

ARTICLE 6 PERMITS AND APPROVAL PROCESSES

Summary: *This Article describes how to obtain permits OTHER than subdivision plat, site plan, and sign permits under the Concord Development Ordinance.*

Typically, the permit approval process involves four steps -

- *First, an application is submitted to the Administrator. Section 6.1 lists the submittal requirements for different types of applications.*
- *Second, the Administrator determines whether the application is complete.*
- *Third, the application is forwarded to the appropriate board, commission and/or staff member to approve, approve with conditions, or deny the plans.*
- *Fourth, a permit is issued to the applicant once plans are approved.*

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6.1. ADMINISTRATIVE PERMITS

6.1.1. PURPOSE.

Administrative permits are required for the health, safety and general welfare of the public. The purpose of this Section is to describe procedures for permits, which do not require quasi-judicial, legislative notice, or a public hearing. A public hearing is not required for permits set forth in this Section for one or more of the following reasons:

- A. If required, public hearings have already been conducted relating to the permit application. The permit application procedure was designed to ensure that the proposed use complies with a previously approved subdivision plat, site plan, specific plan, comprehensive plan amendment, or conditional rezoning (e.g., zoning clearing, certificate of occupancy).
- B. The proposed use is permitted by right in the applicable zoning district (e.g., zoning clearance, certificate of occupancy).

6.1.2. APPLICABILITY.

The provisions of this Section shall apply to the following any site plan or final site plan or required administrative permit as set forth in § 6.1 of this Ordinance. Some permits may not be applicable for every development. Below is the list of the Administrative permits along with a brief description:

- 1. Zoning Clearance Permit - Obtained at the point where the applicant is ready begin construction of the project. (May include stormwater installation and grading permit approval).
 - A. Stormwater Installation / Grading Permit - Obtained for the purposes of preliminary grading work for development or other land disturbing activities as described in Art. 4 as a subset of a Zoning Clearance Permit.
- 2. Certificate of Compliance Permit - Obtained at the point where construction is completed and states that the project complies with the City standards.
- 3. Temporary Electric Power Permit - Typically obtained for the purposes of establishing temporary power for a construction site.
- 4. Temporary Use Permit - Obtained for any structure or business that is temporary in nature.
- 5. Sign Permit (see Art. 12) - Obtained anytime a sign is erected for the purposes of advertising.
- 6. Erosion and Sedimentation Control Permits (see § 4.5. THESE PERMITS ARE ISSUED ONLY BY THE STATE OF NORTH CAROLINA)
- 7. Building Permit (THESE PERMITS ARE ISSUED ONLY BY CABARRUS COUNTY.)

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8. Driveway Permit (Technical Standards Manual Article III) - Obtained for any access points and driveways planned to connect to a publicly-maintained street within the corporate limits and extraterritorial jurisdiction of the City of Concord.
 9. Wastewater Collection Permit (City Code Chapter 62) - Obtained prior to construction for any extension or modification of the City's wastewater collection system.
 10. Water Distribution Permit (City Code Chapter 62) - Obtained prior to construction for any extension or modification of the City's water distribution system.
 11. Stormwater Best Management Practice (BMP) Operation and Maintenance Permit (City Code Chapter 60) - Obtained after stormwater BMP installation and upon the final certification.

6.1.3. PROCEDURES.

All development permits applicable to a proposed development must be issued in accordance with the provisions of this Ordinance, prior to any development activity. Permits are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards, and laws and to ensure consistency with the Comprehensive Plan and policies of the City.

6.1.4. ZONING CLEARANCE PERMIT (Includes Temporary Zoning Clearance Permits).

- A. **Application.** Upon adoption of this Ordinance, buildings or structures shall be erected or constructed, and uses shall be established, only on parcels of land that have been created in conformance with this Ordinance. To construct any structure on or develop any land, a Zoning Clearance Permit must be obtained from the City of Concord Development Services Department. Building permits are issued by the Cabarrus County Building Inspections Department and may also be required for construction. A stormwater and grading permit may be issued separately or in conjunction with a Zoning Clearance Permit.
- B. **Procedures**
 1. Prior to construction of a building the Applicant shall file a completed Zoning Clearance Permit application with the Administrator. If Site Plan review is required in accordance with § 5 of this Ordinance, the approved site plan must be submitted with the Zoning Clearance Permit application. If the proposed development or development activity is not subject to site plan review pursuant to § 5.4, a plot plan is still required for administrative review to ensure the activity does not impact water quality or natural stormwater flow. For residential structures, architectural drawings showing building floor plans and elevations are required. The requirements for a plot plan are set forth

in the next section.

2. Plot Plan Submission Requirements

- A. Location of structure(s), including, but not limited to, all proposed decks, steps, or other similar structural improvements.
- B. Building setbacks
- C. Location of off-street parking areas
- D. Location of 100-year flood plain
- E. Architectural drawings showing building elevations with material indicated and floor plans. These can be reductions on 8.5 x 11 inch paper.

3. Following review, the Administrator shall approve, approve with conditions, or deny the application for a Zoning Clearance Permit. Applications that are denied shall have the reasons for denial, in writing, attached to the application. An appeal of the decision of the Administrator to the Zoning Board of Adjustment is allowed as prescribed in § 6.3.

C. **Approval Criteria.** The Zoning Clearance Permit shall be issued by the Administrator only if the application complies with all pertinent provisions of this Ordinance, and any approved special use permit, conditional rezoning, or site plan, except under the following circumstances;

- 1. A Legal nonconforming use established in accordance with the provisions of this Ordinance; and
- 2. Construction or expansion of an existing principal or accessory use, that otherwise conforms to all standards of this Ordinance, by no more than ten percent (10 %) of the cumulative gross floor area of the lot of record are exempt from Article 10 UPFIT TO EXISTING PUBLIC STREETS.

D. **Validity.** The Zoning Clearance Permit shall be valid for the established use if:

- 1. The use is in compliance with applicable codes
- 2. A building permit has been obtained by the applicant within (6) months of issuance of the Zoning Clearance Permit

If six (6) months elapse without the issuance of a building permit, the Zoning Clearance Permit shall expire. Resubmission of plans and materials and an application for a new Zoning Clearance Permit, including applicable fee(s), shall be required for any approved project that did not commence construction within six (6) month period.

6.1.5. CERTIFICATE OF COMPLIANCE.

- A. Application.** On the effective date of this Ordinance, it shall be unlawful to use, permit the use or occupancy of, connect or provide utilities to any building or land hereafter created, erected, changed, converted, altered or enlarged in its use or structure, including home occupations, until a Certificate of Compliance Permit has been issued by the Administrator. Freestanding single-family residences are exempt. Certificate of Compliance is the City's final permit before the Cabarrus County Building Inspections Department issues a Certificate of Occupancy.
- B. Procedures.** The Applicant shall file a complete application for a Certificate of Compliance Permit with the Administrator. For new construction projects, an approved as-built plot plan or site plan as submitted for the Zoning Clearance Permit shall be used. If the application for a Certificate of Compliance Permit does not involve new exterior construction, a plot plan showing all exterior improvements, as required by this Ordinance, shall be provided for review. The Administrator shall assist the applicant in determining which documents are required for a submittal.
1. Individual tenants desiring to occupy lease space within an existing commercial development with multiple tenants shall be required to obtain a Certificate of Compliance Permit. However, individual tenants shall not be required to upgrade any existing nonconforming site improvements to conform to the standards of this Ordinance, unless the new tenant(s) creates a change of use.
 2. Following review, the Administrator shall approve, temporarily approve, or deny the application for a Certificate of Compliance. Denied applications shall have the reasons for denial, in writing, attached to the application. An appeal of the decision of the Administrator is allowed as provided for in § 6.3.
 3. **Approval Criteria.** The Administrator shall issue the Certificate of Compliance Permit only if the application complies with all pertinent provisions of this Ordinance and any approved special use permit, conditional rezoning or site plan.
 4. **Validity.** The Certificate of Compliance shall be valid for its granted use as long as 1.) The use is in compliance with applicable codes and 2.) The property or structure is used, erected, changed, converted, altered, or enlarged in the stated manner.
 5. **Performance Security.** The applicant may submit a performance guarantee to the Administrator if a Certificate of Compliance Permit cannot be approved because certain improvements cannot be completed or installed due to adverse weather conditions or other reasonable factors. The applicant shall submit to the Administrator the following information:

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- a. A specific description of the factor(s) causing the delay in the installation of the improvement(s); and
 - b. A written estimate from a licensed contractor of the cost of materials and labor for completing the work. The Administrator shall then determine if the submission of a performance guarantee is appropriate and if the estimate is acceptable. The performance guarantee shall follow the standards of section 5.7.6.4.2. and shall be in the amount of 125% of the estimate. The performance guarantee shall be released after the improvements, as guaranteed, are inspected by the Administrator and determined to be in full compliance with the approved plan.

6.1.6. TEMPORARY ELECTRIC POWER PERMIT.

- A. The Administrator issues temporary Electric Power Permits for the purposes of establishing temporary electric power to a construction site or location for a period not to exceed six (6) months. A Temporary Electric Power Permit may also be issued for a period not to exceed six (6) months to allow for utilities to be connected to an unoccupied structure for rent and/or sale. It shall be unlawful to permanently occupy any portion of a newly constructed or altered building or structure, or to allow a change of use to occur unless a Certificate of Compliance has been granted as prescribed in § 6.1.5. The procedures for issuance of a Temporary Electric Power Permit are as set forth in § 6.1.4.

6.1.7. STORMWATER INSTALLATION / GRADING PERMITS.

- A. **Application.** On the effective date of this Ordinance, it shall be unlawful for any person(s) to commit any land disturbing activity, including removal of vegetation, until the Administrator has issued a Stormwater Installation / Grading Permit. Phase II provisions became effective upon the adoption of Article IV on January 12, 2006.
- B. **Coordination with Erosion Control.** A Stormwater Installation / Grading Permit shall not be issued until a Sedimentation and Erosion Control Permit has been issued as set forth in § 4.5, if applicable.
- C. **Approval Criteria.** Stormwater Installation /Grading Permit may be issued prior to the Zoning Clearance Permit. This permit allows the developer to begin site work prior to the approval of the Zoning Clearance Permit. Approved grading and drainage plans shall be submitted prior to issuance of the permit. The Stormwater Installation /Grading Permit shall be issued by the Administrator only if the application complies with the standards of Article 4, the City of Concord Technical Standards Manual, and as referenced below:
 1. The provisions for floodplain protection as prescribed in §4.7 of this Ordinance;

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2. The provisions for vegetation protection and retention as prescribed in § 4. 6; and
 3. The requirements of § 4.4. Stormwater Control; and
 4. As required by any approved special use permit, conditional rezoning, or site plan.

D. Plan Submittal Standards

All designs shall be accompanied by supporting data, graphs, calculations, sketches, and applicable references appropriate to the complexity of the proposed facility.

Plans and profiles shall be drawn on sheets no smaller than 24" x 36" to a horizontal scale of no smaller than 1"=50', and to a vertical scale of 1"=10'. Exceptions are permitted on specific projects such as culverts and channel cross sections. Applications for Stormwater Installation / Grading Permits may be combined with Site Plans and Subdivisions. For the purpose of applying for a Stormwater Installation / Grading Permit, the application shall include, at minimum, the following information:

1. Address or vicinity map showing the location of the activity.
2. Subdivision name including book and page number and date of the approved subdivision plat, if applicable.
3. The date of the subdivision's approved Stormwater / Grading Permit, if applicable.
4. Site boundaries.
5. Street and other right-of-ways.
6. Existing roadway width and pavement type.
7. Stationing shall match street stationing and proceed upstream.
8. North arrow shall point to the top of page or to the left.
9. Elevation datum shall be United States Geological Survey (USGS).
10. Existing and proposed structures and finished floor elevations.
11. Existing and proposed driveway locations and types.
12. Existing and proposed stormwater facilities (swales, pipes, inlets, basins, etc.).
13. General drainage patterns indicated on a topographic map showing 1-foot (or smaller) contour intervals.

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14. Natural drainage ways and direction of flow.
 15. City designated Stream Buffer overlays.
 16. FEMA Flood boundaries and/or elevations.
 17. Location and extent, and label the name of, any water body that is shown on the most recent version of either the 7.5-minute USGS topographic map or the Natural Resource Conservation Service (NRCS) Soil Survey map.
 18. Extent and phasing of land disturbing activities. If needed, a separate drawing can be provided for each phase.
 19. Other information that may be necessary to develop an understanding of the project.

Profiles sheets or drawings shall indicate the proposed system being designed (size and type of material) with flow-line elevations, flow-lines, gradients, left and right bank profiles, station numbers, inlets, manholes, ground-line and curb-line elevations, typical cross sections, riprap construction, filling details, minimum permissible building floor elevations within 100-year floodplain and adjacent to open drainage features, pipe crossings, design flow capacities and velocities, and title block.

Detail plans and sections shall be provided for all special system features such as detention/retention facilities, inlets, manholes, culverts, pipe bedding and backfill, ditch sections, and all related structures.

A complete list of the drawing requirements is provided on a reproducible sheet located in the *Manual*. No text presented on the drawings and documents shall be in a font smaller than 10-point type. The Administrator may waive any of the format specifications and required items that are deemed not to be necessary for the review, reproduction, and storage of the documents.

At the City's option, any or all of the above materials may be, or may be required to be, submitted in electronic formats compatible with the City's computer systems and software.

Exemption. A Stormwater Installation / Grading Permit shall not be required for Agricultural uses, as defined in Art. 14.

- E. **Validity.** The Stormwater Installation / Grading Permit shall be valid for six months. If six (6) months elapse without the commencement of construction the Stormwater Installation / Grading Permit shall expire. Resubmission of plans and an application for a new Stormwater Installation / Grading Permit, including applicable fee(s), shall be required upon expiration of the permit.
- F. **Vegetation Protection and Retention.** See section 4.6.2.2.

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- G. General Requirements.** See section 4.6.2.3. and the tree and vegetation protection techniques shall be shown in the Stormwater / Grading Plans and shall be in conformance with standard practices set forth in the *Manual*.
1. The Administrator shall use the guidelines below to assist in determining the approval of a Stormwater Installation / Grading Permit. Vegetation should be removed if:
 - A. The vegetation prevents the reasonable development of a property and without its removal, development of the land would be prevented;
 - B. The vegetation poses a safety hazard to pedestrians or vehicles, buildings or structure;
 - C. The vegetation imposes a disruption or potential disruption of utility services;
 - D. The vegetation prevents access to property; or
 - E. The vegetation is diseased or will become diseased due to infectious disease, insect infestation, wind or ice storm, or fire and poses a threat to the safety and welfare of the public, vehicles, structures or buildings.

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 § 1.6 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.

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.

6.2.3. APPROVAL CRITERIA.

The Planning and Zoning Commission shall permit only those uses that are part of the special use permit. The following criteria shall be issued by the Commission as the basis for review and approval of the project:

- A. The proposed special use conforms to the character of the neighborhood, considering the location, type, and height of buildings or structures and the type and extent of landscaping and screening on the site.
- B. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.
- C. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.
- D. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.
- E. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.
- F. Compliance with any other applicable Sections of this Ordinance.

6.2.4. SCOPE OF APPROVAL.

All approvals of Special Use Permits require concurrent approval of a site plan (§5.4) or plot plan (§6.1.4. B.). No Zoning Clearance Permit may be issued until either the final major site

plan or plot plan and Special Use Permits are approved. Approval of a special use permit does not authorize any development activity, but is a pre-requisite in some cases to obtaining approval of construction plans or other necessary permits.

6.3. PERMITS ISSUED BY THE ZONING BOARD OF ADJUSTMENT

6.3.1. GENERAL PROVISIONS.

All permits issued by the Board of Adjustment under this section shall be subject to the following General Conditions, including a “Quasi-Judicial Evidentiary Public Hearing”. The provisions of this subsection apply to any application for a special exception, variance, appeal, or any other quasi-judicial action.

6.3.2. APPLICATION REQUIREMENTS.

A. Times to Apply.

1. A notice of appeal of an administrative decision from a final decision relating to an application for development approval shall be submitted to the Administrator within thirty (30) days from receipt of the decision.
2. Applications for variances and certificates of non-conformity adjustments shall be submitted to the Zoning Administrator according to the annual schedule adopted by the Board.

B. Fee Required. All applications, including applications for re-hearings, shall be accompanied by a fee as established by City Council in the annual Budget Ordinance. This fee partially defrays the City's expense in keeping records relating to the application, verifying the application, advertising a public hearing on the application, and performing other services required by statute or ordinance in processing the application to its conclusion. No refund of the fee or any part thereof shall be made unless the application is withdrawn prior to hearing. However, in the case of applications brought challenging the decision, determination, order, requirements or interpretation of the administrative official pursuant, the filing fee and any civil penalty will be returned to the applicant if the Board of Adjustment decides that the position of the City official is erroneous; except as stated herein no civil penalty shall be reduced by the Board. A fee shall not be required if the application is made by the City or any agency created and appointed by the Concord City Council to perform governmental functions.

C. Notices Required. Three kinds of Notices are required before the Board of Adjustment may consider applications. Notices shall be made by publication, mail, and posting on or near the subject property. The requirements for each type of notice are listed in Article 3 at section 3.1.

6.3.3. QUASI-JUDICIAL PUBLIC HEARING PROCEDURES.

A. Generally. In making quasi-judicial decisions, the decision-makers must investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. In the land use context, these quasi-judicial decisions involve the application of land use policies to individual situations, such as variances, special exceptions, and appeals of administrative determinations. These decisions involve two key elements: 1.) The finding of

facts regarding the specific proposal and 2.) The exercise of some discretion in applying the standards of the ordinance. Due process requirements for quasi-judicial decisions mandate that certain standards be observed when these decisions are made. This includes a hearing with the right of the parties to offer evidence, have sworn testimony, and have findings of fact supported by competent, substantial, and material evidence.

B. Conduct of Hearing. Any person or persons may appear at a public hearing and submit evidence, either individually or as a representative. Each person who appears at a public hearing, after first taking an oath or affirmation to give accurate and truthful testimony, shall state, for the record, his or her name, address, and if appearing on behalf of an organization or group, its name and mailing address.

1. All parties in interest shall have the right to present evidence and cross-examine witnesses, as to any competent, material, and relevant facts, inspect documents, and make oral argument.
2. The burden of proof is upon the party who files the application, and if the party fails to meet its burden, the reviewing body shall deny the request.
3. The Board of Adjustment shall act as a fact-finding body and shall approve or disapprove the application in accordance with the evidence presented before it that is competent, relevant, and material. Every decision shall include the vote, abstention from voting, or absence of each member.

C. The decision of the quasi-judicial proceeding, including findings of fact and conclusions of law, shall be filed in the Office of the City Clerk and recorded at the Cabarrus County Registry. A written copy shall 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 zoning board of adjustment 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.

1. Quasi-judicial permits shall be approved by a four-fifths majority of the members of the Board present at the meeting and not otherwise excused.
2. Appeals from the Board of Adjustment shall be filed with the Clerk of the Cabarrus County Superior Court within 30 days of the final decision of the Board. The Board of Adjustment's decision shall be considered a final decision after the Board approves the official minutes containing such during an official meeting.

E. GENERAL FACTS TO BE CONSIDERED.

1. Uniform rules and standards are set forth in this Article, which regulate the interpretation of the text of this Ordinance and the Official Zoning

Maps, the appeal from administrative decisions, the issuance of variances, and the granting of non-conformity exceptions. Under this authority, the Board of Adjustment is required to determine the applicability of facts to a particular case. It is recognized that the required facts are not reducible to any precise formula, but rather they must be gathered from the varying circumstances of the actual cases as they arise.

2. In passing on any case the Board of Adjustment shall determine that the request meets all applicable requirements of this Code, and if there are conflicts between the Code provisions, the more restrictive shall apply unless an overlay district authorizes a lesser standard.
3. In passing on any case, and as a further guide to its decision-making, the Board of Adjustment may also consider, among other things the following, if relevant to the requested interpretation, appeal, variance, and special exception permit(s):
 - A. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.
 - B. The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
 - C. The character of the neighborhood, considering the location, type, and height of buildings or structures and the type and extent of landscaping and screening on the site.
 - D. The number of persons residing, studying, working in or otherwise occupying buildings adjoining or in the vicinity of the property mentioned in the application.
 - E. Traffic conditions in the area and accessibility of the building for fire and police protection. Any measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.
 - F. Accessibility of light and air to the premises and to the property in the vicinity.
 - G. The location, kind and size of surface and subsurface structures in the vicinity of the property mentioned in the application, such as water mains, sewers and other utilities.
 - H. Materials of combustible, hazardous, explosive, or inflammable nature to be sold, stored, or kept on the premises.
 - I. Protection of occupants of the building from stormwater, noise, dust, on-street parking, odor, vibration, smoke, gases, or other noxious or offensive substances, uses or actions.

- J. The type of electric illumination for the proposed use, with special reference to its effect on nearby structures and the glare, if any, from such illumination in surrounding sleeping quarters.
- K. The public records and other competent testimony concerning the location of the zoning district boundary lines.
- L. The relation of the proposed application to conditions in the vicinity which have changed since the zoning district was originally determined.
- M. The effect on the orderly development and improvement of surrounding property for uses permitted within the zoning district.
- N. Compliance with any other applicable Sections of this Ordinance.

6.3.4. VARIANCES.

- (a) A variance is not a right. It may be granted to an applicant only if the applicant establishes that practical difficulties or unnecessary hardships would result from carrying out strict letter of this ordinance. The Board shall have the power to vary or modify any of the provisions of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (b) Any person may petition the Zoning Board of Adjustment for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:
 - (1) Unnecessary hardships would result from strict application of this ordinance.
 - (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3) The hardships did not result from actions taken by the petitioner.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (c) The Zoning Board of Adjustment may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (d) Statutory exceptions.

Notwithstanding subdivisions (a) through (c) of this section, exceptions to sections 4.3 through 4.5 as well as any deed restrictions and protective covenants requirements may be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of best management practices (BMPs).
- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

6.3.5. APPEALS OF ADMINISTRATIVE DECISIONS.

Any person aggrieved or any agency or officer, department, board, including the governing board of the City of Concord affected by any decision, order, requirement, or determination relating to the interpretation, compliance, or application of chapters 1 and 2 of this Part and made by an administrative official charged with the enforcement of these chapters may file an appeal to the Board of Adjustment. If an administrative official charged with enforcement of chapter 1 and 2 of this part is unable to make a decision because of vagueness or ambiguity in the meaning or application of these chapters or the zoning map, determine a lot or zoning district boundary line, determine whether a proposed use is allowed within a zoning district, or resolve similar questions or uncertainties, the official is hereby authorized to bring an appeal to the Board of Adjustment. In an appeal to the Board of Adjustment, regarding an administrative decision or interpretation, the Board's scope of review shall be limited to determining whether the decision or interpretation by the Administrator was in accordance with the intent and requirements of this Ordinance, and accordingly, the Board will affirm or reverse the decision.

6.3.6. CERTIFICATES OF NONCONFORMITY ADJUSTMENT.

- A. Certificates of Nonconformity Adjustment shall be required to enlarge, expand or otherwise alter any Nonconforming Use or Structure.
- B. In addition to the application requirements stated at section 4.9.1. above, Applications for a Certificate of Nonconformity Adjustment shall include a detailed plan of the existing site, showing, the degree of Nonconformity with respect to the dimensional and design regulations of this Ordinance. In the case of a Nonconforming Use the application shall include a detailed explanation of the current Use including documentation of traffic generated by the current use.
- C. The Board of Adjustment may impose conditions to lessen the size or scope of the nonconformity. The Board may determine what the nonconformity operator/owner must do to the property for certification. For example, landscaping or fencing may be required or a shift of operations away from adjoining properties may be stipulated.

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 limiting condition imposed in accordance with subsection 6.3.4. (c) or 6.3.6. C. below or violation of any provision of this chapter 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.