

**ARTICLE 3.**

**ENFORCEMENT AND REVIEW PROCEDURES**

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## **ARTICLE 3.**

### **ENFORCEMENT AND REVIEW PROCEDURES**

#### **DIVISION I. ENFORCEMENT**

##### **Sec. 18-50. Building permits.**

(a) Except as provided in G.S. section 160A-417 and the State Building Code, no person within the city shall commence or proceed with any of the following activities without first applying for and receiving from the City Manager or designee and/or the county inspections department, as appropriate, one or more permits covering all such work or changes:

- (1) The construction, reconstruction, alteration, repair, moving or demolition of any building or structure;
- (2) The installation, extension or general repair of any plumbing system;
- (3) The installation, extension, alteration or general repair of any heating, air conditioning or ventilation system;
- (4) The installation, extension, alteration or general repair of any electrical wiring, devices, appliances or equipment;
- (5) The installation, alteration or repair of any sign; or
- (6) A change in the use of an existing building or structure.

(b) No building permit as required by the City Code and General Statutes of the State of North Carolina shall be approved by the City Manager except in conformity with the provisions of this chapter, unless he receives a written order from the board of adjustment in the form of an administrative review or variance as provided by this chapter.

(c) The City Manager shall not issue a building permit unless the plans, specifications and intended use of such building or structures or part thereof conform in all respects to the provisions of this chapter. The application for a building permit shall be accompanied by such information as the City Manager may lawfully require to enable him to act upon such application.

(d) Each application for a building permit shall include information as to the location of applicable areas of environmental concern. Prior to the issuance of a building permit, the permit officer shall certify that the proposed structure or facility is in accordance with the state guidelines for areas of environmental concern.

(e) For the purposes of enforcing the above paragraph of this section, the "permit officer" shall be the county engineer or his designee in accordance with the Coastal Area Management Act Implementation and Enforcement Plan for New Hanover County and the City of Wilmington.

**Sec. 18-51. Certificate of occupancy.**

No person shall change or commence the use of any building or land, except the use of land for agricultural purposes, until a certificate of occupancy shall have been issued by the City Manager stating that the proposed use complies with the provisions of this chapter.

**Sec. 18-52. Penalties and Remedies.**

(a) If the City Manager finds that any of the provisions of this chapter are being violated, he shall endeavor to notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of any illegal work being done and shall take any other action authorized by the City Code or General Statutes of the State of North Carolina to ensure compliance with or to prevent violation of the provisions of this chapter. The City Manager shall have the duty and authority to bring judicial actions on behalf of the city against actual or threatened violations of this chapter. The failure to give notice as provided in this subsection shall not be a defense to any action to enforce this chapter.

(b) Except as otherwise provided herein, a violation of any of the provisions of this chapter shall subject the offender to a civil penalty of one hundred dollars (\$100.00) for the initial violation and a civil penalty of two hundred dollars (\$200.00) for each subsequent violation. A violation shall include the failure to comply with the express or implied condition or term of any permit or any order, notice or directive issued pursuant to the provisions of this chapter.

(c) Any person removing any tree in violation of Article 8 of this chapter, in addition to mitigation requirements, shall be subject to a civil penalty of four hundred (400) dollars per tree or fifty (50) dollars per inch diameter at breast height (DBH) of the tree, whichever is greater. Any person removing any regulated tree after notice of the requirements of Article 8 of this chapter shall be subject to a civil penalty of one thousand (1,000) dollars per tree or one hundred (100) dollars per inch DBH of the tree, whichever is greater.

(d) Violations of the provisions of Article 6, Division II. Temporary Uses, Section 18-340 of this chapter shall subject the offender to the following civil penalties:

- (1) For the first violation, a civil penalty of two hundred dollars (\$200.00).
- (2) For a second and any subsequent violation, a civil penalty of five hundred dollars (\$500.00).

(e) Violations of Article 14, Division III of this chapter shall subject the offender to a civil penalty up to the full amount of any civil penalty assessed against the city for violations of the city's NPDES Phase II Stormwater permit.

(f) If any offender fails to pay the civil penalty set forth herein within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of debt.

(g) The city may seek to enforce this chapter through any appropriate equitable action. The city also may apply for and the court may enter an order to abate any unlawful condition existing upon or use made of real property and to take any action that is necessary to bring property into compliance with this chapter and any permit or order issued pursuant to this chapter. Whenever a party is cited for contempt by the court for failure to comply with an order of abatement and the city executes the order, the city shall have a lien on the property for the cost of executing the order in the nature of a mechanic's and material man's lien.

(h) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense. Each tree removed in violation of this chapter shall be a separate offense.

(i) The city may seek to enforce this chapter by using any one (1) or any combination of the foregoing remedies. Nothing in this section shall limit any other remedy provided by law or this chapter.

### **Sec. 18-53. Withholding or revocation of permits.**

(a) *Withholding of permits and approvals.* The city or county may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon for which there is an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city or county. Instead of withholding or denying an authorization, the city or county may grant such authorization subject to the condition that the violation be corrected. A building permit, site plan approval or subdivision plan approval may be denied, in accordance with G.S. 160A-458.5, subject to the following:

- (1) For a period of up to three (3) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all regulated or significant trees from the tract;  
or
- (2) For a period up to five (5) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the regulated or significant trees from the tract if the harvest was a willful violation of city regulations.

This enforcement provision shall apply regardless of whether the current owner or applicant is responsible for the violation in question.

- (b) Revocation of permits.
  - (1) Any permit may be revoked when the city determines: (1) that there is a substantial departure from the plans, specifications, or conditions as required under terms of the permit; (2) that the same was procured by false representation or was issued by mistake; or (3) that any of the provisions of this chapter are being violated.
  - (2) Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued, or shall be posted in a prominent location; and, thereafter, no such

construction shall proceed.

(c) Stopping work. With or without revoking permits, the city or county may stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this chapter or of a permit or other form of authorization issued hereunder, in accordance with its power to stop work under the state building code.

**Secs. 18-54--18-59. Reserved.**

## **DIVISION II. SITE PLAN REVIEW**

**Sec. 18-60. Site plan review.**

(a) *Purpose.* Site plan review for all major and/or minor developments, as defined in this chapter, is required to insure adequate provision of public services and the well-being of citizens and the preservation of environmental quality.

(b) *Procedure.* This section sets forth the procedures for review and approval of site plans, both major and minor.

- (1) Prior to any site plan submittal for a development, it is strongly recommended that the developer arrange a pre-application conference with the appropriate City staff to discuss the proposed development. The primary purpose of the pre-application conference is to provide assistance and guidance to the developer for the most efficient review of the proposed development. To ensure an equal understanding, a mutual exchange of basic information is needed to facilitate and clarify the required review process for all developments.
- (2) Application. Each application for a building permit of a major or minor development project shall be accompanied by a site plan as required in this subsection. No building permit shall be issued for a major or minor development within the scope of this chapter until a site plan of the development has been reviewed and approved in accordance with the procedures and standards of this chapter.
- (3) Application completeness. An application for a site plan shall be deemed complete if it is submitted in the required number and form, includes all requested information and is accompanied by the applicable fee. A determination of application completeness shall be made within five (5) working days of application filing. If an application is determined to be incomplete, the City Manager shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within twenty (20) working days, the application shall be considered withdrawn.
- (4) Review.
  - a. Major site plans shall be reviewed by the technical review committee following the

submittal of a complete application. Minor site plans shall be reviewed by the appropriate city departments or other agencies as deemed necessary.

- b. The technical review committee and/or reviewing departments or agencies shall either approve or reject the site plan; rejection may be made with one (1) or more of the following written findings with respect to the proposed development as determined by the reviewing departments or agencies and no approved modifications to the plan having been made:
  - i. The provisions for vehicular loading and unloading, and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety, or will impose an unreasonable burden upon public facilities.
  - ii. The proposed use will impose undue burdens on the sewers, sanitary and storm drains, water or similar public facilities in excess of available capacity.
  - iii. The provisions of on-site landscaping do not provide adequate protection to neighboring residential properties from detrimental features of the development as required in the pertinent district regulations.
  - iv. The site plan fails to provide for adequate storm water drainage.
  - v. The proposed development will create fire safety hazards by not providing adequate access to the site, or buildings on the site, for emergency vehicles.
  - vi. The proposed development or use is not consistent with the City of Wilmington Land Development Code, Technical Standards and Specifications Manual, a specific standard established in an official map, or in a plan including but not limited to the Future Land Use Plan, corridor plans, special area plans, CAMA plan, thoroughfare plans and those adopted hereafter.
- c. Upon approval of the site plan, the building inspector may issue a building permit.

(c) *Site plan content.* Site plans shall depict or otherwise provide the information required below, whether the improvements exist or are proposed. Whenever applicable, the proposed site improvements shall be designed in accordance with the City of Wilmington Technical Standards and Specifications Manual. In general, the following information shall be provided:

- (1) A vicinity sketch or key map at a scale of not more than one thousand (1,000) feet to the inch, showing the position of the subdivision with its relation to surrounding streets and properties, and oriented in the same direction as the site plan;
- (2) True north arrow, with north being at the top of the map;

- (3) Scale of the site plan using engineer's scale (1"=10', 1"=50', etc.) both graphic and numeric and date of preparation, including all revision dates;
- (4) Title block with the name of the development, name of the owner and agent, name and contact information of the designer who prepared the plan and the address of the project;
- (5) Site data tabulation with the parcel identification number, zoning district of the subject property, building setbacks (required and proposed) total amount of acreage within the project boundaries; building size, (both existing and proposed) with square footage, calculations for building lot coverage, number of units, number of buildings, building height and the number of stories and square feet per floor; total amount and percent of impervious surface areas, before and after development; off street parking calculations, including required amount of parking and proposed amount of parking and the basis for determination; and CAMA land use classification;
- (6) Location of buildings (existing and proposed) and all proposed expansions;
- (7) Location of existing and proposed property boundaries and lot lines;
- (8) Location of on-site and proposed tie-in to existing public utilities (water, sewer, culverts, drains, etc.) showing size and direction flow, and soil erosion and sedimentation control measures;
- (9) Location and dimensions of any easements, public or private rights-of-way, existing and proposed;
- (10) Location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, designs of ingress and egress of vehicles to and from the site onto public streets, and curb and sidewalk lines;
- (11) Location and dimensions of all fencing and screening;
- (12) Names of property owners of adjacent properties or subdivisions of record;
- (13) Zoning and land use of adjacent properties or subdivisions of record;
- (14) Current accurate topographical information based on mean sea level datum, with contour interval of two (2.0) feet or less;
- (15) Landscaping plans as required by this chapter;
- (16) Site inventory map(s) as required by this chapter;
- (17) Tree Inventory

- (18) A written statement by the applicant that shall consist of:
- a. A description of the proposed uses to be located on the site, including quantity and type of residential units; if any
  - b. The total land area of the site, and the total floor area and ground coverage of each proposed building and structure;
  - c. General summary of existing and proposed easements or other restrictions on the property;
  - d. Method for handling solid waste disposal;
  - e. The applicant's evaluation of the availability of off-site public facilities including sewer, water and streets;
  - f. A description of any problems of drainage or topography, or a representation that, in the opinion of the applicant there are none;
- (19) The City Manager may request additional information as deemed necessary to insure compliance with this chapter.

(d) *Infrastructure improvements.* Where required to satisfy the city's or Cape Fear Public Utility Authority's level of service standards or technical standards, approval of site plans shall be conditioned to include requirements that street and utility, or other improvements be made to the same extent as required by Article 7, Subdivision Regulations. The approval may require payment in lieu of the dedication of property and rights-of-way or construction of improvements to the same extent as required by this chapter. This provision shall not apply to site plans for individual detached, single- and two-family units to be constructed on previously subdivided lots. This provision shall not apply to additions of less than five (5) percent of gross floor area on an annual basis unless such addition causes an increase in the off-street parking requirement or a change in occupancy as occupancy is defined by the North Carolina State Building Code.

(e) *Effect and duration of the plan approval.* Approval of a major or minor site plan shall expire after eighteen (18) months from the date of such approval if the applicant has failed to make substantial progress on the site. The technical review committee may grant a single, six-month extension of this time limit for major and minor site plans, for good cause shown, upon receiving a request from the applicant before the expiration of the approved plan. In the event approval of a site plan has expired, for whatever reasons, the owner and/or applicant will be required to resubmit for approval of a site plan that meets current development standards unless otherwise noted in this chapter.

- (f) *Appeals.* All appeals from decisions under this section shall be to the board of adjustment.

**Secs. 18-61--18-64. Reserved.**

### **DIVISION III. REVIEW AND APPROVAL OF SUBDIVISION PLATS**

**Sec. 18-65. Plat submission and approval required prior to subdividing.**

(a) No person, firm or corporation owning or having interest in land located within the subdivision jurisdiction of the City of Wilmington shall cause that land, directly or indirectly, to be divided into a subdivision as defined herein without initially preparing and presenting a plat of the subdivision of the City of Wilmington for approval in compliance with the regulations contained herein and until recordation of the approved plat within the office of the New Hanover County register of deeds.

(b) A copy of this chapter shall be filed with the register of deeds of New Hanover County. The register of deeds shall not thereafter file or record a plat of a subdivision located within the jurisdiction of the City of Wilmington without the approval of the subdivision review board or its chairman as required by this division. The landowner shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat as to whether or not any land shown thereon is within the regulatory jurisdiction of the City of Wilmington as defined herein. The filing or recording of a subdivision plat without approval as required by this chapter is hereafter prohibited. When a question arises as to whether a plat presented for recordation is subject to the provisions of this division, the register of deeds may request the assistance of the chairman of the subdivision review board in making such determination.

(c) Any person who, being the owner or agent of the owner of land located within the regulatory jurisdiction of the City of Wilmington, subdivides his land in violation of this division 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 the provisions of this division and recorded in the office of the New Hanover County register of deeds, shall be guilty of a misdemeanor as provided in G.S. 160A-375. 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 city, through its attorney or other official designated by council, may enjoin illegal subdivision, transfer, conveyance or sale of land by action for injunction.

**Sec. 18-66. Pre-application conferences.**

(a) Prior to any subdivision plat submittal, it is strongly recommended that the subdivider arrange a pre-application conference with the City Manager to discuss the proposed subdivision. The City Manager will advise the subdivider as to other appropriate departments or agencies which should be contacted for additional pre-application conferences.

(b) The primary purpose of these conferences is to provide assistance and guidance to the subdivider for the swift and most efficient review of the proposed subdivision. To ensure an equal understanding, a mutual exchange of basic information is needed to facilitate and clarify the required review process for all subdivisions. To carry out the purpose of the pre-application conferences, it is suggested that the subdivider provide the following information:

- (1) Location of property on most recent county topo map.
- (2) Boundary land use.

- (3) Proposed land use.
- (4) Total acreage of tract.
- (5) Site inventory.
- (6) Proposed street right-of-way and lot layout.
- (7) Number of lots and minimum size of lots.

(c) Those agencies contacted by the subdivider will review the information for general compliance with the requirements of this chapter and other official regulations or policies. The subdivider will then be advised as to how the regulations pertain to the proposed subdivision as well as to the procedures for preparation and submission of preliminary and final plats.

(d) The pre-application review shall in no way constitute any form of official approval of the subdivision as required by this chapter.

**Sec. 18-67. Plat submittal for review.**

(a) The City Manager may categorize subdivisions into two (2) separate classes, major and minor, as defined in Article 15.

(b) All required plats and plans of major subdivisions shall be reviewed by the subdivision review board, and shall be submitted with a completed application at least thirty (30) working days prior to the next regular meeting of the subdivision review board at which the application is to be considered. The day the plats and plans are submitted and the meeting day shall not be counted in computing the required thirty (30) working days. Final plats may be submitted and approved under applicable conditions as outlined in section 18-70.

(c) Plats and plans of subdivisions meeting criteria for minor subdivisions may be submitted to the City Manager for initial review at any time, and after review and approval of the plat or plans by the City Manager, the chairman of the subdivision review board shall be authorized to approve the preliminary plat or plans and sign the final plat on behalf of the subdivision review board, after which the final plat may be recorded according to section 18-71 herein. The subdivision review board shall be notified monthly of all subdivision plats reviewed and approved by the City Manager and the chairman of the subdivision review board. Final plats may be submitted under applicable conditions as outlined in section 18-70.

**Sec. 18-68. Preliminary plan.**

(a) Initial submission of all subdivisions shall consist of a completed application and a preliminary plan prepared in accordance with the requirements of Article 7, Division IV, to be filed with the City Manager. The preliminary plan may indicate proposed improvements for the entire contiguous property in the area in question. The approved preliminary plan is an official administrative guide for both

the subdivider and the subdivision review board, and therefore, if the subdivider desires to alter, change or re-draft it, official review and re-approval by the subdivision review board or its chairman shall be required, according to all requirements set forth in this division.

(b) Approval of the preliminary plan shall expire eighteen (18) months from the date of such approval unless a final plat for all or part of the subdivision is officially submitted to the City Manager, or an extension of the approval of the preliminary plan is granted by the subdivision review board or its chairman prior to the expiration date.

(c) After initial submission of the above-required information, subdivisions which meet criteria for minor subdivisions, as defined above, thereafter will be required only to submit a final plat of the particular lot or lots which are desired to be cut out from the tract, in accordance with section 18-70 and Article 7, Division IV.

### **Sec. 18-69. Required improvements.**

After approval of the preliminary plan, the necessary construction permits shall be obtained from the city engineer and the Cape Fear Public Utility Authority for the installation of the required improvements in compliance with Article 7, Division II of this chapter. After installation of the improvements in accordance with the preliminary plan by the subdivider, inspection and approval shall be secured from the City Manager prior to submission of the final plat. The final plat may be submitted prior to completion of required improvements under conditions as outlined in Article 7, Division II, section 18-366 and under any applicable condition as outlined in section 18-68 of this division.

### **Sec. 18-70. Final plat.**

(a) A final plat may be submitted to the City Manager after approval of the preliminary plan, according to any of the following conditions:

- (1) Where there are no public and/or private improvements to be made;
- (2) Where there are public and/or private improvements to be made, and the improvements have been installed, inspected and approved by the city engineer;
- (3) Where there are public and/or private improvements to be made, a majority of the improvements have been installed, inspected and approved by the city engineer, and a surety has been posted with the city under conditions as outlined in paragraph (b) of section 18-366 of Article 7.
- (4) When all public and/or private improvements have been installed, inspected and approved by the city in accordance with subparagraphs (2) and (3) above except for any extensions of water and/or sewer lines necessary to serve the subdivision that the Cape Fear Public Utility Authority has elected to install and for which the subdivider has deposited with the Cape Fear Public Utility Authority the full estimated cost of the extensions in accordance with the Division II of Article 7 of this chapter.

(b) The final plat shall depict the entire subdivision or that portion of the subdivision which the subdivider proposes to record at the time of submittal. The final plat shall be certified by a land surveyor licensed and registered to practice in the State of North Carolina. The final plat shall substantially conform to the preliminary plan, as it was approved. The final plat shall conform to the provisions of, section 18-421 of Article 7 and section 47-30 of the North Carolina General Statutes.

(c) All final plats, for both major and minor subdivisions, as defined herein, may be reviewed by the City Manager and approved and executed by the chairman of the subdivision review board, after certification by the city engineer that the final plat substantially conforms to the approved layout of the preliminary plan as it was approved, and that the improvements (if any) have been installed in accordance with all City of Wilmington requirements and specifications.

#### **Sec. 18-71. Plat recordation.**

Upon approval of the final plat by the subdivision review board or its chairman, the City Manager shall retain the original plat. The subdivider shall, within ninety (90) calendar days of the approval date, authorize the City Manager to record the original plat in the New Hanover County Registry by submitting fees associated with the recordation and plat duplication to the City Manager. The city engineer shall make two (2) reproducible copies of the recorded plat for filing purposes.

#### **Sec. 18-72. Major subdivisions; review by subdivision review board.**

(a) The subdivision review board shall approve, approve conditionally or disapprove all subdivision plats properly submitted.

- (1) If approved, the city shall direct the subdivider to the appropriate action needed for either continuance of the review process, as provided herein, or recordation.
- (2) If approved conditionally, the conditions and reasons thereof shall be both given in written form to the subdivider and noted in the minutes of the meeting for adjustment by the applicant. When all conditions have been properly addressed and met by the subdivider, the city shall take appropriate action in accordance with the provisions of review and approval contained herein. If necessary, the subdivision review board shall require the subdivider to submit a revised plan for final approval.
- (3) If the subdivision review board should disapprove any submittal by a subdivider, the reasons for such action shall be both given in written form to the sub-divider and noted in the minutes of the meeting. Recommendations for approval will be given by the board for the proposed subdivision.
- (4) Failure on the part of the subdivision review board to act within the period of two (2) regular meetings after official submittal of a completed plat and completed application shall be deemed approval by the board, unless extended by consent of the board and applicant. If the subdivision review board determines that an application is incomplete, the information needed for completing the application and plat shall be noted in the minutes of the meeting and given in written form to the subdivider.

- (5) Approval of a final plat by the subdivision review board or its chairman shall not in any manner constitute acceptance by the city or public of the dedication of any street or other ground, public utility line, or public facility shown on the plat. Acceptance of such dedications shall require approval by the City Council in the form of a resolution and shall be requested by the sub-divider only after recordation of the final plat in the New Hanover County Registry has been completed.

**Sec. 18-73. Minor subdivisions; review by City Manager.**

(a) The City Manager may review minor subdivisions as outlined herein. In his review, the City Manager may require and solicit input from any city agency and any other source as he deems necessary to ensure that the plat or plans meet the requirements of this chapter. The requirements for approval will be the same as any other approval required in this chapter.

(b) When the subdivider has met all conditions for approval as outlined in this chapter, the plat or plans shall be forwarded to the chairman of the subdivision review board for his approval and signature, after which any final plats may be recorded in the New Hanover County Registry in accordance with this chapter.

(c) During the review process of an application treated as a minor subdivision, if at any time it subsequently appears that the proposal may not in fact fully comply with the criteria for a minor subdivision, or for any reason ceases to meet the definition, then the chairman shall require the plan to be reviewed by the full subdivision review board for final action as provided in this chapter.

**Sec. 18-74. Appeals.**

(a) Decisions by the chairman of the subdivision review board relating to minor subdivisions shall be appealed to the subdivision review board. Written notice of the appeal shall be filed with the secretary of the subdivision review board not later than ten (10) days after the decision of the chairman of the subdivision review board.

(b) Decisions of the subdivision review board may be appealed by the following persons:

(1) The City Council and/or planning commission.

(2) The subdivider.

(3) Any aggrieved party with standing.

(4) Persons who, upon request to the planning commission, receive a favorable majority vote as to the question of their proven significant interest in the matter.

(c) An appeal from a decision of the subdivision review board shall be to the planning commission, provided written notice of the appeal is filed with the secretary of the planning commission not later than twenty (20) days after the date of the action by the subdivision review board. The party or

parties appealing shall be entitled to de novo hearing before the planning commission. When a notice of appeal has been filed with the secretary of the planning commission, the appeal may not be withdrawn except upon approval by the planning commission.

(d) The appeal shall be set for hearing before the planning commission within thirty (30) days of receipt of written notice of appeal by the secretary of the planning commission, or as soon thereafter as is practicable.

(e) The decision of the planning commission shall be subject to review by the superior court of New Hanover County by proceedings in the nature of certiorari. In order to obtain judicial review of a final decision by the planning commission, the person seeking review must file a petition in the superior court of New Hanover County within thirty (30) days of the final decision of the planning commission. Failure to file such petition within the time stated shall bar review by the Superior Court. The final decision of the planning commission shall not be stayed pending review except by order granted by the Superior Court.

(f) An appeal from any final decision as authorized by this chapter shall stay all further proceedings of the action appealed from, unless a certificate is filed by the appellee with the board or court, as applicable, stating that by reason of facts, a stay would cause peril to life or property. Where said certificate is filed by the appellate, further proceedings of the original decision or approval shall not be stayed, other than by a restraining order which may be granted by a court of competent jurisdiction.

**Secs. 18-75--18-78. Reserved.**

#### **DIVISION IV. SPECIAL USE PERMIT APPROVAL PROCESS**

##### **Sec. 18-79. Purpose.**

Special use permits add flexibility to the zoning ordinance. Subject to high standards of planning and design, certain property uses may be allowed in several districts where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, property uses which would otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.

##### **Sec. 18-80. General.**

Special use permits may be issued by the City Council for those uses of land and buildings requiring a special use permit as listed in each zoning district classification. Special use permits may be granted by the City Council after planning commission review and recommendations, and after a public hearing.

##### **Sec. 18-81. Application.**

The owner or owners, or their duly authorized agent, of the property included in the application for a special use permit shall submit a complete application and supplemental information to the planning division at least thirty (30) working days prior to the regular meeting of the planning commission at which

the application is to be considered. Such application shall include all of the requirements pertaining to it in this chapter including the provisions of subsection 18-118(c), letter of notification.

**Sec. 18-82. Consideration.**

The planning commission shall consider and make recommendations to the City Council concerning such special use permit application. The planning commission shall review all applications at a regularly scheduled public meeting held and advertised in accordance with its rules of procedure then in effect. In lieu of separate consideration, the planning commission may review an application in a joint meeting with the City Council at a public hearing held in conformity with the requirements of section 18-85 herein.

**Sec. 18-83. Additional conditions.**

(a) The planning commission may recommend, and the City Council in granting the permit may designate, such conditions in addition and in connection therewith as well as in its opinion assure that the use in its proposed location will be harmonious with the spirit of this chapter. All such additional conditions shall be entered in the minutes of the meeting at which the permit is granted and also on the certificate of the special use permit or on the 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.

(b) In addition to the specific conditions imposed by the regulations of this chapter and whatever additional conditions the council deems reasonable and appropriate, all special uses, shall comply with the height, yard area and parking regulations for the district in which they are to be located. If additional yard area is required for a special use, such additional area may be used for off-street parking.

**Sec. 18-84. Action by planning commission.**

The planning commission shall forward its recommendations to the City Council within thirty (30) days after the meeting of the planning commission's final action. Failure to submit a recommendation within this period shall be deemed a favorable recommendation.

**Sec. 18-85. Action by City Council.**

(a) *Notice of public hearing.* No special use permit shall be issued by the City Council until public notice is given of a public hearing to be held. Notice of public hearing shall be published in accordance with G.S. section 160A-364. Public notice may also be posted on the property in question, indicating the date of public hearing.

(b) *Public hearing.* The applicant shall present his request in the following manner:

(1) All persons shall be sworn before presenting evidence to the City Council, unless waived by the petitioner.

- (2) All persons shall offer only competent material and substantial evidence in any presentation to the council. Competency shall be determined by the council in its decision.
- (3) All persons participating in the hearing or their representatives shall have an opportunity to cross-examine adverse witnesses and to inspect any evidence presented.
- (4) The applicant shall be allowed the opportunity to offer competent evidence in explanation or rebuttal to objecting participants.
- (5) Following the presentation of all evidence both for and against the application for special use permit, the hearing may be continued until the next regularly scheduled meeting of the City Council or as soon thereafter as possible, at which time the council will render its decision on the application and will state its reasons, orally or in writing, for approving or disapproving the application.
- (6) The City Council, in granting the permit, must find that all four (4) of the following factors exist:
  - a. 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 by the issuance of the special use permit;
  - b. That the use meets all required conditions and specifications;
  - 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 if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the city's Future Land Use Plan, the CAMA plan, and adopted special area plans (i.e. corridor plans, neighborhood plans, Wilmington Vision 2020: A Waterfront Downtown Plan).
- (7) A finding of the City Council that the four (4) required conditions exist, or a finding that one (1) or more of the four (4) required conditions do not exist shall be based on sufficient and competent evidence presented to the City Council at the hearing at which the special use permit is requested.

(c) *Issuance, denial of permit.* When issuing or denying special use permits, the City Council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the City Council to issue such permits, and every such decision of the City Council shall be subject to review by the superior court by proceedings in the nature of a certiorari.

**Sec. 18-86. Denial.**

If the planning commission recommends denial of the special use permit request, and/or if the City

Council denies the permit, each body shall enter the reasons for its action in the minutes of the meeting at which the action is taken.

**Sec. 18-87. Appeal.**

No appeal may be taken to the board of adjustment from the City Council in granting or denying a special use permit. Any appeal from an action by the City Council on a special use permit shall be in accordance with G.S. 160A-381.

**Sec. 18-88. Permit voidance.**

(a) The City Manager shall ensure compliance with the plans approved by the City Council or with any other conditions imposed upon the special use permit. In the event of failure to comply, no building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed structures shall be regarded as nonconforming uses subject to the provisions of this chapter.

(b) A special use permit, issued by the City Council, shall become null and void if construction or occupancy of the proposed use as specified on the special use permit has not commenced within one (1) year of the date of issuance. An extension of time for a special use permit, not to exceed a period of six (6) months, may be granted by the planning commission upon review, provided application for such extension is submitted in writing prior to the original expiration date. Decisions of planning commission regarding special use permit extension requests may be appealed to the council by any person having a direct relationship to said action and aggrieved by such action in the manner prescribed in this chapter; provided, however, that such an appeal must be presented within ten (10) days from the date of decision by the planning commission.

(c) At any time after a special use permit has been issued, council may hold a public hearing to find if it should be terminated. Upon findings that the conditions of a special use permit are not being fulfilled, council shall revoke it and the use of the property allowed by such permit shall be discontinued immediately. If a special use permit is terminated for any reason, it may only be reinstated after a full review and approval in accordance with the provisions of this division.

**Sec. 18-89. Modifications to approved plan.**

(a) Major changes to approved plans and conditions of development may be authorized only by the City Council after review and recommendation by the planning commission in the same manner as outlined in this division for original submission. Major changes include, but are not limited to:

- (1) Change in use;
- (2) Increase in intensity of the development; such as, increase in density of units, whether residential, office, commercial or industrial; an increase in number of off-street parking or loading spaces; or, an increase in impervious surface area;
- (3) An increase in overall ground coverage by structures;

- (4) A change in any site dimension by more than ten (10) percent;
- (5) A reduction in approved open space or screening;
- (6) A reduction in size of public utilities;
- (7) A change in the soil erosion and sedimentation controls unless approved by the city engineer;
- (8) A change in access and internal circulation design.

(b) Minor changes, which are not deemed as major changes by the City Manager, may be authorized by the City Manager if required by engineering or other physical circumstances not foreseen at the time of approval.

**Secs. 18-90--18-94. Reserved.**

## **DIVISION V. HISTORIC PRESERVATION COMMISSION PROCEDURES**

### **Sec. 18-95. Certificate of appropriateness required.**

(a) From and after the designation of a landmark or a historic district no exterior portion of any building or other structure, (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features), aboveground utility structure or any type of on-premise sign shall be erected, altered, restored, moved or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission.

(b) For purposes of this division, exterior features include the architectural style, general design and general arrangement of the exterior of a building or other structure including the kind and texture of the building material, the size and scale of the buildings, and type and style of all windows, doors, light fixtures, signs, and other appurtenant features, historic signs, color, significant landscape, archeological and natural features of the area. In the case of signs (off-premises or on premises) exterior features means the style, material, size and location.

(c) The demolition of a structure within a historic district shall require a certificate of appropriateness for demolition. A certificate of appropriateness under the provisions of this division shall be required whether or not a building permit is required, but, in all instances where such a permit is required, the certificate of appropriateness shall be issued prior to the issuance of a building permit.

### **Sec. 18-96. Application requirements and procedures for certificate of appropriateness.**

Application for the certificate of appropriateness shall be made at least thirty (30) days prior to the next historic preservation commission meeting. Applications are subject to historic preservation commission staff review within fifteen (15) days of submission of the application for a certificate of

appropriateness. A staff review meeting with the applicant and fee is required for projects totaling eighteen thousand dollars (\$18,000.00) or more in construction costs.

- (a) *Application.* Property owners, developers or agents applying for a certificate of appropriateness shall be required to submit the following as applicable:
  - (1) Detailed description of project.
  - (2) Tax map.
  - (3) Site plan drawn to scale showing the location of existing and proposed structures and property lines of such structures, parking, driveways, and landscaping.
  - (4) Scaled drawings and elevations showing all exterior architectural detailing for the proposed project and streetscape.
  - (5) Building materials, product information sheets and color samples.
  - (6) Photographs.
  - (7) List of adjacent property owners and stamped addressed envelopes.
  - (8) Any other information specifically required to determine whether the proposed project meets the design guidelines.
  
- (b) *Staff review.* The purpose of this review shall be to acquaint the property owner, developer or agent with standards of appropriateness and design required for the proposed project and to establish a review and informal discussion with the historic preservation commission staff.
  
- (c) *Required procedures for the certificate of appropriateness.*
  - (1) *Application to secretary.* An application for a certificate of appropriateness shall be obtained from and filed with the secretary to the commission. Applications for certificates of appropriateness shall be considered by the historic preservation commission at its next regularly scheduled monthly meeting, provided they have been filed, complete in form and content, at least thirty (30) days before the regularly scheduled monthly meeting of the commission; otherwise consideration shall be deferred until the following monthly meeting.
  
  - (2) *Administrative bypass for the certificate of appropriateness; specified categories.* If the proposed change is in accordance with the Wilmington Design Guidelines, a certificate of appropriateness may be granted by the secretary of the commission (or designee) for the following work items:
    - a. Storm windows

- b. Storm doors
  - c. Fences (except corner lots)
  - d. Shutters or blinds
  - e. Handicapped facilities
  - f. Paint colors
  - g. Garage doors
  - h. Signs
  - i. Determination of "in kind" roofing materials
  - j. Awnings
  - k. Utilitarian garden sheds
  - l. Minor exterior alterations
  - m. Rear yard decks
  - n. Brick walkways, paths, driveways, and patios
  - o. Removal of asbestos siding and exposure of original material
  - p. Restoration of original features and/or materials based on photographic, physical or other historical evidence
  - q. Six (6) month extension of certificate of appropriateness with a written reason for request prior to expiration.
- (3) *Notification of affected property owners.* All property owners immediately adjacent to any and all points of property in question shall be notified. This notice, as provided by the commission staff, shall contain adequate information to notify adjacent property owners of the specific request of the applicant for a certificate of appropriateness, as well as the time, date and place of the meeting of the historic preservation commission. The notice required by this subsection shall be mailed to all affected adjacent property owners at least ten (10) calendar days prior to the public meeting. The applicant for a certificate of appropriateness shall be responsible for providing the necessary unsealed, stamped, addressed envelopes ready for mailing. Such envelopes shall bear the return address of the city. The applicant shall also supply a list of names and addresses of such affected property

owners with the application for a certificate of appropriateness.

- (4) *Action required.* The historic preservation commission shall take official action upon an application for a certificate of appropriateness no later than the third regular meeting following the first meeting for which the application appears on the commission agenda. As a part of the review process, the commission may review the premises and seek the advice of the division of archives and history or such expert advice as it may deem necessary under the circumstances.
- (5) *Issuance of certificate of appropriateness.* If the commission determines that the proposed construction, reconstruction, alteration, restoration, moving or demolition of a structure is appropriate, it shall approve and issue to the applicant a certificate of appropriateness. The commission may issue the certificate of appropriateness subject to reasonable conditions necessary to implement the purposes of Part 3C of Article 19 of Chapter 160A of the North Carolina General Statutes.
- (6) *Denial of certificate of appropriateness.* If the commission determines that a certificate of appropriateness should not be issued, it shall place in its records the reason for the denial and shall notify the applicant of such determination, furnishing him a copy of its reasons, and its recommendations, if any, as they appear in the records of the commission.
- (7) *Report to City Manager.* Upon the issuance or denial of a certificate of appropriateness, the historic preservation commission shall transmit a letter to the City Manager stating that a certificate of appropriateness has or has not been approved and issued to the property in question.
- (8) *Submission of new application.* If the historic preservation commission determines that a certificate of appropriateness should not be issued, a new application may be submitted on the proposed construction, reconstruction, alteration, restoration, or moving, only if substantive change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving.
- (9) *Appeals.* An appeal may be taken to the City of Wilmington's Board of Adjustment regarding the commission's action in granting or denying any certificate of appropriateness. Such appeals:
  - a. May be taken by any aggrieved party;
  - b. Shall be filed with the secretary to the board of adjustment no more than ten (10) days from the date of the commission's action; and
  - c. Shall be in the nature of certiorari.
- (10) *Time limits of certificate of appropriateness.* A certificate of appropriateness issued by the historic preservation commission shall become null and void if construction,

reconstruction, alteration, restoration, moving or demolition is not commenced within six (6) months of the date of issuance. An extension of time for the certificate of appropriateness, not to exceed six (6) months, may be granted by the secretary of the commission or his designee providing an application for such extension is submitted in writing prior to the expiration of the original certificate of appropriateness. The secretary shall inform the commission of any extension of time for a certificate of appropriateness. No extension of a certificate of appropriateness shall be denied by the secretary without formal action of the commission. Notwithstanding the secretary's authority under this section, the historic preservation commission is also empowered to grant an extension of a certificate of appropriateness, for any length of time deemed appropriate, provided an application for such extension is submitted in writing to the commission prior to the expiration of the original certificate of appropriateness or any extension thereof.

(Ord. No. O-2006-25, § 1, 3-7-06)

**Sec. 18-97. Design review process for certificate of appropriateness.**

Applications for a certificate of appropriateness shall be subject to review based upon the design guidelines then in effect. These guidelines are set forth in a manual prepared and adopted by the commission. The commission shall also utilize the secretary of interior's standards and other resources on architectural history and restoration as may be required.

**Sec. 18-98. Demolition.**

(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or of a building, structure or site within a historic district may not be denied. The effective date of the certificate of appropriateness may be delayed for a period of up to three hundred sixty-five (365) days from the date the application is approved by the historic preservation commission. The maximum period shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of delay.

(b) During the period of delay, the commission shall negotiate with the owner and any other parties involved in an effort to find a means of preserving the building or site. If the commission finds that the building or site within a historic district has no special significance or value toward maintaining the character of a historic district, it shall waive all or part of such period and authorize earlier demolition or removal.

(c) If the commission has voted to recommend designation of a property as a landmark or designation of an area as a historic district, and final designation has not been made by City Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to one hundred eighty (180) days or until City Council takes final action on the designation, whichever occurs first.

(d) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide

significance as defined in the criteria of the National Register of Historic Places may be denied unless the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(e) Demolition in national register historic district. No building or structure in the portion of the national register historic district located outside a locally designated historic district may be demolished or otherwise removed until the owner thereof shall have given the commission ninety (90) days written notice of the proposed action. The maximum notice period shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. In addition, if the commission staff finds that the building involved is "non-contributing" based on the National Register inventory for that district or if the building is listed as "contributing" in the inventory but the commission finds that it has no particular historic significance in maintaining the character of the National Register Historic District, all or part of such ninety (90) day period may be reduced and earlier demolition or removal may be authorized.

**Sec. 18-99. Demolition by neglect of buildings and structures within historic districts and landmarks within the city.**

The exterior features of any building or structure (including walls, fences, light fixtures, steps, pavement, paths or any other appurtenant feature) or any type of outdoor advertising sign either designated as an historic landmark within the city or found to have significance and located within a historic district or, within the CBD, Central Business District but outside of a locally-designated historic district or overlay, as set forth in the list maintained by the City Clerk, shall be preserved by the owner, or such other person who may have legal possession, custody, and control thereof, against decay and deterioration and kept free from structural defects which contribute to demolition by neglect. The owner or other person having such legal possession, custody, and control, shall upon written request by the city repair such exterior features if they are found to be deteriorating or if their condition is contributing to deterioration and demolition by neglect, including but not limited to, any of the following defects:

- (a) Deterioration of exterior walls, foundations or other vertical support that causes leaning, sagging, splitting, listing or buckling.
- (b) Deterioration of flooring or floor supports, roofs or other horizontal members that causes leaning, sagging, splitting, listing or buckling.
- (c) Deterioration of external chimneys that causes leaning, sagging, splitting, listing or buckling.
- (d) Deterioration or crumbling of exterior plasters or mortars.
- (e) Ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors.
- (f) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint or weathering due to lack of paint or other protective covering.

- (g) Rotting, holes and other forms of decay.
- (h) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings and architectural details that causes delimitation, instability, loss of shape and form or crumbling.
- (i) Heaving, subsidence or cracking of sidewalks, steps or pathways.
- (j) Deterioration of fences, gates and accessory structures.
- (k) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of a historic landmark.
- (l) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health or other property.

**Sec. 18-100. Review and inspection authority.**

The City Manager shall assure compliance with the standards set forth in section 18-99 herein. The commission staff shall assist the City Manager in carrying out the responsibilities under this article. The staff shall act as an expert advisory adjunct to the City Manager for matters related to significant buildings, and structures and historic landmarks.

**Sec. 18-101. Petition and action.**

The historic preservation commission or any other interested party may file a petition listing specific defects with the City Manager requesting that the City Manager act under the following procedures to require the correction of deterioration or making of repairs to any significant building or structure located within an historic district or any historic landmark within the city so that such building, structure or landmark shall be preserved and protected.

- (a) Whenever a petition is filed with the City Manager charging that a building, structure or landmark is undergoing demolition by neglect, the City Manager shall, if his preliminary investigation discloses a basis for such charges, within thirty (30) days issue and cause to be served upon the owner and/or such other person who may have legal possession, custody and control thereof, as the same may be determined by reasonable diligence, a complaint stating the charges in that respect and containing a notice that a hearing will be held before the hearing officer designated in section 16-226 of the City Code at a place within the city in which the property is located therein fixed not less than ten (10) nor more than thirty (30) days after the serving of such complaint; that the owner and/or parties in interest shall be given a right to answer and to give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the hearing officer. The purpose of the hearing is to receive evidence concerning the charge of deterioration and demolition by neglect and to consider any claim of undue economic hardship made by the owner and/or other parties in

interest.

- (b) If after such notice and hearing, the hearing officer determines that the building, structure or landmark is undergoing demolition by neglect because it is deteriorating or if its condition is contributing to deterioration, according to the standards of section 18-99, the hearing officer shall state in writing the findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or parties in interest therein an order to repair within the time specified those elements of the structure that are deteriorating, contributing to deterioration or deteriorated.

**Sec. 18-102. Safeguards from undue economic hardship.**

(a) When a claim of undue economic hardship is made owing to the effects of demolition by neglect, the burden of proof shall be upon the owner and/or parties in interest to provide evidence during the hearing upon the claim, describing the circumstances of hardship, which may include:

- (1) Nature of ownership (individual, business or nonprofit) or legal possession, custody, control, residency and a description of the building or structure.
- (2) Financial resources of the owner and/or parties in interest.
- (3) Cost of repairs.
- (4) Assessed value of the land and improvements.
- (5) Real estate taxes for the previous two (2) years.
- (6) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
- (7) Annual debt service, if any, for previous two (2) years.
- (8) Any listing of the property for sale or rent, price asked, and offers received, if any.

If the property is income-producing:

- (9) Annual gross income from the property for the previous two (2) years.
- (10) Itemized operating and maintenance expenses for the previous two (2) years, including proof that adequate and competent management procedures were followed.
- (11) Annual cash flow, if any, for the previous two (2) years.

The hearing officer may direct the code enforcement officer or preservation planner to

furnish additional information that the hearing officer believes is relevant.

(b) Following the hearing on the claim, the hearing officer shall cause to be made a finding of undue or no undue economic hardship and shall state in writing the findings of fact in support of such determination.

(c) In the event of a finding of undue economic hardship, the finding may be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the city, the county or other public, private or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations or extensions of time to mitigate the undue economic hardship. The order of the hearing officer for such property to be repaired with the time specified may include the provisions of the recommended plan.

**Sec. 18-103. Methods of service.**

(a) Complaints issued by the City Manager or orders issued by a hearing officer under this article shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence or if the owners are known but have refused to accept service by registered or certified mail and the officer shall make an affidavit to that effect, then the serving of such complaint or order upon such owners or other persons may be made by publishing the same at least once in a newspaper having general circulation in the city and no later than the time at which personal service would be required under section 18-101. When service is made by publication, a copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order.

(b) Failure on the part of any owner or party in interest to receive or have served upon him any complaint, notice or order herein provided for shall not affect or invalidate the proceedings with respect to any other owner or party in interest or any other person.

**Sec. 18-104. Right of appeal.**

An appeal from any decision or order of the hearing officer pursuant to sections 18-101 and section 18-102 may be taken by any person aggrieved thereby or by any officer, board or commission of the city to the board of adjustment. The procedures for such appeal shall be as set forth in Article 2, Division II of this chapter.

**Sec. 18-105. Other city powers.**

Nothing in this article addressing demolition by neglect shall be construed to impair or limit in any way the power of the city to define and declare minimum housing code and abandoned structure

ordinance violations and nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement by a remedy provided herein prevent the enforcement of other remedies provided herein or elsewhere in the City Code.

**Sec. 18-106. Preservation of historic features in the public rights-of-way.**

In order to prevent destroying or seriously damaging the historic, architectural, archeological or aesthetic values of the physical features lying within public rights-of-way, all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating any changes to the character of the streetscapes, paving and sidewalks.

**Sec. 18-107. Interior arrangement not considered.**

(a) The historic preservation commission shall not consider interior arrangement except as set forth below. The commission shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, or signs (off premises or on-premises) or other significant features in the historic districts which would be incongruous with the special character of the landmark or district.

(b) The historic preservation commission shall consider specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks when the owner consents to interior review. Such consent for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds for New Hanover County and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

**Sec. 18-108. Certain changes not prohibited.**

(a) Nothing in this division shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material, or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition.

(b) Nothing in this division shall be construed to prevent a property owner from making any use of his property not otherwise prohibited by law.

(c) Nothing in this division shall be construed to prevent the maintenance, or in the event of an emergency, the immediate restoration of any existing aboveground utility structures.

(d) Nothing in this division shall be construed to prevent the maintenance, repair, construction, reconstruction, alteration or restoration of any city-owned utilities, streets, sidewalks, landscaping, signs or other similar improvements located on public rights-of-way and property. Except in the event of an emergency, prior to undertaking any work that involves a change in design, material or appearance of any such features, the City Manager shall present the plans for such work to the commission for its advice and

comment. The historic preservation commission shall be allowed sixty (60) days to comment on proposals for major work in the public right-of-way and staff of the development management division shall be allowed seven (7) days to comment on proposals for minor work in the public right-of-way, when brick pavers or installation procedures other than those pre-approved by the historic preservation commission are used.

**Sec. 18-109. Buildings owned by state of North Carolina.**

(a) All of the provisions of this division, except subsection 18-96(c)(9) and section 18-97 shall apply to the construction, alteration, moving and demolition of buildings by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided, however, they shall not apply to interiors of buildings or structures owned by the State of North Carolina.

(b) The state and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency from any decision of the historic preservation commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the historic preservation commission.

(c) The secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings shall be the sole principles and guidelines used in reviewing applications of the state for certificates of appropriateness.

**Sec. 18-110. Reference to historic district.**

All references in this chapter to historic district(s) shall be deemed to refer to all historic districts and historic district-overlays that may be established by the City Council from time to time pursuant to the terms of this chapter.

**Sec. 18-111. Conflict with other laws; decisions of City Council.**

(a) Whenever the provisions of any other statute, charter provision, regulation or ordinance requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or historic district than are established under this division, such other statute, charter provision, ordinance or regulation shall govern.

(b) Whenever a request for a certificate of appropriateness relates to a site, building or project that is the subject of a request for a special use permit or rezoning, the decision of the City Council shall take precedence over the commission's decision on the issuance of such certificate to the extent of any conflict.

**Sec. 18-112. Remedies.**

When any building, structure, site, area or object designated a historic landmark or located within a historic district is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, without compliance with this division; the city, historic preservation commission or other party aggrieved by such action may institute any appropriate

action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, site, area or object. Such remedies are in addition to any others authorized by this chapter.

**Secs. 18-113--18-116. Reserved.**

## **DIVISION VI. ORDINANCE AMENDMENTS**

**Sec. 18-117. Authorization.**

(a) The City Council may from time to time, on its own motion or petition, after public notice and hearing as provided by law, amend, supplement or change, modify or repeal the boundaries or regulations herein or subsequently established. Any amendment for the reclassification of property to a conditional zoning district also shall be subject to Article 5, Division IV herein.

(b) The City Council may change the existing zoning classification of the area covered by a petition, or any part or parts thereof, to the classification requested or to a higher classification or classifications without the necessity of withdrawal or modification of the petition; provided, however, notices of hearings on such amendments shall inform the public that such action may be taken.

**Sec. 18-118. Petition for a change.**

The following action shall be taken by the applicant:

- (a) *Initiation of amendments.* Proposed amendments may be initiated by the City Council, planning commission, board of adjustment, or by one (1) or more interested parties.
- (b) *Application.* An application for any amendment shall contain a description of the proposed regulation or zoning district boundary to be applied. Such application shall be filed with the secretary of the planning commission no later than thirty (30) working days prior to the planning commission meeting at which the application is to be considered, except Land Development Code regulatory amendments, which shall follow (g) below.
- (c) *Letter of notification.* Whenever a petition for a change in zoning district boundary or an application for a special use permit is submitted, all property owners within a one hundred (100) foot wide buffer extending along the entire boundary of each discrete or separate area in question and all points of property in question shall be given notice of the public hearings on the proposed petition or application by first class mail or by published notice as set forth in G.S. 160A-384. A street right-of-way shall not be considered in computing the one hundred (100) foot buffer area as long as that street right-of-way is one hundred (100) feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the one hundred (100) foot buffer shall be measured from the property line of that parcel. The applicant shall submit the following material with either request or the application will be considered incomplete.
  - (1) A list of names of owners, their addresses and the tax parcel numbers of the

properties the one hundred (100) foot wide buffer, including the property owner(s) directly opposite the proposed request but separated by a street right-of-way.

- (2) An equal number of plain, letter size envelopes to the above list of names. The envelopes are to be unsealed, stamped, and addressed for mailing to the adjacent property owners, bearing also the return address of the City Manager.
- (d) *Mailing.* The City Manager shall mail a letter of notification in the supplied envelopes containing a description of the request, and the time, date and location of the next public hearing at least ten (10), but not more than twenty-five (25) calendar days prior to the public hearing. The City Manager shall certify to the planning commission or City Council that such notices have been mailed, and such certification shall be deemed conclusive in absence of fraud.
- (e) *Failure to receive; effect.* Failure of any addressee of such letter of notification to receive the same shall not in any way invalidate or affect subsequent action on the petition for rezoning or application for special use permit and such requirement shall not be construed as a legal precedent to the official approval.
- (f) *Exemption.* City agencies are exempt from subsection (b) above.
- (g) *Regulatory Amendments.* Requests to amend the regulations of the Land Development Code shall only be accepted biannually in accordance with the following schedule. Criteria for the submittal of such an amendment are set forth in this section.
  - (1) First Amendment Cycle:
    - a. A complete application adhering to the requirements of this section must be received by city staff by 1 pm on the first Monday in February.
    - b. A public hearing shall be conducted by the Planning Commission for eligible requests no earlier than the first Planning Commission meeting in May.
  - (2) Second Amendment Cycle:
    - a. A complete application adhering to the requirements of this section must be received by city staff by 1 pm on the first Monday in July.
    - b. A public hearing shall be conducted by the Planning Commission for eligible requests no earlier than the first Planning Commission meeting in October.
  - (3) A completed application, including justification of the proposed amendment, along with the application fee shall be submitted upon application.
  - (4) Upon determination by the City Manager, an application for a regulatory amendment may be presented to Planning Commission not in accordance with this

schedule. The applicant must provide evidence that adhering to this schedule would create a situation that is detrimental to the health, safety, and welfare of the city and its residents.

**Sec. 18-119. Action by planning commission.**

Planning commission consideration. The planning commission shall consider and make recommendations to the City Council concerning each proposed zoning amendment at a regularly scheduled meeting held and advertised in accordance with its rules of procedure then in effect. In lieu of separate consideration, the planning commission may review an amendment in a joint meeting with the City Council at a public hearing held in conformity with the requirements of section 18-120 of this division.

**Sec. 18-120. Action by City Council.**

(a) *Notice and public hearing.* No amendment shall be adopted by the City Council until after public notice and hearing. Notice of public hearing shall be in accordance with sections 18-8 and 18-120 herein. Public notice may also be posted on the property concerned indicating the proposed change and date of public hearing, but shall not constitute a legal requirement to the adoption.

(b) *Consideration.* Before taking such lawful action as it may deem advisable, the City Council shall consider the planning commission's recommendation on each proposed zoning amendment.

- (1) Petitions for amendments that receive a favorable recommendation from the planning commission, or petitions on which the planning commission fails to take any action within thirty (30) days after the planning commission's public meeting, shall be scheduled for public hearing before the City Council.
- (2) Petitions for amendments that receive an unfavorable recommendation from the planning commission may be appealed within ten (10) days of the date of such adverse decision to the City Council by filing with the city clerk a notice, in writing, stating therein the action of the planning commission and the amendment requested.

**Sec. 18-121. Protest petition.**

(a) In accordance with G.S. 160A-385, if a protest by written petition against a change authorized by this section, signed by the owners of twenty (20) percent or more of the area of the lots included in such proposed change, or five (5) percent of those adjacent thereto within one-hundred (100) feet, as specified in G.S. 160A-385, is presented as provided by law, such amendment shall not become effective except by favorable vote of three-fourths ( 3/4) of all members of the City Council. Such protest shall contain the signature and address of each protesting property owner, and the location of property owned by each protestor shall be shown on a map attached to the written petition.

(b) In accordance with G.S. 160A-386, all protest petitions must have been received by the city clerk in sufficient time to allow the city at least two (2) normal work days (excluding Saturdays, Sundays and legal holidays) before the date established for a public hearing before the City Council on

the proposed map change or amendment to determine the sufficiency and accuracy of the petition. For purposes of this chapter, two (2) days shall mean at least forty-eight (48) hours prior to the date of the hearing. The hours prior to the time of the hearing on the scheduled date of the hearing shall not be added to the requisite forty-eight (48) hours to determine if such protest petition has been filed on time. "Legal holidays" shall mean all those days set forth in G.S. section 103-4 and shall also include all approved state, county or city holidays since some of the required public records to determine the sufficiency of a petition may be unavailable for inspection due to office closings on these days. To be considered, a petition shall be complete in all respects at the time of filing and no additions, corrections, revisions or other amendments shall be allowed subsequent to the filing deadline. The filing deadline shall be the designated time at least forty-eight (48) hours prior to the properly advertised date of the first scheduled public hearing and any tabling, continuance, postponement or other delay does not extend the filing deadline.

**Sec. 18-122. Resubmission of a denied petition.**

Once a petition for a rezoning or conditional zoning district has been denied, no resubmission of a petition for the same request for rezoning or conditional zoning district may be filed within six (6) months of its previous denial.

**Sec. 18-123. Appeals.**

(a) A cause of action as to the validity of this chapter, or amendment thereto, shall be brought within two (2) months as provided by G.S. 160A-364.1.

(b) Any person aggrieved by any amendment to the zoning ordinance or decision of the City Council shall have standing for purposes of seeking further review by a court of competent jurisdiction. For purposes of this section, "person aggrieved" shall mean any person, firm, corporation or group of persons of common interest, including the city, its officials, agents and employees, and any city departments, boards or agencies, that are directly or indirectly affected substantially by an amendment or decision as set out herein.

(c) The applicant shall be entitled to argue on appeal only those objections or grounds asserted in the original hearing which are preserved in the notice of appeal. The reviewing authority shall not decide any matters that were not discussed or considered below it and which are not set forth in the written notice of appeal.

**Secs. 18-124--18-127. Reserved.**

**DIVISION VII. FUTURE LAND USE PLAN AMENDMENT PROCESS**

**Sec. 18-128. Future land use plan amendment process.**

(a) *Purpose:* Establish an amendment process for the Future Land Use Plan (FLUP) and special area plans as adopted set forth the long-range land use policies of the City of Wilmington.

(b) *Rezoning and other amendments to land use regulations are intended to be consistent*

with the FLUP and the special area plans. Given the importance of the plans and the basis for the decisions on the policies, it is appropriate that due consideration be given to amendments to the FLUP and the special area plans.

(c) *Amendments to the Future Land Use Plan and the special area plans text or maps shall only be allowed biannually in accordance with the following schedule.* Criteria for the submittal of such an amendment are set forth in this section.

- (1) Pre-conference with staff is required before submittal. The submittal requirements for this meeting are below:
  - a. An aerial photograph with the proposed site showing adjacent existing uses and adopted zonings.
  - b. An official Composite Future Land Use Map or the appropriate corridor plans showing the proposed site.
  - c. A generalized written description of the proposed development.
- (2) First amendment cycle:
  - a. A complete application adhering to the requirements of this section must be received by city staff by 5:00 pm on the first Monday in February.
  - b. A public hearing shall be conducted by the planning commission for eligible amendments no earlier than the first planning commission meeting in April.
- (3) Second amendment cycle:
  - a. A complete application adhering to the requirements of this section must be received by city staff by 5:00 pm on the first Monday in July.
  - b. A public hearing shall be conducted by the planning commission for eligible amendments no earlier than the first planning commission meeting in September.
- (4) Submittal requirements: The following information shall be submitted with the application to amend the Future Land Use Plan or any special area plan.
  - a. Complete application provided by the city.
  - b. General site survey showing both existing uses and zoning of the site and surrounding area.
  - c. An official Composite Future Land Use Map or the appropriate special area plan map showing the proposed site.

- d. Rationale for changing the future land use designation or the adopted special area plan should compare uses, site design, access and other characteristics, to the adopted Future Land Use Plan or the applicable special area plan showing compliance with said documents.
  - e. Aerial photograph showing property and surrounding area.
  - f. Description of proposed land use category and general development parameters.
- (5) Any parcel(s) totaling two (2) acres or less shall be exempt from the biannual submittal cycle. If an application is made for more than one (1) platted lot, the lots must be contiguous. Future Land Use Plan Map amendments for these parcels may be filed at any time during the year to be heard at the first applicable planning commission meeting. The cumulative total of small scale amendments impacting any infill, redevelopment, or transition area shall not exceed two (2) acres when submitted outside of the biannual cycle. Once a petition for a Future Land Use Plan Map amendment for such a parcel has been denied, no submission of a petition which includes any combination or recombination of such a parcel may be filed within six (6) months of its previous denial.
- (6) Zoning map amendments: A zoning map amendment to implement the proposed amendment to the Future Land Use Plan or an adopted special area plan may be considered at the same time as a plan amendment.
- (7) Before a public hearing may be held on a petition for an amendment to the Future Land Use Plan, the petitioner must file in the office of the City Clerk a written report of at least one community meeting held by the petitioner. The community meeting shall be held prior to the planning commission's consideration of the request. Written notice of such a meeting shall be given to the property owners and organizations entitled to notice as determined by policies approved by the City Council, including but not limited to owners of affected parcels and all property owners within a one hundred (100) foot wide buffer extending along the entire boundary of each discrete or separate area in question and all points of property in question. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is one hundred (100) feet wide or less. When less than an entire parcel of land is subject to the proposed Future Land Use Plan amendment, the 100-foot buffer shall be measured from the property line of that parcel. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the Future Land Use Plan amendment request made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the City Council but shall not be subject to judicial review.

**Secs. 18-129--18-132. Reserved.**

## **DIVISION VIII. SITE INVENTORY**

### **Sec. 18-133. Purpose.**

The requirements for a site inventory are intended to accomplish the following purposes:

- (a) To identify existing features prior to submittal of an application for any land-disturbing activity that requires a permit.
- (b) To facilitate review of the issuance of associated development permits.
- (c) To establish a collaborative framework to prevent unnecessary natural vegetation and habitat loss on development sites.
- (d) To enhance the built aesthetics and welfare of the community and maintain property values.
- (e) To maintain good water quality.

### **Sec. 18-134. Scope.**

A site inventory map must be submitted as part of the application and approved by the appropriate reviewing agency, for any land-disturbing activity which requires a permit. Prior to an application being considered complete for any land-disturbing activity which requires a permit on residential or non-residential properties on which site disturbance will exceed one (1) acre per year, a site inventory map must be approved for the area of disturbance and the surrounding one-hundred (100) feet on the same parcel. Site plans will not be reviewed without inclusion of a complete site inventory with the application. Presence of any features identified in the inventory shall be included on at least one (1) site plan map showing the layout of buildings and infrastructure. No permit(s) will be issued until the site inventory map is approved and signed.

### **Sec. 18-135. Exclusion.**

Provided that the requirements for all land-disturbing activities regulated by the state are satisfied, the following are exempt:

- (a) *Ditch cleaning.* Cleaning of ditches or re-ditching of existing ditches in accordance with Article 14, Division III: Stormwater Management.
- (b) *Disturbance size threshold.* Land-disturbing activity on a residentially zoned parcel or lot, provided the total disturbance shall not exceed one (1) acre per year.
- (c) *Minor land disturbance.* Land-disturbing activity incidental to preparing a site development plan including hand cutting of sight lines for surveying purposes, soil testing,

and other minor tasks necessary to conduct a site analysis.

- (d) *Agricultural, horticultural and forestland.* Activities on agricultural, horticultural and forestland as defined in G.S. 105-277.2.

### **Sec. 18-136. Site inventory map.**

The contents of the site inventory map shall include the following and the source of information and assumptions. All boundaries, location and identification of required inventory items may be approximate to the extent that best readily available data is applied and do not require the services of a surveyor, architect, landscape architect, engineer or other professional, unless required by other provisions within this chapter. (The City Manager will provide a list of reference material to assist the applicant).

- (a) *General information.* Include the preparer, applicant name, site address of the development, property owner, developer, and a legible scale map of the same scale and size as the site plan.
- (b) *Property boundary.* Indicate minimum tax parcel information or boundary survey, or deed composite. Indicate the city zoning.
- (c) *Adjacent property.* Indicate adjacent property. Indicate the city and/or county adjacent zoning.
- (d) *Vicinity.* Provide a vicinity map in relation to the site.
- (e) *Topography and drainage.* Indicate a two (2) foot topography minimum interval from city or other data sources with date of data. Indicate approximate one-hundred (100) year flood plain boundary, and the location of ditches, creeks, and streams and their classification (i.e. intermittent, perennial, C (SW), ORW, etc.). Indicate areas with a history of flooding and areas of naturally concentrated surface drainage.
- (f) *Soil.* Indicate the type of soils as referenced in the most recent book of Soil Survey of New Hanover County, North Carolina by the US Department of Agriculture and Natural Resource Conservation Service. If more than one (1) soil type is present, delineate the boundaries of each soil type on the site plan as provided in the above referenced soil survey.
- (g) *NC Coastal Area Management Act information.*
  - (1) CAMA areas of environmental concern (AEC) and associated set backs.
  - (2) CAMA land classification from the Wilmington--New Hanover CAMA Plan. If more than one (1) land classification exists on the site, the boundaries must be delineated on the site inventory map.
- (h) *Conservation Resource Regulations.* Indicate the presence or non-presence of conservation

resources and setbacks. If present, delineate the resources and the appropriate setback and note associated vegetated buffer controls.

(i) Historic and archaeological site(s).

- (1) Indicate whether or not the site has local, state, or federally recognized historic structure(s) or archeological resources. If present, indicate their location on the site inventory map.
- (2) If a proposed development site contains historic structure(s) or archeological resources, provisions of either (a) or (b), listed below, shall be met.
  - a. Grant access rights for investigating the site and acquisition rights to artifacts to the City Manager for a period of at least sixty (60) days between issuance of the building permit and any development of the property that would impact the site; or
  - b. Provide a thorough site investigation by a professional historian or archaeologist, as appropriate, who shall prepare a written report with the following information:
    - i. Description of site;
    - ii. Relevant historical documentation/background research;
    - iii. Research design;
    - iv. Field studies as actually implemented including any deviation from the design and the reason for the deviation;
    - v. All field observations;
    - vi. Analyses and results;
    - vii. Information on the location of original data in the form of field notes, photographs, and other materials;
    - viii. Proof that adequate collection of artifacts with sufficient records are available to ensure that preservation and accessibility for further study will be provided;
    - ix. Recommendation for further study and preservation of the site, given anticipated development; and
    - x. Evaluation of the potential of the site for inclusion in the National Register of Historic Places. If the site is evaluated

to have historical or archaeological significance and is eligible for the National Register, every reasonable effort shall be made in the development to preserve it.

- (j) *Cemetery*. Indicate cemeteries, burial sites, or burial grounds.
- (k) *Forested area(s)*. Delineate aerial extent of forested areas, and their approximate location, in square feet or acres and note habitat and dominant species within stands.
- (l) *Wetlands*. Delineate the approximate location of U.S. Army Corps of Engineers Section 404 wetlands and Section 10 waters certified by the Corp of Engineers as well as non-jurisdictional wetlands that may be regulated by the NC Department of Environment and Natural Resources or under the City Conservation Overlay District regulations. If no wetlands are on the site, the method of making this determination shall be documented
- (m) *Endangered species or habitat*. Indicate information from the U.S. Fish and Wildlife Service and N.C. natural heritage inventory.
- (n) *Automobile, bicycle, pedestrian, or transit facilities*. Indicate the presence or non-presence of existing or proposed thoroughfares, bike routes, pedestrian sidewalks or trails, and transit facilities.

**Sec. 18-137. Review.**

- (a) The final site inventory map shall be submitted to the technical review committee for approval.
- (b) Within fifteen (15) working days, the technical review committee shall review the final site inventory map for compliance with the requirements of this division.
- (c) Approval shall be indicated in writing on the original map which will constitute a notice to proceed.
- (d) If the site inventory map is not approved, the reasons shall be stated in writing with reference to specific sections of this division of this chapter.

**Sec. 18-138. Enforcement.**

- (a) *Inspections*. The City Manager and representatives of the city may enter at reasonable times upon any property, public or private, for the purpose of investigating and verifying information provided on the site inventory map.
- (b) *Expiration*. If applicable permit(s) for the development of the site have not been issued within five (5) years of the signed approval of the site inventory map, then the site inventory map shall expire.

