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ARTICLE III PERMITS AND HEARING PROCEDURES

3.01 Permit Required

No person shall undertake any development activity subject to this Ordinance except in accordance with and pursuant to one of the following permits:

- A. A zoning permit or sign permit issued by the Zoning Administrator;
- B. A special use permit issued by the Planning Board; or
- C. A conditional use permit issued by the Board of County Commissioners.

3.02 Permit Application Review and Approval

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

3.03 Permit Exemptions

- A. The following are exempt from zoning permit requirements:
 - 1. Farm buildings (other than residences and swine farm buildings) used for bona fide farm purposes;
 - 2. Any accessory building with any building dimension that does not exceed 12 feet as well as such accessory uses and structures as flagpoles and mailboxes; landscaping features such as fences, trees and shrubs, terraces, gazebos, and similar items; recreational improvements such as swing sets and playgrounds; and wells and pump houses;
 - 3. Facilities (other than buildings) of a public utility or an electric or telephone membership corporation; and
- B. The following are exempt from sign permit requirements:
 - 1. Signs specifically exempted by [Section 9.03](#).

3.04 Permit Applications and Plans

- A. **Submission.** Unless otherwise specified, all applications for permits under this Ordinance shall be submitted by the owner of the property or the authorized agent of such owner to the Zoning Administrator. The Zoning Administrator may

require reasonable proof of agency from any person submitting an application as an agent.

- B. Form of Submission.** An application for any permit under this Ordinance shall be submitted in such form, number of copies and format as required by [Appendix A](#), together with such fees as required.
- C. Waiver of Submission Requirements.** The Zoning Administrator may waive submission of required elements of information when, in his opinion, such information is otherwise available or is not necessary to review the application. The Zoning Administrator may refuse to process an incomplete application.
- D. Processing.** All applications for permits shall be submitted, reviewed and processed in accordance with the requirements of this Ordinance.
- E. Approved Plans.** A copy of required plans or information submitted with the application shall be returned to the applicant after the Zoning Administrator has marked the copy either approved or disapproved and attested to same. A similarly marked copy shall be retained by the Zoning Administrator.
- F. Health Department Construction Permit Required.** A permit for any building or use for which a State or County Health Department permit for installation of a well or a sewage disposal system is required or for which approval by the State or County Health Department of an existing well or sewage disposal system is required, shall not be issued until such permit or approval has been issued by the State or County Health Department.
- G. Compliance with Development Standards.** Certain land uses (designated with a 'D', 'S', or 'C' in [Table 5-1, Table of Permitted Uses](#)) are required to comply with development standards that are delineated in [Article VIII, Development Standards for Individual Uses](#). Permit applications and site plans for such uses shall demonstrate how compliance with the applicable development standards will be achieved.

3.05 Plot Plan and Site Plan Procedures

- A. Plot Plan Required.** No zoning permit for a single-family or two-family dwelling on a single lot shall be issued until a plot plan, prepared in accordance with [Appendix A](#), has been approved.
- B. Site Plan Required.** No other zoning, special use, or conditional use permit shall be issued on a lot until a site plan, prepared in accordance with [Appendix A](#), has been approved for the development. Neither a new nor amended site plan shall be required if an adequate site plan is already on file, there is no change in the parking requirements, or there is no increase in impervious surface area.
- C. Exception.** The Zoning Administrator may waive the requirement for a site plan or a plot plan if, in the Zoning Administrator's judgment, it is determined that it is not necessary to complete the review of the permit application.

- D. **Timing.** Site plans shall be submitted to the Zoning Administrator in conjunction with a permit application.
- E. **Coordination with Other Procedures.** To lessen the time required to obtain all necessary approvals, the site plan approval process may run concurrently with building plan review or other applications for approvals required for the particular project.

3.06 Site Plan and Plot Plan Approval

- A. **Approval of Site/Plot Plan.** The site plan or plot plan shall be approved when it meets all requirements of this Ordinance or proper waivers and/or variances are obtained.
- B. **Approval Authority.**
 - 1. Site plans or plot plans submitted with zoning permit applications shall be approved by the Zoning Administrator.
 - 2. Site plans submitted with special use permit applications shall be approved by the Planning Board.
 - 3. Site plans submitted with conditional use permit applications shall be approved by the Board of County Commissioners.
- C. **Conditional Approvals.** If the site plan is granted conditional approval, the applicant shall revise and resubmit the site plan. The Zoning Administrator shall review the revised site plan and, if it meets all the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. If the site plan is not revised within sixty days from the date of conditional approval, or the applicant notifies the Zoning Administrator that he is unwilling to revise the site plan, it shall be deemed denied.

3.07 Authorization to Commence Work

The issuance of a zoning, sign, special use, or conditional use permit authorizes the recipient to commence the activity resulting in a change in use of the land or, (subject to obtaining a building permit), to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures. However, except as provided in [Sections 3.15 and 3.16](#), the intended use may not be commenced and no building may be occupied until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a special use permit have been complied with.

3.08 Inspections and Investigations

- A. **Periodic Inspections.** The Zoning Administrator shall have the right, upon presentation of proper credentials, or inspection warrant, if necessary, to enter on any premises within the county's zoning jurisdiction at any reasonable hour for

the purposes of inspection, determination of plan compliance or other enforcement action.

- B. Investigations.** The Zoning Administrator shall have the power to conduct such investigation as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.
- C. Written Statements.** The Board of Commissioners or its agent shall also have the power to require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

3.09 Zoning and Sign Permits

- A. Submission.** Requests for a zoning or sign permit shall be submitted to the Zoning Administrator by filing an application form with the Zoning Administrator. Applications for a zoning or sign permit may be a separate form or may be combined.
- B. Zoning Permit Review and Approval.** The Zoning Administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant, that:
 - 1. The requested permit is not within his authority according to [Section 5.01, Table of Permitted Uses](#); or
 - 2. The application is incomplete; or
 - 3. If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance.
- C. Sign Permit Review and Approval.** The Zoning Administrator shall issue the sign permit unless he finds, after reviewing the application and consulting with the applicant, that:
 - 1. The requested permit is not in compliance with the requirements of [Article IX, Signs](#); or
 - 2. The application is incomplete.

3.10 Special Use and Conditional Use Permits

- A. Special Use Permit Submission.** An application for a special use permit shall be submitted to the Planning Board by filing a copy of the application with the Zoning Administrator in the Planning and Inspections Department [15 working days](#) prior to the Planning Board meeting at which the evidentiary hearing will be held and the special use permit request will be reviewed.

- B. Special Use Permit Review and Approval.** The review process for a special use permit shall include:
1. Planning and Inspections Department review and recommendation in accordance with [Section 3.11](#);
 2. Evidentiary hearing held by the Planning Board; and
 3. Planning Board review and action.
- C. Conditional Use Permit Submission.** An application for a conditional use permit shall be submitted to the Zoning Administrator at least 25 working days prior to the Planning Board meeting at which the conditional use permit request will be reviewed by the Board of Commissioners for evidentiary hearing and final action.
- D. Conditional Use Permit Review and Approval.** The review process for a conditional use permit shall include:
1. Planning and Inspections Department review and recommendation in accordance with [Section 3.11](#);
 2. Planning Board review and recommendation in accordance with [Section 3.11](#);
 3. Evidentiary hearing held by the Board of County Commissioners; and
 4. Board of County Commissioners review and action.

3.11 Recommendations on Special Use and Conditional Use Permits

- A. When presented to the appropriate permit-issuing board at the evidentiary hearing, the application for a special use or a conditional use permit shall be accompanied by a report setting forth the Planning and Inspections Department's proposed findings concerning the application's compliance with [Section 3.04](#) and the other requirements of this Ordinance, as well as any staff recommendations for additional requirements to be imposed by the appropriate permit-issuing board.
- B. If the Zoning Administrator proposes a finding or conclusion that the application fails to comply with [Section 3.04](#) or any other requirement of this Ordinance, the Zoning Administrator shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.
- C. For conditional use permit requests, the Planning Board shall also review the request and forward its recommendations to the Board of County Commissioners.

3.12 Evidentiary Hearing Requirements and Procedures for Special Use and Conditional Use Permit Applications

- A. No special use or conditional use permit shall be approved until an evidentiary hearing has been held by the permit-issuing board in accordance with the provisions of this Section. The purpose of the evidentiary hearing is to gather facts, not to solicit citizen opinion. Consequently, the hearing procedures differ from those of the typical public hearing. In an evidentiary hearing, testimony may be provided only by sworn witnesses, strict rules of evidence apply, and written findings of fact are required.
- B. The Zoning Administrator shall provide due notice to the parties involved in the special use permit request as well as to the owners of property adjacent to the property involved in the permit request. The Zoning Administrator shall mail written notice of the evidentiary hearing to the owners of all properties involved in the permit request as well as the owners of all properties adjacent to the property involved in the permit request.
- C. The Zoning Administrator may also publish a general public notice of the evidentiary hearing in a newspaper having general circulation in the area. If published, the notice shall be published not less than ten days before the date affixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be. The newspaper notice shall:
 - 1. State the date, time, and place of the hearing;
 - 2. State the purpose of the hearing and summarize the procedures of an evidentiary hearing;
 - 3. Summarize the nature and character of the permit request;
 - 4. Reasonably identify the property affected by the permit request;
 - 5. State that the full permit request application can be reviewed at the office of the Zoning Administrator; and
 - 6. State that substantial changes in the permit request may be made following the hearing.
- D. The Zoning Administrator may also post notices of the evidentiary hearing on or in the vicinity of the property involved in the permit request and take any other action deemed by the Zoning Administrator to be useful or appropriate to give notice of the evidentiary hearing on any permit request.
- E. The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this Section. However, it is the permit-issuing board's intention that no failure to comply with any of the notice provisions [except those set forth in [Section 3.12 B.](#)] shall render any permit request invalid.
- F. At the conclusion of the evidentiary hearing, the permit-issuing board may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure. [Section 3.13](#) delineates specific actions that the permit-issuing board must take on requests for special use and conditional use permits.

- G The permit-issuing board is not required to take final action on a special use or conditional use permit request within any specific period of time, but it should proceed as expeditiously as practicable on permit requests since inordinate delays can result in the applicant incurring unnecessary costs.
- H. Subject to [subsection I. below](#), the permit-issuing board shall approve the requested permit unless it concludes, based upon the information submitted at the hearing, that:
 - 1. The requested permit is not within its jurisdiction according to [Section 5.01, Table of Permitted Uses](#); or
 - 2. The application is incomplete; or
 - 3. If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance.
- I. Even if the permit-issuing board finds that the application complies with all other provisions of this Ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - 1. Will materially endanger the public health or safety; or
 - 2. Will substantially injure the value of adjoining or abutting property; or
 - 3. Will not be in harmony with the area in which it is to be located; or
 - 4. Will not be in general conformity with the land use plan or other plans and policies officially adopted by the Board of County Commissioners.
- J. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this Ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in [subsection I. above](#) rests on the party or parties urging that the requested permit should be denied.

3.13 Action on Special Use and Conditional Use Permits

- A. Following the evidentiary hearing, the permit-issuing board may proceed to vote on the permit request, refer it to committee for further study, or take any other action consistent with its usual rules of procedure. The Planning Board and Board of County Commissioners, in considering special use and conditional use permit applications, act in a quasi-judicial capacity and, accordingly, are required to observe quasi-judicial procedures except that no vote greater than a majority vote shall be required for the Planning Board to issue a special use permit or the Board of County Commissioners to issue a conditional use permit. For purposes of this Section, vacant positions on the permit-issuing board and members who

have been disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

B. In considering whether to approve an application for a special use or conditional use permit, the permit-issuing board shall proceed according to the following format:

1. The permit-issuing board shall consider whether the application is complete. If the permit-issuing board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by a simple majority vote of the permit-issuing board, shall constitute the permit-issuing board's finding on this issue. If a motion to this effect is not made and concurred in by a simple majority vote, this shall be taken as an affirmative finding by the permit-issuing board that the application is complete.
2. The permit-issuing board shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes by the necessary simple majority vote, the permit-issuing board need not make further findings concerning such requirements.

If such a motion fails to receive the necessary simple majority vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this Ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application. If the permit-issuing board concludes that the application fails to meet one or more of the requirements of this Ordinance, the application shall be denied.

3. If the permit-issuing board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in [Section 3.12 H](#). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.
4. Decisions by the permit-issuing board on special use and conditional use permit requests shall be filed in the offices of the Planning and Inspections Department. A copy of the permit-issuing board's decision shall be provided, by first class mail, to the applicant as well as to any parties that have requested a written copy of the permit-issuing board's decision.
5. Decisions of the Planning Board regarding special use permit requests and decisions of the Board of County Commissioners regarding conditional use permit requests shall be subject to review by the Superior Court of Chowan County by proceedings in the nature of certiorari ([see Section 11.07, Judicial Review](#)).

- C. Right to an Impartial Decision Maker. Pursuant to the requirements of NCGS 153A-345 (e1), a member of the Planning Board or the Board of County Commissioners shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

3.14 Additional Requirements on Special Use and Conditional Use Permits

- A. Subject to subsection B., in approving a special use or conditional use request, the Planning Board or Board of County Commissioners, respectively, may attach to the approval such reasonable requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:
 - 1. Will not endanger the public health or safety;
 - 2. Will not injure the value of adjoining or abutting property;
 - 3. Will be in harmony with the area in which it is located; and
 - 4. Will be in conformity with the land development plan, thoroughfare plan, or other plan officially adopted by the Board of County Commissioners.
- B. The permit-issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this Ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.
- C. Without limiting the foregoing, the permit-issuing board may attach to a special use or conditional use approval a condition limiting the approval to a specified duration.
- D. All additional conditions or requirements shall be specified in the letter of approval issued to the applicant by the Zoning Administrator.
- E. All additional conditions or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirement of this Ordinance.
- F. A vote may be taken on application conditions or requirements before consideration of whether the special use or conditional use request should be denied for any of the reasons set forth in [Sections 3.12 H. or 3.12 I.](#)

3.15 Authorizing Use or Occupancy before Completion of Development under Zoning, Special Use, and Conditional Use Permits

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

- B. When the permit-issuing board imposes additional requirements upon the special use or conditional use permit recipient in accordance with [Section 3.12](#) or when the developer proposes in the plans submitted to install amenities beyond those required by this Ordinance, the permit-issuing board may authorize the permittee to commence the intended use of the property or to occupy any building before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:
 - 1. A performance bond and security satisfactory to the county staff attorney is furnished;
 - 2. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made; or
 - 3. The nature of the requirements or amenities is such that sufficient assurance of compliance is given by [Section 11.04, Penalties and Remedies for Violations](#), and [Section 11.06, Permit Revocation](#).

3.16 Completing Development in Phases

- A. If a development is constructed in phases or stages in accordance with this Section, then, subject to subsection C., the provisions of [Section 3.07](#) and [Section 3.15](#) shall apply to each phase as if it were the entire development.

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

- C. If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall

relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit-issuing authority, no land may be used, no buildings may be occupied except in accordance with the schedule approved as part of the permit, provided that:

1. If the improvement is one required by this Ordinance then the developer may utilize the provisions of [Section 3.15 A.](#); or
2. If the improvement is an amenity not required by this Ordinance or is provided in response to a condition imposed by the permit-issuing board, then the developer may utilize the provisions of [Section 3.15 B.](#)

3.17 Expiration of Approved Permits and Site Plans

- A. Except as provided in subsection F., zoning, sign, special use, and conditional use permits (including approved site or plot plans) shall expire automatically if, within one year after the issuance of such permits:
 1. The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
 2. Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see [Section 3.16](#)), this requirement shall apply only to the first phase.
- B. If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the zoning, special use, or conditional use permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of [Section 3.18](#).
- C. The permit-issuing authority (Zoning Administrator, Planning Board, or Board of County Commissioners, as applicable) may extend for a period up to six months the date when a zoning, sign, special use, or conditional use permit would otherwise expire pursuant to [subsections A. or B.](#) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.
- D. For purposes of this Section, the permit within the jurisdiction of the Planning Board or the Board of County Commissioners is issued when the applicable permit-issuing board votes to approve the application and issue the permit. A zoning permit within the jurisdiction of the Zoning Administrator is issued when the earlier of the following takes place:

1. A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is delivered to the permit applicant; or
 2. The Zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded, if required under [Section 3.18 B](#).
- E. Notwithstanding any of the provisions of [Article XII, Nonconforming Situations](#), this Section shall be applicable to permits issued prior to the date this Ordinance becomes effective.
- F. Special use and conditional use permits with a vested right established in accordance with [Section 3.22, Zoning Vested Rights](#), shall expire at the end of the two-year vesting period established pursuant to [Section 3.22](#).

3.18 Effect of Permit on Successors and Assigns

- A. Zoning, sign, special use, and conditional use permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:
1. No person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit; and
 2. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued.
- B. Whenever the recording of a special use or conditional use permit is required by the permit-issuing board as a condition of approval, nothing authorized by the permit may be done until the record owner of the property provides documentation that indicates that the permit has been recorded in the Chowan County Registry and indexed under the record owner's name as grantor.

3.19 Amendments to and Modifications of Permits and Plans

- A. Insignificant deviations from the permit (including approved site plans) approved by the Planning Board, Board of County Commissioners, or the Zoning Administrator are permissible and the Zoning Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact

on neighboring properties, the general public, or those intended to occupy or use the proposed development.

- B. Minor design modifications or changes in permits (including approved site plans) are permissible with the approval of the permit-issuing authority. Such permission may be obtained without a formal application, evidentiary hearing, or payment of any additional fee. For purposes of this Section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
- C. All other requests for changes in approved site plans will be processed as a modification to the original application. If such requests are to be acted upon by the Planning Board or Board of County Commissioners, new conditions may be imposed only on the specific site or area requested to be modified in accordance with [Section 3.14](#), but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.
- D. The Zoning Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections A. through C.
- E. A property owner requesting approval of changes shall submit a written request for such approval to the Zoning Administrator, which request shall identify the changes. Approval of all changes must be provided to the property owner in writing.
- F. A vested right established in accordance with [Section 3.22](#) shall not be extended by any amendments or modifications to an approved site specific development plan unless expressly provided for by the Planning Board.

3.20 Reconsideration of Action on Special Use and Conditional Use Permits

- A. Whenever the Planning Board disapproves a special use permit application or the Board of County Commissioners disapproves a conditional use permit application, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the permit-issuing board at a later time unless the applicant clearly demonstrates that:
 - 1. Circumstances affecting the property that is the subject of the application have substantially changed; or
 - 2. New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Zoning Administrator within the time period for an appeal to superior court (see [Section 11.07](#)). However, such a request does not extend the 30-day period within which an appeal must be taken.
- B. The permit-issuing board may, however, at any time consider a new application affecting the same property as an application previously denied. A new

application is one that differs in some substantial way from the one previously considered.

- C. The permit-issuing board shall, by a majority vote, make the determination as to whether or not an amended application meets the criteria delineated in [subsection \(A\)](#) for a rehearing or qualifies as a new application pursuant to [subsection \(B\)](#).

3.21 Maintenance of Common Areas, Improvements, and Facilities.

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

3.22 Zoning Vested Rights

- A. A vested right shall be established, upon petition by the owner of the property, after the approval or conditional approval of a site specific development plan by the Planning Board in accordance with the provisions outlined in this Section. A right which has been vested as provided for in this Section shall remain valid for two years and shall attach to and run with the land.
- B. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning indicated when used in this Section.
 - 1. Landowner. Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan.
 - 2. Property. All real property subject to the regulations and restrictions of this Ordinance as well as the zoning district boundaries established by this Ordinance and depicted on the official zoning map.
 - 3. Site specific development plan. A plan which has been submitted to Chowan County by a landowner describing in detail the type and intensity of use for a specific parcel or parcels of property. Such plan shall be in the form of a site plan required to obtain a special use permit. The information required by [Section 3.04](#) and [Appendix A](#), as applicable, shall be included. All site specific development plans shall be approved by the Planning Board.

4. Vested right. The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.
- C. A vested right shall be deemed established, following the receipt of a petition from the property owner, upon the effective date of approval by the Planning Board of a site specific development plan. Following the approval of a site specific development plan, the Zoning Administrator shall issue a vested right certificate to the landowner which indicates the duration of the vesting period, the conditions, if any, imposed on the approval of the site specific development plan, and any other information determined by the Zoning Administrator to be necessary to administer the vested right.
 - D. A vested right shall confer upon the landowner the right to undertake and complete the development and use of the property as delineated in the approved site specific development plan. The Planning Board may approve a site specific development plan upon such terms and conditions, as may be determined necessary to protect the public health, safety, and welfare. Failure to comply with the approved terms and conditions shall result in a forfeiture of vested rights.
 - E. Approval by the Planning Board of a site specific development plan shall follow the procedural requirements for the issuance of a special use permit as outlined in [Sections 3.12 and 3.13](#). Changes in or modifications to an approved site specific development plan shall be made only with the concurrence of the Planning Board in accordance with the provisions of [Section 3.19](#).
 - F. A vested right obtained under this section runs with the land and is valid for two years from the effective date of approval by the Planning Board of a site specific development plan. A vested right shall not be extended by any amendments or modifications to an approved site-specific development plan unless expressly provided for by the Planning Board. A vested right shall expire at the end of two years if no building permit applications have been filed with the County to construct the use or uses proposed in the approved site specific development plan. If building permits are issued, the provisions of NCGS 153A-358 and NCGS 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the lack of progress during the two-year vesting period.
 - G. A vested right, once established or provided for in this section, precludes any zoning action by Chowan County which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site specific development plan, except:
 1. With the written consent of the affected landowner;
 2. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards 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;

3. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the County, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property, which is caused by such action;
 4. Upon findings, by ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the County of the site specific development plan; or
 5. Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific development plan, in which case the County may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a public hearing.
- H. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the County, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.
- I. Notwithstanding any provisions of this Section, the establishment of a vested right shall not preclude, change, or impair the authority of the County to enforce provisions of this Ordinance governing nonconforming situations or uses.
- J. A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such vested rights.
- K. The County shall not require a landowner to waive his vested rights as a condition of developmental approval.

3.23 (Reserved)

3.24 Compliance with State Guidelines for Areas of Environmental Concern

Prior to the issuance of any initial zoning permit, zoning change permit, special use permit, or conditional use permit, CAMA and the local AEC Permit Officer shall determine whether the proposed use or structure is located within an Area of Environmental Concern. This determination shall result from an on-site investigation. If the proposed use or structure is located in an Area of Environmental Concern, CAMA and the local AEC Permit Officer shall certify that the proposed use or structure complies with development standards of the State Guidelines for Areas of Environmental Concern (15 NCAC 7H) prior to issuing any zoning permit, special use, or conditional use permit.

3.25 Compliance with Overlay District Provisions, Special Purpose Regulations, and Development Standards

Additional requirements that are applicable to properties within overlay zoning districts; requirements for particular uses (such as manufactured homes and wireless communications); and requirements for stormwater management and soil erosion, sedimentation control, and coordination with the Army Corps of Engineers regarding wetlands are delineated in [Article VII](#). Use-specific standards that are applicable to those uses designated in [Table 5-1, Table of Permitted Uses](#) as ‘D’ or ‘S’ are provided in [Article VIII](#).