

**SECTION 12.1 PURPOSE AND INTENT**

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

It is also the intent of this Section to ensure that land, parcels, and lots are appropriately subdivided so that their use and development complies with all applicable requirements of this Ordinance. It is also the intent to ensure that compliance is in a manner generally harmonious with surrounding properties and without the endangerment of the health, safety, and general welfare of existing, prospective, or future owners, users, surrounding and adjoining properties, and the public. This Section provides for adequate and efficient provision of facilities and/or infrastructure, and the dedication of land, rights-of-way, and easements, so as not to burden the fiscal resources of the Town. These provisions include the construction of buildings and utilities, streets and sidewalks, landscaping, recreational open spaces, and other provisions required for the public good of the Town of Cornelius.

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

**SECTION 12.2 APPLICABILITY**

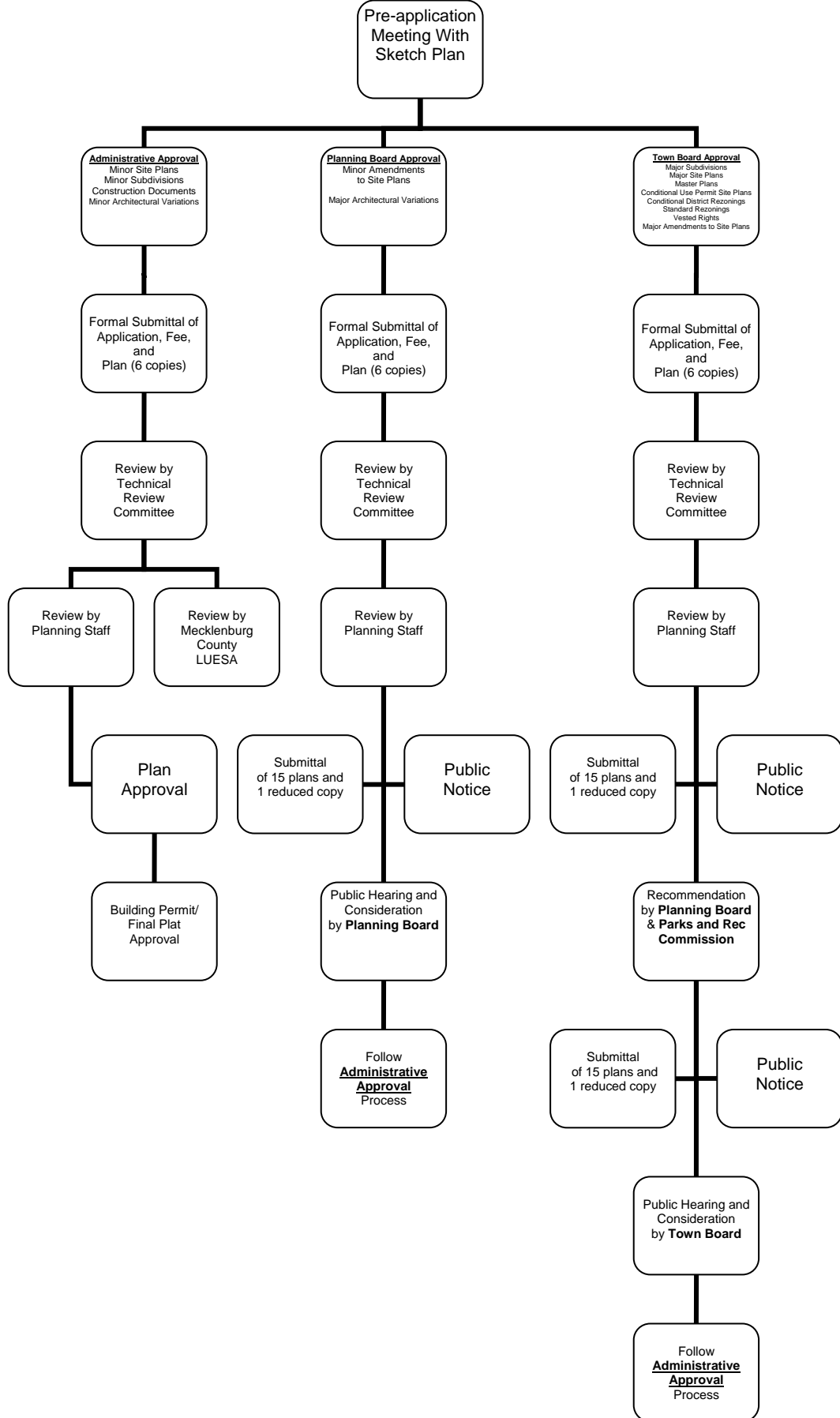
The Provisions of this Chapter shall be applicable to all Minor and Major Subdivisions, Minor and Major Site Plans, Conditional-Use Site Plans, Vested Rights Applications, and Master Plans. In general, this review process shall be used for all uses and development other than individual single or two family detached homes (as permitted) and their accessory structures on a single lot. The Zoning Administrator or designee may waive the required Development Review Process only in the following cases when he determines that the submission of a development plan in accordance with this Chapter would serve no useful purpose:

- a) Accessory Structures or
- b) Any enlargement of a principal building by less than twenty percent (20%) of its existing size provided such enlargement will not result in site or landscaping improvements; or
- c) A change in principal use where such change would not result in a change in lot coverage, off-street parking access or other external site characteristics, except where a Conditional Use Permit has been issued.

For the purposes of this Chapter, Major Site Plans are considered for any multi-family, mixed-use, or commercial development within the Rural Preservation (RP), General Residential (GR), Neighborhood Residential (NR), Traditional Neighborhood (TN), Industrial Campus (IC), and Business Campus (BC) Districts and any non-residential buildings over 30,000 square feet in gross floor area. The concurrent submission of a Major Site Plan and a Major Subdivision Plan shall be considered a Master Plan and be processed accordingly. All subdivisions, other than for single family and two family detached homes, shall be submitted as Master Plans.

# Chapter 12 Development Review Process

## SECTION 12.3 DEVELOPMENT REVIEW PROCESS





Once the Zoning Administrator or designee deems the Plans or Construction Documents to be complete and in compliance with all provisions of this Ordinance, it may be approved. Following approval of a Minor Site Plan and its associated Construction Documents, a Zoning Permit may be issued. Approval of Construction Documents for a Minor Subdivision constitutes approval of the Preliminary Plat. Final Plats for Minor Subdivisions will also be reviewed by the Planning Department and approved administratively.

**SECTION 12.6 PROCEDURES FOR PLANNING BOARD APPROVAL**

All Minor Amendments to Town Board approved Plans and Major Architectural Variations shall be approved by the Planning Board after having held a Public Hearing.

**12.6.1 Application and Planning Department Review:**

A Plan of the proposed site plan amendment or architectural variation shall be submitted and shall be accompanied by a completed application and payment of a fee as adopted by the Town Board of Commissioners. The Planning Director or his designee will present the Plan to the Technical Review Committee and may require the Plan to be circulated to the relevant governmental agencies and officials may include, but need not be limited to those listed in Section 12.5. The requirements of the submission are listed in Section 13.5.

**12.6.2 Public Hearing by the Planning Board:**

The Planning Board shall conduct a public hearing. Notice of the public hearing shall be given as follows:

- A. A notice shall be published in a newspaper having general circulation in the town not less than ten (10) days or more than twenty-five (25) days prior to the date established for the Public Hearing.
- B. A notice of the public hearing shall also be sent by first class mail by the Zoning Administrator or designee to the affected property and to all contiguous property owners. This notice may be contained in the notice requirements of 12.6.2 regarding notification of Planning Board consideration.

**12.6.3 Consideration by the Planning Board:**

After the public hearing, the Planning Board shall have up to sixty (60) days from the date of their first regularly scheduled meeting of consideration to defer, approve, approve with conditions, or deny the Plan. Alternatively, the Planning Board may suspend the review period and request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the Development Plan or deferral of its consideration. If the Application is denied, the reasons for denial shall be provided to the applicant in writing.

Following denial by the Planning Board, the Applicant may file a new Application and associated fee. Unless the Planning Board explicitly states conditions that must be met prior to the resubmission of an Application, the Applicant shall not submit a new Application for the same property within one (1) year of the date of denial by the Planning Board unless the Application is significantly different from the previously denied Application. All Applications shall be resubmitted for full review beginning with Section 12.6.1 unless the Application is resubmitted to address conditions set forth by the Planning Board for re-application.

Approval of a Plan shall constitute final Planning Board approval except for any required approval of Construction Documents.

**SECTION 12.7 PROCEDURES FOR TOWN BOARD APPROVAL**

All Major Site Plans, Major Subdivisions, and Master Plans shall be approved by the Town Board of Commissioners after having held a Public Hearing and upon review and recommendation by the Planning Board and, if applicable, the Parks and Recreation Commission.

**12.7.1 Application and Planning Department Review:**

A Plan of the proposed development shall be submitted and shall be accompanied by a completed application and payment of a fee as adopted by the Town Board of Commissioners. The Planning Director or his designee will present the Plan to the Technical Review Committee and may require that the Plan be circulated to the relevant governmental agencies and officials for comments and recommendations. The reviewing agencies and officials may include, but need not be limited to those listed in Section 12.5. The requirements for submission are listed in Section 13.5.

**12.7.2 Review by the Planning Board and Parks and Recreation Commission:**

Once the Planning Department has received a complete application and has had adequate time to review and make comments, they shall schedule the Application for review by the Planning Board and the Parks and Recreation Commission (if applicable) at their next regularly scheduled meetings. Notice of review and consideration by the Planning Board shall be given as follows:

- A. A notice shall be published in a newspaper having general circulation in the town not less than ten (10) days nor more than twenty-five (25) days prior to the date established for Planning Board consideration.
- B. A notice of consideration by the Planning Board shall also be sent by first class mail by the Zoning Administrator or designee to the affected property and to all contiguous property owners. This notice may also contain notice of the Public Hearing required under 12.6.3.

The Planning Board and the Parks and Recreation Commission shall have up to sixty (60) days from the date of their first regularly scheduled meeting of consideration to recommend deferral, approval, approval with conditions, or denial of the Schematic Design to the Town Board of Commissioners. Alternately, the Planning Board may suspend the review period and request additional information of the applicant in order to aid in the review of the Development Plan or deferral of its consideration.

If no recommendation is made within the sixty (60) day period, the Application shall move forward to the Town Board without recommendation.

**12.7.3 Public Hearing by the Town Board of Commissioners:**

Upon receipt of recommendations from the Planning Board and Parks and Recreation Commission, the Town Board of Commissioners shall conduct a public hearing. Notice of the public hearing shall be given as follows:

- A. A notice shall be published in a newspaper having general circulation in the town not less than ten (10) days or more than twenty-five (25) days prior to the date established for the Public Hearing.
- B. A notice of the public hearing shall also be sent by first class mail by the Zoning Administrator or designee to the affected property and to all contiguous property owners. This notice may be contained in the notice requirements of 12.6.2 regarding notification of Planning Board consideration.

**12.7.4 Consideration by the Town Board of Commissioners:**

After the public hearing, the Town Board shall have up to sixty (60) days from the date of their first regularly scheduled meeting of consideration to defer, refer back to the Planning Board, approve, approve with conditions, or deny the Development Plan. Alternatively, the Town Board may suspend the review period and request additional information of the applicant, other governmental agencies, or interested/affected parties in order to aid in the review of the Development Plan or deferral of its consideration. If the Application is denied, the reasons for denial shall be provided to the applicant in writing.

Following denial by the Town Board, the Applicant may file a new Application and associated fee. Unless the Town Board explicitly states conditions that must be met prior to the resubmission of an Application, the Applicant shall not submit a new Application for the same property within one (1) year of the date of denial by the Town Board unless the Application is significantly different from the previously denied Application. All Applications shall be resubmitted for full review beginning with Section 12.6.1 unless the Application is resubmitted to address conditions set forth by the Town Board for re-application.

Approval of a Plan shall constitute final Town Board approval for all phases of the development except for any required approval of Construction Documents.

A Major Amendment to any Major Site Plan, Major Subdivision, or Master Development Plan shall follow the Town Board approval process. A Minor Amendment shall follow the Planning Board approval process.

**12.7.5 Review and Approval of Construction Documents:**

Following approval of the Development Plan by the Planning Board or Board of Commissioners, the applicant may submit Construction Documents in accordance with Section 13.6 Construction Documents. The Planning Department and other agencies as necessary shall review the Construction Documents for conformance with the approved Plan.

If the Application is denied, the reasons for denial shall be provided to the applicant in writing. Following denial, the Applicant may file a new Application and associated fee and follow the procedures as prescribed in this subsection.

Approval of the Construction Documents shall constitute Preliminary Plat approval for Major Subdivisions and Zoning Permit Approval for Major Site Plans and Master Development Plans.

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

Final Plats shall be prepared in accordance with Section 13.8 and shall be approved administratively by the Planning Department.

**12.7.6 Effect of Approval of the Preliminary Plat:**

Only after receiving Preliminary Plat approval for a Major Subdivision as prescribed by this Chapter and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction on the development.

Approved Preliminary Plats are valid for 1 year from the date of approval by the Town of Cornelius. Reasonable and necessary extensions may be granted at the Board's sole discretion if a written request by the developer is made to the Town Board forty-five (45) days prior to the 1-year anniversary of preliminary plat approval. Upon expiration of approval prior to final plat approval and recordation, a new application for subdivision will be required in accordance with the process before development can recommence.

Approval of Construction Documents and a Preliminary Plat constituting an individual phase of a multi-phase project, which has not been entirely approved, does not constitute approval by the Town of any remaining phases. For approved preliminary plats consisting of multiple phases, only the phase that is to be developed for sale immediately shall be submitted for final plat approval.

Any substantial changes proposed to an approved preliminary plat shall be reviewed by the Planning Board and approved or denied by the Town Board of Commissioners as amended Construction Documents.

All required infrastructure improvements for the preliminary plat shall be in place within 1 year of preliminary plat approval. If circumstances beyond the control of the developer do not allow for the completion of the required work within the 1 year period or the size of the phase is such that 1 year is insufficient time to complete all required work, then the developer may file a written request for an extension with Town Board no later than forty-five (45) days prior to the 1 year anniversary of preliminary plat approval by the Town as provided above. If infrastructure work is not completed within 1 year and/or no extension request is filed with Town Board and approved, preliminary plat approval becomes null and void on the day of the 1-year anniversary and a new application will be required.

**12.7.7 Review and Approval of Final Plat:**

The developer shall initiate the final subdivision plat approval process by submitting the Final Plat and copies of any required improvement guarantees to the Planning Department. The Zoning Administrator or designee will then have thirty (30) business days to approve or deny the Final Plat. During the review period, the Zoning Administrator or designee will confirm the accuracy of the Final Plat. If substantial errors are found, including inconsistencies with the approved Preliminary Plat, the Final Plat shall not be approved and the review period suspended until the applicant has corrected such errors. A list of the needed corrections shall be provided to the applicant. Once complete, the Final Plat shall be approved or denied by the Zoning Administrator or designee within thirty (30) business days of the date of final completed submission.

The Final Plat shall constitute all portions of a phase the approved Preliminary Plat. No Final Plat shall be approved unless and until the subdivider has installed in that area all

improvements required by this ordinance or has posted any required improvement guarantees as prescribed by this Ordinance in Section 12.10.

Any conditions placed by the Town on the approval of the Final Plat shall be addressed by the subdivider within forty-five (45) days. Failure of the subdivider to meet the forty-five (45)-day response period shall cause the conditional approval of the Town to be null and void.

Approved Final Plats must be filed by the applicant for recording with the Register of Deeds of Mecklenburg County within thirty (30) days of the date of approval by the Zoning Administrator or designee; otherwise, such approval shall be null and void. After recordation, the subdivider shall provide twenty (20) copies of the registered plat to the Town for distribution to the various state and local government agencies and public utilities along with one (1) certified mylar copy for permanent file in the Planning Department.

**12.7.8 Revisions to Final Plats:**

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

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

**12.7.9 Penalties for Transferring Lots in Unapproved Subdivisions:**

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

**12.8 PROCEDURES FOR APPROVAL OF MAJOR SUBDIVISIONS:**

**12.8.1 General Procedures:**

All Major Subdivisions shall be processed in accordance with the Town Board approval process. The consideration of the Major Subdivision shall be conducted as a quasi-judicial

proceeding. During the public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against the Major Subdivision application shall be presented and competent evidence will be considered towards formulating the Findings-of-Fact prescribed in this section.

**12.8.2 Approval Requirements:**

The evaluation and approval of the Major Subdivision shall be based upon competent sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact:

- A. The proposed subdivision is reasonably consistent with the intent, function, and requirements of applicable provisions of the Land Development Code; and,
- B. The proposed subdivision if developed according to the plat submitted and approved will be visually and functionally compatible to the surrounding area. See *Chapter 4* for additional specifications regarding *Spatial Definition* and *Architectural Compatibility*; and,
- C. The proposed subdivision does not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed; and,
- D. Adequate provisions and design have been made or will be made to ensure automotive and pedestrian safety and convenience, street connectivity, traffic flow and control, emergency vehicle access, and adequate ingress and egress; and,
- E. The proposed subdivision will not adversely impair or substantially overburden the public facilities and infrastructure within the Town and adequate provisions have been or will be made to reasonably address such impacts.

In approving an application for a Major Subdivision, the Town Board may attach fair and reasonable conditions which support the findings of fact as listed above. The applicant shall be given reasonable opportunity to consider and respond to any additional requirements contained in conditions prior to approval or denial by the Town Board. Conditions not agreed to cannot be considered by the Town Board in approval or denial of the plat. The Town Board may not require the landowner to waive a vested right as a condition of Major Subdivision approval.

The burden of proof and production of evidence to support these findings (and to overcome any challenges that approval of the plan would be contrary to one or more of these findings) shall rest entirely with the applicant.

**SECTION 12.9 PROCEDURES FOR APPROVAL OF CONDITIONAL USE PERMITS**

**12.9.1 General Procedures:**

All Conditional Use Permits shall be processed in accordance with the Town Board approval process. The consideration of the Conditional Use Permits shall be conducted as a quasi-judicial process. During the public hearing, all parties presenting testimony and evidence shall be duly sworn. Testimony both in favor and against the Conditional Use Permits application shall be presented and will be considered towards formulating the Findings-of-Fact prescribed in this section.

**12.9.2 Approval Requirements:**

The evaluation and approval of the Conditional Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following Findings of Fact:

- A. The proposed Conditional Use Permit is reasonably consistent with the intent, function, and requirements of applicable provisions of the Land Development Code; and,
- B. The proposed Conditional Use Permit if developed according to the plat submitted and approved will be visually and functionally compatible to the surrounding area. See *Chapter 4* for additional specifications regarding *Spatial Definition* and *Architectural Compatibility*; and,
- C. The proposed Conditional Use Permit does not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed; and,
- D. Adequate provisions and design have been made or will be made to ensure automotive and pedestrian safety and convenience, street connectivity, traffic flow and control, emergency vehicle access, and adequate ingress and egress; and,
- E. The proposed Conditional Use Permit will not adversely impair or substantially overburden the public facilities and infrastructure within the Town and adequate provisions have been or will be made to reasonably address such impacts.
- F. \*The proposed Conditional Use Permit for multifamily residences meets the purposes and intent for such development in Section 5.4.1 of the Land Development Code. *\*(only applies to multi-family in the NMX District outside the TDO)*

In approving an application for a Conditional Use Permit, the Town Board may attach fair and reasonable conditions which support the five finding of facts as listed above. The applicant shall be given reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Board. The Town Board may not require the landowner to waive a vested right as a condition of Conditional Use Plan approval.

The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the plan would be contrary to one or more of these findings) shall rest entirely with the applicant or landowner.

**12.9.3 Expiration of Conditional Use Permits:**

A valid building permit shall have been issued for any activity authorized by a *Conditional Use Permit* within twenty-four (24) months after the date of approval of the Conditional Use Permit. If a valid building permit has not been issued during this time period, the Town Board may consider revoking the *Conditional Use Permit*. Such revocation by the Town Board may only occur after a public hearing has been conducted by the Town Board. Notification shall take place as specified in Section 12.6.3 of this Ordinance.

An owner of property that is subject to the *Conditional Use Permit* may request to remove the CUP and all approved uses associated if a valid building permit has not been issued. Such revocation by the Town Board may only occur after a public hearing has been conducted by the Town Board. Notification shall take place as specified in Section 12.6.3 of this Ordinance.

**12.9.4 Amendments to Conditional Use Permits:**

Major Amendments to Conditional Use Permits shall follow the Town Board Approval Process. Minor Amendments to Conditional Use Permits shall follow the Planning Board Approval Process.

**SECTION 12.10 VESTED RIGHTS REQUIREMENTS**

**12.10.1 General Procedures:**

Pursuant to G.S.160A-385.1 and notwithstanding any other provision or amendment thereto, a landowner may apply for approval of a site-specific development plan as defined in the statute that shall entitle said landowner to develop property in accordance with said plan.

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

**12.10.2 Town Board Action:**

The Town Board shall determine whether or not to accord a vested right after the review and consideration of the Planning Department and Planning Board in accordance with the procedures listed in 12.6. The Town Board may not require the landowner to waive his vested right as a condition of development approval. The Town Board may approve the vested rights for a period greater than two (2) years, provided the total period does not exceed five (5) years from the date of plan approval of the site.

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

**12.10.3 Effect of Approval of Vesting:**

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

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

A vested right, once established as herein provided, shall preclude any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development plan except under the following conditions where such rights are terminated and revoked:

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

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

The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the Town from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.

**12.10.4 Construction Document Process for Vested Site-Specific Plans:**

Preliminary Plats for Minor Subdivisions with previously vested site-specific plans shall be reviewed for compliance and consistency and subsequently approved by the Zoning Administrator or designee in accordance with the provisions of Section 12.5 of this Ordinance, providing the proposed Preliminary Plat for the Minor Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

Preliminary plats for Major Subdivision with previously vested site-specific plans shall be reviewed for compliance and consistency by the Zoning Administrator or designee and subsequently approved by the Town Board of Commissioners in accordance with the provisions of Section 12.6.4 of this Ordinance, providing the proposed Preliminary Plat for Major Subdivision does not deviate from, and is subdivided in accordance with the previously approved site specific plan.

**12.10.5 Revocation or Expiration of a Vested Right:**

The vested right, resulting from the approval of a site-specific development plan, may be revoked by the Town Board as provided for in Section 12.8.3. In addition, a revocation may occur if the Town Board determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Land Development Code. The vested right shall otherwise expire at the end of the approval period established by the Town Board.

A building permit issued by the Mecklenburg County Building Inspector pursuant to G.S. 160A-417 may not expire or be revoked because of the running of time on a piece of property while a plan has been approved and the vested right period has not otherwise expired.

<b>SECTION 12.11 IMPROVEMENT GUARANTEES</b>
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In lieu of meeting the requirement for the completion, installation and dedication of any and all improvements (e.g., water, sewer, street lights, etc.) prior to final plat approval for subdivisions or Certificate of Occupancy for Site Plans, the Town of Cornelius or its authorized agent may enter into a written agreement with the developer whereby the developer shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the final plat or Certificate of Occupancy may be approved by the Zoning Administrator or designee or authorized agent, if all other requirements of this ordinance are met. To secure this agreement, the developer shall provide either one, or a combination of the following guarantees equal to 1.50 times the entire cost of the improvements secured, except as identified within the Maintenance Guarantee subsection.

**12.11.1 Surety Performance Bond(s):**

The developer shall obtain a performance bond(s) from a surety bonding company authorized to do business in North Carolina, and approved by the Town Board. The bond shall be payable to the Town of Cornelius (or its authorized agent) and shall be in an amount equal to 1.50 times the entire cost, as estimated by the developer and verified by the County, of installing all required improvements. The duration of the bond(s) shall be until such time as the improvements are accepted by the Town. Any expenses associated with the cost verification by the Town shall be paid entirely by the developer.

**12.11.2 Cash or Equivalent Security:**

The developer or developer shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the Town (or its authorized agent) or in escrow with a financial institution designated as an official depository of the Town. The amount of deposit shall be equal to 1.50 times the entire cost, as estimated by the developer, and verified by the County, of installing all required improvements.

If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the Town of Cornelius (or its authorized agent) an agreement between the financial institution and himself guaranteeing the following:

- A. That said escrow amount will be held in trust until released by the Town of Cornelius and may not be used or pledged by the developer in any other transaction during the term of the escrow; and
- B. That in case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification of the Town to the financial

institution of an estimate of the amount needed to complete the improvements, immediately pay to the Town the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.

**12.11.3 Maintenance Guarantee:**

All improvements required by this ordinance shall be guaranteed against defects in workmanship and materials by the developer for a period of one year from the date of the filing of the final plat or the date of the completion of the improvement, whichever is later. The developer shall file with the Town Manager a maintenance bond with adequate sureties in an amount determined by the Town Manager or Consulting Engineer to be sufficient to assure proper maintenance and repair of such improvements for the one-year warranty period

**12.11.4 Default:**

Upon default, meaning failure on the part of the developer to complete the required improvements in the time required by this ordinance or as spelled out in the performance bond or escrow agreement, then the surety, or financial institution holding the escrow account, shall, if requested by the Town, pay all or any portion of the bond or escrow fund to the Town of Cornelius up to the amount needed to complete the improvements based on an estimate by the Town. Upon payment, the Town, in its discretion, may expend such portion of said funds, as it deems necessary to complete all or any portion of the required improvements. The Town shall return to the developer any funds not spent in completing the improvements.

**12.11.5 Release of Guarantee Security:**

The Town may release a portion of any security posted as the improvements are completed and recommended for approval by the Town Manager. Within 30 days after receiving the Town Manager's recommendation, the Town of Cornelius shall approve or disapprove said improvements. When the Town of Cornelius approves said improvements, it shall immediately release the portion of the security posted which covers the cost of the improvements approved by the Town Board.