

2.2 COMMON REVIEW PROCEDURES

The general provisions of this section apply to all development applications and procedures under this Ordinance, unless otherwise stated.

2.2.1 Authority to File Applications

Applications under this article shall be submitted to the Planning Director by the owner, or any other person having a recognized interest in the land for which the development is proposed, or their authorized agent.

A) ***Applicant is Not the Owner***

If the applicant is not the owner of the land, or is a contract purchaser of the land, a letter signed by the owner consenting to the submission of the application shall be submitted.

B) ***Applicant is Not the Sole Owner***

If the applicant is not the sole owner of the land, a letter signed by the other owners or an association representing the owners consenting to or joining in the application for development approval shall be submitted.

2.2.2 Planning Director Authorized to Establish Application Submission Schedule

The schedule for the submission of applications shall be established by the Planning Director and made available to the public.

2.2.3 Simultaneous Processing

Whenever two or more forms of review and approval are required under this Ordinance (e.g., a rezoning and a special use permit), the applications for those development approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied for both applications. However, whenever this Ordinance requires two types of review for the same approval (e.g., a master plan for subdivision and a final plat for subdivision), those two review and approval procedures must be completed as separate steps in the order specified.

2.2.4 Form of Application

Applications required under this article shall be submitted in a form established by the Planning Director and made available to the public.

2.2.5 Fees

A) ***Determination of Fees***

The Town Council shall determine the fees to accompany all applications submitted under this Ordinance. The Council may adjust fee amounts from time to time. The fee amount shall defray the actual cost of processing the application.

B) ***Fees to be Paid***

No application shall be processed until the established fee has been paid.

C) ***Refund of Fees***

Application fees are not refundable except where the Planning Director determines that an application was accepted in error, or the fee paid exceeded the amount due, in which case the amount of the overpayment will be refunded to the applicant.

2.2.6 Pre-Application Conference

- A) **General Overview**
A pre-application conference is optional prior to submission of any application under this Ordinance. The purpose of a pre-application conference is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance required to permit the proposed development.

- B) **Initiation of Pre-Application Conference**
Any potential applicant may request a pre-application conference, in writing, with the Planning Director. Along with the request for the pre-application conference, the applicant shall provide to the Planning Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of development permit sought.

- C) **Pre-Application Conference**
The Planning Director shall schedule a pre-application conference after receipt of the written request for a pre-application conference. At the pre-application conference, the applicant, the Planning Director, and any other Town staff and/or State and/or federal representatives the Planning Director deems is appropriate to attend the pre-application conference, shall discuss the proposed development, and based upon the information provided by the applicant and the provisions of this Ordinance, discuss in general what provisions of this Ordinance apply to the proposed development.

2.2.7 Neighborhood Meeting

Neighborhood meetings are required for all applications for rezonings, major site plans and residential subdivisions, excluding minor or exempt subdivisions. Before a public hearing or meeting may be held on a rezoning petition or a residential subdivision plan, the petitioner must file in the office of the Planning Director a written report of at least one neighborhood meeting held by the petitioner. The neighborhood meeting should comply with the following procedures.

- A) **General**
The purpose of the neighborhood meeting is to educate neighbors about the proposed development and application, to receive neighborhood comments, and to address concerns about the development proposal. At least one neighborhood meeting should be scheduled and held by the applicant or applicant's agent prior to submission of the initial application.

 - B) **Time and Place**
The neighborhood meeting shall be held at a place that is generally accessible to neighbors that reside in close proximity to the land subject to the application.

 - C) **Notification**
The applicant should provide notification of the neighborhood meeting a minimum of ten (10) calendar days in advance of the meeting by mail, to all landowners within three hundred (300) feet of the land subject to the application, to any neighborhood association that represents citizens within that area and to the Town of Apex Planning and Community Development Department.

 - D) **Conduct of Meetings**
At the neighborhood meeting, the applicant should explain the development proposal and application, answer any questions, respond to concerns neighbors have about the application and proposed resolutions to these concerns.

 - E) **Report**
The report shall include, among other things:
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- 1) A listing of those persons and organizations contacted about the meeting and the manner and date of contact;
- 2) The date, time and location of the meeting;
- 3) An Apex Neighborhood Meeting Roster Form identifying the persons in attendance at the meeting;
- 4) A summary of issues discussed at the meeting; and,
- 5) A description of any changes made by the petitioner as a result of the meeting.

2.2.8 Application Submission

An application shall be submitted to the Planning Director pursuant to the application submittal schedule established by the Planning Director and made available to the public, along with a fee established pursuant to Sec. 2.2.5, Fees. Applications for master subdivision plans, planned developments, site plans, and construction plans shall be reviewed and commented on by the Technical Review Committee (TRC). Provided, however, that the Town shall not accept any such applications relating to any property within the Town's municipal corporate limits or extraterritorial jurisdiction on which an historic structure (as defined in Article 12) has been demolished (as defined in Article 12) within the immediately preceding forty-eight (48) months, measured from the date of the Town's final inspection of such demolition activities pursuant to the North Carolina State Building Code.

A) ***Determination of Sufficiency***

The Planning Director shall determine if the application is sufficiently complete and includes data in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive requirements of this Ordinance. This process shall occur within the time frame of the application submittal schedule as established by the Planning Director. If the Planning Director determines the application is not sufficient a written notice shall be transmitted to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied.

B) ***Determination of Compliance***

When an application is determined sufficient, it shall be reviewed pursuant to the procedures and standards of this article. The Planning Director shall forward the application to each member of the TRC and any other applicable review agencies for review and comments. If the application is found not to comply with one or more aspects of this ordinance or other regulations, then the TRC Chairperson shall compile a list of comments and outstanding issues and transmit it to the applicant. The applicant shall make the requested changes and resubmit revised plans to address the comments of the TRC and any other review agency. The process shall repeat until the application is found to be complete and in full compliance with this ordinance and all other applicable regulations. This process shall follow the steps and the time frame of the application submittal schedule as established by the Planning Director.

2.2.9 Staff Report

Upon the TRC's finding that the application is complete and in full compliance with this ordinance and all other applicable regulations, the Planning Director shall prepare a staff report. This staff report shall include a recommendation from the Town Staff for approval, approval with conditions, or denial. The Town Staff may recommend conditions for approval to eliminate any areas of noncompliance or to mitigate any adverse effects of the development proposal.

2.2.10 Scheduling Public Hearing(s)

When an application is subject to a public hearing (see Sec. 2.2.11(E), *Timing of Notice* for when a public hearing is required), the Planning Director shall ensure that the public

hearing or public hearings on the application are scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the decision-making or advisory body reviewing the application. The public hearing shall be scheduled so there is sufficient time for a Staff Report to be prepared, and for the public notification requirements to be satisfied.

2.2.11 Public Notification

All applications for development approval requiring public hearings shall comply with the North Carolina General Statutes, the table in Sec. 2.2.11(E), *Timing of Notice*, and the other provisions of this Section with regard to public notification.

A) **Content**

All notices for public hearings, whether done by mail (written notice), publication or posting shall:

- 1) *Time and place.* Indicate the time and place of the public hearing or action;
- 2) *Location.* Describe the land involved by street address or by legal description and nearest cross street;
- 3) *Describe nature and scope of application.* Describe the nature, scope and purpose of the application or proposal being advertised;
- 4) *Additional information.* Indicate where additional information can be obtained; and
- 5) *Notify interested parties they will be heard.* Include a statement that interested parties may appear at the public hearing and be heard with respect to the application.

B) **Written (Mailed) Notice**

When the provisions of this Ordinance require that written or mailed notice be provided, the Planning Director shall be responsible for preparing the written notice and mailing the written notice. Notice shall be mailed to all owners of the land subject to the application, and all owners of land located within 300 feet of the land subject to application, unless otherwise specified in this Ordinance. However, as an alternate form of notification, NCGS 160A-384(b) may be used when a zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. Written notice shall be provided at the last addresses listed for such owners on the county tax abstracts. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The applicant shall be responsible for providing the Planning Director with first class stamped envelopes (postage metering is not acceptable) addressed to all owners of the land subject to the application and all owners of land located within 300 feet of the land subject to application. The applicant shall also sign and provide to the Planning Director an affidavit with a certified list of all owners of the land subject to the application and all owners of land located within 300 feet of the land subject to application. The Planning Director shall be responsible for preparing an affidavit affirming that the mailed notice met the requirements of Section 2.2.11(A) Content. The affidavit shall be conclusive that notice has been given pursuant to the terms of the subsection.

C) **Published Notice**

When the provisions of this Ordinance require that notice be published, the Planning Director shall be responsible for preparing the content of the notice and publishing the notice in either:

- 1) A newspaper of general circulation that has been selected by the Town once a week for two successive weeks prior to the public hearing;
 - 2) Or by electronic means including the Town's website.
- The notice shall be published the first time not less than 10 days nor more than 25 days before the date established for the public hearing.

D) **Posted Notice**

When the provisions of this Ordinance require that notice be posted on the land subject to the application, the Planning Director shall (1) post the notice on weatherproof signs and (2) place the signs on the property that is the subject of the application, and along each public street which is adjacent to or runs through the subject property in a manner that makes them clearly visible to neighboring residents and passers-by. The sign(s) shall be set back no more than 25 feet from the public street(s) so that the lettering is visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest public street with an attached notation indicating generally the direction and distance to the land subject to the application.

E) **Timing of Notice**

Unless otherwise expressly provided in the North Carolina General Statutes or this Ordinance, notice shall be provided as follows:

Application for Development Permit or Other Action	Notice Required (days before hearing/action)			
	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Rezoning, Conditional Rezoning, PUD-CZ, TND-CZ, MEC-CZ	Written notice no less than 10 days prior to meeting date	Not more than 25 days nor less than 14 days prior to public hearing	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing	Not more than 25 days nor less than 14 days prior to public hearing
All other applications for development requiring public hearing (Special use and Major Site Plan)	Written notice no less than 10 days prior to meeting (Major Site Plans and Residential Master Subdivision Plans only)	Not more than 25 days nor less than 14 days prior to public hearing	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing	Not more than 25 days nor less than 14 days prior to public hearing
Variance permit		Not more than 25 days nor less than 14 days prior to public hearing	Not more than 25 days nor less than 14 days prior to public hearing	Not more than 25 days nor less than 14 days prior to public hearing
Appeals to Board of Adjustment (interpretations and decisions of Planning Director)		Not more than 25 days nor less than 14 days prior to public hearing	Not more than 25 days nor less than 14 days prior to public hearing	Not more than 25 days nor less than 14 days prior to public hearing

2.2.12 Withdrawal of Application

A) **Submission of Application**

Any request for withdrawal of an application shall be submitted in writing to the Planning Director.

- B) **Prior to Notice of Public Hearing**
The Planning Director shall approve a request for withdrawal of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Sec. 2.2.11, *Public Notification*.

- C) **Subsequent to Notice of Public Hearing**
Once notice of a public hearing has occurred pursuant to Sec. 2.2.11, *Public Notification*, the request for withdrawal of the application shall be placed on the public hearing agenda and acted upon by the appropriate decision-making body.

2.2.13 Protest Petition

If a valid protest petition is filed against a proposed rezoning pursuant to NCGS Sec. 160A-385(a) and 160A-386, the development approval request shall not be approved except by a favorable vote of three-fourths of the Town Council. Protest petitions shall be submitted no later than two (2) normal work days, excluding Saturdays, Sundays, and legal holidays, prior to the date of the Town Council public hearing in a form established by the Planning Director and made available to the public.

2.2.14 Review and Recommendation of Planning Board

After submission of an application (Sec. 2.2.8) and preparation of the Staff Report (Sec. 2.2.9), scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Planning Board shall conduct a public hearing on the application pursuant to Sec. 2.2.18, *Public Hearing Procedures*. At the public hearing, the Planning Board shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall recommend to the Town Council either to approve, approve with conditions (if appropriate) or disapprove the application based on the relevant review standards, and forward the application to the Town Council.

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

2.2.15 Action by the Town Council

After receipt of the recommendation from the Planning Board, or at the Town Council's discretion, after 30 days of consideration of proposed amendments to the zoning ordinance or zoning map by the Planning Board with no written recommendation, the scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Town Council shall conduct a public hearing on an application pursuant to Sec. 2.2.18, *Public Hearing Procedures*. At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the Planning Board recommendation, and the public testimony given at the public hearing. After the close of the public hearing, the Town Council by a majority vote of the quorum present, shall approve, approve with conditions (if appropriate), or disapprove the application based on the relevant review standards.

Per NCGS 160A-381(c), when approving Special Use Permits the Town Council shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Town Council to issue such permits. For the purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

Per NCGS 160A-383, prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

2.2.16 Decisions

All decisions shall be made part of the tape recorded or transcribed record of the public hearing and the written minutes. The decision shall include:

- A) ***Information Presented***
The information presented before the decision-making body.
- B) ***Documentary Evidence***
The documentary evidence submitted into the record; and
- C) ***Statement of Approval, Approval with Conditions, or Disapproval***
A clear statement of approval, approval with conditions, or disapproval, whichever is appropriate.

2.2.17 Notification of Decision

Notification of a decision on a development approval or permit shall be provided by the Planning Director to the applicant by mail within 14 calendar days after the decision. A copy of the decision shall also be made available to the public at the offices of the Planning Department, during normal business hours, within a reasonable period of time after the decision.

2.2.18 Public Hearing Procedures

A public hearing held pursuant to this Ordinance shall comply with the following procedures:

- A) ***Examination and Copying of Application and Other Documents***
At any time upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Department offices. Copies of such materials shall be made available at a reasonable cost.
- B) ***Conduct of Public Hearing***
 - 1) ***Burden of proof or persuasion.*** The burden of demonstrating that an application complies with applicable review and approval standards is on the applicant. The burden is not on the Town or other parties to show that the standards have not been met by the applicant.
 - 2) ***Rights of all persons.*** Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state an address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

- 3) *Exclusion of testimony.* The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
 - 4) *Offers of testimony.* In the event any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to offer such testimony or evidence for the record. Such offer shall be made at the public hearing.
 - 5) *Continuance of public hearing*
 - a) The body conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. An applicant shall have the right to request and be granted one continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the public hearing only upon good cause shown.
 - b) A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Section, provided that the continuance is set for a date within 60 days, and the date and time of the continued hearing is announced at the time of the continuance.
 - 6) *Order of proceedings at public hearing.* The order of the proceedings at the public hearing shall be as follows:
 - a) The Planning Director shall present a narrative and/or graphic description of the application.
 - b) The Planning Director shall present a Staff Report that includes a written recommendation.
 - c) The applicant shall present any information the applicant deems appropriate.
 - d) Public testimony shall be heard.
 - e) The applicant may respond to any testimony or evidence presented by the public.
 - f) The Planning Director or Planning Department staff, the Town Attorney, and any other Town staff may respond to any statement made by the applicant or the public.
 - 7) *General procedures and findings at public hearing*
 - a) All decision-making bodies and persons shall act in accord with any time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the Town and the applicant, and shall include a clear statement of approval, approval with conditions, or disapproval, where appropriate.
 - b) In approving development applications, the decision-making body shall be authorized to impose such conditions upon the
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approval and land benefited by the approval as is necessary to ensure compliance with the relevant review standards, so long as the condition relates to a situation created or aggravated by the proposed use or development for which approval is granted and is roughly proportional to its impact.

- c) The form of all decisions shall comply with Sec. 2.2.16, *Decisions*.

C) ***Notification of Decision***

Notification of a decision-making body's decision shall comply with Sec. 2.2.17, *Notification of Decision*.

D) ***Record***

- 1) *Recording of public hearing.* The body conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Planning Director, and payment of a fee to cover the cost of transcription or duplication of the record.
- 2) *The record.* The record of oral proceedings, including testimony and statements of personal opinions, the minutes of the Secretary, all applications, exhibits and papers submitted in any proceeding before the decision-making body, the Staff Report and the decision of the decision-making body shall constitute the total record.

E) ***Successive Applications***

Whenever any application is disapproved, an application for all or a part of the same land shall not be considered for a period of one (1) year after the date of disapproval unless either the subsequent application involves an application that is materially different from the prior application or a simple majority of the membership of the decision-making body that made the final decision on the application determines that the prior disapproval was based on a material mistake of fact. The decision-making body charged with conducting the public hearing under such successive application shall resolve any issue concerning the similarity of a successive application or other issues that may develop under this Section.
