ARTICLE IV

PERMITS AND FINAL PLAT APPROVAL

Part I. Zoning, Special Use, and Conditional Use Permits

Section 46 Permits Required.

(a) Subject to Section 271 (Sign Permits), the use made of property may not be substantially changed (see Section 152), substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:

(1) A zoning permit issued by the administrator;

(2) A special use permit issued by the Board of Adjustment;

(3) A conditional use permit issued by the Town Council;

(4) An erosion control permit issued by the North Carolina Department of Natural Resources and Community Development, if required;

(5) A Coastal Area Management Act (CAMA) permit issued by the Division of Coast Management, if required.

(b) Zoning permits, special use permits, conditional use permits and sign permits are issued under this chapter only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this chapter if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 64, all development shall occur strictly in accordance with such approved plans and applications.

(c) Physical improvements to land to be subdivided may not be commenced except in accordance with a conditional use permit issued by the Council for major subdivisions or after final plat approval by the administrator for minor subdivisions (see Part II of this article).

(d) A zoning permit, conditional use permit, special use permit, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal) shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All such permits issued with respect to tracts of land in excess of one acre (except sign permits and zoning permits for single-family and two-family residential uses) shall be recorded in the Chowan County Registry after execution by the record owner as provided in Section 64.

Section 47 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled.

Issuance of a conditional use, special use, or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 53, 61, and 62, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a conditional use or special use permit have been complied with.

Section 48 Who May Submit Permit Applications.

(a) Applications for zoning, special use, conditional use, or sign permits; certificates of appropriateness or minor subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit, certificate of appropriateness or the minor subdivision plat approval. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this chapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees). When an authorized agent files an application on behalf of a property owner, the agent shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.

(b) The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (a) whenever there appears to be a reasonable basis for questioning this authority.

(c) All applicants for permits requiring Planning Board or Board of Adjustment review shall be submitted to the administrator 25 calendar days prior to the date of the Planning Board or Board of Adjustment meeting at which the permit will be reviewed. If the submission deadline date falls on Saturday, the application must be received by the preceding Friday. If the submission deadline falls on a Sunday, the application must be received by the following Monday.

Section 49 Applications To Be Complete.

(a) All applications for zoning, special use, conditional use, or sign permits must be complete before the permit issuing authority is required to consider the application.

(b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance.

(c) In this ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to this ordinance. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this

ordinance. However, whenever this ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII.

(d) The presumption established by this ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the administrator as to whether more or less information than that set forth in Appendix A should be submitted.

(e) The administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the administrator to determine compliance with this ordinance, such as applications for zoning permits to construct single-family or two-family houses, or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 50 Staff Consultation Before Formal Application.

(a) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this chapter, preapplication consultation between the developer and the administrator is encouraged or required as provided in this section.

(b) Before submitting an application for a conditional use permit authorizing a development that consists of or contains a major subdivision, the developer shall submit to the administrator a site plan of such subdivision, drawn approximately to scale (1" = 100 feet). The site plan shall contain:

(1) The name and address of the developer;

(2) The proposed name and location of the subdivision;

(3) The boundaries of the tract and the portion of the tract to be subdivided;

(4) The approximate total acreage of the proposed subdivision;

(5) The tentative street and lot arrangement;

(6) Topographic lines;

(7) A sketch vicinity map showing the location of the subdivision in relation to the neighboring tracts, subdivisions, roads and waterways;

(8) The existing and proposed uses of the land within the subdivision and adjoining it, including the streets and lots of adjacent developed or platted tracts;

(9) The zoning classification(s) of the tract and of adjacent tracts;

(10) Any impact the proposed development will have on any environmentally sensitive areas;

(11) Any other information the developer believes necessary to obtain the informal opinion of the administrator as to the proposed subdivision's compliance with the requirements of this chapter.

The administrator shall meet with the developer as soon as conveniently possible to review the site plan.

(c) Before submitting an application for any other permit, developers are strongly encouraged to consult with the administrator concerning the application of this chapter to the proposed development.

Section 51 Staff Consultation After Application Submitted.

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

(b) If the application is for a special use or conditional use permit, the administrator shall place the application on the agenda of the appropriate board when the applicant indicates that the application is as complete as he intends to make it. However, as provided in Sections 56 and 57, if the administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

(c) If the administrator determines that the development for which a special use or conditional use permit is requested will have or may have substantial impact on surrounding properties, he shall require that (i) the applicant notify, at a minimum, all adjoining property owners, at least ten days in advance, of an informal information meeting and (ii) the applicant conduct the informational meeting to discuss the proposed development with the adjoining property owners. The purpose of the informational meeting is to involve those property owners most likely impacted by a proposed project in the early stages of the development process. Consequently, the informational meeting should be held prior to the public hearing date established for the permit request.

(d) Without limiting the generality of subsection (c), the administrator shall require the applicant to hold an informational meeting when:

(1) the request for a special use or conditional use permit involves a residential project of 25 or more dwelling units;

(2) the request for a special use or conditional use permit involves a non-residential project containing 10 acres or more.

Section 52 Zoning Permits.

(a) A completed application form for a zoning permit shall be submitted to the administrator by filing a copy of the application with the administrator.

(b) The administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant as provided in Section 50, that:

(1) The requested permit is not within his jurisdiction according to the Table of Permissible Uses; or

(2) The application is incomplete; or

(3) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those requirements concerning which a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).

(c) If the administrator determines that the development for which a zoning permit is requested will have or may have substantial impact on surrounding properties, he shall, at least ten days before taking final action on the permit request, send a written notice to those persons who have listed for taxation real property any portion of which is within 100 feet of the lot that is the subject of the application, informing them that:

(1) An application has been filed for a permit authorizing identified property to be used in a specified way;

(2) All persons wishing to comment on the application should contact the administrator by a certain date; and

(3) Persons wishing to be informed of the outcome of the application should send a written request for such notification to the administrator.

Section 53 Authorizing Use or Occupancy Before Completion of Development Under Zoning Permit.

In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this chapter prior to commencing the intended use of the property or occupying any buildings, the administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this chapter are concerned) if the permit recipient provides an adequately secured completion bond or other security satisfactory to the administrator to ensure that all of the requirements of this chapter will be fulfilled within a reasonable period (not to exceed twelve months) determined by the administrator. The bond and security shall be reviewed and approved by the Town Attorney, however, prior to the administrator authorizing the intended use or occupancy.

Section 54 Special Use Permits and Conditional Use Permits.

(a) An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator.

(b) An application for a conditional use permit shall be submitted to the Council by filing a copy of the application with the administrator.

(c) Subject to subsection (d), the Board of Adjustment or the Council, respectively, shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:

(1) The requested permit is not within its jurisdiction according to the table of permissible uses; or

(2) The application is incomplete; or

(3) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations); or

(d) Even if the permit issuing board finds that the application complies with all other provisions of this chapter, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

(1) Will materially endanger the public health or safety; or

(2) Will substantially injure the value of adjoining or abutting property; or

(3) Will not be in harmony with the area in which it is to be located; or

(4) Will not be in general conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Council.

(e) No special use nor conditional use permit shall be approved until a public hearing has been held by the permit issuing board.

(f) The administrator shall publish a notice of the public hearing once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date affixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

(g) The administrator shall mail written notice of the public hearing to the owners of all properties involved in the permit request as well as the owners of all properties any portion of which is within 100 feet of the property involved in the permit request.

(h) The administrator shall also post notices of the public hearing in the vicinity of the property involved in the permit request and take any other action deemed by the administrator to be useful or appropriate to give notice of the public hearing on any permit request.

(i) The notice required by this section shall:

(1) State the date, time, and place of the public hearing;

(2) Summarize the nature and character of the permit request;

(3) Reasonably identify the property affected by the permit request;

(4) State that the full permit request application can be reviewed at the office of the administrator; and

(5) State that substantial changes in the permit request may be made following the public hearing.

(j) The administrator shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the permit issuing board's intention that failure to comply with any of the notice provisions (except those set forth in subsection (f)) shall not render any permit request invalid.

(k) At the conclusion of the public hearing, the permit issuing board may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

(l) The permit issuing board shall be required to take final action on a permit request within 180 days of the date the permit application fee is paid to the town, but it should proceed as expeditiously as practicable on permit requests since inordinate delays can result in the applicant incurring unnecessary costs.

(m) Decision of the permit issuing board to be filed in the office of the administrator the working day following the decision. *(Amended 2/12/91)*

(n) Special use and conditional use permits must be recorded with the Chowan County Register of Deeds in the chain of title.

Section 55 Burden of Presenting Evidence; Burden of Persuasion.

(a) The burden of presenting a complete application (as described in Section 49) to the permit issuing board shall be upon the applicant. However, unless the board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.

(b) Once a completed application has been submitted, the burden of presenting evidence to the permit issuing board sufficient to lead it to conclude that the application should be denied for any reasons stated in Subdivision 54© shall be upon the party or parties urging this position, unless

the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

(c) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in subdivision 54(d) rests on the party or parties urging that the requested permit should be denied.

Section 56 Recommendations on Special Use Permit Applications.

(a) When presented to the Board of Adjustment at the hearing, the application for a special use permit shall be accompanied by a report setting forth the administrator's proposed findings concerning the application's compliance with Section 49 (Application To Be Complete) and the other requirements of this chapter, as well as the administrator's recommendations for additional requirements to be imposed by the Board of Adjustment.

(b) If the administrator proposes a finding or conclusion that the application fails to comply with Section 49 or any other requirement of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(c) The Board of Adjustment may, by general rule applicable to all cases or any class of cases, or on a case by case basis, refer applications to the Planning Board to obtain its recommendations.

Section 57 Recommendations on Conditional Use Permits.

(a) Before being presented to the Council, an application for a conditional use permit shall be referred to the Planning Board for action in accordance with this section. The Council may not hold a public hearing on a conditional use permit application until the Planning Board has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the Planning Board, the Council may continue the public hearing to allow the Planning Board more time to consider or reconsider the application.

(b) When presented to the Planning Board, the application shall be accompanied by a report setting forth the administrator's proposed findings concerning the application's compliance with Section 49 and other requirements of this chapter, as well as the administrator's recommendations for additional requirements to be imposed by the Council. If the administrator's report proposes a finding or conclusion that the application fails to comply with Section 49 or any other requirement of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(c) The Planning Board shall consider the application and the attached administrator's report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public.

(d) After reviewing the application, the Planning Board shall report to the Council whether it concurs in whole or in part with the administrator's proposed findings and conditions, and to the extent there are differences the Planning Board shall propose its own recommendations and the reasons therefore.

(e) In response to the Planning Board's recommendations, the applicant may modify his application prior to submission to the Council, and the administrator may likewise revise his recommendations.

Section 58 Council Action on Conditional Use Permits.

In considering whether to approve an application for a conditional use permit, the Council shall proceed according to the following format:

(1) The Council shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the Council that the application is complete.

(2) The Council shall consider whether the application complies with all of the applicable requirements of this chapter. If a motion to this effect passes, the Council need not make further findings concerning such requirements. If such a motion fails or is not made then a motion shall be made that the application be found not in compliance with one or more of the requirements of this chapter. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Council to be unsatisfied through this process.

(3) If the Council concludes that the application fails to comply with one or more requirements of this chapter, the application shall be denied. If the Council concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 54(d). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Section 59 Board of Adjustment Action on Special Use Permits.

In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed in the same manner as the Council when considering conditional use permit applications (Section 58), except that the format of the Board of Adjustment's proceedings will differ as a result of the four-fifths voting requirement set forth in Subsection 32(a).

(1) The board shall consider whether the application is complete. If the board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by four members of the board, shall constitute the board's finding on this issue. If a motion to this effect is not made and concurred in by at least four members, this shall be taken as an affirmative finding by the board that the application is complete.

(2) The board shall consider whether the application complies with all of the applicable requirements of this chapter. If a motion to this effect passes by the necessary four-fifths vote, the board need not make further findings concerning such requirements.

If such a motion fails to receive the necessary four-fifths vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this chapter. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the number of members equal to more than one fifth of the board membership (excluding vacant seats) in favor of such a motion shall be sufficient to constitute such motion a finding of the board. It shall be conclusively presumed that the application complies with all requirements not found by the board to be unsatisfied through this process. As provided in Subsection 54(c), if the board concludes that the application fails to meet one or more of the requirements of this chapter, the application shall be denied.

(3) If the board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 54(d). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. Since such a motion is not in favor of the applicant, it is carried by a simple majority vote.

Section 60 Additional Requirements on Special Use and Conditional Use Permits.

(a) Subject to subsection (b), in granting a special or conditional use permit, the Board of Adjustment or Town Council, respectively, may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:

(1) Will not endanger the public health or safety;

(2) Will not injure the value of adjoining or abutting property;

(3) Will be in harmony with the area in which it is located; and

(4) Will be in conformity with the land use plan, thoroughfare plan, or other plan officially adopted by the Council.

(b) The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

(c) Without limiting the foregoing, the permit-issuing board may attach to a permit a condition limiting the permit to a specified duration.

(d) All additional conditions or requirements shall be entered on the permit.

(e) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.

(f) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections 54 (c) or (d).

Section 61 Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use of Conditional Use Permits.

(a) In cases when, because of weather conditions or other factors beyond the control of the special use or conditional use permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the permit issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides an adequately secured completion bond or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months). The proposed completion bond and security shall be reviewed and approved by the Town Attorney, however, prior to the permit issuing board authorizing the intended use or occupancy.

(b) When the board imposes additional requirements upon the permit recipient in accordance with Section 60 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

(1) A completion bond and security satisfactory to the Town Attorney is furnished;

(2) A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made;

(3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 114 (Penalties and Remedies For Violations) and Section 115 (Permit Revocation).

(c) With respect to subdivisions in which the developer is selling only undeveloped lots, the Council may authorize final plat approval and the sale of lots before all the requirements of this chapter are fulfilled if the subdivider provides a completion bond and security satisfactory to the Town Attorney to ensure that all of these requirements will be fulfilled within not more than twelve months after final plat approval.

Section 62 Completing Developments in Phases.

(a) If a development is constructed in phases or stages in accordance with this section, then, subject to subsection (c), the provisions of Section 47 (No Occupancy, Use, or Sale of Lots

Until Requirements Fulfilled) and Section 61 (exceptions to Section 47) shall apply to each phase as if it were the entire development.

(b) As a prerequisite to taking advantage of the provisions of subsection (a), the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this chapter that will be satisfied with respect to each phase or stage.

(c) If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:

(1) If the improvement is one required by this chapter then the developer may utilize the provisions of Subsections 61(a) or 61(c);

(2) If the improvement is an amenity not required by this chapter or is provided in response to a condition imposed by the board, then the developer may utilize the provisions of Subsection 61(b).

Section 63 Expiration of Permits.

(a) Zoning, special use, and sign permits shall expire automatically if, within one year after the issuance of such permits:

(1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commence-ment of such use; or

(2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 62), this requirement shall apply only to the first phase.

(b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 64.

(c) The permit issuing authority may extend for a period up to six months the date when a zoning, special use, or sign permit would otherwise expire pursuant to subsections (a) or (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

(d) For purposes of this section, the permit within the jurisdiction of the Council or the

Board of Adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place:

(1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or

(2) The administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under subsection 64(b).

(e) Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

(f) Conditional use permits shall expire within one year or, if applicable, at the end of the vesting period established in accordance with Section 328, Vested Right. *(Amended 6/13/95)*

Section 64 Effect of Permit on Successors and Assigns.

(a) Zoning, special use, conditional use and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

(1) No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and

(2) The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice (as provided in subsection (b)) of the existence of the permit at the time they acquired their interest.

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

Section 65 Amendments to and Modifications of Permits.

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

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

(c) All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Council or Board of Adjustment, new conditions may be imposed in accordance with Section 60, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

(d) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c).

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

(f) Upon complaint to the Town Council from any person within 400 feet of a use allowed by conditional use permit, the Town Council may initiate permit revocation proceedings in accordance with the provisions of Section 115.

Section 66 Reconsideration of Board Action.

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

(1) Circumstances affecting the property that is the subject of the application have substantially changed; or

(2) New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the administrator within the time period for an appeal to superior court (see Section 116). However, such a request does not extend the period within which an appeal must be taken.

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

Section 67 Applications to be Processed Expeditiously.

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications within 180 days of the date the permit application fee is paid to the town, consistent with the need to ensure that all development conforms to the requirements of this chapter.

Section 68 Maintenance of Common Areas, Improvements, and Facilities.

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

Sections 69 through 75 Reserved.

Part II. Major and Minor Subdivisions

Section 76 Regulation of Subdivisions.

(a) Major subdivisions are subject to a two step approval process. Physical improvements to the land to be subdivided are authorized by a conditional use permit as provided in Part I of Article IV of this chapter, and sale of lots is permitted after final plat approval as provided in Section 79. Minor subdivisions, except for those located within CD, CH, and CN zoning districts, only require a one step approval process: final plat approval (in accordance with Section 78). Minor subdivisions within CD, CH, and CN zoning districts shall follow the same review and approval procedures as major subdivisions. *(Amendment 3/99)*

(b) All minor and major subdivision final plats shall include, at minimum, all the following information: Zoning of Tract; Name of Subdivision; Name of Owners; Name of Surveyor, registration number, certificate, and seal; exact boundaries of the tract shown; streets; block number and lot number; building setbacks; easements; accurate scale; monument and control corners; names and vicinity map; appropriate certificates; proper size 18” x 24”; Reproducible (in ink on mylar or black slick, no sepia, paper, velum or linen, no sticky back certifications); additional information required by NCGS 47-30 & 39-32.3. (Amended 1/14/03)

Section 77 No Subdivision Without Plat Approval.

(a) As provided in NCGS § 160A-375, no person may subdivide his land except in accordance with all of the provisions of this chapter. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 78 or Section 79 and recorded in the Chowan County Registry.

(b) Any parcel of land ten (10) acres or less may not be subdivided into more than three (3) parcels of land unless a major subdivision approval has been applied for. For example, a person may not buy three (3) acres of a ten (10) acre parcel then divide that parcel into three (3) parcels of land. At no time may the original parcel be divided into more than three (3) parcels unless as stated a major subdivision is applied for and approved.

(c) In accordance with NCGS 160A-373, the register of deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with the provisions of the adopted ordinance. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision regulation jurisdiction of any city.

(d) In accordance with NCGS 160A-375, if a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter, subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. *(Amended 5/14/91)*

Section 78 Minor Subdivision Approval.

(a) The administrator shall approve or disapprove minor subdivision final plats, except for those located within CD, CH, and CN zoning districts, in accordance with the provisions of this section. Minor subdivisions within CD, CH, and CN zoning districts shall follow the same review and approval procedures as major subdivisions (Section 79). *(Amended 3/99)*

(b) The applicant for minor subdivision plat approval, before complying with subsection (c), shall submit a sketch plan to the administrator for a determination of whether the approval process authorized by this section can be and should be utilized. The administrator may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land within the previous five years.

(c) Applicants for minor subdivision approval shall submit to the administrator a copy of a plat conforming to the requirements set forth in Subsections 79(b) and (c) (as well as two prints of such plat), except that a minor subdivision plat shall contain the following certificates in lieu of those required in Section 80:

(1) <u>Certificate of Ownership</u>

I hereby certify that I am the owner of the property described hereon, which property is within the subdivision regulation jurisdiction of the Town of Edenton, and that I freely adopt this plan of subdivision.

_____ _____

Date Owner

(2) Certificate of Approval

I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with Chapter 21 of the Edenton Town Code, and that therefore this plat has been approved by the land use administrator, subject to its being recorded in the Chowan County Registry within sixty days of the date below.

_____ _____

Date Land Use Administrator

(3) Flood Damage Prevention Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Town of Edenton Flood Damage Prevention Ordinance requirements and is approved by Edenton for recording in the Register of Deeds office.

_____ _____

Date Land Use Administrator

(4) A Certificate of Survey and Accuracy, in the form stated in Subdivision 80(5).

(d) The administrator shall take expeditious action on an application for minor subdivision plat approval as provided in Section 67. However, either the administrator or the applicant may at any time refer the application to the major subdivision approval process.

(e) Not more than a total of three lots may be created out of one tract using the minor subdivision plat approval process, regardless of whether the lots are created at one time or over an extended period of time.

(f) Subject to subsection (d), the administrator shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 15 or the application or the proposed subdivision fails to comply with subsection (e) or any other applicable requirement of this chapter.

(g) If the subdivision is disapproved, the administrator shall promptly furnish the applicant with a written statement of the reasons for disapproval.

(h) Approval of any plat is contingent upon the plat being recorded within sixty days after the date the Certificate of Approval is signed by the administrator or his designee.

Section 79 Major Subdivision Approval Process.

(a) The administrator shall approve or disapprove major subdivision final plats and minor subdivision plats located within CD, CH, and CN zoning districts in accordance with the provisions of this section. *(Amended 3/99)*

(b) The applicant for major subdivision plat approval shall submit to the administrator a final plat, drawn in waterproof ink on a sheet made of material that will be acceptable to the Chowan County Register of Deeds Office for recording purposes, and having the following dimensions, 18" x 24". When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate references to other sheets of the subdivision. The scale of the plat shall be at one (1) inch equals not more than one hundred (100) feet. The applicant shall also submit five prints of the plat. *(Amended 5/12/92)*

(c) In addition to the appropriate endorsements, as provided in Section 80, the final plat shall contain the following information:

(1) The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the Chowan County Registry;

(2) The name of the subdivision owner or owners;

(3) The township, county and state where the subdivision is located; and

(4) The name of the surveyor and his registration number and the date of survey.

(5) The scale according to which the plat is drawn in feet per inch or scale ratio in words or figures and bar graph;

(6) All of the additional information required by NCGS § 47-30 and NCGS § 39-32.3.

(d) The administrator shall approve the proposed plat unless he finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this chapter or that the final plat differs substantially from the plans and specifications approved in conjunction with the conditional use permit that authorized the development of the subdivision.

(e) If the final plat is disapproved by the administrator, the applicant shall be furnished with a written statement of the reasons for the disapproval.

(f) Approval of a final plat is contingent upon the plat being recorded within sixty days after the approval certificate is signed by the administrator or his designee.

Section 80 Endorsements on Major Subdivision Plats.

All major subdivision plats shall contain the endorsements listed in Subdivisions (1), (2), and (3) herein. The endorsement listed in Subdivision (4) shall appear on plats of all major subdivisions located outside the corporate limits of the town but within the planning jurisdiction.

(1) <u>Certificate of Approval</u>

I hereby certify that all streets shown on this plat are within the Town of Edenton's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within twelve months after the date below) has been assured by the posting of a

performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter 21 of the Edenton Town Code, and therefore this plat has been approved by the Edenton land use administrator, subject to its being recorded in the Chowan County Registry within sixty days of the date below.

_____ _____
Date Land Use Administrator

(2) Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property described hereon, which property is located within the subdivision regulation jurisdiction of the Town of Edenton, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Edenton Town Council in the public interest.

_____ _____
Date Owner

_____
(Notarized)

(3) Certificate of Improvements

If the required improvements are completed prior to the submission of the Final Plat, the following certificate shall be lettered on the plat above the signature of the Town Engineer:

"Know all men by these present, that I hereby certify that on this, the ___ day of _____, 20___, all of the improvements as required by the Edenton subdivision regulations have been installed by the developer in an approved manner."

If the required improvements are not completed prior to the submission of the Final Plat, the following certificate shall be lettered on the plat above the signature of the City Manager:

"Know all men by these presents, that I hereby certify performance guarantees sufficient to secure the amount of $_____ has been posted with the Town of Edenton by the developer, thereby guaranteeing that all improvements required by the Edenton subdivision regulations shall be constructed. Such improvements shall be completed within ___ days from the date of this statement."

(4) Flood Damage Prevention Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Town of Edenton Flood Damage Prevention Ordinance requirements and is approved by Edenton for recording in the Register of Deeds office.

_____ _____

Date Land Use Administrator

(5) Certificate of Survey and Accuracy

I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page ____, etc.) (other); that the boundaries not surveyed are clearly indicted as drawn from information found in Book _____, page _____; that the ratio of precision as calculated is 1: _____; that this plat was prepared in accordance with NCGS 47-30, as amended. Witness my original signature, registration number and seal this _____ day of _____, A.D., 19_____.

Seal or Stamp

_____

Surveyor

_____

Registration Number

The certificate of the Notary shall read as follows:
'North Carolina, _____ County

I, a Notary Public of the County and State aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 19___.

Seal or Stamp

_____
Notary Public
My Commission expires *(Amended 6/13/95)*

(6) Division of Highways District Engineer Certificate

I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the North Carolina Department of Transportation, Division of Highways, for acceptance of subdivision streets on the state highway system for maintenance.

_____ _____
Date District Engineer

(7) CAMA Consistency Certificate

I hereby certify that this subdivision conforms to the standards of the North Carolina Coastal Area Management Act of 1974 and is _____ / is not _____ located within any area of environmental concern.

_____ _____
Date Local Permit Officer

(8) Offer of Dedication

Town Council approved offer of dedication by resolution adopted at meeting on _____, 20___.

_____ _____
Date Town Clerk

Section 81 Plat Approval Not Acceptance of Dedication Offers.

Approval of a plat does not constitute acceptance by the town of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the town may accept any such offer of dedication by resolution of the Council or by actually exercising control over and maintaining such facilities.

Section 82 Guarantees

(a) *Performance Guarantees*. In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat approval, the Town of Edenton may enter into an agreement with the subdivider whereby the subdivider shall agree to complete any remaining required improvements as specified by the approved preliminary plat for that portion of the subdivision to be shown on the final plat within a mutually agreed upon specified time period not to exceed one (1) year. Once agreed upon by both parties and the security required herein is provided, the final plat may be approved by the Board of Commissioners, if all other requirements of this Ordinance are met. The town shall require a certified cost estimate from a licensed contractor or engineer for the cost of completion of such improvements.

(1) The subdivider shall provide one of the following Performance Guarantees, elected at the subdivider's discretion, in lieu of installation:

(i) Surety bond issued by any company authorized to do business in this State.

(ii) Letter of credit issued by any financial institution licensed to do business in this State.

(iii) Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(2) The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgment by the town that the improvements for which the performance guarantee is being required are complete. If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. The form of any extension shall remain at the election of the developer.

(3) The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(4) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.

(5) The town may release a portion of any security posted as the improvements are completed and recommended for approval by the UDO Administrator. Within thirty (30) days after receiving the UDO Administrator's

recommendation, the Board of Commissioners shall approve or not approve said improvements. If the Board of Commissioners approves said improvements, then it shall immediately release any security posted.

(6) For subdivisions which are underwritten or constructed with federal funds and for which the specifications for facilities or improvements are equal to or of a higher standard than those required by the town, the bond-posting requirement may be waived and the final plat approved prior to completion of facilities or improvements.

(b) *Defects Guarantees*. The owner of the subdivision shall require the contractor constructing streets, curbs, gutters, sidewalks, drainage facilities, and/or water and sewer lines to give bond guaranteeing the work against defects.

(c) *Claims*. No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this section or in the proceeds of any such performance guarantee other than the following:

(1) The local government to whom such performance guarantee is provided.

(2) The developer at whose request or for whose benefit such performance guarantee is given.

(3) The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

Section 83 Maintenance of Dedicated Areas Until Acceptance.

As provided in Section 68, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

Section 84 Commercial Subdivisions.

Major subdivisions of land, in any zoning district, are allowed by conditional use permit. Thus, a proposed commercial or industrial subdivision should be reviewed according to the procedures outlined for a conditional use permit. Building development on an individual lot within a commercial or industrial subdivision approved through the conditional use permit process would, at the time of actual building construction, require a separate approval. Thus, parking, signage, buffering, lot size, etc. requirements for each lot would be determined based upon the specific proposed use of the lot. All uses must conform to the underlying zone, and table of permissible uses. *(Amended 2/09/93)*

Sections 85 Subdivisions in the Historic District.

All subdivision of property within the locally designated Historic District is subject to the review of the Edenton Historic Preservation Commission and may not be permitted without issuance of a Certificate of Appropriateness according to the procedures outlined in Article XI, Section 168 Historic Overlay District Requirements. *(Amended 08/09/2005)*

Sections 86 through 90 Reserved.