by the Administrator within thirty (30) calendar days of the date of final completed submission.

2. **Improvements Required:** The Final Plat shall constitute all portions of the approved preliminary plat. No Final Plat shall be approved unless and until the developer has installed in that area all improvements required by this Code or has posted any required improvement guarantees approved by the Town Council and prescribed by this Code in Section 12.8.
3. **Plats to be Recorded:** Approved Final Plats must be filed by the applicant for recording with the Register of Deeds of Henderson County within thirty (30) days of the date of approval by the Administrator; otherwise, such approval shall be null and void. After recordation, the developer shall provide three (3) copies of the registered plat to the Town for distribution to the various state and local government agencies and public utilities along with one (1) certified mylar copy for permanent file in the Planning Department.

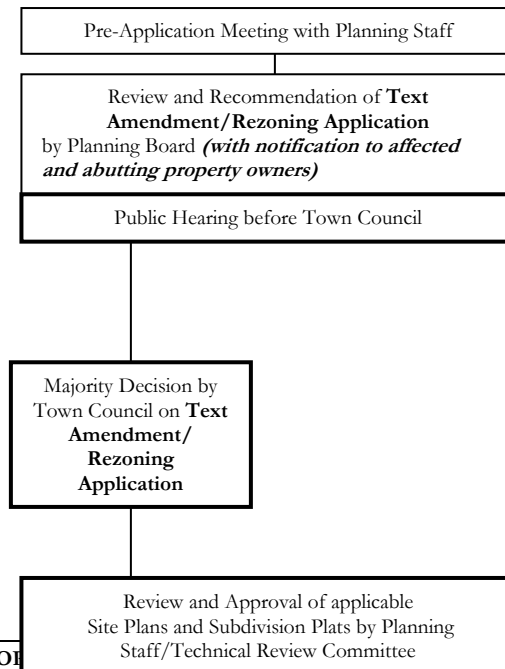
C. **Resubdivision Procedures:** For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed herein for an original subdivision. Resubdivision of lots on already approved and recorded plats can occur subject to the following requirements:

1. No lot or tract of land shall be created or sold that is smaller than the minimum size as required by this Code for the District in which the subdivision is located.
2. Drainage, easements, or rights-of-way shall not be changed unless the final plat is otherwise amended.
3. Street alignment and block sizes shall not be changed unless the final plat is otherwise amended.
4. The property line between the back of lots shall not be changed to cause the rear setback of any lot to become non-conforming.
5. The rear portion of lots shall not be subdivided from the front part except for lots with frontage on two streets (double frontage lots).
6. The character of the area shall be maintained.

15.7 Text Amendments and Rezoning (Map Amendments)

- A. Purpose:** The purpose of this Section is to establish uniform procedures for amending the text of the Land Development Code and the zoning classification of land as shown on the Official Zoning Map.
- B. Application Required:** An amendment to the Official Zoning Map or to the text of this Code may be initiated by the Town Council, the Planning Board, the Planning Department, or any private citizen by filing an application with the Administrator.
- C. Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Text Amendments and Rezoning (Map Amendments)	Administrator	Review	n/a
	Planning Board	Review of Petition for Compliance with the Comprehensive Plan <i>(with notification to affected and abutting property owners)</i>	n / a
	Town Council	Public Hearing	n/a
	Town Council	Grant Rezoning – or - Denial and Request for Rehearing	Superior Court



1. Administrative Review

- a. The applicant shall meet with the Administrator to discuss, in general, the procedures and requirements for a zoning amendment request.
- b. The applicant shall submit the completed application at least sixty (60) calendar days prior to the meeting of the Planning Board.
- c. Applications shall be reviewed by the appropriate reviewing departments / committees. The Administrator shall then refer the petition to the Planning Board for review.
- d. Third party down-zonings are prohibited.

2. Planning Board Review and Recommendation

- a. The Planning Board shall make a recommendation regarding the submitted petition within forty-five (45) days from the date they first review the application. The Planning Board shall notify all affected property owner and abutting property owner of the time and place of the meeting at which the matter will be discussed. (Notified property owners shall also include properties separated from the subject property by street, railroad, or other transportation corridor in accordance with G.S. 160D-602.) The Planning Board may continue a rezoning request for up to two (2) months provided the reason for the continuance is stated in motion. A continuance for a greater period of time is permitted, provided it is mutually agreed upon by all concerned parties. Upon failure of the Planning Board to act on a request immediately following all proper continuances, or if no action is taken, the petitioner may take the rezoning application to the Town Council without a recommendation from the Planning Board. The Planning Board shall consider the Comprehensive Plan when making a recommendation and shall indicate in their findings whether the application complies with the Plan. All recommendations shall be by majority vote.
- b. A recommendation concerning the petition for rezoning 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) Recommend that the application be denied.
 - (5) Planning Board recommendation shall include comment on whether the proposed change is consistent with the Land Use Plan.
- c. A recommendation concerning a petition to amend the text of this Code 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.
3. **Public Hearing:** Upon a recommendation of an amendment, the Administrator shall schedule the application for a public hearing before the Town Council. The Administrator shall present the application with the recommendations of the Planning Board to the Town Council.
4. **Town Council's Decision:** Once the public hearing has been conducted, the Town Council shall render a decision on the petition. All decisions shall be by simple majority vote.
 - a. A decision concerning a petition for rezoning shall be as follows:
 - (1) Grant the rezoning as requested, or
 - (2) Grant the rezoning with a reduction in the area requested, or
 - (3) Grant the rezoning to a more restrictive general zoning district, or
 - (4) Grant the rezoning with a combination of 1 and 2 above, or
 - (5) Deny the application.
 - b. A decision concerning the petition to amend the text of this Code 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.
 - c. The Town Council may send the application back to the Planning Board for further study and consideration.
 - d. The Town Council shall have the authority to call for additional public hearings on amended petitions brought before them.
 - e. The Town Council decision shall include comment on whether the proposed change is consistent with the Land Use Plan. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. (G.S. 160D-605).
5. **Rehearing**
 - 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 date of the Town Council decision.
 - b. Specific information to enable the Town Council to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented.

- c. A rehearing shall be denied by the Town Council, if, in its judgment, such change in facts, evidence or conditions have not been proven.
- d. A public hearing shall be required to be held by the Town 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 Town Council finds that a rehearing is warranted, it shall then proceed as in the original hearing except that the application fee shall be waived.
- e. 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.
- f. The decision of the Town Council 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. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the Town Clerk.

D. Notification Requirements: For such amendments, a public hearing must first be held by the Town Council. Notification of the public hearing shall be as follows:

- 1. 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.
- 2. A prominent sign shall be posted on the subject property(ies) beginning not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing. Such notice shall state the date, time and location of the public hearing, and a phone number to contact during business hours for additional information. The sign shall remain until after the Town Council has rendered its final decision.
- 3. A notice of a proposed change to the Official Map shall be sent by first class mail by the Administrator to the affected property and to all contiguous property owners. (Notified property owners shall also include properties separated from the subject property by street, railroad, or other transportation corridor in accordance with G.S. 160D-602.) This 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 first class mail notice required the Town shall publish once a week for four (4) 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 Code 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 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(s) mailing the notices shall certify to the Town Council that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town 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.

E. Application Withdrawal

1. The petitioner may withdraw his application before submission of the public notice to the newspaper announcing the public hearing.
2. After submission of such notice, an application may be withdrawn at the discretion of the Planning Board or Town Council at the public hearing.
3. No more than two (2) withdrawals may occur on the same parcel or portion of land within a one (1) year period.
4. No application shall be filed on the same parcel or portion of land within a one (1) year period after the date of the second withdrawal.

15.8 Conditional Zoning

A. Purpose: The purpose of the Conditional Zoning is to provide a procedure for the rezoning of property based upon the recognition that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. The Conditional Zoning process allows certain uses to be established in accordance with specific standards, assuring the compatibility of the use with the surrounding properties and the area in general, for each proposed conditionally zoned property. This process affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses.

B. General Requirements

1. Conditional Zoning classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included. A Conditional Zoning may not be initiated by the Town Council, the Planning Board, or Town staff.
2. All standards and requirements of the corresponding zoning district shall be met, except to the extent that the conditions imposed are more restrictive than those standards. The Town 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. The Master Plan, a site specific Conditional Zoning Plan, is itself a condition of the Conditional Zoning.
3. Within an approved Conditional Zoning, no use shall be permitted except pursuant to the conditions imposed on the plan submitted for approval.

C. Procedures

			APPEAL PROCESS
Conditional Zoning Application with Sketch Plan (16.2)	Administrator (& TRC for projects involving potential public infrastructure)	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/a
	Planning Board	Review and recommendation of Conditional Zoning application <i>(with notification to affected and abutting property owners)</i>	n/a
	Town Council	Public hearing	n/a
	Town Council	Grant Conditional Zoning - or - Denial and Request for Rehearing	Superior Court
Site Plan/Preliminary Plat (16.3)	Administrator (& TRC for projects involving potential public infrastructure)	Review for Completeness & Code Compliance	n/a

1. The processing of a Conditional Zoning shall follow the procedures described in Section 15.7 concerning Rezoning.
2. In addition to the Master Plan, the applicant shall provide the exact land use classifications proposed for the Conditional Zoning. 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 Zoning is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional Zoning.
3. The Planning Board may recommend and the Town Council may attach reasonable and appropriate conditions including but not limited to the location, nature, hours of operation and extent of the proposed use. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the Planning Board or the Town Council prior to final action. The Planning Board recommendation shall include comment on whether the proposed change is consistent with the Land Use Plan.
4. Decisions by the Town Council shall be by majority vote. The Town Council decision shall include comment on whether the proposed change is consistent with the Land Use Plan.
5. An Applicant shall submit a Conditional Zoning Application and a Sketch Plan containing all details as outlined in Section 16.2.

Upon approval by the Town Council, the applicant will then submit a Site Plan/Preliminary Plat containing all details as outlined in Section 16.3 for review and final approval by the administrator prior to commencement of any grading or infrastructure work. The applicant/land owner must submit written consent to conditions related to a conditional zoning approval to ensure enforceability. A pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer shall be required prior to the start of construction

D. Substantial Changes: Any substantial change to a Site Specific Plan shall be reviewed by the Planning Board and approved or denied by the Town Council as an amended Conditional Zoning.

E. Rescission of Conditional Zoning

1. The applicant must secure a valid building or construction permit(s) within a twelve (12) month period from date of approval of the Conditional Zoning unless otherwise specified.
2. If such project is not complete and a valid building or construction permit is not in place at the end of the twelve (12) month period, the Administrator shall notify the applicant of either such finding. Within sixty (60) days of notification, the Administrator shall make a recommendation concerning the rescission of the conditional district to the Town Council. The Town Council may then rescind the Conditional Zoning, or extend the life of the Conditional Zoning for a specified period of time.

15.9 Vested Rights

- A. General Procedures:** Pursuant to G.S. 160D-108 and notwithstanding any other provision or amendment, a landowner may apply for approval of a Site-Specific Vesting Plan as defined in the statute that shall entitle said landowner to develop property in accordance with the previously approved plan.

All requests for Vested Rights shall be accompanied by a copy of the approved Site-Specific Vesting Plan in accordance with the provisions of this Article. A request to extend Vested Rights to a previously approved Site-Specific Vesting Plan shall be reviewed and approved by the Town Council after notice and public hearing.

- B. Town Council Action:** The Town Council shall determine whether or not to grant or establish a vested right after the review and consideration of the Planning Board. The Town Council may not require the landowner to waive his vested right as a condition of development approval. The Town Council may approve the vested rights for a period greater than two (2) years where it is found that due to (i) the sizing and phasing of the development; or (ii) the level of investment; or (iii) the need for the development; or (iv) economic cycles; or (v) market conditions, building permits for all phases of the development cannot be secured within two years, provided the total period does not exceed five (5) years from the date of plan approval of the site (except for the specified exceptions under G.S. 160D-108(f)).

- C. Effect of Approval of Vesting:** The effect of the Town Council approving a vested plan shall be to vest such site plan for a period of two (2) years to five (5) years as approved by the Town Council from the date of approval. Additionally, multi-phase developments of at least 25 acres shall be vested for a period of up to seven (7) years, except for the specified exceptions under G.S. 160D-108(f).

A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the approved site-specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the previously granted or established vested right.

A vested right, once established shall preclude any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property in accordance with the approved Site-Specific Development Plan except under the following conditions where such rights are terminated and revoked:

1. The affected landowner provides written consent to the Town of his desire to terminate the vested right; or,
2. The Town determines after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,

3. Compensation is made by the Town to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
4. The Town determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town Council of the plan; or,
5. Upon the enactment of a State or Federal law or regulations which precludes development as shown in plan. In such case the Town may, after having advertised and conducted a public hearing, modify the affected provisions upon a finding that this change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular plan, nothing in this section shall preclude the Town from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.

The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the Town from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Code.

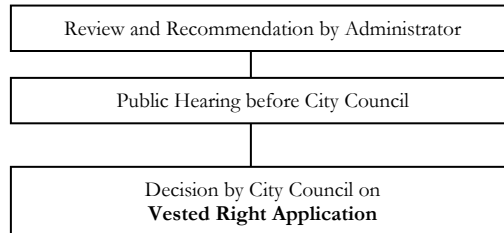
- D. Establishment of Common Law Vesting Plans:** Previously approved Site-Specific Development Plans shall be reviewed for compliance and consistency and subsequently approved by the Administrator or designee in accordance with the provisions of this Article, providing the proposed Preliminary Plat for the Minor Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

Preliminary Plats for Major Subdivisions with previously vested site-specific plans shall be reviewed for compliance and consistency and approved by the Administrator or designee, providing the proposed Preliminary Plat for Major Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan. Substantial financial investment must be determined and a good faith effort made to develop proportionate to the approved statutory vested plan.

- E. Revocation or Expiration of a Vested Right:** The vested right, resulting from the approval of a site-specific development plan, may be revoked by the Town Council if the Town Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of this Code. As prescribed under the provisions of G.S.160D-108, the vested right shall otherwise expire at the end of the approval period established by the Town Council. A building permit issued by the Henderson County Building Inspector pursuant to G.S. 160D-403 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

F. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Vested Right Application w/Site Plan (16.4)	Administrator	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/a
	Town Council	Public hearing	n/a
	Town Council	Grant Vested Right Application – or - Denial and Request for Rehearing	Superior Court



15.10 Special Use Permits

- G. Purpose:** Upon application, The Town Council (with recommendation from the Planning Board) may grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by this ordinance and set forth as special uses under the various use districts.
- B. General Requirements:** A special use permit may be granted by the Fletcher Town Council only after making the following findings:
1. An application for the special use has been submitted as prescribed by this Code.
 2. Approval may be granted if the Town Council finds that, in the particular case in question, the use for which the special use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such approval, the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of the Code.
 3. Before any special use permit is issued, the Town Council shall make written findings certifying compliance with the specific rules governing the individual special use (Article 3), and that satisfactory provision and arrangement has been made for at least the following where applicable:
 - a. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control.
 - b. Provision of off-street parking and loading areas where required, with particular attention to the items listed above, and the economic, noise, glare and odor effects of the special use on adjoining properties in the area.
 - c. Adequate and proper utilities, with reference to locations, availability, and compatibility.
 - d. Buffering, with reference to type, location, and dimensions.
 - e. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmonies with properties in the district.
 - f. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability.
 - g. Buildings and structures, with reference to location, size, and use.
 - h. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.
 - i. A site plan/preliminary plat has been submitted, as required in Article 16.3.
 4. The applicant/land owner shall submit written consent to conditions related to the Special Use Permit to ensure enforceability. A pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer shall be

required prior to the start of construction. The Administrator shall make periodic inspections during construction as well as final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this Code have been met. If at any time a special use permit has been issued and the Town Council determines that the conditions imposed and agreements have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued. If a special use permit is terminated for any reason, it may be reinstated only after reapplying for a special use permit.

C. Procedures

Special Use Permit Application with Sketch Plan (16.2)	Administrator (& TRC for projects involving potential public infrastructure)	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/a
	Planning Board	Review and recommendation of Special Use Permit application <i>(with notification to affected and abutting property owners)</i>	n/a
	Town Council	Public hearing	n/a
	Town Council	Grant Special Use Permit - or - Denial and Request for Rehearing	Superior Court
Site Plan/Preliminary Plat (16.3)	Administrator (& TRC for projects involving potential public infrastructure)	Review for Completeness & Code Compliance	n/a

D. Public Notification

The Administrator shall give notice of all public hearings. Public notice shall become a part of the record of the proceedings of the Fletcher Town Council. Notice shall be given in the following manner:

- a. Notice shall be sent by the Town by first class mail to the applicant at least ten (10) days prior to the public hearing.
- b. Notice shall also be posted by the Administrator in a conspicuous location in the Town Hall at least ten (10) days prior to the public hearing. Both notices shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- c. A notice shall be posted by the Administrator in a conspicuous location on the property at least ten (10) days prior to the public hearing. This

notice shall indicate the nature of the public hearing, the date, time, and location at which it is to occur.

- d. A notice of public hearing concerning the special use permit application shall be sent by first class mail by the Administrator to the affected property and to all contiguous property owners. (Notified property owners shall also include properties separated from the subject property by street, railroad, or other transportation corridor in accordance with G.S. 160D-602.)
- e. 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.

15.11 Appeals and Variances

- A. **Applicability:** The Zoning Board of Adjustment shall hear any applications for appeals of an administrative interpretation and decisions and may grant variances from the requirements of this Code. In addition, the Administrator may grant a minor variance as outlined in section 15.12.A (Modification of Dimensional Standards) from the dimensional requirements of this Code.
- B. **Administrative Appeal Procedure:** The Zoning Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Administrator and apply such interpretation to particular fact situations. The Administrator's determination must be made in writing and delivered to the property owner and party seeking the determination either by personal delivery, electronic mail, or first-class mail.
 - 1. An appeal may be initiated by any aggrieved party or by any officer, department or board of Fletcher upon the submission of a completed application. Any such appeal shall be filed within thirty (30) days of the administrative decision. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will 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 Code. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Adjustment or by a judicial court of law.
 - 2. **Public Notification:** The Administrator shall give notice of all public hearings. Public notice shall become a part of the record of the proceedings of the Zoning Board of Adjustment. Notice shall be given in the following manner:
 - a. Notice shall be sent by the Town by first class mail to the applicant at least ten (10) days prior to the public hearing.
 - b. Notice shall also be posted by the Administrator in a conspicuous location in the Town Hall at least ten (10) days prior to the public hearing.

submission of a completed application. The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will 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 Code. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Zoning Board of Adjustment, Town Council or by a judicial court of law.

2. Public Notification

- a. Notices shall be provided by the applicant and sent by the Administrator by first class mail to the applicant and to owners of all contiguous properties at least ten (10) days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- b. Notices shall also be posted by the Administrator in a conspicuous location in the Town Hall at least ten (10) days prior to the public hearing. Said notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- c. A notice shall be posted by the Administrator in a conspicuous location on the property at least ten (10) days prior to the public hearing. This notice shall indicate the nature of the public hearing, the date, time, and location at which it is to occur.
- d. 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.

3. The Zoning Board of Adjustment may only grant a variance having first held a public hearing on the matter and having made the following determinations:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- b. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- c. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- d. The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- e. The special circumstances are not the result of the actions of the applicant.
- f. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

The following are not cause for a variance:

- (1) The citing of other nonconforming or conforming uses of land or structures in the same or other districts.
 - (2) The request to permit a use of land, building or structure which is not permitted by right or by special use in the district involved.
 - (3) Economic hardship or the fact that property may be utilized more profitably with a variance.
4. The Zoning Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this Code. 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 Code and shall be punishable as prescribed in Article 17.
5. **The concurrent, supermajority vote of four-fifths (4/5) of the voting members of the Zoning Board of Adjustment shall be necessary to grant a variance.** In all matters coming before the Zoning Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. All decisions of the Zoning Board of Adjustment shall be in writing and filed with the Administrator.

D. Decisions

The Zoning Board of Adjustment shall hold a public hearing on an application no later than 60 days after a complete application has been filed with the Administrator. The Zoning 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.

A simple majority vote of the voting members of the Zoning Board of Adjustment shall be necessary to make an interpretation of the Code, reverse any order, requirement, decision or determination of the Administrator, grant or allow for a change or expansion of a nonconformity or to decide in favor of the applicant on any matter upon which it is required to pass under this Code. 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. All decisions of the Board of Adjustment shall be in writing and filed with the Administrator.

E. Rehearings and Appeals of the Zoning Board of Adjustment's Decisions

1. Rehearings

- 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 date of the Zoning Board of Adjustment's decision. In addition, specific information to enable the Zoning 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 Zoning 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 Zoning Board of Adjustment 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 Zoning Board of Adjustment finds that a rehearing is warranted, it shall 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 date of denial of the original application.
2. **Appeals:** Every decision of the Zoning 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. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the Administrator, or after a written copy is delivered to every aggrieved party who has filed a written request for such copy with Administrator at the time of the Board's hearing of the case, whichever is later.

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Variance Petition	Board of Adjustment	Review of Appeals from Administrative Decision or Code Compliance	n/a
	Board of Adjustment	Public Hearing	n/a
	Board of Adjustment	Variance Issued -or- Denial and Request for Rehearing	Superior Court

15.12 Modification of Dimensional Standards

- A. The Administrator is authorized to approve requests that deviate from required dimensional standards set forth in this Code by up to ten (10%) percent, upon determination that one or more of the following conditions exists:
 - 1. There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.
 - 2. The part of the proposed structure that would encroach into the minimum setback area is less than 50 percent of the width of the affected building

facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).

3. The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety Code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety Code requirements.
4. The proposed structure will allow the preservation of significant existing vegetation.
5. A good faith error was made in the location of a building foundation not exceeding one (1) foot due to either field construction or survey error.
6. Other dimensional standards/conditions that may need exceptions include dimensional standards for Signage.

B. Procedure:

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Modification of Dimensional Standards	Administrator	Review of Minor Deviations from Required Setbacks	Board of Adjustment

15.13 Nonconforming Plans

- A. Any site specific plan (including but not limited to master plans, preliminary plats, final plats, conditional district plans, special use permit plans) for the development of property and/or construction of a building which has received final approval by the Town of Fletcher for development and/or construction, but does not conform to this Code, may be developed and/or constructed in accordance with the Code, rules, and regulations, including any conditions imposed upon approval. Any plan approved prior to the adoption of this Code, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this Code. For additional information, please refer to Article 15.10 of this Code.
- B. A property owner with an approved site specific plan as identified above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this Code and the rules and regulations upon which the plan was approved. The property owner shall notify the Administrator assigned to approve such plan. A property owner shall be notified in writing of additional required approvals or modifications which may be necessary in order for the plan to conform to the Code.
- C. Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the Code, the rule or regulation by which the plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this Code as if it were an amendment or modification to a plan originally approved under this Code.

- D. This section does not prohibit the exercise of any vested right established by common law, ordinance or statute.

15.14 Heart of Fletcher Overlay Districts

- A. **Purpose:** Notwithstanding the procedure outlined in Article 15.3, the Planning Board shall have special authority to review and approve development applications within the Heart of Fletcher Overlay Districts.
- B. **General Requirements:** The Planning Board may approve a development application within the Heart of Fletcher Overlay Districts only after finding that the proposed development meets the spirit and intent of the Heart of Fletcher Master Plan and that satisfactory provision and arrangement has been made for at least the following where applicable:
 1. Satisfactory ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control.
 2. Off-street parking areas.
 3. Adequate stormwater management system.
 4. Buffering, with reference to type, location, and dimensions.
 5. Buildings and structures, with reference to design, location, size and height.
 6. Streetscape design.
- C. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.2)	Staff/TRC	For Non-Binding Review Only	n/a
Site Plan (16.3)	Planning Board	Review for Code Compliance	Superior Court

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