

## CHAPTER 12: DEVELOPMENT REVIEW PROCESS

### SECTION 12.1: PURPOSE AND INTENT

The purpose of these requirements is to establish an orderly process to develop land within the jurisdiction of the Town of Cornelius consistent with standard development practices and terminology. It is the intent of this Chapter to provide a clear and comprehensible development process that is fair and equitable to all interests including the petitioners, affected neighbors, Town staff and related agencies, the Planning Board, the Parks Arts Recreation and Culture Commission, and the Town Board of Commissioners.

It is also the intent of this Chapter to ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Ordinance. These provisions include the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces, and other provisions required for the public good of the Town of Cornelius.

The Town of Cornelius Board of Commissioners shall adopt from time to time, a schedule of fees for application processing as specified in this Ordinance. This process, as established, provides the applicant an opportunity to submit a development plan for review and approval by the Town prior to the submission of construction documents. This development plan shall be the guiding document in the review of the construction documents for final approval and permitting.

### SECTION 12.2: APPLICABILITY

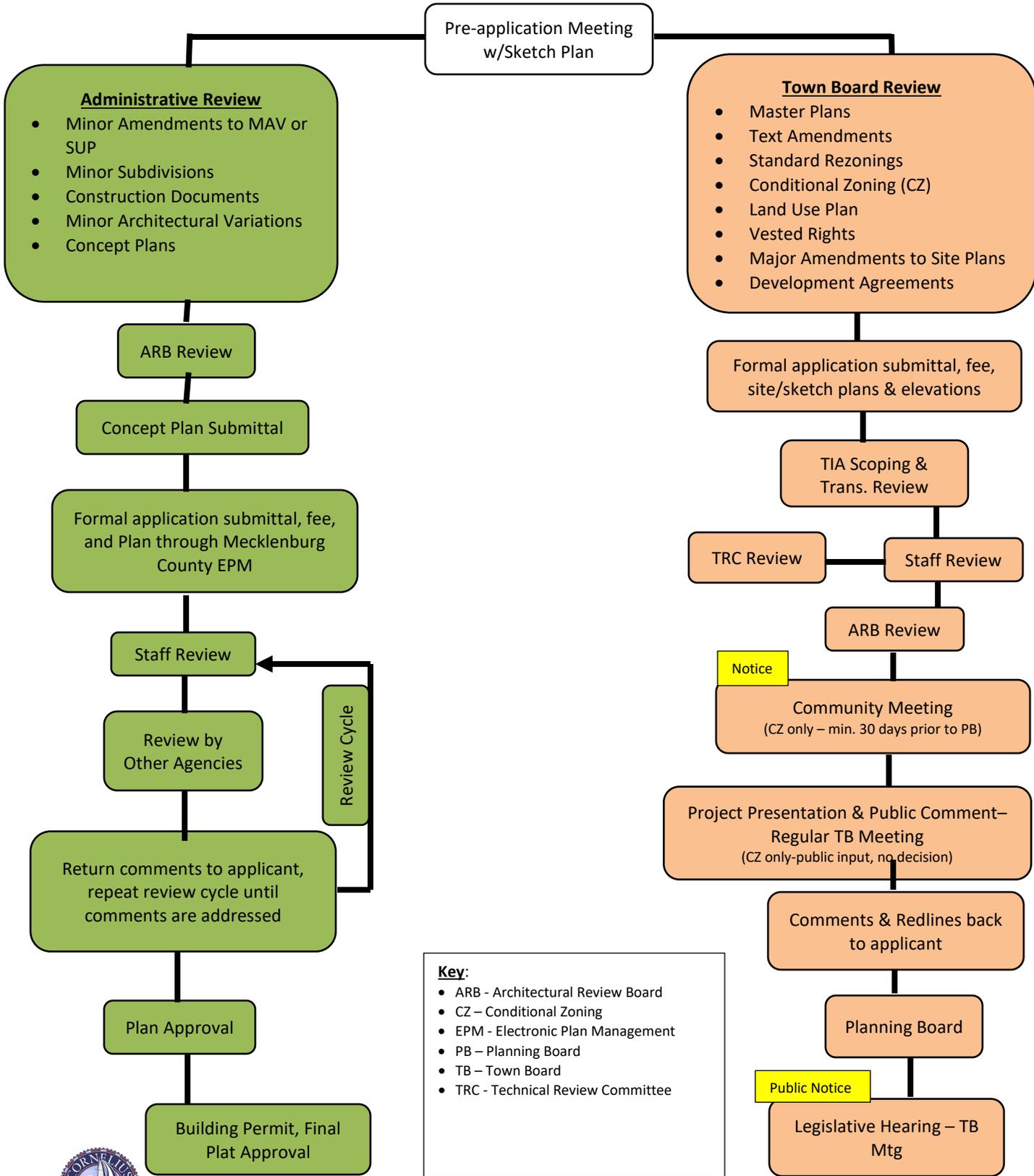
In general, the review process described in this Chapter shall be used for all uses and development other than individual single or two family detached homes (as allowed) and their accessory structures on a single lot.

The review process for any application requiring a quasi-judicial evidentiary hearing, including but not limited to variances, special use permits, major architectural variations, and appeals, may be found in Chapter 16 of this Code.



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## SECTION 12:3: DEVELOPMENT REVIEW PROCESS



**Key:**

- ARB - Architectural Review Board
- CZ - Conditional Zoning
- EPM - Electronic Plan Management
- PB - Planning Board
- TB - Town Board
- TRC - Technical Review Committee



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### SECTION 12.4: PRE-APPLICATION MEETING AND SKETCH PLAN

The Applicant shall submit a sketch plan compliant with Section 13.4, Sketch Plan Requirements, and a general statement of development intent to the Planning Department for review as part of the pre-application meeting. The Planning staff will advise the applicant of all applicable Town regulations and policies that are relevant to the project, including the Land Use Plan and any other pertinent approved plans. This stage is a non-binding and informal review of a development proposal intended to provide information to the applicant on the procedures and policies of the Town of Cornelius and does not confer upon the applicant any development rights.

The Planning Department may submit a sketch plan to other departments or agencies for input and recommendations. After a reasonable review of the sketch plan, the Planning Department shall forward all appropriate comments to the applicant.

### SECTION 12.5: APPLICATION

The Planning Director or designee will determine when an application is complete based on review of the application and plans for compliance with the Code and all related plans and policies, as well as submission of all other necessary information (such as Charlotte Water Capacity Assurance, etc.). Applications must be accompanied by the payment of a fee as adopted by the Town Board of Commissioners. The application and fee shall be waived for any petition submitted by any Cornelius official or agency acting on behalf of the Town of Cornelius. Plans must be submitted in accordance with the specifications listed in Chapter 13, Development Plan Specifications.

Applications for Development Approval, including but not limited to zoning permits, variances, and special use permits, must be submitted by the Developer, as defined in Chapter 2 (G.S. 160D-403(a)).

Refer to Chapter 18, Text/Rezoning Amendments, for additional application and plan requirements for general rezonings, text amendments, and conditional zoning requests.

### SECTION 12.6: DEVELOPMENT AGREEMENTS

The Town may consider and enter into development agreements with developers, subject to the procedures of G.S. 160D Article 10, Development Agreements. Development agreements may be approved by the Town Board as a legislative decision and may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the Town. If a development agreement is incorporated into a conditional zoning district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

Pursuant to G.S. 160D-1001 (b), a local government must be a party to a development agreement (a water and sewer authority may enter an agreement as a party, but not independently).

A development agreement shall, at a minimum, include all of the following:

- (1) A description of the property subject to the agreement and the names of its legal and equitable property owners.
- (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.



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- (3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
- (5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
- (6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
- (7) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

The development agreement may also cover any matter not inconsistent with G.S. 160D Article 10.

The developer shall record the agreement with the Mecklenburg County Register of Deeds within 14 days after the Town Board and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded.

Subject to the provisions of G.S. 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties.

### SECTION 12.7: PROCEDURES FOR ADMINISTRATIVE APPROVAL

The following may be approved administratively:

- Minor Subdivisions
- Minor Architectural Variations
- Minor Amendments to Major Architectural Variations
- Minor Amendments to Special Use Permits
- Concept Plans
- Construction Documents
- Change of residential structure use to a commercial use that is allowed by right in the zoning district
- Plats

In addition to the Development Plan Specifications in Chapter 13, submittals for Minor Architectural Variations and minor amendments to Major Architectural Variations may include elevations and any other drawings or documents that the Planning Director or designee deems necessary to render a decision.



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The Planning Director or designee may require that the plans be circulated to the relevant Town, County, and State agencies and officials for comments as to the proposed development's conformance to all applicable standards and requirements and whether approval is recommended.

Once the Planning Director or designee deems the plans or construction documents to be complete and in compliance with all provisions of this Ordinance, it may be approved. Approval of construction documents also constitutes approval of the preliminary plat.

### SECTION 12.8: PROCEDURES FOR TOWN BOARD REVIEW

#### 12.8.1: Planning Board Review

The Planning Board reviews and makes recommendations to the Town Board on proposed development regulations, text amendments, and other land use/development policies. In addition to the application, plans shall be submitted in accordance with the requirements of Chapter 13, Development Plan Specifications.

For applications requiring a quasi-judicial evidentiary hearing such as appeals, variances, special use permits, and major architectural variations, please refer to Chapter 16 for the appropriate process.

The Planning Board shall have up to thirty (30) days from the date of their first regularly scheduled meeting of consideration of the proposed development regulation, text amendment, and other land use/development policies to make a recommendation to the Town Board of Commissioners, unless, in the case of a proposed development regulation, the applicant consents and agrees to defer further. Alternatively, the Planning Board may suspend the review period and request additional information of the applicant, other governmental agencies, or interested/affected parties, in order to aid in the review of the development plan or deferral of its consideration.

In addition to deferral, the Planning Board may recommend development regulations (including rezonings) be:

1. Granted as requested, or
2. Granted with a reduction of the area requested, or
3. Granted to a more restrictive general zoning district or districts, or
4. Granted with a combination of 2 and 3 above, or
5. Denied.

In the case of conditional zoning requests, the Planning Board may also recommend to grant the rezoning subject to approved conditions enumerated on the district plan.

For text amendments, the Planning Board may recommend:

1. Adoption of the amendment as written, or
2. Adoption of the amendment as revised by the Planning Board, or
3. Rejection of the amendment.

If no recommendation is made within the thirty (30) day period, the application may move forward to the Town Board without a recommendation.



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The governing board is not bound by the recommendations, if any, of the planning board.

### 12.8.2: Legislative Public Hearing Notifications

Upon receipt of recommendations from the Planning Board and other applicable boards, the Town Board of Commissioners shall conduct a legislative public hearing.

For conditional zoning applications only, staff will present the project immediately following the community meeting, at the next regularly scheduled Town Board meeting where public comment is encouraged. Staff's presentation of the project is the second opportunity (the Community Meeting is the first opportunity for public comment) for public input, but no decision on the rezoning application shall be rendered by the Town Board.

The Town Board shall have the authority to call for additional project presentations on any amended petition presented for approval as a result of public comments in the project presentation. The Town Board shall also have the authority to submit such amended petition to the Planning Board for additional review prior to any additional project presentations.

Required notice(s) shall be published/mailed/posted no less than ten (10) days, or more than twenty-five (25) days prior to the date established for legislative public hearings. Notice of these hearings shall be given as follows:

- A. **Published Notice.** A notice shall be published in a newspaper having general circulation in the town, once a week for two (2) successive calendar weeks (G.S. 160D-601 (a)); and
- B. **Mailed Notice.** For zoning map amendments, a notice of the hearing shall also be sent by first class mail by the Zoning Administrator or designee to the affected property and to all contiguous property owners, including properties separated by a street, railroad, or other transportation corridor (G.S. 160D-602 (a)); and
- C. **Posted Notice.** For zoning map amendments, including conditional zoning requests and rezoning applications, the Town shall post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way.

For an amendment to the Zoning Map, the first class mail notice required under (B) of this section shall not be required when the zoning reclassification action directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners. In such case the Town shall publish once a week for two successive calendar weeks in a newspaper having general circulation in the area, a map showing the boundaries of the area affected by the proposed ordinance or amendment. The map shall not be less than one-half of a newspaper page in size. The notice 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 Town's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to this section. The person or persons mailing the notices shall certify to the Town Board that fact, and the certificates shall be deemed conclusive in the absence of fraud. In addition to the published notice, one or more prominent signs shall be posted on or immediately adjacent to the subject property area reasonably calculated to give public notice of the proposed rezoning.



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### 12.8.3: Consideration by the Town Board of Commissioners

After a legislative public hearing, the Town Board shall have up to sixty (60) days to defer, refer back to the Planning Board, approve, or deny the proposed development regulation, text amendment, and other land use/development policies unless, in the case of a proposed development regulation, the applicant consents and agrees to defer further. Alternatively, the Town Board may approve the proposed development regulation with conditions, or suspend the review period and request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the development regulation or deferral of its consideration. The petitioner shall have the right to withdraw the petition at any time prior to the final decision being rendered by the Town Board.

Town Board approval constitutes preliminary plat approval.

### 12.8.4: Notification of Decision

Once the final determination made by the Town Board has been filed with the Planning Department, the Zoning Administrator shall send it by first class mail to the Developer and any persons at or before the public hearing who have indicated in writing to the Zoning Administrator that they would like the decision mailed to them. Similarly, notice shall be sent to the Developer in the same manner if the Town Board makes a decision to re-submit the petition to the Planning Board for further review.

If the application is denied, the reasons for denial shall be provided to the applicant in writing. Following a denial by the Town Board, the applicant may file a new application and associated fee. Unless the Town Board explicitly states conditions that must be met prior to the resubmission of an application, the applicant shall not submit a new application for the same property within one (1) year of the date of denial by the Town Board unless the application is significantly different from the previously denied application. All applications shall be resubmitted for full review beginning with Section 12.8.1 (unless the application is resubmitted to address conditions set forth by the Town Board for re-application).

Approval of a plan shall constitute final Town Board approval for all phases of the development except for any required approval of construction documents.

### SECTION 12.9: REVIEW AND APPROVAL OF CONSTRUCTION DOCUMENTS:

Following approval of a preliminary plat, site plan, or any other development approval, the applicant may submit construction documents in accordance with Section 13.6, Construction Document Requirements. The Planning Department and other agencies as necessary shall review the construction documents for conformance with the approved plan.

Approval of the construction documents shall also constitute preliminary plat approval for plans that do not require Town Board approval.

No grading or infrastructure construction work may commence until the construction documents are approved.

Final plats shall be prepared in accordance with Section 13.8, Final Plat Requirements, and shall be approved administratively by the Planning Department.



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### SECTION 12.10: PLATS

#### 12.10.1: Effect of Approval of the Preliminary Plat

Only after receiving preliminary plat approval as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction on the development.

#### 12.10.2: Review and Approval of Final Plat

The developer shall initiate the final subdivision plat approval process by submitting the final plat and copies of any required improvement guarantees to the Planning Department. During the review period, the Zoning Administrator or designee will confirm the accuracy of the final plat. If substantial errors are found, including inconsistencies with the approved plan, the final plat shall not be approved and the review period suspended until the applicant has corrected such errors. A list of the needed corrections shall be provided to the applicant. Once complete, the final plat shall be approved or denied by the Zoning Administrator or designee.

No final plat shall be approved unless and until the developer/owner/applicant has installed all improvements required by this Ordinance or has posted any required improvement guarantees as prescribed by this Ordinance.

Any conditions placed by the Town on the approval of the final plat shall be addressed by the developer/owner/applicant.

Approved final plats must be filed by the applicant for recording with the Register of Deeds of Mecklenburg County within 30 days of the date of approval by the Zoning Administrator or designee; otherwise, such approval shall be null and void. After recordation, the developer/owner/applicant shall provide one (1) certified mylar copy for permanent file in the Planning Department.

#### 12.10.3: Revisions to Final Plats

Revisions to Final Plats may only be approved administratively by the Planning Department under the following circumstances:

- A. No lot or tract of land shall be created or sold that is smaller than the minimum size as required by this Code for the zoning district in which the lot or tract of land is located.
- B. Rights-of-way shall not be changed.
- C. Street alignment and block sizes shall not be changed.
- D. Property lines shall not be changed to cause the building setbacks of any lot to become non-conforming.
- E. Non-conforming lots shall not be created.
- F. The character of the area shall be maintained.



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### **SECTION 12.11: PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS:**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of Town of Cornelius, thereafter subdivides land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town of Cornelius may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this Ordinance.

### **SECTION 12.12: AMENDMENTS TO CONDITIONAL USE PERMITS**

Major Amendments to Conditional Use Permits shall follow the Conditional Zoning process. Minor Amendments to Conditional Use Permits shall follow the Conditional Zoning administrative process specified in Section 18.5.9, Alterations and Amendments to Approvals.

### **SECTION 12.13: VESTED RIGHTS REQUIREMENTS**

#### **12.13.1: General Procedures**

Pursuant to G.S.160D-108.1 and notwithstanding any other provision or amendment thereto, a landowner may apply for approval of a site specific development plan as defined in the statute that shall entitle said landowner to develop property in accordance with said plan.

All requests for vested rights shall be accompanied by a site specific development plan in accordance with the provisions of Section 13.5, Development Plan Requirements. A request to extend vesting rights to a previously approved development plan shall be reviewed and approved by the Town Board of Commissioners after notice and public hearing.

#### **12.13.2: Town Board Action**

The Town Board shall determine whether or not to accord a vested right after the review and consideration of the Planning Department and Planning Board in accordance with the procedures listed in Section 12.8, Procedures for Town Board Approval. The Town Board may not require the landowner to waive his vested right as a condition of development approval. The Town Board may approve the vested rights for a period greater than two (2) years, provided the total period does not exceed five (5) years from the date of plan approval of the site.

The vesting of any plan beyond a two (2) year period may only be authorized by the Town Board where it is found that due to (i) the sizing and phasing of the development; or (ii) the level of investment; or (iii) the need for the development; or (iv) economic cycles; or (v) market conditions, building permits for all phases of the development cannot be secured within two years.

#### **12.13.3: Effect of Approval of Vesting**

The effect of the Town Board approving a vested plan shall be to vest such site plan for a period of two (2) years to five (5) years as approved by the Town Board from the date of approval.



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A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the approved site specific development plan as provided for in this Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the vested right previously accorded.

A vested right, once established as herein provided, shall preclude any zoning action by the Town 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 under the following conditions where such rights are terminated and revoked:

- A. The affected landowner provides written consent to the Town of his desire to terminate the vested right; or,
- B. The Town determines after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the plan; or,
- C. Compensation is made by the Town to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
- D. The Town determines, after having advertised and held 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 Town Board of the plan; or,
- E. Upon the enactment or promulgation of a State or Federal law or regulations which precludes development as contemplated in the plan. In such case the Town may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that this change in State or Federal law has a fundamental effect on the plan.

Once a vested right is granted to a particular plan, nothing in this section shall preclude the Town from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are consistent with the original approval.

#### **12.13.4: Construction Document Process for Vested Site Specific Plans:**

Preliminary plats for minor subdivisions with previously vested site specific plans shall be reviewed for compliance and consistency and subsequently approved by the Zoning Administrator or designee in accordance with the provisions of Section 12.7, Procedures for Administrative Approval, providing the proposed preliminary plat for the minor subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

Preliminary plats with previously vested site specific plans shall be reviewed for compliance and consistency by the Zoning Administrator or designee and subsequently approved by the Town Board of Commissioners in accordance with the provisions of Section 12.8.3, Consideration by the Town Board of



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Commissioners, providing the proposed preliminary plat does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

### **12.13.5: Revocation or Expiration of a Vested Right:**

The vested right, resulting from the approval of a site specific development plan, may be revoked by the Town Board as provided for in this Chapter. In addition, a revocation may occur if the Town Board determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Land Development Code. The vested right shall otherwise expire at the end of the approval period established by the Town Board.

A building permit issued by the Mecklenburg County Building Inspector pursuant to G.S. 160D-1110 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

### **SECTION 12.14: IMPROVEMENT GUARANTEES**

To assure compliance with G.S. 160D-804 and the requirements of this Code, performance guarantees are required to insure the successful installation and completion of required improvements, public or private, (e.g., roads, water, sewer, sidewalks, street lights, street trees, etc.) prior to final plat approval for subdivisions or Certificate of Occupancy. The developer will also enter into a written agreement with the Town of Cornelius or its authorized agent whereby the developer shall agree to complete the installation (public or private) and dedication (public) of all required improvements, public or private. Once said agreement is signed by both parties and the security required herein is provided, the final plat or Certificate of Occupancy may be approved by the Zoning Administrator or designee or authorized agent, if all other requirements of this Ordinance are met.

#### **12.14.1: Types of Guarantees**

The developer shall choose any of the following forms of guarantee:

1. Surety bond, payable to the Town of Cornelius or its authorized agent, issued by any company authorized to do business in North Carolina.
2. Letter of Credit, to the benefit of the Town of Cornelius or its authorized agent, issued by any company authorized to do business in North Carolina.
3. Other form of guarantee that provides equivalent security to a surety bond or letter of credit. If cash or other instrument is deposited in escrow with a financial institution, then the developer shall file with the Town of Cornelius (or its authorized agent) an agreement between the financial institution and the developer guaranteeing the following:
  - A. That said escrow amount will be held in trust until released by the Town of Cornelius and may not be used or pledged by the developer in any other transaction during the term of the escrow; and
  - B. That in case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification of the Town to the financial institution of an estimate of the amount needed to complete the improvements, immediately pay to the Town the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.



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### 12.14.2 Amount

The developer will provide a guarantee not to exceed 125% of the reasonably estimated cost of installation and completion of improvements at the time the guarantee is issued, as estimated by the developer's civil engineer and verified by the County. The initial performance bond may exclude the cost of improvements already installed and satisfactorily inspected by Mecklenburg County in accordance with the Mecklenburg County Land Development Standards Manual. Notwithstanding the developer is financially responsible for ensuring all improvements are completed to engineered standards as set forth in the Mecklenburg County Land Development Standards Manual and accepted for maintenance by the Town or the HOA.

### 12.14.3: Duration

The duration of the bond(s) shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications defined in the Mecklenburg County Land Development Standards Manual and the Town Board has not adopted an ordinance to accept said improvements and the current performance guarantee is likely to expire prior to completion and acceptance of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued for an additional period.

### 12.14.4: Street Acceptance

Performance guarantees for streets that will be maintained by the Town of Cornelius may only be released following the Requirements for Adoption of Street Acceptance Resolution as specified in Section 94.17 of the Cornelius Code of Ordinances. Simultaneous to acceptance, a two-year maintenance guarantee is required in accordance with Section 12.14.5 below.

Performance guarantees for streets that will remain privately maintained by a homeowners association or individual property owners may be released following a final inspection by Mecklenburg County certifying the completed street(s) are constructed in accordance with the specifications defined in the Mecklenburg County Land Development Standards Manual.

### 12.14.5: Maintenance Guarantee

All improvements required by this ordinance that will be publicly maintained shall be guaranteed against defects in workmanship and materials by the developer. The developer shall file with the Town (or its authorized agent) a two-year maintenance bond with adequate sureties in an amount determined by the Town Manager or Consulting Engineer to be sufficient to assure proper maintenance and repair of such improvements for the warranty period.

### 12.14.6: Default

Upon default, meaning failure on the part of the developer to complete the required improvements in the time required by this ordinance or as spelled out in the performance bond or escrow agreement, then the surety or financial institution holding the escrow account shall, if requested by the Town (or its authorized agent), pay all or any portion of the bond or escrow fund to the Town of Cornelius (or its authorized agent) up to the amount needed to complete the improvements based on an estimate by the



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Town. Upon payment, the Town (or its authorized agent), in its discretion, may expend such portion of said funds, as it deems necessary to complete all or any portion of the required improvements.

### **12.14.7: Release of Guarantee Security**

When the Town of Cornelius approves said improvements, it shall immediately release the portion of the security posted which covers the cost of the improvements approved by the Town of Cornelius.



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