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SECTION 5.1 GENERAL SUBMITTAL REQUIREMENTS

- A. Unless otherwise specified in this Ordinance, applications for review and approval may be initiated by: (i) the owner of the property that is subject to the application; or, (ii) the owner’s authorized agent(s).
- B. When an authorized agent files an application on behalf of a property owner, the agent shall provide the Administrator with written documentation that the owner of the property has authorized the filing of the application.
- C. In certain instances, i.e., revocation of a conditional use permit, a governing board may initiate an application. When such a petition is filed, it is being done without prejudice toward the final outcome.
- D. All uses, signs, structures, buildings, or other improvements addressed by this Ordinance shall be in compliance with this Ordinance and all other applicable federal, State, and local codes and ordinances as regulated and enforced by those agencies.



SECTION 5.2 SITE PLAN REVIEW

The purpose of these requirements is to promote orderly development in the City of Lowell and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. To achieve these ends and to assure compliance with all applicable requirements of this ordinance, site plans for certain uses or land shall be submitted to and reviewed by the Land Use Administrator prior to the issuance of a zoning permit.

SECTION 5.2.1 DEVELOPMENT AND USES REQUIRING A SITE PLAN

Site plan review shall be required for all uses and development other than single or two family dwelling units and their accessory structures. Provided however, the Administrator may waive site plan requirements when he determines that the submission of a site plan or parts thereof would serve no useful purpose.

SECTION 5.2.2 PROCEDURE FOR PREPARATION

- A. Site plans or any portion thereof shall be prepared by an engineer, architect, landscape architect or land surveyor who is authorized by the State of North Carolina to practice as such;
- B. Site plans shall be prepared to a scale of one inch equals fifty feet (1" = 50') or larger;
- C. A site plan may be prepared in one (1) or more sheets to show clearly the information required by this section and to facilitate the review and approval of the site plan;
- D. All horizontal dimensions shown on the site plan shall be in feet; Decimal fractions of a foot to the closest one hundredth of a foot (0.00); and all bearings in degrees, minutes and seconds;
- E. Every site plan shall show the name and address of the owner or developer, the north arrow and reference, the date, the scale of the drawing, and the number of sheets. In addition, it shall reserve a blank space three (3) inches wide by five (5) inches long for the use of the approving authority;
- F. The number of required copies of the site plan for submittal shall vary depending on the use.



SECTION 5.2.3 REQUIRED INFORMATION ON SITE PLANS

- A. Location of the tract on an insert map at a scale of not less than one inch equals two thousand feet (1"=2000') scale, the north arrow, and such information as the names and numbers of adjoining roads, streams, subdivisions, or other landmarks, sufficient to clearly identify the location of the property.
- B. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor or engineer.
- C. The location and dimensions of any sidewalks and curbs and gutters to be installed along public street frontages.
- D. All existing property lines; existing streets and easements; their names, numbers and widths; the location and size of exiting sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses; and any other prominent physical features on or adjoining the tract.
- E. Existing zoning and zoning district boundaries on the tract and on adjoining properties.
- F. The present use of all adjoining properties.
- G. Existing topography with contours drawn at two (2) foot intervals. This requirement for topography information may be waived by the Administrator for developments smaller than one (1) acre in size and where he determines that there are insufficient topography changes to make such information necessary.
- H. Proposed changes in zoning, if any.
- I. The proposed location, general use, number of floors, height and floor area for each building; and where applicable, the number, size and type of dwelling units.
- J. All off-street loading spaces, parking and walkways indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided.
- K. All proposed water and sanitary sewer facilities, indicating all pipe sizes, types and grades and where connection is to be made to City or other utility systems; all proposed gas lines and other utilities and their easements.



- L. The location, dimensions and character of construction of proposed streets, alleys, driveways; and the location, type and size of vehicular entrances to the site.
- M. Proposed finished grading at two (2) foot intervals and / or by spot elevations. This requirement may be waived in the same manner as in Section 5.2.3G.
- N. Provisions for the adequate disposition of natural and storm water indicating location, sized, types and grades of ditches, catch basins, pipes, and connections to existing drainage systems or suitable outlet.
- O. Provisions for adequate control of erosion and sedimentation indicating the proposed temporary and permanent control practices and measures that will be implemented during all phases of clearing, grading and construction.
- P. Delineation of any flood hazard areas as shown on the FEMA maps.
- Q. Location, type, size and height of fencing, retaining walls and screen planting where required under the provision of this or any other City, State or Federal ordinance.
- R. The location of wooded areas on the property and the location of trees and wooded areas that will be retained.
- S. The location and dimensions of proposed recreation areas, open space and required amenities and improvements.
- T. The location, character, size, height and orientation of proposed signs and outdoor lighting systems.
- U. Verify Thoroughfare dedication per section 9.19 if density credits are to be applied.

SECTION 5.2.4 COMPLIANCE WITH OTHER REGULATIONS

All features and elements of the site plan shall in all respects conform to all other applicable provisions of this Ordinance and the standards of the Ordinances of Lowell; and the standards and requirements of the NCDOT and the NC Department of Health and Environment, as regulated by those agencies.



SECTION 5.2.5 PROCEDURE FOR PROCESSING

The Administrator shall review all site plans submitted to his office. The Administrator shall verify the completeness and compliance of the site plan and circulate the site plan to the relevant County, City and State agencies for comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended. The reviewing agencies and officials may include, but not limited to those on the TRC.

Except under abnormal circumstances, within twenty-one (21) working days of the receipt of the site plan, the Administrator shall approve, subject to conditions, or disapprove the site plan and notify the applicant in writing of the action taken. In cases when the site plan approval is subject to conditions or when the site plan is denied approval, the Administrator shall set forth in writing any conditions or changes which might make the site plan acceptable.

SECTION 5.3 ZONING PERMIT

No building, sign or other structure (except as otherwise noted in this Ordinance) shall be erected, moved, extended or enlarged or structurally altered, nor shall any excavation or filling of any lot for the construction of any building be commenced until the Administrator has issued a zoning permit for such work in accordance with the fee schedule established by the City Council.

- A. Expiration of Zoning Permit: Any zoning permit issued in accordance with this Ordinance will lapse and become invalid unless the work for which it was issued is started within six (6) months 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.
- B. Records: The Administrator shall maintain a record of all zoning permits on file at his office, and copies shall be made available upon request to interested parties.
- C. Conditions for Approval: 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 differs from that authorized shall be deemed a violation of this Ordinance and shall be punishable as indicated under Chapter 18 of this Ordinance.



- D. Zoning Permit Not Required: Notwithstanding any other provisions of this Ordinance, no zoning permit is necessary 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. Sign, as indicated in Chapter 12 of this Ordinance.
 4. Mailboxes, newspaper boxes, walls, fences, birdhouses, flag poles, pump houses, doghouses, and accessory structures that do not require a Building Permit.
- E. In cases where a preexisting zoning violation has been cited in accordance with Section 18.1, a new zoning permit, for work not related to the violation, shall not be issued until the preexisting violation is brought into compliance.
- F. All features and elements of the site plan shall in all respects conform to all other applicable provisions of this Ordinance and the standards of the Ordinances of Lowell; and the standards and requirements of the NCDOT and the NC Department of Health and Environment, as regulated by those agencies.

SECTION 5.4 BUILDING PERMIT

No structure that is governed by the State Building Code may be erected, added to, structurally altered, moved, occupied or demolished until the Gaston County Building Inspections Department has issued a building permit for such work. A building permit shall be issued only for work that conforms to the requirements and standards of this Ordinance (and all other applicable ordinances) and the terms and conditions of any other permits, approvals, or variances granted pursuant to this Ordinance.

SECTION 5.5 ZONING CERTIFICATE OF COMPLIANCE

5.5.1 PURPOSE

- A. No building or structure hereafter erected or structurally altered or changed in use shall be used or occupied until the Administrator has issued a zoning certificate of compliance. The zoning



certificate of compliance shall state that the building or portion of a building or lot is in compliance with the provisions of this Ordinance.

- B. Application for a zoning certificate of compliance can be made simultaneously with a certificate of occupancy.

5.5.2 APPLICATION FOR A ZONING CERTIFICATE OF COMPLIANCE

A zoning certificate of compliance may only be issued after written application for same has been made in which the applicant must state that the building or structure erected or altered or use of the lot in question complies in all respects with this Ordinance and the zoning permit previously issued. An application for a zoning certificate of compliance shall include a scaled, dimensional drawing prepared and certified as accurate by a surveyor or engineer registered with the State of North Carolina which affirmatively shows that the building or structure was erected or altered, or that the lot in question is being used in compliance with this Ordinance and the zoning permit previously issued. Such scaled and certified drawing shall not be required under the following conditions:

1. The certificate of compliance is for a change of use only with no new building expansions or construction.
2. The certificate of compliance is for an accessory residential structure.
3. The certificate of compliance is for a principal building construction or expansion and such expansion or construction is less than five-hundred (500) square feet in area.
4. The certificate of compliance is for a new or expanded single- or two-family dwelling (including manufactured homes) and the tract that the new or expanded dwelling is on is five (5) acres or greater in area, and the principal structure is located one-hundred (100) feet or greater from any of the boundaries of the tract.
5. Other situations where the Administrator deems that such drawing would serve no meaningful purpose and that there are other means for demonstrating compliance with the regulations contained in this Ordinance.



SECTION 5.6 RESERVED

SECTION 5.7 SIGN PERMIT

5.7.1 PERMIT REQUIREMENTS

- A. For any sign for which a permit is required (refer to Section 12.4), the following information shall be submitted to the Administrator in order for a sign permit to be issued:
1. An accurate and scaled depiction of the lot upon which the sign is to be located.
 2. Location of all buildings, driveways, and required landscaped / buffered areas on such lot.
 3. Location, type, size and height of all proposed signs.
 4. Location, type, size and height of all existing external signs. Wall signs shall be accompanied by a drawing showing the proposed location of the wall sign on the building.
 5. Other information deemed necessary by the Administrator to ensure that the sign(s) for which a permit is being requested, will be in compliance with all applicable sections of this Ordinance.
- B. Notwithstanding the above, the Administrator shall have the ability to waive or modify any one of the above requirements when strict compliance would serve no practical or useful purpose.

5.7.2 PERMIT REVIEW PROCEDURES

- A. The Administrator shall endeavor to review the sign permit in an expeditious manner and will notify the applicant in writing if a decision on the sign permit cannot be rendered within twenty-one (21) working days of submittal.
- B. The Administrator may issue a sign permit concurrently with site plan approval (refer to Section 5.2) and / or zoning permit approval (refer to Section 5.3) for the same development.



SECTION 5.8 TEMPORARY USE PERMIT

5.8.1 PURPOSE

Temporary use permits are a mechanism to allow a use on a short-term basis and to permit certain seasonal and transient uses that otherwise may not be allowed. Certain temporary uses are allowed subject to the issuance of a temporary use permit by the Administrator; others are allowed without a permit but are nonetheless subject to all applicable regulations contained herein.

5.8.2 TABLE OF ALLOWED TEMPORARY USES

- A. All temporary uses will be subject to the requirements contained in Section 5.8.3. Table 5.8-1 shows a list of allowed temporary uses is shown below. Additional supplemental requirements for individual temporary uses are also indicated and are found in Section 5.8.4.
- B. Otherwise, if a temporary use is not listed in Table 5.8-1 may only be granted a zoning permit only after: (i) a public hearing has been conducted by the Board of Adjustment, and (ii) the Board of Adjustment has made the following determinations:
 - 1. The proposed use will not materially endanger the public health, welfare and safety; and
 - 2. The proposed use will not have a substantial negative effect on adjoining properties.

In approving such permit, the Board of Adjustment may authorize conditions regarding duration of the use, hours of operation, signage, lighting, etc. and such conditions shall be made part of the permit issued. Violations of such conditions shall be considered a violation of this Ordinance.



TABLE 5.8-1 ALLOWED TEMPORARY USES		
TEMPORARY USE	PERMIT NEEDED?	OTHER REGULATIONS
Real Estate Sales Office/Model Sales Home	Yes	5.8.4 (A)
Sale of Goods Other Than Agricultural Products	Yes	5.8.4 (B)
Sale of Agricultural Products Grown Onsite	No	5.8.4 (D)
Sale of Agricultural Products Grown Off-site	Yes	5.8.4 (C)
Garage/Yard Sales	Yes	5.8.4(E)
Special Outdoor Event	Yes	5.8.4 (F)
Construction Trailers	Yes	5.8.4 (G)
Temporary RV's and Manufactured Homes	Yes	5.8.4 (H)
Temporary RVs for Workers for Construction Projects	Yes	5.8.4 (I)

5.8.3 GENERAL REQUIREMENTS FOR TEMPORARY USES

Unless otherwise specified, all temporary uses shall be subject to the following requirements:

- A. All temporary signs associated with the temporary use shall be removed when the activity ends.
- B. The temporary use may not violate any applicable conditions of approval that apply to a principal use on the site.
- C. If the site is undeveloped, it shall contain sufficient land area to allow the temporary use to occur, as well as any required parking and traffic movement that may be associated with the temporary use without disturbing any required landscaping, screening, natural plantings or other required protective resources.



- D. If the site is developed, the temporary use shall be located in an area that does not negatively impact existing buffers, landscaped areas, required natural plantings, traffic and pedestrian circulation or significantly impact parking space availability. (**NOTE:** The Administrator shall have the authority to allow the placement of certain temporary uses in required off-street parking areas and may allow that use to occur upon determining that the use, given its nature, location, time-frame, and anticipated amount of pedestrian or vehicular traffic, would not unduly cause harm by locating in such an area and that existing off-street parking provided on-site is sufficient to accommodate both the existing principal and temporary uses simultaneously.)
- E. Tents and other temporary structures shall be located so as to not interfere with the normal operation of any permanent use on the site.
- F. In approving a temporary use permit, the Administrator may impose other requirements that he/she deems reasonable and necessary to ensure that:
 - 1. The proposed use will not endanger the public health, welfare or safety; and,
 - 2. The proposed use will not have a substantial negative effect on adjoining or nearby properties.
- G. Prior to the issuance of a temporary use permit, the applicant shall provide proof of the property owner's or an agent of the property owner's permission to occupy such property for the requested temporary use.
- H. All temporary uses shall comply with the permit requirements contained in Table 5.8-1 and conditions contained in Section 5.8.4 and any other requirements applicable to the use in question.
- I. Sketch Plan showing setbacks, parking, ingress / egress, and other required information as determined by the Administrator.
- J. Unless otherwise noted, setbacks for any structures housing the temporary use shall be the same as provided for the principal structure. Notwithstanding, the Administrator may grant relief to the setback requirements on a case-by-case basis, upon determination that:
 - 1. The placement of the structure would be harmony with other structures both on the lot in question and nearby lots;



2. Placement of the structure at the required setback would serve no useful purpose; and,
3. The placement of the structure at an alternative location on the lot would not impact the public's health, welfare and safety.

5.8.4 SPECIFIC REGULATIONS FOR CERTAIN TEMPORARY USES

A. Temporary Real Estate Sales Office / Model Sales Home

1. If a modular home is used, it shall have been built to the applicable commercial building code standard. Manufactured homes built to HUD standards shall not be used as a sales office. All such sales offices shall be in compliance with all applicable Building Code standards.
2. The structure shall be located on an approved lot within a subdivision containing twenty-five (25) lots or more as indicated in the recorded final plat; such structure shall be used for the sale of the lots within that subdivision.
3. If the structure is permanently placed on the lot, it must meet applicable setback regulations for the lot; otherwise, the Administrator shall have the ability to waive or modify one (1) or more setback requirements for the placement of the temporary structure.
4. Off-street parking for at least three (3) off-street vehicles shall be provided. Such spaces need not be paved; in addition, one (1) paved handicapped space shall be required in accordance with North Carolina Building Code.
5. A wall sign, no greater than sixteen (16) feet in area may be used.
6. Upon termination of the temporary real estate office or model sales home, the structure shall be converted into a permanent residential use or be removed from the property.
7. The maximum duration for such uses is as follows: Temporary Real Estate Sales Offices – One (1) Year; Model Homes – Three (3) Years. The Administrator shall have the authority to issue renewals for each in one (1) year increments, provided substantial progress is being made in the selling and / or marketing of the lots / homes within the subdivision.



B. Sale of Goods Other Than Agricultural Products AND Other Than “Garage/Yard Sales”

1. Receipt of a municipal “privilege or business license” shall not exempt a merchant from needing to obtain a temporary use permit for such sales.
2. The proposed display and/or sales of goods shall not occur within two-hundred (200) linear feet of an occupied residential dwelling unit located in a Residential zoning district.
3. The temporary sales of goods for civic, charitable, educational or religious purposes shall only be allowed on a lot located in a Commercial or Office zoning district or on a developed lot in a Residential zoning district that contains a civic, public, charitable, educational or institutional use (e.g., church, school, etc.) Provided however, the Administrator may allow such sales to take place on public property including: public parks, public street rights-of-way, or any other political subdivision of the State of North Carolina. Approval from the City Manager, as well as other public officials, as deemed necessary by the Administrator shall also be required.
4. Such sales shall be allowed from 8:00 AM to 10:00 PM, EST, only or, if there is a principal use on the lot, the same hours of operation as the principal use, whichever is more restrictive. The Administrator may allow exceptions to these regulations for lots that contain principal uses with limited hours of operations.
5. Sales at any one site are allowed a maximum of thirty (30) days per calendar year.

C. Sales of Agricultural Products Grown Off-Site

1. Sales may occur on a vacant or developed lot in a Commercial or Office zoning district.
2. Receipt of a municipal “peddler’s or business license” shall not exempt a merchant from needing to obtain a temporary use permit for such sales.
3. Sales at any one (1) site are allowed a maximum of sixty



(60) days during any calendar year. Sales of food products for greater than sixty (60) days per calendar year shall require the issuance of a conditional use permit per Section 5.11 of this Ordinance. All procedures contained in Section 5.11 shall be followed except that the following findings shall substitute for those found in Section 5.11.5(B):

- a. The proposed use will not endanger the public health, welfare or safety.
- b. The proposed use will not have a substantial negative effect on adjoining or nearby properties.

4. Such sales shall be allowed from 8:00 AM to 10:00 PM, EST, only or, if there is a principal use on the lot, the same hours of operation as the principal use, whichever is more restrictive. The Administrator may allow exceptions to these regulations for lots that contain principal uses with limited hours of operations.

D. Sales of Agricultural Products Grown On-Site

1. For purposes of this section the term “on-site” shall mean the lot upon which the sales take place and any other lots in Lowell owned by the party(ies) or leased (with a one (1) year minimum lease) upon which the sales occur.
2. Sales may occur on any lot upon which agricultural products are grown, regardless of the underlying zoning district.
3. Such sales shall be allowed during daylight hours only.
4. Sales at any one (1) site are allowed a maximum of one hundred eighty (180) days during any calendar year. Sales of food products for greater than one hundred eighty (180) days per calendar year shall require the issuance of a conditional use permit per Section 5.11 of this Ordinance. All procedures contained in Section 5.11 shall be followed except that the following findings shall substitute for those found in Section 5.11.5(B):
 - a. The proposed use will not endanger the public health, welfare or safety.
 - b. The proposed use will not have a substantial negative effect on adjoining or nearby properties.



E. Garage/Yard Sales UDO SECTION 5.8.4 SPECIFIC REGULATIONS FOR CERTAIN TEMPORARY USES: AMENDED BY CITY COUNCIL 05/12/2015

1. Such sales shall be limited to Saturdays only, between the hours of 6:00 a.m. and 1:00 p.m.
2. Sales shall be limited to household goods.
3. Sales shall be allowed on any lot in a Residential zoning district or on any public, charitable, educational or institutionally developed lot in other zoning districts.
4. Garage/yard sales may take place on any one (1) site no greater than four (4) days per calendar year.
5. A permit will not be granted where a registered sex offender is listed as a resident of the household.
6. A permit shall be obtained from City Hall at least 24 hours prior to the sale.
7. Applicant shall adhere to sign regulations as set forth in Section 12.2 S

F. Special Outdoor Events

1. The Administrator shall submit the temporary use permit application for the special event to local police, fire and emergency service providers and to the City Manager for review and comment. Such persons and agencies will be given up to twenty-one (21) days to provide comment. Based on such comments, the Administrator shall approve, approve with fair and reasonable conditions or disprove the permit.
2. If the event is to last for greater than nine (9) consecutive days or if such events are to occur on any particular lot for greater than nine (9) days in a calendar year, a conditional use permit per Section 5.11 shall be required. All procedures contained in Section 5.11 shall be followed except that the following findings shall substitute for those found in Section 5.11.5(B):
 - a. The proposed use will not endanger the public health, welfare or safety.
 - b. The proposed use will not have a substantial negative effect on adjoining or nearby properties.
3. Events may be held between 8:00 AM to 10:00 PM, EST,



unless, given the nature of the event, the Administrator (or the approval body, in the issuance of a conditional use permit) allows for other hours of operation if he determines that such extended hours will not have a substantial negative impact upon adjoining and nearby properties and that all necessary public safety concerns have been addressed.

4. Such special events may take place on any one (1) site no greater than seven (7) events per calendar year.

G. Construction Trailers

Construction trailers shall be allowed as follows:

1. They shall only be located at a building site where there is a valid building permit.
2. They shall be located at least ten (10) feet off any street right-of-way or property line.
3. Construction trailers shall be removed within ten (10) days of the issuance of a certificate of occupancy for the lot or development in question.

SECTION 5.9 HOME OCCUPATION PERMIT

5.9.1 PURPOSE

A home occupation permit shall be required to ensure that a proposed home occupation is developed in accordance with all applicable provisions of this Ordinance. Lists of permissible customary and home occupations are found in Section 8.1.14 and 8.1.15.

5.9.2 APPLICATION PROCEDURES

- A. An application for a home occupation shall be filed with the Administrator on a form so prescribed by the City. The form shall be complete and accompanied by a fee, in accordance with the most recently adopted fee schedule approved by the governing board, in order to be reviewed by the Administrator.



- B. The Administrator shall endeavor to review the permit in an expeditious manner and will notify the applicant in writing if a decision on the permit cannot be rendered within fifteen (15) working days.
- C. Failure to adhere to an approved permit shall be deemed a violation of this Ordinance.

SECTION 5.10 VESTED RIGHTS CERTIFICATE

Pursuant to NCGS 160A-385.1 and notwithstanding any other provision of this Ordinance or amendment thereto, a landowner may apply for a vested rights certificate which shall entitle said landowner to develop property in accordance with an approved site specific development plan. The procedure for establishing a vested right is set forth in this section.

5.10.1 DEFINITIONS

For the purpose of this section only, the following definitions shall apply:

- A. Landowner
Any owner of a legal or equitable interest in real property, including such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site-specific development plan in the manner allowed by this Ordinance.
- B. Property
All real property is subject to the zoning regulations of this Ordinance.
- C. Vested Right
The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

5.10.2 SUBMISSION OF A SITE SPECIFIC DEVELOPMENT PLAN

- A. To apply for vested right, a landowner shall first submit to the Administrator a site-specific development plan. The plan shall be submitted in completed form to the Administrator and processed in



the same manner, except as herein provided, as a conditional use permit per Sections 5.11 of this Ordinance.

- B. Once a public hearing has been held, the governing board shall issue the vested rights certificate for a period of no less than two (2) years if it has evaluated an application and determined that:
 - 1. The use meets all required specifications of this Ordinance, and
 - 2. The use, as approved, will protect the public health, safety and welfare. Conditions, if any, placed on the site-specific development plan by the City shall be adequate to satisfy this requirement.
- C. If the City issues a vested right certificate for site specific development plan for a period of more than two (2) years and up to five (5) years, this shall be based on one (1) or more factors so described in Section 5.10.3.
- D. If the use or development for which a vested rights certificate is submitted is a conditional use, the City may approve the vested rights certificate at the same time with the approval of the conditional use permit. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

5.10.3 EFFECT OF APPROVAL

- A. The effect of approval of a vested rights certificate shall be to vest the site specific development plan for a period of two (2) to five (5) years from the date of approval. Any vesting for a period of greater than two (2) years shall be at the request of the applicant and where the governing board determines that such greater period of vesting is needed 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) the market of conditions, building permits for all phases of the development cannot be secured within two (2) years.
- B. An approved vested right certificate shall confer upon the landowner a vested right, the right to undertake and complete the development and use of said property under the terms and conditions of the 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 vested right previously accorded.

- C. A vested right, once established as herein provided, shall preclude any zoning action by the City that would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development plan except under the following conditions:
1. The affected landowner provides written consent to the - City of his desire to terminate the vested right; or,
 2. The City determines, after having advertised and held a public hearing per Section 5.16.3C of this Ordinance, 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 site specific development plan; or,
 3. Compensation is made by the City 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 City determines, after having advertised and held a public hearing per Section 5.16.3C of this Ordinance, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the City of the site specific development plan; or,
 5. Upon the enactment or promulgation of a State or Federal law or regulations that precluded development as contemplated in the site-specific development plan. In such case the City may [after having advertised and conducted a public hearing per Section 5.16.3C of this Ordinance] modify the affected provisions upon a finding that the change in State or Federal law has had a fundamental effect on the plan.
- D. Once a vested right certificate is granted for a particular site-specific development plan, nothing in this Ordinance shall preclude the City from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original



approval, provided such reviews and approvals are not inconsistent with the original approval.

5.10.4 REVOCATION OR EXPIRATION OF A VESTED RIGHT

In addition to the revocation provisions cited in Section 5.10.3, a revocation of a vested rights certificate may occur if the governing board determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the UDO. The vested right shall otherwise expire at the end of the approval period established by the governing board.

5.10.5 REVOCATION OF BUILDING PERMIT

A building permit issued by Gaston County may not be revoked because of the running of time on a piece of property for which a vested rights certificate has been approved and the vested right period has not otherwise expired.

5.10.6 ESTABLISHMENT OF VESTED RIGHTS

The establishment of a vested right on a piece of property for a site specific development plan shall not preclude the City from establishing and putting into place one (1) or more overlay districts which may impose additional restrictions on said property, provided such restrictions do not affect the allowable type or intensity or use. Otherwise such regulations shall become effective with respect to the subject property upon the expiration or termination of the vested right certificate. The City may also enforce on the property additional regulations (adopted during the time the vested right certificate was in effect) that are general in nature and applicable to all property subject to the regulations of this Ordinance.

SECTION 5.11 CONDITIONAL USE PERMIT

NOTE: The following procedures pertain to conditional use permits that are not associated with a Parallel Conditional Use (PCUP) District. Refer to Section 5.16.4 for procedures to be followed in association with Parallel Conditional Use (PCUP) District requests.

5.11.1 PURPOSE

There are many uses identified in Table 7.1-1 that are “uses by right” and that are allowed “by right” in each general zoning district subject to the use



meeting certain area, height, yard and off-street parking and loading requirements. In addition to these uses, there are some uses in these districts that are “conditional uses” and are subject to the issuance of a conditional use permit. The purpose of having conditional uses is to ensure that these uses are compatible with surrounding development and are in keeping with the purposes of the general zoning district in which they are located. There may be some uses that prior to adoption of this Ordinance were allowed as “uses by right” but now are allowed subject to a conditional use permit. For these uses, any expansion or modification to the uses would be subject to the issuance of a conditional use permit.

5.11.2 PROCEDURES

A pre-application meeting between the applicant and the Administrator shall be required in order to familiarize the applicant of the procedure for securing approval of a conditional use permit. The Administrator shall accept no conditional use permit application for review without such meeting having first occurred unless the Administrator determines that such meeting would not serve any meaningful purpose and waives the meeting requirement.

Procedures for application submittal are as follows:

- A. A complete conditional use permit application that is signed by the applicant and which is accompanied by a submittal fee (in accordance with a fee scheduled approved by the Governing Board) shall be filed with the Administrator.
- B. The application shall be accompanied by a drawing or plan, drawn to scale, that includes or is accompanied by the following:
 - 1. Name, address and phone number of the property owner (or his agent) and the property identification number of the property. (Note: The property owner or his authorized agents are the only two parties who may initiate a request for a conditional use permit).
 - 2. A boundary survey and vicinity map, showing the property's total acreage, general location in relation to adjoining streets, railroads and/or waterways, date and north arrow. The zoning classification of the property in question and contiguous properties shall also be shown. (In lieu of the boundary and survey maps, one (1) or more up-to-date tax maps depicting the area in question may be submitted. Any required drawing or depiction of the proposed development



or use shall not appear on the tax maps but rather shall appear on the drawing or plan.)

3. The name and addresses of all owners, tax parcel numbers and existing land use(s) of all contiguous properties.
4. Proposed use of all land and structures including the number of residential units proposed, if any, and total square footage of nonresidential development.
5. Location of all proposed structures, their approximate area and exterior dimensions, height, and proposed number of structures.
6. A description of all screening and landscaping required by the UDO and/or proposed by the applicant; the delineation of any wooded, landscaped or grassed areas existing prior to development and proposed to remain on the property once the development is completed.
7. All existing easements, reservations and rights-of-way.
8. Proposed phasing, if any, and approximate completion time for the project.
9. Delineation of areas within the regulatory floodplain as shown on the official Federal Emergency Management Agency (FEMA) flood hazard boundary maps for Gaston County.
10. Traffic, parking and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets.
11. A list, if any, of all additional development conditions or standards that differs from those that would normally apply to that use. Only conditions that exceed the UDO minimum standards can be considered and listed by the applicant, except those minor modifications listed in Table 5.15-1(B).
12. The Administrator reserves the right to waive the depiction of some or all of the information contained in paragraphs 5 through 10 above, when, in his opinion, such information would serve no meaningful purpose for the particular conditional use being requested. Notwithstanding, if either the Board of Adjustment determines that additional information as set forth in paragraphs 5 and 10 above of this



subsection is needed to render a recommendation or decision on the application, they may require the applicant to submit such additional information.

- C. In the course of evaluating the proposed conditional use, City Council may request additional information from the applicant in order to assist in the review process. A request for such additional information shall stay any further consideration of the application by such agency. Such additional requested information may include (but shall not be limited to) the following:
1. Stormwater drainage plan.
 2. Existing and proposed topography at five (5) foot contour intervals or less.
 3. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
 4. Proposed number, type, and location of signs.
 5. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. Information requested to be a part of the impact study may include:
 - a. Existing traffic conditions within the study area boundary.
 - b. Traffic volumes generated by the existing and proposed development on the parcel, including the morning peak, afternoon or evening peak, and average annual daily traffic levels.
 - c. The distribution of existing and proposed trips through the street network.
 - d. Analyses of the capacities of intersections located within the study area boundary.
 - e. Recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way; and
 - f. Other pertinent information, including but not limited



to accidents, noise, and impacts of air quality and other natural resources.

6. Drawings of proposed building elevations.
7. An environmental impact statement that includes some or all of the following:
 - a. A cover sheet that provides, in summary form, a description of the proposed project;
 - b. A statement of purpose and need of the project;
 - c. For projects proposed by public entities, a list of alternatives of the proposed project;
 - d. A succinct description of the environment affected by the project;
 - e. A discussion of short and long term consequences of the project on the environment including any adverse environmental impacts which cannot be avoided; and,
 - f. A list of means that could be employed to mitigate any negative effects on the environment caused by this project.

D. Except as herein provided, no application shall be deemed complete unless it contains or is accompanied by all items listed in Section 5.11.2(B) and as may otherwise be required per Section 5.11.2(C) and a fee, in accordance with a fee schedule approved by the governing board for the submittal of conditional use permit applications. Said fee shall be waived for any application submitted by any official or agency acting on behalf of the City of Lowell or the State of North Carolina.

E. Any completed application submitted shall be heard by the appropriate Board for approval within one hundred-eighty (180) days. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.

5.11.3 PUBLIC HEARING NOTIFICATION

A. In order for a conditional use permit to be considered for approval, a public hearing must be held by the City Council. Any complete



application shall be submitted to the Administrator at least thirty (30) working days prior to the public hearing. This shall be sufficient time period for the staff to review the application and produce a staff report and to ensure that all applicable notification requirements can be met. Notification of the public hearing shall be as follows:

1. A notice shall be published in a newspaper having general circulation in Lowell 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.(GS 160A-388(a2)),
2. The Administrator shall post at least one (1) notice on the site for the proposed conditional use or an adjacent public street or highway right-of-way at least ten (10) days (but not more than 25 days) prior to the public hearing. Where multiple parcels are included within the application, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the date and time of the hearing, case number and contact telephone number to obtain more information. The notice shall be removed only after final action has been taken on the matter.
3. A notice of the public hearing shall be sent by first class mail by the Administrator to the applicant, owner of the property (if the owner did not initiate the hearing) and to all adjacent property owners (as defined in Section 2.7) at least ten (10) days (but not more than 25 days) prior to the public hearing.

5.11.4 PLANNING BOARD RECOMMENDATION

The Planning Board shall have a maximum of thirty (30) days from the date it initially met to review the application to forward a recommendation to the governing board. If a recommendation is not made during said time period, the application shall be forwarded to the governing board without a recommendation from the Planning Board Zoning Board of Adjustment. The City Council will act on this recommendation at the next regularly scheduled City Council meeting.

5.11.5 FINAL DECISION



A. Conduct of Public Hearing

1. The public hearing shall be held in a quasi-judicial manner. No vote greater than a majority vote shall be required to issue such permits. In approving an application for a conditional use permit, the City Council may attach fair and reasonable conditions to the approval. Such conditions shall be limited to those that address the impacts reasonably expected to be generated by the development or use of the site. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the zoning district in which the property is located [except for minor modifications as indicated in Table 5.15-1 and except where otherwise specifically allowed in this Ordinance. Such conditions may exceed any performance criteria or minimum requirements listed elsewhere in this Ordinance that pertain to that development. Such conditions shall be mutually agreeable by the City and the petitioner.

B. Burden of Proof

1. The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions that Subitems b and d below require. If any person submits competent, material, and substantial evidence allegedly contrary to any of the facts or conditions listed in Subitems a and c below, the burden of proof for overcoming such evidence shall rest with the applicant.
2. The City Council may only issue a conditional use permit if it has evaluated an application and found each of the following findings in the affirmative:
 - a. The use will not materially endanger the public health or safety if located where proposed and developed according to plan;
 - b. The use meets all required conditions and specifications;
 - c. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity; and,



- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted Land Use Plan and other plans for the physical development of the City as adopted by the City Council.

C. Additional Review Criteria / Findings of Fact

In addition to the findings of fact listed in Section 5.11.5(B), certain uses require the consideration of additional review criteria. Before a conditional use permit may be issued for said uses, the findings of fact listed in Section 5.11.5(B) along with those pertaining to that individual use must each be found in the affirmative. **[NOTE:** in certain instances the findings contained in Section 5.11.5(B) shall be substituted with those so indicated.]

D. Effect of Approval

1. If an application for a conditional use permit is approved, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the conditional use permit or (ii) develop any other use listed as a "permitted use" for the general zoning district in which it is located. Such approval, however, does not immediately authorize development activity, as the property owner will need to file for and secure a zoning permit, in accordance with Section 5.3, in order to proceed with development. The Administrator shall ensure that any development plans submitted with such zoning permit request are consistent with the terms and conditions of the conditional use permit approved for such property or for any other use by right allowed in the underlying zoning district. If, however, a conditional use permit is issued in relation to the rezoning of a property to a parallel conditional use (PCUP) district (refer to Section 5.16.4), the property may be used only for the development for which that conditional use permit was approved.
2. Following approval of a conditional use permit authorizing specified permitted uses and/or specified development conditions, the applicant shall file and record a copy of the conditional use permit in the office of the Register of Deeds for Gaston County. The conditional use permit shall become null and void unless it was recorded in such office within



one-hundred eighty (180) days of the granting of the conditional use permit and evidence to that effect has been presented to the Administrator. No zoning permit shall be issued on such property unless evidence of such recordation has been first presented to the Administrator.

E. Binding Effect

1. Any conditional use permit herein authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the City Council in accordance with Section 5.11.2 through 5.11.5 of this Ordinance. All conditions contained in the conditional use permit shall run with the land and shall be binding on the original applicants, their heirs, successors, and assigns, unless subsequently changed or amended as provided for herein. However, the Administrator may approve minor changes in the detail of the approved application. A “minor change” to the approved conditional use permit shall be deemed to be a change which:
 - a. Will not alter the basic relationship of the proposed development to adjacent property;
 - b. Will not increase the gross floor area of any nonresidential use by the smaller of ten (10) percent or ten-thousand (10,000) square feet (Note: Such limitations shall be cumulative and shall be based on the gross floor area of the conditional use permit as originally approved);
 - c. Will not decrease the off-street parking ratio below the minimum number of parking spaces required by this Ordinance;
 - d. Will not increase the height of any structure to the extent that additional usable floor space could be added; or
 - e. Will not result in an increase in the number of dwelling units constructed;
 - f. Will not alter the uses permitted.
2. Further changes to the development may be made only by the Zoning Board of Adjustment in accordance with Section 5.11.2 through 5.11.5 of this Ordinance.



3. No certificate of compliance for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for such particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit. In the event that only a segment of a proposed development has been approved, the certificate of compliance shall be issued only for that portion of the development constructed or used as approved.

F. Period of Validity of Conditional Use Permit

Unless the City Council issues a conditional use permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit (or certificate of compliance) within twenty-four (24) months from date of issuance of the conditional use permit. [NOTE: As indicated in Subsection D, the conditional use permit shall also become null and void unless filed by the applicant with the Register of Deeds within one-hundred eighty (180) days of permit approval.] If a building permit or certificate of compliance is not issued at the end of said time period, the conditional use permit shall automatically expire and shall be deemed rescinded. Such rescission shall not occur if the applicant has secured the vesting of a site development plan (in accordance with Section 5.10) for a period of greater than twenty-four (24) months.

5.11.6 TWELVE-MONTH LIMITATION ON REAPPLICATION

- A. If a request for conditional use permit is denied, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of denial. This waiting period shall not be applicable where the application for a conditional use permit is determined by the Administrator to be substantially different from (i.e., not similar to) the original application.
- B. Notwithstanding, the Administrator may allow resubmission of a similar application within said twelve (12) month period if it determines that since the date of action on the prior petition:
 1. There has been a significant change in the zoning district classification of an adjacent piece of property; or,
 2. The governing board has adopted a plan that changes public policy regarding how the property affected by the proposed conditional use should be developed; or,



3. Construction or expansion of a road, water line, sewer line, or other such facilities has occurred to serve the property and can accommodate comfortably the intensity of development allowed under the proposed classification; or,
4. There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the twelve-month restriction on a new petition; this, however, shall not include a change in the ownership of the subject property.

5.11.7 PETITION WITHDRAWAL

- A. An applicant who has submitted a complete application for a conditional use permit may withdraw the application prior to a final decision being rendered.
- B. If said petition is withdrawn at least two (2) working days prior to the City Council public hearing, a similar petition submitted by that property owner (or his agent) shall not be accepted by the Administrator within one-hundred (180) days of the date of withdrawal.
- C. If said petition is otherwise withdrawn prior to a final decision being rendered, a similar petition submitted by that property owner/or his agent shall not be accepted by the Administrator within one (1) year of the date of withdrawal. Any new application shall be accompanied by the appropriate fee.

5.11.8 CHANGE IN CONDITIONAL USE PERMIT

Any request to materially change [i.e., undergo a change other than one listed as a "minor change" in Section 5.11.5(E)] to the conditional use permit once it has been issued shall require the issuance of a new conditional use permit. All notification and procedural steps and requirements as outlined in Sections 5.11.2 through 5.11.5 shall be followed.

5.11.9 APPEALS

- A. An appeal to the decision of the City Council shall be filed with the Clerk of Superior Court in the nature of certiorari no later than thirty (30) days after said decision has been filed in the Administrator's office and as otherwise provided for in NCGS 160A-388



SECTION 5.12 SPECIAL EXCEPTION

5.12.1 AUTHORITY

The Board of Adjustment shall have the authority to grant a “special exception” for the following activities:

- A. Expansion of nonconforming uses per Sections 3.5.1(C) and Section 3.5.4(C);
- B. Expansion of certain nonconforming structures in accordance with Section 3.5.5(B);
- C. Change of one nonconforming use into another nonconforming use per Section 3.5.1(D);
- D. Reduction in the number of required off-street parking spaces per Section 3.5.9B and 10.1(D)(4); Provision of greater than fifty (50) percent more off-street parking spaces than required, per Section 10.1(D)(5).
- E. Provision of satellite parking greater than five-hundred (500) feet from the principal use, per Section 10.7.
- F. Relief from the requirements of the TH Thoroughfare Highway Overlay District, as provided in Section 7.6.2.
- G. Provision for two (2) or more family care homes to be located within one-half (1/2) mile of each other per Section 8.1.6
- H. Extended operating hours for certain non-residential uses in Residential zoning districts per Section 9.20.

5.12.2 PROCEDURES

Procedures for processing and deciding upon a request for a Special Exception shall be the same as for variances as contained in Section 5.14, except the following findings must be each found in the affirmative prior to the issuance of a Special Exception:

- A. Expansion of a Nonconforming Use [Sections 3.5.1(C) and 3.5.4(C)]
 - 1. The nonconforming use will not occupy any additional lands



beyond the boundaries of the lot upon which said nonconforming use was located as of the date said use became nonconforming. The lot boundaries to be used to determine this shall be those existing at the time the use became nonconforming; and,

2. The expansion will not result in a negative effect on any adjoining property; and
3. The expansion will be in harmony with the general purpose and intent of this Ordinance and will not be harmful to the neighborhood or otherwise be detrimental to the public welfare.

B. Expansion of a Nonconforming Structure [Section 3.5.5(B)]

1. The expansion will not result in a negative effect on any adjoining property;
2. The expansion will be in harmony with the general purpose and intent of this Ordinance and will not be harmful to the neighborhood or otherwise be detrimental to the public welfare.

C. Change of a Nonconforming Use Into Another Non-conforming Use [Section 3.5.1(D)]

1. The proposed use will be more suitable and appropriate for the lot(s) upon which it is located than the existing use; and
2. The proposed use will have a less harmful effect on adjacent properties than the existing use; and
3. The change in use will be in harmony with the general purpose and intent of this Ordinance and will not be harmful to the neighborhood or otherwise be detrimental to the public welfare.

D. Modifications in the Number of Off-street Parking Spaces Provided [Sections 3.5.9(B) and 10.1(D) (4) and (5)]

The reduction or addition to the number of off-street parking spaces will not have an undue negative effect or burden on



adjacent and nearby properties and the adjoining road network.

- E. Provision of Satellite or Shared Parking Greater than Five-hundred (500) Feet from the Principal Use [Section 10.7]
 - 1. The location of the satellite parking will not have an undue negative effect or burden on adjacent and nearby properties and the adjoining road network.
 - 2. Adequate steps have been taken to ensure that the satellite parking, where located, will blend in to the greatest degree feasible with adjoining land uses.

- F. Relief from the Provisions of TH Thoroughfare Highway Overlay District [Section 7.6.2]
 - 1. The Thoroughfare Plan affecting the area in question recommends that a street right-of-way be of less than one hundred (100) feet in width for a major thoroughfare and eighty (80) feet for a minor thoroughfare is needed; and
 - 2. Such reduced right-of-way area is determined to be sufficient for said road; and
 - 3. The reduction in setback will not result in a jagged or irregular setback line being created.

- G. Family Care Homes to be Within One-half (1/2) Mile of Each Other (Per Section 8.1.6)
 - 1. Such reduced separation will not result in the clustering of family care homes that could promote the segregating and isolation of handicapped persons instead of the integration and interaction of handicapped persons with the community mainstream.
 - 2. The Board of Adjustment shall only consider evidence relevant to the above finding in reaching a decision to grant the special exception.

- H. Extended Operating Hours for Certain Non-residential Uses in Residential Zoning Districts (Per Section 9.20)



1. The nature of the use is such that limiting the hours of operation for that use in that particular location would result in a practical difficulty or unnecessary hardship; and,
2. The use is in such location that it would not have a significant negative impact on surrounding and/or nearby property owners and cannot yield a reasonable return or cannot be put to reasonable use unless relief is granted; and,
3. In balancing the public interest and the interest of the property owner, the grant of relief in the form of extended operating hours is required by considerations of justice and equity.

SECTION 5.13 ADMINISTRATIVE APPEALS / INTERPRETATIONS

Except as provided herein, the 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. In addition, the Administrator may ask the Board of Adjustment to interpret the Official Zoning Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of this Ordinance. (160A-388 (b1)).

~~Notwithstanding the above, any decision made by the Administrator relative to Chapter 13 shall first be appealed to the Planning Board per Section 13.6. Any such decision made by the Planning Board may be appealed to the governing board in accordance with Section 13.6.~~

5.13.1 FILING OF APPEAL; EFFECT OF FILING

- A. An appeal to the Board of Adjustment may be brought by any person, firm, corporation, office, department, board aggrieved by the order, requirement, or decision made by the Administrator. A complete application including a fee, in accordance with a fee schedule approved by the governing board, shall be filed with the Administrator within fifteen (15) days from the date the decision being appealed was made. Notwithstanding, the Administrator may ask for an interpretation of the Zoning Map at any time.
- B. The filing of an appeal shall stay all proceedings in furtherance of



the contested action, unless the Administrator certifies to the Board of Adjustment that, in his/her opinion by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed except by a restraining order granted by the Board of Adjustment or the Gaston County Superior Court on notice to the Administrator, with due cause shown.

5.13.2 ACTION BY THE BOARD OF ADJUSTMENT

- A. Upon receiving the application materials from the Administrator, the Board of Adjustment shall hold a quasi-judicial public hearing on the appeal. Notice of the public hearing shall be per Section 4.5.10 of this Ordinance.
- B. Upon conclusion of the public hearing, the Board of Adjustment shall adopt a resolution that either reverses, affirms, or modifies the contested action. Similarly, the Board of Adjustment shall have the ability to make an interpretation of the zoning district boundaries as shown on the Zoning Map. In making such a decision, the Board of Adjustment shall have all the powers of the with respect to the action being contested or decision being made.

5.13.3 EFFECT OF REVERSAL OR MODIFICATION

In the event that the Board of Adjustment reverses or modifies a contested action, all subsequent actions taken by the Administrator with respect to the subject matter shall be in accordance with the reversal or modification granted by the Board of Adjustment.

5.13.4 EFFECT OF INTERPRETATION

Upon a ruling regarding an interpretation of the Official Zoning Map, said map shall be altered to accurately depict the Board of Adjustment's ruling and all uses of land on the affected property (ies) shall thereafter be in harmony with the rules of regulations of the appropriate zoning district(s) for such properties.

SECTION 5.14 VARIANCES



The procedures for processing applications for variances are shown below, except as stated elsewhere in this Ordinance.

5.14.1 PURPOSE

The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create practical difficulties or unnecessary hardships. This process is not intended so that variances can be granted so as to merely remove inconveniences or financial burdens that the requirements of this Ordinance may otherwise impose on property owners. Rather, it is intended to provide relief where the requirements of this Ordinance render land unduly difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is being requested. Any state or federal requirements may not be varied through the granting of a variance. Furthermore, use variances (i.e., the allowance for a use to be developed in a zoning district where that use is otherwise not allowed) may not be granted by the Board of Adjustment. In addition, the Board of Adjustment shall have the option to grant a variance for any situations that are subject to a “Special Exception” as indicated in Section 5.12.

5.14.2 VARIANCE SUBMITTAL PROCEDURE

- A. An application for a variance may be filed only by the owner of the lot(s) upon which the variance is sought or by an agent of such owner. The application shall be processed and a public hearing called and advertised as set forth in Sections 4.5.9 and 4.5.10 of this Ordinance.
- B. Any completed application submitted shall be heard by the appropriate Board for approval within one hundred-eighty (180) days from the date of submittal. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.

5.14.3 RESERVED

5.14.4 ACTION BY THE BOARD OF ADJUSTMENT

- A. In considering an application for a variance, the Board of Adjustment shall review the application, the approval criteria set forth in Section 5.14.5 and all testimony and evidence received at



the public hearing.

- B. After conclusion of the public hearing, the Board of Adjustment shall have the following options:
 - 1. Approve the application for a variance as requested; or,
 - 2. Approve the application for a variance with fair and reasonable conditions attached that the Board of Adjustment feels are necessary to satisfy one or more of the findings contained in Section 5.14.5; or,
 - 3. Deny the variance application.
- C. Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, any order of the Board of Adjustment in granting a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within twenty-four (24) months from the date of the Board of Adjustment's decision.
- D. Before granting a variance, the Board of Adjustment shall take a separate vote on each of the findings shown in Section 5.14.5. A variance cannot be granted unless each finding is found in the affirmative by a 4/5 majority of the Board. A motion to make an affirmative finding on each of the findings contained in Section 5.14.5 shall be accompanied by one or more reasons, based on evidence heard at the public hearing, supporting such motion.

5.14.5 VARIANCE APPROVAL CRITERIA ADOPTED BY COUNCIL 08/11/14

The Board of Adjustment (GS 160A-388 (d) 10/01/13) shall vary any of the provisions of the ordinance upon a showing of all of the following:

- A. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- B. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;



- C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

5.14.6 VARIANCE APPROVAL

- A. Following approval of a variance, the City shall expeditiously file and record a copy of the variance in the office of the Register of Deeds for Gaston County.
- B. Once the Board of Adjustment approves a variance, the applicant shall follow the procedures found elsewhere in this Ordinance for securing the requisite permit to proceed with the development of his property. All orders, decisions, determinations and interpretations made by the Administrator under those procedures shall be consistent with the variance granted by the Board of Adjustment.

SECTION 5.15 MINOR MODIFICATIONS TO DEVELOPMENT AND ZONING DISTRICT STANDARDS AND APPROVED PLATS

5.15.1 DEVELOPMENT AND ZONING DISTRICT STANDARDS

- A. Purpose
 - 1. As part of the review and approval process set forth in the Ordinance, the Administrator is hereby authorized to approve minor modifications to certain development standards where such modifications are incidental and do not have significant impact on adjacent properties. The “minor modification” process is seen as a way to:
 - a. Grant minor modifications that would not significantly alter the relationship of a building or structure to neighboring properties;
 - b. Allow building encroachments into required setbacks



that may be commonly found elsewhere in the City;

- c. Address minor and insignificant construction errors which have occurred in the past and which could only otherwise be alleviated through the issuance of a variance.
2. The list of situations for which the Administrator is authorized to apply a “minor modification” is listed in Section 5.15.1 (B). Unless specifically listed there (or elsewhere in the Ordinance) any other modifications to the terms of this Ordinance shall require the issuance of a variance by the Board of Adjustment.

B. Minor Modifications Allowed

Table 5.15-1 indicates those minor modifications that are suitable for approval by the Administrator.

TABLE 5.15-1: MINOR MODIFICATION TABLE	
STANDARD THAT MAY BE MODIFIED	MODIFICATION ALLOWED
Façade and HVAC Encroachment-Placement of Eaves, Gutters, Cornices, Bay Windows, and HVAC Equipment	An eave, bay window or external HVAC equipment may extend into the required front, side or rear yard by no greater than three (3) feet, but in no case closer than five (5) feet to an adjoining property line. ¹
Handicap Ramp Encroachment-Placement of Handicap Ramps	A ramp designed to accommodate handicapped persons may extend into a required front, side or rear yard, but in no case closer than five (5) feet to an adjoining property line. ¹
Uncovered and Unenclosed Decks, Porches and Terraces	Such decks, porches and terraces which are not in any part more than six (6) feet above the finished grade level shall not project more than twenty-five percent (25%) into any required yard setback. ¹
At-grade Driveways, Paths, Walks or Uncovered Concrete Slabs	May be placed in any required setback.
Other Yard Encroachments	One (1) foot or ten (10) percent of the required yard standard, whichever is less. ^{1, 2}
Reduction in the Required Amount of Landscaping or Buffering Plant Materials	Refer to Section 11.1.2F
Accessory Structures	An accessory structure may exceed its maximum area requirement by up to three (3) percent.



¹ In no case shall the Administrator have the authority herein to allow for a building encroachment into any of the following: 1. Street or railroad right-of-way; 2. Street or utility easement; 3. Designated floodplain or floodway areas; 4. Encroachment into another lot or parcel; 5. Encroachment into land that lies in another local government's planning jurisdiction, unless approval from that local government is given to do so.

² The Administrator shall only be able to grant such modification if the petitioner can demonstrate that the modification required was not the result of a deliberate action to circumvent the terms of this Ordinance.

C. Procedures

The Administrator may approve a minor modification in conjunction with a Site Plan review as set forth in Section 5.2, the issuance of a zoning permit as set forth in Section 5.3, the issuance of certificate of compliance as set forth in Section 5.6. That notwithstanding, the Administrator may not approve a request for a minor modification in cases where the development application must go to the City Council or Board of Adjustment for approval or to another approval body even in cases where the requested modification is small enough to be granted by the Administrator. In such cases, the Administrator shall transmit his/her recommendations with respect to the minor modification and the designated approval body shall have the authority to approve such minor modification in conjunction with their approval process.

D. Approved Final Subdivision Plats

1. Purpose

The Administrator is hereby authorized to approve minor modifications to approved and recorded final plats where such modifications are incidental and do not have significant impact on affected and adjacent properties. Such modifications shall not result in any lessening of any requirements that are otherwise called for in this Ordinance. Rather, the minor modification process is designed to address minor infrastructural changes that may not have been anticipated at the time of final plat approval.

NOTE: *Changes to a subdivision plat that involve the combination or recombination of lots, where the resultant lots are not increased and meet all of the Ordinance requirements, shall not be considered a "subdivision" per NCGS 160A-376. Provisions for making such changes are addressed in Section 13.2 of this Ordinance.*

2. Types of Subdivision Plat Modifications Allowed



Changes to a recorded subdivision plat that may be authorized by the Administrator include those that are a result of minor field alterations to accommodate physical site conditions involving interior features of the site design that involve the relocation of streets, easements, utilities and other infrastructural improvements.

3. Process

- a. The applicant shall present a copy of the recorded subdivision plat along with a paper copy of the modified plat with: (i) the modifications clearly identified and labeled, and (ii) the lots that are affected by such modifications. A written statement that gives reason as to why such modifications are needed shall accompany this.

- b. If any of the lots so identified have been sold to other parties, a signed statement from each of the affected property owners shall accompany such plat. Each such statement shall: (i) list the modifications that are proposed and (ii) indicate their agreement with and support of the proposed subdivision plat modifications.

Once this information has been received, the Administrator shall have the ability to administratively approve the subdivision plat, send the plat to the TRC for their review and decision, or reject the plat amendment. The plat amendment may be approved by the Administrator (and/or the TRC) if determined that the proposed amendment(s): (i) does not violate any of the standards contained in this ordinance; (ii) will be beneficial to the residents of the subdivision and/or the community as a whole; and, (iii) will create conditions essential to the public health, welfare or safety.

**SECTION 5.16 CHANGES TO THE OFFICIAL ZONING MAP (AMENDED
3/10/2014 BY CITY COUNCIL)**

5.16.1 AUTHORITY



Upon compliance with the provisions of this Chapter, the City Council shall have the authority to amend or repeal the zoning classification of any parcel of land, as indicated on the Official Zoning Map.

5.16.2 INITIATION OF A ZONING MAP AMENDMENT

Any person, board, department or council may apply for a change in zoning district boundaries (rezoning), with the following limitations:

1. Applications for parallel conditional use and conditional rezoning as set forth in Sections 5.16.4 and 5.16.5 of this Ordinance may be initiated only by the property owner or his authorized agent (refer to Section 5.1);
 2. Applications for third party rezonings (i.e., rezoning of a piece of property to another general zoning district by a person other than the property owner or the property owner's authorized agent) shall not be considered, except if the City initiates the rezoning petition.
- B. An amendment to the Official Zoning Map may be initiated by filing a complete and signed application with the Administrator. Before any application is accepted, the applicant must meet with the Administrator to discuss, in general, the procedures and requirements for a zoning amendment request. During the conference, the Administrator will identify the submittal requirements. The Administrator may waive the pre-application requirement, on a case-by-case, where due to the size of the tract being petitioned for rezoning or the likely impact that such rezoning might have, such conference would not serve any useful purpose.

5.16.3 ZONING MAP AMENDMENT PROCESS- GENERAL DISTRICT REZONING

When considering a petition for the reclassification of property to a general zoning district (i.e., other than a parallel conditional use district or a conditional district), neither the Planning Board nor the City Council shall evaluate the petition based on any specific proposal for the use or development of the affected property and the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development except for those which would apply to any use permitted in the requested district.



A. Filing of Petitions; Determination of Completeness

For a reclassification of property proposed by any person or entity other than the Planning Board or City Council, such petition shall be on an application form prescribed by the Administrator, signed by the applicant and accompanied by the fee in accordance with a fee schedule adopted by the governing board. Said application form and fee shall be filed with the Administrator. Said fee shall be waived for any petition submitted by any official or agency acting on behalf of the City of Lowell or the State of North Carolina. No application shall otherwise be considered complete unless accompanied at the time of submittal by said fee. An application will otherwise be deemed complete if it is:

1. Submitted on the proper form;
2. Includes all mandatory information;
3. Includes all necessary supporting materials specified; and,
4. Includes the designated fee

B. Content of Application

1. Each non-adjacent parcel of land for which rezoning is requested shall be deemed a separate application, and said application fee shall accompany each application. For the purpose of this section, land located and adjacent on either side or to the rear and all property located directly across any street, railroad, body of water, jurisdictional boundary line, or public right-of-way from the subject property shall be deemed to be adjacent. Also refer to the definition of "adjacent property" in Section 2.7.
2. Each application for a rezoning of land shall be accompanied by two (2) copies of a map, drawn to scale, with the following information either shown on the map or accompanying it:
 - a. The subject property plus all adjacent properties;
 - b. If the property is in a subdivision of record, a map of such portion of the subdivision that would relate the subject property to the closest street intersection;
 - c. A survey and written description of the property(ies) proposed for rezoning shall accompany the map for



rezoning requests that do not address the entire parcel and where one (1) or more of the exterior boundaries of the rezoning request do not follow readily identifiable mapped features (e.g., street or railroad rights-of-way, easements, bodies of water, etc.);

- d. The present and proposed zoning classification of the lot(s) in question; and,
- e. The property identification number(s) of the lot(s) in question as issued by the Gaston County Tax Department.

C. Submittal Procedures

1. Applications must be submitted no later than 10 business days before a regularly scheduled City Council meeting in order to be considered at the next regularly scheduled City Council meeting.
2. Upon receipt of a completed and timely application, the City Council shall consider the request at its next regularly scheduled meeting.
3. After its initial consideration of the application, the City Council shall refer the request to the Planning Board for a review and recommendation.

D. Planning Board consideration

1. Review; The Planning Board shall consider a proposed amendment to the map. The Planning Board will make recommendations to the City Council regarding whether to approve or deny the proposed map amendment.
2. Upon receipt of the recommendation from the Planning Board on the proposed map amendment, the City Council shall schedule a public hearing before taking final action.
3. Content of recommendations. Any recommendation made by the Planning Board to the City Council pursuant to this section shall be



in writing and shall include a statement describing whether the proposed amendment is consistent with the comprehensive land use plan and any other applicable plan, and shall address any other matter deemed appropriate by the Planning Board. The Planning Board recommendation shall be as follows:

- a. Grant the rezoning as requested; or
 - b. Grant the rezoning with a reduction of the area requested; or
 - c. Grant the rezoning to a more restrictive general zoning district or districts; or,
 - d. Grant the rezoning with a combination of Subsections (b) and (c) above; or,
 - e. Deny the rezoning.
-
1. The list of general zoning districts in descending order of restrictiveness is as follows, with RLD being the most restrictive and I-3 being the least restrictive:
 - a. RLD (Most restrictive)
 - b. R-1
 - c. R-2
 - d. R-3
 - e. RS-20
 - f. RS-12
 - g. RS-8
 - h. RMF
 - i. OM
 - j. TMU
 - k. OLC
 - l. O-1
 - m. NBS
 - n. C-1
 - o. CBD
 - p. UMU
 - q. C-2
 - r. C-3
 - s. GPX
 - t. I-U
 - u. I-1
 - v. I-2
 - w. I-3 (Least restrictive)



E. City Council Public Hearing

Following receipt of a recommendation on a proposed map amendment, the City Council shall hold a public hearing on the proposed map amendment.

Notification of the public hearing shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in Lowell once a week, for two 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 City Council public hearing.
 - b. A notice shall be sent by first class mail by the Administrator to the applicant and owners of all adjacent properties as indicated on the most up-to-date records of the Gaston County Tax Department at least ten (10) but not greater than twenty-five (25) days prior to the City Council public hearing.
 - c. The Administrator shall post at least one (1) notice on the site proposed for rezoning or an adjacent public street or highway right-of-way at least ten (10) days prior to the public hearing. Where multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the case number, the public hearing date, time at which it is to be held, and contact telephone number. The notice shall be removed only after final action has been taken on the matter.
2. Any public hearing notice published or mailed shall state the case number, nature of the public hearing, the date, time, and place at which the hearing is to occur, and who to call and/or see for more information.

This public hearing, once opened, may be continued to a later date.

F. Action by City Council



1. Before acting on any proposed zoning map amendment, the City Council shall consider the recommendation made by the Planning Board, the comments made at the public hearing, and any other relevant additional information.
2. When considering a proposed zoning map amendment, the City Council will not evaluate the petition based on any specific proposal for the use or development of the property. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those which would apply to all uses permitted by the requested classification.
3. Upon reviewing all pertinent information, the City Council may:
 - a. Adopt the proposed map amendment;
 - b. Reject the proposed map amendment;
 - c. Refer the proposed map amendment back to the Planning Board for further consideration or hearing; or
 - d. Modify the proposed map amendment.

F. Petition Withdrawal

An applicant who has submitted a complete application for a zoning map amendment may withdraw that application prior to a final decision being rendered by the City Council. Such withdrawal may be made under the following guidelines:

1. If said petition is withdrawn at least two (2) working days prior to the Planning Board / City Council public hearing, a similar application shall not be accepted by the Administrator within one hundred-eighty (180) days of the date of withdrawal.
2. Otherwise, if said petition is withdrawn less than two (2) working days prior to a final decision being rendered, a similar application shall not be accepted by the Administrator within one (1) year of the date of withdrawal.
3. Notwithstanding the above, the Administrator may allow a similar application to be submitted prior to the expiration of said time periods having first determined:
 - a. There has been a significant change in the zoning district classification of an adjacent piece of property; or
 - b. The City Council has adopted a plan that changes



public policy regarding how the property affected by the proposed change would be developed; or,

- c. Construction or expansion of a road, water line, sewer line, or other such facility has occurred to serve the property and can comfortably accommodate the proposed zoning classification; or,
- d. There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies the waiver of said time restrictions. This, however, shall not include a change in property ownership; or,
- e. The proposed zoning map amendment is substantially different from that which was previously proposed and, if such amendment were approved, would effect a change substantially different than that contained in the previous application.

- 4. Notwithstanding the above, any amendment petition initiated by the Planning Board or City Council shall be exempt from any time restraints on resubmittal.

G. Petition Resubmittal

If the City Council has denied an application for the rezoning of a parcel of land to a general zoning district, a similar application shall not be accepted by the Administrator for a period of one (1) year following the date of such denial. Notwithstanding, the Administrator may accept such submittal within said one-year period if he makes any one of the findings listed in Section 5.16.3(F)(3) of this Ordinance.

H. Application Submission Period

Any completed application submitted shall be heard by the appropriate Board for approval within one hundred-eighty (180) days from the date of submittal. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.

5.16.4 ZONING MAP AMENDMENT PROCESS-PARALLEL CONDITIONAL USE DISTRICTS (PCUP)



A. Purpose

1. The parallel conditional use rezoning process allows particular uses to be established, but only in accordance with a specific development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and/or on the entire community that cannot be predetermined and controlled by general district standards or the criteria governing planned developments. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property and be consistent with the objectives of these regulations, the adopted land use plan, and other plans for the physical development of the City as adopted by the governing board. The review process established herein provides for the accommodation of such uses by a reclassification of property into a "parallel conditional use" district.
2. The "parallel conditional use" district (PCUP) approval process is established to address those situations when a particular use may be acceptable but the general zoning districts which would allow that use would not be acceptable. Such zones may be approved or changed only by the City Council in accordance with the regulations contained herein.
3. In order for a property owner to secure privileges for developing property under the parallel conditional use process, a two-step process must be followed. The property must first be rezoned by the City Council to a parallel conditional use district. The City Council must then approve a conditional use permit which may contain fair and reasonable conditions to assure conformance with this Ordinance, other plans adopted by the City Council and compatibility with surrounding properties. Any use permitted under this process also must conform to the development regulations for the corresponding general zoning district. Thus, if a property were rezoned to a "CU / R-1" conditional use district, and a conditional use permit approved authorizing the development of a particular use, that use must: (i) be a use allowed in the R-1 district, (ii) meet all dimensional, screening and related requirements of the R-1 district, (iii) meet any listed supplemental requirements for that particular use in the R-1 zoning district, and (iv) meet any additional requirements placed by the City Council on



the conditional use permit.

4. Rezoning of property to any PCUP parallel conditional use district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. A PCUP district application may not be initiated by the City Council, Planning Board, administrative staff, or a third party with no ownership interest in the subject property. Furthermore, it is not intended or suited for securing early zoning for a tentative proposal that may be undertaken at some unknown time in the future.
5. In order for a property owner to secure development privileges in accordance with the regulations contained in this Chapter, the City Council must first rezone said property to a particular PCUP district and then City Council must issue a conditional use permit allowing the particular development to take place.

B. Reclassification Required

No (PCUP) parallel conditional use district and associated conditional use permit shall be established until the owner of the property in question (or his authorized agent) proposing the district has submitted an application for the rezoning of the property and issuance of a conditional use permit, and City Council has approved such application in accordance with the procedures stated herein.

C. Plans and Other Information to Accompany Petition

1. Every application for the rezoning of property to a parallel conditional use district and issuance of a conditional use permit shall be accompanied by a site plan, drawn to scale containing all of the information outlined in Section 5.11.2(B) of this Ordinance.
2. Furthermore, no application shall be considered complete unless it is accompanied by a fee, in accordance with a fee schedule approved by the City Council for the submittal of an application for rezoning to a PCUP district and issuance of a conditional use permit. Said fee shall be waived for any application submitted by any official or agency acting on behalf of Gaston County, or the State of North Carolina

D. Public Hearing Notification Requirements for the Planning Board



1. Before any property is rezoned to a PCUP district and a conditional use permit issued, the Planning Board shall have had an opportunity to review and make a recommendation on the application. Such Planning Board review shall take place at its regular monthly meeting. After the Planning Board has met and made its recommendation to the City Council, after a joint public hearing will be held by the Planning Board and the City Council. Any complete application shall be submitted to the Administrator at least thirty (30) forty-five (45) working days prior to the public hearing Planning Board's regularly scheduled meeting. Notification of the Planning Board hearing shall be as follows:
 - a. A notice shall be published in a newspaper having general circulation in Lowell 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 joint public hearing.
 - b. A notice of the proposed zoning map change shall be sent at least ten (10) days prior to the Planning Board/ City Council public hearing by first class mail by the Administrator to the applicant and to owners of all adjacent properties as indicated on the most up-to-date records of the Gaston County Tax Department.
 - c. The Administrator shall post at least one notice on the site proposed for rezoning or an adjacent public street or highway right-of-way at least ten (10) days prior to the Planning Board/ ~~City Council's~~ public hearing. Where multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the case number, the public hearing date and time which it is to be held and contact telephone number. The notice shall be removed only after final action has been taken on the matter.
2. Any public hearing notice published or mailed shall state the nature of the public hearing, the date, time, and place at which the hearing is to occur, and who to call and/or see for more information.



E. Planning Board Review / Action

The Planning Board shall have thirty (30) days to make a recommendation on the proposed change, said thirty (30) days being measured from the date of the closing of the joint City Council / Planning Board public hearing. If a recommendation is not made during said time period, the application shall be forwarded to the governing board City Council without a recommendation. Any such Planning Board recommendation shall be accompanied by statements that address: (i) whether the proposed map amendment is consistent with any comprehensive plan that has been adopted by the governing board and any other officially adopted plan that is applicable, and (ii) other matters that the Planning Board deems appropriate, and (iii) why it considers the action taken to be reasonable and in the public interest.

F. Final Action: Conduct of Public Hearing and Notification requirements for City Council. After a recommendation is made by the Planning Board, a Public Hearing shall be conducted by the City Council. Prior to this hearing, notification shall be as follows:

- a. A notice shall be published in a newspaper having general circulation in Lowell 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 joint public hearing.
- b. A notice of the proposed zoning map change shall be sent at least ten (10) days prior to the ~~Planning Board/~~ City Council public hearing by first class mail by the Administrator to the applicant and to owners of all adjacent properties as indicated on the most up-to-date records of the Gaston County Tax Department.
- c. The Administrator shall post at least one notice on the site proposed for rezoning or an adjacent public street or highway right-of-way at least ten (10) days prior to the Planning Board/ City Council's public hearing. Where multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the case number, the public hearing date and time which it is to be held and contact telephone number. The notice shall be removed only after final action has been taken on the matter.



- b) Any public hearing notice published or mailed shall state the nature of the public hearing, the date, time, and place at which the hearing is to occur, and who to call and/or see for more information.

1. Conduct of Public Hearing

- a. The ~~joint Planning Board and~~ City Council public hearing shall be held in a quasi-judicial manner. Once the public hearing is opened, it may be continued to a later date. Any such public hearing shall consider information relating both to the zoning of a piece of property to a PCUP district and the issuance of a conditional use permit. That notwithstanding, the decision to rezone property to a PCUP district shall be legislative in nature. The decision to issue a conditional use permit shall be quasi-judicial in nature. In approving an application for a conditional use permit, the City Council may attach fair and reasonable conditions to the approval that are mutually approved by the City and the petitioner. Such conditions shall be limited to those that address the conformance of the development and use of the site to City ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. In no instance shall any of these conditions be less restrictive than any requirements that would pertain to that particular development found in the zoning district in which the property is located. Such conditions may exceed any performance criteria or minimum requirements listed elsewhere in this Ordinance that pertain to that development. Statements that: (i) analyze whether the rezoning is consistent with an adopted comprehensive plan and any other officially adopted plan, and (ii) other matters that the City Council deems appropriate and (iii) why it considers the action taken to be reasonable and in the public interest shall be prepared and accompany each final decision relative to the PCUP rezoning request.

2. Parallel Conditional Use District Burden of Proof



- a. The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions that Subsections b(ii) and b(iv) below require. If any person submits competent, material, and substantial evidence allegedly contrary to any of the facts or conditions listed in Subsections i and iii below, the burden of proof for overcoming such evidence shall rest with the applicant.
- b. The City Council may only issue a conditional use permit if it has evaluated an application and found each of the following findings of fact in the affirmative:
 - i. The use will not materially endanger the public health or safety if located where proposed and developed according to plan;
 - ii. The use meets all required conditions and specifications;
 - iii. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity; and
 - i. The location and character of use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted Land Use Plan and other plans for the physical development of the City as adopted by the City Council.

G. Additional Review Criteria

In addition to the findings of fact listed immediately above certain uses require the consideration of additional review criteria. Before a conditional use permit may be issued for said uses, the findings of fact listed immediately above along with those pertaining to that individual use must each be found in the affirmative.

H. Effect of Approval

1. If a petition for a PCUP rezoning and conditional use permit are both approved as herein provided, the district that is established, the approved conditional use permit, and all conditions that may have been attached to the approval are binding on the property as an amendment to the Zoning



Map. Subsequent development on the property in question shall be in accordance with the standards for the approved PCUP district, the conditional use permit, and any conditions attached to the approval. The applicant shall be responsible for all expenses involved in the dedication of rights-of-way when such dedication is a condition of the conditional use permit.

2. Whenever a petition for PCUP zoning has been approved and a conditional use permit granted, the applicant shall file and record a copy of the conditional use permit in the office of the Register of Deeds for Gaston County. The conditional use permit shall become null and void unless it was recorded in such office within one hundred-eighty (180) days of the granting of the conditional use permit. No zoning permit shall be issued on such property unless evidence of such recordation has been first presented to the Administrator.
3. Following the approval of the petition for a parallel conditional use district, the subject property shall be identified on the zoning map by the appropriate district designation. A parallel conditional use district shall be identified by a general zoning district classification preceded by the letters PCUP (for example, "CU / R-1").

I. Binding Effect

1. Changes to the approved PCUP petition or to the conditions attached to the approval shall be treated the same as an amendment to the zoning map and shall be processed in accordance with the procedures contained in Section 5.16.4.
2. Except as provided below, any conditional use permit herein authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the City Council. However, minor changes in the detail of the approved application may be approved by the Administrator. A "minor change" to the approved conditional use permit shall be deemed to be a change which:
 - a. Will not alter the basic relationship of the proposed development to adjacent property;
 - b. Will not increase the gross floor area of any nonresidential use by the smaller of ten (10) percent or ten thousand (10,000) square feet (**NOTE:** Such



limitations shall be cumulative and shall be based on the gross floor area of the conditional use permit as originally approved);

- c. Will not decrease the off-street parking ratio below the minimum number of parking spaces required by this chapter or reduce the yards provided at the perimeter of the site by the lesser of ten (10) feet or ten (10) percent;
- d. Will not increase the height of any structure to the extent that additional usable floor space could be added;
- e. Will not result in an increase in the number of dwelling units constructed; or
- f. Will not alter the uses permitted.

J. Period of Validity of Conditional Use Permit

- 1. Unless the City Council issues a parallel conditional use permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit (or certificate of compliance) within twenty-four (24) months from date of issuance of the parallel conditional use permit. If a building permit or certificate of compliance is not issued at the end of said time period, the parallel conditional use permit shall automatically expire and shall be deemed rescinded. Such rescission shall not occur if the applicant has secured the vesting of a site development plan (in accordance with Section 5.10) for a period of greater than two (2) years.
- 2. If the parallel conditional use permit is rescinded, the City shall immediately take steps to rezone the property to a general zoning district.

K. Application Submission Period

Any completed application submitted shall be heard by the appropriate Board for approval within one hundred-eighty (180) days from the date of submittal. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.



5.16.5 ZONING MAP AMENDMENTS- CONDITIONAL USE DISTRICTS (CD)

A. Application

1. Petitioning for a CD zoning district is a voluntary procedure and can be initiated only by the owner(s) of the property (ies) in question or by his/her authorized agent. Every application for the rezoning of property to a CD district shall be accompanied by a site plan, drawn to scale containing all of the information outlined in Section 5.11.2 (B) of this Ordinance. The Administrator shall schedule a meeting with the applicant, prior to any public information meeting (PIM) being advertised and/or held to review the rezoning application and site plan to make sure that it meets, at a minimum, all minimum requirements of this Ordinance.
2. No application shall be considered complete unless it is accompanied by a fee, in accordance with a fee schedule approved by the governing board for the submittal of an application for rezoning to a CD district. Said fee shall be waived for any application submitted by any official or agency acting on behalf of Lowell or the State of North Carolina
3. The Administrator may require the petitioner to submit more than one (1) copy of the rezoning application in order to have enough copies available to circulate to other government agencies for review and comment. When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning Board or City Council may request additional information as they deem necessary.
4. The deadline for submittal shall be ninety thirty (90) days prior to the public hearing meeting with the Planning Board and City Council.

B. Public Information Meeting

1. Once the complete application has been submitted to the Administrator and fees paid prior to the public hearing on the rezoning request, two (2) Public Information Meetings (PIMs)



shall be scheduled and held. Such meetings shall occur prior to any recommendation by the Planning Board and approval by the City Council. The PIM is designed to provide a framework for creating a shared vision with community involvement directed by the applicant in accordance with the following requirements:

- a. The applicant shall provide an agenda, schedule, location, and list of participants such as landscape architects, engineers, etc. to answer questions from citizens and service providers for the PIMs in cooperation with the Administrator.
- b. It is recommended that the first PIM last 2-4 hours, depending on the nature of the proposed development and its location. A minimum of one (1) hour should be scheduled during normal business hours to allow service providers and other public agencies (such as public works officials, NCDOT, NCDENR, QNRC, etc) to participate as needed and to allow for citizens to drop in at a convenient time throughout the period. It is recommended (but not mandated) that this portion of the PIM take place at the proposed development site.

In addition, a second one (1) hour minimum PIM should be scheduled at a conveniently located meeting site agreed upon by the applicant and the Administrator.

A PIM may last for different amounts of time, depending on the nature of the development, its location, and the number of parties involved and/or attending the meeting.

- c. Notice of the PIM shall at a minimum, be given as follows:
 - i. A public notice shall be sent by the applicant to a newspaper having general circulation in Lowell not less than ten (10) days nor more than twenty-five (25) days prior to the date of the PIM.
 - ii. A notice shall be sent by first class mail by the applicant to the owners of all properties that lie



within two hundred (200) feet as measured from the exterior boundaries of the proposed development.

The applicant shall furnish the City with a list of the mailing labels that depict the names and addresses of the owners of all properties within the said two hundred (200) foot area. Such notice shall be sent not less than ten (10) days prior to the date of the PIM. The notification shall contain information regarding the PIM time and location(s) as well as a general description of the proposal.

- iii. With respect to Subsection ii above, the applicant shall provide to the City proof of the paper notice and mailings.
 - iv. A PIM notification sign shall be posted by City in a conspicuous place at the property not less than ten (10) days prior to the PIM. The sign shall indicate date, time, and location(s) of the PIM. In lieu of any or all of this information to be contained on this posted notice, the notice may give a phone number where interested parties may call during normal business hours to get further information on the PIM.
- d. The Administrator will keep notes of comments received during the PIM. A summary of the comments made shall be included in any staff report prepared by the Administrator relative to the rezoning request.
2. Following the PIM, the applicant shall have the opportunity to make changes to the application to take into account information and comments received. One (1) or more revised copies of the application shall be submitted to the Administrator for review. No additional fee shall be required to be paid for making such changes provided the Administrator receives the revised application within thirty (30) days following the PIM. If a revised application is not received during said thirty (30) day period, the Administrator shall review the original application submitted.



C. Administrator Approval

The Administrator shall have up to thirty (30) days following any revision of the application to make comments. If the Administrator forwards no comments to the applicant by the end of any such thirty (30) day period, the application shall be submitted to the Planning Board for their review without any further comment.

D. Plans and Other Information to Accompany Petition

1. Every application for the rezoning of property to a CD district requires a site plan, drawn to scale containing all of the information outlined in Section 5.11.2(B) of this Ordinance.
2. Other information as required by the Administrator relative to the rezoning request.

E. Public Hearing Notification Requirements

1. Before any property is rezoned to a CD district, the Planning Board shall have had an opportunity to review and make a recommendation on the application. Such Planning Board review shall take place after the PIMs are completed and a joint Public Hearing has been held by the Planning Board and the City Council. Notification of the Public Hearing shall be as follows:
 - a. A notice shall be published in a newspaper having general circulation in Lowell once a week, for two 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 joint public hearing.
 - b. A notice of the proposed zoning map change shall be sent by first class mail by the Administrator at least ten (10) days prior to the public hearing to the applicant and owners of all adjacent properties as indicated on the most up-to-date records of the Gaston County Tax Department.
 - c. The Administrator shall post at least one notice on the site proposed for rezoning or an adjacent public street or highway right-of-way at least ten (10) days prior to the Planning Board/ City Council's public hearing meeting. Where multiple parcels are included within a proposed zoning map amendment, a posting on each



individual parcel is not required, but the City shall post sufficient notices to provide reasonable notice to interested persons. Such notice shall state the nature of the public hearing and its date, time, and location at which it is to be held. The notice shall be removed only after final action has been taken on the matter. In lieu of any or all of this information to be contained on this posted notice, the notice may give a phone number where interested parties may call during normal business hours to get further information on the conditional use permit requested

2. Any public hearing notice published or mailed shall state the nature of the public hearing, the date, time, and place at which the hearing is to occur, and who to call and/or visit for more information.

F. Planning Board Review

The Planning Board shall have at least thirty (30) days to make a recommendation on the proposed change, said thirty (30) days being measured from the date of the closing of the joint Planning Board / City Council public hearing. Any such Planning Board recommendation shall be accompanied by statements that address: (i) whether the proposed amendment is consistent with any comprehensive plan that has been adopted by the governing board and any other officially adopted plan that is applicable, and (ii) other matters that the Planning Board deems appropriate and (iii) why it considers the action taken to be reasonable and in the public interest. If a recommendation is not made during said time period, the application shall be forwarded to the City Council without a recommendation.

G. Action by CITY COUNCIL

A decision pertaining to Conditional zoning districts is a legislative process subject to judicial review using the same procedures and standard of review as applied to general use district zoning decisions. Once the public hearing has been held, the City Council shall take action on the petition. Within 30 days of the Planning Board's recommendation to the City Council, the City Council will hold a public hearing.

Once (i) the Planning Board has submitted its recommendation or (ii) the thirty (30) day Planning Board review period has expired, whichever comes first, the City Council shall render a decision on the petition by holding public hearing. Notification of the public



hearing shall be published in a newspaper having general circulation in Lowell once a week, for two 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 joint public hearing.

Any public hearing notice published shall state the nature of the public hearing(s), the date, time, and place at which the hearing(s) is to occur, and who to call and/or see for more information.

Once the City Council has held a public hearing, the City Council shall render a decision on the text amendment.

The public hearing, once opened, can be continued to a later date and action take at that time. The City Council shall have the authority to:

1. Approve the application as submitted.
2. Deny approval of the application
3. Approve the application with modifications that are mutually agreed to by the applicant and the City Council. Such conditions shall be in compliance with Subsection F herein.
4. Submit the application to the Planning Board for further study. The Planning Board shall have up to thirty (30) days from the date of such submission to make a report to the City Council. If no report is issued, the governing board can take final action on the petition. The governing board reserves the right to schedule and advertise a new public hearing based on the Planning Board's report.

H. Conditions for Approval of Petition

In approving a petition for the reclassification of a property to a CD district, the Planning Board may recommend, and the City Council may require, that reasonable and appropriate conditions be attached to approval of the petition. Such conditions shall be limited to those that address the conformance of the development and use of the site to City ordinances and officially adopted Comprehensive Land Use Plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the City Council. In no



instance shall any of these conditions be less restrictive than any requirements that would otherwise pertain to that particular development if it were located in a general or parallel conditional use zoning district. Such conditions may exceed any performance criteria or minimum requirements listed elsewhere in this Ordinance that pertain to that development: (i) analyze whether the rezoning is consistent with an adopted comprehensive plan and any other officially adopted plan, and (ii) other matters that the City Council deems appropriate and (iii) why it considers the action taken to be reasonable and in the public interest shall be prepared and accompany each final decision relative to the CD rezoning request

I. Effect of Approval; Zoning Map Designation

If a petition for a CD district is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's zoning classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map. Following the approval of the petition for a CD district, the subject property shall be identified on the Zoning Map by the appropriate district designation preceded by the letters CD (i.e., CD-R-1.) The Administrator may make minor changes (per Section 5.16.4(l)(2) to the approved site plan administratively without necessitating a need to rezone the property to a different conditional district classification.

J. Application Submission Period

Any completed application submitted shall be heard by the appropriate Board for approval within one hundred-eighty (180) days from the date of submittal. After the expiration of an application, a new application may be submitted following the current regulations in place at the time of the new application submittal.

**SECTION 5.17 CHANGES TO THE ORDINANCE TEXT (AMENDMENT
APPROVED BY CITY COUNCIL 03/10/14)**

5.17.1 AUTHORITY

Upon compliance with the provisions of this Chapter, the City Council shall



have the authority to amend the text of this Ordinance.

5.17.2 INITIATION OF A TEXT AMENDMENT

Any proposed amendment to the text of this Ordinance may be initiated by the governing board, Planning Board, by any owner of a legal or equitable interest in a piece of property located within the geographical boundaries of this Ordinance, by a local government agency, or by any other person in accordance with the procedures set forth herein.

5.17.3 FILING OF PETITIONS; DETERMINATION OF COMPLETENESS

Any petition to amend the text of this Ordinance shall be made using an application form prescribed by the Administrator and accompanied by a fee in accordance with a fee schedule adopted by the City Council. Said application form, signed by the applicant and accompanied by the requisite fee shall be filed with the Administrator. Said application fee shall be waived for any petition submitted by any official or agency acting on behalf of the City of Lowell or the State of North Carolina. No application shall otherwise be considered complete unless accompanied at the time of submittal by said fee. The completed application shall contain, among other things, a reference to the specific section, subsection, paragraph or item proposed for change, as well as the wording of the proposed change, and the reasons therefore.

5.17.4 SUBMITTAL REQUIREMENTS

- A. In order that an amendment to the text of this Ordinance be made by the City Council, applications must be submitted no later than 10 business days before a regularly scheduled City Council meeting in order to be considered at the next regularly scheduled City Council meeting.
- B. Upon receipt of a completed and timely application, the City Council shall consider the request at its next regularly scheduled meeting.
- C. After its initial consideration of the application, the City Council shall refer the request to the Planning Board for a review and recommendation.

5.17.5 PLANNING BOARD CONSIDERATION

- A. The Planning Board shall consider a proposed amendment to the text . The Planning Board will make recommendations to the city Council regarding whether to approve or deny each proposed text



amendment. Statements that: (i) analyze whether the amendment is consistent with an adopted comprehensive plan and any other officially adopted plan, and (ii) other matters that the Planning Board deems appropriate and (iii) why it considers the action taken to be reasonable and in the public interest shall be prepared and accompany each recommendation relative to the text amendment request.

- B. A Planning Board recommendation shall be in one of the following manners:
1. Grant the amendment as requested; or
Grant the amendment with changes; or
 2. Reject the amendment.

5.17.6 Action by City Council

Upon receipt of the recommendation from the Planning Board on the proposed text amendment, the City Council shall hold a public hearing on the proposed text amendment.

Notification of the public hearing shall be published in a newspaper having general circulation in Lowell once a week, for two 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 City Council joint public hearing.

Any public hearing notice published shall state the nature of the public hearing(s), the date, time, and place at which the hearing(s) is to occur, and who to call and/or see for more information.

Once the City Council has held a public hearing, the City Council shall render a decision on the text amendment.

The decision of the City Council shall be in the form of any of the various options listed in Section 5.17.5 B above.

Furthermore, the City Council shall have the authority to make additional amendments to the text change request, based on the proceedings of the public hearing so long as such changes are in keeping with the spirit and intent of the originally requested amendment.

Alternately, the City Council may send the application back to the Planning Board for further study and consideration.



(NOTE: Such resubmittal by the City Council to the Planning Board may occur not more than one (1) time for any text amendment request. If a resubmittal to the Planning Board occurs, the Planning Board shall hear the case and have an additional thirty (30) day period (from the date of referral by the City Council) to resubmit a recommendation to the City Council.