



DATE: June 18, 2019

CASE: TA-03-19 –Corrective Text Amendment to Clarify Permitting Procedures in Articles 1 and 6

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SUMMARY

In the process of conducting research on a Code Enforcement issue, the Legal Department has discovered that the sections of the Concord Development Ordinance (CDO) that deal with permit revocation contain incorrect cross-references and are procedurally vague. These items are contained in both Articles 1 and 6. The staff is proposing a minor corrective text amendment to address these items.

In Article 1, the change corrects the cross-references and clarifies that the original issuing party (either the Administrator or commission/board) is the responsible party for revoking a permit or plan approval. The change in Article 6 also corrects a cross-reference error and adds language to state that the Board of Adjustment may modify a decision upon finding of an ordinance violation, or an imposed condition.

Upon approval of the amendment, it can be forwarded to Council for consideration in July.

- B. Revoke Permits.** Any Development Permit or other form of authorization required under this Ordinance may be revoked for any reason set forth in § 1.5.2 and in NCGS § 160A-422. Permit revocation shall be the responsibility of the issuing party or commission/board. The revocation hearing (if required) shall be conducted in accordance with Sections 6.2 and 6.3 of this Ordinance.
- C. Stop Work.** With or without revoking permits, the Administrator or Code Enforcement Officers may stop work on any land or structure on any land on which there is an uncorrected violation of a provision of this Ordinance or of a permit or other form of authorization issued hereunder, in accordance with the power to stop work pursuant to NCGS § 160A-421. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed.
- D. Revoke Plan or Other Approval.** Where a violation of this Ordinance involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Administrator may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected), revoke the plan approval pursuant to G.S. 160A-422. If the plan was issued or approved at a public hearing, the Administrator shall schedule the hearing for revocation for the next available public hearing of the appropriate commission/board. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- E. Injunction and Abatement.** This CDO may be enforced by any means or any remedy provided for in NCGS § 160A-175 and 160A-389. An action for injunction of any illegal subdivision, transfer, conveyance, or sale of land may be prosecuted by the Administrator or his designee pursuant to NCGS § 160A-375.
- F. Other Remedies.** The Administrator, City Council, Planning and Zoning Commission and the Board of Adjustment shall have such other remedies as are, and as may be from time to time, provided by North Carolina law for the violation of zoning, subdivision, sign or related Ordinance provisions.

6.2 SPECIAL USE PERMITS

6.2.1. APPLICABILITY.

- A. Special uses are generally compatible with the land uses permitted by right in a zoning district, but require individual review as to their location, design, and configuration. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.
- B. Only those uses that are enumerated as special uses in a zoning district, as set forth in the Table of Permitted Uses of this Ordinance, shall be authorized by the Planning and Zoning Commission (Commission).

6.2.2. APPROVAL PROCEDURE.

- A. No Special Use Permit shall be authorized, developed, or otherwise carried out until the applicant has approval of the Special Use from the Planning and Zoning Commission and approval of a site plan per § 5.4 or alternate plan by the Administrator and/or Commission, as applicable.
- B. Applications for Special Use Permit approvals shall be filed with the Administrator. A pre application meeting prior to filing is strongly encouraged.
- C. Site plan applications (see Article 5.4) or Plot Plans (see § 6.1.4. B.) shall be filed concurrently with Special Use Permit applications. The Planning and Zoning Commission shall consider both the site plan and special use permit at the same meeting.
- D. The Planning and Zoning Commission shall conduct a quasi-judicial public hearing following the requirements of section 6.3 below, and shall do one of the following:
 - 1. Deny the request, or
 - 2. Approve the request; or
 - 3. Approve the request with conditions.
- E. The Planning and Zoning Commission may place conditions on the use as part of the approval to assure adequate mitigation measures are associated with the use. The conditions shall become a part of the special use permit approval and shall be included as part of the site plan.
- F. Special use permits shall be approved by a simple majority of the members of the Commission present at the meeting and not otherwise excused.
- G. Appeals from the Commission shall be filed with the Administrator within 30 days of the final decision of the Commission. The Commission's decision shall be considered a final decision after the Commission approves and the Chair signs an order stating the permit requirements. The Zoning Board of Adjustment shall sit as a quasi-judicial body to hear the appeal after final approval by the Commission.

- H. The Director of Development Services shall cause a copy of all orders issued to be recorded in the Cabarrus County Registry and a written copy to be mailed to the applicant and to any person who has filed a written request for such copy with the Office of the City Clerk or chairperson of the commission at the time of its hearing of the case. Delivery shall be by any of the following means: personal service, registered mail, or certified mail, return receipt requested.
- I. Violations of any of the conditions shall be treated in the manner as set forth in § 1.5 of this Ordinance.
- J. An application for a Special Use Permit that has been denied may be resubmitted only after one year from the date of the first submission or upon the motion of the Planning & Zoning Commission.
- K. Any conditional or special use permit issued under Articles 5 or 6 of this Ordinance may be modified following the provisions of this section. This section may also be used to amend site plans submitted as a part of a conditional or special use permit application as provided below. The limits on the administrator's ability to approve amendments to site plans found in section 5. 4.c.4. do not apply to site plans submitted as part of a special or conditional use application. Nothing in this section allows the administrator to approve the extension or expansion of a non-conforming use.
1. Subject to subsection (5), insignificant deviations from the permit (including approved plans) issued by the Planning & Zoning Commission or the Board of Adjustment or the administrator are permissible; and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.
 2. Subject to subsection (5), minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Unless it is requested by the permit-issuing authority, no public hearing shall be required for such minor modification. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. All changes having a greater impact are "major changes".
 3. Subject to subsection (5), all other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Planning & Zoning Commission or the Board of Adjustment, new conditions may be imposed if the permit issuing authority has the right to impose conditions on the original or prior permit; but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

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4. The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (1), (2) and (3).
5. An applicant requesting a change in approved plans shall point out to the administrator, specifically and in writing, what deviation or changes are requested. The administrator shall respond in writing. No changes shall be authorized except in conformity with this section.
6. When (i) a request for a change in a permit is made under this section (whether for an insignificant deviation, minor modification, or major modification), and (ii) the use of the property is not changed, and (iii) some type of nonconforming situation other than a nonconforming use exists on the property, then the permit change may be approved without requiring the elimination of the nonconforming situations. However, (i) any new development authorized by the permit change shall comply with current standards to the extent reasonably practicable, and (ii) the permit-issuing authority may require the elimination of nonconforming situations when the cost (financial and otherwise) of doing so is clearly proportional to the benefits of elimination of such nonconformity.

6.3.7. REVIEW OF PREVIOUS PROCEEDINGS OR DECISIONS BY THE BOARD OF ADJUSTMENT

- A. All quasi-judicial decisions of the Board of Adjustment, whether or not such decision contain limiting conditions, may be set aside or modified upon a finding that:
 1. Fraud, material, misrepresentation or other misconduct occurred at the proceeding before the Board of Adjustment; or
 2. Violation of any condition imposed in accordance with this development ordinance or violation of any provision of this development ordinance exists on the subject property.
- B. No decision shall be set aside or modified until the landowner and tenant (if any) are sent written notice and a hearing on the matter is first held. If a review proceeding is held to determine that the applicable conditions and provisions of this chapter are being met, special attention to the impact of the original action on adjoining properties and the extent to which financial investments were made in reliance of the decision, particularly for decisions made prior to the application of this provision. After the hearing the prior decision may be reversed, modified, or affirmed.

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