

ARTICLE 16 - ADMINISTRATION

16.1 Bodies

(1) Zoning Administrator

The Zoning Administrator shall be appointed by the Town Council and is duly charged with the enforcement of the provisions of this Ordinance. If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, he/she shall notify in writing the person(s) responsible for such violations, indicating the nature of the violation and ordering the action(s) necessary to correct it. He/she shall also take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions including, but not limited to:

- (A)** Review and approval of Zoning Permits, including plot and site plans;
- (B)** Staff review of rezonings, variances, and conditional use permits;
- (C)** Interpretation of land use categories; and
- (D)** Perform any duties assigned by the Town Council, Planning Board or Board of Adjustment.

(2) Planning Board

(A) Powers and Duties of Planning Board

As directed by the Town Council, the Planning Board shall have the following duties.

1. Make studies and recommend to the Town Council plans, goals and objectives relating to the growth, development and redevelopment of the Town planning jurisdiction.
2. Develop and recommend to the Town Council policies, Ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
3. Make recommendations to the Town Council, concerning land uses, rezonings, and Special Use Districts, and Planned Unit Developments.
4. Make recommendations to the Town Council concerning proposed conditional use permits and proposed zoning text and map amendments, as provided in Section 16.7.
5. Perform any other duties assigned by the Town Council.

(B) Rules and Bylaws

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The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and Chapter 160A, Article 19 of the General Statutes of North Carolina.

(C) Conflict of Interest

Planning Board members shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(3) Board of Adjustment

(A) Establishment

A Board of Adjustment is hereby established. The Board of Adjustment shall consist of five (5) regular members and one (1) alternate member.

1. Regular Members

There are five (5) regular members of the Board of Adjustment. The membership shall be composed of the Mayor, who shall also act as Chairman or Chairwoman, and four (4) of the five members of the Town Council. All members shall be entitled to vote on all issues except in those cases where a conflict of interest exists.

2. Alternate Member

One (1) alternate member shall be appointed by the Town Council from within the Town's corporate limits. When called to serve in the place of a regular member, an alternate member shall have all the rights and responsibilities of the regular member, including a right to vote on all issues brought before the Board. Appointments for the alternate member shall be for a term of three (3) years. All appointments to fill vacancies shall be for the unexpired term.

3. Quorum

A quorum shall consist of four (4) members and is the minimum number to vote on Town business matters (see Section 16.1(3)(C) for details).

(B) Powers and Duties of the Board of Adjustment

1. Administrative Review

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To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the Town. Appeals shall be taken within times prescribed by the Board of Adjustment by general rule, by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

2. Appeal and Stay

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him/her, that because of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

3. Reasonable Time

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that, in its opinion, ought to be made in the premises. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

4. Variances

When owing to special conditions, practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this article relating to the use, construction or alteration of buildings or structures or the use of the land, so the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done (N.C.G.S. 160A-388(d)).

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The existence of a nonconforming use of neighboring land, building, or structure in the same district, or of permitted or nonconforming uses in other districts, shall not constitute a reason for the requested variance. A variance may be granted in such individual cases of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

a. Exceptional Conditions

There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands or structures in the same district, or there is a peculiar characteristic of an establishment which makes the parking and/or loading requirements of this Ordinance unrealistic.

b. Not Confer Special Privileges

Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

c. Reason Away from Literal Interpretation

A literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

d. Harmony

The request variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare.

e. Special Circumstances

The special circumstances are not the result of the actions of the applicant.

f. Minimum Variance

The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure.

g. Shall be Appropriate

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The variance is not a request to permit a use which is not a permitted or conditional use in the district involved.

5. Conditions Imposed on Variances

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards to ensure that substantial justice has been done and that the public safety and welfare has been assured. Such conditions may be imposed by the Board regarding the location, character, and other features of the proposed building, structure, or use as may be deemed by the Board to protect property values and general welfare of the neighborhood. Nonconformance with such conditions and safeguards, when part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.

6. Variances Run with the Land

Variances granted by the Board run with the land and not to the subject applicant. A variance granted by the Board does not expire unless it has not been acted upon within a period of six (6) months from the date of issue. In such cases, the variance may be canceled upon written notice to the owner of the subject property.

7. Map Interpretation

To interpret the official zoning map in accordance with this Ordinance.

(C) Proceedings of the Board of Adjustment

The Board of Adjustment shall elect a chairperson, a vice-chairperson and a secretary from its regular members, who shall serve for one year or until re-elected or until their successors are elected. The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and Chapter 160A, Article 19 of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson, or in his/her absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

The concurring vote for four-fifths of the members of the Board of Adjustment is necessary to reverse any order, requirements, decision, or determination of any administrative official charged with the

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enforcement of this Ordinance, or to decide in favor of the applicant any matter upon which it is required to pass under this Ordinance, or to grant a variance from the provisions of this Ordinance.

(D) Decision and Appeal

Every decision of the Board of Adjustment shall be filed in the office of the Zoning Administrator and a written copy thereof shall be delivered to the appellant by personal service or register mail. Every decision by the Board shall be subject to review by superior court. Any appeal to the superior court shall be taken within thirty (30) days after the decision of the Board is filed in the office of the Zoning Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail, whichever is later.

16.2 Permits

(1) Zoning Permit Required

No land shall be used or occupied and no building or structure, including signs and fences, or any part thereof shall be erected, extended, enlarged, structurally altered or moved until a Zoning Permit has been issued by the Zoning Administrator or his/her authorized representative stating that the building and/or the proposed use complies with the provisions of this Ordinance. A fee in accordance with the Town's adopted fee schedule shall be charged for each Zoning Permit application. All applications shall be on a form prescribed by the Zoning Administrator and shall be accompanied by a site or plot plan in accordance with section 16.2(2) below.

A Zoning Permit shall also be required for the purpose of changing any existing use; as well as for maintaining, reviewing, changing, or extending any nonconforming use. A record of all such permits shall be kept on file and open to the public, subject to State law.

A building permit may only be issued by the Building Inspector for a parcel for which a Zoning Permit has been issued.

(2) Plot Plan or Site Plan Required

(A) Application Process

Plot or Site plans shall be required as part of the application process for any of the following:

1. New structures.
2. Expansions to existing structures.

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3. Any new use not contained within an existing building except:
 - a. Agricultural uses which do not involve the construction of buildings, containment pens for livestock, swine, or poultry, or the construction of sediment or animal waste lagoons; and
 - b. Temporary or seasonal uses unless the Zoning Administrator cannot otherwise determine compliance with parking or screening requirements.
4. Any significant change in required landscaping or buffer areas.
5. An expansion to parking areas requiring a landscaping plan in accordance with Sections 12.5 and 12.6.

(B) Plot Plan Requirements

A plot plan shall be required for any single-family or duplex residential use, and any other situation determined by the Zoning Administrator to require such a plan. A plot plan does not require the seal of a professional engineer, architect, landscape architect, or surveyor, but shall be drawn to scale and signed by the preparer. It shall consist of the following elements, except that the Zoning Administrator has the authority to waive any application requirement where the proposed type or scale of use makes that information unnecessary or impractical.

1. The date the plan was drafted along with the name, signature, address and phone number of the preparer.
2. The zoning classification of the subject property and all immediately adjacent properties.
3. Property lines, lot dimensions, and total acreage.
4. The location and extent of rights-of-way and easements.
5. The location and type of natural water features (e.g., streams, ponds, rivers, wetlands, etc.)
6. The location and dimensions of driveways.
7. The approximate location and dimension of structures including signs.
8. The location and dimension of parking lots/areas and internal circulation drives.

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9. The location and dimension of streets.
10. The approximate location and dimensions of landscaping, buffering, screening, fences, and walls.
11. The approximate location and dimensions of septic tank systems and wells.
12. The approximate location of utility lines, including water, sewer, and overhead power.
13. The approximate location of significant trees (those eight (8) inches or greater in caliper when measured six (6) inches above grade).

(C) Site Plan Requirements

A site plan shall be required for all commercial, industrial and multi-family projects, and any other situations determined by the Zoning Administrator or Planning Board to require such a plan. A site plan shall require the seal of a professional engineer, architect, or landscape architect, except that surveyors may also seal plans for projects that do not include any engineering stormwater control structures. The plan should be drawn to a scale such that all features are clearly legible. A site plan shall consist of the following elements:

1. A location map that shows the project in relation to the larger planning area.
2. The names, addresses, and telephone numbers of owners, mortgages, registered surveyors, land planners, architects, landscape architects, and professional engineers responsible for the development.
3. The name of the development.
4. The date of plan preparation.
5. A north arrow, legend and scale (including a bar scale).
6. A site plans shall show existing and proposed Environmental Features of the site, including (where applicable).
 - a. Natural cover (wood, pastureland, etc.).
 - b. Streams, ponds or rivers.
 - c. Historic sites.
 - d. Flood zones.

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16. The location of any existing or proposed roads, bike paths, sidewalks, trails, greenways, or parks that appear in any plans adopted by the Town, County, or State.
17. Legal features including:
 - a. The zoning of the property and adjacent properties, including zoning district lines.
 - b. Property lines.
 - c. Project phase lines.
 - d. Street rights-of-way.
 - e. Utility easements (including water, sewer, electric, power, stormwater, and telephone).
 - f. Lot dimensions.
18. Sign detail required. Whenever a new sign or change in existing sign would require the issuance of a permit, detailed designs showing all relevant information required to determine compliance with the sign regulations (Article 11) shall be required as part of a complete application.
19. In addition to the information required above, manufactured home parks shall provide the following information on the site plan:
 - a. Location of all manufactured home spaces with dimensions.
 - b. All recreation and convenience areas including parks, laundry facilities, swimming pools etc.
 - c. Location of park office.

(D) Plan Exemption

The Zoning Administrator may, in writing, exempt the applicant from meeting any plan requirement which is clearly inapplicable to the proposed use.

(3) Cancellation of Permit

Any permit issued shall become invalid unless the work authorized by it shall have been commenced within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period in excess of two (2) years. Prior to the expiration of a zoning permit, the applicant may

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request a six (6) month extension either to begin a project or to continue an inactive project. If the applicant can demonstrate just cause why the extension is needed, the Zoning Administrator may grant the extension and the Board of Adjustment shall hear appeals thereof.

(4) Record of Zoning Permit

A record of all Zoning Permits shall be kept on file in the Town Hall and open to the public, subject to State law.

16.3 Conformance with Plans

Permits or certificates issued on the basis of plans and applications shall authorize only the use, arrangement, and construction set forth in such approved plans and applications and no other use, arrangement, or construction.

16.4 Right of Appeal

If the Zoning Permit is denied, the applicant may appeal the action of the Zoning Administrator to the Board of Adjustment.

16.5 Conditional Uses

(1) In General

Conditional uses require a permit from the Town Council because they may be, in some circumstances, compatible with and desirable in the districts in which they are designated, but they may also have characteristics which could have detrimental effects if not properly designed and controlled. All Conditional Use Permit requests require a public hearing in accordance with Section 16.6 and must meet the standards identified in Section 16.5(2). Some uses due to their nature require additional design standards in addition to the general conditions listed below. Design standards for individual uses are found in Article 9.

If all requirements and conditions are mutually accepted by the applicant and the Town Council for conditional uses, the Council shall authorize the issuance of the Conditional Use Permit; otherwise, the permit shall be denied. Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in such permit. Permits may be subsequently changed or amended only if the property owner submits a new application for conditional use and after a public hearing held in accordance with the procedures Section 16.6.

(2) Conditional Use Standards

In order for any conditional use to be granted, the applicant, at the hearing, shall present sufficient evidence to enable the Board to find that all of the following standards (A) through (J) have been satisfied:

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- (A) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
- (B) That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
- (C) That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- (D) That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood;
- (E) That access roads or entrance and exit drives are or will be sufficient in size and properly located to ensure automotive and pedestrian safety and convenience, traffic flow, and control and access in case of fire or other emergency;
- (F) That off-street parking, loading, refuse, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood;
- (G) That utilities, schools, fire, police, and other necessary public and private facilities and services will be adequate to handle the proposed use;
- (H) That the location and arrangement of the use on the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts;
- (I) That the type, size, and intensity of the proposed use, including such considerations as the hours of operation and number of people who are likely to utilize or be attracted to the use, will not have significant adverse impacts on adjoining properties or the neighborhood; and
- (J) That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

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16.6 Application and Hearing Procedures for Administrative Appeals, Variances, and Conditional Uses

(1) Decision-Making Body

- (A)** The Board of Adjustment is the decision-making body for administrative appeals and variances.
- (B)** The Town of Navassa Town Council is the decision-making body for conditional uses.

(2) Applications

- (A)** An applicant seeking an administrative appeal shall submit an Application for Administrative Appeal in accordance with Section 16.1.3(B).
- (B)** An applicant seeking a variance from the provisions of this Ordinance shall submit an Application for Variance in accordance with Section 16.1(3)(B)4.
- (C)** An applicant seeking approval of a conditional use (Section 16.5) shall submit an Application for Conditional Use Permit, accompanied by a site plan prepared in accordance with Section 16.2(2). The applicant shall furnish the number of copies established by the Zoning Administrator along with any other information required for proper review of the application.

(3) Hearing Procedure

(A) Decision Body

The appropriate decision-making body shall hold a public hearing on the application and shall give due notice of the hearing to the parties involved.

(B) Conditional Use Permit Timing Review

In the case of a conditional use permit application, the Planning Board shall be given forty-five (45) days to review the application, before the hearing. The hearing shall not take place until a Planning Board recommendation has been received or forty-five (45) days have elapsed. The Planning Board shall give due notice to the applicant of any meetings at which the application will be reviewed.

(C) Conditional Use Notice

Notice of the hearing for conditional use requests shall be published in a newspaper of general circulation in the Navassa area at least once a week for two (2) successive calendar weeks prior to the hearing.

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The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included.

(D) Quasi-Judicial Procedure

All hearings by the Board of Adjustment for administrative appeals, variances, and by the Town Council for conditional use permits shall be conducted as quasi-judicial hearings in accordance with the general law and court decisions of the State. More specifically, any interested party must be given the opportunity to present evidence or testimony, to cross-examine witnesses, to inspect documents, and to offer evidence or testimony in explanation or rebuttal. Findings shall be based on substantial evidence or testimony which is competent, relevant, and material. Findings as to the existence or nonexistence of crucial facts shall be based on sworn evidence or testimony unless the party or parties before the Board stipulate the facts or waive this requirement.

(E) Majority Voting

Although a four-fifths (4/5) majority is necessary for the Board of Adjustment to grant a variance or overturn a decision of the Zoning Administrator, the Town Council does not have to meet this requirement in issuing conditional use permits. A simple majority vote by the Town Council is all that is required to issue a conditional use permit. The Clerk of the Board shall keep minutes of the proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact.

(F) Conflict of Interest

A member of any board exercising the functions identified in this Section shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex-parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(G) Vacancy

Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculations of the requisite supermajority (a majority

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greater than a simple majority) if there are no qualified alternates available to take the place of such board members.

(4) Fees

A fee in accordance with the Town's adopted fee schedule shall be paid to the Town for each application for an administrative review, variance, or Conditional Use Permit not initiated by an officer or agency of the Town, to cover the costs of advertising and other administrative expenses involved. No application will be processed until the above fee has been paid. Fees become unrefundable once staff has initiated processing an application, except that the Zoning Administrator may refund a fee in special cases.

16.7 Amendments (Zoning Map Amendments and Text Amendments)

This Zoning Ordinance, including the Zoning Map, may be amended only by the Town Council, according to the procedures of this Article. Any proposed amendments may be initiated by the Town Council, Planning Board, or Board of Adjustment of the Town of Navassa. Proposed amendments to the text of this Ordinance may also be initiated by any resident or "record owner" of real property lying within the jurisdiction of the Town. Any "record owner" of real property lying in the jurisdiction of the Town may initiate a request for a change in the zoning classification of his/her real property.

(1) Application

An applicant who is not representing the Town shall submit an application on a form provided by the Town and the applicant shall provide any additional information related to the proposed map and or text amendment requested in writing by the Zoning Administrator, Planning Board or Town Council. The Zoning Administrator shall transmit the original application to the Planning Board, who shall provide a recommendation to the Town Council on the proposed amendment. The original application shall be filed in the Town Hall after consideration by the Town Council. A fee in accordance with the adopted fee schedule shall be paid to the Town for each application not initiated by an officer or agency of the Town to cover the costs of advertising and other administrative expenses involved. No amendment shall be considered nor a public hearing held until such fee is paid.

(A) Map Amendment

A complete application for a map amendment, also known as a rezoning, shall contain the following information.

1. A statement of the present zoning regulations or district boundary;
2. The name and signature of the applicant;
3. The tax parcel number of the lot proposed to be rezoned;

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4. The names and addresses of the owners of the lot in question; and
5. A map of the proposed amendment showing the tax parcel number of the subject property and of adjacent properties. The map shall show ownership of adjacent lots along with the use of each adjacent property and shall be attached to the application form.

(B) Text Amendment

A complete application for an amendment to the text of this Ordinance shall consist of:

1. The name and address of the applicant;
2. The Ordinance section proposed to be changed;
3. The existing text proposed to be changed;
4. The proposed changes to the text of the Ordinance; and
5. A written justification for the requested amendment including consistency of the proposal with Town land use plan policies;

(2) Planning Board Action

(A) Planning Board Review

The Planning Board shall have at least forty-five (45) days to make a recommendation concerning the amendment before the Town Council may hold a public hearing on the amendment. The Planning Board may review and make a recommendation on the proposed amendment either before or after the public hearing.

(B) Statement of Consistency with Adopted Plans

In accordance with N.C.G.S. 160A-383, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the adopted land use plan and any other applicable officially adopted plan. The Planning Board shall provide a written recommendation to the governing board that addresses plan consistency and other matters deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the land use plan or another plan shall not preclude consideration or approval by the governing board.

(3) Public Hearing

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The Town Council shall hold a public hearing before any amendment to this Ordinance shall be approved.

(A) Notification

Notice of the public hearing shall be published in a newspaper of general circulation in the Navassa area at least once a week for two (2) successive calendar weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included.

(B) Map Notification

Whenever there is a map amendment involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Town Council that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(C) Vicinity

If a zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, the Town may, as an alternative method of notification, elect to publish notice of the hearing as required by N.C.G.S. 160A-364. Such notification shall not be less than one-half of a newspaper page in size. The advertisement shall be effective only for owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent tax listing for the affected property, shall be notified according to the first class mail provisions listed above.

(D) Posting of Hearing Notices

When a zoning map amendment is proposed the Town shall post a notice of the public hearing on the site proposed for the rezoning or on an adjacent right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the town shall post sufficient notices to provide reasonable notice of interested persons.

(E) Governing Board Statement

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Prior to adopting or rejecting any zoning amendment, including a rezoning to a special use district or a small-scale rezoning, the Town Council shall adopt a statement describing whether its action is consistent with the adopted land use plan and any other officially adopted plan that is applicable, pursuant to N.C.G.S. 160A-382 and 160A-383. Such statement shall explain why the Council considers the action taken to be reasonable and in the public interest. The statement may be prepared in advance of the hearing and may be prepared by the Zoning Administrator, the Planning Board, or the Town Council.

(F) Amendments Inconsistent with Adopted Plans

The Town Council shall consider Planning Board recommendations and consistency with the Town's adopted plans when determining amendments. The Town's adopted plans include but are not limited to the CAMA Land Use Plan and the Future Land Use Plan. Council may find that the CAMA Land Use Plan, Future Land Use Plan and other plans must be revised and amended to be consistent with other Town documents and ordinances before affected development activity can continue or move forward.

(4) Protest Petitions

If a qualified protest as defined in N.C.G.S. 160A-385 is filed against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths (3/4) of all the members of the Town Council. For the purposes of this subsection, vacant positions on the Council and members who are excused from voting shall not be considered 'members of the Council' for calculation of the requisite supermajority.

(A) Protest Petition Qualification

To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a one-hundred (100) foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. 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. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

(B) Withdrawal of Petition

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No protest against any change in or amendment to a zoning Ordinance or zoning map shall be valid or effective for the purposes of N.C.G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Town clerk in sufficient time to allow the Town at least two (2) normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The Town Council may by Ordinance require that all protest petitions be on a form prescribed and furnished by the Town, and such form may prescribe any reasonable information deemed necessary to permit the Town to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in N.C.G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

16.8 Enforcement

(1) General Enforcement

Violations of this Ordinance shall constitute a misdemeanor and/or at the election of the Town, shall subject the violator to civil penalties and/or where permitted by law, equitable remedies for said violation as hereinafter provided.

(2) Injunction and Order of Abatement Remedies

(A) Provision

Any provision of this Ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the general court of justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the N.C.G.S. Chapter 1A Rules of Civil Procedure in general and Article 8 Rule 65 in particular.

(B) Order of Abatement

An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture

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or other movable property be removed from buildings on the property; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the Judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the Judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(3) Civil Penalties

(A) Notice of Violation

Upon determination of a violation of any section of this Ordinance the penalty for which is a civil penalty, the Town shall cause a notice of violation to be issued to the violator by the appropriate official of the Town and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the Town or as obtained from the violator or his agent. The appropriate Town official serving the notice of violation shall sign and have notarized an affidavit describing the type of service and the date of service. The violator shall be deemed to have been served upon the mailing or personal service of the notice of violation.

(B) Nature of Violation

The notice of violation shall set out the nature of the violation, the code section or Ordinance violated, the date or dates of the violation, and shall contain an order to immediately cease the violation. The notice of violation shall specify that a second and subsequent citations will assess a civil penalty, together with costs, attorney fees, and such other relief as provided by law. The notice of violation shall also inform the violator of the violator's appeal rights. If the violation is in the nature of an offense for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated within which the violation must be abated.

(C) Appeals

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The violator must file an appeal from a notice of violation within ten (10) days from the service date of the notice of violation as indicated on the affidavit of service. An appeal is deemed filed when it is received by the Town Clerk. Forms and instructions for filing an appeal shall be made available at the office of the Town Clerk. A violator who fails to file an appeal within the time period described above is deemed to have forfeited the appeal for the violation, the notice of violation, the civil citations, and the civil penalties assessed for the violation. Appeals shall be heard by the Board of Adjustment or other administrative process established by the Town. The decision of the Board of Adjustment is subject to review in the Superior Court of Brunswick County in the nature of certiorari (a writ order).

(D) Extensions Allowed

Where the Town determines that the period of time stated in the original notice of violation is not sufficient for abatement based upon the work required or based on a consent agreement, the Town may amend the notice of violation to provide for additional time.

(E) Civil Citation

Upon failure of the violator to comply with the notice of violation within ten (10) days of service, a civil citation in the amount of fifty dollars (\$50.00) shall be issued by the appropriate official of the Town and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the Town or obtained from the violator or his agent.

(F) Citation Contents and Repeat Violations

The civil citation shall direct the violator to immediately cease the violation, shall inform the violator of the penalty amount, and shall direct the violator to make payment at Town Hall within ten (10) days of the date of the civil citation, or alternatively to pay the citation by mail postmarked within ten (10) days of service of the civil citation. Once a notice of violation has been issued and the ten (10) days warning period has expired, civil citations in the amount of fifty dollars (\$50.00) may be issued for each day the same or similar violation continues until the prohibited activity is ceased or abated. If a violation is repeated within a two (2) year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this Section. A repeat violation is one which is identical to or reasonably similar to a previous violation for which a notice of violation or civil citation has been issued by the Town.

(G) Settlement of Civil Claim

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If the violator fails to respond to a civil citation within ten (10) days of its service, and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Court of Justice for the collection of the penalty, costs, attorney fees and such other relief as permitted by law.

(4) Criminal Penalties

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished for each offense by a fine not to exceed five-hundred dollars (\$500.00) and/or imprisonment for a period not to exceed thirty (30) days. Each day a violation continues shall be deemed a separate offense provided that the violation of this Article is not corrected within thirty (30) days after notice of said violation is given.