

## Chapter 4. Application Requirements and Review Procedures

### 155.401. Amendments

The purpose of this Section is to provide a means for amending the Matthews Land Use Plan, the text of these regulations, and the classification of any parcel of land identified on the Official Zoning Map. The purpose is not to relieve particular hardships, nor to confer special privileges or rights to any person, but only to make adjustments necessary in light of changed conditions or changes in public policy, or likely to achieve the purposes of these regulations.



#### 155.401.1 General Requirements for Zoning Map Changes and Amendments

- A. **APPLICATION AND FEE FOR AMENDMENT REQUIRED.** An application for an amendment must be completed on the forms provided and filed with the Town Planning Office, together with the necessary fee as established by the Board of Commissioners. **[formerly § 153.266]**
- B. **PUBLIC HEARING REQUIRED.** The regulations imposed and the existing zoning classifications applied by this Title may be amended from time to time, but no such amendments shall be made until a public hearing has been held, and a recommendation has been made by the Planning Board. The public hearing may be continued to a later date in order to provide opportunity for proposed text, conditional notes, site plan details, or other unresolved issues to be presented and clarified during an open public session. **[formerly part of § 153.268]**
- C. **APPEARANCE AT PUBLIC HEARING.** Any person desiring to speak either for or against an application may be present at the public hearing or arrange for a suitable agent to speak on his behalf. Or, interested parties may submit written correspondence to the Board of Commissioners at or prior to the public hearing in order for it to be presented at the public hearing and entered into the record. The Applicant, or his designated agent, is compelled to appear at the public hearing. Failure to appear at the public hearing may result in the Board of Commissioners continuing the public hearing to another date. **[formerly part of § 153.268.B]**
- D. **NOTIFICATION REQUIRED.** A notice of the required public hearing shall be published in a local newspaper having general circulation in the area by the Town once a week for two (2) successive calendar weeks, or

any other alternative notice as allowed by the NC General Statutes at Article 19, Chapter 160A. When provided by local newspaper, the notice will appear for the first time no less than ten (10) days and no more than twenty five (25) days prior to the hearing date. If a public hearing is continued to a later date, no additional notice is required. **[formerly part of § 153.268.A]**

- E. ACTION BY THE PLANNING BOARD. The Planning Board shall sit in joint session with the Board of Commissioners for a public hearing on the proposed change. No proposal to amend this Title or to rezone property will be approved unless it is first submitted to the Planning Board for its recommendation. The Planning Board shall make a recommendation within thirty (30) days after the application has been referred to it following the close of the public hearing. If the Planning Board does not complete their review within the specified period, then it will be considered the same as a favorable recommendation. The Planning Board shall advise and comment on whether the proposed amendment is consistent with the Town's adopted Land Use Plan, any applicable small area plans, and other development policy plans. **[formerly § 153.269]**
- F. ACTION BY THE BOARD OF COMMISSIONERS. After receiving the recommendations and report of the Planning Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the application or amendment. In accordance with GS 160A-75, a member of the Board of Commissioners who is present and not excused from participating on a final vote on a requested change in zoning district or text of this Title, and does not vote, that member's lack of a vote will not be counted as an affirmative vote. (Am. Ord. 2141, passed 4-11-16)
- G. EFFECT OF DENIAL. After a public hearing, no application for a proposed zoning map change or amendment of this Title which has been denied wholly or in part by the Board of Commissioners shall be resubmitted for a period of one (1) year from the date of action on the original request. However, the Commissioners may choose to allow a re-application, if after a report from the Planning Board, they determine that there have been substantial changes in circumstances or conditions not discovered or not possible during the previous zoning action, which may relate to the request. **[formerly § 153.270]**
- H. NO COMMITMENT PRIOR TO PUBLIC HEARING. The Mayor, members of Town Board of Commissioners, and members (including alternates) of the Planning Board shall make no commitment or agreement or enter into any understanding of any zoning issues through the application process pertaining to any property located within the Town limits until the conclusion of the public hearing on the application to amend this Title or change the zoning map. **[formerly § 153.271]**
- I. RELIEF FOR MINOR NONCONFORMITIES REQUIRING VARIANCE ACTIONS DURING REZONING FROM AN OUTDATED ZONING CLASSIFICATION.
1. While an application or motion to change a parcel from a classification that is no longer available in these regulations to a current zoning district designation may be desirable, this action may create some conditions on a parcel that would become nonconformities. In order to reduce the necessity of resulting multiple similar zoning variance actions, certain minor nonconforming elements may be determined to be exempt from strict compliance through the following:
    - a. Any existing development which meets the setback and rear yard requirements of its zoning district prior to amendment but will exceed front setback and/or rear yard minimums in the proposed new zoning district, up to twenty feet (20'), will be considered to be in conformance to the new zoning district provisions.
    - b. Any existing development which meets the side yard requirements of its zoning district prior to amendment but will exceed one or more side yard minimums in the proposed new zoning district, up to ten feet (10'), will be considered to be in conformance to the new zoning district provisions.
    - c. Any existing development which meets the minimum parking requirements of its zoning district prior to amendment but will be deficient in required parking by up to ten percent (10%) for parcels up to two (2) acres in size, or will be deficient by up to fifteen percent (15%) for parcels greater than two (2) acres, will be considered to be in conformance to the new zoning district provisions.
    - d. Any existing development which did not have to meet any minimum landscape regulations prior to amendment but will be deficient in some required landscaping in the proposed new zoning district will be exempt from installation of new landscaping to meet current standards.
    - e. Any existing development which meets the landscaping requirement imposed on it at the time of the last successful zoning action on the site but would not be in compliance in the

- proposed new zoning district, will be considered to be in conformance to the new zoning district provisions.
- f. Any existing development which meets the signage provisions imposed on it at the time of the last successful zoning action on the site but would not be in compliance in the proposed new zoning district, will be considered to be in conformance with the new zoning district provisions if both: any single sign on the site is no more than twenty percent (20%) greater in sign area than what would be allowed in the proposed zoning district; and the total signs on the site are not in aggregate more than fifteen percent (15%) greater in sign area and number than would be allowed under the proposed zoning district.
2. Any site which has existing development and utilizes one or more of the exemptions listed in § 155.401.1.I.1, above, may continue in active use and may change from one land use to another under the exemptions listed above. When changes are made to the improvements on the parcel, the following apply:
    - a. If structural changes are considered for any structure, then the provisions of § 155.304, Nonconforming Structures, shall apply. In cases where the application of these standards creates a significant hardship, a zoning variance may be requested.
    - b. If any additions or changes are considered for on-site parking, or are required as a result of a change in use, then the current parking standards must be fully met. Parking lot landscaping requirements must also be met for any new or revised parking lots. In cases where the application of these standards creates a significant hardship, a zoning variance may be requested. Restriping or repaving of existing pavement without removal of the existing hard surface shall not be considered revision. Removal or disturbance of the existing parking hard surface pavement (including gravel) shall require compliance to current standards in that portion of the parking lot which is being impacted. When there is a clear limit to the disturbance, only that disturbed portion is subject to compliance with current standards.
    - c. If any changes are made to a sign on the site that has been exempted under § 155.401.1.I.1.f, then the replacement sign must meet current standards but the overall exemption may still apply for the remainder of the site.
    - d. When a developed parcel has utilized one or more of the exemptions at § 155.401.1.I.1 and later is considered for significant or total redevelopment, then all standards in place at the time of redevelopment will be required. For purposes of this paragraph, significant redevelopment means any land disturbing activity whose cost exceeds fifty percent (50%) of the County tax market value of the property. [formerly § 153.272]

### **155.401.2 Additional Standards and Criteria for Amending the Town Land Use Plan**

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- A. THE ROLE OF THE LAND USE PLAN IN ADMINISTRATION OF THE UNIFIED DEVELOPMENT ORDINANCE. The Matthews Land Use Plan shall serve as the basic policy guide for the administration of this Title. The Land Use Plan is a statement of goals and policies to guide new development, redevelopment and infrastructure investment decisions in the Town. It therefore, is the intent of the Town to administer this Title in accordance with the Land Use Plan. The goals and policies of the Land Use Plan may be amended from time to time to meet changing community preferences, needs and requirements. Such amendments may at times be necessary to accommodate proposed development or redevelopment of property that may be inconsistent with the Land Use Plan. This Section establishes the procedures for amending the Land Use Plan.
- B. INITIATION OF AMENDMENTS. An amendment to the Land Use Plan may be initiated only by the Planning Board, the Board of Commissioners, or the Owner of property proposing development of such property under this Title that may be inconsistent with the Land Use Plan.
- C. NOTIFICATION REQUIREMENTS. The Town Board of Commissioners shall call for a notice of public hearing on the application and the notice of public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area; or any other alternative notice as allowed by the NC General Statutes at Article 19, Chapter 160A. When provided by local newspaper, the

notice shall be published the first time not less than ten (10) days and no more than twenty five (25) days before the date fixed for the public hearing.

**D. APPLICATION FOR AMENDING THE LAND USE PLAN.**

1. **FILING AN APPLICATION.** Where an amendment to the Land Use Plan is proposed by someone other than the Planning Board or Board of Commissioners, an application requesting the amendment shall be filed with the Planning Director. The application shall be accompanied by a written statement from the applicant stating the basis for the request.
2. **STAFF REVIEW.** Upon receiving an application requesting an amendment, or upon an instruction from the Board of Commissioners, or Planning Board, that it will consider a proposed amendment, the Planning Director shall review the proposed amendment to evaluate its effect on the integrity of the Land Use Plan and this Title. The Planning Director may require review by appropriate Town departments and other government agencies in which case the applicant will pay any review fees that may be required. Prior to the scheduled public hearing, the Planning Director shall deliver a written report incorporating or summarizing the comments of the Planning Director, other Town departments, and other government agencies.
3. **ACTION BY THE PLANNING BOARD.**
  - a. The Planning Board shall sit in joint session with the Board of Commissioners for a public hearing on the proposed amendment.
  - b. In considering the amendment, the Planning Board shall review the proposed amendment, the standards set forth in § 155.401.2.D.4 below, the report of the Planning Director, and any oral and written comments received before or at the public hearing or otherwise submitted. Based on this information, the Planning Board shall submit, within a reasonable time and recommendation to the Board of Commissioners on whether or not the proposed amendment should be adopted.
4. **STANDARDS FOR REVIEWING PROPOSED LAND USE PLAN AMENDMENTS.** In deciding whether to recommend adoption of a proposed amendment to the Land Use Plan, the Planning Board shall consider whether the amendment is necessary based on one or more of the following factors:
  - a. There has been a change in projections or assumptions (such as demographic trends or the availability of public facilities) from those on which the Land Use Plan is based;
  - b. The data used as the basis for formulating the Land Use Plan are in error or out of date;
  - c. New issues or needs have presented themselves to the Town that are not adequately addressed in the Land Use Plan; or
  - d. The amendment will not adversely affect the character of the area in which the proposed development is to be located.
5. **ACTION BY THE BOARD OF COMMISSIONERS.** After receiving the recommendations of the Planning Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the amendment. The Board of Commissioners may refer the matter back to the Planning Board for further consideration.

**E. SMALL AREA PLANS AS APPENDICES.** A small area plan, neighborhood plan, or a similar plan which explains and illustrates desired development concepts for a sub region of the Town may be adopted as an Appendix to the Land Use Plan. Such area plan shall follow the same review and approval process as an amendment to the Land Use Plan, as outlined in § 155.401.2.D above. The provisions within an Appendix shall be considered as outlining adopted policies and preferred development patterns for that portion of the Town the same as the main body of the Land Use Plan.

**F. TYPOGRAPHICAL OR DRAFTING ERRORS.** Notwithstanding any other provisions set forth above, amendments to correct typographical or drafting errors in the Land Use Plan may be adopted by the Board of Commissioners at a regular meeting without the posting or personal delivery of prior notice and without a public hearing.

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**155.401.3 Additional Standards and Criteria for Amending the Regulations of this Title**

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In addition to the requirements set forth in § 155.401.1 applications to amend the regulations of this Title shall

comply with the following:

- A. INITIATION OF AMENDMENTS. Amendments to the text of this Title may be initiated by the Board of Commissioners, by the Planning Board, the Planning Director, by any person having proprietary interest in property in the Town, or by any interested citizen of the Town.
- B. APPLICATION FOR AMENDING THE REGULATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE. Where an amendment to text of this Title is proposed by someone other than the Planning Director, Planning Board or Board of Commissioners, an application requesting the amendment shall be filed with the Planning Director. The application shall be in a form determined by the Planning Director and shall include the section(s) of this Title to be amended and the proposed text. An application to amend the text initiated by someone other than the Board of Commissioners or Planning Board shall only be accepted after a pre-application meeting with Planning Office staff has been held.
- C. NOTIFICATION REQUIREMENTS. The Town Board of Commissioners shall call for a notice of public hearing on the application and the notice of public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the area, or any other alternative notice as allowed by the NC General Statutes at Article 19, Chapter 160A. When provided by local newspaper, the notice shall be published the first time not less than ten (10) days and no more than twenty five (25) days before the date fixed for the public hearing.
- D. PROCEDURE FOR AMENDING THE REGULATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE.
  - 1. STAFF REVIEW. Upon receiving an application requesting an amendment, or upon an instruction from the Board of Commissioners, or Planning Board, that it will consider a proposed amendment, the Planning Director shall review the proposed amendment to evaluate its effect on the integrity of this Title. The Planning Director may deliver copies of the proposed amendment to appropriate departments and government agencies for review and comment. Prior to the scheduled public hearing, the Planning Director shall deliver a written report incorporating or summarizing the comments of the Planning Director, other Town departments, and other agencies.
  - 2. ACTION BY THE PLANNING BOARD.
    - a. The Planning Board shall sit in joint session with the Board of Commissioners for a public hearing on the proposed amendment.
    - b. In considering the amendment, the Planning Board shall review the proposed amendment, the report of the Planning Director, and any oral and written comments received before or at the public hearing or otherwise made part of the record. Based on this information, the Planning Board shall submit, within thirty (30) days of date of referral, a recommendation to the Board of Commissioners on whether or not the proposed amendment should be adopted. The Planning Board shall advise and comment on whether the proposed text amendment is consistent with the Town's adopted Land Use Plan, any applicable small area plans, and other development policy plans.
  - 3. ACTION BY THE BOARD OF COMMISSIONERS. After receiving the recommendation from the Planning Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the amendment.
- E. ALTERNATE PROCEDURE ON MOTIONS. When a proposed text change is initiated by motion from the Board of Commissioners, the Planning Board may review and make recommendation regarding the suggested change prior to the public hearing. The Planning Board shall sit in joint session with the Board of Commissioners for the public hearing, and at the close of the hearing the Board of Commissioners may act on the request or may refer the proposed text amendment back to the Planning Board for further consideration and recommendation. The Planning Board shall submit a recommendation to the Board of Commissioners within thirty (30) days of date of referral, if the motion is sent to them after close of public hearing. The Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the amendment.

#### **155.401.4 Additional Standards and Criteria for Amending the Zoning Map**

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In addition to the requirements set forth in § 155.401.1 applications to amend the zoning map shall comply with the following:

- A. INITIATION OF AMENDMENTS. Amendments to the zoning map for a Traditional district classification may

- be proposed by any person. A Parallel Traditional or Conditional-Only district classification will be considered only if the application is made by the owner of the property or his/her authorized agent. [formerly part of § 153.201(A)]
- B. APPLICATION FOR AMENDING THE ZONING MAP. Every application for an amendment to the zoning map shall be filed with the Planning Director. An application to amend the zoning map or to make revisions to a previously-approved conditional zoning district shall only be accepted after a pre-application meeting with Planning office staff has been held with the property owner(s) and/or agents.
- C. NOTIFICATION REQUIREMENTS. In addition to the requirements for notification in § 155.401.1.D, the following forms of notice shall be provided:
1. NOTICE BY MAIL. The owner of the subject parcel(s) of land, and the owners of all parcels of land which abut, are across a public right-of-way, and/or are wholly or partially within one hundred feet (100') of any point of the subject property, as shown on the most current county tax listing, shall be mailed a notice of a public hearing on the proposed zoning map amendment by first class mail. The applicant shall prepare such notices and shall deliver said notices to the Planning Office at the time of zoning application submission. If any citizen submits a written statement regarding the proposed zoning change to the Planning office and Town Clerk at least two (2) business days prior to the scheduled decision date, the Clerk shall deliver the written statement to the Board of Commissioners. (Am. Ord. 2141, passed 4-11-16)[**formerly part of § 153.268.A**]
  2. EXCEPTION TO NOTICE BY MAIL. The first class mail notice required in § 155.401.4.C.1, above, shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in § 155.401.4.C.1 or may, as an alternative, elect to publish notice of the hearing as required by GS 160A-364 but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected properties, shall be notified according to the provisions of § 155.401.4.C.1. [**verbatim from GS 160A-364**]
  3. NOTICE BY POSTING A SIGN. When a zoning map amendment is proposed, the Town shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, posting a sign on each individual parcel is not required, but the Town shall post sufficient notice signs to provide reasonable notice to interested persons. [**verbatim from GS 160A-364**]
- D. PROCESS FOR AMENDING THE ZONING MAP.
1. STAFF REVIEW. Upon receiving an application requesting a zoning map amendment, or upon an instruction from the Board of Commissioners, or Planning Board, that it will consider a proposed amendment, the Planning Director shall review the proposed amendment to evaluate its effect on the integrity of the Land Use Plan and this Title. The Planning Director may deliver copies of the proposed zoning map amendment to appropriate departments and government agencies for review and comment. Prior to the scheduled public hearing, the Planning Director shall deliver a written report incorporating or summarizing the comments of the Planning Director, other Town departments, and other agencies.
  2. ACTION BY THE PLANNING BOARD.
    - a. The Planning Board shall sit in joint session with the Board of Commissioners for a public hearing on the proposed zoning map amendment.
    - b. In considering the amendment, the Planning Board shall review the proposed amendment, the report of the Planning Director, and any oral and written comments received before or at the public hearing or otherwise submitted. Based on this information, the Planning Board shall submit, within thirty (30) days of date of referral, a recommendation to the Board of Commissioners on whether or not the proposed zoning map amendment should be granted.
  3. ACTION BY THE BOARD OF COMMISSIONERS. After receiving the recommendation of the Planning

Board, the Board of Commissioners may adopt an ordinance approving, modifying, or rejecting the amendment. [formerly § 153.265.B]

4. ADDITIONAL CRITERIA FOR ZONING MAP AMENDMENTS.
  - a. When considering an application to amend the zoning map to any Traditional classification, the Planning Board or Board of Commissioners will not evaluate the application based on any specific proposal for the use or development of the property. The applicant will refrain from using any graphic materials or descriptions of the proposed development except for those which would apply to any use permitted by the requested classification. [formerly § 153.265.C]
  - b. Following formal acceptance of an application by the Board of Commissioners, the applicant may propose further adjustment to the application which results in a more restrictive zoning district, or applicant may amend the underlying proposed conditions in a conditional zoning district that do not alter the requested underlying proposed district designation. ('72 Code, § 24-1303) (Ord. No. 477, passed 2-8-88; Ord. No. 1524, passed 12-11-06; (Am. Ord. 2141, passed 4-11-16) [formerly § 153.267]

E. WITHDRAWAL OF APPLICATIONS. Applications for amending the zoning map or amending conditions of a previously approved conditional zoning district may be withdrawn by the applicant at any time up to and including fifteen (15) days prior to the initially-scheduled hearing date. It is generally not the intent of the Board of Commissioners to permit withdrawal of applications within fifteen (15) days prior to the hearing date. However, after that time, requests to withdraw an application must be filed with the Planning Office. On the day of the hearing the Commissioners will decide if the withdrawal will be allowed. The Board of Commissioners may approve a request for withdrawal if it finds that there are substantial circumstances which warrant favorable consideration and that the withdrawal will not be detrimental to the interests of citizens affected by the application. Application fees are non-refundable. [formerly § 153.267]

### **155.401.5 Administrative Amendment Approval, and Site Plan and/or Elevation Plan Review and Approval**

Changes to approved plans and conditions of development in Parallel Traditional Districts and Conditional-Only Districts will be treated the same as changes to the zoning map and will be processed as an amendment as provided in §§ 155.401.1 and 155.401.4. However, some minor changes or additional details in response to previously approved zoning conditions in these conditional districts may be approved through one of the procedures listed here. Site plan and/or elevation plan review and approval may also be a requirement for certain identified uses allowed in some zoning districts as a use “under prescribed conditions” in the Tables of Allowed Uses at § 155.505.

- A. ADMINISTRATIVE AMENDMENT. Minor changes in the detail of the approved plan which will not alter the basic relationship of the proposed development to adjacent property, will not alter the uses permitted or increase the density or intensity of development, or will not decrease the off-street parking ratio or reduce the yards provided at the boundary of the site may be approved as an Administrative Amendment.
  1. STAFF REVIEW AND APPROVAL. Upon receiving an application for an Administrative Amendment, the Planning Director shall review the specific proposed changes to previously approved zoning conditions to verify the level of revision requested. When the proposed changes are limited to no more than two (2) note or drawing changes as allowed through the Administrative Amendment process, the Planning Director may approve the changes. The Planning Director may determine the request be reviewed by the Planning Board for action.
  2. PLANNING BOARD ACTION. The Planning Board shall review any request for Administrative Amendment submitted to the Board from the Planning Director. The Planning Director shall provide the Planning Board with an explanation of the requested revisions to previously approved zoning conditions, and a recommendation of action. The Planning Board may approve a request for an Administrative Amendment, or may refer the request for change to the Board of Commissioners for decision.
  3. BOARD OF COMMISSIONERS ACTION. When the Planning Board refers a request for Administrative Amendment, the Board of Commissioners shall determine whether the impact of the proposed changes, while meeting the standard of minor changes as provide here, would be sufficient to provide an opportunity for public input prior to action. The Board of Commissioners may schedule a public input session or require the applicant to hold a community meeting. Notice of the public input session or community meeting shall be sent by the applicant by first class mail to all persons

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required to be notified for a change of zoning map at § 155.401.4.C.1. When the applicant holds a community meeting separate from a regular Board of Commissioners meeting, then the applicant shall provide a written report to the Commissioners on discussion during and results from the community meeting. The Board of Commissioners may approve, modify and approve, or deny the Administrative Amendment.

- B. **BOARD OF COMMISSIONERS SITE PLAN AND/OR ELEVATION PLAN APPROVAL.** Approved zoning map changes involving conditional districts may include standards for greater details to be provided at a later time. The Board of Commissioners may review and act on graphics and site plans provided to them separate from and subsequent to a zoning application which provide details on the specific design of sites and/or buildings. A request for Site Plan and/or Elevation Plan approval shall not require notification or public hearing when they are in response to a condition of a previously approved zoning action on a site. In addition, certain uses that are allowed under prescribed conditions may require site plan and/or elevation plan review and approval by the Board of Commissioners.
  - 1. **STAFF REVIEW.** Upon receiving an application for Site Plan or Elevation Plan Approval, the Planning Director shall review the documents to verify they meet all zoning conditions for the site. The Planning Director may deliver copies of the drawings to appropriate departments and government agencies for review and comment. The Planning Director shall determine when sufficient information has been provided to verify all conditions have been met, and shall deliver a written report incorporating or summarizing comments from Planning staff, other Town departments, and other agencies, as appropriate, with the drawings to the Board of Commissioners.
  - 2. **BOARD OF COMMISSIONERS ACTION.** The Board of Commissioners shall approve the Site Plan and/or Elevation Plan as presented or may request further revisions or details from the applicant. The Board of Commissioners may not take final action until they have sufficient details on the documents to fully illustrate the intended design, materials, and related information.
- C. **SITE PLAN AND/OR ELEVATION PLAN APPROVAL FOR CERTAIN USES UNDER PRESCRIBED CONDITIONS.** Some uses are identified as allowed “under prescribed conditions” in some zoning districts. Where the specific standards to be met for these uses include a site plan and/or elevation plan review and approval by the Board of Commissioners, then the site plan and/or elevation plan review shall follow the same process as given in § 155.401.5.B. immediately above. **[formerly § 153.201(E)]**

**155.401.6 Conditional-Only District and Parallel Traditional District Zoning Provisions**

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- A. **PURPOSE.** This Title identifies multiple residential, nonresidential, and mixed use zoning districts that may be assigned to parcels within the Town’s jurisdiction. There are certain uses or site design layouts which because of their nature or scale have particular impacts on both the immediate area and the community as a whole. Development of these uses and situations may benefit the community, but their unique aspects and needs cannot be predetermined within the confines of general district regulations. In addition, circumstances often arise when a general district designation would not be appropriate for a certain property, but a specific use or group of uses permitted under the district would be consistent with the objectives of this Title. To accommodate these specific situations, Parallel Traditional and Conditional-Only districts (conditional districts) may be employed.
- B. **PARALLEL TRADITIONAL DISTRICTS.** The Parallel Traditional district process is established to address those situations when a particular use may be acceptable but the Traditional classification which would allow that use would not be acceptable. It allows the Board of Commissioners to approve a proposal for a specific use or group of uses with reasonable conditions to assure the compatibility of the use(s) with surrounding properties. Any use permitted under this process must also conform to the development regulations for the corresponding Traditional zoning district. This is a voluntary procedure which is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals which may not be undertaken for some time, unless a condition is included to have all development go through a subsequent site plan and/or elevation plan review and approval by the Board of Commissioners.
  - 1. Potential uses which may be considered for a Parallel Traditional district are restricted to those uses permitted in the corresponding Traditional zoning district. Uses permitted in Parallel Traditional districts are subject to all applicable development standards and requirements for that use listed in the corresponding Traditional zoning district.
  - 2. The application for a Parallel Traditional district must contain information and/or site plans which will indicate all of the principal and accessory uses which are proposed to be developed on the



site. Subsequent to the approval of a Parallel Traditional district, only those principal and accessory uses indicated on the approved plan may be constructed on the site. Any modifications to an approved plan or any changes in the permitted principal or accessory uses must comply with the provisions of § 155.401. [formerly § 153.202]

- C. **CONDITIONAL-ONLY DISTRICTS.** The Conditional-Only district process allows certain uses to be established in accordance with specific development standards for each use. The categories listed at § 155.501.3.B may be utilized only through the Conditional-Only district process. The standards for these districts are provided in Chapter 5.
- D. **APPLICATION AND REVIEW PROCESS.** The following process applies to both the Parallel Traditional and Conditional-Only districts. For simplicity the term conditional district shall be used in this section to refer to both types of districts unless otherwise noted.
  - 1. **APPLICATION.** Applications to establish a conditional district shall be processed in accordance with the provisions of § 155.401.1, § 155.401.4, and § 155.401.5 as appropriate, as well as this section. A conditional district classification shall be considered only if the application is made by the owner of the property or his/her authorized agent. All applications must include a schematic plan drawn to scale and supporting text which will become part of the ordinance amendment. The applicant should include at least the items listed below:
    - a. A boundary survey showing the total acreage, present zoning classifications, date, and north arrow.
    - b. The owners' names, addresses, and the tax parcel numbers of all adjoining properties.
    - c. All existing easements, reservations, and rights-of-way, and all yards required for the zoning district(s) requested.
    - d. Proposed use of land and structures. A site plan drawing, to scale, shall be submitted showing the outline of each building, related parking and vehicular circulation, pedestrian facilities, storage, service and loading facilities, vehicular queuing plans where appropriate for the use, storm water improvements, recreational facilities, required landscape screening and buffers, and all other planned improvements to the site. When this level of detail design has not yet been prepared, the applicant may choose to submit a generalized site plan document showing overall proposed land use by location, vehicular and non-vehicular circulation patterns, preserved natural or historic features, and required landscape screening and buffers. This generalized site plan must include a written condition that all development on the site will go through a subsequent site plan and/or elevation plan review and approval by the Board of Commissioners. In addition, general information on the intended density and intensity of development at build-out must be included on the site plan. For residential uses this should include the number of units and an outline of the area where the structures will be located. For nonresidential uses this should include the approximate square footage of all structures and an outline of the area where such structures will be located. For applications for Early Designation to an applicable Condition-Only district, a lesser level of detail is necessary. A site map showing land area in the requested zoning action is minimally required, along with additional written and/or graphic conditions matching the adopted small area plan or general development plan for the geographic area, and conditions indicating any proposed refinement of design standards of the proposed Conditional-Only district.
    - e. Traffic, parking, and circulation plans, showing the proposed locations and arrangement of parking spaces and access points to adjacent streets, all sidewalks, bicycle facilities, and multi-modal pathways for non-motorized transportation. For Early Designation applications, general motor vehicle and pedestrian/bicycle circulation plans, in written and/or graphic format, shall be submitted, sufficient to show compliance with any small area plan or general development plan for the geographic area.
  - 2. **ADDITIONAL REQUIREMENTS.** When dealing with the conditional 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 Director, Planning Board and/or the Board of Commissioners may request additional information as they deem necessary. This information may include but is not limited to the items listed below.

- a. Proposed screening, including walls, fences, or planting areas as well as treatment of any existing natural features.
  - b. Delineation of areas within the regulatory floodplain as shown on official Flood Hazard Boundary Maps for Mecklenburg County.
  - c. Existing and proposed topography at four foot (4') contour intervals or less.
  - d. Generalized information on the number, height, size, or location of structures.
  - e. Proposed number and location of signs.
  - f. Approximate completion time of the project and proposed phasing, if any.
3. REVIEW AND APPROVAL.
- a. In considering an application for the establishment of a conditional district, the Board of Commissioners may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use. Any conditions should exhibit the relationship of the proposed use to surrounding property, proposed support areas, the timing of development, and other matters that the Board may find appropriate or the applicant may propose. The applicant will have a reasonable opportunity to consider and respond to any such requirements prior to final action by the Board of Commissioners. All conditions included in any conditional zoning approval require agreement of the property owner, which may be accomplished by the owner's authorized agent.
  - b. In evaluating an application for the establishment of a conditional district, it is appropriate for the Commissioners to consider the following.
    - i. The policies and objectives of the Matthews Land Use Plan and any relevant small area plan, particularly in relation to the proposed site and surrounding area.
    - ii. The potential adverse impacts on the surrounding area, especially in regard but not limited to traffic, storm drainage, land values, and compatibility of land use activities.
  - c. In the review and approval of a Parallel Traditional district, emphasis will be given to an evaluation of the characteristics of the specific use(s) proposed in relationship to surrounding properties.
4. EFFECT OF APPROVAL. If an application is approved, the conditional district established and all conditions attached to the approval are binding on the property. All subsequent development and use of the property must be in accordance with the approved plan and conditions. The intent of this type of zoning is to provide an alternative procedure for specific development proposals. It is intended that all property be zoned only in accordance with firm plans to develop. Therefore, three years from approval, the Planning Board will examine the progress made to develop in accordance with approved plans to determine if active efforts are proceeding. If it is determined by the Planning Board that active efforts to comply with the approved plan are not proceeding, a report will be forwarded to the Board of Commissioners which may recommend that action be initiated to remove the conditional district in accordance with the amendment procedures outlined in § 155.401.1 and § 155.401.4.
5. ZONING MAP DESIGNATION. Following Board of Commissioners approval of a conditional district, the property in question will be identified on the zoning map by the appropriate Parallel Traditional or Conditional-Only district designation. **[formerly § 153.201]**

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**155.401.7 Use of Flexible Design Standards**

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- A. OPPORTUNITY TO APPLY. Certain conditional zoning districts are intended to allow flexibility in overall design through the use of Flexible Design Provisions. Because it is not always possible to anticipate variations or improvements in the development types or to accommodate changes with broad, all-encompassing regulations which could create good quality of life opportunities, these provisions allow the Board of Commissioners to consider and evaluate new and flexible design concepts in a specially designated and controlled setting.

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1. The R-VS SRN, C-MF, MUD, TS, and ENT Conditional-Only districts provide such a setting. Therefore, the opportunity for flexible design standards may be included as an integral part of proposals for these districts.
  2. The Cottage Cluster Housing alternative in the residential districts provide such a setting. Therefore, the opportunity for flexible design standards may be included as an integral part of proposals for Cottage Cluster Housing within any of the single-family zoning districts when requested through a Parallel Traditional district process.
  3. Various permitted uses within the CrC district may apply flexible design standards.
- B. **PURPOSE.** It is the objective of these flexible design standards to encourage development proposals that exhibit such special qualities or concepts that they may deviate from standard ordinance requirements. These regulations are established in order that a flexible design proposal will be evaluated on its own merits. It is recognized that some proposals or concepts will be more successful than others, and the approval of a specific proposal in one situation does not mean that a similar proposal would be acceptable in other circumstances. These provisions are purely optional and are a voluntary means by which land may be developed outside of the standard ordinance requirements. These provisions are designed to evaluate only those flexible design concepts that propose to meet a community need that would not otherwise be met. Finally, it should be emphasized that these provisions should not be confused with or take the place of the normal zoning and subdivision variance procedures established either in § 155.403 or § 155.712.
- C. **CERTAIN ZONING DEVELOPMENT STANDARDS MAY BE MODIFIED.** The quantitative dimensions and locational zoning standards listed here which would normally apply to development may be modified through the flexible design process.
1. Lot area.
  2. Lot width.
  3. Public street frontage.
  4. Setbacks and yards.
  5. Building separation.
  6. Height of fences and walls.
  7. Block length.
  8. Maximum build-to line only when a lot has multiple street frontages (public or private street frontages).
  9. Location of off-street parking (distance from site and/or on-site or off-site provisions; partially within a sight triangle; partially within perimeter planting or required screening; distance of parking area and access drives from lot lines in the ENT District).
  10. Specific standards set within the Conditional Only zoning districts for “Building and Structure Design Principles” (within subsection G of each district’s section at 155.503) when they would result in new development concepts, innovative design, unique circumstances, or public/private ventures.
  11. Minimum tree canopy as called for at 155.606.7 for the ENT district only. (Am. Ord. 2269, passed 11-13-17)
- D. **CERTAIN INFRASTRUCTURE STANDARDS MAY BE MODIFIED.** The infrastructure standards of Chapter 7 which would normally apply to development may be modified either through the subdivision variance process or flexible design process, each as identified below.
1. Street right-of-way.
    - a. Street right-of-way must be at least thirty feet (30’) for a private street or alley in accordance with the Land Development Standards Manual or other adopted street cross sections.
    - b. Street right-of-way must be at least forty four feet (44’) for a two-way public street in accordance with the Land Development Standards Manual or other adopted street cross sections.
    - c. The Board of Commissioners may modify the above minimum standards as they deem necessary or justifiable through the subdivision variance procedure as established at § 155.712.

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2. Street type – public or private.
    - a. Where a public street is used, it must be constructed in accordance with the Land Development Standards Manual or other adopted street cross sections.
    - b. Where a private street is used, it must be constructed in accordance with the Land Development Standards Manual or other adopted street cross sections. Private streets generally will not be allowed although private alleys may be used. Private streets must be identified on any record maps as “private street not eligible for State or Town maintenance”.
    - c. The Board of Commissioners may modify the above requirements as they deem necessary or justifiable through the subdivision variance procedure as established at § 155.712.
  3. Sidewalks, pedestrian pathways, and multi-use trails (all non-motorized use paths). Where required or used, sidewalks and other pedestrian bike facilities shall conform to the minimum width and construction standards of Chapter 7, and to the standards as may be adopted separately for any type of non-motorized use pathways. They may, however, deviate from the usual placement within the road right-of-way, and may meander on both public and privately-owned land with appropriate easements. The Board of Commissioners may consider deviations regarding location and construction standards for non-motorized vehicular use pathways through the flexible design procedures of this § 155.401.7.
  4. Curbs and gutters. Where required or used, curbs and gutters must conform to the Land Development Standards Manual or other adopted street cross sections, or provide sufficient documentation to illustrate alternative construction design that will provide necessary storm water control and adequate traffic and parking safety. The Board of Commissioners may consider deviations regarding location and construction standards for non-motorized vehicular use pathways through the flexible design procedures of this § 155.401.7.
- E. **LIMITATIONS ON PROJECT SIZE.** Due to the special nature of these provisions, it may be desirable to limit the size of the area proposed for flexible design standards. This will ensure the appropriateness of the land use relationships with adjoining property, and/or within the development site itself, while providing needed flexibility essential to the success of these provisions.
1. In any R-VS district, the cumulative project area which may incorporate flexible design provisions shall not exceed ten (10) acres.
  2. In any MUD district, the cumulative project area which may incorporate flexible design provisions shall not exceed thirty (30) acres.
  3. In any residential district employing the Cottage Cluster Housing option, the total project area, when incorporating flexible design provisions, shall not exceed ten (10) acres.
- F. **APPLICATION PROCESS.**
1. In applying for approval of a flexible design standards project, the applicant shall include a letter to the Planning Director with a statement of intent outlining the purposes and objectives of the proposed development; the particular development standards being modified; the special design features or amenities being incorporated into the plan which makes the proposed development significant and worthy of approval; identification of the individual separate locations where flexible design provisions are proposed to be used, and the cumulative total acreage; and any other applicable information that the applicant may feel is appropriate. The applicant must submit a site development plan drawn to scale showing the information listed below.
    - a. Proposed lot configurations.
    - b. Proposed vehicular and non-vehicular circulation systems, off-street parking arrangements, on-street parking locations, pedestrian and bicycle facilities and pathways.
    - c. Open space system, specifying what improvements, amenities, or facilities will be located within the open space, and phasing of implementation, if phasing is proposed.
    - d. Proposed screening, including fences, walls, or planting areas.
    - e. Proposed treatment of any significant natural features.
  2. The Board of Commissioners, the Planning Board, or the Planning Director or designee may require additional information that may be necessary for an adequate review of the proposed development. This information may include individual building concepts, intended use and design

of green or environmentally sustainable elements, proposed recreational amenities, and similar information.

- G. REVIEW AND APPROVAL. Any application for flexible design will be considered at the same time as the related conditional district application or through a separate site plan and/or elevation plan review, as appropriate. In evaluating an application for flexible design, the Planning Board and Board of Commissioners will consider whether the development plan meets the following objectives.
1. Accomplishes objectives as specified in the written statement of intent.
  2. Exhibits special, atypical design features or environmentally sustainable elements and creates a thoughtful, imaginative use of land.
  3. Provides for reasonable and appropriate land use relationships, both within the development itself and with surrounding areas adjacent to the development, specifically improving neighborhood access to employment or services opportunities.
  4. Exhibits design criteria that will protect and preserve substantial natural or historic features of the site prior to any land disturbing activity
  5. Provides the community with a beneficial, alternative design concept which is potentially applicable in other community situations. (Am. Ord. 2059, passed 12-8-14) [formerly § 153.207]

## **155.402. Vested Rights**

### **155.402.1 Purpose**

The purpose of this section is to implement the provisions of GS Chapter 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan. ('72 Code, § 24-1800) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.240]

### **155.402.2 Definitions**

For the purpose of this § 155.402, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Approval Authority:** shall mean the Town Board of Commissioners is authorized to grant the specific zoning approval that constitutes a site specific development plan.

**Multi-phased development:** shall mean a development containing one hundred (100) acres or more that: i) is submitted for site plan approval for construction to occur in more than one phase; and ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval, all as provided by NCGS 160A-385.1(b). (Am. Ord. 2188, passed 11-14-16)

**Property Owner:** shall mean any owner of a legal or equitable interest in real property, including the devisees, heirs, successors, assigns, and personal representative of that owner. The property owner may allow a person holding a valid option to purchase to act as his agent for purposes of submitting a proposed site specific development plan.

**Site Specific Development Plan:** shall mean a plan of land development submitted to the Town for purposes of obtaining a certificate of vested right which plan shall include the following items: i) a boundary survey showing the total acreage, present zoning classifications, date, and north arrow; ii) the owners' names, addresses, and the tax parcel numbers of all adjoining properties; iii) all existing easements, reservations, and rights-of-way and all yards required for the zoning district requested; iv) proposed use of structures and land (for residential uses, this should include the number of units and an outline of the area where the structures will be located; for nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located); and, v) traffic, parking, and circulation plans, showing proposed locations and arrangement of parking spaces and access points to adjacent streets. Notwithstanding the foregoing, neither a variance, a Sketch Plan, or any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

**Vested Right:** shall mean a right pursuant to GS 160A-385.1 to undertake and complete the development and use of property under the conditions and terms of an approved site specific development plan, upon receipt of a certificate of vested right. ('72 Code, § 24-1801) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.241]

**155.402.3 Obtaining a Certificate of Vested Right**

- A. CERTIFICATE OF VESTED RIGHT CONCURRENT WITH SUBMITTAL OF A PARALLEL TRADITIONAL OR CONDITIONAL-ONLY DISTRICT ZONING APPLICATION.
1. If the property owner so chooses, an application for vested right and fee (in accordance with a fee schedule adopted by the Town Board of Commissioners) may be submitted concurrent with a zoning application for a conditional district rezoning. Upon the successful completion of a conditional district zoning request, which includes a public hearing, Planning Board review, and Town Board of Commissioners final approval, then a certificate of vested right shall be issued. ('72 Code, § 24-1802) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.242]
  2. A multi-phased development request for vested right (over one hundred acres) shall be submitted concurrent with a zoning application for a conditional district rezoning. This request will require additional time for staff review, and will not be scheduled for public hearing on the zoning request until the Planning office has verified all necessary information, including what is listed in 155.402.3.C. below and any data unique to the proposed development location, has been satisfactorily submitted. The zoning public hearing will be scheduled no earlier than three (3) months following initial submission. If the proposed development location has been previously zoned to a conditional district through an early designation process, then the request for vested right will be processed as though it is a change of zoning conditions for that zoning district and therefore will follow the same review and approval steps as a zoning action. (Am. Ord. 2188, passed 11-14-16)
- B. OBTAINING A CERTIFICATE OF VESTED RIGHT INDEPENDENT OF ZONING APPLICATION. To apply for a certificate of vested right, a property owner or his agent shall submit a site specific development plan, a fee (in accordance with a fee schedule adopted by the Town Board of Commissioners) and an application for vested right on a form supplied by the Town. The application and plan shall be accepted by the Town Board of Commissioners and a hearing date shall be set. Following the hearing, the Board of Commissioners may submit the application to the Planning Board for its recommendation. The Board of Commissioners shall approve, approve with conditions, or deny the site specific development plan. Conditions shall be reasonable and appropriate and relate to the relationship of the proposed use to surrounding property, proposed support facilities, such as parking areas and driveways, pedestrian and vehicular circulation systems, buffer and screening areas, the timing of development, and other matters the Board of Commissioners may deem necessary for public health or safety. ('72 Code, § 24-1803) (Ord. 477, passed 2-8-88; Am. Ord.694, passed 10-7-91) [formerly § 153.243]
- C. CERTIFICATE OF VESTED RIGHT APPLICATION REQUIREMENTS. The Town Board of Commissioners may request additional information as they deem necessary in order to evaluate a proposed use and its relationship to the surrounding area. This information may include but is not limited to the items listed below.
- A. Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features;
  - B. Delineation of areas within the regulatory floodplain as shown on the official Flood Hazard Boundary Maps;
  - C. Existing and proposed topography at two foot (2') contour intervals or less;
  - D. Generalized information on the number, height, size, or location of structures;
  - E. Location and size of storm water quality ponds or facilities;
  - F. Driveway access and off-street parking areas;
  - G. Proposed number, size, and location of signs; and,
  - H. Proposed phasing, if any, and approximate completion time of the project. ('72 Code, § 24-1804)(Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.244]
- D. PUBLIC HEARING. A public hearing date shall be set by the Town Board of Commissioners at the next regularly scheduled meeting which includes zoning matters, subject to sufficient time for advertisement. Notice shall be published in a newspaper having general circulation in the Town area 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 public hearing. In addition, a notice of the public hearing shall be sent by first class mail to the owners of all parcels of land which are wholly or partially within one hundred feet (100') of any point of the subject property, when calculated to exclude any public right-of-way one hundred feet (100') wide or less, as shown on the most current county tax listing. The applicant

shall prepare such notices to all property owners required to receive mailed notification, and shall deliver said notices to the Planning Office at the time of application submittal for a Certificate of Vested Right. ('72 Code, § 24-1805) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.245]

**155.402.4 Approval of a Site Specific Development Plan**

- A. CONSIDERATIONS FOR APPROVAL. The burden of proof of producing evidence to support these findings and to overcome challenges to them shall rest entirely with the property owner. In evaluating a site specific development plan for approval, the Board of Commissioners shall find the following:
  - 1. The policies and objectives of the Land Use Plan, particularly in relation to the proposed site and surrounding area shall be met.
  - 2. The potential adverse impacts on the surrounding area, especially in regard but not limited to traffic, storm drainage, land values, and compatibility of land use activities shall be minimized to the greatest extent possible.
  - 3. The plan meets all specifications required by this Title.
  - 4. The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. [formerly § 153.246]
- B. APPROVAL OF SITE SPECIFIC DEVELOPMENT PLAN. Upon approval of a site specific development plan, a statement shall be placed on the plan reading:

“A vested right under GS 160A-385.1 has been established for this property as shown on this site Specific Development Plan, approved on (date). Unless terminated at an earlier date, the vested right shall remain valid until (date).”

('72 Code, § 24-1807)(Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.247]
- C. OTHER REVIEWS. Following approval of a site specific development plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that those reviews and approvals are not inconsistent with the original approval. The establishment of a vested right on a property shall not preclude the Town from creating and approving one or more overlay districts which may impose additional restrictions on the property, provided that those restrictions do not affect the allowable type or intensity of use. The Town may also enforce on the property any regulations adopted during the effective time period of the vested right, which are general in nature and applicable to all property subject to the regulations of 155.402. ('72 Code, § 24-1808) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.248]
- D. DURATION. A vested right shall be approved for a period of two (2) years, except a vested right for a multi-phase development (100 acres or larger) shall be approved for a period of seven (7) years. It shall be effective immediately upon approval. Upon issuance of a building permit, the expiration provisions of GS 160A-418 and the revocation provisions of GS 160A-422 shall apply, except that a building permit shall not expire or be revoked due to the running of time while an established vested right is outstanding. A multi-phased development shall be vested for the entire development to utilize the provisions of this Title in place at the time of zoning and site plan approval for the initial phase of the multi-phased development. (Am. Ord. 2188, passed 11-14-16) ('72 Code, § 24-1809) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.249]

**155.402.5 Termination of a Zoning Vested Right**

A zoning right that has been vested as provided in this § 155.402 shall terminate:

- A. At the end of the applicable vesting period with respect to buildings or uses for which no valid building permit applications have been filed;
- B. With the written consent of the affected property owner;
- C. Upon findings by the Town Board of Commissioners, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- D. Upon payment to the affected property owner of compensation for all costs, expenses, and other losses incurred by the property owner, including fees paid in consideration of financing and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval of vested right, and interest at

the legal rate until paid;

- E. Upon findings by the Town Board of Commissioners, by ordinance after notice and a hearing, that the property owner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or
- F. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Board of Commissioners may modify the affected provisions, upon a finding, by ordinance after notice and a hearing, that the change in state or federal law has a fundamental effect on the plan. ('72 Code, § 24-1810) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.250]

#### **155.402.6 Voluntary Annexation**

A petition for voluntary annexation for contiguous or satellite boundaries shall contain a signed statement declaring whether or not any vested right with respect to the properties subject to the petition has been established. A statement declaring that no vested right has been established, or the failure to sign a statement declaring an established vested right, shall be binding on the property owner and any undeclared vested right shall be terminated. ('72 Code, § 24-1811) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.251]

#### **155.402.7 Repealer**

In the event that GS 160A-385.1 is repealed, § 155.402 shall be deemed repealed and the provisions within no longer effective. ('72 Code, § 24-1812) (Ord. 477, passed 2-8-88; Am. Ord. 694, passed 10-7-91) [formerly § 153.252]

#### **155.403. Process for Deciding Interpretations, Appeals, and Variances**

In fulfilling the duties listed at § 155.208, the Town Board of Adjustment shall receive and act on applications presented for their review and action.

#### **155.403.1 Interpretation and Variance Limitations**

No request for interpretation or variance to zoning provisions of Chapters 1 through 6 inclusive, or to the Floodplain and Flood Damage Protection Standards of Chapter 9, shall be granted that would have the effect of allowing a use not permitted in the district in which the property in question is located.

#### **155.403.2 Application Process**

- A. APPLICATION REQUIRED.
  - 1. All interpretation or variance applications shall be filed with the Planning Office. An application shall be considered filed with the Planning Office when delivered to the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.
  - 2. An appeal of any determination, order, requirement or decision by an administrative official must be taken within thirty (30) days after the date of decision or order which is being appealed. An appeal shall be concurrently filed with the Town Clerk, the Planning Office and any administrative official charged with enforcement of this Title, which shall serve as the notice of appeal finding as required at NCGS 160A-388(b1)(1). An application shall be considered filed when delivered to both the Town Clerk and the Planning Office and the date and time of filing shall be entered on the application by the Planning Office staff.
- B. DETERMINATION OF COMPLETE APPLICATIONS. An application for interpretation, appeal, or variance will not be deemed properly filed unless it is complete. The Planning Office shall determine the completeness of an application. Upon determination that the application is complete, the Board of Adjustment shall schedule a hearing in accordance with the application schedule on file in the Planning Office.
- C. NOTICE TO OFFICIAL. When an appeal is filed, the Planning Office shall transmit to the Board of Adjustment and to any administrative official charged with enforcement of a pertinent section of this Title all documents constituting the record relating to the action which is being appealed. An administrative or enforcement official may include, but is not limited to, the Town Planning Director or designee, the Town Code Enforcement Officer, the Town Zoning Administrator, the Town Public Works Director or designee, the Town Engineer, the Town Storm Water Administrator, the Town Floodplain Administrator, and an employee of the Mecklenburg County Land Use and Environmental Services Agency or Mecklenburg County Code Enforcement Division when applying Town adopted regulations.



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- D. EFFECT OF APPEAL APPLICATION. An appeal stays all actions by the enforcement official seeking enforcement of or compliance with the order or decision being appealed unless the enforcement official certifies to the Board of Adjustment in an affidavit that a stay would cause imminent peril to life or property, or because the violation is transitory in nature, a stay would seriously interfere with the enforcement of this Title. In that case, enforcement proceedings shall not be stayed except by restraining order. If enforcement is not stayed, the appellant may request an expedited hearing, as allowed at NCGS 160A-388(b1)(6).

**155.403.3 Findings of Fact for Zoning Variances**

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In granting any zoning variance to provisions within Chapters 1 through 6, the Board of Adjustment shall make findings listed at § 155.208.C.1.b.i through *iv* that an unnecessary hardship would result from the strict application of this Title, that the hardship is peculiar to the subject property, that the hardship is not self-created, and that the variance is consistent with the spirit of this Title and public safety is secured. To reach these findings, the Board of Adjustment shall consider the following standards:

- A. That special or unique circumstances or conditions exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
- B. That the special conditions or circumstances do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Planning Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
- C. That the unique hardship situations cited by the applicant are not hardships resulting from personal or household members' circumstances which would no longer be applicable to the location if the applicant or household was no longer present at the property;
- D. That the strict enforcement of this Title would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Title;
- E. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Title denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
- F. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and
- G. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance.

**155.403.4 Conditions of Approval for Zoning Variances**

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In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practical with surrounding properties.

**155.403.5 Burden of Proof**

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- A. ZONING VARIANCES. The burden of presenting evidence sufficient to allow the Board of Adjustment to make its findings as set forth in § 155.403.3, as well as the burden of persuasion on those issues remains with the applicant seeking the variance.
- B. APPEALS. When an appeal is taken to the Board of Adjustment in accordance with § 155.403.2, the enforcement official shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision which is being appealed. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

**155.403.6 Action by Board of Adjustment**

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- A. VARIANCE APPROVAL. Before a variance action is determined to be granted, the Board of Adjustment shall vote affirmatively by a four-fifths majority on the request and on the required findings of fact in § 155.208.C.1. A statement on each of the seven standards in § 155.403.3, or any other contested facts and their application to the case under review, may be included to give a specific reason in support of the motion.
- B. VARIANCE DENIAL. A motion to deny a variance may be made on the basis that any one or more of the standards and therefore required findings of fact are not satisfied or that the application is incomplete. The motion shall include a statement of the specific reasons or findings of fact that support such motion. The

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motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (excluding vacant seats). **[Expands upon § 153.289]**

- C. **APPEAL.** The Board of Adjustment may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken. A motion to reverse, affirm, or modify the order, requirement, decision, or determination which is being appealed shall include a statement of the specific reasons or findings of fact that support the motion. If a motion to reverse or modify is not made or fails to receive a majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order.
- D. **INTERPRETATION.** The Board of Adjustment shall interpret the meaning or application of text within this Title, zoning maps, district boundary lines and similar questions by a concurring vote of a majority.
- E. **WRITTEN DECISION.** Each quasi-judicial decision by the Board of Adjustment shall be in writing and signed by the chair or other duly authorized member of the Board. The decision shall become effective when the signed decision is filed with the clerk to the board. A copy of the signed decision shall be given to the applicant, property owner, and any person who requested in writing to receive a copy by personal delivery, electronic mail, or first-class mail. The person delivering this notice shall certify that proper notice has been made. **[Expands upon § 153.289]**

### **155.403.7 Other Appeal or Variance Actions**

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- A. **VARIANCE FROM SUBDIVISION REGULATIONS.** The procedures, standards, and requirements as given in § 155.712 shall be followed for any request for variance from Chapter 7 Public Improvement Standards.
- B. **APPEAL OR VARIANCE FROM POST CONSTRUCTION ORDINANCE REGULATIONS.** The procedures given in § 155.802.E. for actions taken by the Storm Water Advisory Committee (SWAC) shall be followed for any request for variance or appeal to enforcement of and regulations in Chapter 8 Post Construction Storm Water Regulations.
- C. **APPEAL OR VARIANCE FROM FLOODPLAIN REGULATIONS.** The Board of Adjustment shall follow the procedures, standards, and requirements as given in § 155.904 for any request for variance or appeal from Chapter 9 Floodplain Regulations.
- D. **APPEAL FROM MINIMUM HOUSING REGULATIONS.** The Board of Adjustment shall follow the procedures given in § 155.1005.D. for any appeals of enforcement decisions or actions taken to implement Chapter 10 Housing Code.

### **155.403.8 Effect of Board's Decision**

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- A. After the Board of Adjustment approves an interpretation or a variance, the applicant shall be required to follow the applicable procedures of this Chapter 4 for the approval of a building permit or Certificate of Occupancy in order to proceed with the use and development of the subject property. Where a variance is granted, unless otherwise specified by the Board, the variance shall automatically expire if a building permit is required and is not obtained within six (6) months from the date of the meeting at which the Board of Adjustment rendered its decision. In addition, if six (6) months has expired, the Zoning Administrator shall have the authority to authorize the permit to be issued if the Zoning Administrator determines that, based upon the Board's decision the circumstances for granting of the variance have not changed and would allow the issuance of the permit.
- B. After the Board of Adjustment reverses or modifies an order, requirement, decision, or determination of the Zoning Administrator, the appellant shall be required to follow the applicable procedures of this Chapter 4 for the approval of a building permit or Certificate of Occupancy in order to proceed with the use and development of the subject property.
- C. After the Board of Adjustment issues an interpretation on how a specific provision of this Title is to be understood and applied, then that interpretation will be used on future situations with matching criteria. Future amendments to clarify or further revise written provisions or zoning maps shall follow the procedures outlined in this Chapter 4.
- D. Decisions on interpretations, appeals, and variances by the Board of Adjustment may be appealed when such appeal is to superior court in the nature of certiorari as provided by law. A petition for review shall be filed with the clerk of superior court by the later of thirty (30) days after the decision is effective or thirty (30) days after a written copy is given to the applicant or property owner.

**155.405. Subdivisions**

**155.405.1 General Requirements**

- A. **PURPOSE.** The provisions of these regulations are designed and enacted for the following purposes: to promote the orderly development of the Town and its environs; to promote the coordination of streets within subdivisions with existing or planned streets or with public facilities; to secure adequate rights-of-way or easements for street or utility purposes; to secure adequate spaces for recreation, open space, and school sites; to provide for the distribution of population and traffic in a manner which will avoid congestion and overcrowding; to protect and enhance environmental quality; and to create conditions essential to health, safety, convenience and the general welfare. **[formerly § 152.01]**
- B. **JURISDICTION.** The provisions of these regulations apply to all subdivision activities for which approval under these regulations is required in the Town of Matthews. **[formerly § 152.02]**
- C. **APPLICABILITY.** A subdivision shall include all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but, the following shall not be considered a subdivision nor be subject to the requirements of the regulations of this § 155.405:
  - 1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of these regulations;
  - 2. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;
  - 3. The public acquisition by purchase of strips of land for the widening or opening of streets; and
  - 4. The division of a tract in single ownership whose entire area is not greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of these regulations and the underlying zoning district. **[formerly the definition of "subdivision" from § 152.10]**
- D. **COMPLIANCE WITH OFFICIAL PLANS.** When a proposed subdivision embraces any part of a proposed thoroughfare, school, park, or recreation site, or other public facility which has been designated in the officially adopted plan of the Town or CRTPO, that planned facility shall be platted and designated by the subdivider in the location shown on the plan in accordance with § 155.405.4.L, § 155.405.4.M, § 155.405.4.N, and § 155.405.4.O. ( Am. Ord. 2231, passed 6-12-17) **[formerly § 152.04]**

**155.405.2 Subdivision Plat Required**

After the effective date of this Title and pursuant to GS 160A-372, a Final Plat shall be prepared, approved and recorded pursuant to the provisions of this Title whenever any subdivision of land occurs. **[formerly § 152.20]**

**155.405.3 Approval Prerequisite to Plat Recording**

Pursuant to GS 160A-373, no Final Plat of a subdivision within the jurisdiction of the Town shall be recorded by the Register of Deeds of Mecklenburg County until it has been approved as provided by this Title. To obtain approval of a Final Plat the subdivider shall follow the procedures established in this Chapter.

**155.405.4 General Subdivision Design Criteria**

The following statements provide general requirements and policies to be used in the design, review, and approval of any subdivision under the jurisdiction of these regulations. As stated at § 155.701.C, these provisions also apply to any proposed rezoning, expansion of an existing development (40% or more increase in building square footage or outdoor use area), any new development, or any redevelopment of land where they logically can apply (i.e., not § 155.405.4.Q since subdivision names would not apply to a development site not involving a formal subdivision final plat). (Am. Ord 2059, passed 12-8-14)

- A. **CONSISTENCY WITH ADOPTED PUBLIC PLANS AND POLICIES.** All subdivisions of land approved under these regulations shall be consistent with the most recently adopted plans and policies for the area in which they are located and conform to the dimensional requirements of the underlying zoning. This includes general policy regarding development objectives for the area as well as specific policy or plans for public facilities

such as streets, parks and open space, schools, and other similar facilities.

- B. CONFORMITY. All proposed subdivisions shall be planned so as to facilitate the most advantageous development of the entire neighboring area. In areas where nearby development has occurred, new subdivisions should be planned to protect and enhance the stability, environment, health and character of the neighboring area.
- C. EXTENSION OF EXISTING STREETS. The proposed street system shall extend streets on their proper projections at the same or greater width than the minimum required by these regulations. Emphasis will be placed on the adopted Comprehensive Transportation Plan or thoroughfare plan and any adopted small area plans in the determination of street extensions and connections. (Am. Ord. 2231, passed 6-12-17)
- D. ACCESS TO ADJOINING UNSUBDIVIDED PROPERTY. The proposed street system shall be designed to provide for desirable access to and not to impose undue hardship upon unsubdivided property adjoining the subdivision and to provide interconnection to similar adjacent uses when such connection would facilitate traffic movement in the area. Reserve strips adjoining street rights-of-way for the purpose of preventing access to adjacent property are not permitted.
- E. RELATIONSHIP TO TOPOGRAPHY. In sloping terrain, streets should parallel the contours of the land insofar as practicable, to avoid steep grades and the undue concentration of storm water surface runoff.
- F. MATURE TREES AND NATURAL VEGETATION. Streets and development sites shall be designed to protect and preserve, to the greatest extent practicable, stands of mature trees and other areas of significant natural vegetation. Streetscape trees shall be incorporated along all new public or private streets, and should utilize existing trees to the greatest extent possible. Streetscape trees shall follow the Town's adopted plans along existing roads. Interior landscaping within newly platted lots should be designed to incorporate and preserve existing trees. (Ord. No. 1618, passed 4-14-08)
- G. ACCESS TO PARKS, SCHOOLS, GREENWAYS, ETC. Streets shall be designed or walkways dedicated to assure convenient access to parks, greenways, playgrounds, schools and other places of public assembly. Dedicated walkways or easements shall not be less than fifteen feet (15') in width and may be required to be large enough and structurally capable of providing vehicular access for maintenance vehicles.
- H. NEIGHBORHOOD CONNECTIVITY. Subdivisions shall be designed to connect to adjacent neighborhoods by street to the greatest extent practicable for improved access for emergency services without encouraging a significant increase in volume of traffic or speed of motor vehicles. Subdivisions shall also be designed to incorporate bicycle and pedestrian facilities in such a manner as to allow for access within and between neighborhoods.
- I. RELATIONSHIP TO RAILROAD RIGHTS-OF-WAY. When a subdivision adjoins a railroad right-of-way the subdivider may be required to arrange the street pattern to provide for the future grade separation of street and railroad crossings.
- J. HALF STREETS. Whenever an existing half street is adjacent to a tract of land to be subdivided the other half of the street shall be platted within such tract. New half streets are prohibited.
- K. PARALLEL STREETS ALONG THOROUGHFARES. Where a tract of land to be subdivided adjoins a federal or state highway or a major arterial street, the subdivider may be required by the Town or the North Carolina Department of Transportation (NCDOT) to provide a street parallel to the highway or to utilize reverse frontage on an interior street for the lots to be developed adjacent to the highway. Where reverse frontage is established, deed restrictions or other means shall be provided to prevent private driveways from having direct access to the highway or street.
- L. PUBLIC PARK, GREENWAY, RECREATION, AND OPEN SPACE SITES. The subdivider of each subdivision which includes residential lots shall dedicate a portion of such land or pay a fee in lieu of land dedication, in accordance with Chapter 7, for public park, greenway, recreation, and open space sites to serve the recreational needs of the residents of the subdivision.
- M. PUBLIC SCHOOL SITES. When a tract of land that appears in an adopted plan or policy document as a future public school site falls within an area proposed to be subdivided, the Planning Director shall notify the Charlotte- Mecklenburg Board of Education of the proposed subdivision and its effect on the future public site. The Board of Education must decide within thirty (30) days if it wishes to reserve the site for future acquisition. If the site is not to be reserved, then the subdivision shall be processed in the normal fashion. If the Board of Education does wish to reserve the site, then the subdivision shall not be approved without such reservation. The Board of Education shall have eighteen (18) months from the date of Preliminary

Plan approval to acquire the site by purchase, receipt of a dedication or by initiating condemnation proceedings. The Board of Education may also choose to release the site from reservation at any time prior

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to the end of the eighteen (18) month period. If at the end of the eighteen (18) month period none of the actions listed above have commenced, the subdivider may consider the land free of any reservation.

- N. PUBLIC FACILITIES. When a tract of land that appears in an adopted plan or policy document as a future site for any community service facility, including but not limited to police and fire stations, libraries, public housing, or other public use, falls within the area proposed to be subdivided, the Town staff shall notify the appropriate agency of the proposed subdivision and its effect on the future public site. The appropriate agency must decide within thirty (30) days if it wishes to reserve the site for future acquisition. If the site is not to be reserved, then the subdivision shall proceed in the normal fashion. If the agency does wish to reserve the site, then the subdivision shall not be approved without such reservation. The appropriate agency shall have eighteen (18) months from the date of Preliminary Plan approval to acquire the site by purchase, receipt of a dedication or by initiating condemnation proceedings. The appropriate agency may also choose to release the site from reservation at any time prior to the end of the eighteen (18) month period. If, at the end of the eighteen (18) month period, none of the actions listed above have commenced, the subdivider may consider the land free of any reservation.
- O. THOROUGHFARE RIGHTS-OF-WAY. Whenever a tract of land to be subdivided includes any part of any arterial street shown on the adopted Comprehensive Transportation Plan, the right-of-way for the arterial street shall be platted and dedicated or reserved in accordance with Chapter 7. (Am. Ord. 2231, passed 6-12-17)
- P. STREET NAMES. All proposed street names must be reviewed by Matthews Planning Department, Public Works, Police Department, and Fire & EMS Department before being submitted to Mecklenburg County for final approval. A proper street name shall include one (1) to three (3) words as the main name and a street type suffix. A proper street name may include a directional prefix, and/or "extension" following the street type suffix. Proposed street names shall adhere to the following guidelines: do not duplicate nor too closely approximate phonetically the name of any street within the Town or county; do not use business names; do not include punctuation; do not use possibly offensive names; and do not include directional suffixes. Where proposed streets are extensions of existing streets, or align with an existing street, the existing names should be used, except where a new name can reasonably be used to facilitate the proper street address numbering or to avoid further street name duplication. Words shall not be used as the first word of a street name if used in two other locations within the county. The only exception allowed is use of a generic label naming a topographic feature or a color, which can be part of multiple street names. (Am. Ord 2176, passed 9-12-16)
- Q. SUBDIVISION NAMES. Proposed subdivision names shall not duplicate nor too closely approximate phonetically the name of any subdivision within the Town, unless applicant presents compelling reasons to support proposed name. Compelling reasons include known and documented historical reference names specific to the history of the Town of Matthews. Subdivision names should minimize the use of words used two (2) or more times as part of names of streets (except streets internal to the subdivision), residential subdivisions, commercial subdivisions or apartment complexes within the county except where the new subdivision is an extension of or adjacent to an existing subdivision with the same name. Applicants may present requests to deviate from this ordinance prior to the completion of any new subdivision. Approval of requested names shall be reviewed on an individual basis and solely at the discretion of the Board of Commissioners. (Am. Ord. 2091, passed 6-8-15)
- R. EASEMENTS. Easements for public and private utilities and drainage shall be provided on all lots when requested by an appropriate utility agency or as determined to be necessary by the Town Public Works Director. Easements shall be established to the width and in the locations required by the County Land Use and Environmental Services Agency, the Town Public Works Director and the Charlotte-Mecklenburg Utility Department as appropriate, but in no case shall be less than a minimum of ten feet (10') in width and shall be centered on rear and side lot lines. A utility easement not less than five feet (5') in width shall be provided along the front lot line. More than one easement may be required on a lot to accommodate the various utilities and drainage facilities.
- S. PROPOSED WATER AND SEWERAGE SYSTEM. The preliminary subdivision plan shall be accompanied by satisfactory evidence as to the proposed method of providing potable water and a system of sanitary sewage collection and disposal.
  - 1. Where these systems are to be a part of the Charlotte-Mecklenburg public water and sanitary sewerage system, the acceptability of the proposed system should be attested by the approval of the preliminary subdivision plan by the utility department or a letter from the utility department stating the availability of water and/or sewer service and that the subdivision shall be allowed to connect to the system upon completion and dedication of the systems in the development.

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- 2. When the proposed systems to serve more than one structure do not contemplate the use of facilities owned and operated by the Charlotte-Mecklenburg Utility Department, the proposed systems must meet the Charlotte-Mecklenburg Utility Department Standards and shall be reviewed and approved by the agency or agencies with jurisdiction over the approval. Evidence must be provided by the developer prior to the Preliminary Plan approval of the required soil and site evaluation. Prior to the approval of the Final Plat evidence must be provided that both the sewer and water system designs meet Charlotte-Mecklenburg Utility Department Standards and have been approved for construction. Prior to the issuance of any certificate of occupancy for any structure, evidence must be provided that both the water and sewer systems have been approved and are operational for the structures in question. Where local standards exceed those of State or Federal agencies and where those standards may be enforced over those of State or Federal agencies, then the State Department of Environment and Natural Resources shall coordinate all reviews for such standards. However, the approval of the proposed systems remains with the responsible agency or agencies, which may include the Department of Environment and Natural Resources.
  
- T. **STORM WATER.** When a tract of land to be subdivided is required to comply with the Matthews Post Construction Ordinance, Chapter 8 of this Title, and/or the storm water management standards at § 155.704, then all requirements and procedures of these provisions shall be followed. (Ord. 1585, passed 8-13-07)
  
- U. **RESTRICTIONS ON THE SUBDIVISION OF LAND SUBJECT TO FLOODING.** Lots that are subject to flooding shall not be established in subdivisions except as provided in Chapter 9. **[formerly § 152.21]**
  
- V. **BURIED UTILITIES.** Except for overland drainage and detention, meters, and control boxes/equipment, all public and private utilities in the subdivision shall be buried.
  
- W. **CENTRALIZED BOX UNITS (CBUS) FOR USPS MAIL DELIVERY.** Where the US Postal Service determines there is a need to utilize one or more Centralized Box Units (CBUs) in place of individual curbside mailboxes, then the following dimensional and design criteria shall be followed:
  - 1. Any CBU placement shall meet the requirements of the US Postal Service for unobstructed pavement and individual CBU unit(s), and shall be situated to meet ADA requirements. CBUs shall be placed where there is a logical, safe and direct walking path between the CBU location and the homes, offices, or other establishments being provided with mail delivery service.
  - 2. Any CBU structure shall not extend over the required minimum width of the public sidewalk, over the street curb and gutter, or over any bike facility.
  - 3. Any CBU shall not open directly toward travel lanes (bicycle or motor vehicle) within the street without adequate space for the carrier and users to open individual unit boxes to insert or retrieve mail.
  - 4. A CBU shall be accessible from the adjacent sidewalk when one is provided.
  - 5. A CBU shall be set back from the edge of pavement or back of curb at least five feet (5') when no sidewalk or pedestrian path is either immediately adjacent or connected by a minimum 5' wide solid surface path.
  - 6. A CBU shall not be placed any closer to an intersection of two Class V, VI, or VI-L streets than forty feet (40').
  - 7. A minimum of two (2) on- or off-street parking spaces shall be provided within eighty feet (80') of any CBU which is located on a Class IV or higher street. These parking spaces shall be placed such that the carrier or individual visiting the CBU does not need to cross a Class IV or higher street after exiting the vehicle. (Am. Ord. 2141, passed 4-11-16)

**155.405.5 Major and Minor Subdivision Classifications**

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For the purposes of this § 155.405, two (2) classes of subdivisions are established, minor subdivisions and major subdivisions, and are described as follows:

- A. **MINOR SUBDIVISIONS.** Minor subdivisions require only approval of a Sketch Plan and a Final Plat in accordance with the requirements of §§ 155.405.6 and 155.405.8, respectively, of this Chapter 4. A minor subdivision has all of the following characteristics: **[formerly § 152.22]**
  - 1. The subdivision has no more than nine (9) lots;
  - 2. There is no installation of a private wastewater treatment plant or a private water supply system for more than one lot or building site;

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- 3. There are no new proposed public or private streets, roads, or alley rights-of-way to serve the lots being created, or improvements to an existing street;
  - 4. There is no new installation of drainage improvements through one or more lots to serve one or more other lots; and,
  - 5. There are no new extensions of any needed rights-of-way or easements for the water and sewer system operated by the Charlotte-Mecklenburg Utility Department.
- B. MAJOR SUBDIVISIONS. Major subdivisions require the approval of a Sketch Plan, Preliminary Plan and a Final Plat as required by §§ 155.405.6, 155.405.7, and 155.405.8, respectively, of this Chapter. A major subdivision is one that fails to satisfy the requirements for a minor subdivision.

**155.405.6 Sketch Plan Requirements and Procedures**

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- A. SKETCH PLAN REQUIRED. As a prerequisite for application for Preliminary Plan or Final Plat, and in order to discuss the general purpose of the subdivision or development in the context of the Town’s established community development policies and practices, and to ensure that required data is properly prepared and presented before expending the time and money in preparation and review of a Preliminary Plan (for Major Subdivisions) and a Final Plat (for Minor Subdivisions), any person desiring to subdivide land subject to this § 155.405 before filing a Preliminary Plan or Final Plat shall file a Sketch Plan of the subdivision with the Planning Office.
- B. REQUIRED INFORMATION FOR SKETCH PLAN. When submitted, the Sketch Plan shall be on a topographical survey and shall show in simple sketch form the proposed layout of streets, lots, and other features in relation to existing conditions. It shall include the information identified in § 155.405.9.
- C. SKETCH PLAN REVIEW PROCESS.
  - 1. A Sketch Plan of the proposed subdivision prepared in accordance with the specifications and requirements set forth in § 155.405.6.B and § 155.405.9 shall be submitted to the Planning Office. Digital and/or print copies are to be submitted to the Planning Office and Mecklenburg County Land Use and Environmental Services Agency Department along with any applicable fees as may be required by each agency.
  - 2. Within thirty (30) days for a Minor Subdivision, or forty five (45) days for a Major Subdivision, from the date of receipt of the Sketch Plan by the Planning Office the Plan Review Committee shall review, comment and approve the Sketch Plan only if all requirements of this Title are met. The proposed subdivision name shall be sent to Mecklenburg County Land Use and Environmental Services Agency and local emergency agencies for comments. All proposed street names shall be reviewed by Matthews Planning, Public Works, Police, and Fire & EMS Departments before being submitted to Mecklenburg County for final approval. If necessary, the subdivider shall submit additional information and/or a revised Sketch Plan, as required, to the Planning Office. Within thirty (30) days from the date of receipt of the revised Sketch Plan or such additional information by the Planning Office the Plan Review Committee shall review the revised Sketch Plan or such additional information and, if all issues have been satisfactorily resolved, the Plan Review Committee shall approve the Sketch Plan with or without conditions. (Am. Ord. 2264, passed 10-9-17)
  - 3. EXPIRATION. Sketch Plan approval shall be effective for no more than one (1) year from the date of approval by the Plan Review Committee to submission of Preliminary Plan for a Major Subdivision or Final Plat for a Minor Subdivision. The time frame for expiration does not change with successive owners.
- D. SKETCH PLAN IS NOT A COMMITMENT TO APPROVE. Approval of the Sketch Plan by the Plan Review Committee shall in no way be construed as constituting an official act of approval for recording the subdivision plat and does not vest the owner or developer with any developmental rights. [formerly § 152.23]

**155.405.7 Preliminary Plan Requirements and Procedures**

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- A. PRELIMINARY PLAN REQUIRED. Prior to filing an application for approval of the Final Plat for Major Subdivisions, a Preliminary Plan must be prepared and submitted as outlined here.
- B. PRELIMINARY PLAN REVIEW PROCESS.
  - 1. PLAN REVIEW COMMITTEE ACTION. A Preliminary Plan of the proposed subdivision prepared in accordance with the specifications set forth in § 155.405.9 shall be submitted to the Town

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Planning Office and Mecklenburg County Land Use and Environmental Services Agency. Digital and/or print copies are to be submitted to the Planning Office and Mecklenburg County Land Use and Environmental Services Agency along with any applicable fees as may be required by each agency.

2. The Plan Review Committee shall have sixty (60) days from the date of receipt of the Preliminary Plan by the Planning Office in which to review, comment and approve the Preliminary Plan if all requirements of this Title are met. All proposed street names and the proposed subdivision name shall be sent to local emergency agencies for comments and to Mecklenburg County Land Use and Environmental Services Agency for approval. If necessary, the applicant shall submit a revised Preliminary Plan to the Planning Office and to the County Land Use and Environmental Services Agency. The Plan Review Committee shall review the revised Preliminary Plan and, if all issues have been resolved, the Preliminary Plan will then be signed by County Land Use and Environmental Services Agency as meeting all required standards.
  3. BOARD OF COMMISSIONERS ACTION. The Preliminary Plan shall be transmitted to the Board of Commissioners within thirty (30) days following the Plan Review Committee's determination that all required standards have been met. The Board of Commissioners shall approve or approve with conditions the Preliminary Plan. If the Preliminary Plan is conditionally approved, the minutes of the Board of Commissioners meeting shall state the measures necessary for the Final Plat to be approved.
  4. EXPIRATION. Such Preliminary Plan approval shall be effective for no more than one (1) year from the date of approval unless, upon written request by the Applicant, the Board of Commissioners grants an extension of time for not more than one (1) additional year. The time frame for expiration does not change with successive owners.
- C. RELEASE OF GRADING PERMIT. Preliminary Plan approval is required for the issuance of a grading permit for any grading work on the site for the installation of any improvements in furtherance of the development. The release of the grading permit may be authorized by the Mecklenburg County Land Use and Environmental Services Agency prior to the approval of the Preliminary Plan if the Plan Review Committee has signed it as meeting all required standards and the matter(s) staying the approval of the Preliminary Plan are not related to nor will have any effect on the need for grading on the site. Once the Preliminary Plan is approved, further approvals under this provision are not required for grading permits for individual sites within the subdivision.

**155.405.8 Final Plat Requirements and Procedures**

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- A. FINAL PLAT REQUIRED. Prior to recording a Final Plat, a Final Plat must be prepared and submitted to the Town Planning Office for review and approval by the Planning Director or designee.
- B. REQUIRED INFORMATION FOR FINAL PLAT. The Final Plat shall include the information identified in § 155.405.9.
- C. FINAL PLAT REVIEW PROCESS.
  1. PREREQUISITES FOR FINAL PLAT SUBMITTAL. No Final Plat will be accepted for review unless the subdivider shall have:
    - a. Obtained approval of the Sketch Plan for Minor Subdivisions, or the Preliminary Plan by the Board of Commissioners for Major Subdivisions in accordance with this Title; and,
    - b. Completed the installation of required improvements in accordance with the approved Preliminary Plan and the requirements of this Title, including all required improvements to any existing street shown on the Preliminary Plan, and which improvements have been reviewed and inspected and approved by the Town Engineer and Mecklenburg County Land Use and Environmental Services Agency; or,
    - c. Filed any required financial guarantees in a form acceptable to the Town and in an amount determined by the Mecklenburg County Land Use and Environmental Services Agency and/or Town Public Works Director as appropriate, with said guarantees sufficient to assure the completion of the required subdivision improvements and any required improvements to any existing street shown on the Preliminary Plan. These financial guarantees include but are not limited to: transportation infrastructure, storm water improvements, landscaping, open space, street lighting, and recreational lands.

The Final Plat may include all or only a portion of the subdivision as proposed and approved in the Preliminary Plan provided that all required improvements to any existing street shown on the



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- Preliminary Plan have been completed or a guarantee in an amount and in such form as approved by the Town for such improvements prior to such Final Plat approval.
2. **PLAN REVIEW COMMITTEE ACTION.** Within one (1) year of approval of the Sketch Plan (for Minor Subdivisions) the subdivider shall submit the Final Plat. For Major Subdivisions, a Final Plat may be submitted for the full development or for a portion of the subdivision as proposed and approved on the Preliminary Plan, provided that all required improvements to any existing street shown on the Preliminary Plan are provided for prior to any Final Plat approval. The Final Plat shall be prepared in accordance with the specifications of § 155.405.9.
  3. **MECKLENBURG COUNTY LAND USE AND ENVIRONMENTAL SERVICES AGENCY ACTION.** The official plat(s) for recording, together with required copies and "as built" drawings and electronic copies as required, shall be presented to the Mecklenburg County Land Use and Environmental Services Agency, who shall sign the Final Plat(s) within thirty (30) days after submission as being in compliance with this Title.
  4. **EFFECT OF APPROVAL.** The approval of a Final Plat shall not be deemed to constitute or cause the acceptance by the Town of the dedication of any street or other ground, public utility line or other public facility shown on the plat. However, the Town may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes within the corporate limits. Acceptance or dedication of lands or facilities shall not place on the Town any duty to open, operate, repair or maintain any street, utility line or other land or facility, and the Town shall in no event be held to answer in any civil action or proceeding for failure to open, operate, repair or maintain any street. The Town has no obligation to open any street even after acceptance of dedication.
  5. **TOWN ACTION.** Upon Mecklenburg County Land Use and Environmental Services Agency determination that all requirements for Final Plat approval have been met, the Town Public Works Director/Town Engineer shall determine any required financial guarantees for streets, storm water improvements or landscaping and receive such guarantees from the subdivider. The Town Planning Director shall determine and receive any fees due for open space. When all financial requirements to the Town have been completed, the Planning Director or designee shall sign the Final Plat as approved by the Town, and shall certify the Final Plat as meeting requirements for recordation.
  6. **RECORDING THE FINAL PLAT.** The subdivider shall file the approved Final Plat with the Register of Deeds for Mecklenburg County for recording within thirty (30) days after the date of approval; otherwise, the approval shall be null and void. The subdivider shall provide copies of the recorded plat to the Town in such number and form as determined by the Planning Director within five (5) business days following recording of the Final Plat.

**155.405.9 Contents of the Sketch Plan, Preliminary Plan and Final Plat**

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- A. **REQUIRED INFORMATION.** Any person proposing to subdivide any parcel of land in the Town shall file with the Planning Director and Mecklenburg County Land Use and Environmental Services Agency a Sketch Plan, Preliminary Plan and a Final Plat as required and described in this § 155.405 in a quantity and form as required by the Planning Director. The Sketch Plan, Preliminary Plan and a Final Plat shall include the following information:

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	SKETCH PLAN	PRELIMINARY PLAT	FINAL PLAT
<b>GENERAL INFORMATION:</b>			
Title Block containing the following information:			
▪ Name of proposed subdivision [formerly § 152.25.H]	■	■	■
▪ Owner's name [formerly § 152.25.H]	■	■	■
▪ Location (including Town, county, state) [former 152.26.A.4]	■	■	■
▪ Date or dates the survey was conducted and the plat prepared		■	■
▪ A scale of drawing expressed in feet per inch listed in words and graphics and which scale shall not be smaller than one hundred feet (100') to the inch [formerly § 152.25.I]	■	■	■
▪ Name, address, registration number, and seal of the Registered Land Surveyor [formerly § 152.25.H]		■	■
▪ The name of the subdivider	■	■	■
A vicinity map showing the location and relationship between the proposed subdivision and surrounding area [formerly § 152.25.L]		■	■
Corporate limits, county lines if on the proposed subdivision	■	■	■
The names, addresses, and telephone numbers of all owners, mortgagees, registered land surveyors, land planners, architects, landscape architects, and professional engineers responsible for the subdivision [formerly § 152.25.H]		■	
The registration numbers and seals of the professional engineers		■	■
Date of preparation of the drawing [formerly § 152.25.I]	■	■	■
North arrow and orientation [formerly § 152.25.I]	■	■	■
The boundaries of the tract or portion to be subdivided, distinctly and accurately represented with all dimensions shown [formerly § 152.25.A]	■		
The exact boundary lines of the tract to be subdivided, fully dimensioned by lengths and bearings, and the location of existing boundary lines of adjoining lands [formerly § 152.26.A.1]			■
The names of owners of adjoining property	■	■	
The names of any adjoining subdivisions of record or proposed and under review		■	■
Traffic impact analysis		■	
Site calculations, including:			
▪ Total acreage of the tract to be subdivided	■	■	■
▪ Acreage in parks, recreation and open space areas, and non-residential areas	■	■	■
▪ Total number of parcels created	■	■	■
▪ Acreage/square footage of the smallest lot in the proposed subdivision	■	■	■
▪ All applicable certificates as required at § 155.405.9.B			■
▪ All mapping shall comply with GS 47-30		■	■
▪ A digital copy of the plat in a file format acceptable to the Town	■	■	■

**TOWN OF MATTHEWS UNIFIED DEVELOPMENT ORDINANCE**

A declaration of understanding, on form provided at §155.405.11, that zoning variances associated with the building envelope on any lots within the proposed subdivision are not anticipated (Am. Ord. 2025A, passed 6-9-14)	■		
Maximum sheet or page size for all maps or drawings submitted shall be twenty four inches (24") by thirty six inches (36")	■	■	■
A signed declaration of intent to provide land dedication for public recreation and/or fees-in-lieu for each new single-family lot	■		
	<b>SKETCH PLAN</b>	<b>PRELIMINARY PLAT</b>	<b>FINAL PLAT</b>
<b>EXISTING CONDITIONS:</b>			
The zoning classification of the tract to be subdivided and on each adjoining property	■	■	
Existing property lines on the tract to be subdivided and within one hundred fifty feet (150') on all adjoining property		■	
Existing buildings or other structures, water courses, railroads, bridges, culverts, storm drains, both on the land to be subdivided and within one hundred fifty feet (150') on all adjoining property [ <b>formerly § 152.25.A</b> ]	■	■	
The location of any archeological features	■	■	
Wooded areas, marshes, swamps, rock outcroppings, ponds, lakes, streams or streambeds, wetlands, and any other natural features affecting the site	■	■	
Original contours at intervals not greater than two feet (2') for the entire area to be subdivided and extending into adjoining property for a distance of three hundred feet (300') at all points where street rights-of-way connect to the adjoining property. These contours shall be referenced to mean sea level datum when a benchmark is located within two thousand feet (2,000') of the proposed subdivision [ <b>formerly § 152.25.C</b> ]	■	■	
The exact location of the flood hazard, floodway, and floodway fringe from the Flood Insurance Map or surveys of the property in question [ <b>formerly § 152.25.E</b> ]	■	■	■
Tree survey and vegetation survey	■	■	
The location, sizes, inverts, dimension and material type of all existing sanitary sewer, water main and storm sewer utilities within the proposed subdivision and immediately adjacent to the proposed subdivision [ <b>formerly § 152.25.B</b> ]	■	■	
SWIM buffers, as required	■	■	■
	<b>SKETCH PLAN</b>	<b>PRELIMINARY PLAT</b>	<b>FINAL PLAT</b>
<b>PROPOSED CONDITIONS:</b>			
Building lines (setbacks) for each lot [ <b>formerly § 152.25.E</b> ]		■	■
Proposed lot lines, with approximate dimensions [ <b>formerly § 152.25.E</b> ]	■	■	
The lots numbered consecutively throughout the proposed subdivision		■	■
<i>The following information and data concerning proposed streets:</i>			
■ Existing and platted streets on and within one hundred fifty feet (150') of adjoining properties and in the proposed subdivision	■	■	
■ Rights-of-way, location, and dimensions, in accordance with § 155.701 [ <b>formerly § 152.25.E</b> ]	■	■	■
■ Pavement widths [ <b>formerly § 152.25.E</b> ]		■	
■ Approximate grades		■	
■ Design engineering for all corners and curves		■	

**TOWN OF MATTHEWS UNIFIED DEVELOPMENT ORDINANCE**

<ul style="list-style-type: none"> <li>▪ Typical street cross-sections showing width and construction [formerly § 152.25.J]</li> <li>▪ Existing and proposed street names [formerly § 152.25.H]</li> </ul>	■	■	■
	SKETCH PLAN	PRELIMINARY PLAT	FINAL PLAT
<p><b>PROPOSED CONDITIONS (Continued)::</b></p> <ul style="list-style-type: none"> <li>▪ Type of street dedication; all streets shall be designated either public or private</li> </ul>	■	■	■
<p>Proposed profiles of roadways. Where a proposed street is an extension of an existing street, the profile shall be extended to include three hundred feet (300') of the existing roadway and a cross section of the existing street shall be shown. Where a proposed street within the subdivision abuts a tract of land that adjoins the subdivision and where that street may be expected to extend into the adjoining tract of land, the profile shall be extended to include three hundred feet (300') of the adjoining tract [formerly § 152.25.K]</p>		■	
<p>Proposed Grading Plan showing proposed contours for the full-width of all street rights-of-way, along drainage channels, and in all other portions of the subdivision where extensive grading is planned. These requirements shall not apply where the size of the subdivision and the topography make such information unnecessary. [formerly § 152.25.D]</p>		■	
<p><i>The location and dimension of all of the following, if proposed:</i></p> <ul style="list-style-type: none"> <li>▪ Utility and other easements</li> <li>▪ Riding trails</li> <li>▪ Natural buffers</li> <li>▪ Pedestrian or bicycle paths</li> <li>▪ Parks and recreation areas with specific type indicated [formerly § 152.25.E]</li> <li>▪ Areas to be dedicated to or reserved for public use [formerly § 152.25.E]</li> <li>▪ Areas to be used for purposes other than residential with the zoning classification of each stated</li> <li>▪ The future ownership of recreation and open space lands in the proposed subdivision</li> </ul>	■	■	■
<p>The location of all proposed storm water retention and water quality facilities, best management practices, and rain gardens</p>	■		■
<p>The location of all proposed storm drains and retention facilities, best management practices, rain gardens, swales and appurtenances with grades, inverts and sizes indicated, together with a map of the drainage area(s) above or below the proposed storm drains, and a copy of the data used in determining the sizes of drainage pipes and structures. These drawings shall be coordinated with the Streetscape Trees to clearly indicate the proposed placement of any storm water feature does not conflict with any existing or proposed new streetscape tree. [formerly § 152.25.G]</p>		■	
<p>The location, type, and design of proposed traffic calming devices, which shall be coordinated with and approved by the Town Public Works Director [formerly § 152.25.F]</p>		■	
<p>Street lighting plan, as outlined in § 155.609</p>		■	
<p>The proposed method of water supply and sewer disposal. Where public water or public sewer is not available for extension to each lot in the subdivision, a written statement from the Mecklenburg County Department of Environmental Health shall be submitted with the Preliminary Plan indicating that each lot has adequate land area and soil conditions to accommodate the proposed methods of water supply and sewage disposal. [formerly § 152.25.M]</p>		■	
<p>Profiles based upon mean sea level datum for sanitary sewers and storm sewers</p>		■	

**TOWN OF MATTHEWS UNIFIED DEVELOPMENT ORDINANCE**

<p>The accurate location of monuments which must be established at or near the corners of all blocks including coordinates computed from the North Carolina Plane Rectangular Coordinate System, provided a control monument is within two thousand five hundred feet (2,500') of the subdivision. These monuments shall be concrete posts not less than thirty inches (30") long, four inches (4") at the top and six inches (6") at the bottom with a copper pin in the top to mark the location of the designated point. The monuments shall be placed flush with the level of the ground. The corners of all lots and parcels shall be marked with iron posts driven flush with the ground. Iron posts shall be placed where lot boundaries intersect railroad and State Department of Transportation rights-of-way. <b>[formerly § 152.26.A.5]</b></p>			■
<p><b>PROPOSED CONDITIONS (Continued):</b></p>	SKETCH PLAN	PRELIMINARY PLAT	FINAL PLAT
<p>Sufficient surveying data to determine readily and reproduce on the ground every straight or curved line, street line, lot line, right-of-way line, easement line, and setback line, boundary lines of reserved or dedicated areas, including dimensions, bearings, or deflection angles, radii, central angles, and tangent distance for the center line of curved property lines that are not the boundary line of curved streets required or of record in Mecklenburg County. All dimensions shall be measured to the nearest one-tenth foot and all angles to the nearest minute. The maximum allowable error of linear closure shall not be in excess of 1:10,000. In closed traverses, the sum of the measured angles shall vary with the theoretical sum by a difference not greater than an average of 7.5 seconds per angle, or the sum total shall not differ from the theoretical sum by more than 90 seconds, whichever is smaller <b>[formerly § 152.26.A.3]</b></p>			■
<p>A copy of the proposed conditions, covenants and restrictions or similar deed restrictions (such restrictions are mandatory when private recreation areas or open space are established in the proposed subdivision).</p>		■	■
<p>Where land disturbing activity is one acre or more in size, a copy of the erosion control plan submitted to the appropriate office of the North Carolina Department of the Environment and Natural Resources, which complies with GS 113A, Article 4, Sedimentation and Pollution Control Act of 1973. Evidence of approval shall be provided prior to submittal of the Final Plat for approval</p>		■	
<p>Topographic maps with contour intervals no greater than two feet (2') at a scale no less than one inch (1") equals fifty feet (50') (Am. Ord 2141, passed 4-11-16)</p>		■	
<p>404 Wetlands areas as determined by the US Army Corps of Engineers</p>		■	
<p>A timetable for estimated phasing, if intended, and completion of grading, infrastructure improvements, and landscaping and exterior lighting within public rights-of-way and land to be dedicated to the public in the area covered by the Preliminary Plan <b>[formerly § 152.25.O]</b></p>		■	
<p>When any portion of the property included in a plat must adhere to the requirements of Chapter 8, Post Construction Ordinance and/or § 155.704, then the specific notations or management plan as called for in that regulation must be included on the Final Plat drawing, and a copy of the operation and maintenance agreement and BMP Maintenance Plan stamped by Mecklenburg County Register of Deeds Office with deed book and page numbers must be provided with the plat. (Ord. 1585, passed 8-13-07) <b>[formerly § 152.26.A.6]</b></p>			■
<p>Construction traffic bond submitted</p>		■	
<p>Construction traffic routing plan</p>		■	
<p>Subdivision improvement guarantee, in accordance with § 155.405.10 <b>[formerly § 152.26.A.8, relocated to § 155.405.10]</b></p>			■
<p>Tree maintenance and /or replacement guarantee, in accordance with § 155.405.10 and § 155.606.13.H <b>[formerly § 152.26.A.10, relocated to § 155.405.10; Am. Ord. 2231, passed 6—12-17]</b></p>			■
<p>Recreation Land fees-in-lieu when new single-family units are created</p>			■
<p>Any other information considered by either the subdivider or the Planning Director or designee to be pertinent to the review of the Final Plat. <b>[formerly § 152.26.A.7]</b></p>			■





prescribed in § 155.405.10.

- D. **AS-BUILT DRAWINGS REQUIRED.** AutoCAD compatible digital as-built drawings and plans of all water system, sewer system, and storm drainage system facilities shall be prepared by the subdivider and submitted to the Town Engineer and Mecklenburg County Land Use and Environmental Services Agency at the time of request for Final Plat. Where financial guarantees are provided in lieu of completed improvements at the time of Final Plat approval, then the as-built drawings shall be required at time of the release of any surety for required improvements. These as-built plans must show all easements and/or rights-of-way to demonstrate that the facilities are properly placed. **[formerly § 152.26.A.9]**

**155.405.10 Subdivision Improvement Guarantees**

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- A. **PURPOSE AND INTENT.** Final approval of a Final Plat is subject to i) installation of or provision for all improvements required by this Title, or ii) the subdivider filing a financial guarantee in lieu of completing, installing and dedication of all improvements prior to Final Plat approval, and iii) the performance of all other obligations required by this Title and in accordance with this § 155.405.10.
- B. **TYPES OF GUARANTEES.** For the purpose of this Section, there shall be the following types of subdivision improvement guarantees (the “Guarantee”):
1. Type 1 Guarantee, shall refer to a subdivision improvement guarantee required for the approval of a Final Plat following construction, installation and provision of improvements required by this Title, except the final one inch (1”) surface course when paving according to Chapter 7, and before issuance of any building permits in the subdivision.
  2. Type 2 Guarantee, shall refer to a subdivision improvement guarantee required for the approval of a Final Plat prior to construction, installation and provision of improvements required by this Title.
  3. Type 3 Guarantee, shall refer to all other guarantees required by this Title.
- C. **GUARANTEE REQUIREMENTS.**
1. **TYPE 1 GUARANTEE.** Prior to release of the final plat for recordation and before issuance of any building permits, a surety bond, letter of credit, or other form of guarantee that provides equivalent security to a surety bond or letter of credit, in an amount determined by Mecklenburg County Land Use and Environmental Services Agency shall be filed with the County. This performance guarantee will assure that the final one-inch surface course will be applied to each street once the street has met the conditions outlined in Chapter 7 for acceptance for maintenance. The delayed application of the surface course shall be considered as a testing period for the streets installed in order that any defects or deficiencies will have had at least one full cycle of seasons in which to appear, except as provided for in Chapter 7 where the Board of Commissioners waives the one (1) year waiting period. In the event that defects or deficiencies do appear, the developer shall repair those defects in a manner approved by the Town Public Works Director, Town Engineer, and Mecklenburg County Land Use and Environmental Services Agency prior to applying the final one-inch surface course. (Am. Ord. 2141, passed 4-11-16) **[formerly § 152.24.G]**
  2. **TYPE 2 GUARANTEE.** Where the improvements required by this Title have not been completed prior to the submission of the Final Plat for approval, the approval of the Final Plat shall be subject to the subdivider filing a surety bond, letter of credit, or other form of guarantee that provides equivalent security with Mecklenburg County Land Use and Environmental Services Agency and/or the Town Public Works Director, in an amount to be determined by the appropriate agency, with sureties satisfactory to the Town guaranteeing the installation and construction of the required improvements. Upon completion of the improvements as required by this Title, written notice shall be given by the subdivider to Mecklenburg County Land Use and Environmental Services Agency and the Town Engineer. Upon receipt of this notice, Mecklenburg County Land Use and Environmental Services Agency and the Town Engineer shall cause an inspection of the improvements to be made and, if all outstanding items have been satisfactorily resolved, shall, within thirty (30) days of the date of notice, authorize in writing the release of the surety given. (Am. Ord. 2141, passed 4-11-16) **[formerly § 152.26.A.8]**
  3. **TYPE 3 GUARANTEE.** The amount of Type 3 Guarantees shall be determined as follows:



**TOWN OF MATTHEWS UNIFIED DEVELOPMENT ORDINANCE**

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- A. **TREE MAINTENANCE AND REPLACEMENT GUARANTEE.** Where the improvements required by this Title include a future guarantee for tree maintenance and/or replacement, the approval of the Final Plat shall be subject to the subdivider filing a surety bond, cash bond, or irrevocable letter of credit with the Town in an amount to be determined by the Town to guarantee tree life and health for three (3) years. Upon conclusion of the three (3) year period, written notice shall be given to the Town by the subdivider, at which time the Town Public Works Director shall cause an inspection of the trees within thirty (30) days of the date of the notice, and upon satisfactory completion, shall authorize in writing the release of the surety given. See also Section 155.606.13.H (Ord. No. 1618, passed 4-14-08; Am. Ord. 2231, passed 6-12-17 ) [formerly § 152.26.A.10]
- B. (RESERVED)
- D. **AS-BUILT DRAWINGS REQUIRED.** As a condition of release of any Guarantee, AutoCAD compatible digital as-built drawings and plans of all water system, sewer system, and storm drainage system facilities shall be prepared by the subdivider and submitted to the Town Public Works Director and Mecklenburg County Land Use and Environmental Services Agency at the time of request for release of any surety for required improvements. These plans shall show all easements and/or rights-of-way to demonstrate that the required improvements and facilities are properly placed.  
(Ord. 2025A, passed 6-9-14; Am. Ord. 2141, passed 4-11-16)

155.405.11

DECLARATION OF UNDERSTANDING THAT  
ZONING VARIANCES ARE NOT ANTICIPATED IN THIS SUBDIVISION  
FOR THE PURPOSE OF INADEQUATE BUILDABLE AREA

Date \_\_\_\_\_

Name of Developer \_\_\_\_\_

Name of Subdivision \_\_\_\_\_

Location of Subdivision \_\_\_\_\_

The above-named subdivision is being developed within the zoning and subdivision jurisdiction of the Town of Matthews.

The above-named developer, by signing this statement, agrees that he/she is aware of the zoning dimensional requirements for potential structures likely to be constructed within the above-named development, and does not anticipate any zoning variances to be requested on individual lots due to insufficient buildable area.

- This declaration is intended to verify that the lots being designed in the above-named subdivision will have adequate building envelopes, after applying all required limiting factors that can reasonably be expected to be known prior to construction of dwelling unit or other structures, including but not limited to: setbacks, yards, easements, floodplain lines, septic drain fields and reserve fields, demolition disposal sites, on-site parking, etc.

The zoning on this property is: \_\_\_\_\_

The dimensional requirements of this/these zoning district(s) are:

Min. lot size \_\_\_\_\_

Min. lot width \_\_\_\_\_

Min./Max front setback \_\_\_\_\_

Min. side yard \_\_\_\_\_

Min. rear yard \_\_\_\_\_

Min./Max. height \_\_\_\_\_

Other (specify) \_\_\_\_\_

(Attach additional pages if multiple zoning districts are involved)

- It is understood that the developer of the subdivision may or may not be involved in any subsequent design or siting of buildings and structures, and is not guaranteeing all possible structural configurations will fit each lot.
- Where the developer of the land will not be the ultimate user, the developer, by signing this declaration, agrees to inform buyers of lots, dwellings, or other interests, that this subdivision was designed to meet zoning dimensional requirements, and that variances to zoning dimensional requirements were not anticipated based on the physical layout design of the property.

Signature of Developer \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Development Company \_\_\_\_\_

(Am. Ord. 2025A, passed 6-9-14)