

ARTICLE 11 ADMINISTRATION

11.1 THE STAFF.

- (A) **The Zoning Administrator.** The Zoning Administrator shall have the following powers and duties to be carried out in accordance with these regulations, which include but are not limited to:
- (1) To serve as staff to the Village Council and the Planning Board with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, amendments to the zoning map, appeals, variances, special use permit requests and any other matters brought before them under this article.
 - (2) To maintain the text of these regulations and the zoning map.
 - (3) To maintain development review files and other public records related to the administration and enforcement of these regulations.
 - (4) To review applications for zoning permits filed under these regulations.
 - (5) To recommend and comment on proposed amendments to these regulations and to the zoning map.
 - (6) To establish such rules of procedure and permit application forms as are necessary and proper for the administration of their responsibilities under these regulations.
 - (7) To coordinate the administration of the water supply watershed protection regulations contained herein with designated Stanly County staff, including the following additional duties:
 - (a) To serve as staff to the Planning Board when it is serving in its capacity as the Watershed Review Board.
 - (b) To submit copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, NC Division of Water Quality.
 - (c) To keep records of variances granted under the watershed regulations. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality section, NC Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
 - (d) To monitor land use activities in the watershed to identify situations that may threaten water quality. The Zoning Administrator shall report these situations to the agency with direct regulatory responsibility for these activities.

- (B) **The Zoning Enforcement Officer.** The Zoning Enforcement Officer is charged with enforcing the provisions of the zoning regulations as set out herein except for enforcement duties specifically assigned to the Zoning Administrator. If the Zoning Enforcement Officer shall find that any of the provisions of this article are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering that necessary actions be taken to correct the deficiency. He/she shall order discontinuances of illegal uses of land, buildings, or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes, discontinuance of any illegal work being done; and shall take any other action authorized by this article to insure its compliance.
- (C) **The Mayor and Village Council.** The Mayor and Village Council shall appoint the Zoning Administrator and the Zoning Enforcement Officer, and shall have the authority to exercise any and all duties and authorities assigned to such.
- (D) The positions of Zoning Administrator and Zoning Enforcement Officer may be held by the same person.
- (E) No staff member shall make a final decision on an administrative required by this ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section the decision shall be assigned to the supervisor of the staff person or such other staff person as the Mayor may direct.

11.2. THE BOARDS.

- (A) **The Village Council.** The Village Council shall have the following duties related to this article:
 - (1) To review and from time to time initiate changes to the Village’s land use plan and land use regulations.
 - (2) To review and from time to time initiate changes to this article.
 - (3) To decide upon any application or request for an amendment to this article or the zoning map.
 - (4) To take any other actions not delegated to the Zoning Administrator or Zoning Enforcement Officer as the Council may deem desirable and necessary to implement the provisions of this article.
 - (5) A member of the Village Council shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- (B) **The Planning Board.** The Planning Board shall have duties related to this Ordinance that include, but may not be limited to, the following:

- (1) To review and from time to time initiate changes to this Ordinance.
- (2) To review and from time to time initiate changes to the Village's land use plan and land use regulations.
- (3) To review and make recommendations on applications for changes to this Ordinance or the Zoning Map.
- (4) To review and make recommendations on any permit application to be heard by the Village Council.
- (5) To perform the duties of the Board of Adjustment pursuant to NCGS 160D-109(d);-302;-403(b);-405;-406;-702;-1405

(C) **The Planning Board acting as the Board of Adjustment.**

- (1) **Powers and Duties.** The Planning Board acting as the Board of Adjustment shall have the following powers and duties:
 - (a) To hear and decide appeals according to the procedures of this article, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or Zoning Enforcement Officer in the administration and enforcement of this article.
 - (b) To grant variances from the terms of this article according to the standards and procedures prescribed herein.
 - (c) To serve as the local watershed review board as authorized and prescribed in G.S. 15A NCAC 02B and these regulations.

(D) **Conflicts of Interest and Oaths.**

- (1) **Conflicts of Interest.**
 - (a) Village Council. A member of the Village Council shall not vote on any legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business or other associational relationship.
 - (b) Planning Board and Board of Adjustment. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with

whom the member has a close familial, business or other associational relationship.

- (2) **Oaths of Office.** All members appointed to boards under the Misenheimer Zoning Ordinance shall, before entering their duties, qualify by taking an oath of office as required by GS 160A-61.

11.3 PERMITS.

- (A) **Permit Required.** No building or land shall hereafter be used or occupied and no building or structure shall be erected, expanded or moved until a zoning permit as required by this article shall have been issued. The form and content of such permit, when not expressly set out in this article, shall be determined by the Zoning Administrator and may include any information required for the applicant to demonstrate an intent to comply with the zoning regulations. Zoning permit forms shall be available at the office of the Zoning Administrator.
- (B) **Permit Type.** Permits shall be required for any use by right, unless specifically exempted by this article and special uses.
- (C) **Expiration of Permit.** Any zoning permit issued by the Zoning Administrator shall become null and void after a period of one year from the date of issuance of the permit unless a valid building permit has been issued for the work authorized by the permit or, if a building permit is not required, substantial work has not begun. Once a zoning permit has expired, construction on the property in question cannot proceed until a new zoning permit has been issued.
- (D) **Condition of Approval.** Zoning permits issued on the basis of site plans, architectural renderings, landscaping plans, and other information submitted as part of the zoning permit application process authorizes only the use, arrangement, construction, and change set forth in such approved plans and applications. Use, arrangement, construction, or changes that differ from those authorized by the permit shall be deemed a violation of this article.
- (E) **Right of Appeal.** If a request for a zoning permit from the Zoning Administrator is disapproved or if a ruling of the Zoning Enforcement Officer is questioned, the aggrieved party may appeal such ruling to the Planning Board acting as the Board of Adjustment in accordance with Section 12.2.
- (F) **Site Plan Required.** Prior to approval and issuance of a zoning permit for any new structure or expansion to an existing structure permitted under this chapter and any new impervious coverage on any lot (excluding single-family detached residential) in a designated water supply watershed, all applicants shall be required to submit a site plan as outlined below. All site plans must be reviewed by the Zoning Administrator and found to meet submission requirements before any application for a zoning permit is deemed to be complete.
 - (1) **Single-Family Residential Structures.** The site plan shall show the approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines as required. This type of site plan may be drawn by the

applicant and does not require an engineer, surveyor, or landscape architect's seal, unless such development appears to lie wholly or in part within a federally designated floodplain or a required watershed buffer area.

- (2) **Site plans for all uses except single-family residential structures and signs, flags, and similar structures shall show:**
- (a) The approximate location of the proposed structure on the lot, including distances from side, rear, and/or front setback lines and distances from other structures;
 - (b) Adjacent streets and street rights-of-way;
 - (c) Adjacent property lines, owners, uses and zoning districts;
 - (d) The location of any federally designated floodplain;
 - (e) The location of any required watershed buffer area;
 - (f) The location and extent of all impervious coverage on the lot constructed prior to the designation of the Tuckertown Reservoir WS-IV water supply watershed (if applicable);
 - (g) The location of all existing and proposed public easements; and
 - (h) The location of any existing or proposed parking and loading areas and screening that may be required by this section.
 - (i) The location and type of any existing or proposed outdoor lighting fixtures to demonstrate compliance with Article 8 – Outdoor Lighting.
- (3) **Site plans for Signs, Flags and Similar Structures shall show:**
- (a) The approximate location of the proposed structure on the lot, including distances from the side, rear, and/or front setback lines and distances from other structures;
 - (b) Adjacent streets; and
 - (c) Existing and/or proposed driveways, parking areas, walkways and public easements.

11.4 SPECIAL USE PERMITS.

- (A) **Purpose.** The development and execution of this Ordinance is based upon the division of the community into zones within which the use of land and buildings, and the bulk and location of buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular zone or zones, without consideration, in each case, of the impact of those uses in the particular location. Such special uses fall into two categories:
- (1) Uses publicly operated or traditionally affecting a public interest.

- (2) Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.
- (B) **Applicants.** Any person having a freehold interest in land, or a possessor interest entitled to exclusive possession, or a contractual interest which may become a free hold interest or an exclusive possessor interest and which is specifically enforceable, may file an application to use such land for one or more of the special uses provided for in this Ordinance in the zone in which the land is located.
- (C) **Application Required.**
- (1) An application for a special use shall be filed with the Zoning Administrator, on a form prescribed by the Zoning Administrator, at least 30 days prior to the date of a regularly scheduled Planning Board meeting. The application shall be accompanied by such plans and/or data prescribed in this Ordinance and shall include a statement in writing by the applicant and adequate evidence showing that the proposed special use will conform to the standards set forth in Section 11.4 (F).
- (2) Upon receiving a complete application, the Zoning Administrator shall cause a notice of hearing to be mailed to the person or entity whose application is the subject of the hearing; to the owners of all parcels of land abutting the subject parcel; and to any other persons entitled to receive notice as required by law. Notice shall conform to the requirements set forth in the NC General Statutes. The hearing shall be held by the Village Council. At its discretion, the Planning Board may also hold a hearing on the special use permit application. If a hearing is to be held by the Planning Board, public notice shall be provided as delineated for the Village Council hearing.
- (3) A fee shall be paid to the Village of Misenheimer by each applicant for an application. The fee shall be adopted and periodically amended by the Village Council as needed to cover the costs of advertising and other administrative expenses. A copy of the fee schedule shall be posted in the office of the Zoning Administrator.
- (D) **Planning Board Review.** The special use permit application shall be forwarded from the Zoning Administrator to the Planning Board. The Planning Board shall review the application and prepare a recommendation thereon to the Village Council. The Planning Board may hold a hearing concerning the application provided adequate notice is provided as set forth in Section 11.4 (C).
- (E) **Hearing.** The Village Council shall conduct a hearing on the application for a special use permit. At the hearing, all interested persons shall be permitted to testify. The Village Council, in considering special use permit requests, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements established for the Planning Board acting as the Board of Adjustment except that no vote greater than a majority vote shall be required by the Village Council to issue a special use permit.

At the conclusion of the hearing, the Village Council may proceed to vote on the special use permit application request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

(F) **Village Council Review**

- (1) The Village Council shall consider the application and recommendations of the Planning Board and may grant or deny the Special Use Permit requested.
- (2) The Special Use Permit, if granted, shall include approval of plans as may be required. In granting the permit, the Village Council shall find:
 - (a) that the use meets all required conditions and specifications;
 - (b) that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
 - (c) that the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 - (d) that the location and character of the use is compatible with existing uses in area or with any anticipated uses in area;
 - (e) that the appearance of the use if developed according to the plan as submitted and approved will be in harmony with the appearance of the area in which it is to be located and in general conformity with the aesthetics of the surrounding properties; and
 - (f) that the use if developed according to the plan as submitted and approved is compatible with the Village of Misenheimer Land Use Plan.
- (3) In granting the Special Use Permit, the Planning Board may recommend and the Village Council may designate additional conditions to assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this Ordinance and clearly in keeping with the public welfare. All such additional conditions shall be entered in the minutes of the meeting, at which the Special Use Permit is granted, on the Special Use Permit itself, and on the approved plans submitted therewith. All specific conditions shall run with the land and shall be binding on the original applicants for the Special Use Permit, their heirs, successors and assigns.
- (4) If the Planning Board recommends the disapproval of the Special Use Permit, and if the Village Council denies the permit, each body shall enter the reason for its action in the minutes of the meeting at which the action is taken.
- (5) No appeal may be taken to the Planning Board acting as the Board of Adjustment from the action of the Village Council in granting or denying a Special Use Permit. Any such action by the Village Council shall be considered a final decision reviewable as provided in GS 160D-1402.

- (6) In addition to the conditions specifically imposed in this paragraph and such further conditions as the Village Council may deem reasonable and appropriate, special uses shall comply with the height, area and parking regulations for the zone district in which they are located.
- (G) **Conditions and Guarantees.** Prior to the granting of any special use, the Planning Board may recommend, and the Village Council may stipulate, such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in Section 11.4 (F) above. In all cases in which special uses are granted, the Village Council shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.
- (H) **Expiration.** In any case where a special use has not been exercised within the time limit set by the Village Council, or within one (1) year if no specific time limit has been set nor a vested right established pursuant to Section 2.2, then without further action, the permit shall be null and void. “Exercised” as set forth in this section shall mean that binding contracts for the construction of the main building have been let; or in the absence of contracts that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.). When construction is not a part of the use, “exercised” shall mean that the use is in operation in compliance with the conditions set forth in the permit. Further, all work on the special use must be completed within three (3) years of Council approval or the permit shall be null and void.
- (I) **Withdrawal or Amendment of a Special Use Permit Application.** An application for a special use permit may be withdrawn or amended as follows:
- (1) A petitioner may withdraw the petition filed according to this article at any time up to the scheduling of the date of the hearing on the petition.
 - (2) If the petitioner wishes to withdraw the petition after the scheduling of the hearing, the petitioner may file a request to withdraw with the Zoning Administrator. On the date scheduled for the hearing, the Village Council may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.
 - (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than two (2) weeks prior to the scheduled hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the hearing. No changes to the petition shall be made at the hearing, except that changes proposed by the petitioner, Village Council, and other interested parties may be presented at the hearing and considered by the Village Council during their deliberations.
 - (4) If the Village Council deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties the opportunity to comment on the amendment to the petition.

- (5) If the Village Council deems any amendment to be an intensification of the petition, it shall call for a new hearing.

(J) Effect of Denial.

- (1) If the Village Council denies an application for a special use permit, a reapplication for that special use on that property shall not be made within one (1) year of the date of denial.
- (2) The Village Council may allow re-submission of the application within the one-year restricted period, however, if it determines that since the date of action on the prior application one of the following criteria has been met:
 - (a) The Village Council has adopted a new or amended plan for the area that changes public policy regarding how the subject property and/or the general area affected by the special use permit should be developed; or
 - (b) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the type and intensity of development which would be allowed under the proposed special use permit; or
 - (c) There has been a substantial change in conditions or circumstances, outside the control of the applicant, which justifies the waiver of the one (1) year restriction on resubmission of a special use permit application for the property; this shall not include a change in the ownership of the subject property nor a change in the scale or features of the development proposed in the prior application.

(K) Amendment to an Approved Special Use Permit.

- (1) Any major change to a development approved by special use permit shall require an amendment to the special use permit by the Village Council. Any proposed change in use, increase in density or intensity, decrease in open space and common recreational facilities, substantial change in the location of uses or streets from what is shown on the approved plans, any change in a condition imposed on the use by the Village Council, or any other change the Zoning Administrator determines is significant shall be deemed a major change requiring an amendment to the special use permit. Factors to be considered by the Zoning Administrator in determining if a change is substantial include, but are not limited to, the extent of the change, the expected impact on adjacent properties, and the impact on offsite streets and other public infrastructure. Otherwise, the Zoning Administrator may approve minor changes to a permit.
- (2) The owner of property which is subject to an approved special use permit may petition for an amendment of the special use permit and accompanying conditions by following the procedures applicable to initiation of new special use permits.
- (3) Evidence presented at the hearing on the proposed amendment will be limited to the effect of the proposal on the original special use permit, any plans or

conditions which were a part of the original special use permit, and the present standards and requirements in this zoning ordinance.

- (L) **Appeals.** Any petition for review by superior court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the decision of the Village Council is filed in the office of the Zoning Administrator or is mailed to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later.
- (M) **Recognition of Previously Approved Special Use Permits.** Special use permits, which have been previously granted by the Village Council, will be recognized for building permit and other administrative purposes during the period of time the project was vested by the ordinance under which it was approved. After the vesting period, if construction of the development has not begun or there is no valid building permit in effect for the property, the special use permit will be considered null and void.
- (N) **Revocation of a Special Use Permit.**
 - (1) If at any time the Zoning Administrator determines that construction inconsistent with the approved special use permit is occurring within the development, he or she shall cause to be issued a stop work order on such construction, and shall notify the responsible parties of the violation who will immediately cease and desist further work on the project. If the nonconforming construction is not brought into compliance with the permit or the applicant has not filed an appeal with the Planning Board acting as the Board of Adjustment within 30 days, the Zoning Administrator may initiate a revocation of the special use permit. The Zoning Administrator shall follow the same development review and approval process for a revocation as was required for the issuance of the Permit, including required notices and hearing. The Zoning Administrator may also act to suspend the issuance of any additional building permits within the development if he or she has reason to believe that such construction will not be in conformance with the approved permit or such construction will increase or reinforce the degree of nonconformance.
 - (2) If the nonconformance involves a completed, unoccupied building, no certificate of occupancy shall be granted for such building until the violation is corrected. If the nonconformance involves initial construction or provision of any of the public facilities, open space, required landscaping, or similar common features of the approved permit, no building permits or certificates of occupancy will be issued within the development until the violation is corrected or a new special use permit has been granted by the Village Council.
 - (3) Action to revoke a permit shall be taken by the Village Council after receiving a request from staff pursuant to Subsection (1) above. Such a request shall be in writing and shall declare that notice of the hearing has been given as required by law. Said applicant and other individuals with standing shall have the right to appear before the Council at said hearing and show cause why the Village Council should or should not revoke the permit.

11.5 AMENDMENTS.

- (A) **Authority.** The Village Council shall have the authority to amend the zoning text and maps as follows, except that amendments to this text that affect one or more watershed requirements shall also follow the procedures outlined in Section 11.6.
- (B) **Initiation.** Any amendment to the zoning text or map, except for the classification of property to a conditional district, may be initiated by:
- (1) The Village Council or the Planning Board.
 - (2) The property owner(s), upon filing an official petition including a complete application.
 - (3) A petitioner other than the Village Council or property owner, except that no amendment to zoning regulations or the zoning map which down-zones property may be filed without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the amendment is initiated by the Village.
- (C) **Application for a Text Amendment.** A petition for amendment to the text of this ordinance shall consist of:
- (1) A completed application form.
 - (2) A written justification for the requested amendment including consistency of the proposal with the Village's Land Use Plan.
 - (3) All appropriate fees.
 - (4) Any other information deemed necessary by the Zoning Administrator.
- (D) **Application for a Map Amendment.** A petition for an amendment to the zoning map shall consist of:
- (1) A completed application form.
 - (2) A list of abutting properties, including tax parcel numbers and the name and address of each owner. For the purposes of this section, abutting property owners shall be as defined in GS 160D-601.
 - (3) A map of the parcel and its relationship to the general area in which it is located.
 - (4) All appropriate fees.
 - (5) Any other information deemed necessary by the Zoning Administrator.
- (E) **Conditional Rezoning.**
- (1) **Initiation.** The reclassification of property to a conditional rezoning may be initiated only by the property owner(s), or an agent authorized by affidavit to act on the owner's behalf.

- (2) **Petition.** A request for a conditional rezoning shall include an official petition consisting of the following:
- (a) A completed application form.
 - (b) A list of abutting properties including tax parcel numbers and the name and address of each owner.
 - (c) A map of the parcel and its relationship to the general area in which it is located.
 - (d) All appropriate fees.
 - (e) A site plan that meets the requirements of Section 11.3 (F)(2).
 - (f) A written description or notation on the map explaining the proposed use of land and structures, including the number of residential units or the total square footage of any nonresidential development.
 - (g) Any other information deemed necessary by the Zoning Administrator or review board.
- (3) **Conditions.** Prior to the action on the proposed amendment (which may also include a period after the hearing) any Planning Board or Village Council member (or any group of members not comprising a majority of such board) may meet with the petitioner to discuss the proposed plan and suggest features to be included in the rezoning proposal. The specifics of the plan may be negotiated to address community issues or concerns and to insure that the spirit and intent of this ordinance are preserved. During the hearing, the Village Council may suggest additional features to be included or reflected in the proposal prior to taking action on the request. All conditions to a conditional zoning must be agreed to in writing by the applicant and the landowner.
- (4) **When Development Has Not Begun Within Three (3) Years.** The property owner shall commence construction in accordance with the approved development plan within three (3) years after the rezoning. If the Zoning Administrator or the Planning Board determines that construction has not commenced in accordance with the plan within such time period, they may, at their discretion, recommend to the Village Council that the Village rezone the property to an appropriate general-use zoning district.
- (F) **Copies.** The Zoning Administrator shall determine the number of copies of each petition and other required documentation to be submitted by the petitioner so that copies may be circulated to all appropriate staff, agencies, and boards for review and comment.
- (G) **Withdrawal or Amendment of Petition.**
- (1) A petition filed according to this article may be withdrawn by the petitioner at any time up to the scheduling, by the Village Council, of the date of the hearing on the petition.
 - (2) If the petitioner wishes to withdraw the petition after the scheduling of the hearing, the petitioner may file a request to withdraw with the Village Clerk. On

the date scheduled for the hearing, the Village Council may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of citizens affected by the petition.

- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the Zoning Administrator no later than three (3) weeks prior to the scheduled hearing date. No changes to the petition shall be accepted in the intervening weeks prior to the hearing. No changes to the petition shall be made at the hearing, although potential changes proposed by the petitioner, Planning Board, Village Council, and other interested parties may be presented at the hearing and considered by the Planning Board and Village Council during their deliberations.
- (4) If the Village Council deems any amendment to be a substantial change to the petition, it shall defer action on the petition for 30 days to allow interested parties the opportunity to comment on the amendment to the petition.
- (5) If the Village Council deems any amendment to be an intensification of the petition, it shall call for a new hearing.

(H) **Hearing.**

- (1) Notice of hearings required under these regulations shall be in accordance with the North Carolina General Statutes.
- (2) Notice of any request for a change in the zoning map shall state that the Planning Board and Village Council may consider the application of **any** of the zoning districts to the property, not just the classification requested.
- (3) Amendments to the Zoning Ordinance text and Official Zoning Map shall be made in accordance with the adopted land use plan. Prior to adopting or rejecting any zoning amendment, the Village Council shall adopt a statement describing whether its action is consistent with the adopted land use plan and explain why the Council considers the action taken to be reasonable and in the public interest.
- (4) Conduct of Hearing.
 - (a) No amendment shall be adopted until after the Village Council has held a hearing on the proposed amendment.
 - (b) The hearing shall be conducted in accordance with rules and procedures established by the Mayor and Village Council.
 - (c) When presenting a petition for the reclassification of property to a general-use district, as opposed to conditional zoning, the petitioner shall refrain from using any graphic materials or descriptions of the proposed use or development site design, except for those which would apply to any use or development site design permitted in the requested district.

(I) Recommendation and Decision.

- (1) No proposed amendment shall be approved unless it is first submitted to the Planning Board for a recommendation. If the Planning Board does not make a recommendation to approve, approve with conditions, deny, or defer a decision on the proposed amendment within 30 calendar days after the petition has been referred to it, then the Planning Board shall be considered to have recommended deferral for additional deliberation. The petition, along with the recommendation of the Planning Board, shall be placed on the agenda of the Village Council at its next regular meeting.
- (2) The Village Council, after receiving the recommendation of the Planning Board, shall within a reasonable time either reject the proposed amendment or approve the proposed amendment, with or without modifications.
- (3) In considering any petition to reclassify property, the Planning Board in its recommendation and the Village Council in its decision shall consider all of the following:
 - (a) Whether the proposed reclassification is consistent with the purposes, goals, objectives, and policies of adopted plans for the area.
 - (b) Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property.
 - (c) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.
- (4) When considering a petition to reclassify property to a general use district, the Planning Board and the Village Council shall not evaluate the petition based on any specific proposal for the use of the property or design of the site.
- (5) In approving an amendment to reclassify property to a general use district the Village Council may change the existing classification of the property, or any part of the property covered by the petition, to the classification requested or to any other classification or classifications permitted by this article.
- (6) The Village Council may modify any proposed text amendment upon adoption of an ordinance enacting the amendment, without the withdrawal or modification of the petition or further public hearings, when, in the opinion of the Council, such a change would not require a separate hearing.

(J) Effect of the Denial of a Petition.

- (1) A petition for a reclassification of property that has been denied in whole or in part shall not be re-submitted within one (1) year of the date of the Village Council's action on the original petition.
- (2) The Village Council may, however, allow re-submission of a petition within the one (1) year restricted period if it determines that, since the date of action on the prior petition, one of the following criteria has been met:

- (a) There has been a similar change in the zoning district classification of an adjacent property.
- (b) The Village Council has adopted a new or amended plan for the area that changes public policy regarding how the property affected by the amendment should be developed.
- (c) Construction or expansion of a road, water line, sewer line, or other infrastructure has occurred or is to occur in such a time frame as to serve the property and comfortably accommodate the intensity of development allowed under the proposed classification.
- (d) There has been a substantial change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one (1) year restriction on a new petition. This shall not include a change in ownership of the subject property.

11.6 WATERSHED AMENDMENTS AND VARIANCES.

- (A) **Amendments.** All amendments to the watershed regulations shall be heard as regular amendments to this article. However, under no circumstances shall the Village amend, supplement or change the watershed regulations so as to cause these regulations to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments shall be filed with the N.C. Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.
- (B) **Watershed Variances.**
 - (1) The Planning Board acting as the Board of Adjustment shall handle minor variances to the watershed requirements in the same manner as regular zoning variances.
 - (2) If a major variance is requested, the Planning Board acting as the Board of Adjustment shall, after making a favorable decision to grant the request, prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include all of the following:
 - (a) The variance application.
 - (b) The hearing notices.
 - (c) The evidence presented.
 - (d) Motions, offers of proof, objections to evidence and rulings on them.
 - (e) Proposed findings and exceptions.
 - (f) The proposed decision including all conditions proposed to be added to the permit.
 - (3) The information shall be sent to the N.C. Environmental Management Commission (EMC) for review. The EMC shall review the preliminary record and determine whether or not: a) the request qualifies as a major variance; b) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted; and 3) the variance, if granted, will not result in a serious threat to the water supply. Based on its findings, the EMC shall approve the variance as proposed, or approve the

proposed variance with conditions and stipulations, or disapprove the variance. The EMC shall prepare a decision and send it to the Planning Board acting as the Board of Adjustment. The Planning Board acting as the Board of Adjustment shall prepare a final decision based on the decision of the EMC.

- (4) The Zoning Administrator shall notify any jurisdictions within the watershed of a proposed variance to the watershed regulations. Local governments may submit any comments to the Zoning Administrator before the public hearing by the Planning Board acting as the Board of Adjustment.

11.7 ENFORCEMENT.

Whenever there is a violation of this article, the Zoning Enforcement Officer or Zoning Administrator may take any or all of the following actions to stop such violation.

- (A) **Notice of Violation.** Notices of violation (NOVs) must be issued in compliance with GS 160D-404: must be delivered to the permit holder and the landowner if different; may deliver to occupant or person undertaking the activity which is in violation; delivery may be by hand, email or first class mail; may be posted on site
- (B) **Permit Revocation.** The Zoning Administrator/Zoning Enforcement Officer may initiate the revocation of any zoning permit issued after written notification to the permit holder when violations of this ordinance have occurred, when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, or a permit has been mistakenly issued in violation of this ordinance. Revocation of permits must follow the same process as was used to issue the permit.
- (C) **Stop Work Orders.** Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this ordinance, the Zoning Administrator/Zoning Enforcement Officer may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.
- (D) **Civil Penalties.**
 - (1) In addition to the other remedies cited in this article for the enforcement of its provisions, and pursuant to N.C. General Statute 160A-175, the regulations and standards of this article may be enforced through the issuance of civil penalties by the Zoning Administrator/Zoning Enforcement Officer.
 - (2) Subsequent citations for the same violation may be issued by the Zoning Administrator/Zoning Enforcement Officer if the offender does not pay the citation (except as otherwise provided in a warning situation) after it has been issued, unless the offender has sought an appeal to the decision of the Zoning Administrator/Zoning Enforcement Officer through the Planning Board acting as the Board of Adjustment. Once the ten (10) day warning period has expired, each day the violation continues shall subject the violator to additional citations to be issued by the Zoning Administrator/Zoning Enforcement Officer.

- (3) The following penalties are hereby established:
 - (a) Warning citation correct violation within ten days
 - (b) First citation..... \$50.00
 - (c) Second citation for same offense\$200.00
 - (d) Third and subsequent citations for same offense.....\$500.00
- (4) If the offender fails to pay the civil penalties within three (3) days after having been cited, the Village may recover the penalties in a civil action in the nature of debt.
- (E) **Equitable Remedy.** The Zoning Administrator/Zoning Enforcement Officer may apply to a court of competent jurisdiction for any appropriate equitable remedy to enforce the provisions of this ordinance. It is not a defense to the Zoning Administrator’s application for equitable relief that there are other remedies provided under general law or this article.
- (F) **Injunction.** Enforcement of the provisions of this article may also be achieved by injunction. When a violation occurs, the Zoning Administrator/Zoning Enforcement Officer may, either before or after the institution of other authorized action, apply to the appropriate division of the general court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.
- (G) **Order of Abatement.** In addition to an injunction, the Zoning Administrator/Zoning Enforcement Officer may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:
 - (1) Buildings or other structures on the property be closed, demolished, or removed;
 - (2) Fixtures, furniture or other moveable property be moved or removed entirely;
 - (3) Improvements, alterations, modifications or repairs be made; or
 - (4) Any other action be taken that is necessary to bring the property into compliance with this ordinance.

Editor’s Note:

Ordinance of July 9, 2018 repealed the separate authority for a Board of Adjustment and assigned the duties of the Board of Adjustment to the Planning Board and increased the number of alternates on the Planning Board from one (1) to five (5).

Amended 4/12/21 to comply with changes required by the adoption of Chapter 160D of the NC General Statutes.