

# **ARTICLE 3 ZONING AND PERMITTING PROCEDURES**

*Summary: This Article describes how to obtain a permit under the Unified Development Ordinance. Typically, the permit approval process involves four steps -*

- *First, an application is submitted to the Administrator. Appendix B lists the submittal requirements for different types of applications.*
  
- *Second, the Administrator determines whether the application is complete.*
  
- *Third, the application is forwarded to the appropriate board, commission and/or staff member to approve, approve with conditions, or deny the plans.*
  
- *Fourth, a permit is issued to the applicant once plans are approved.*

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**3.1. GENERAL PROCEDURES.**

**3.1.1. APPLICATION PROCESS AND OFFICIAL FILING DATE.**

The specific procedures followed in reviewing various Applications for Development Approval may vary. Generally, the procedures for all applications have four common elements: (1) submittal of a complete application, including required fee payment and appropriate information; (2) review of the submittal by appropriate staff and boards; (3) action to approve, approve with conditions, or deny the application; and (4) issuance of a permit, based on complete and approved plans.

**3.1.1.1. Pre-Application Conference.** The applicant shall meet with the Administrator to discuss the nature of the proposed application, application submittal requirements, the procedure for action, and the standards for evaluation of the application.

**3.1.1.2. Application Materials.** Current application materials shall be made available in the Planning Department offices. Such applications shall be filed in advance of any public hearing or public meeting required pursuant to this Ordinance or the NCGS. The Administrator may establish a schedule to file any Application for Development Approval that requires action by the Planning and Zoning Board or the Town Board. The schedule shall provide adequate time for notice and/or publication consistent with § 3.1.5 of this Ordinance. Completed applications shall be filed according to any published schedule of the Planning Department.

**3.1.2. PLANNING AND ZONING BOARD.**

The Planning and Zoning Board shall hold regularly scheduled public hearings to receive and review public input on those items required by this Ordinance and the NCGS. On those items where it has review authority, the Board shall recommend that the Town Board approve, approve with conditions (if applicable), or deny applications. On items it has final decision authority, the Board shall approve, approve with conditions (if applicable), or deny applications. The Administrator will submit the proposed item to the Town Board for its consideration.

**3.1.3. RECORDS.**

The Administrator shall provide for minutes to be written and retained, shall record the evidence submitted within the allotted hearing time, and shall include a summary of the considerations and the action of the Board.

**3.1.4. TOWN BOARD.**

The Town Board shall hold regularly scheduled public hearings to act upon all items required by this Ordinance and the NCGS to be considered by the Town Board. The Town Board shall decide whether or not to approve, approve with conditions (if applicable), or deny such applications.

**3.1.5. NOTICE PROVISIONS.**

The notice requirements for each type of application for development approval are prescribed in the individual subsections of this Article and/or the NCGS.

**3.1.5.1.** Unless provided for otherwise, the notice given for legislative and advisory proceedings, including amendments to this Ordinance, or the Official Zoning Map, shall be provided as set forth in NCGS § 160A-364, and 160A-384.

**3.1.5.2.** The adjacent property owners to a quasi-judicial hearing will be given a notice of hearing (by the Administrator) not less than 15 days before the hearing. The notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of this Ordinance involved, and shall give a short and plain statement of the application. Notice shall be given by first-class mail.

**3.1.5.3.** No notice shall be required for an administrative permit issued pursuant to § 3.2 of this Ordinance unless otherwise provided by this Ordinance or by law.

**3.1.6. SCOPE OF ACTION.**

The reviewing body may take any action on the application that is consistent with the notice given, including approval of the application, conditional approval (if applicable), or denial. The reviewing

body may allow minor amendments to the application which: (1) proposes fewer dwelling units, floor area or impervious surface than that requested on the original application; (2) reduces the impact of the development; or (3) reduces the amount of land involved from that indicated in the notices of the hearing. The reviewing body shall not, in any case, permit: a greater amount of development, a use falling in a different general use category, a larger land area than indicated in the original application, or a greater variance than was indicated in the notice. In addition, the reviewing body shall not reduce or eliminate conditions for a conditional use or conditional zoning district unless a new notice is provided prior to the meeting at which a final decision is to be made.

**3.1.7. QUASI-JUDICIAL PUBLIC HEARING PROCEDURES.**

**3.1.7.1. Applicability.** The provisions of this subsection apply to any application for a conditional use permit, variance, appeal, or any other quasi-judicial action. In making quasi-judicial decisions, the decision-makers must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use policies to individual situations, such as variances, conditional use permits, and appeals of administrative determinations. These decisions involve two key elements: 1.) the finding of facts regarding the specific proposal and 2.) the exercise of some discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence. *See Lancaster County v. Mecklenburg County*, 334 N.C. 496, 434 S.E.2d 604 (1993).

**3.1.7.2. Rulemaking Authority.** The Planning and Zoning Board and the Town Board may adopt general rules which apply to quasi-judicial public hearings. These public hearings may relate to a conditional use permit or to a proceeding before the Board of Adjustment.

**3.1.7.3. CONDUCT OF HEARING.**

**3.1.7.3.1.** Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. Each person who appears at a public hearing shall state, for the record, his or her name, address, and if appearing on behalf of an organization or group, its name and mailing address. The hearing shall be conducted in accordance with the procedures set forth in NCGS § 160A-388.

**3.1.8. ADMINISTRATIVE DECISIONS.**

**3.1.8.1. Applicability.** Administrative decisions are routine, non-discretionary zoning ordinance implementation matters carried out by the staff, including issuance of permits for permitted uses. In general, the Administrator is a purely administrative agent following the literal provisions of this ordinance. The Administrator may engage in some fact finding, (for example, as in making an initial determination as to whether a nonconforming use was in existence at the time a zoning provision was adopted). This involves determining objective facts that do not involve an element of discretion. In contrast to quasi-judicial hearings, administrative decisions are made without a hearing at all, with the staff member reviewing an application to determine if it is complete and compliant with objective standards set forth in this Ordinance. *Lancaster County v. Mecklenburg County*, 334 N.C. 496, 434 S.E.2d 604 (1993).

**3.1.8.2. Processing Procedures.** The procedures for processing administrative permits, such as zoning clearance permit and certificates of compliance, conveyance plats, and final plats are set forth in the sections of this Ordinance pertaining to such permits.

**3.1.9. LEGISLATIVE AND ADVISORY HEARINGS.**

**3.1.9.1. Purpose.** The purpose of a legislative or advisory review public hearing is to provide the public an opportunity to be heard. Unlike quasi-judicial hearings, a legislative proceeding does not require due process protections, such as right of the parties to offer evidence, sworn testimony, or findings of fact. Like quasi-judicial hearings, legislative hearings are public hearings preceded by notice to interested parties. Public hearings are

required for legislative review hearings, such as amendments to the Comprehensive Plan, amendments to this Ordinance (including Zoning provisions of this Ordinance and the Zoning Map), and applications for a Planned Unit Development.

**3.1.9.2. Notice.** Notice of hearing shall be provided in accordance with NCGS Chapter 160A-384.

**3.1.9.3. Conduct of Hearing.** Testimony may be presented by any member of the public, but need not be submitted under oath or affirmation. The decision-making body may establish a time limit for testimony.

**3.1.9.4. Record of Proceedings.** The body conducting the hearing shall record the minutes of the proceedings by any appropriate means as prescribed by rule and consistent with NCGS Chapter 132. The Administrator will provide the record upon request by application and payment of a fee set by the Town Board (to cover duplication costs.)

**3.1.9.5. Neighborhood Meeting Required.** The Town will not accept an application for development approval that increases density or intensity unless:

- all adjacent property owners have been contacted and given an opportunity to meet with the applicant at a meeting established at a reasonable time; and
- applicant submits a summary report indicating results of meeting.

The Administrator may act as a facilitator if requested by the Applicant in order to avoid *ex parte* contacts. No member of the decision-making entity may participate in a neighborhood meeting. The applicant may conduct additional neighborhood meetings prior to the hearing at his discretion.

**3.1.10. REVOCATION OF PERMIT OR APPROVAL.**

**3.1.10.1. Duties of Administrator.** If the Administrator determines that there are reasonable grounds for revocation of a development permit or approval, the Administrator shall take appropriate action as set forth in § 1.6. The decision of the Administrator to revoke the permit shall be based on § 3.1.10.2, below.

**3.1.10.2. Grounds for Revocation.** The following shall be considered grounds for revocation of a permit:

- The applicant intentionally supplies misleading information. The provision of information is considered “intentional” when the applicant was aware of the inaccuracies or could have discovered the inaccuracies with reasonable diligence.
- The failure to comply with any condition of a development order or development permit.

**3.1.10.3. Decision and Notice.** The Administrator shall render a decision to revoke the permit, to allow the applicant to retain the development permit, or to reconsider the permit. The Administrator shall notify the holder of the permit in the manner provided in NCGS § 160A-422.

**3.1.10.4. Effect and Appeals.** The decision of the Administrator may be appealed as set forth in § 3.8 of this Ordinance. Unless appealed, a decision to revoke a development permit shall become final thirty (30) days after the date the decision is rendered. After that, any further activities based on the permit shall be deemed to be in violation of this Ordinance and shall be subject to the remedies as prescribed in § 1.6 of this Ordinance.

**3.1.10.5. Right Cumulative.** The right to revoke a development permit, as provided in this Section, shall be cumulative to any other remedy allowed by law.

## 3.2. ADMINISTRATIVE PERMITS.

### 3.2.1. PURPOSE.

The purpose of this Section is to prescribe procedures for permits which do not require quasi-judicial or legislative notice or a public hearing. A public hearing is not required for permits set forth in this Section for one or more of the following reasons:

- If required, public hearings have already been conducted relating to the permit application. The permit application procedure was designed to ensure that the proposed use complies with a previously approved subdivision plat, site plan, specific plan, comprehensive plan amendment, or conditional district rezoning (e.g., zoning clearing, certificate of occupancy).
- The proposed use is permitted by right in the applicable zoning district (e.g., zoning clearance, certificate of occupancy).

### 3.2.2. APPLICABILITY.

The provisions of this Section shall apply to the following any site plan or final site plan or required administrative permit as set forth in § 3.6 of this Ordinance. Administrative permits include:

- a zoning clearance permit (see below)
- certificate of compliance (see below)
- temporary certificate of compliance (see below)
- grading permit (see below)
- temporary use permit (see Art. 5)
- home occupation permit (see Art. 5)
- sign permit (see Art. 12)
- special flood hazard area development permit (see Art. 4)
- erosion and sedimentation control permits (see Art. 9)

### 3.2.3. PROCEDURES.

All development permits applicable to a proposed development must be issued in accordance with the provisions of this Ordinance, prior to any development activity. Permits are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards, and laws and to ensure consistency with

the Comprehensive Plan and policies of the Town .

### 3.2.4. ZONING CLEARANCE PERMIT.

**3.2.4.1. Application.** Upon adoption of this Ordinance, buildings or structures shall be erected or constructed, and uses shall be established, only on parcels of land that have been created in conformance with this Ordinance. To construct any structure, use any land, or change the use of any structure, or land, a zoning clearance permit must be obtained from the Zoning Department and a building permit obtained from the Cabarrus County Building Inspections Department. The following standards apply to new construction:

**3.2.4.1.1.** New construction of a freestanding principal structure(s) shall be subject to all applicable design standards as set forth in this Ordinance.

**3.2.4.1.2.** Expansions, or additions to an existing principal structure shall be subject to the following:

- An expansion or addition of 25% or less of the Gross Floor Area (GFA) shall be subject to the building setbacks and minimum parking standards of this Ordinance. If additional new parking is required, parking lot yard landscaping shall be required as set forth in Article 7.
- An expansion or addition of greater than 25% of the GFA shall be subject to all applicable design standards as set forth in this Ordinance.

**3.2.4.2. Grading.** A Grading Permit shall be required in accordance with § 3.2.7.

**3.2.4.3. Exceptions.** The provisions of this section shall not apply to any legal nonconforming use established in accordance with the provisions of Article 8 of this Ordinance.

**3.2.4.4. Procedures.** (See Figure 3.2-1)

**3.2.4.4.1.** The Applicant shall file a complete application on a prescribed form for a Zoning Clearance Permit with the Administrator. If Site Plan review is required in accordance with § 3.6 of this Ordinance, the approved site plan must be submitted with the application for a zoning clearance. If the

proposed development or development activity is not subject to site plan review pursuant to § 3.6, a plot plan must be filed for review as illustrated in Figure 3.2-1. The requirements for a plot plan are set forth in Appendix B.

**3.2.4.4.2.** Following review, the Administrator shall approve, approve with conditions, or deny the application for a zoning clearance permit. Applications that are denied shall have the reasons for denial, in writing, attached to the application. An appeal of the decision of the Administrator is allowed as provided for in § 3.7.

**3.2.4.5. Approval Criteria.** The zoning clearance permit shall be issued by the Administrator only if the application complies with all pertinent provisions of this Ordinance, and any approved conditional use permit, conditional district rezoning, or site plan.

**3.2.4.6. Validity.** The zoning clearance permit shall be valid for its established use if:

- The use is in compliance with applicable codes
- A building permit has been obtained by the applicant within (6) months of issuance of the zoning clearance permit

If six (6) months elapse without the issuance of a building permit, the zoning clearance permit shall expire. Resubmission of plans and materials and an application for a new zoning clearance permit, including applicable fee(s), shall be required for any approved project that did not commence construction within that six (6) month period.

**3.2.5. CERTIFICATE OF COMPLIANCE.**

**3.2.5.1. Application.** Upon the effective date of this Ordinance, it shall be unlawful to use, occupy or permit the use or occupancy of, connect or provide utilities to any building or land hereafter created, erected, changed, converted, altered or enlarged in its use or structure until a Certificate of Compliance has been issued by the Administrator.

**3.2.5.2. Procedures.**

**3.2.5.2.1.** The Applicant shall file a complete application for a certificate of compliance with the Administrator. For new construction projects, an approved site plan as submitted for application for a

Zoning Clearance Permit shall be used. If the application for a certificate of compliance does not involve new exterior construction, a plot plan showing all exterior improvements, as required by this Ordinance, shall be filed for review. The Administrator shall assist the applicant in determining which materials are required for a submittal.

**3.2.5.2.2.** Individual tenants desiring to occupy lease space within an existing commercial development with multiple tenants shall be required to obtain a certificate of compliance. However, individual tenants shall not be required to upgrade any existing nonconforming site improvements to conform to the standards of this Ordinance. New construction is not exempted from meeting the design standards of this Ordinance.

**3.2.5.2.3.** Following review, the Administrator shall approve, approve with conditions, or deny the application for a certificate of compliance. Denied applications shall have the reasons for denial, in writing, attached to the application. An appeal of the decision of the Administrator is allowed as provided for in § 3.7.

**3.2.5.2.4. Approval Criteria.** The Administrator shall issue the certificate of compliance only if the application complies with all pertinent provisions of this Ordinance and any approved conditional use permit, conditional district rezoning or site plan.

**3.2.5.2.5. Validity.** The certificate of compliance shall be valid for its granted use as long as 1.) the use is in compliance with applicable codes and 2.) the property or structure is used, erected, changed, converted, altered, or enlarged in the stated manner.

**3.2.5.2.6. Performance Guarantee.** The applicant may submit a performance guarantee to the Administrator when an application for a certificate of compliance cannot be approved because certain improvements cannot be completed or installed due to adverse weather conditions or other reasonable factors. The applicant shall submit to the Administrator the following information: (1) a specific description of the factor(s) hindering completion or installation of the improvement(s); and (2) a written estimate from a licensed contractor of the cost of materials and labor for completing the work. The administrator shall then determine if the submission of a performance guarantee is appropriate

and if the estimate is acceptable. The performance guarantee may be submitted in the form of a certified check, cashier's check, bond, or letter of credit on approved forms and shall be in the amount of 150% of the estimate. The performance guarantee shall be released after the improvements, as guaranteed, inspected by the Administrator and determined to be in full compliance with the approved plan.

**3.2.6. TEMPORARY CERTIFICATE OF COMPLIANCE.**

**3.2.6.1.** A temporary certificate of compliance may be issued by the Administrator for a period not to exceed six (6) months to allow for partial occupancy of a structure or land in order to complete construction or alteration as permitted. A temporary certificate of compliance may also be issued for a period not to exceed six (6) months to allow for utilities to be connected to an unoccupied structure for rent and/or sale. It shall be unlawful to permanently occupy any portion of a newly constructed or altered building or structure, or to allow a change of use to occur unless a Certificate of Compliance has been granted as prescribed in § 3.2.5. The procedures for issuance of a temporary certificate of occupancy shall be in the same manner as set forth for certificates of compliance in § 3.2.5.2.

**3.2.7. ZONING GRADING PERMITS.**

**3.2.7.1. Application.** Upon the effective date of this Ordinance, it shall be unlawful for any person(s) to commit any land disturbing activity, including removal of vegetation, until a Zoning Grading Permit has been issued by the Administrator.

**3.2.7.2. Coordination with Erosion Control.** A Zoning Grading Permit shall not be issued until sedimentation and erosion control permit has been issued as set forth in § 9.1, if applicable.

**3.2.7.3. Approval Criteria.** The zoning grading permit shall be issued by the Administrator only if the application complies with the standards of Appendix B and as referenced below:

- the provisions for floodplain protection as prescribed in § 4.14 of this Ordinance;
- the provisions for vegetation protection and retention as prescribed in § 3.2.7.6 below; and

- as required by any approved conditional use permit, conditional district rezoning, or site plan.

**3.2.7.4. Exemption.** A Zoning Grading Permit shall not be required for the following:

- agricultural uses, as defined in Table 4.6-1;
- single-family detached homes; or
- land disturbing activities that do not disturb more than one (1) acre of land.

**3.2.7.5. Validity.** The zoning grading permit shall be valid for one year. Resubmission of plans and an application for a new zoning grading permit, including applicable fee(s), shall be required upon expiration of zoning grading permit.

**3.2.7.6. Vegetation Protection and Retention.** Zoning Grading plans shall be designed to preserve existing trees and vegetation to the greatest extent possible and shall seek to incorporate existing significant stands of trees as well as individual trees. Certain excavation techniques used by utility companies and others can cause removal of vital roots, change drainage patterns and create conditions that could kill trees and plant materials or make them more susceptible to disease and deterioration. The intent of these regulations is to recognize the need to alter the landscape during site development activities while setting out standards necessary to ensure tree preservation to the greatest extent possible.

**3.2.7.6.1. General Requirements.** Existing trees and vegetation that are to be preserved should be protected from all construction activities including installation and/or replacement of utilities, earthwork operations, movement and storage of equipment and materials and dumping of toxic materials. Tree and vegetation protection techniques shall be shown in the Zoning Grading Plans and shall be in conformance with standard practices set forth in Appendix B of this Ordinance.

**3.2.7.6.2.** The Administrator shall use the guidelines below to assist in determining the approval of a Zoning Grading Permit. Vegetation should be removed if:

- the vegetation prevents the reasonable development of a property and without its

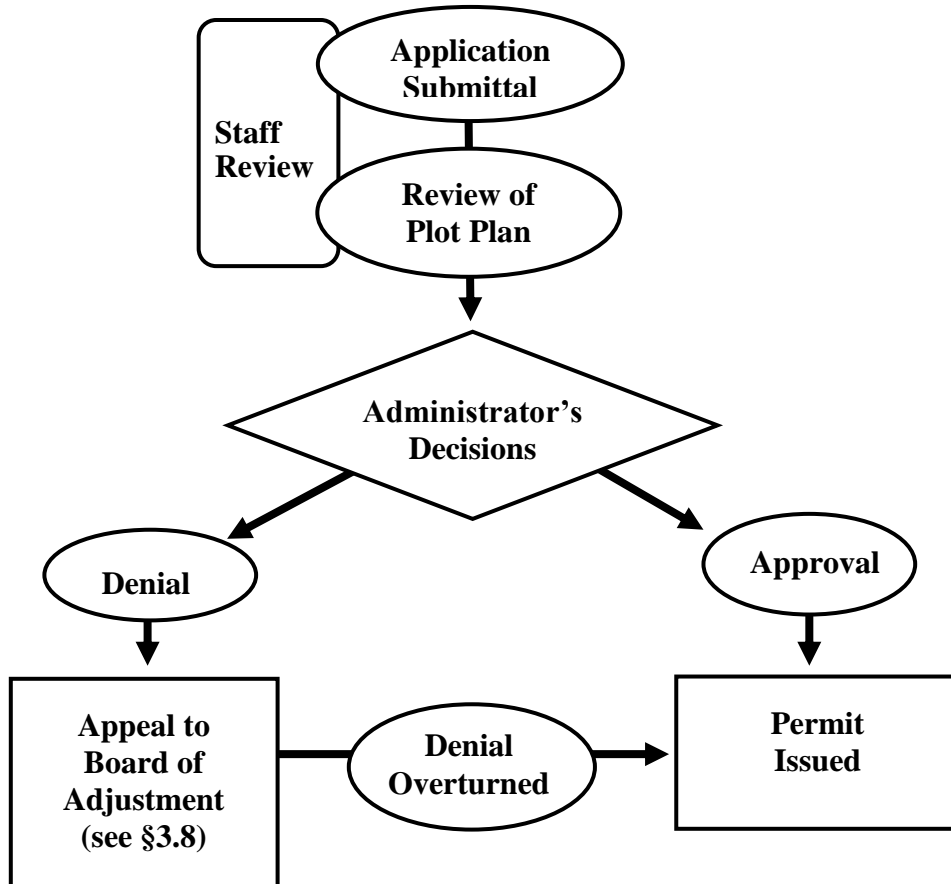
removal, development of the land will be prevented;

- the vegetation poses a safety hazard to pedestrians or vehicles, buildings or structure;
- the vegetation imposes a disruption or potential disruption of utility services;
- the vegetation prevents access to property; or
- the vegetation is diseased or will become diseased due to infectious disease, insect infestation, wind or ice storm, or fire and poses a threat to the safety and welfare of the public, vehicles, structures or buildings.



**Figure 3.2-1 – ADMINISTRATIVE PERMIT REVIEW PROCESS\***

**\*Includes only administrative permits applications that are not required to obtain site plan approval as set forth in § 3.7 of this Ordinance.**



**3.3. ZONING MAP AMENDMENTS.**

**3.3.1. PURPOSE.**

The purpose of this Section is to establish uniform procedures for processing changes to the Official Zoning Map ("rezonings").

**3.3.2. INITIATION OF A ZONING MAP AMENDMENT.**

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

- applications for conditional district rezoning as set forth in § 3.4 may be initiated only by petition;
- applications for third party rezonings may not be permitted unless a petitioner obtains Planning Board sponsorship.

**3.3.2.2.** An amendment to the Official Zoning Map (a "Rezoning") may be initiated by filing an application with the Administrator. Before any application is accepted by the Planning Department, the applicant must meet with the Administrator. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for a zoning amendment request. During the conference, the administrator will identify the submittal requirements. Neighborhood meetings are required pursuant to § 3.1.9.5 of this Ordinance.

**3.3.3. ZONING TEXT AMENDMENTS.**

An amendment to the text of this Ordinance is regulated in accordance with § 3.8 of this Ordinance.

**3.3.4. ZONING MAP AMENDMENT PROCESS.**

The purpose of this Section is to provide a procedure for streamlining the review of rezoning applications as permitted by special legislation.

**3.3.4.1. Delegation.** The Planning and Zoning Board is hereby delegated by the Town Board to have the authority to take final action on applications to rezone property as herein provided.

**3.3.4.2. Procedures for Review.**

**3.3.4.2.1.** Zoning Amendment applications shall be submitted for review by the appropriate reviewing departments and a hearing scheduled for the next available meeting of the Planning and Zoning Board. Notice of the public hearing shall be provided as set forth in § 3.1.5 of this Ordinance. The zoning amendment review process is illustrated in Figure 3.3-1.

**3.3.4.2.2. Statement of Consistency With Comprehensive Plan(s).** Prior to adopting or rejecting any zoning map amendment the Planning and Zoning Board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Board considers the action taken to be reasonable and in the public interest. (*Amended 5/1/2006*)

**3.3.4.2.3. Decision.** The Planning and Zoning Board may render a final decision regarding a zoning amendment by vote of at least three-fourths of the members of the Board present and not excused from voting, and if there is no appeal of this decision. If a decision is by a vote of less than three-fourths of the members of Board or if an appeal is taken, then only the Town Board shall have the authority to make a final decision on a rezoning application. Conditions may be imposed to an approved rezoning only if a rezoning to a conditional zoning district is approved pursuant to § 3.4 of this Article.

**3.3.4.2.4.** Any person aggrieved by the decision of the Planning and Zoning Board shall have the right to appeal the action to the Town Board. The appeal shall be filed by giving notice in writing to the Administrator within fifteen (15) days of the decision of the Planning and Zoning Board.

**3.3.4.2.5. Written Recommendation of Planning and Zoning Commission.** In the event of an appeal, denial, or approval by less than a supermajority, the Commission shall provide a written recommendation to the governing board that addresses consistency with the comprehensive plan(s) and any other matters deemed appropriate by the Planning & Zoning Commission. (*Amended 5/1/2006*)

**3.3.4.2.6** If an amendment is forwarded to the Town Board of Commissioners for review after an appeal, the Town Board of Commissioners shall hold a

hearing in no more than sixty days from the date of appeal (if any) and decide to approve or deny the zoning amendment. If an amendment is forwarded to the Town Board of Commissioners for review for any reason OTHER than appeal, the Town Board of Commissioners shall hold a hearing in no more than sixty days from the date of the Planning and Zoning Commission meeting and decide to approve or deny the zoning amendment. Comments by the Planning and Zoning Commission that a proposed amendment is inconsistent with the comprehensive plan(s) shall not preclude the Town Board of Commissioners from considering or approving any proposed amendment. Approval of the amendment shall be by a majority vote. Conditions may be imposed to an approved rezoning only if a rezoning to a conditional zoning district is approved pursuant to § 3.4 of this Article. *(Amended 5/1.2006)*

**3.3.5. APPROVAL CRITERIA.**

Whenever the public necessity, safety, or general welfare justifies such action, and after obtaining the recommendation by the Planning and Zoning Board, the Town Board may change zoning district boundaries. The Planning and Zoning Board and Town Board may consider the following questions, at a minimum, in reviewing an application for a rezoning.

**3.3.5.1.** The size of the tract in question.

**3.3.5.2.** Whether the proposal conforms with and furthers the goals and policies of the Comprehensive Plan, other adopted plans, and the goals, objectives, and policies of this Ordinance.

**3.3.5.3.** The relationship of the uses envisioned under the new zoning and the uses currently present in adjacent tracts, as follows:

- Whether 1.) the proposed rezoning is compatible with the surrounding area, or 2.) there will be adverse effects on the capacity or safety of the portion of street network influenced by the rezoning, or 3.) parking problems, or 4.) environmental impacts that the new use will generate such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances.
- Any change of character in the area due to installation of public facilities, other zone

changes, new growth trends, deterioration, and development.

- Compliance with the adequate public facilities criteria as set forth in this Ordinance.
- The zoning districts and existing land uses of the surrounding properties.
- Whether the subject property is suitable for the uses to which it has been restricted under the existing zoning classification.
- Whether the rezoning is compatible with the adjacent neighborhood, especially residential neighborhood stability and character.
- The length of time the subject property has remained vacant as zoned.
- Whether there is an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs.
- Whether the existing zoning was in error at the time of adoption.

**3.3.6. PROTEST PETITIONS.**

A three-fourths supermajority vote of the members of the Town Board shall be required if a protest petition is filed in accordance with NCGS § 160A-385. The protest petition shall be filed with the Administrator at or before 12:00 noon not less than two working days before the date of the Board hearing.

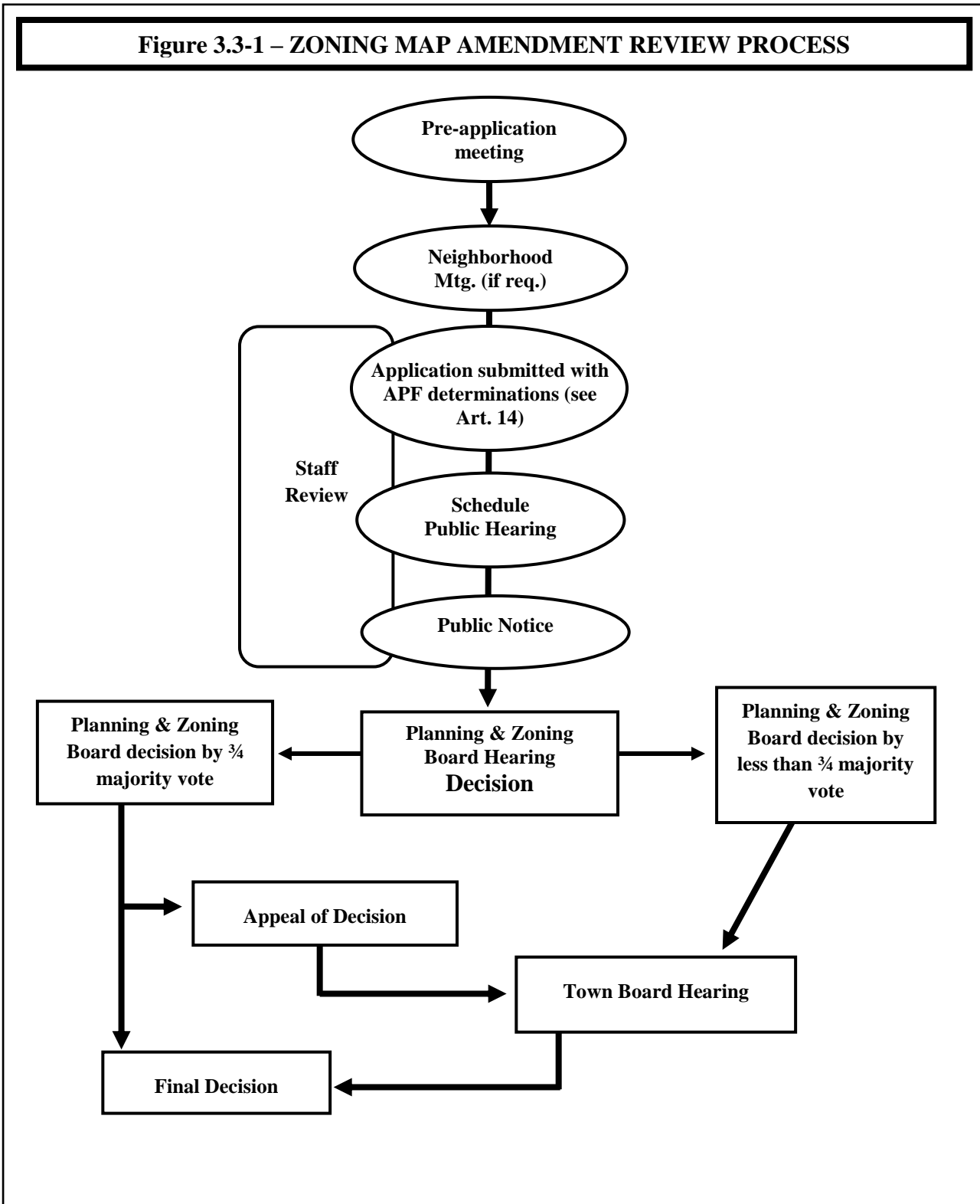
**3.3.7. SCOPE OF APPROVAL.**

The approval of a zoning map or text amendment does not authorize any development activity. For proposed conditional uses, the approval of a rezoning authorizes the applicant to file a site plan for conditional use permit approval. If the desired use is permitted as of right, the applicant may file a site plan (if required by § 3.6) and, if no site plan is required, an application for a zoning clearance permit and any other administrative permits required by § 3.2 of this Ordinance.

**3.3.8. SUBSEQUENT APPLICATIONS.**

In the event that an application for a rezoning or text

amendment is denied by the Town Board or Planning and Zoning Board (without an appeal) or that the application is withdrawn after the Board hearing, the Administrator shall refuse to accept another application for the same amendment on the same property or any portion of the same property within one year of the original hearing. However, the Planning and Zoning Board may consider such an application within that time period if it finds there is new and different evidence that was not reasonably available at the time of the original hearing.



**3.4. CONDITIONAL DISTRICT (CD) REZONINGS.**

**3.4.1. PURPOSE.**

The purpose of the conditional district rezoning process is to provide a procedure for considering the rezoning of property based upon the recognition that certain types of zoning would be inappropriate at particular locations in the absence of special conditions. Because of the refinement of this option, the Town strongly encourages its use for such situations. Conditional zoning affords a degree of certainty when making land use decisions that is not possible when rezoning to a general zoning district, which allows the full range of uses permitted in the district and does not provide the flexibility to propose or require binding site specific conditions to address unique issues that affect the subject property or any potential adverse impacts on adjacent property.

**3.4.2. PROCEDURE. (See Figure 3.4-1)**

**3.4.2.1.** Applications for conditional district rezoning approval shall be filed with the Administrator in a similar manner as set forth in § 3.3 and as illustrated in Figure 3.4-1.. A conditional district rezoning shall only be initiated at the request of the property owner or their authorized agent. A “CD” rezoning shall not be initiated by the Town Board, Planning and Zoning Board, or administrative staff.

**3.4.2.2.** The Applicant shall submit an application for a “CD” rezoning and a preliminary major site plan as set forth in § 3.6 and Appendix B of this Ordinance to the Administrator. Following approval of the rezoning, the applicant shall file an application for a final site plan with the Administrator that is consistent with the approved preliminary site plan and any supplemental conditions set forth as part of the conditional district rezoning approval.

**3.4.2.3.** The applicant shall describe the exact land use(s) proposed for the "CD" rezoning. Such use(s) may be selected from any of the uses, whether permitted by right or conditional, allowed in the general zoning district upon which the "CD" rezoning is based. The applicant may also submit any other conditions limiting the type, scope or intensity of development or use of the subject property for consideration by the decision making body.

**3.4.2.4.** The Planning Board shall hear the conditional district rezoning request and review the major site plan concurrently, except that the final decision to approve or deny each request shall be by a separate vote. The Planning Board shall first make a decision whether to grant approval for the requested “CD” rezoning. If the “CD” request is denied, the Planning Board will no longer consider the request for approval of the preliminary major site plan. If the “CD” rezoning is approved, the Planning Board shall then make a decision whether to approve the preliminary major site plan.

**3.4.3. PERMITTED USES AND CONDITIONS.**

Within a conditional zoning district, only those uses permitted by the zoning district with which the "CD" rezoning corresponds shall be permitted. Such action approving the preliminary major site plan may further specify 1.) the location of units, 2.) the location and extent of supporting facilities such as parking lots, driveways, and access streets, 3.) the location and extent of rights-of-way, and other areas to be dedicated for public use, and 4.) other such matters as the applicant may propose as conditions upon request. The decision-making body may also impose additional reasonable and appropriate safeguards to serve the purpose and intent of this chapter, public welfare, and justice. In the event of a "CD" rezoning, the final major site plan is itself a condition of the rezoning.

**3.4.4. VIOLATION OR INVALIDITY OF THE TERMS AND CONDITIONS OF A "CD" REZONING.**

**3.4.4.1.** A violation of a condition of rezoning to a conditional zoning district as set forth in the final development plan and a violation of other related official documents associated with such rezoning are considered violations of this Ordinance subject to the same remedies and penalties. Upon determining that such a violation has occurred, the Administrator shall notify the property owner of his findings and set a reasonable time for the violation to be corrected or abated in accordance with § 1.6. When a violation is not corrected or abated within the time period set by the Administrator, the Administrator or any person

aggrieved may institute appropriate action proceedings to correct or abate the violation consistent with § 1.6 of this Ordinance.

**3.4.4.2.** If any condition imposed, or consideration made, is found to be illegal or invalid, or if an applicant should fail to accept a condition such "CD" rezoning and preliminary major site plan shall be null and void. Proceedings will be instigated to rezone the property to its previous classification.

**3.4.5. SCOPE OF APPROVAL.**

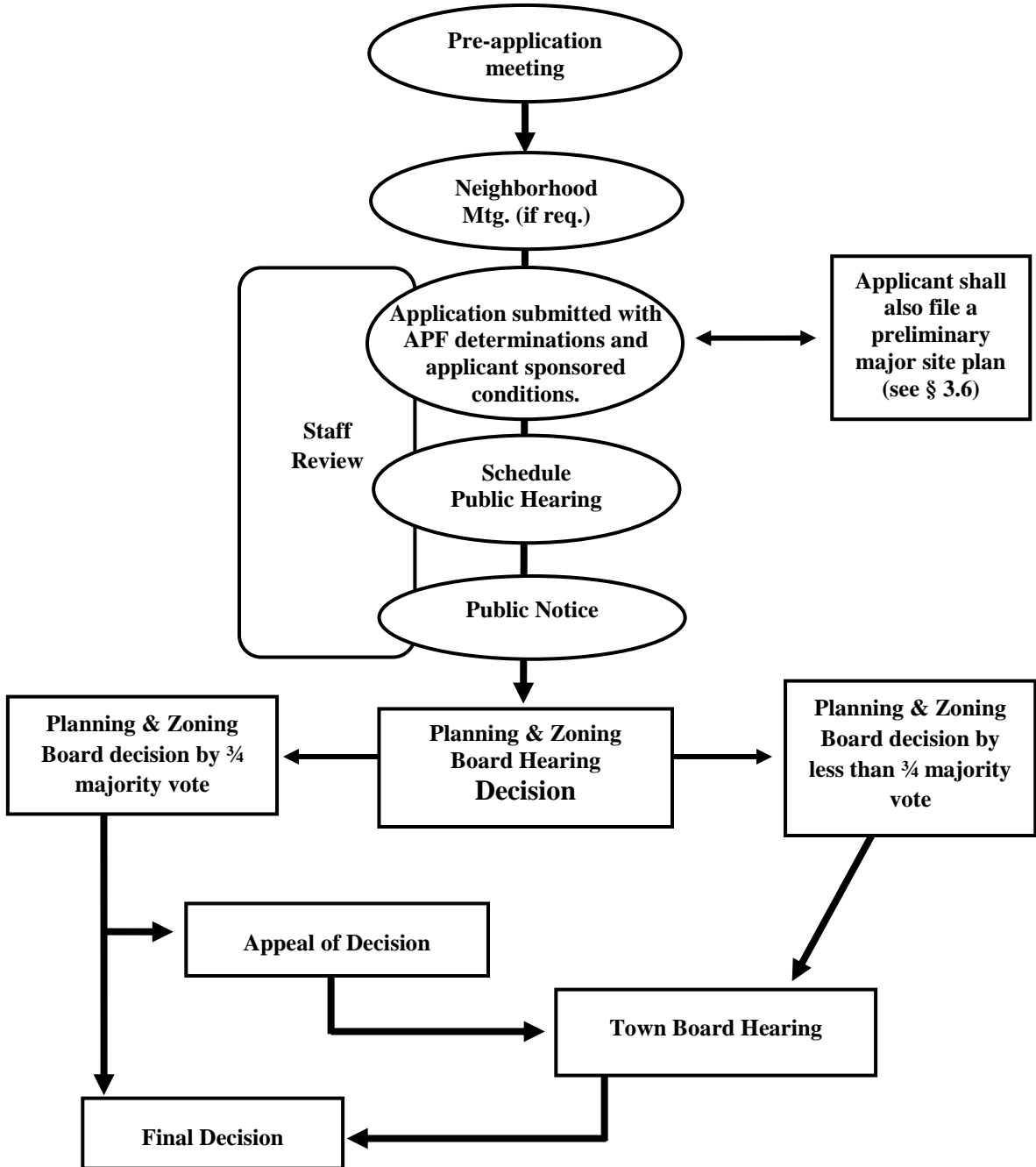
**3.4.5.1.** The approval of a rezoning to a conditional zoning district does not authorize development activity. The rezoning to the conditional zoning district and approval of the preliminary major site plan shall authorize the applicant to apply for a final major site plan. Final major site plans shall be reviewed by the Administrator in accordance with § 3.6.4 of this Ordinance.

**3.4.5.2.** The approval of a final major site plan shall constitute approval of the use(s) requested in the application and approved by the Planning Board. Approval of the final major site plan shall have the same effect as set forth in § 3.6 of this Ordinance.

**3.4.6. SUBSEQUENT PETITIONS.**

Subsequent applications for a conditional district rezoning shall be handled in the same manner as that of rezonings prescribed in § 3.3.8.

**Figure 3.4-1 – CONDITIONAL ZONING DISTRICT AMENDMENT REVIEW**





### **3.5. CONDITIONAL USE PERMITS.**

#### **3.5.1. APPLICABILITY.**

**3.5.1.1.** Conditional uses are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration. Conditional uses ensure the appropriateness of the use at a particular location within a given zoning district.

**3.5.1.2.** Only those uses that are enumerated as conditional uses in a zoning district, as set forth in § 4.6, Table 4.6-1 of this Ordinance, shall be authorized by the Town Board.

#### **3.5.2. APPROVAL PROCEDURE. (See Figure 3.5-1)**

**3.5.2.1.** No conditional use permit shall be authorized, developed, or otherwise carried out until the applicant has secured approval of the conditional use by the Board of Adjustment and approval of a final site plan by the Administrator.

**3.5.2.2.** Applications for conditional use permit approvals shall be filed with the Administrator as illustrated in Figure 3.5-1. Pre-application meetings with the Administrator prior to filing are required.

**3.5.2.3.** Major site plan applications (see Appendix B) shall be filed concurrently with conditional use permit applications. The information shall be provided to the Board of Adjustment during their deliberations.

**3.5.2.4.** The Board of Adjustment shall conduct a quasi-judicial hearing in accordance with the requirements of § 3.1.7 of this Ordinance. The Board of Adjustment shall conduct a quasi-judicial hearing and shall deny the request, approve the request; or approve the request with conditions.

**3.5.2.5.** The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the conditional use permit approval and shall be included in the final site plan application.

**3.5.2.6.** Violations of any of the conditions shall

be treated in the manner as set forth in § 1.6 of this Ordinance.

**3.5.2.7.** An application for a conditional use permit that has been denied may be resubmitted only if there has been a substantial change in circumstances, as determined by the Administrator, or if substantial revisions have been made to the application for development approval.

**3.5.2.8.** Minor field alterations or minor revisions to approved conditional uses may be approved by the Administrator if the conditional use still meets the intent of the standards established with the original approval. Minor alteration/revisions shall be limited to changes that do not increase the intensity, density, or character of the use. If the Administrator determines that the change is not minor, the applicant shall be required to apply for a revised conditional use permit. The applicant may appeal the decision of the Administrator to the Board of Adjustment.

#### **3.5.3. APPROVAL CRITERIA.**

Uses permitted subject to conditional use review criteria shall be permitted only after review and approval by the Board of Adjustment only if the applicant demonstrates that:

**3.5.3.1.** The proposed conditional use conforms to the character of the neighborhood, considering the location, type, and height of buildings or structures and the type and extent of landscaping and screening on the site.

**3.5.3.2.** Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

**3.5.3.3.** The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

**3.5.3.4.** The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

**3.5.3.5.** The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.

**3.5.3.6.** Compliance with any other applicable Sections of this Ordinance.

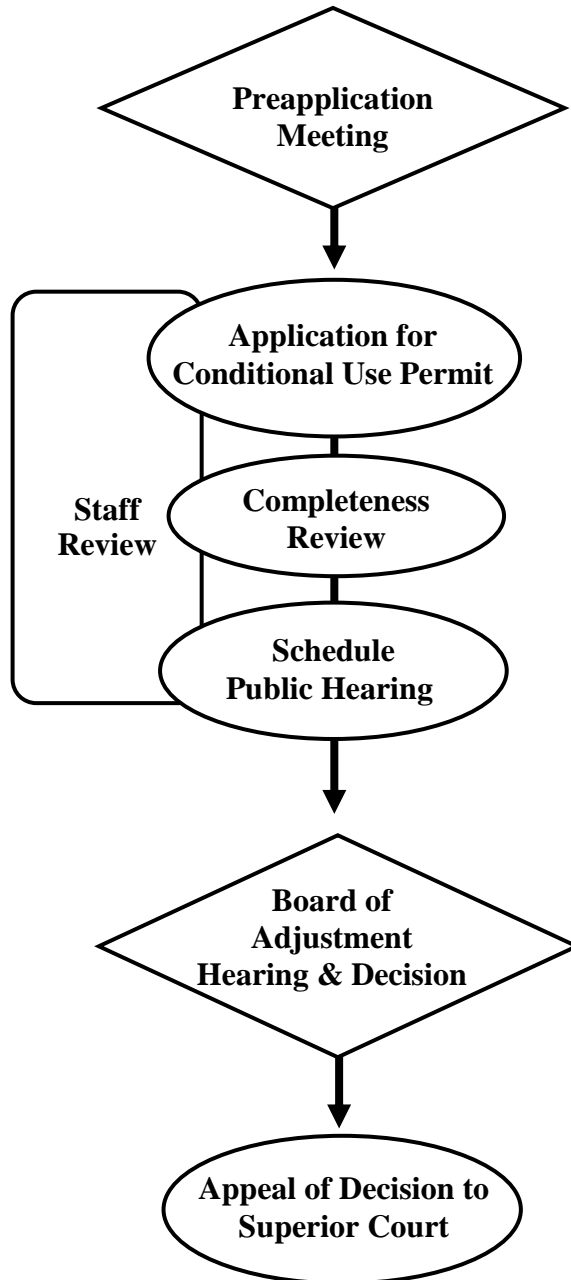
**3.5.4. SCOPE OF APPROVAL.**

The approval of a conditional use permit shall authorize the applicant to apply for final site plan approval pursuant to § 3.6 of this Ordinance. All approvals of conditional use permits require approval of the site plan. Any conditional use permit approval shall become null and void if a required site plan is not approved within 12 months after the date of the approval. No zoning clearance permit may be issued until the final major site plan and conditional use permits are approved. Final major site plan approval may require approval of variances. Approval of a conditional use permit does not authorize any development activity.

**3.5.5. SUBSEQUENT APPLICATIONS.**

Subsequent applications for a conditional use permit shall be handled in the same manner as that for rezonings prescribed in § 3.3.8.

**Figure 3.5-1 – CONDITIONAL USE PERMIT REVIEW PROCESS**



**3.6. SITE PLAN REVIEW.**

**3.6.1. PURPOSE.**

The site plan review provisions and regulations of this Section are intended to promote the safe, functional, and aesthetically pleasing development of property and to ensure that new structures, utilities, streets, parking, circulation systems, yards, and open spaces are developed in conformance with the standards of this Ordinance. The site plan review considers the siting of structures and related site improvements to promote harmonious relationships with adjacent development.

**3.6.2. MAJOR/MINOR SITE PLAN DEFINED.**

No application for development approval in the following categories shall be approved unless a site plan has been approved in accordance with the procedures prescribed in this Section.

**3.6.2.1.** The following shall require MINOR SITE PLAN approval:

- An application for development approval requesting a non-residential use or any multi-family dwelling unit, which is permitted by right in the applicable zoning district.
- Any application for development approval for which a site plan is required pursuant to Article Five of this Ordinance.

**3.6.2.2.** The following applications shall require MAJOR SITE PLAN approval:

- Any application for approval of a Planned Unit Development (PUD), Traditional Neighborhood Development (TND), or Transit-Oriented Development (TOD) district.
- Any application for rezoning to a conditional zoning district.
- An application for approval of a conditional use permit.

The foregoing approvals shall be referred to in this Section as the "Underlying Zoning Application."

**3.6.3. EXEMPTIONS.**

Detached single-family dwelling units and duplex developments on individual lots of record shall be exempt from the provisions of this section. Detached single-family dwelling units and duplex developments on individual lots of record shall be reviewed in accordance with § 3.2.4.4.1.

**3.6.4. CONFORMITY WITH APPROVED PLAN.**

**3.6.4.1.** Development activities subject to the requirements of this Section may be carried out only in substantial conformance with the approved site plan and attached any conditions or restrictions. Any substantial deviation from the approved site plan, unless approved in advance and in writing by the Administrator, shall be deemed a violation of this Ordinance. Further, no certificate of compliance shall be issued if the development activities do not conform to the approved site plan.

**3.6.5. APPROVAL PROCEDURE (MINOR SITE PLANS). (See Figure 3.6-1)**

Approval of a Minor Site Plan is a one-step process. The Applicant submits a Minor Site Plan for approval by the Administrator and an application for a Zoning Clearance Permit as illustrated in Figure 3.6-1.

**3.6.5.1. COMPLETENESS REVIEW.** An application for approval of a minor site plan shall be submitted to the Administrator. The Administrator shall determine whether the application for site plan approval is complete as provided for in Appendix B.

**3.6.5.2. PLAN APPROVAL.** When a complete minor site plan is filed, the Administrator shall render an administrative determination as follows:

- If the site plan conforms to the provisions of this Ordinance and all required conditions (if applicable), the Administrator shall approve the site plan.
- If the site plan is complete, but does not conform to the provisions of this Ordinance and/or required conditions (if applicable), the

Administrator shall deny the site plan and return to applicant for revision and resubmission. If the applicant disagrees with the decision of the Administrator, an appeal may be filed in accordance with the procedures set forth in § 3.7.

- If the site plan is determined to be incomplete, the administrator shall return to it to the applicant for revision and resubmission.
- Time limit for final plan approval is regulated in accordance with Table 13.3-1 of this Ordinance.

**3.6.6. APPROVAL PROCEDURE (MAJOR SITE PLANS). (See Figure 3.6-2)**

**3.6.6.1.** Approval of a Major Site Plan is a two-step process. As the first step, the Applicant submits a Preliminary Site Plan for review by the Administrator, which is accompanied by an application for a conditional use permit, conditional district rezoning, or a rezoning to a zoning district for which a Major Site Plan is required. As the second step, after the decision-making agency renders its decision on the underlying zoning map amendment and/or conditional use permit application, the applicant files a final site plan for approval by the Administrator and an application for a Zoning Clearance Permit as illustrated by Figure 3.6-2.

**3.6.6.2. PRELIMINARY MAJOR SITE PLAN.**

**3.6.6.2.1. APPROVAL PROCEDURE.** An application for approval of a preliminary major site plan shall be submitted with an application for a conditional district zoning map amendment, conditional use permit, or an application for a Planned Unit Development, Traditional Neighborhood Development, or Transit-Oriented Development. The Administrator shall determine whether the application for a preliminary site plan is complete as prescribed in Appendix B.

**3.6.6.2.2.** If the preliminary major site plan is complete, the Administrator shall forward the application, along with the zoning amendment or conditional use permit application, to decision-making agency for recommendation as prescribed in § 3.4 or 3.5, respectively.

**3.6.6.2.3.** If the preliminary major site plan is incomplete, the Administrator shall return it to the

applicant with a statement of the reasons why the proposed preliminary site plan does not conform to the provisions of Appendix B.

**3.6.6.2.4.** Time limit for preliminary major plan approval is regulated in accordance with Table 13.3-1.

**3.6.6.3. FINAL SITE PLAN.**

**3.6.6.3.1.** The Planning and Zoning Board or Town Board, if appealed, shall render a final decision to approve, deny, or approve with conditions the zoning map amendment or conditional use permit application and preliminary site plan. If the zoning map amendment application or conditional use permit are approved (or approved with conditions), the applicant may file an application for Final Site Plan approval.

**3.6.6.3.2.** The final site plan shall be prepared and submitted to the Administrator in the same manner as set forth in § 3.6.5 APPROVAL PROCEDURE (MINOR SITE PLANS). The final major site plan shall conform to the provisions of the approved Preliminary Site Plan and any conditions as imposed by the decision-making agency.

**3.6.7. FINAL INSPECTION.**

The Administrator shall inspect the site for compliance with the approved site plan before a certificate of zoning compliance is issued for the project. The Administrator will write a letter to the applicant stating any deficiencies.

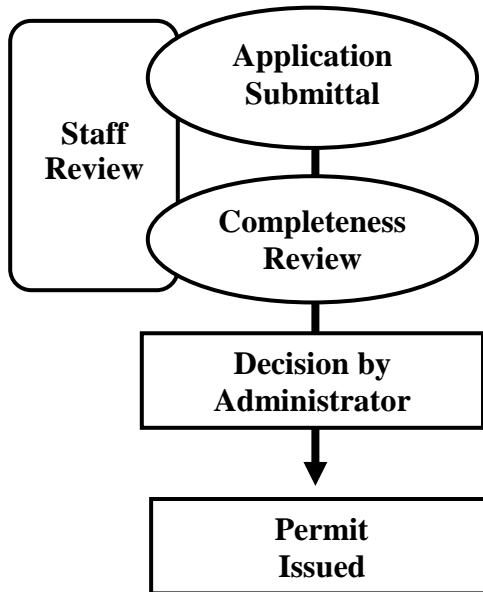
**3.6.8. VALIDITY.**

**3.6.8.1.** The Administrator will sign and date the site plan to indicate approval. Approval shall become effective immediately.

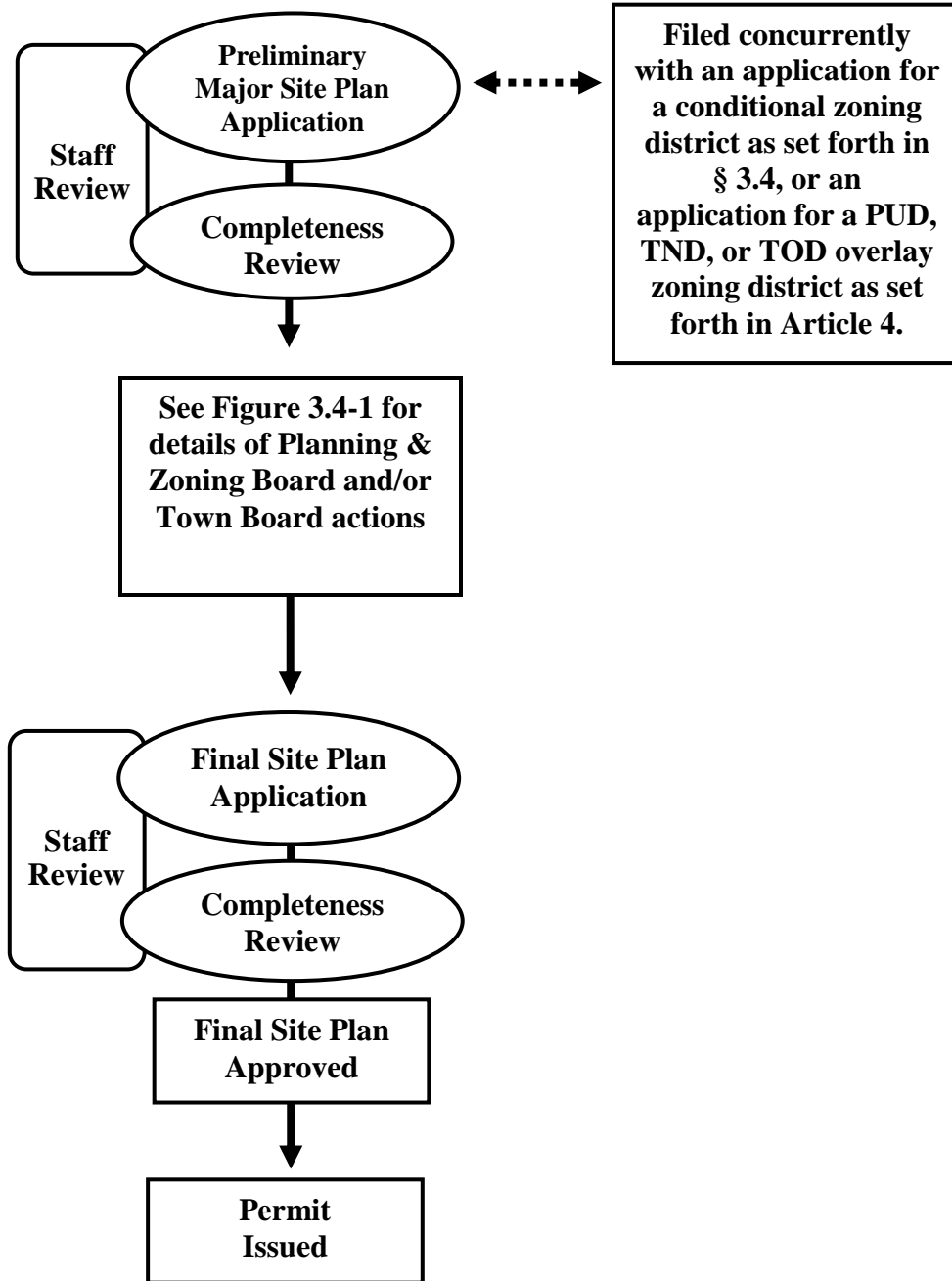
**3.6.8.2.** The owner of a use or property subject to the site plan will be notified if site plan approval must be suspended. Suspension is caused by 1.) violation of any applicable provision of this section, or 2.) failure to comply with any applicable required conditions.

**3.6.8.3.** If ownership changes of the site plan or structure in question, the site plan approval remains valid.

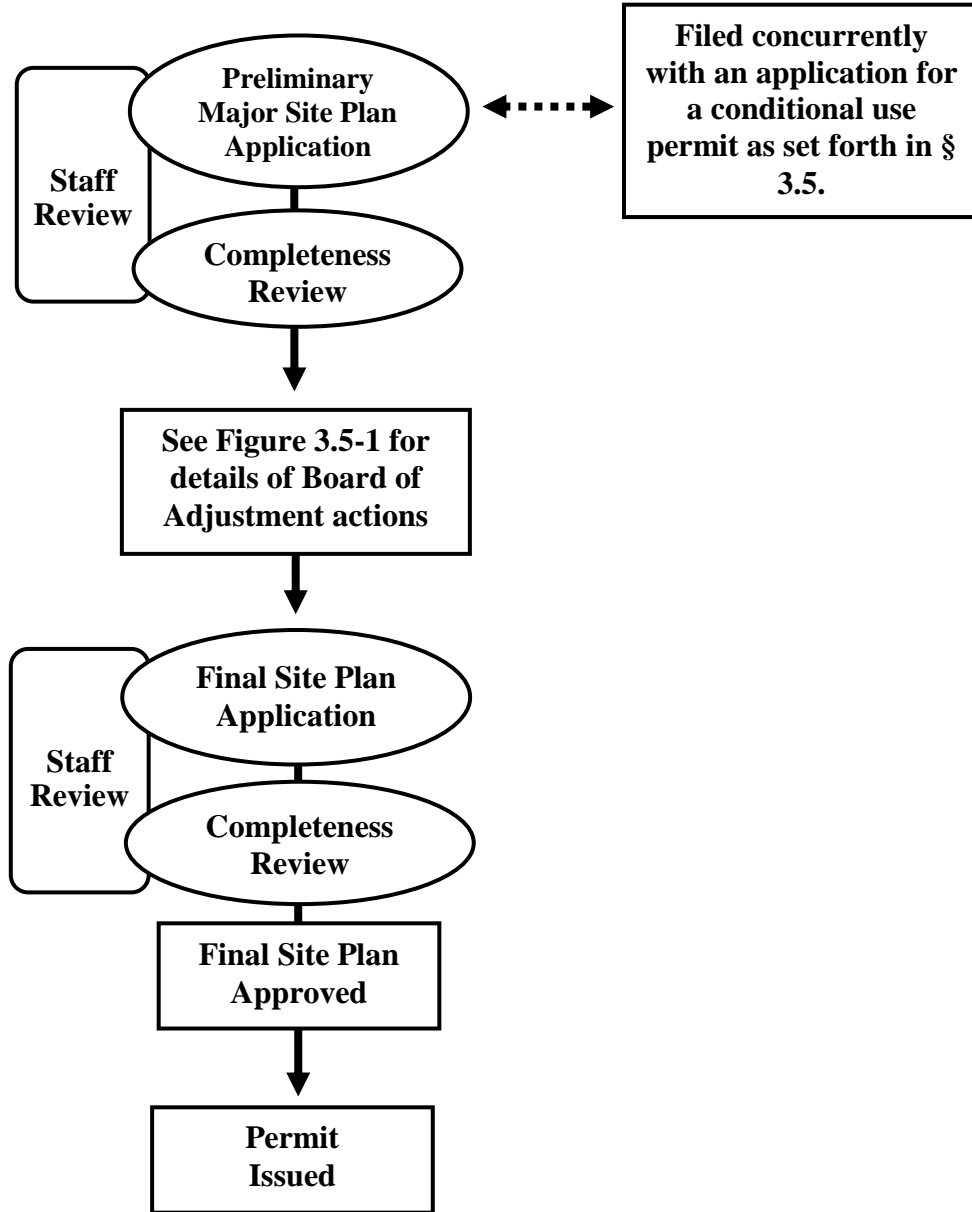
**Figure 3.6-1 – MINOR SITE PLAN REVIEW PROCESS**



**Figure 3.6-2 – MAJOR SITE PLAN REVIEW PROCESS (Conditional District Rezoning, § 3.4)**



**Figure 3.6-2 – MAJOR SITE PLAN REVIEW PROCESS (Conditional Use Permits, § 3.5)**





**3.7. APPEALS AND VARIANCES.**

**3.7.1. APPLICATION.**

The Planning and Zoning Board, acting as Board of Adjustment (BOA), may decide appeals of administrative interpretations and decisions and may grant variances from the requirements of this Ordinance.

applicant only if the applicant establishes compliance with the hardship criteria established in NCGS § 160A-388(d).

**3.7.2. PROCEDURES. (See Figure 3.7-1)**

**3.7.2.1.** The Board of Adjustment will review any appeal of a decision or interpretation of the Administrator and any application for a variance.

**3.7.2.2.** A notice of appeal of an administrative decision from a final decision relating to an application for development approval shall be submitted to the Administrator within thirty (30) days from receipt of the decision.

**3.7.2.3.** Any application request for a variance shall be filed with the Administrator for transmittal to the Board of Adjustment.

**3.7.2.4.** The Board of Adjustment shall conduct a hearing on the appeal pursuant to the procedures established in NCGS § 160A-388 and § 3.1.7 of this Ordinance.

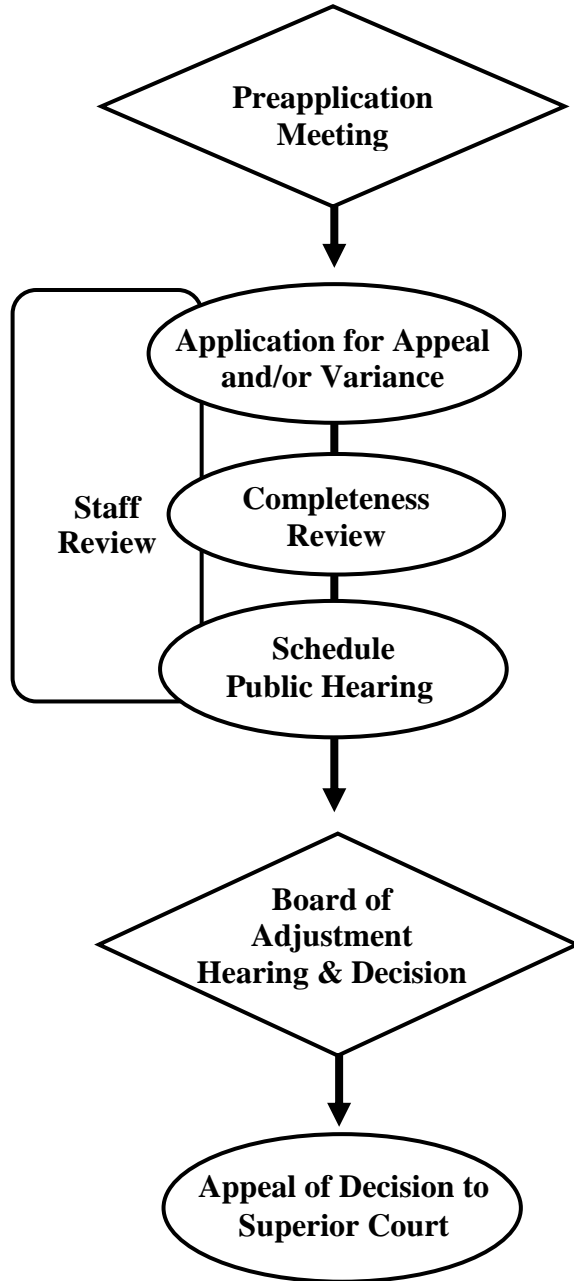
**3.7.2.5.** Appeals from the Board of Adjustment shall be filed with the Clerk of the Cabarrus Count Superior Court within 30 days of the final decision of the Board. The Board of Adjustment’s decision shall be considered a final decision after the Board approves the official minutes containing such during an official meeting.

**3.7.3. APPROVAL CRITERIA.**

**3.7.3.1. APPEAL OF DECISION.** In an appeal to the Board of Adjustment, regarding an administrative decision or interpretation, the Board's scope of review shall be limited to determining whether the decision or interpretation by the Administrator was in accordance with the intent and requirements of this Ordinance, and accordingly, the Board will affirm or reverse the decision.

**3.7.3.2. APPLICATION FOR VARIANCE.** A variance is not a right. It may be granted to an

**Figure 3.7-1 – PROCESS FOR REVIEW OF APPEALS AND VARIANCES**



### **3.8. ZONING TEXT AMENDMENTS.**

#### **3.8.1. PURPOSE.**

The purpose of this Section is to establish uniform procedures for processing amendments to the text of this Ordinance.

#### **3.8.2. INITIATION OF A ZONING TEXT AMENDMENT.**

**3.8.2.1.** Any person, board, department, or commission may apply for a change in zoning ordinance text.

**3.8.2.2.** An amendment to the text of this Ordinance may be initiated by filing an application with the Administrator. Before an application is accepted by the Planning Department, the applicant must meet with the Administrator. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for a zoning text request. During the conference, the administrator will identify the submittal requirements.

#### **3.8.3. PROCEDURES. (See Figure 3.8-1)**

**3.8.3.1.** Zoning Text Amendment applications shall be submitted for review by the appropriate reviewing departments and a scheduled for the next available meeting of the Planning and Zoning Board. The zoning amendment review process is illustrated in Figure 3.8-1. *Amended March 6<sup>th</sup>, 2006.*

**3.8.3.2.** A majority vote is required for the Planning and Zoning Board to recommend approval of a text amendment.

**3.8.3.3.** Upon a recommendation of a zoning text amendment, the Administrator shall schedule the application for hearing before the Town Board. The Town Board shall approve or deny the zoning text amendment by a majority vote.

#### **3.8.4. SCOPE OF APPROVAL.**

The approval of a zoning text amendment does not authorize any development activity. Development plans shall be filed and reviewed by the appropriate authority as set forth in this Ordinance.

#### **3.8.5. SUBSEQUENT APPLICATIONS.**

In the event that an application for a text amendment is denied by the Town Board or Planning and Zoning Board (without an appeal) or that the application is withdrawn after the Board hearing, the Administrator shall refuse to accept another application for the same amendment within one year of the original hearing. However, this section shall not limit the powers of the Town Board and/or Planning and Zoning Board to initiate a text amendment.

**Figure 3.8-1 – ZONING TEXT AMENDMENT REVIEW PROCESS**

