

2021-109 TEXT AMENDMENT SUMMARY

CHARLOTTE SUBDIVISION ORDINANCE

05/02/21

This document summarizes the changes proposed to the Charlotte Subdivision Ordinance through petition 2021-109. Only the sections being revised are shown in the summary. Text to be added is in red and underlined. Text to be deleted is in red and struck through. The full ordinance, with the changes shown in the ordinance, can be found on the webpage for [rezoning petition 2021-109](#) on the Charlotte Planning, Design & Development website.

ARTICLE 1. IN GENERAL

Sec. 20-2. - Purpose.

This chapter is adopted pursuant to the authority conferred by G.S. ~~160A-371~~ 160D-801 et seq., the Charter, and certain special legislation for the city and the county (ch. 203, Sess. Laws 1961) and for the purpose of promoting the orderly development of the city and county and for the purpose of coordinating streets within subdivisions with existing or planned streets or with public facilities; to secure adequate rights-of-way or easements for street or utility purposes; to secure adequate spaces for recreation and school sites; to provide for the distribution of population and traffic in a manner which shall avoid congestion and overcrowding; to protect and enhance environmental quality; and to create conditions essential to health, safety, convenience and the general welfare.

Sec. 20-6. - Definitions.

(Definitions not listed remain unchanged)

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Performance guarantee means any of the following forms of guarantee: a surety bond issued by any company authorized to do business in this State; a letter of credit issued by any financial institution licensed to do business in this State; or other form of guarantee that provides equivalent security to a surety bond or letter or credit.

Subdivision will include all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, or building development of any type, including both residential and nonresidential multiple building site and multi-site projects even if there is no division of the underlying land into separate parcels which is to be recorded with the register of deeds and also includes

all divisions of land involving the dedication of a new street or a new street right-of-way or a change in existing streets; provided, however, that the following will not be included within this definition nor be subject to the requirements of this chapter:

- (1) The combination or recombination of portions of parcels created and recorded prior to January 1, 1988, or portions of lots platted in compliance with this ordinance after January 1, 1988, where the total number of parcels or lots is not increased and the resultant parcels are equal to the standards of the zoning ordinance.
- (2) The division of land into parcels greater than ~~five~~ ten acres where no street right-of-way dedication is involved.
- (3) The creation of strips of land for the widening or opening of streets or the location of public utility rights-of-way.
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the appropriate zoning classification.
- (5) The division of land into plots or lots for use as a cemetery.
- (6) Creation of a separate lot or building site by a less than fee simple instrument, such as a ground lease, when the property interest created is divided from the original parcel for ten years or less, including options to renew.
- (7) The lease of space or other area within a building owned by the landlord.
- (8) Easements for the purposes of utilities, driveways, parking, footpaths, trails or other similar purposes.
- (9) The division of a tract or parcel into separate tracts or parcels, or the creation of interests in lots or parcels, by means of:
 - a. A deed of trust, mortgage, or similar security interest solely for the purpose of securing any bona fide obligation (including transfers of such parcels or tracts pursuant to foreclosure or deeds in lieu of foreclosure), and
 - b. Releases from the liens and operation of such deeds of trust, mortgages, or similar security interests.
- (10) Proceedings to partition interests in lots or parcels pursuant to G.S. ch. 46 (or any successor statute) resulting in the division of a lot or parcel into two or more lots or parcels except where the partition proceeding is brought to circumvent the provisions of this chapter.
- (11) Divisions of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
- (12) Transfers of tracts or parcels by inheritance, to settle an estate, or bona fide gift.
- (13) Condemnation or deed in lieu of condemnation, by either a public or private condemnor; provided, however, that the condemnor must comply with the

requirements of this chapter as to the property acquired, either prior to the commencement of any development of the property acquired, or prior to the issuance of any building permit on the property acquired, or within six months following the date of acquisition, whichever date first occurs.

Subdivision, minor-limited is the division of a tract or parcel of land in single ownership if all of the following criteria are met, which may require only a plat for recordation:

- (1) The tract or parcel of land to be divided is not exempted under the subdivision definition (2) in this chapter.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than 5 acres.
- (4) After division, no more than three lots result from the division.
- (5) After division, all resultant lots comply with all the following:
 - a. All lot dimension size requirements of the applicable land-use regulations, if any.
 - b. The use of the lots is in conformity with the applicable zoning requirements, if any.
 - c. A permanent means of ingress and egress is recorded for each lot.

Sec. 20-7A. – Conflicts of Interest

For the purposes of this ordinance, the following conflicts of interest standards shall apply:

- (1) Boards and Commissions. – Members of appointed boards and commissions (Charlotte-Mecklenburg Planning Commission, Design Review Board, and the Alternative Compliance Review Board) shall not vote on any advisory or quasi-judicial decision regarding a development regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.
- (2) Administrative Staff. – No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

- (3) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Chapter 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 violations of due process 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.
- (4) Resolution of Objection. – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
- (5) Familial Relationship. – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Sec. 20-9. - Planning commission.

(Subsection listings not shown remain unchanged)

- (a) In addition to any authority granted to the Charlotte-Mecklenburg Planning Commission (hereinafter "planning commission) by other ordinances of the city or Mecklenburg County, and in accordance with the provisions of the interlocal agreement regarding the structure and responsibilities of the planning commission, the planning commission will have the following powers and duties to be carried out in accordance with these regulations.
 - (1) To hear appeals filed regarding the action of the planning staff in the approval or disapproval of any subdivision proposed under these regulations.
 - (2) To hear and decide requests for variances from the standards of this chapter in accordance with the provisions of article III. The planning commission may appoint the zoning committee to serve as the hearing committee to hear and decide requests for variances.
 - (3) To hear and decide appeals from the interpretation of any provisions of this ordinance from the planning staff. The planning commission may appoint the zoning committee to serve as the hearing committee to hear and decide appeals.
- (b) In all of these matters, the planning commission, or the hearing committee, may approve the request, deny the request, or approve the request with conditions relating to the intent and standards of this chapter.
- (c) Each commission member shall take an oath of office before starting their duties.

(Code 1985, § 20-11; Ord. No. 2960, § 2, 5-16-2005)

Sec. 20-10. – Development Review Board.

(Subsection listings not shown remain unchanged)

- (a) A Development Review Board is hereby established to hear and decide requests for alternative compliance with the standards of this chapter. The board shall be composed of nine members and three alternates who shall be appointed according to the following disciplines (the determination that an appointee meets the relevant discipline shall be made by the appointing authority whose determination shall be conclusive):

Architect (City Council)

Civil Engineer (Mayor)

Landscape Architect

(Mayor)

Bicycle Advocate (Mayor)

Planning Commissioner (City Council)

Public Health Professional (City

Council) Real Estate Attorney (City

Council)

Real Estate Development Industry Representative (City Council)

Transportation Planner or Urban Planner (City Council)

Architect – Alternate (Mayor)

Civil Engineer – Alternate (City Council)

Landscape Architect – Alternate (City Council)

- (b) The terms of office shall be for three (3) years with no member serving more than two consecutive full terms. The terms of one-third of the Board shall expire each year. If a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.
- (c) Five voting members shall constitute a quorum. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section.
- (d) Members shall be subject to removal from the Board with or without cause by the appointing authority.
- (e) Each commission member shall take an oath of office before starting their duties

Sec. 20-17. - Procedures for approval.

(Subsection listings not shown remain unchanged)

- (a) Preliminary plan. A preliminary plan of the proposed subdivision, developed in accordance with the specifications set forth in section 20-16, must be submitted to the planning staff. The plan must be accompanied by an application in duplicate, signed by the owner and/or his or her duly authorized agent for approval of the plans, on application forms to be furnished by the planning staff. At the time of submission, the applicant will be advised as to the number of copies of the plan and related data required in section 20-16 that must be submitted with the application.

- (b) Time limits. Time limits for reviewing complete applications are as follows:

Action	Staff Time
Initial review of preliminary plan—red line drawings	30 days
Review of plans with corrections and/or changes	20 days
Approval of completed and correct plan	10 days

The time limits do not apply to plans for which no sketch plan has been prepared and submitted to the planning staff or to plans which contain any proposed school, park, greenway or other public facility for which reservation is required. The applicant may consent to an extension of any of the time limits in this subsection. Should the staff fail to respond within the time limits set out, the application will be considered to be denied, and the applicant may appeal the denial to the planning commission. ~~If the application is denied by the planning staff, the staff will furnish a written notice of the denial and the reasons for the denial upon request of the applicant.~~

- (c) Waiver. The required preliminary plan may be waived by the planning staff for certain subdivisions, including metes and bounds subdivision. Such applications will

be designated "minor subdivisions," provided:

- (1) Such land abuts a street of required width and is so situated that no new streets are proposed, and no improvements are required to be installed by the subdivider according to this chapter.
- (2) A plat of the tract being subdivided, accompanied by two applications signed by the owner/developer and/or his or her duly authorized agent, has been filed with the planning staff.
- (3) The subdivider may be required to submit topographic information to determine flood elevations whenever the property proposed to be subdivided or resubdivided is traversed by or adjacent to a known watercourse. However, a final plat must be prepared and recorded as provided in section 20-18.

- (4) The required preliminary plan may also be waived by the planning staff for limited subdivisions and/or those subdivisions which do not involve the dedication of a new street.
- (d) Final plats. Upon tentative approval of the preliminary subdivision plan by the planning staff, the subdivider may proceed to comply with the other requirements of this chapter and the preparation of the final subdivision plat. The final plat may include all or only a portion of the subdivision as proposed and approved on the preliminary subdivision plan, provided that all required improvements to any existing or new street shown on the preliminary plan within the boundaries of the final plat have been provided for or been assured by the posting of a surety as provided for in section 20-58 prior to any final plat approval. The final subdivision plat must be developed in accordance with the specifications set forth in section 20-18. When the final plat is submitted to the planning staff for approval, it must be accompanied by an application in duplicate, signed by the owner and/or his or her duly authorized agent for final plat approval, on an application form to be supplied by the planning staff. The official plat for recording, together with a sufficient number of copies for distribution, must be presented for approval. The planning staff will approve final plats which comply with the requirements of this chapter within 30 days after complete submission.
- (e) Decisions for preliminary subdivision plan and final subdivision plat.
- (i.) In approving a preliminary subdivision plan or final subdivision plat, the planning staff shall deliver a written notice of the decision, in print or electronic form, by personal delivery, electronic mail, or by first-class mail to the applicant and property owner, if different from the applicant. Any approval issued exclusively in electronic form shall be protected from further editing once issued. The written notice shall be delivered to the applicant's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the applicant is not the property owner.
- (ii.) Disapproval. If the planning staff disapproves a preliminary plan or final plat of a subdivision, ~~the grounds~~ reasons for such disapproval will be stated in ~~writing~~ a written notice of the decision delivered to the applicant and property owner, if different from the applicant, by personal delivery, electronic mail, or by first-class mail. The written notice shall be delivered to the applicant's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the applicant is not the property owner.

After such disapproval, an appeal from the decisions of the planning staff may be taken to the planning commission, in accordance with article III of this chapter, and shall be properly filed within 30 days from receipt of the written notice of the decision. If notice is provided by first-class mail, the notice is deemed received on the third business day following deposit of the notice for mailing with the United States Post Office. The planning

commission may approve, disapprove in whole or in part, or otherwise modify the action of the planning staff. A final plat of a subdivision approved by the planning commission upon appeal from the decision of the planning staff will be eligible for recording by the register of deeds of the county.

- (f) Effect of approval of preliminary plan. A preliminary plan approved under this chapter will be valid for a period of three years from the date of approval. If no work on the site in furtherance of the plan has commenced within the three-year period, the preliminary plan approval will become null and void, and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced, that involves any utility installations or street improvements except grading, the plan will remain valid and in force, and the subdivision may be completed in accordance with the approved plan.
- (g) Release of grading permit. Preliminary plan approval is required for the issuance of a grading permit for any grading work on the site for the installation of any improvements in furtherance of the development. The release of the grading permit may be authorized by the planning staff prior to the approval of the preliminary plan, if the matters staying the approval are not related to nor will have an effect on the need for grading on the site. Once the preliminary plan is approved, further approvals under this subsection are not required for granting permits for individual sites within the development.

Sec. 20-20. - Planned developments.

(Subsection listings not shown remain unchanged)

- (a) The requirements of this section will apply for the preparation, submission and approval of preliminary site plans for planned developments involving one-family attached dwellings and planned multifamily developments.
- (b) A pre-preliminary site plan conference will be arranged by the developer with designated members of the planning staff prior to the submission of a preliminary site plan for a planned development.
- (c) The developer must submit to the planning staff a preliminary site plan and supplemental documents for review and approval. The preliminary site plan must be prepared in accordance with the requirements of section 20-16 and must include the following additional information:
 - (1) The use, approximate height, bulk and location of all buildings and structures other than one-family detached and semidetached dwellings, except that one-family detached dwellings using a zero side yard shall be shown.
 - (2) All proposed land use and dwelling unit densities.
 - (3) For plans which call for development over a period of years, a schedule showing the time within which application for final approval of all parts of the development are intended to be filed.

- (4) The proposed location, use, improvements, ownership and manner of maintenance of common open space areas.
- (5) Proposed off-street parking and circulation plan showing the location and arrangement of parking spaces and any driveways for ingress and egress to and from adjacent streets and highways.
- (d) The planning staff action may be approval, requests for revisions, or denial of the preliminary site plan.

(1) In approving a preliminary site plan, or requesting revisions for a planned development, the planning staff shall deliver a written notice of the decision, in print or electronic form, to the developer and property owner, if different from the developer, by personal delivery, electronic mail, or by first-class mail. Any approval issued exclusively in electronic form shall be protected from further editing once issued. The written notice shall be delivered to the developer's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the developer is not the property owner.

(+2) If the planning staff disapproves a preliminary site plan for a planned development, the applicant will be notified of the ~~grounds~~ reasons for such disapproval in a written notice of decision delivered to the developer and property owner, if different from the developer, by personal delivery, electronic mail, or by first-class mail. The written notice shall be delivered to the developer's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the developer is not the property owner.

After such disapproval, an appeal from the decision of the staff may be taken to the planning commission and shall be properly filed within 30 days from receipt of the written notice of the decision. If notice is given by first-class mail, the notice is deemed received on the third business day following deposit of the notice for mailing with the United States Post Office. The planning commission may disapprove in whole or in part or otherwise modify the action of the planning staff.

- (23) The final plat for planned developments, involving one-family attached dwellings and planned multifamily developments shall be prepared in accordance with the requirements of section 20-18 and shall contain the following additional information:
- a. The use, bulk, and location of all buildings and structures other than one family detached and semidetached dwellings.
 - b. All land uses.
 - c. The location, use, improvements, ownership and manner of maintenance of all common areas.

Written notice of the decision on a final plat for planned development shall be sent to the developer and to the property owner, if different from the developer. The written decision may be provided in print or electronic form and shall be delivered by personal delivery, electronic mail, or by first-class mail. Any approval issued exclusively in electronic form shall be protected from further editing once issued. If the final plat is not approved, the reasons shall be provided in the notice of decision. The notice shall be delivered to the developer at the address provided in the final plat application, and to the last address listed for the property owner on the county tax abstract, if the developer is not the property owner.

- (e) The planning staff will review the preliminary site plan to ensure conformance with the requirements of the zoning ordinance in appendix A to this Code and with this chapter. (Code 1985, § 20-20)

Sec. 20-24 Alternative Compliance for Street Design

(Subsection listings not shown remain unchanged)

- (1) Purpose and Intent. It is the purpose of this section to provide for the consideration of alternative street designs which differ from the conventional design standards outlined in Sec. 20-22 and 20-23 of this article but which are based upon sound engineering, transportation, and urban design practice. Alternative street design means alternative designs for physical improvements such as street cross-sections, street network, and street block design.
- (2) Authority. The Development Review Board will have the authority to hear and decide applications for alternative compliance.
- (3) Initiation. An application for alternative compliance may be initiated only by the owner of the subject property, an agent authorized in writing to act on the owner's behalf, or a person having written contractual interest in the affected property.
 - (a) An applicant requesting alternative compliance shall schedule a pre-application conference with staff to discuss the procedures, standards, and regulations.
 - (b) An application, in a form prescribed by the Planning Director, must be filed with the planning department accompanied by a nonrefundable filing fee as established by city council. The application shall include an explanation of why the development proposal is not allowed by the ordinance standards.
- (4) Determination of completeness.
 - (a) Within ten days of receiving an application for alternative compliance, the Planning Director will determine whether the application is complete. If the Planning Director determines that the application is not complete, he or she will notify the applicant or specifying the application's deficiencies. The planning director will take no further action on the application until the deficiencies are remedied. If the planning director fails to notify the applicant,

the application will be deemed complete. If the application is deemed complete, the planning director will schedule the application for consideration at a hearing before the Development Review Board within 30 days.

- (b) A determination of completeness will not constitute a determination of compliance with the substantive requirements of these regulations but will only allow review of the application to proceed under this section. In the event that the application is automatically deemed complete due to the failure of the planning director to notify the applicant of any deficiencies in the application, the deficiency of information may result in rejection of the application by the Development Review Board.
- (5) Staff review.
- (a) After receipt of a complete application for alternative compliance, the planning director will review the application and send a written recommendation to the Development Review Board setting forth whether the application for alternative compliance should be granted or denied and the reasons for such recommendation. In making such recommendation, the planning director may consult with other city and county agencies and may allow them to review the application for alternative compliance. The recommendation of the planning director will be submitted to the Development Review Board and mailed to the applicant at least five days prior to the scheduled public hearing.
- (6) Notice and hearing.
- (a) The Development Review Board will hold hearings on any application for alternative compliance which comes before it in accordance with rules adopted by it for such purpose.
 - (b) The planning staff will mail written notice of the time, place, and subject of the hearing to the person or persons filing the application, to the owners of the subject property, and to the owners of property which adjoins or is directly across a street or alley from the subject property at least 15 days prior to the hearing.
- (7) Action by the Development Review Board. The Development Review Board will grant or deny the application for alternative compliance. The board must state the reasons used to reach its decision.
- (a) If the application is approved by the Development Review Board, the administrator shall deliver a written notice of the decision, in print or electronic form, by personal delivery, electronic mail or by first-class mail to the applicant and property owner, if different from the applicant. Any approval issued exclusively in electronic form shall be protected from further editing once issued. The written notice shall be delivered to the applicant's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the applicant is not the property owner. A written copy of the notice of decision shall also be mailed to every

aggrieved party who has filed a written request for such copy with the planning director at the time of the hearing.

- (b) If the application is disapproved by the Development Review Board, the administrator shall notify the applicant of the reasons for such disapproval in a written notice of decision delivered to the applicant and property owner, if different from the applicant, by personal delivery, electronic mail, or by first-class mail. The written notice shall be delivered to the applicant's address provided in the application, and to the last address listed for the property owner on the county tax abstract, if the applicant is not the property owner. A written copy of the notice of decision shall also be mailed to every aggrieved party who has filed a written request for such copy with the planning director at the time of the hearing.
- (8) Approval criteria. Before granting approval of an application for alternative compliance, the Development Review Board must determine that:
 - (a) While the proposed alternative design does not strictly meet all of the standards of the Urban Street Design Guidelines it nevertheless satisfies their intent and is not an inferior improvement design.
 - (b) The proposed alternative design will have the same or higher level of service or adequacy as the standard required improvements. It is not the intent of the alternative compliance procedure to allow an inferior improvement design to the standards required by this chapter for the purpose of reducing cost.
 - (c) The departure from the standard is the minimum necessary, given the specific circumstances of the request.
 - (d) The proposed alternative design will not materially endanger the public health or safety if constructed where proposed and developed according to the plan as submitted and approved
- (9) Rehearing. The Development Review Board may refuse to hear an application for alternative compliance which is substantially similar to an application that has been previously denied.
- (10) Appeal from Development Review Board. Any appeal of a decision rendered by the Development Review Board under this section must be to the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court must be properly filed with the clerk of superior court within 30 days from receipt of the written notice of decision. If notice is given by first-class mail, the notice is deemed received on the third business day following deposit of the notice for mailing with the United States Post Office.~~after the decision of the Development Review Board is filed in the office of the planning director or after a written copy thereof is mailed to every aggrieved party who has filed a written request for such copy with the planning director at the time of the hearing, whichever is later.~~
- (11) Effect of grant of application for alternative compliance. After the approval of an application for alternative compliance, the applicant will be required to follow the

procedures for preliminary and final plat approval in order to proceed with development of the subject property. All decisions made by administrative officers under those procedures will comply with the alternative compliance to the regulations granted to the applicant by the Development Review Board or court.

ARTICLE II. REQUIRED IMPROVEMENTS

Sec. 20-58. - Modification of requirements; ~~bond~~ performance guarantees.

(Subsection listings not shown remain unchanged)

- (a) In subdivisions adjoining already established streets that have been accepted for maintenance by the city or the state department of transportation, the requirements of this article will apply as follows:
 - (1) Those requirements that would necessitate the general removal and reconstruction of established permanent pavements will not be applicable;
 - (2) Where the adjoining established street is a part of the city's or the state department of transportation's street system, the adjoining street must be improved in accordance with either the requirements of this article and the requirements of the city or the state department of transportation, whichever establishes the higher standard.
- (b) Plats for new lots fronting on already dedicated or established streets or roads that have not been accepted for maintenance by the city council or the state department of transportation, or which have been accepted for maintenance by the state department of transportation but have not been improved with a paved roadway, will be eligible for final approval when the requirements of this article have been complied with as closely as may reasonably be required considering the existing condition of the road, the extent of area to be platted and the cost of required improvements in relation to the comparative benefits to accrue to the subdivider and the other owners of property on both sides of the street or road.
- (c) Where the improvements required by this chapter have not been completed prior to the submission of the final subdivision plat for approval, the approval of the plat will be subject to the owner filing ~~a surety bond or an irrevocable letter of credit~~ performance guarantee with the engineering department, ~~in an amount to be determined by the city engineering department~~ The amount of the performance guarantee shall not exceed 125% of the reasonably estimated cost of completion at the time the performance guarantee is issued. The City, in consultation with other affected agencies, such as the department of environmental health, with ~~sureties~~ performance guarantees satisfactory to the city guaranteeing the installation of the required improvements allowing credit for improvements completed prior to the submission of the final plat, may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably

estimated cost of completion shall include 100% of the cost for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional 25% allowed under this section includes inflation and all costs of administration regardless of how such fees or charges are denominated. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed 125% of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time. Upon completion of the improvements and the submission of as-built drawings, as required by this chapter, written notice thereof must be given by the subdivider to the appropriate engineering department. The engineering department will arrange for an inspection of the improvements and, if found satisfactory, will, within 30 days of the date of the notice, provide written acknowledgement to the developer that the required improvements have been completed and authorize in writing the release or return of the ~~security~~ performance guarantees given, subject to the warranty requirement.

The developer shall have the option to post one type of a performance guarantee, in lieu of multiple bonds, letters of credit, or other equivalent security, for all matters related to the same project requiring performance guarantees. Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

(Code 1985, § 20-44)

Sec. 20-59. - Inspection.

(Subsection listings not shown remain unchanged)

- (a) The city must be notified two days in advance of the work to be started in a subdivision so that an authorized representative of the city engineer or other responsible agency may be assigned to make any and all necessary inspections of the work performed.
- (b) The inspector must be allowed access to all parts of the work to ascertain whether or not the work as performed is in accordance with the specifications, and terms of approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
- (c) No material may be placed nor any work performed except in the presence of the inspector without special permission of the appropriate agency. Such inspection,

however, does not relieve the contractor from any obligation to perform all of the work strictly in accordance with the specifications.

- (d) If any disputes arises as to the material furnished or the manner of performing the work, the inspector will have authority to reject materials or suspend work until the question or issue can be referred to and decided by the appropriate agency. The contractor must remove any work or material condemned as unsatisfactory by the inspector and must rebuild and replace the work or material to the standard required by the specifications, all at his or her own expense.

(Code 1985, § 20-45)

ARTICLE III. APPEALS AND VARIANCES

Sec. 20-87. - Initiation.

- (a) An appeal of a decision on a subdivision preliminary plan may be initiated by any person or incorporated or unincorporated association to which at least one of the members has standing per G.S. 160D-1402(c) is aggrieved or by any officer, department, board or bureau of the city or the county. However, only the applicant has the right to appeal from the disapproval of a final plat as required by section 20-18.
- (b) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

(Code 1985, § 20-57)

Sec. 20-88. - Filing of notice of appeal.

- (a) A notice of appeal in the form prescribed by the planning commission must be properly filed with the planning director within ~~ten~~ 30 days from receipt of the written notice of the decision. If the notice is given by first-class mail, the notice is deemed received on the third business day following deposit of the notice for mailing with the United States post Office. The notice filed with the planning director must be accompanied by a nonrefundable filing fee as established by the city council. Failure to timely file such notice and fee will constitute a waiver of any rights to appeal under this section.
- (b) The filing of such notice will require the officer whose action is appealed to transmit to the planning commission all administrative ~~papers~~ materials, records, and other information regarding the subject matter of the appeal.
- (c) Except as provided in this article, the filing of such notice shall stay any proceedings, including the issuance of civil penalties in furtherance of the contested action.

(Code 1985, § 20-58)

Sec. 20-93. - Staff review.

After receipt of a complete variance petition or notice of appeal from an action taken, the planning director will review the notice or petition and send a written recommendation to the planning commission, or the hearing committee, setting forth whether the appeal or variance should be granted or denied and the reasons for such recommendation. In making such recommendation, the planning director may consult with other city and county agencies and may allow them to review the notice of appeal or variance petition. The recommendation of the planning director will be submitted provided in written or electronic form to the planning commission and ~~mailed~~ to the appellant or petitioner, at the same time, at least five days prior to the scheduled public hearing.

(Code 1985, § 20-63; Ord. No. 2960, § 7, 5-16-2005)

Sec. 20-94. - Notice and hearing.

- (a) The planning commission, or the hearing committee, will hold quasi-judicial hearings on any appeal or variance petition which comes before it in accordance with rules adopted by it for such purpose.
- (b) As per G.S. ~~160A-388(a2)~~, 160D-406(b) notices of hearings shall be mailed by the administrator or planning staff to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject to the hearing, and to other persons entitled to receive notice.

In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(Code 1985, § 20-64; Ord. No. 2960, § 8, 5-16-2005)

- (c) The administrator or planning staff shall transmit to the planning commission all applications, administrative materials, records, and other information regarding the subject matter being considered. The administrative materials may be distributed in written or electronic form to the members of the commission prior to the hearing if at the same time they are distributed to the commission a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. The planning commission chair shall rule on any

objections. Rulings on unresolved objections shall be made by the commission at the hearing. These rulings are also subject to judicial review pursuant to G.S. 160D-1402.

- (d) The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the City shall be present at the evidentiary hearing as a witness.

Sec. 20-97. - Appeal from planning commission.

- (a) Every quasi-judicial decision of the planning commission, or the hearing committee, shall be subject to judicial review by the superior court by proceedings in the nature of certiorari pursuant to G.S. ~~160A-393~~ 160D-1403. Any petition for a review of the planning commission's, or hearing committee's decision in the nature of certiorari by the superior court must be filed with the clerk of superior court ~~by the later of (1) within~~ 30 days ~~after the decision is effective, or (2) 30 days after a from receipt of the~~ written ~~copy of the~~ notice of decision, is given in accordance with Section 20-95 of this ordinance. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.
- (b) If there is an appeal from the decision of the planning staff taken to the planning commission, or the hearing committee, then the person filing the appeal may not file a revised preliminary plan or revised final plat for the portion of the subject site affected by the appeal until the completion of the appeal, or any final judicial determination. The planning staff may approve a preliminary plan or final plat for that portion of the property not affected by the action of the appeal.

(Code 1985, § 20-67; Ord. No. 2960, §§ 11, 12, 5-16-2005)