Town of Hilton Head Island
Regular Planning Commission Meeting
Wednesday, December 4, 2013
9:00 a.m. Benjamin M. Racusin Council Chambers
AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
   Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
5. **Approval of Agenda**
6. **Approval of Minutes –** November 20, 2013 Meeting
7. **Appearance by Citizens on Items Unrelated to Today's Agenda**
8. **Unfinished Business**
   None
9. **New Business**
   ZMA130008: A request from Tim Wright proposing to amend the Official Zoning Map by changing the zoning designation of parcels from the IL (Light Industrial) Zoning District to the RM-4 (Low Density Residential) Zoning District. The parcels affected are identified as 147B, 0440, 0407, 0408, 0409, 0438 and 0147 on Beaufort County Tax Map 7. *Review of this application is postponed to a future meeting.*

   LMO Amendments: The Town of Hilton Head Island is rewriting the Land Management Ordinance (LMO). This document guides new development and redevelopment within the Town limits. The Town proposes to replace Chapters 1, 2, 3, 8 and 9 of the existing LMO with the following new chapters: Chapter 1 (General Provisions), Chapter 2 (Administration), Chapter 8 (Enforcement) and Chapter 9 (Disaster Recovery). Significant changes have been made to parts or all of the above chapters. *Presented by: Clarion Associates, consultant for the LMO Rewrite Project*
10. **Commission Business**
11. **Chairman's Report**
12. **Committee Reports**

13. Staff Reports

14. Adjournment

Please note that a quorum of Town Council may result if four or more of their members attend this meeting.

TOWN OF HILTON HEAD ISLAND
Planning Commission Meeting
Wednesday, November 20, 2013 **DRAFT**
9:00a.m – Benjamin M. Racusin Council Chambers

Commissioners Present: Chairman Gail Quick, Vice Chairman David Bennett, Tom Lennox, Alex Brown, Terry Ennis, Bryan Hughes, and Judd Carstens

Commissioners Absent: Barry Taylor and Brian Witmer

Town Council Present: Bill Harkins

Town Staff Present: Jayme Lopko, Senior Planner & Planning Commission Coordinator
Anne Cyran, Senior Planner
Jill Foster, Deputy Director of Community Development
Shawn Colin, Deputy Director of Community Development
Teri Lewis, LMO Official
Kathleen Carlin, Secretary

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

5. Chairman's Welcome and Introduction to Meeting Procedures

6. Approval of Agenda
The agenda was **approved** as presented by general consent.

7. Approval of Minutes
The Planning Commission **approved** the minutes of the November 6, 2013 meeting as presented by general consent.

8. Appearance by Citizens on Items Unrelated to Today's Agenda
a) Mr. Jim Collett, Telecommunications Task Force Chairman, presented an update on the status of improved telecommunications on the island. Mr. Collett thanked the Planning Commission for their continued support.

b) Ms. Julie Hallquist presented statements in concern of plans for Collier Beach Park.

c) Mr. Peter Ovens presented statements regarding the Coligny project including the site selection for USCB.

Chairman Quick thanked the public speakers for their comments.

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9. Unfinished Business

None

10. New Business

ZMA130006: A request from Walter J. Nester, III on behalf of Main Street Inn, LLC proposing to amend the Official Zoning Map by amending the Hilton Head Plantation Master Plan to add Medical and Behavioral Health Services as a permitted use on property located at 2200 Main Street. The property is further identified on Beaufort County Tax Map 7B as Parcel 19. Chairman Quick introduced the application and opened the public hearing. Chairman Quick then requested that the staff make their presentation.

Mrs. Jayme Lopko made the presentation on behalf of staff. The staff recommended that the Planning Commission find this application to be *consistent* with the Town's Comprehensive Plan and does serve to carry out the purposes of the LMO, based on the Findings of Facts and Conclusions of Law as determined by the LMO Official and enclosed in the staff's report. Mrs. Lopko presented an in-depth overhead review of the application including the vicinity map and zoning map.

Main Street Inn was rezoned in 1998 to make the use conforming to the actual use of the property. It did not meet the definition of the bed and breakfast inn so it was rezoned to a 34 room motel and 1200 square foot restaurant limited to 67 seats.

This application proposes to add medical and behavioral health services as a permitted use on the property. Medical and behavioral health services would allow a facility to provide clinical services including diagnosis, treatment and rehabilitation for medical and behavioral conditions, but excluding incarceration or post incarceration patient services. This use would not be considered a medical office because it would include overnight accommodations. The permitted density on the property would be a 34 room motel with a 1200 square foot restaurant (up to 67 seats) or a 14,696 square foot medical and behavioral health services facility.

Mrs. Lopko reviewed the staff's Findings of Fact and Conclusions of Law. Mrs. Lopko stated that the staff has not received any public comment on the application. At the completion of the staff's presentation, Chairman Quick requested that the applicant make his presentation.

Walter Nester, Esq., agent for the applicant, presented statements in support of the application. Mr. Nester presented statements in agreement with the staff's Findings of Facts and Conclusions of Law. Mr. Nester discussed the current and proposed use of the property. The proposed use will serve to provide an economical service to the citizens of Hilton Head Island. Following the applicant's presentation, Chairman Quick requested public comments.

1) Mr. Rob Jordan, partner in the SERG restaurant group, presented statements in concern of the potential economic loss to their business.
2) Mr. Shawn Peck, Quality Inn & Suites, presented statements in concern of the proposed use.
3) Mr. Brian Bombeck, business owner, Mongiamo's, stated concern with the potential loss of business.
4) Mr. Rick Clayton, business owner, Pyramids, stated concern with the potential loss of business.

DRAFT

Mr. Nester presented follow up comments in response to the public concerns. The application will have no negative impacts on the community. At the completion of public comments, Chairman Quick stated that the public hearing for this application is closed. Chairman Quick requested comments from the Planning Commission.

Each member of the Planning Commission presented statements in favor of approving the application. The Planning Commission discussed the existing facility. Commissioner Lennox stated that the application will increase the viability of the area and is an improvement over the existing.

Following final discussion by the Planning Commission, Chairman Quick requested that a motion on the application be made.

Commissioner Brown made a **motion** to **approve** Zoning Map Amendment application ZMA130006 as presented finding the application to be *consistent* with the Town's Comprehensive Plan and does serve to carry out the purposes of the LMO. Commissioner Carstens **seconded** the motion and the motion **passed** with a vote of 7-0-0.

11. Staff Reports

a. Ms. Jennifer Ray presented a status update on Chaplin Linear Park.
b. Mr. Shawn Colin presented a status update on Coligny.

12. Adjournment

The meeting was adjourned at 4:40p.m.

Submitted By:	Approved By:
_____	_____
Kathleen Carlin	Gail Quick
Secretary	Chairman

DRAFT

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Planning Commission
CC: Town Council, LMO Rewrite Committee
FROM: Teri Lewis, *LMO Official*
DATE: November 26, 2013
SUBJECT: LMO Rewrite – Draft Chapters 1, 2, 8 and 9

The LMO Rewrite Committee, Town Staff and the project's consultant, Clarion Associates, have been working diligently over the past two years to rewrite the Town's Land Management Ordinance. Public input was solicited and received during the over 50 meetings held by the LMO Rewrite Committee.

The draft LMO will go through the public adoption process in stages. The ten chapters will be grouped as follows:

First Stage – Public Hearing: 12/4/13 Planning Commission Meeting
Chapter 1 – General Provisions
Chapter 2 – Administration
Chapter 8 – Enforcement
Chapter 9 – Disaster Recovery
Appendix A

Second Stage – Public Hearing: 1/29/14 Planning Commission Meeting
Chapter 3 – Zoning Districts
Chapter 4 – Use Standards
Chapter10 – Definitions

Third Stage – Public Hearing: /5/14 Planning Commission Meeting
Chapter 5 – Development & Design Standards
Chapter 6 – Natural Resources
Chapter 7 – Nonconformities

The chapters provided with this memo are Chapters 1, 2, 8 and 9. At the start of each chapter is a commentary provided by the project's consultant which attempts to summarize the content of the chapter and any significant changes.

The project's Executive Summary is also included. The Executive Summary sets out the original directives from Town Council related to the LMO Rewrite project and sums up the major changes that were drafted in an effort to accomplish those directives.

Should you have any questions or concerns that you would like to address prior to the public hearing, please contact me at 341-4698 or teril@hiltonheadislandsc.gov.

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Hilton Head Island ♦ South Carolina ♦ 29928
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Executive Summary

The Town's Land Management Ordinance (LMO) was a widely discussed topic during the last elections on Hilton Head Island in 2010, with all mayoral candidates and all candidates for Town Council agreeing that the LMO must be changed in order to facilitate redevelopment of aging properties. The original LMO, adopted in 1987, and both rewritten and amended multiple times since then had served the Town well when the objective was controlling new development.

Much has changed over the years as the island is mostly built out and the original development/buildings are more than 30 years old.

Town Council in March of 2011 officially chartered a committee of volunteers, supported by Town Staff and a consulting firm which specializes in land management ordinances.

The LMO Rewrite Committee has been working since its first meeting in April 2011 to understand the current issues, define the problems associated with the old LMO, and articulate the requirements for the future LMO. Clarion Associates out of Chapel Hill, NC has provided insight into the approach taken by other similar communities, and provided expertise in turning the committees' objectives into a draft ordinance for Town approval.

Throughout the effort, the committee has kept in mind three very important guiding principles and believes that the draft LMO adheres to all:

1. Living in Harmony with Nature, Protecting the Natural Beauty, and Creating a Unique Sense of Place
2. Sustaining Community Prosperity Through a Diversified, Strong Local Economy Based Upon Resort, Retirement, and Non-Hospitality Businesses
3. Providing a Serene, Safe, and Healthy Living Environment for Residents, Guests and Visitors

Charter from Town Council - presented April 8, 2011 First Committee Meeting

Mission:

To rewrite the LMO to simplify the Town's land development regulations and reorganize it into a format that is more user-friendly and easier to understand and apply. Property owners and investors should be able to clearly and quickly understand what development and improvements to property the code will support. The new code should not require users to search through multiple chapters to find regulations affecting a specific property. This code should encourage reinvestment to revitalize existing development and encourage investment in new development consistent w the Town's core value.

The Committee is to be guided by direction identified by Town Council at its 2010 Workshop. The areas below are to be addressed. As part of this effort, the Committee shall review staff efforts in reworking the LMO to address the Town Council's directives.

1. *Development application review and permitting processes and procedures.*
    - *Eliminate unnecessary processes and procedures.*
    - *Eliminate unnecessary submittal requirements.*
    - *Conform notice requirements to State Code.*
    - *Review criteria for special exceptions/variances and rezoning. Make them flexible and easy to understand.*

2. *Zoning districts.*
    - *Review recent rezoning requests.*
    - *Evaluate current and future market trends.*
    - *Evaluate and identify appropriate land uses and densities with attention to market trends and past rezoning requests.*
    - *Develop a new zoning scheme to replace existing zoning districts outside existing PD-1s.*

3. *Design standards.*
    - *Develop specific design standards for selected zoning districts.*
    - *Review non-district specific design and natural resources standards.*
    - *Eliminate outdated requirements, create flexibility where appropriate.*
4. *Administrative waivers.*
    - *Develop process to allow more waivers at staff level.*

5. *Nonconformities.*

    - *Evaluate policy on nonconformities.*
    - *Devise framework to facilitate improvement of existing nonconforming sites.*

6. *PD-1's.*
    - *Evaluate the use of master plans for zoning purposes.*
    - *Consider more broad designations of allowed uses and densities.*
    - *Develop a framework to establish consistent development regulations for all PUDs.*
    - *Evaluate the current "use it or lose it" clause and determine appropriate applications*

7. *Identify and prioritize revitalization and investment zones.*
    - *The Coligny area and Shelter Cove Mall are already identified by Town Council, Comprehensive Plan and Mayor's Task Force as top priority investment areas.*
    - *Existing TIF district has prioritized other areas.*
    - *Other suitable areas should be identified and prioritized.*

Any additional work beyond the areas identified above must first be approved by the Town Council.

The mission was amended in 2012 to include Ward 1 issues relating to subdivision of property, infrastructure (roads and sewers) installation timing requirements related to sub-division, as well as setbacks and buffer requirements.

The new Land Management Ordinance

The most visible change in the LMO is appearance. It is shorter in length, encompasses a more user friendly format and makes better use of graphics and data sheets, making it easier to use and understand.

Some chapters of the LMO remain unchanged (like General Provisions, Disaster Recovery and Violations and Enforcement), while most others have been substantially updated and improved. Specifically, the new LMO:

a. Implements an improved review and permitting process, reducing complexity and improving response times for applicants which has been widely praised by businesses and individuals who have used the new process

b. Clarifies zoning by eliminating outdated districts, reducing the number of districts from 24 to 21 and creating new mixed use districts that better reflect specific areas of the island (e.g. Coligny Resort District, Sea Pines Circle District and Main Street District). Increases in density and flexibility in uses are proposed for some key areas to improve opportunities for redevelopment.

c. Develops specific design standards in key areas, with different criteria for pedestrian oriented districts, elimination of setbacks between adjacent similar uses and incentives for pedestrian and bicycle access between parcels. Buffer options will be available to offer choice between narrower buffers with more vegetation, or wider less vegetated buffers in order to preserve our green edge conditions. The new LMO will provide greater flexibility in managing natural resources (particularly trees), with a shift in focus from individual trees to overall canopy management.

d. Reduces nonconformities, and reduces cost/complexity of redevelopment for existing structures through changes to the use table in multiple zoning districts. More uses will be allowed by right or by condition rather than special exception. Additional flexibility for

nonconforming structures and uses to expand will be provided.

e. Clarifies PUD-1 roles and responsibilities in managing natural resources and PUD's will assume full responsibility for natural resource management on property they own and control.

f. Defines a process and specific guidelines for administrative waivers for certain design and performance standards.

g. Identifies revitalization areas (e.g. Coligny area, Mathews/278 area, Medical area) and improved opportunities for redevelopment through changes to use tables, development standards and creation of several specific zoning districts

h. Currently researching how to improve the ability to subdivide property (based on input from the native island community), deferring requirement to install roads and utilities until first development occurs. *NOT FINALIZED IF WE CAN DO THIS*

Town of HILTON HEAD ISLAND

Land Management Ordinance

Public Hearing Draft

Chapters 16-1, -2, -8, and –9

November 2013

CLARION OPTICOS WARD EDWARDS

Chapter 1 General Provisions

Commentary:

Title 16 Chapter 1: General Provisions, contains important general provisions that are relevant to the LMO as a whole. Some of the separate provisions already exist in the Town's current LMO, while others do not. Specifically, this chapter includes sections that:

- Establish the Land Management Ordinance (LMO), or official name of the document (Section 16-1-101);
- Identify the statutory authority of the Town to adopt the LMO (Section 16-1-102);
- Provide the general purpose and intent of the Town Council in establishing the LMO (Section 16-1-103);
- Set out who is subject to the LMO (Section 16-1-104);
- Identify Town-adopted plans that serve as policy guides to administration of the LMO (Section 16-1-105);
- Clarify that the stricter provision applies if ordinance provisions conflict with other regulations of the LMO (Section 16-1-106);
- Formally adopt and incorporate by reference the Official Zoning Map (Section 16-1-107);
- Establish rules governing the rights of development approved under previous ordinances and pending development applications submitted before the effective date of the new LMO (Section 16-1-108); and
- Provide a severability provision (Section 16-1-109).

This commentary box and the footnotes included in this draft are provided for reference purposes and will not be included in the adopted LMO.

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Chapter 16-1: General Provisions

Sec. 16-1-101. Ordinance[1]

This Ordinance shall be officially known as the "Land Management Ordinance of the Town of Hilton Head Island" and may be referred to as the "LMO" or "this Ordinance," and may be cited as Title 16 of the Municipal Code of the Town of Hilton Head Island (1983), as amended. Individual chapters of this Ordinance may be cited as Title 16 Chapter [chapter #], as appropriate. Individual sections of this Ordinance may be cited by reference to the section number as follows: "Sec. 16-[chapter #]-[section, subsection, and paragraph #]", as appropriate.

Sec. 16-1-102. Authority

A. General[2]

The Town Council is authorized to adopt the LMO in accordance with the enabling authority in Title 6 of the Code of Laws of South Carolina (1976), as amended, including but not limited to Chapter 7 and Chapter 29 of Title 6 of the Code, and including all provisions located elsewhere in the Code citing any applicable authority.

B. References to Code of Laws of South Carolina[3]

Whenever any provision of the LMO refers to or cites a section of the Code of Laws of South Carolina and that section is later amended, this Ordinance shall be deemed amended to refer to the amended section.

Sec. 16-1-103. Purpose and Intent[4]

The purpose and intent of the LMO is to guide development in accordance with the Town's Comprehensive Plan and existing and future needs of the Town in order to protect, promote, and improve the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare of the landowners and residents of the Town. The LMO is enacted and designed to exercise the full range of authority available to the Town in accordance with the enabling authority in Title 6 of the Code of Laws of South Carolina, and including all provisions located elsewhere in the Code granting any applicable authority, to:

A. Promote the public health, safety, and general welfare, while recognizing the rights of real property owners, by adopting a comprehensive zoning ordinance for the Town and providing for administrative procedures and development standards.

B. Prevent the overcrowding of land and avoid undue concentration of population by creating zoning districts consistent with the character and desired development form of each area of the Town and each area's suitability for particular development and uses by adopting an Official Zoning Map consistent with the zoning districts.

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[1] This section carries forward Sec. 16-1-101 of the current LMO, with minor changes to clarify language.
[2] This subsection carries forward Sec. 16-1-102 of the current LMO.
[3] This new subsection states when the LMO refers to or cites a section of the Code of Laws of South Carolina, and that section is later amended or superseded, the LMO shall be deemed amended. It is included so that "as amended" does not have to be included every time the Code of Laws of South Carolina is cited in the LMO.
[4] This section carries forward Sec. 16-1-103 of the current LMO, with minor changes to clarify language.

C. Through the zoning districts, regulate the areas and dimensions of land, water, and airspace to be occupied by buildings and structures.

D. Provide for the safe, orderly, and convenient movement of vehicular, pedestrian, and bicycle traffic.

E. Minimize risk to life and property from natural disaster, fire, panic, and other dangers.

F. Facilitate the adequate provision of transportation, water, sewerage, drainage, schools, parks, and other public facility improvement requirements by regulating, as appropriate, the impact of development on community infrastructure.

G. Ensure orderly development with concurrent provision of appropriate and necessary public facility infrastructure that is consistent with the capacity of public facility infrastructure systems to serve development.

H. Provide for the imposition of impact fees to finance the expansion, maintenance, and repair of the Town's transportation systems to meet growth-related demand.

I. Protect designated corridors, natural resource areas, historic areas, scenic areas, and the Town's general aesthetic by establishing conservation and corridor overlay zoning districts, as appropriate, and regulations related to ensure maintenance of quality aesthetics and environmental standards.

J. Assist to achieve the goals, objectives, and policies of the Town of Hilton Head Island Comprehensive Plan.

K. Carry out such other purposes in the public interest as may be specifically cited in the LMO.

Sec. 16-1-104. Applicability and Jurisdiction[5]

A. General Applicability[6]

The provisions of the LMO shall apply to the development of all land within the Town together with such adjacent unincorporated areas of Beaufort County that the Town Council and the Beaufort County Council jointly agree shall be governed by this Ordinance, unless expressly exempted by a specific section, subsection, or paragraph of this Ordinance.

B. Development Activities Constituting Development[7]

1. The following development activities, whether public or private, are considered development under the LMO and shall comply with the procedures and standards of the LMO.

a. The establishment, re-establishment or change in use of a structure or land, whether temporary or permanent, unless expressly exempted by this Ordinance.

b. Activity involving the construction, reconstruction, or alteration of the size of a structure, unless expressly exempted by this Ordinance.

[5] This important section identifies the applicability of the LMO in terms of "where," "what," and "who."
[6] This subsection establishes "where" the LMO applies (within the Town and such adjacent areas the Town and County agree it should). Although no adjacent areas of jurisdiction have yet been established, this provision preserves the authority to apply the LMO to any that may be identified in the future.
[7] This subsection carries forward Sec. 16 1-105 of the current LMO, with some minor changes to clarify language.

c. An increase in the intensity of land use, such as an increase in the number or size of nonresidential or residential uses in a structure or on land, or in the number of parking spaces or amount of impervious coverage, unless expressly exempted by this Ordinance.

d. Commencement of any filling or excavating operation on a parcel of land or filling or dredging of intertidal or underwater land.

e. Material alteration of a shore, bank, or floodplain of the ocean or other natural water body.

f. The construction or extension of any utility service line or facility.

g. The subdivision of land within the Town.

2. Development as defined in the LMO shall include all other activities associated with it unless otherwise expressly specified in this Ordinance. The change or repair of a structure or site infrastructure (e.g., parking, access drives) may result in development as defined in this Ordinance.

C. Activities Not Constituting Development[8]

The following activities are not considered development under the LMO, unless specifically stated otherwise in this Ordinance, and determined so by the Official. Except for paragraph 1 below, if any of these activities necessitates the recording of documents or plats, such documents and plats shall be submitted to the Official for review and stamping prior to recording.

1. A transfer of title to land not involving the division of land into separate parcels.

2. The creation or termination of leases and easements concerning development of land, or other rights, except that no easement required by this Ordinance may be terminated without the approval of the Official in accordance with this Ordinance.

3. The recording of any documents or plats expressly for the purposes of reference or attachment to a publicly recorded document when such recording does not result in subdivision of land into parcels. Such recording may include, but is not limited to, documents such as master deeds or covenants, or plats for mortgage or HUD filing purposes only.

4. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots comply with all standards of this Ordinance.

5. The division of land into parcels of five acres or more where no new street is involved.

6. The combination or recombination of entire lots of record where no new street or change in existing streets is involved.

D. Exemption of Homes for the Handicapped[9]

This Ordinance does not apply to a home providing 24-hour care to nine or fewer mentally or physically handicapped persons in accordance with S.C. Code Ann. § 6-29-770(E).

[8] This subsection carries forward the first part of Sec. 16-1-106 of the current LMO, with minor changes to clarify language. It establishes "what" kinds of activities are generally exempt from LMO regulation. Subsections 4, 5, and 6 are divisions of land that are statutorily exempted from local subdivision regulation.

[9] This subsection essentially restates an exemption from zoning regulation found in S.C. Code Ann. § 6-29-770(E).

E. Application to Governmental Units[10]

1. The provisions of this Ordinance shall apply to development by the Town or its agencies and departments, or on land owned or otherwise controlled by the Town.
2. To the extent allowed by law, the provisions of the LMO shall also apply to development by any county, state, or federal government or its agencies, departments, or corporate services, or on land owned or otherwise controlled by a county, state, or federal government.

F. Appropriate Development Permits or Approvals Required[11]

No development shall occur without the permits or development approvals appropriate for the development, as set forth in this Ordinance.

G. Compliance with Code Required[12]

No land subject to the requirements of this Ordinance shall be developed without full compliance with the provisions of the LMO and all other applicable Town, state, and federal ordinances, laws, statutes, and regulations.

Sec. 16-1-105. Relationship to Comprehensive Plan and Planning Policies[13]

A. Relationship to Comprehensive Plan

In addition to the purposes stated in Sec. 16-1-103, Purpose and Intent, the LMO is intended to ensure that all development within the Town's jurisdiction is in accordance with the Town of Hilton Head Island Comprehensive Plan, and that the LMO implements the planning policies adopted as part of the Town of Hilton Head Island Comprehensive Plan and furthers the general health, safety, and welfare of the Town's citizens.

B. General Planning Policies

In considering applications for the development of land, the advisory and decision-making bodies shall be guided by the following general planning policies. Development shall be encouraged and permitted only:

1. In a coordinated, adjusted, and harmonious manner for the public welfare and with consideration of the need for clean air and water.

[10] This new subsection clarifies that the LMO applies to development undertaken by the Town, as well as development undertaken by other governmental units, to the extent allowed by law.
[11] This new subsection clarifies that no development may occur unless the appropriate permits and development approvals are granted in accordance with the LMO.
[12] This new subsection states that no land subject to the requirements of these provisions may be developed without full compliance with the provisions of the LMO and all other applicable Town, state, and federal ordinances, laws, statutes, and regulations. It is included to establish a clear foundation for enforcement of the LMO.
[13] This section modifies Chapter 1, Article II (Comprehensive Plan) of the current LMO by deleting a number of the subsections outlining the requirements for a comprehensive plan established by state law. The key elements of the current Article II are carried forward: the requirement that the LMO be in accordance with the Comprehensive Plan; Sec. 16-1-205 of the current LMO, which sets out the general planning policies that must be considered in the review of development applications; and Sec. 16-1-208 of the current LMO, which sets down the statutory requirement that no public project be constructed or authorized in the Town until its location, character, and extent is submitted to the Planning Commission for review and comment as to its consistency with the Comprehensive Plan.

2. In accordance with present and future needs, and which best promote the public health, safety, morals, order, convenience, prosperity, and general welfare.
3. Through a process of efficiency and economy that considers adequate provisions for traffic, promotion of safety from fire, hurricane, or other dangers, adequate provision for light and air, the promotion of the healthful and convenient density and distribution of population, the promotion of good civic design, appearance, and arrangement, the wise and efficient expenditure of public funds, and the adequate and efficient provision of public utilities and public services.
4. Through the preservation of the tree canopy throughout all developed areas in the Town.
5. Through the reduction of the dangers of hurricanes, including the dangers of overwash or other damage to or interference with evacuation routes.
6. In accordance with the values represented by a broad consideration of the public welfare, including aesthetic, environmental, spiritual, and other values of the community as a whole, in addition to the traditional consideration of land and property rights.

C. Effect of Adopted Comprehensive Plan

No public project shall be constructed or authorized in the Town until the location, character, and extent of it is submitted to the Planning Commission for review and comment in accordance with Sec. 16-2-103.Q, Public Project Review.

Sec. 16-1-106. Relationship with Other Laws, Covenants, or Deed Restrictions

A. Conflicts with Other LMO Standards[14]

1. Except for an overlay zoning district, if a provision of the LMO is inconsistent with another provision of the LMO, or with a provision found in other adopted codes or ordinances of the Town, the more restrictive provision shall govern unless the terms of the more restrictive provision specify otherwise. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.
2. When there is a conflict or apparent conflict between an overlay zoning district and an underlying base zoning district, the provisions of the overlay district shall control. When there is a conflict between two overlay districts and one of the districts is the Redevelopment Overlay District, the provisions of the Redevelopment Overlay District shall control.
3. When it is possible to implement, administer, or construe a particular provision in more than one way, it shall be implemented, administered, or construed in a way that eliminates or minimizes conflicts with other provisions of the LMO.

[14] This subsection carries forward Sec. 1-1-107 of the current LMO, with some reorganization and minor changes to clarify language.

B. Conflicts with State or Federal Law[15]

If a provision of the LMO is inconsistent with a provision found in the law or standards of the state or federal government, the more restrictive provision shall control, to the extent allowed by law.

C. Relationship to Restrictive Covenants or Deed Restrictions[16]

In accordance with S.C. Code Ann. § 6-29-1145, Town applications for land development permits or approvals other than those authorizing the building or placement of a structure on a tract or parcel of land shall ask whether the subject tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the proposed activity. If the Town has actual notice of such a restrictive covenant, whether from the application or other source, the Town shall not issue the permit unless the Town receives written confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders, or by court order.

Sec. 16-1-107. Official Zoning Map [17]

A. Establishment and Maintenance

1. Land subject to the LMO is divided into the various base and overlay zoning districts established in Chapter 16-3: Zoning Districts. The location and boundaries of the districts are shown on the Official Zoning Map. The Official Zoning Map, including all the notations thereon, is incorporated herein by reference and made part of the LMO. The Official Zoning Map shall be the final authority as to the status of the current zoning district classification of land in the Town.
2. The original and all revised versions of the Official Zoning Map shall be certified as such by the signature of the Official, and shall be kept on file, in either hardcopy or digital form, at Town Hall. Copies of the Official Zoning Map shall be made available for public inspection at Town Hall during normal business hours.

B. Changes

1. Changes made in zoning district boundaries or other matters portrayed on the Official Zoning Map shall be made in accordance with Sec. 16-2-103.C, Zoning Map Amendment (Rezoning).
2. The Official shall enter changes onto the Official Zoning Map within a reasonable period of time after a map amendment is approved by the Town Council. Where the ordinance enacting a zoning district boundary change contains wording explaining or clarifying the location of the new boundary, the Official may enter on the Official Zoning Map notations reflecting the ordinance wording.

[15] This new subsection establishes rules governing situations where there in a conflict between the LMO and state or federal laws.
[16] This subsection modifies Sec. 1-1-109 of the current LMO to mirror the language in S.C. Code Ann. § 6-29-1145.
[17] This new section establishes the Official Zoning Map, states how changes to the map are to be accomplished, and identifies who is responsible for making interpretations on the Official Zoning Map. It builds on Sec. 16-4-102 of the current LMO.

3. The Official shall maintain a copy of superseded versions of the Official Zoning Map for historical reference.

C. Interpretation

The Official shall be responsible for interpretations of the Official Zoning Map in accordance with the standards in Sec. 16-2-103.R, Written Interpretation.

Sec. 16-1-108. Transitional Provisions

A. Effective Date[18]

The LMO shall take effect and be in force on *[insert effective date of this Ordinance]*.

B. Transition to New Zoning Districts[19]

On *[insert effective date]*, land zoned with a zoning district classification from the previous LMO shall be translated to one of the zoning district classifications in this LMO as set forth in Chapter 16-3: Zoning Districts. Table 16-1-108.B, Zoning District Transition Table, summarizes the translation of the zoning districts used in the previous ordinance to the zoning districts used in this LMO.

TABLE 16-1-108.B: ZONING DISTRICT TRANSITION TABLE

ZONING DISTRICT IN FORMER LMO	NEW ZONING DISTRICT
CONSERVATION AND PARKS/RECREATION DISTRICTS	
CON Conservation District	**CON** Conservation District
PR Parks and Recreation District	**PR** Parks and Recreation District
RESIDENTIAL DISTRICTS	
RS-2 Residential Single-Family District (2 units/acre)	**RSF-3** Residential Single-Family-3 District
RS-3 Residential Single-Family District (3 units/acre)	
RS-4 Residential Single-Family District (4 units/acre)	**RSF-5** Residential Single-Family-5 District
RS-5 Residential Single-Family District (5 units/acre)	
RS-6 Residential Single-Family District (6 units/acre)	**RSF-6** Residential Single-Family-6 District
RM-4 Low to Moderate Density Residential District (4 units/acre)	**RM-4** Low to Moderate Density Residential District
RM-8 Residential Moderate Density District (8 units/acre)	**RM-8** Moderate Density Residential District
RM-12 Moderate to High Density Residential District (12 units/acre)	**RM-12** Moderate to High Density Residential District
MIXED USE AND BUSINESS DISTRICTS	
CCW Coligny Commercial Walking District	**CR** Coligny Resort District [NEW]
CFB Central Forest Beach District	
DCW Dunnagans Commercial Walking District	**SPC** Sea Pines Circle District [NEW]
CC Commercial Center District[20]	
	CC Community Commercial District
	MS Main Street District [NEW]
WMU Water Front Mixed use District	**WMU** Waterfront Mixed use District

[18] The effective date will be entered here and at all subsequent references to *[insert effective date]* during the adoption process.
[19] This subsection builds on Sec. 16-1-304 of the current LMO. It outlines how the zoning districts will be transitioned from the current LMO to the revised LMO.
[20] Current CC in the vicinity of Sea Pines Circle is proposed to be reclassified as SPC. Current CC zoning in the vicinity of Matthews Rd. is proposed to remain classified as CC.

TABLE 16-1-108.B: ZONING DISTRICT TRANSITION TABLE	
ZONING DISTRICT IN FORMER LMO	**NEW ZONING DISTRICT**
SMU- Stoney Mixed Use District	**SMU** Stoney Mixed Use District
MMU Marsh Front Mixed Use District	**MMU** Marshfront Mixed Use District
	MV Mitchelville District [NEW]
NC Neighborhood Commercial District	**LC** Light Commercial District [NEW]
OCIL Office/Light Commercial/Light Industrial District	
OL Office/Institutional Low Intensity District	
RD Resort Development District	**RD** Resort Development District
OM Office/Institutional Moderate Intensity District	**MED** Medical District [NEW]
IL Light Industrial/Commercial Distribution District	**IL** Light Industrial District
PD-1 Planned Development Mixed Use District	**PD-1** Planned Development Mixed Use District
OVERLAY DISTRICTS	
AZ Airport Overlay District	**AOD** Airport Overlay District
COR Corridor Overlay District	**COR** Corridor Overlay District
PD-2 Planned Development Overlay District	**PD-2** Planned Development Overlay District
FB-NCOD Forest Beach Neighborhood Character Overlay District	**FB-NCOD** Forest Beach Neighborhood Character Overlay District
FF-NCOD Folly Field Neighborhood Character Overlay District	**FF-NCOD** Folly Field Neighborhood Character Overlay District
HH-NCOD Holiday Homes Neighborhood Character Overlay District	**HH-NCOD** Holiday Homes Neighborhood Character Overlay District
RO Redevelopment Overlay District	**RO** Redevelopment Overlay District
CSPDAA&TAOD Critical Storm Protection and Dune Accretion Area and Transition Area Overlay District	**CS/DA/T-O** Critical Storm/ Dune Accretion/ Transition Area Overlay District

C. Violations Continue[21]

Any violation of previous development regulations replaced by this LMO shall continue to be a violation under this LMO, and be subject to the penalties set forth in Chapter 16-8: Enforcement, unless the development complies with the express terms of this LMO.

D. Nonconformities

If any use, structure, lot, sign, or other site feature was legally established on the date of its development, but does not fully comply with the standards of this LMO, then that use, structure, lot, sign, or other site feature shall be considered nonconforming and subject to the provisions of Chapter 16-7: Nonconformities. If a use, structure, lot, or site feature that was legally nonconforming under previous development regulations becomes conforming under this LMO, it shall no longer be deemed nonconforming or subject to the provisions of Chapter 16-7: Nonconformities.

E. Policy Regarding Prior Development Approvals[22]

Land development plans and subdivision plats submitted to and approved by the Town prior to the adoption of this Ordinance shall have expiration dates governed as follows:

[21] This new subsection clarifies that any violations under the old LMO continue to be violations of the LMO rewrite unless the rules have changed and development in violation under the old LMO now conforms to the requirements of the LMO rewrite.
[22] This section replaces language in Sec. 16-1-301 of the current LMO with new language that details the specifics of prior development approvals.

1. The Vested Rights Act

The expiration of a phased development plan or a site specific development plan, as defined in the Vested Rights Act, S.C. Code Ann. § 6-29-1510 et seq., approved by the Town prior to *[insert effective date]* is governed by the Vested Rights Act.

2. Other Approvals

Any land development plan or subdivision plat approved by the Town prior to [*[insert effective date]* that is not subject to the Vested Rights Act, S.C. Code Ann. § 6-29-11, shall expire on the later of (i) a definite expiration date contained in the approval or permit itself, or (ii) two years from the issuance date of the approval or permit.

3. The Development Agreement Act

Subject to the terms of South Carolina Development Agreement Act, S.C. Code Ann. § 6-31-10, this Ordinance applies to any Development Agreement previously approved by the Town or any other government entity.

F. Continued Effectiveness of PUD Master Plans[23]

1. PUD Master Plan Incorporated into Official Zoning Map

Where a PUD Master Plan that was granted approval prior to *[insert effective date]* has been incorporated into the Official Zoning Map in accordance with Sec. 16-3-105.N.4, Included PUDs and Master Plans, the provisions of Sec. 16-3-105.N.4 shall govern the development and implementation of the PUD Master Plan.

2. Conditional Use Review Granted Prior to Effective Date

Where a conditional use review was granted prior to *[insert effective date]*, and the development is listed in Sec. 16-3-106.G.4, PD-2 Listed Master Plans, the development shall be considered a PD-2 Planned Development Overlay District, and the provisions of Sec. 16-2-103.D, Planned Unit Development (PUD) District/Master Plan, shall govern the development, implementation, or amendment of the PD-2 Master Plan.

G. Pending Applications[24]

1. Option for Review Under Prior Standards or this LMO

If an application for a permit or development approval is submitted before *[insert effective date]*, but is still pending approval or denial as of that date, the application shall be reviewed and decided, at the applicant's option, wholly in accordance with the development standards in effect when the application was accepted, or wholly in accordance with the standards put into effect by this LMO (but not in accordance with a mix of provisions from both sets of development standards).

[23] This subsection carries forward Sec. 16-1-303 of the current LMO.
[24] This new section addresses applications that are in the "development review pipeline" when the revised LMO is adopted.

2. Review Under Prior Standards

If the applicant elects to have the pending application reviewed in accordance with the prior development standards, the Town shall review and decide the application in good faith and in accordance with any time periods established by the prior development standards. If the application is approved and the approval or subsequent authorization of the approved development expires or becomes invalid (e.g., for failure to comply with time limits or the terms and conditions of approval), any subsequent development of the site shall be subject to the procedures and standards of this LMO.

3. Development Approved Under Prior Standards May be Nonconforming

To the extent a pending application is approved in accordance with the prior development standards and proposes development that does not comply with this LMO, the subsequent development, although allowed, shall be nonconforming and subject to the provisions of Chapter 16-7: Nonconformities.

H. Development with Prior Permits and Development Approvals [25]

1. Completion of Development with Prior Approved Permits and Development Approvals (Other than PUD/Master Plans)

Development with approved permits or development approvals issued prior to *[insert effective date]*, other than PUD/Master Plans, (which are addressed in Sec. 16-1-108.F, Continued Effectiveness of PUD Master Plans) may be carried out in accordance with the terms and conditions of the permit or development approval and the procedures and development standards in effect at the time of approval, provided the permit or approval does not expire and otherwise remains valid. If the permit or development approval expires, is revoked (e.g., for failure to comply with time limits or the terms and conditions), or otherwise becomes invalid, any subsequent development of the site shall be subject to the procedures and standards of this LMO.

2. Development Under Prior Permits and Development Approvals May Be Nonconforming

To the extent a prior permit or development approval authorizes development that does not comply with this LMO, the subsequent development, although allowed, shall be nonconforming and subject to the provisions of Chapter 16-7: Nonconformities.

Sec. 16-1-109. Severability

It is the legislative intent of the Town Council in adopting this LMO that all provisions shall be liberally construed to implement the Town Comprehensive Plan and guide development in accordance with the existing and future needs of the Town as established in the Comprehensive Plan and this LMO, and promote the public health, safety, and welfare of landowners and residents of the Town. If any section, subsection, paragraph, sentence, clause, or phrase of this LMO is for any reason held by a court of competent jurisdiction to be invalid, such decision shall

[25] This new section establishes rules governing development projects with approved permits and development approvals at the time of adoption of the revised LMO (except for PUD/Master Plans, which are addressed in prior provisions).

not affect the validity and continued enforcement of any other section, subsection, paragraph, sentence, clause, or phrase of this LMO. The Town Council hereby declares that it would have adopted this LMO and any section, subsection, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses, or phrases of the LMO is declared invalid by a court of competent jurisdiction.

Chapter 2 Administration

Commentary

Title 16 Chapter 2: Administration, attempts to better consolidate and streamline all matters related to the procedural review of development applications in the LMO. It also sets forth the general and application specific review procedures. There are three major sections in the chapter:

Section 16-2-101, Summary Table of Review Procedures, summarizes the development review responsibilities of the development boards (Town Council, Planning Commission, Board of Zoning Appeals, and Design Review Board) as well as the Town staff (Official) review responsibilities. Chapter 2: Review and Decision Making Bodies, in the current LMO, which summarizes these responsibilities in text (along with establishing rules that govern the Town boards) is moved to Appendix A of the Ordinance.

Section 16-2-102, Standard Procedures, builds on and refines the current set of common review procedures that apply to all development applications. It addresses:

- Pre-application steps (pre-application conference with staff and neighborhood meetings);
- Application submittal;
- Staff review responsibilities and how actions are taken;
- Public hearing scheduling, and notification;
- Advisory review and decision-making rules; and
- Post-decision actions, limitations, and effects.

Section 16-2-103, Application Specific Review Procedures, supplements the standard procedures with specific rules and procedures for the individual development applications. Even though the structure and framework for development review in the revised LMO refines and builds on current procedures, most of the current development procedures are carried forward, with the following changes:

- The current administrative expedited procedure for reviewing certain applications for Development Plan Review is formalized as a Minor Development Plan Review procedure (and the current standard Development Plan Review is retained as a Major Development Plan Review), and the current Abbreviated Development Plan Review procedure is changed to a separate Small Residential Development Review procedure;
- The Corridor Review procedure is divided into two procedures, Minor and Major;
- An Administrative Adjustment procedure is added;
- The sign procedures are clarified to distinguish between Minor and Major Sign Permits;
- Review of Wetlands and Tree Protection standards are incorporated into Development Plan review;
- The Wetlands Alteration Permit and Tree Removal Permit are carried forward, but only for development that is not subject to Development Plan Review; and
- The appeal boards for zoning and subdivision/development plans are distinguished.

The rationale for these changes are discussed in the Code Assessment, and discussed in footnotes in this draft.

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Chapter 16-2: Administration

Sec. 16-2-101. Summary Table of Review Procedures

Table 16-2-101, Summary Table of Development Review Procedures, identifies the Town boards and staff responsible for making recommendations or decisions on applications reviewed under this Ordinance, as well as the role each plays in the Town's review of applications. It also identifies those applications that require a public hearing. A textual summary of the development review responsibilities of the Town's boards established in accordance with state law by this Ordinance (Planning Commission, Board of Zoning Appeals, and Design Review Board), as well as staff responsibilities (the Official), is set down in Appendix A: Advisory and Decision Making Bodies and Persons, which is incorporated herein by reference. The specific rules that govern the Town's boards with review responsibilities are also included in Appendix A.

TABLE 16-2-101: SUMMARY TABLE OF DEVELOPMENT REVIEW PROCEDURES
R = Recommendation D = Decision A = Appeal < > = Public Hearing
E = Encouraged

PROCEDURE		PRE-APPLICATION CONFERNCE	REVIEW AND DECISION-MAKING AUTHORITIES				
			OFFICIAL	DESIGN REVIEW BOARD	PLANNING COMMISSION	BOARD OF ZONING APPEALS	TOWN COUNCIL
ORDINANCE AMENDMENTS							
Text Amendment (Sec. 16-2-103.B)			R		<R>		D
Zoning Map Amendment (Rezoning) (Sec. 16-2-103.C)		E	R		<R>		D
PUD District/Master Plan (Sec. 16-2-103.D)		E	R		<R>		D
DEVELOPMENT APPROVALS AND PERMITS							
Special Exception (Sec. 16-2-103.E)			R			<D>	
Subdivision Review (Sec. 16-2-103.F)	Minor	E	D		A		
	Major	E	D		A		
Development Plan Review (Sec. 16-2-103.G)	Minor	E	D		A		
	Major	E	D		A		
Small Residential Development Review (Sec. 16-2-103.H)			D		A		
Corridor Review (Sec. 16-2-103.I)	Minor		D	<A>			
	Major		R	D			
Tree Removal Permit (Sec. 16-2-103.J)			D			<A>	
Wetlands Alteration Permit (Sec. 16-2-103.L)			D			<A>	
Sign Permit (Sec. 16-5-113.H)	Minor		D	<A>			
	Major		R	D			
Development Project Name Review (Sec. 16-2-103.N)			D		A		
Street/Vehicular Access Easement Name Review (Sec. 16-2-103.O)	New name		R		D		
	Modified name		R		<D>		
Certificate of Compliance (Sec. 16-2-103.P)			D			<A>	
Public Project Review (Sec. 16-2-103.Q)		E	R		D		

TABLE 16-2-101: SUMMARY TABLE OF DEVELOPMENT REVIEW PROCEDURES R = Recommendation D = Decision A = Appeal < > = Public Hearing E = Encouraged						
PROCEDURE	PRE-APPLICATION CONFERNCE	REVIEW AND DECISION-MAKING AUTHORITIES				
		OFFICIAL	DESIGN REVIEW BOARD	PLANNING COMMISSION	BOARD OF ZONING APPEALS	TOWN COUNCIL
RELIEF PROCEDURES						
Written Interpretation (Sec. 16-2-103.R)		D			<A>	
Administrative Adjustment (Sec. 16-2-103.S)		D			<A>	
Variance (Sec. 16-2-103.T)		R			<D>	
Appeal of Official's Decision to Board of Zoning Appeals (Sec. 16-2-103.U)					<D>	
Appeal of Official's Decision to Planning Commission (Sec. 16-2-103.V)				D		
Appeal of Official's Decision to Design Review Board (Sec. 16-2-103.W)			<D>			

Sec. 16-2-102. Standard Review Procedures

A. General

This section describes the procedural steps and other rules that are generally applicable to applications reviewed under this Ordinance. These standard procedures shall apply to all applications unless expressly exempted or alternative procedures are specified in Sec. 16-2-103, Application Specific Review Procedures. Flow charts in Sec. 16-2-103 depict those procedural steps that apply to the review of the particular type of application.

B. Pre-Application Conference[26]

1. Purpose

The purpose of a pre-application conference is to provide an opportunity for the applicant to determine the submittal requirements and the procedures and standards applicable to an anticipated application. A pre-application conference is also intended to provide an opportunity for Town staff to become familiar with, and offer the applicant preliminary comments about, the scope, features, and impacts of the proposed development, as it relates to Ordinance standards.

[26] This subsection carries forward Section 16-3-102 of the current LMO, which strongly encourages, but does not require, a pre-application conference when a development application is subject to review by an advisory or decision-making board. It adds provisions establishing the procedure to follow when a pre-application conference is conducted, including minimum submission requirements for the applicant, a provision on pre-application conference determinations, and a requirement that the Official prepare a written summary of the issues discussed at the pre-application conference.

2. Applicability

A pre-application conference is encouraged, but not required, before submittal of particular application types as identified in Sec. 16-2-101, Summary Table of Review Procedures.

3. Procedure

a. Request and Scheduling

Requests for a pre-application conference shall be submitted to the Official, who shall determine which Town staff members will conduct the conference, schedule the conference at the earliest reasonable time, and notify the applicant of the time and place of the conference.

b. Information Submitted For Conference

Before a pre-application conference is held, the applicant shall submit to the Official a narrative describing the scope of the proposed development, a conceptual site plan, and any other information reasoinably requested by the Official.

c. Conference Determinations

Town staff shall review the materials submitted by the applicant prior to the conference, and at the conference ask the applicant questions about the proposed application, as appropriate, and identify any concerns or other factors the applicant should consider about the application.

d. Written Summary

Within five days after completion of the pre-application conference, the Official shall provide the applicant a brief summary of any issues discussed at the conference that were not addressed by materials and information given the applicant before or at the conference.

4. Effect

Discussions held during the pre-application conference constitute preliminary discussions about an application and are not binding on the Town. Processing times for review of applications do not begin until a formal application is submitted.

C. Application Submittal[27]

1. Authority to Submit Applications[28]

a. Unless expressly stated otherwise in the LMO, applications reviewed under this Ordinance shall be submitted by:

i. The owner of record or any other person with a legally recognized property interest in the land on which development is proposed; or

ii. A person authorized to submit the application on behalf of the owner of record or other person with a recognized property interest in the land, as evidenced by a letter or document signed by such owner of record or other person.

b. If there are multiple owners of record, contract purchasers, or other persons authorized to submit the application, all such persons shall sign the application or a letter or document consenting to the application. This requirement shall not apply to properties for which the owner of record is identified only as the "heirs of" a deceased owner. In such cases, the application shall be signed by the heir to whom Beaufort County currently lists as the recipient of property tax bills and notices for the property.[29]

2. Application Content[30]

The Official is authorized to and shall establish in an administrative manual the requirements for the content and form for each type of application reviewed under the LMO. The Official may amend and update these requirements as determined necessary to ensure effective and efficient review under the LMO. The applicant bears the burden of ensuring that an application contains sufficient information to demonstrate compliance with applicable standards.

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[27] As discussed in Section 2.2.9 of the Code Assessment, this new section consolidates Sec. 16-3-104, and -107 of the current LMO, but without the currently required check-in conference.

[28] This new subsection expressly identifies who may submit development applications—persons or entities who might have an ownership interest in the land subject to the application. It also includes a specific provision requiring all landowners to provide formal consent to any application that is submitted. There are several exceptions to this general rule (e.g., text amendments and zoning map amendments—where applications may be initiated by the Town Council, the Planning Commission, and the Town Manager). These exceptions will be identified in the next section on the specific review procedures (Sec. 16-2-103, Application Specific Review Procedures).

[29] This special treatment for heirs properties reflects the Town's current practice.

[30] This paragraph builds on Sections 16-3-103, 104, and 105 of the current LMO. It carries forward the current requirements that that application content requirements be prepared by the Official and that the Town Council establish application fees. Instead of establishing a specific application review schedule in the LMO (Sec. 16-3-106 of the current LMO), it authorizes the Official to establish a review schedule and provides that all of these provisions (application contents, fees, and the review schedule) are to be included in an administrative manual prepared by the Official (see discussion in Section 2.1.6 of the Code Assessment). This would mean that a version of current Sec. 16-3-106 would go into an administrative manual instead of being included in the LMO.

This is a modern best practice, embraced by many communities, that removes many of the detailed application requirements from the code into a manual. Experience teaches that the usability of a development code is greatly improved when supplemented by such an administrative manual that depicts detailed requirements and practices that relate to and facilitate compliance with the code's application submittal and review procedures. In addition, once in a manual, the information is much easier to supplement or amend, since it does not have to go through an ordinance adoption process. In many cases, staff prepares such manuals shortly after adoption of the revised code. While development of an administrative manual is neither integral to adoption of the revised LMO nor part of this project, such manuals are tools that make codes function more efficiently and effectively. We suggest the Town consider supplementing the revised LMO with an administrative manual that includes application content requirements, fee requirements, and the specific review schedule, and authorize the Official to prepare the manual.

3. Application Fees

The Town Council shall establish application fees from time to time, to defray the cost of processing an application. The application fees shall be included in the administrative manual.[31]

4. Submittal and Review Schedule

The Official is authorized to and shall establish in the administrative manual specific rules for the submittal and review (including time frames for review) of the various types of applications. The Official may amend and update these provisions as is determined necessary to ensure effective and efficient processing and review under the LMO.

5. Application Submittal[32]

Applications shall be submitted to the Official in the form established in the administrative manual, together with the applicable application fee.

6. Application Revision[33]

An applicant may revise an application in response to staff review comments on the application, or in response to review comments from an advisory body or a decision-making body prior to any final action on the application. All revised applications shall be submitted to the Official. If the Official determines that the revisions include significant or substantial changes warranting re-review by staff for compliance with this LMO, the Official may refer the application for additional review as if it were a new application.

7. Application Withdrawal

a. An applicant may withdraw an application at any time before it is decided by submitting a written request to withdraw the application to the Official.

b. An applicant who has paid the appropriate fee in accordance with this subsection, but chooses to withdraw the application prior to any review or action taken on the application, is entitled to a refund of 50 percent of the fees paid, upon written request to the Official.

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[31] Section 16-3-105 C. of the current LMO is carried forward, but included in new Sec. 16-2-102.C.7, Application Withdrawal.

[32] Sec. 16-3-108 of the current LMO requires the Administrator (Official) to determine whether an application is complete before accepting it for review. As part of the Town's recent efforts to streamline development review procedures for commercial development, Town staff has adopted the practice of combining review of applications for completeness with review of applications for compliance with applicable standards. Town staff states that this practice works well, and has not created any delays or other problems due to any needs to complete applications mid-stream during staff review. Therefore, this draft incorporates the staff's current practice and does not carry forward current requirements that applications be complete before being accepted for review.

[33] This new paragraph establishes rules for the revision of applications, either after Town staff review, or after an advisory or decision-making body review. It establishes that if significant substantive changes are made to the application, the application must begin the review process anew. This avoids the potential situation where an application is revised so substantially as to create new noncompliance issues that the staff and advisory body don't have a chance to identify and respond to.

D. Staff Review and Action[34]

1. Staff Review and Opportunity to Revise Application

Upon receipt of an application, the Official shall distribute it to all appropriate staff for review and comment. The Official shall review the application, relevant support material, and any comments or recommendations from other review agencies to which the application was referred. If deficiencies in complying with applicable standards of the LMO are identified, the Official shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss the deficiencies and revise the application to address them, in accordance with Sec. 16-2-102.C.6, Application Revision.

2. Applications Subject to Advisory or Decision-Making Body Review

a. Staff Report[35]

If an application is subject to staff review and recommendation to an advisory or decision-making body (see Sec. 16-2-101, Summary Table of Review Procedures), the Official shall, following completion of staff review, prepare a written staff report that addresses the application's compliance with applicable review standards and recommends action on the application, including any recommended conditions of approval.

b. Distribution and Availability of Application and Staff Report[36]

After completion of the staff report, the Official shall transmit the application and staff report to the appropriate advisory or decision-making body. The Official shall also provide the applicant a copy of the staff report and make the application and staff report available for examination by the public at the Town Hall during normal business hours.

3. Applications Subject to Official's Decision[37]

a. Decision

If an application is subject to staff review and a final decision by the Official (see Sec. 16-2-101, Summary Table of Review Procedures), the Official shall, following completion of staff review, either approve the application, approve

[34] This new subsection outlines the procedure for staff review of applications. The first paragraph allows staff discretion in allowing applicant response to informal staff comments. The second paragraph requires preparation of a staff report on an application, which may include recommended conditions of approval to address compliance deficiencies. The third paragraph establishes general rules for the distribution of the staff report.
[35] This paragraph consolidates the staff review and report requirements in Sections 16-3-1402 (text amendments), -1503 (zoning map amendments), -1605 (rezoning to RO district), -1703 (PUD rezonings), -1803 (special exceptions), -1006 (corridor conceptual plans), -1203 (public project reviews), and -1904 (variances). It clarifies that staff reports conclude whether the application complies with applicable standards and recommend how the application should be decided, include conditions of approval.
[36] This new subsection states Town staff's implicit responsibilities to schedule any required public hearing and transmit the application and the staff report to the Town board that will next review the application, as well as to the applicant. It also informs other users of the LMO that the application and staff report will be available for public review at Town Hall.
[37] This section consolidates the staff review and decision requirements in Sections 16-3-203 (written interpretations), -308 (development plan reviews), -407 (tree protection approvals), -505 (wetland alterations), -606 (subdivisions), and -704 (certificates of compliance) of the current LMO. It identifies the decisions Town staff may take on the application, including authority to impose conditions of approval.

the application subject to conditions, or disapprove the application. The decision shall be based on the review standards set forth in Sec. 16-2-103, Application Specific Review Procedures.

b. Conditions of Approval

Any conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of the LMO. All conditions of approval shall be expressly described in the permit or development approval.

E. Public Hearing Scheduling and Notice

1. Public Hearing Scheduling

a. When an application is subject to a public hearing (see Sec. 16-2-101, Summary Table of Review Procedures), the Official shall ensure that the public hearing on the application is scheduled for a regularly scheduled meeting of the body conducting the hearing or a meeting specially called for that purpose by such body.

b. The public hearing(s) on the application shall be scheduled so there is sufficient time for a staff report to be prepared and for the public notification requirements to be satisfied under state law.

2. Public Hearing Notice

a. General Notice Requirements

i. Public notice of a public hearing on an application shall be as required by the South Carolina Code of Laws and as shown in Table 16-2-102.F.2, Public Hearing Notice Requirements. In computing the required time periods, the day the notice is published or postmarked shall be excluded and the day of the hearing shall be included.[38]

ii. A copy of the public hearing notice provided in accordance with this paragraph shall be maintained.

iii. Failure to receive notice in accordance with this paragraph shall not invalidate the proceedings for which notice was required, nor shall failure to receive notice constitute a basis for legal action against the Town.

[38] This measurement provision mirrors that in S.C. Code Ann. § 15-29-10.

TABLE 16-2-102.F.2: PUBLIC HEARING NOTICE REQUIREMENTS[39]			
APPLICATION OR APPROVAL	NOTICE REQUIREMENT		
	PUBLISHED NOTICE	MAIL NOTICE[40]	POSTED NOTICE[41]
Text Amendment	Publish notice of the hearing no less than 15 calendar days before the hearing date	None	None
Zoning Map Amendment PUD District/Master Plan	Publish notice of the hearing no less than 15 calendar days before the hearing date	Mail notice of the hearing to the owner(s) of land subject to the application (if not the applicant), and owners of record of properties within 350 feet of the subject land [1,2], no less than 15 calendar days before the hearing date	Post conspicuous notice of the hearing on or adjacent to the land subject to the application no less than 15 days before the hearing date, with at least one such notice being visible from each public thoroughfare that abuts the subject land
Special Exception Variance	Publish notice of the hearing no less than 15 calendar days before the hearing date	Mail notice of the hearing to the owner(s) of land subject to the application (if not the applicant), and owners of record of properties within 350 feet of the subject land [1,2], no less than 15 calendar days before the hearing date	Post conspicuous notice of the hearing on or adjacent to the land subject to the application no less than 15 days before the hearing date, with at least one such notice being visible from each public thoroughfare that abuts the subject land

[39] The current LMO requires hearing notices in addition to that statutorily required (see below). These notice requirements carry forward the current notice requirements with a few modifications.

South Carolina Code of Laws 6-29-760(A) sets out minimum notice requirements for text amendments and rezonings. It requires a 15-day published notice of text amendment and rezoning hearings for both and posted notice of rezoning hearings. The current LMO requires a 30-day published notice of text amendment and rezoning hearings, 30-day mailed notice to owners of property within 350 feet of the site for rezoning hearings, and 30-day posted notice of rezoning hearings.

South Carolina Code of Laws 6-29-800(D) sets out minimum notice requirements for special exceptions, variances, and appeals heard by the Board of Zoning Appeals. It requires 15-day published notice only. The current LMO requires a 30-day published notice, 30-day mailed notice to owners of property within 350 feet of the site, and 30-day posted notice.

South Carolina Code of Laws 6-29-890(C) sets out minimum notice requirements for appeals heard by the Design Review Board. It requires only reasonable published notice. The current LMO requires a 30-day published notice. We propose replacing the 30-day notice with a 15-day notice. The shorter time period still provides "reasonable" notice and matches that statutorily required for hearings on LMO amendments.

South Carolina Code of Laws 6-29-1200 sets out minimum notice requirements for changes to street/access easement names. It requires only reasonable published notice. The current LMO requires a 30-day published notice, 30-day mailed notice to owners of property addressed along the street/access easement, and 30-day posted notice. We propose that the LMO specify a 15-day published notice requirement, which would match the requirements for other published notices.

For hearings on public project applications, the current LMO also requires 30-day published notice and 30-day mailed notice to owners of property abutting the site. The statute authorizing such review (South Carolina Code of Laws 6-29-540) contains no requirement for a public hearing. Thus this table contains no hearing notice requirements for such applications.

[40] State statutes do not require mailed notices for hearings on applications for rezonings & PUDs, Public Project Review, Special Exceptions, Variances, Modification to Street/Vehicular Access Easement Names, or Appeals (except to the appellant). In accordance with the LMO Rewrite Committee's request, these mailed notice provisions carry forward current mailed notice requirements, reducing the current 30-day time period to 15 days to match that required for other notices.

[41] State statutes do not require posted notices for hearings on applications for Special Exceptions, Variances, or Modification of Street/Vehicular Access Easement Name. In accordance with the LMO Rewrite Committee's request, these posted notice provisions carry forward current posted notice requirements reducing the current 30-day time period to 15 days to match that required for other notices.

TABLE 16-2-102.F.2: PUBLIC HEARING NOTICE REQUIREMENTS[39]			
APPLICATION OR APPROVAL	NOTICE REQUIREMENT		
	PUBLISHED NOTICE	MAIL NOTICE[40]	POSTED NOTICE[41]
Modification of Street/Vehicular Access Easement Name	Publish notice of the hearing no less than 15 calendar days before the hearing date	Mail notice of the hearing to all owner(s) of land that fronts on the street or vehicular access easement proposed for a modified name [1] no less than 15 calendar days before the hearing date	Post conspicuous notice of the hearing on or adjacent to the street or vehicular access easement proposed for a modified name no less than 15 days before the hearing date
Appeal of Official's Decision to Board of Zoning Appeals	Publish notice of the hearing no less than 15 days before the hearing date	Mail notice of the hearing to the appellant and the applicant for the decision being appealed (if different from the appellant) no less than 15 calendar days before the hearing date	None
Appeal of Official's Decision to Design Review Board	Publish notice of the hearing no less than 15 days before the hearing date	Mail notice of the hearing to the appellant and the applicant for the decision being appealed (if different from the appellant)	None
NOTES: 1. As identified in the latest Beaufort County ad valorem tax record. 2. Where properties within 350 feet of the subject land are part of a townhouse, condominium, or timeshare development, the notice shall also be mailed to the president or manager of the property owners association for the development.			

b. Published Notice Requirements

The Official shall be responsible for preparing a required notice of the public hearing and publishing it in a newspaper of general circulation in the Town.

c. Mailed Notice Requirements

The applicant shall be responsible for preparing a required notice of the public hearing and mailing it by first-class mail to those persons listed as mailed notice recipients in Table 16-2-102.F.2, Public Hearing Notice Requirements.

d. Posted Notice Requirements[42]

i. The Official shall be responsible for preparing a required notice of the public hearing and posting it on the land subject to the application.

ii. The Official shall ensure that the posted notice is maintained on the land subject to the application until completion of the noticed public hearing(s). It shall be a violation of this Ordinance for any person to remove, mar, scratch, obliterate, or in any manner deface, hide from view, or tamper with posted hearing notices.

[42] This adds a requirement that posted notices be maintained and that removing or defacing posted notices is a violation of the LMO.

e. Notice Content[43]

i. Published and Posted Notices

All required published and posted notices of a public hearing shall, at a minimum:

01. Identify the application by name or application number;

02. Indicate the type of application and the nature and scope of the proposed development or action;

03. Indicate the date, time, and place of the public hearing and state that interested persons may speak and submit evidence or comments at the hearing; and

04. Indicate how additional information about the application may be obtained and how and where comments on the application may be submitted before the hearing.

ii. Mailed Notices

All required mailed notices of a public hearing shall, at a minimum:

01. Identify the application by name or application number;

02. Indicate the type of application and the nature and scope of the proposed development or action;

03. Identify the location of the land subject to the application by street address or legal description, and include a location map;

04. Indicate the date, time, and place of the public hearing and state that interested persons may appear, speak, and submit evidence or comments at the hearing; and

05. Indicate how additional information about the application may be obtained and how and where comments on the application may be submitted before the hearing.

3. Request to Defer Public Hearing[44]

a. Before Public Hearing Notice

An applicant may submit to the Official a written request to defer the public hearing on an application as long as required notice of the public hearing on an application has not yet been provided. The Official may approve such a request and defer the hearing to a later date.

[43] This paragraph carries forward Sec. 16-3-111 D.1 and 2 of the current LMO, and provides additional detail about the content that is to be included in published and written notices.

[44] This new subsection establishes basic rules for considering requests for review boards to defer public hearings on applications. It is intended to discourage applicants who ask that a public hearing be deferred simply to avoid or wear down anticipated opposition or avoid an anticipated adverse decision. The distinction between treatment before and after the hearing notice is provided reflects the idea that it is not fair to all the people who show up at a public hearing to delay their opportunity to speak on the application. The general reference to "good cause shown" reflects the fact many potentially justifiable reasons for deferral may be applicable (e.g., hurricane, illness, or possibly a delay in the acquisition of requested new information or evidence).

b. After Public Hearing Notice

Where required notice of the public hearing on an application has already been provided, the applicant may request the body scheduled to hold the hearing to defer the hearing. The body may grant the request and concurrently set a new hearing date for the application. The applicant shall bear the cost of any additional notice required as a result of the request for deferral.

F. Advisory Body Review and Recommendation[45]

If an application is subject to a recommendation by the Planning Commission (see Sec. 16-2-101, Summary Table of Review Procedures), the Planning Commission shall review and act on the application in accordance with the following procedures.

1. General

The Planning Commission shall hold any required public hearing (see Sec. 16-2-101, Summary Table of Review Procedures), and consider the application, relevant support materials, staff report, and any public comments. It shall then recommend one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, as set forth in Sec. 16-2-103, Application Specific Review Procedures.

2. Clearly State Factors for Decision

The Planning Commission's recommendation shall state the factors considered in making the recommendation and the basis or rationale for the recommended decision.

3. Timing

The Planning Commission shall take action within any time period specified in Sec. 16-2-103, Application Specific Review Procedures, for the type of application; otherwise, it shall take action as promptly as possible in consideration of the interests of the applicant, affected parties, and citizens of the Town.

4. Forwarding of Recommendation to Town Council

The Official shall prepare a report of the Planning Commission's deliberations and recommendations, which shall be forwarded to the Town Council within a reasonable period of time before its consideration of the application.

G. Decision-Making Body Review and Decision[46]

If an application is subject to a final decision by the Town Council, the Planning Commission, the Board of Zoning Appeals, or the Design Review Board (see Sec. 16-2-101, Summary Table of Review Procedures), such decision-making body shall review and decide the application in accordance with the following procedures.

[45] This new section outlines the procedures for review of a development application by any Town board acting in an advisory capacity (i.e., the Planning Commission on Text Amendment, Zoning Map Amendment, and PUD District/Master Plan applications).
[46] This new section outlines the procedures for all decision-making body review of a development application under the LMO (the Town Council, Planning Commission, Board of Zoning Appeals, and Design Review Board).

1. Review and Decision

a. General

The decision-making body shall hold any required public hearing(s) (see Sec. 16-2-101, Summary Table of Review Procedures) and consider the application, relevant support materials, staff report, any advisory body recommendations, and any public comments. It shall then make one of the decisions authorized for the particular type of application, based on the review standards applicable to the application type, as set forth in Sec. 16-2-103, Application Specific Review Procedures.

b. Remand

The decision-making body may remand the application to the appropriate Town staff for provision and consideration of new information specified by the body.

c. Clearly State Factors for Decision

Unless stated otherwise in this Ordinance, the decision-making body's decision shall clearly state the factors considered in making the decision and the basis or rationale for the decision.

d. Timing

The decision-making body shall take action within any time limit specified in Sec. 16-2-103, Application Specific Review Procedures, for the type of application; otherwise, it shall take action as promptly as possible in consideration of the interests of the applicant, affected parties, and citizens of the Town.

H. Conditions of Approval[47]

Conditions of approval may be recommended by an advisory body or included in the approval by the decision-making body, as appropriate. Conditions of approval shall be limited to those deemed necessary to ensure compliance with the review standards for the particular type of application. All conditions of approval shall be expressly set forth in the statement of approval.

I. Post-Decision Actions and Limitations

1. Notice of Decision

Within five business days after a final decision on an application is made by a decision-making body or the Official, the Official shall provide the applicant written notice of the decision. A copy of the decision shall also be made available to the public at Town Hall during normal business hours.

[47] This new section establishes the general rules for the inclusion of conditions of approval in a development approval or permit. These limitations on conditions reflect general due process principles. For administrative decisions, applicable standards are generally the LMO's objective standards. For legislative and quasi-judicial decisions, applicable standards may also include more general or discretionary standards addressing issues like impacts on adjacent properties and the public as a whole.

2. Appeals[48]

a. Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals, Sec. 16-2-103.V, Appeal of Official's Decision to Planning Commission, and Sec. 16-2-103.W, Appeal of Official's Decision to Design Review Board, authorize and set forth procedures for internal Town appeals of various decisions, determinations, and interpretations by the Official.

b. The following decisions shall constitute final decisions of the Town, and a party aggrieved or adversely affected by such a decision may appeal the decision to the courts in accordance with applicable state law:

i. A final decision by the Town Council on applications for a Text Amendment, Zoning Map Amendment, or PUD District/Master Plan.

ii. A final decision by the Planning Commission on applications for Public Project Review or Street/Vehicular Access Easement Name Review.

iii. A final appellate decision by the Planning Commission on applications for Subdivision Review, Major or Minor Development Plan Review, Small Residential Development Review, or Development Project Name Review.

iv. A final decision by the Board of Zoning Appeals on applications for Special Exceptions and Variances.

v. A final appellate decision by the Board of Zoning Appeals on applications appealing any order, requirement, decision, or determination made by the Official in the enforcement of this LMO (e.g., minor deviations of PUD master plans, Tree Removal Permits, Wetland Alteration Permits, Administrative Adjustments, and Written Interpretations).

vi. A final decision by the Design Review Board on applications for Major Corridor Review or a Major Sign Permit.

vii. A final appellate decision by the Design Review Board on applications for Minor Corridor Review or a Minor Sign Permit.

J. Effect of Permit or Development Approval[49]

Approval of any application in accordance with this Ordinance authorizes only the particular use, plan, or other specific activity approved, and not any other development requiring separate application.

[48] This new section identifies both internal appeal procedures and final Town decisions that may be appealed to the courts.
[49] This new section clearly establishes that permit or development approval is limited to the specific activity approved in the permit or approval.

K. Vesting and Expiration of Development Approval or Permit[50]

1. Vested Rights for Approvals of Site Specific Development Plans[51]

a. General

Approval or conditional approval of an application for a Special Exception, Major or Minor Subdivision Review, Major or Minor Development Plan Review, Small Residential Development Review, and a Variance shall constitute approval of a site specific development plan that establishes a vested right in accordance with the Vested Rights Act, S.C. Code Ann. § 6-29-1510 et seq. The vested right shall expire two years after provision of the notice of approval to the applicant unless the vested right period is extended in accordance with subparagraph b below. The vested right authorizes the developer or landowner to proceed with investments in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit for the approved development in accordance with the terms and conditions of the approval,

b. Extensions of Vested Right Period

Within 60 days before the expiration of the original two-year vested right period or any extension thereof, a developer or landowner may submit to the Official a written request for an additional annual extension of the period. The Official shall approve requests for at least five annual extensions of the vested right unless an amendment to this Ordinance has been adopted that prohibits such approval.

2. Expiration of Other Approvals

a. General

Except for approval of Zoning Map Amendments and Street/Vehicular Access Easement Names, and approvals subject to the vested right provisions in paragraph 1 above, development approvals granted in accordance with this Ordinance shall expire as provided in Sec. 16-2-103, Application Specific Review Procedures, for the particular type of permit or development approval. If no expiration period is provided in Sec. 16-2-103, for a particular type of

[50] This section builds on Sec. 16-3-116 of the current LMO, but includes a specific expiration period for a permit or development approval where one is not included in the permit or development approval itself or established in Sec. 16-2-103, Application Specific Review Procedures.

[51] Section 16-3-310 of the current LMO includes vested rights provisions that expand on statutory provisions in South Carolina's Vested Rights Act. This paragraph modifies those provisions to include only those provisions required by the Vested Rights Act—thus relying on that act's provisions to define further the nature of the vested right created by approval of a site specific development plan. The act only requires local governments to identify what local development approvals constitute approval of a site specific development plan and provide a process for annual extension of the vest right period for five years. The first subparagraph identifies permits and approvals constituting approval of a site specific development plan, which are the same permits and approvals identified as such in the current LMO except for PUD Master Plans for PD-2 districts (but not PD-1 districts).

Sec. 16-2-103.D.7 of the current LMO provides that an approval of any PUD District and associated Master Plan does not expire. Although the current LMO's vested right provisions reference phased development plans, they do not distinguish them from site specific development plans in terms of identification or length of the vested right period (the Vested Rights Act allows local regulations to establish up to a 5-year vested right period for approved phased developments). To avoid the confusion of using two terms for a single class of approvals, this paragraph omits any reference to phased development plans.

permit or development approval, the permit or development approval shall expire if a Building Permit authorizing the approved development is not obtained within two years. A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall suspend the established expiration period of a permit or development approval until final resolution of the appeal.

b. Extension of Expiration Time Period

Except as otherwise provided in Sec. 16-2-103, Application Specific Review Procedures, for the particular type of permit or development approval, the Official may, on a showing of good cause, grant written requests for one or more extensions of the expiration time period for up to a cumulative total of one year. Any further extension requests may only be granted, on a showing of good cause, by the decision-making body or person that granted the permit or development approval.

L. Limitation on Subsequent Similar Applications[52]

1. In the event that an application is denied, an application requesting the same or a substantially similar plan for development shall not be re-submitted for one year from the advertised public hearing date. If the application is not subject to a public hearing, time shall run from the date of the Official's written notice of decision.

2. The Official, upon petition by the applicant, may allow re-submission of the application after six months from the original public hearing date or the written notice of decision upon a determination that:

a. Significant physical, economic, or land use changes have taken place on the land that was the subject of the original application or on land within the immediate vicinity; or

b. A significant LMO text amendment has been adopted that substantially changes conditions and the review standards relevant to the development of the land subject to the original application.

Sec. 16-2-103. Application Specific Review Procedures

A. Overview

1. General

This section sets forth supplemental procedures, review standards, and related information for applications reviewed under this Ordinance, as listed in Sec. 16-2-101, Summary Table of Review Procedures.

2. Structure of Procedures

For each type of application reviewed under this Ordinance, the following subsections state the purpose of the subsection and type of permit or development

[52] This subsection carries forward Sec. 16-3-114 of the current LMO, with refinements to clarify language and provide additional standards to the Official's decision as to when a waiver of the time limits on re-submittal of an application is appropriate.

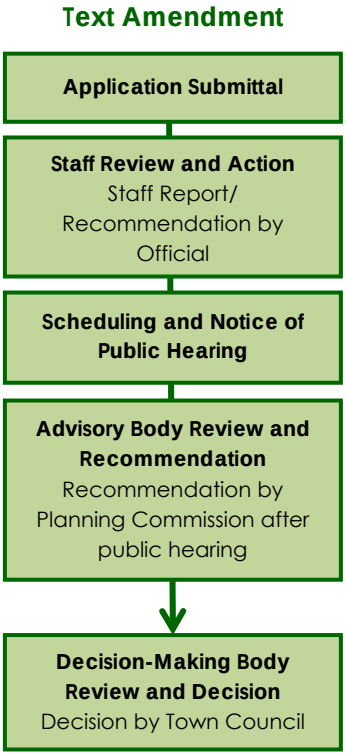
approval, and whether each of the steps in the standard procedure set forth in Sec. 16-2-102, Standard Review Procedures, is applicable, optional, or not applicable. They also include, for each step, any variations of, or additions to, the standard procedures. This is followed by the review standards for the application, and provisions addressing expiration and amendment.

B. Text Amendment[53]

1. Purpose

The purpose of this paragraph is to provide a uniform means for amending the text of this Ordinance.

2. Text Amendment Procedure



a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C). In addition, applications may be initiated by the Planning Commission or the Town Manager.

c. Staff Review and Action

Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D). The Official's recommendation shall be based on the standards in Sec. 16-2-103.B.3, Ordinance Text Amendment Review Standards.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

Applicable to a recommendation by the Planning Commission following a public hearing (see Sec. 16-2-102.F). The Planning Commission's recommendation shall be based on the standards in Sec. 16-2-103.B.3, Ordinance Text Amendment Review Standards. The Planning Commission shall submit its recommendation to the Town Council within 30 days after the first meeting at which it heard and reviewed the application. If the Planning Commission fails to do so, the application shall be forwarded to the Town Council with a deemed Planning Commission recommendation of approval.[54]

[53] This subsection builds on Chapter 3, Article XIV (Amendments to Text of Ordinance) of the current LMO. There are no changes in the procedures for review of text amendments. Other changes are noted in footnotes.
[54] South Carolina Code of Laws 6-29-760(A) requires the LMO to set a deadline for submittal of the Planning Commission's recommendation to the Town Council of no more than 30 days. Since the statute does not specify when the time period begins, this provision reasonably provides that it begins with the meeting at which the Commission first hears and reviews the application.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Town Council at a public meeting (see Sec. 16-2-102.G). The Town Council's decision shall be based on the standards in Sec. 16-2-103.B.3, Ordinance Text Amendment Review Standards.

g. Appeal

Not applicable.

3. Ordinance Text Amendment Review Standards[55]

The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the Town Council and is not controlled by any single` factor. In determining whether to adopt or deny the proposed text amendment, the Town Council may weigh the relevance of and consider whether and the extent to which the proposed amendment:

a. Is in accordance with the Comprehensive Plan;

b. Is required by changed conditions;

c. Addresses a demonstrated community need;

d. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the Town;

e. Would result in a logical and orderly development pattern; or

f. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

4. Expiration

Any text amended in accordance with this subsection is subject to further amendment or repeal in accordance with the Text Amendment procedures set forth in this subsection.

C. Zoning Map Amendment (Rezoning)[56]

1. Purpose

The purpose of this subsection is to provide a uniform means for reviewing and deciding proposed amendments to the Official Zoning Map whenever the public necessity, general welfare, Comprehensive Plan, or appropriate land use practices justify or require doing so.

[55] Chapter 3, Article XIV (Amendments to the Text of Ordinance) of the current LMO does not include review criteria for text amendments. This draft includes review criteria (standards), which we recommend including in the LMO.
[56] The subsection builds on Chapter 3, Article XV (Amendments to Zoning Map (Rezoning)) of the current LMO. There are no changes in the procedures for review of zoning map amendments. The biggest change in this procedure is it integrates the procedures and standards for the RO Redevelopment Overlay district, since the RO district is adopted and applied as a rezoning. Other substantives changes are noted in footnotes.

2. Zoning Map Amendment (Rezoning) Procedure[57]

a. Pre-Application Conference[58]

Strongly encouraged (see Sec. 16-2-102.B).

Map Amendment (Rezoning)

i. Applicants proposing rezoning to the Redevelopment Overlay (RO) District shall provide the Official the following additional information prior to the conference:

01. The application;

02. A narrative addressing the reasons for the requested rezoning;

03. A site plan of the proposed redevelopment that shows all physical improvements and natural features, including but not limited to structures, parking, setbacks, buffers, wetlands, significant trees, impervious coverage, open space, height of structures, and density of site;

04. An as-built survey;

05. A tree and topography plan showing all existing trees six inches in diameter and larger.

ii. If a proposed rezoning to the RO District involves land within the Corridor Overlay (COR) District, the applicant shall submit a conceptual landscape plan for review and approval by the Design Review Board prior to submittal of the rezoning application. The Design Review Board's review and decision on the conceptual landscape plan shall be based on the standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards.

b. Application Submittal

Applicable (see Sec. 16-2-102.C). Except for application for rezoning to the RO District, applications may also be initiated by the Town Council, the Planning Commission, or the Town Manager.

[57] As noted in a footnote 30, this section removes requirements for contents of applications found in the current LMO. These requirements will be located in an administrative manual prepared by the Official (see also the discussion in Section 2.1.6 of the Code Assessment). This would mean that a version of current Sec. 16-3-1502, Application, would go into an administrative manual instead of being included in the LMO. The administrative manual will also include fee requirements, and the specific review schedule.

[58] As noted earlier, the RO District procedures and standards in Sec. 16-3-1602 and -1603 of the current LMO are integrated into this section. They require concept review of the proposed RO District, including the requirement that the applicant receive approval of a conceptual landscape plan from the Design Review Board before submitting a formal application.

c. Staff Review and Action

Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D Staff Review and Action). The Official's recommendation shall be based on the standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

Applicable to a recommendation by the Planning Commission following a public hearing (see Sec. 16-2-102.F). The Commission's recommendation shall be based on the standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards. The Planning Commission shall submit its recommendation to the Town Council within 30 days after the first meeting at which it heard and reviewed the application. If the Planning Commission fails to do so, the application shall be forwarded to the Town Council with a deemed Planning Commission recommendation of approval.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Town Council at a public meeting (see Sec. 16-2-102.G). The Town Council's decision shall be based on the standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards, and shall be one of the following:

i. Approval of the Zoning Map Amendment as submitted by ordinance; or

ii. Denial of the Zoning Map Amendment by resolution.

g. Appeal

Not applicable.

3. Zoning Map Amendment (Rezoning) Review Standards[59]

The advisability of an amendment to the Official Zoning Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to approve or deny a proposed Zoning Map Amendment (Rezoning), the Town Council may weigh the relevance of and consider the following:

a. If the proposed Zoning Map Amendment is for reclassification of land to a district other than the Redevelopment Overlay (RO) District, whether and the extent to which the proposed zoning:

i. Is in accordance with the Comprehensive Plan**;**

ii. Would allow a range of uses that are compatible with the uses allowed on other property in the immediate vicinity:

[59] The review standards for the traditional rezoning build on the review criteria in Section 16-3-1505 of the current LMO; additional review criteria are added, based on best practices and what communities consider when deciding on a rezoning. As noted earlier, this section also incorporates a rezoning to RO District; consequently, the review standards also include review standards for a RO District rezoning, which builds on and refines the current review criteria in Section 16-3-1607, and reference modifications allowed in Sec. 16-3-106.K in exchange for compensating public benefits.

iii. Is appropriate for the land;

iv. Addresses a demonstrated community need;

v. Is consistent with the overall zoning program as expressed in future plans for the Town;

vi. Would avoid creating an inappropriately isolated zoning district unrelated to adjacent and surrounding zoning districts;

vii. Would allow the subject property to be put to a reasonably viable economic use;

viii. Would result in development that can be served by available, adequate, and suitable public facilities (e.g., streets, potable water, sewerage, stormwater management); and

ix. Is appropriate due to any changed or changing conditions in the affected area.

b. If the proposed Zoning Map Amendment is for reclassification of land to the Redevelopment Overlay (RO) District, whether and the extent to which:

i. The proposed plan for development constitutes redevelopment, as defined by this Ordinance;

ii. The proposed plan for development is in accordance with the Comprehensive Plan;

iii. The plan for development and general layout of the site are consistent with the general purpose of the R-O District, as expressed in Sec. 16-3-106.K, Redevelopment Overlay (R-O) District;

iv. The lands surrounding the proposed RO District can be planned and developed or redeveloped in substantial compatibility with the plan for development;

v. The proposed plan for development clearly lessens the number and/or extent of nonconformities on the site**;**

vi. If the site has nonconforming density or intensity, the proposed plan for development demonstrates that the nonconforming density or intensity creates the inability to meet other current standards in this Ordinance;

vii. The proposed plan for development demonstrates that the design and layout of the site complies with the dimensional, development and design, and natural resource protection standards in Chapter 16-5: Development and Design Standards, and Chapter 16-6:, Natural Resource Protection, or modifications to such standards approved in accordance with Sec. 16-3-106.K, Redevelopment Overlay (R-O) District; and

viii. The proposed RO District is not detrimental to the public health, safety, and welfare.

4. Expiration

Any Zoning Map Amendment (Rezoning) shall not expire, but the amended Official Zoning Map is subject to further amendment or repeal, in accordance with the map amendment and PUD District/Master Plan procedures set forth in this subsection.

D. Planned Unit Development (PUD) District/Master Plan[60]

1. Purpose

A planned unit development (PUD) is a development that is planned and developed under unified control in accordance with more flexible standards and procedures that are conducive to ensuring a high quality design that protects natural resources and features, encourages compatible land uses, and encourages a pedestrian-oriented environment, and ensuring otherwise higher quality development than could be achieved through base zoning district regulations.

2. Scope

A planned unit development is established by amendment of the Official Zoning Map to a planned unit development zoning district classification that is defined by a master plan.

3. PUD District/Master Plan Review Procedure

a. Pre-Application Conference

Strongly encouraged (see Sec. 16-2-102.B).

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

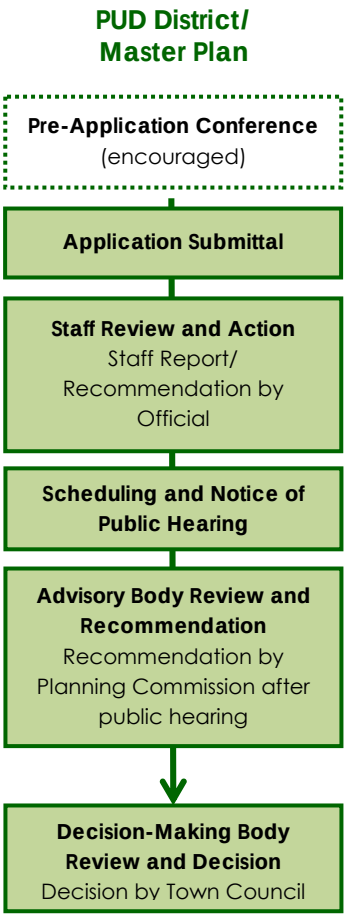
Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D). The Official's recommendation shall be based on the standards in Sec. 16-2-103.D.4, PUD District /Master Plan Review Standards.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

Applicable to a recommendation by the Planning Commission following a public hearing (see Sec. 16-2-102.F). The Planning Commission's recommendation shall be based on the standards in Sec. 16-2-103.D.4, PUD District /Master Plan Review Standards. The Planning Commission shall submit its recommendation to the Town Council within 30 days after the first



[60] This section builds on Chapter 3, Article XVIII (Planned Unit Development Review) of the current LMO. There are no changes in the procedures for review of planned unit developments (PUDs). Changes are noted in footnotes.

meeting at which it heard and reviewed the application. If the Planning Commission fails to do so, the application shall be forwarded to the Town Council with a deemed Planning Commission recommendation of approval.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Town Council at a public meeting (see Sec. 16-2-102.G). The Town Council's decision shall be based on the standards in Sec. 16-2-103.D.4, PUD District /Master Plan Review Standards, and shall be one of the following:

i. Approval of the PUD District/Master Plan as submitted, by ordinance;

ii. Approval of the PUD District/Master Plan with modifications, by ordinance; or

iii. Denial of the PUD District/Master Plan, by resolution.

g. Appeal

Not applicable.

4. PUD District /Master Plan Review Standards[61]

The advisability of a PUD classification with an approved Master Plan is a matter committed to the legislative discretion of the Town Council and is not controlled by any single factor. In determining whether to adopt a proposed PUD zoning district classification and Master Plan, the Town Council may consider and weigh the standards of Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards, and the extent to which the proposed PUD District and Master Plan complies with the standards of Sec. 16-3-105.N, Planned Development Mixed Use (PD-1) District, or Sec. 16-3-106.G, Planned Development Overlay (PD-2) District.

5. Designation on Official Zoning Map[62]

Designation of a PUD District on the Official Zoning Map shall note the ordinance approving the PUD zoning district classification and Master Plan.

6. Effect of Approval[63]

a. Lands rezoned to a PUD District/Master Plan shall be subject to the PUD Master Plan. The Master Plan is binding on the land as an amendment to the Official Zoning Map.

b. The applicant may apply for and obtain subsequent development approvals and permits necessary to implement the Master Plan in accordance with the appropriate procedural standards of this Ordinance.

c. Any subsequent permit or development approval shall comply with the PUD Master Plan.

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[61] This subsection builds on Sec. 16-3-1704 of the current LMO. The actual PUD standards and criteria will be included in the PUD district regulation in Title 16 Chapter 3: Zoning Districts.
[62] This new subsection requires that the ordinance approving a PUD and Master Plan be noted on the Official Zoning Map.
[63] This new subsection clarifies the rules governing development of the PUD District/Master Plan. It also clarifies that subsequent approvals must comply with the terms and conditions of the Master Plan.

7. Expiration

Any approved PUD District/Master Plan shall not expire, but the amended Official Zoning Map or Master Plan is subject to further amendment or repeal in accordance with map amendment and PUD District/Master Plan procedures set forth in this subsection.

8. Minor Deviations from Approved Master Plan

a. General[64][65]

Subsequent applications for permits and development approvals within a PUD District may include minor deviations from the approved PUD Master Plan, without the need to amend the PUD District/Master Plan approval, provided such deviations are limited to the following:

i. Changes that result in a decrease in the density approved for a specific parcel, either residential or nonresidential;

ii. Change in a land use designation from multifamily to single family or a change from any other use to open space/passive recreation;

iii. Change in major infrastructure features (e.g. roads/access, sewer, water, storm drainage) that are clearly beneficial to the occupants of the Master Plan area. The applicant requesting such change shall provide reasonable notice of the request to the property owners association that would be affected by the change and ask that all comments be directed to the Official. Proof of such notification shall be provided to the Official. If after considering comments from affected property owners, the Official determines that the change would not be clearly beneficial to the occupants of the Master Plan area, the Official shall deny the deviation;

iv. Change in land use designation from single family to multifamily with no increase in permitted site-specific density;

v. The addition of collocated or building-mounted telecommunication antennas; and

vi. The construction of a new monopole telecommunication tower on land not designated for single family use, provided that:

01. The application for the tower includes written consent from the PUD property owners association, and

02. The Official determines that the application for the tower has the support of the owners of properties located outside the PUD District and within 100 feet of the proposed tower site. To allow the Official to make such determination, the applicant shall, at least 30 days before a DRB meeting to review the application, send all such owners written notice of the proposed tower by first class mail. The notice shall be approved by the Official and direct all comments to the Official. The names and addresses of the property owners to

[64] This subsection incorporates the review criteria in Sec. 16-3-1707 of the current LMO.
[65] Text Amendment 2012-15 describes the need to add the ability to locate a new telecommunications facility on land designated for uses other than single-family residential as a minor amendment to a prior approved PUD master plan. This subsection proposes to allow the addition of building-mounted telecommunications equipment or colocation of antenna, and the erection of a new stealth telecommunication towers on lands designated for uses other than single-family uses. It would not allow new freestanding telecommunication towers as a minor deviation.

whom the required notice is sent shall be as currently on file at the Beaufort County's Assessor's Office. At least seven days before the DRB meeting, the applicant shall provide the Official an affidavit of compliance with the notice requirement and a list of property owners to whom the notice was sent. If after considering comments from the property owners to whom the notice was provided, the Official determines that the proposed tower does not have the support of such property owners, the Official shall deny the deviation.[66]

b. Appeal

The Official's decision on a minor deviation request may be appealed by an aggrieved person to the Board of Zoning Appeals in accordance with Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

9. Amendments

A PUD District/Master Plan approval shall be amended, extended, or modified only in accordance with the procedures and standards for its original approval.

E. Special Exception[67]

1. Purpose[68]

A use identified as subject to a Special Exception in a particular zoning district is a use that may be appropriate in the district, but because of its nature, extent, and external effects, requires special consideration of its location, design, and methods of operation before it can be deemed appropriate in the district and compatible with its surroundings. The purpose of this subsection is to establish a mechanism to review these kinds of uses to ensure they are appropriate for a particular zoning district.

2. Applicability

Any use identified as a Special Exception in a zoning district in Chapter 16-3: Zoning Districts, shall receive approval of Special Exception in accordance with the procedure and standards of this subsection before it may be developed under this Ordinance.

3. Special Exception Procedure

a. Pre-Application Conference

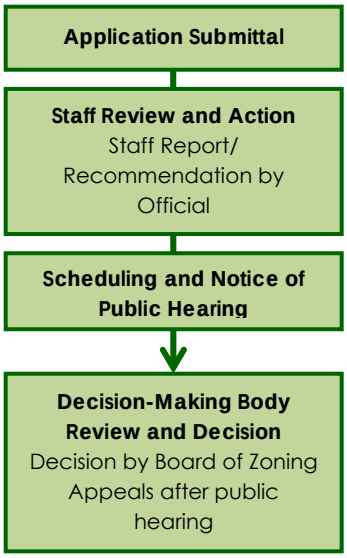
Not applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

[66] This last allowable minor deviation (and the limits to it) is carried forward from Sec. 16-3-1707 of the current LMO, as amended in 2012.
[67] This subsection builds on Chapter 3, Article XVIII (Specific Review) of the current LMO. Current procedures are not changed and the standards of review are reformatted to clarify language. Any other changes are noted in footnotes.
[68] This new section states the purpose of the special exception under the LMO.

Special Exception



c. Staff Review and Action

Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D). The Official's recommendation shall be based on the standards in Sec. 16-2-103.E.4, Special Exception Review Standards.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Board of Zoning Appeals after a public hearing (see Sec. 16-2-102.G). The Board's decision shall be based on the standards in Sec. 16-2-103.E.4, Special Exception Review Standards, and shall be one of the following:

i. Approval of the Special Exception;

ii. Approval of the Special Exception subject to conditions of approval; or

iii. Denial of the Special Exception.

g. Appeal

Not applicable.

4. Special Exception Review Standards[69]

The Board of Zoning Appeals shall approve an application for a Special Exception if the applicant demonstrates the proposed Special Exception and associated development:

a. Will be in accordance with the Comprehensive Plan;

b. Will comply with all regulations and standards that are generally applicable within the zoning district and that are specifically applicable to the particular type of Special Exception;

c. Will be compatible with the intensity, scale, and character of development existing or planned in the surrounding area;

d. Will not cause undue traffic congestion or create a traffic hazard;

e. Will incorporate preservation and protection of important natural features and not result in significant adverse impacts on the natural environment—including, but not limited to, water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment;

[69] This incorporates the review criteria from Sec. 16-3-1805 from the current LMO.

f. Will not generate needs for transportation, water supply, sewage disposal, stormwater management, solid waste collection, fire and police protection, and similar public services that cannot be adequately handled by available or provided infrastructure and facilities;

g. Will not substantially injure the value of surrounding properties; and[70]

h. Will not materially endanger the public health or safety.

5. Effect of Approval[71]

Approval of a Special Exception authorizes only the specific use approved, and not any other development or use requiring a separate application. If a Special Exception is a prerequisite to another permit or development approval that is required to authorize the commencement of development (e.g., Administrative Adjustment or Variance), then no development may take place until all required approvals are obtained. Approval of a Special Exception does not guarantee approval of any subsequent development application.

6. Expiration

Approval of a Special Exception establishes a vested right in accordance with Sec. 16-2-102.K.1, Vested Rights for Approvals of Site Specific Development Plans.

7. Amendment[72]

A Special Exception may be modified or amended only in accordance with the procedures and standards established for its original approval.

F. Subdivision Review (Minor or Major)[73]

1. Purpose [74]

The purpose of this subsection is to provide a uniform method for the review and approval of subdivision of land and to ensure, in conjunction with Sec. 16-5-115, Subdivision Standards, that subdivisions promote the health, safety, convenience, order, prosperity and welfare of the present and future residents of the Town by:

a. Providing for the orderly growth and development of the Town;

b. Coordinating with the existing street system, transportation plans, and public facilities;

c. Providing right-of-way for street and vehicular easements;

[70] As a quasi-judicial process, Special Exception decisions are required to be based on evidence. The burden is on the applicant to present substantial and material evidence to show at least a prima facie case for meeting the required standards. If the applicant does that, the burden shifts to others to show the application does not comply with the standards. In the case of the common standard that property values not be injured, such evidence may consist of the opinions on landowners on the value of their own property, and/or expert testimony of an appraiser.
[71] This new paragraph sets forth the effect of approval of a Special Exception Permit. It states that approval of the Special Exception Permit does not assure approval of subsequently required permits or approval under this Ordinance.
[72] This new paragraph clarifies when a Special Exception Permit may be amended.
[73] This subsection builds on Chapter 3, Article VI (Subdivision Review) of the current LMO. There are no changes in the procedures for review of subdivision.
[74] This new paragraph states the general purpose and intent of subdivision.

d. Avoiding congestion and overcrowding and encouraging proper arrangement of streets in relation to existing planned streets;

e. Ensuring there is adequate open space and recreation facilities; and

f. Ensuring there is proper recordation of land ownership.

2. Applicability

a. General

Approval of either a Minor Subdivision or a Major Subdivision in accordance with the procedures and standards of this subsection is required before any subdivision (see definition of "subdivision" in Sec. 16-10-106, General Definitions) may be recorded or otherwise made effective. No land may be sold, transferred, or offered for sale until a final plat for subdivision is recorded in accordance with this Ordinance.

b. Minor and Major Subdivision[75]

i. A Minor Subdivision is a subdivision creating lots intended for residential development, where no new or extended infrastructure (e.g., streets, sidewalks, water supply or sewer pipes or facilities, and stormwater pipes or facilities) are proposed or required to serve the lots.

ii. Any other subdivision is considered a Major Subdivision.

3. Subdivision Review (Minor or Major) Procedure

a. Pre-Application Conference

Strongly encouraged (see Sec. 16-2-102.B).

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

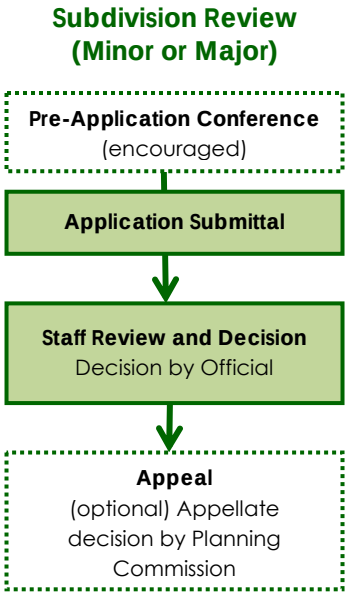
Applicable to a decision by the Official (see Sec. 16-2-102.D).

i. The Official's decision shall be based on the standards in Sec. 16-2-103.F.4, Subdivision Review (Minor or Major) Standards, and shall be one of the following:

01. Approval of the Subdivision Plan;

02. Approval of the Subdivision Plan subject to conditions of approval; or

03. Denial of the Subdivision Plan.



[75] Whereas Sec. 16-3-604 of the current LMO identifies minor subdivisions as divisions of land into 5 or fewer residential lots, this subsection identifies minor subdivisions as any subdivision creating residential lots, where no new or extension of public infrastructure facilities is proposed or required. This distinction better reflects the factors determining the relative complexity of minor and major subdivision reviews.

ii. The Official shall take action on the application within 60 days after it is submitted, or such extended time agreed to by the applicant. If the Official fails to take action on the application within this time period, the application shall be deemed approved.[76]

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The decision of the Official on a Subdivision (Minor or Major) may be appealed by the applicant to the Planning Commission in accordance with Sec. 16-2-103.V, Appeal of Official's Decision to Planning Commission.

4. Subdivision Review (Minor or Major) Standards

An application for a Subdivision (Minor or Major) shall be approved only on a finding the applicant demonstrates the subdivision complies with:

a. Applicable standards in Sec. Sec. 16-5-115, Subdivision Standards;

b. All other applicable standards and requirements in this Ordinance; and

c. All other applicable requirements in the Municipal Code.

5. Effect of Approval

Approval of a Subdivision (Minor or Major) constitutes approval of a final plat for the subdivision. Recording of the final plat in the Beaufort County Register of Deeds creates developable lots that may be sold or otherwise conveyed and may be developed in accordance with development applications authorized by this Ordinance.

6. Expiration[77]

Approval of a Minor or Major Subdivision establishes a vested right in accordance with Sec. 16-2-102.K.1, Vested Rights for Approvals of Site Specific Development Plans.

[76] S.C. Code Ann. § 6-29-1150(A) requires the LMO to set a time limit, not to exceed 60 days after receipt of subdivision plans, for action on such plans. It goes on to provide that failure to act within the prescribed deadline shall constitute approval of the subdivision. The statute does, however, allow extensions of the time period with the agreement of the applicant. Subsection iii establishes a 60-day deadline for action on
Subdivisions, which although not included in the current LMO, reflects the Town's current policy.
[77] This carries forward Sec. 16-3-608 of the current LMO.

7. Amendment[78]

An approved Minor or Major Subdivision may be modified or amended only in accordance with the procedures and standards established for its original approval.

G. Development Plan Review (Minor and Major)[79]

1. Purpose[80]

Development Plan Review is intended to ensure that the layout and general site design of proposed development is compatible with surrounding uses and complies with all applicable standards in this Ordinance. The purpose of this subsection is to establish the procedures and standards for review of a Development Plan.

2. Applicability

a. General

Unless exempted in accordance with paragraph 3 below, approval of a Development Plan in accordance with this subsection is required for any development. Approval of a Development Plan is required before issuance of a Building Permit for development subject to Development Plan Review.

b. Minor and Major Development Plans

There are two types of Development Plans: Minor and Major.

i. Approval of a Minor Development Plan is required for the following types of development, provided the development does not involve any wetland alteration:

01. Accessory uses and structures;

02. Temporary uses and structures, including temporary construction storage and staging; and

03. Any other development that does not involve construction of a new building or addition, such as parking lot changes, new pools or

[78] This new paragraph establishes rules for amending subdivision approval.

[79] This subsection builds on Chapter 3, Article III of the current LMO. As is discussed in Section 2.2.7 of the Code Assessment there are currently three types of Development Plan Review: Expedited Abbreviated, and Standard. Only the latter two are recognized by the LMO; the Expedited Development Plan Review procedure is established by administrative policy and procedures. At the request of Town staff, this subsection carries forward the Standard Development Plan Review procedure (renamed Major Development Plan Review) and formally recognizes the Expedited Development Plan procedure (renamed (Minor Development Plan Review); the Abbreviated Development Plan Review procedure is revised ass a separate procedure (Small Residential Development Review) in the next subsection.

[80] This new paragraph summarizes the purpose of a development plan. As is discussed in Section 2.2.3 of the Code Assessment, the current LMO consolidates compliance review for nearly all aspects of site development into the Development Plan Review procedure—including review of plans and other information for compliance with the LMO's tree protection and wetlands protection standards in Chapter 6 of the current LMO. However, unlike with all other aspects of development, the LMO requires applicants for Development Plan review to submit separate applications and receive Tree Protection Approval and Wetlands Alteration Approval. As is discussed in the Code Assessment, to address this problem and streamline and simplify development review, this draft of the LMO clarifies that compliance with requirements for tree removal and wetlands alteration is to be conducted during Development Plan Review, and any development that has received approval of a Development Plan is exempted from having to receive a Wetlands Alteration or Tree Removal Permit.

decks, recreation fields or courts, utility line construction, or changes in general site design.[81]

ii. Approval of a Major Development Plan is required for all other development subject to Development Plan Review.

3. Exemptions[82]

The following activities or uses are exempt from Development Plan Review (although they may be reviewed under a separate administrative procedure, or may be governed or prohibited by private covenants and restrictions):

a. The construction of any public street or minor utility.

b. The maintenance of any structure.

c. The use of land, with or without accessory structures, for purposes of agriculture, raising of crops or animals, forestry, mariculture, and the like.

d. All structures (including factory-built housing) built or placed on an individual single family residential lot with no other dwelling on it.

e. Development of two to five dwelling units on a single lot (subject to Small Residential Development Review—see Sec. 16-2-103.H)

f. Home occupations (see definition in Sec. 16-10-106, General Definitions).

4. Development Plan Review (Minor or Major) Procedure

a. Pre-Application Conference

Strongly encouraged (see Sec. 16-2-102.B).

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D).

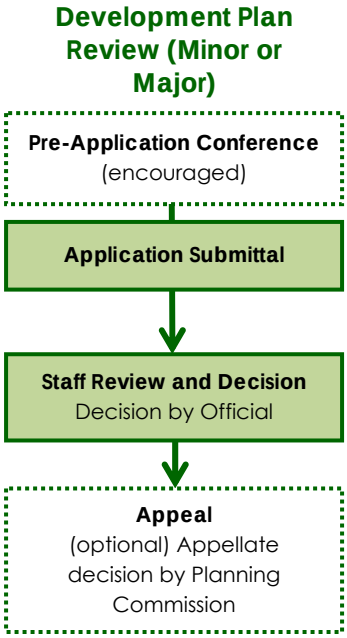
i. The Official's decision shall be based on the standards in Sec. 16-2-103.G.5, Development Plan Review Standards, and shall be one of the following:

01. Approval of the Development Plan;

02. Approval of the Development Plan subject to conditions of approval; or

03. Denial of the Development Plan.

ii. The Official shall take action on the application for Minor Development Plan



[81] This description is carried forward from Town newsletters and documents describing to the public what the expedited development plan process includes.
[82] This incorporates language from Sec. 16-3-302 of the current LMO.

Review within ten business days after the application is submitted, or such extended time agreed to by the applicant.

iii. The Official shall take action on an application for Major Development Plan Review within 60 days after the application is submitted, or such extended time agreed to by the applicant.

iv. If the Official fails to take action on an application for Development Plan Review within the time period in subparagraph ii or iii above, the application shall be deemed approved.[83]

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. A decision of the Official on an application for Development Plan Review (Minor or Major) may be appealed by the applicant to the Planning Commission, in accordance with Sec. 16-2-103.V, Appeal of Official's Decision to Planning Commission.

5. Development Plan Review Standards[84]

An application for Development Plan Review (Minor or Major) shall be approved on a finding the applicant has demonstrated the development proposed in the Development Plan complies with:

a. The relevant standards and requirements in Chapter 16-3: Zoning Districts, Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection;

b. All other applicable standards of this Ordinance; and

c. All other applicable requirements in the Municipal Code.

[83] S.C. Code Ann. § 6-29-1150(A) requires the LMO to set a time limit, not to exceed 60 days after receipt of development plans, for action on such plans. It goes on to provide that failure to act within the prescribed deadline shall constitute approval of the development plan. The statute does, however, allow extensions of the time period with the agreement of the applicant. The provisions in subparagraphs ii, iii, and iv mirror wording in the statute. They extend the current deadline of five business days for action on Abbreviated Development Plan Reviews to apply to Minor Development Plan Reviews. They also establish a 60-day deadline for action on Major Development Plan Reviews, which although not included in the current LMO, reflects the Town's current policy.

[84] This subsection carries forward the basic review standard in Sec. 16-3-308 of the current LMO, specifying those chapters of the LMO containing most of the relevant standards, and adding a standard for compliance with other relevant requirements of the Municipal Code.

6. Effect of Approval

Approval of a Development Plan (Minor or Major) authorizes the submittal of any other subsequent development applications that may be required before construction or other development authorized by this Ordinance.

7. Expiration[85]

Approval of a Development Plan (Minor or Major) establishes a vested right in accordance with Sec. 16-2-102.K.1, Vested Rights for Approvals of Site Specific Development Plans.

8. Amendment[86]

An approved Development Plan (Minor or Major) may be modified or amended only in accordance with the procedures and standards established for its original approval.

H. Small Residential Development Review[87]

1. Purpose

Small Residential Development Review is intended to ensure that the layout and general site design of the proposed development of two to five dwelling units on a single lot is compatible with surrounding uses and complies with all applicable standards in this Ordinance. The purpose of this subsection is to establish the procedures and standards for review of a Small Residential Development.

2. Applicability

Approval of a Small Residential Development in accordance with this subsection is required for any development of two to five dwelling units on a single lot. Approval of a Small Residential Development is required before issuance of a Building Permit for development subject to Small Residential Development Review.

3. Small Residential Development Review Procedure

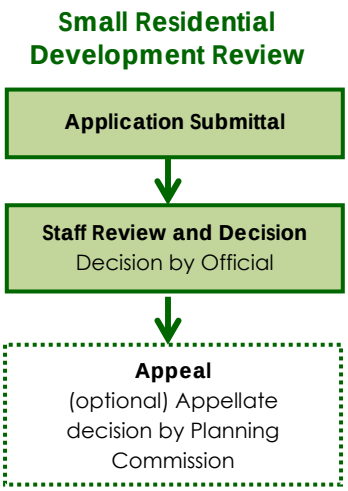
a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C), except that the application shall include the following:

[85] This references the vested right provisions in the standard review procedures.
[86] This new paragraph spells out the procedure for amendment of a Development Plan.
[87] Sec. 16-3-311 of the current LMO sets out provisions pertaining to Abbreviated Development Plan Review. The Code Assessment recommended that this procedure be combined with the very similar Expedited Development Plan Review procedure and be carried forward as a Minor Development Plan Review procedure. At the request of Town staff, this draft instead treats the former Abbreviated Development Plan Review as a review procedure separate from either the Minor or Major Development Plan Review. To avoid confusion, it is given a new name that relates to the limited residential development to which it applies.



i. A site plan prepared, signed, and sealed by a South Carolina registered land surveyor showing at least property boundaries, roads, existing houses and any existing septic systems, locations of proposed house sites and any proposed septic systems, driveways from public streets to existing houses and proposed housing sites, and all applicable setbacks;

ii. Proof of an approved sewage disposal system (either a copy of a septic system design approval by the S.C. DHEC or a copy of a letter from the Public Service District stating it will provide sewer service;

iii. A copy of any required encroachment permit from SCDOT (for a State road), Beaufort County (for a County road), or the Town (for a Town road)

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D).

i. The Official's decision shall be based on the standards in Sec. 16-2-103.H.4, Small Residential Development Review Standards, and shall be one of the following:

01. Approval of the Small Residential Development;

02. Approval of the Small Residential Development subject to conditions of approval; or

03. Denial of the application.

ii. The Official shall take action on the application for Small Residential Development Review within five business days after the application is submitted, or such extended time agreed to by the applicant.

iii. If the Official fails to take action on an application for Small Residential Development Review within the time period prescribed in subparagraph ii above, the application shall be deemed approved.[88]

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

[88] This provision carries forward the current deadline of five business days for action on Abbreviated Development Plan Reviews.

g. Appeal

Applicable. A decision of the Official on an application for Small Residential Development Review may be appealed by the applicant to the Planning Commission, in accordance with Sec. 16-2-103.V, Appeal of Official's Decision to Planning Commission.

4. Small Residential Development Review Standards

An application for Small Residential Development Review shall be approved on a finding the applicant has demonstrated the development proposed in the Small application complies with:

a. The relevant standards and requirements in Chapter 16-3: Zoning Districts, Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection;

b. All other applicable standards of this Ordinance; and

c. All other applicable requirements in the Municipal Code.

5. Effect of Approval

Approval of a Small Residential Development authorizes the submittal of any other subsequent development applications that may be required before construction or other development authorized by this Ordinance.

6. Expiration[89]

Approval of a Small Residential Development establishes a vested right in accordance with Sec. 16-2-102.K.1, Vested Rights for Approvals of Site Specific Development Plans.

7. Amendment[90]

An approved Small Residential Development may be modified or amended only in accordance with the procedures and standards established for its original approval.

I. Corridor Review (Minor and Major) [91]

1. Purpose[92]

The purpose of Corridor Review is to assure that development within the Corridor Overlay District is consistent with the Town's island character.

[89] This references the vested right provisions in the standard review procedures.
[90] This new paragraph spells out the procedure for amendment of a Small Residential Development.
[91] This subsection builds on Article X (Corridor Overlay District Review) of the current LMO. As is discussed in Section 2.2.2 of the Code Assessment, the change in the subsection is the division of review into Minor and Major Corridor Reviews with Minor Corridor Reviews decided by the Official (with an appeal to the Design Review Board), and Major Corridor Reviews decided by the Design Review Board. This is being done in an effort to streamline the time and cost associated with the review of development in the Corridor Overlay District. Other changes are noted in footnotes. As such, minor work that appears to be in scale with current development and in-line with the Hilton Head Island Design Handbook would be approved by staff, through the Minor Corridor Review process. Development requiring Major Corridor Review would still be subject to review by the Design Review Board, as the process currently stands:
[92] This new paragraph states the general purpose of the Corridor Review procedures.

2. Applicability

a. General

Approval of Corridor Review (Minor or Major) in accordance with this subsection is required before any development within the Corridor Overlay District.

b. Minor and Major Corridor Review

There are two types of Corridor Review: Major and Minor.

i. Minor Corridor Review is required for the following types of development within the Corridor Overlay District:

01. Multifamily accessory structures;

02. The addition of minor building or site elements (railings, awnings, and shutters, landscaping, exterior lighting, fences and walls, dumpster enclosures);

03. The use of the same color(s) on the exterior of an accessory structure as authorized by a Major Corridor Review approved for the principal structure;

04. Outdoor merchandising; and

05. Any development within the Corridor Overlay District that is not visible from an arterial road, the OCRM Beachfront Baseline, or the OCRM Critical Line.

ii. Major Corridor Review is required for all other development within the Corridor Overlay District.

3. Minor Corridor Review Procedure

a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

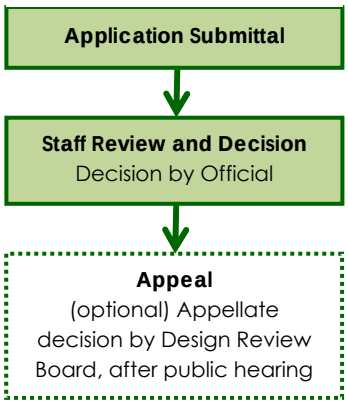
Applicable to a decision by the Official (see Sec. 16-2-102.D) The Official's decision shall be based on the standards in Sec. 16-2-103.I.5, Corridor Review (Minor and Major) Standards, and shall be one of the following:

i. Approval of the application;

ii. Approval of the application subject to conditions of approval; or

iii. Denial of the application.

Minor Corridor Review



d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

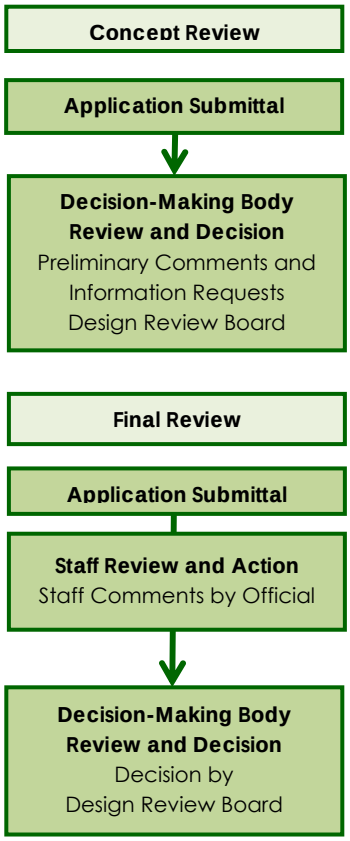
g. Appeal

Applicable. The decision of the Official on Minor Corridor Review may be appealed by an aggrieved person to the Design Review Board in accordance with Sec. 16-2-103.W, Appeal of Official's Decision to Design Review Board.

4. Major Corridor Review Procedure

Applications for Major Corridor Review are subject to a two-step procedure: Concept Review and Final Review.

Major Corridor Review



a. Concept Review

i. Pre-Application Conference

Not applicable.

ii. Application Submittal

Applicable (see Sec. 16-2-102.C).

iii. Staff Review and Action

Not Applicable.

iv. Public Hearing Scheduling and Notice

Not applicable.

v. Advisory Body Review and Recommendation

Not applicable.

vi. Decision-Making Body Review and Decision

Applicable to review by the Design Review Board, which shall provide the applicant preliminary comments on the application and request such additional information materials as may be required for final review of the application. Comments and requests shall be based on the application's compliance with the standards in Sec. 16-2-103.I.5, Corridor Review (Minor and Major) Standards.

vii. Appeal

Not applicable.

b. Final Review

i. Pre-Application Conference

Not applicable.

ii. Neighborhood Meeting

Not applicable.

iii. Application Submittal

Applicable (see Sec. 16-2-102.C).

iv. Staff Review and Action

Applicable to staff comments by the Official (see Sec. 16-2-102.D). The Official's comments shall be based on the standards in Sec. 16-2-103.I.5, Corridor Review (Minor and Major) Standards.

v. Public Hearing Scheduling and Notice

Not applicable.

vi. Advisory Body Review and Recommendation

Not applicable.

vii. Decision-Making Body Review and Decision

Applicable to a decision by the Design Review Board.

01. A private architectural review board whose jurisdiction includes the subject site shall submit written notice of any action it takes on the proposed project to the Official at least seven days before the meeting at which the Design Review Board conducts its final review of the Corridor Review application. The Board shall consider, but is not bound by, the action of such private architectural review board.[93]

02. The decision shall be based on the standards in Sec. 16-2-103.I.5, Corridor Review (Minor and Major) Standards, and shall be one of the following:

(A) Approval of the application;

(B) Approval of the application subject to conditions of approval; or

(C) Denial of the application.

viii. Appeal

Not applicable.

[93] This provision is carried forward from Sec. 16-3-1008 of the current LMO.

5. Corridor Review (Minor and Major) Standards

An application for Corridor Review (Minor and Major) shall be approved on a finding the applicant has demonstrated the proposed development is consistent with the guidelines in the Hilton Head Island Design Guide.

6. Effect of Approval[94]

Approval of Corridor Review (Minor or Major) authorizes only the particular development approved, and not any other development requiring separate application. In the event that approval of Corridor Review (Minor or Major) is a prerequisite to another permit or approval that is required prior to commencement of development, then no development may take place until all required approvals are obtained. Approval of Corridor Review (Minor or Major) does not guarantee approval of any subsequent application for a permit or development approval required by this Ordinance.

7. Expiration[95]

a. Where Corridor Review (Major or Minor) is granted for development for which a Development Plan or Small Residential Development has been concurrently or recently approved, approval of the Corridor Review shall expire at the time of expiration of the associated Development Plan or Small Residential Development approval.

b. Where Corridor Review (Major or Minor) is not associated with approval of a Development Plan or Small Residential Development Review, approval of Corridor Review shall expire one year after the date of approval.

8. Amendment

Approval of Corridor Review (Minor or Major) may be modified or amended only in accordance with the procedures and standards established for its original approval.

J. Traffic Impact Analysis Plans[96]

1. Purpose

It is the purpose of this section to guide development in accordance with the existing and future needs of the Town in order to protect, promote and improve the public health, safety, morals, convenience, order, appearance, prosperity and general welfare of the citizens of the Town, by ensuring new development does not overburden and congest the Town's streets.

2. Intent

The regulations of this section are designed and intended:

a. To ensure that the Town's adopted traffic service level standards are met within the Town and to provide safety from fire, panic and other dangers, to promote

[94] This new paragraph sets forth the effect of approval of Corridor Review. It states that approval of Corridor Review does not assure approval of subsequently required permits or approval under this Ordinance.
[95] This carries forward language from Sec. 16-3-1008 of the current LMO.
[96] This carries forward Chapter 5, Article XI (Traffic Analysis Standards) of the current LMO.

the public health and general welfare, to prevent the overcrowding of land, to avoid undue concentration of population, and to facilitate the adequate provision of street facilities.

b. To enable the Town to conduct an appropriate review and evaluation of the traffic impact of proposed development, to provide for the imposition of conditions in order to assure that new development does not impair the Town's ability and obligation to provide adequate street facilities to all its citizens, and to prescribe necessary project-specific mitigation measures or to otherwise condition traffic impact analysis plan approval.

c. To ensure that no traffic impact analysis plan approvals are granted that would cause a reduction in the service level of any street facility that is currently operating in a manner that fails to satisfy the Town's adopted traffic service level standards.

d. To ensure that no traffic impact analysis plan approvals are granted unless street facilities with adequate capacity to accommodate the traffic generated by the proposed development are available concurrently with the scheduled opening of the development.

e. To establish uniform procedures for the review of applications for traffic impact analysis plan approval subject to the traffic impact analysis plan requirements set forth herein.

f. To better coordinate the short-term growth potential of the Town with the immediately available street system capacity, taking into account exempt development and "background growth," to the extent to which these may be eligible for development plan approval without being subject to the traffic impact analysis plan requirements of this section.

g. To better coordinate the long-term growth potential of the Town with a realistic assessment of road capacity which is currently and which may in the future become available, recognizing the limitations on the Town's financial resources, the constraints presented by the geography of the Island, and the need to preserve the Island's unique aesthetic quality and sensitive natural, historic and environmental resources.

h. To better coordinate the type, location, amount, timing, and rate of development of proposed land uses in accordance with the Comprehensive Plan, zoning district regulations, and Official Zoning Map with the present and projected future availability of street system capacity.

i. To establish and maintain a traffic monitoring system to regularly determine the volume of traffic on the Town's street system and the degree to which capacity limits ("thresholds") are being approached or exceeded.

j. It is not the intent of this section to deny to any person a reasonable opportunity to develop land in a beneficial manner, but rather to coordinate the type, location, amount, timing, and rate of development with the Town's reasonable ability to provide adequate public street facilities consistent with the Town's adopted traffic service level standards.

3. Traffic Impact Analysis Plan Standards

All required traffic impact analysis plans shall, at a minimum, indicate compliance or non-compliance with the standards of this section.

a. The average total delay in seconds per vehicle for each signalized intersection does not exceed 55.0 seconds during the peak hour for an average June weekday; and

b. The volume-to-capacity (V/C) ratio for each signalized intersection does not exceed 0.90 during the peak hour for an average June weekday; and

c. The average total delay on any approach to a traffic circle or roundabout does not exceed 150 seconds per vehicle during the peak hour for an average June weekday.

4. Adoption of Traffic Policies

In order to ensure that no traffic impact analysis plan approvals are granted that would result in unacceptable traffic conditions or conflict with other Town goals or policies, Town Council shall adopt, by resolution, policies to guide the preparation, review and interpretation of the traffic impact analysis plans and to provide for their uniform review. Such resolution shall be reviewed periodically by Town Council, and may be modified and readopted as deemed necessary by Town Council.

K. Tree Removal Permit[97]

1. Purpose

The purpose of this subsection is to provide a means for regulating the removal or other disturbance of trees so as to preserve and maintain Island trees and ensure the important benefits they provide in terms of improving air quality, buffering noise and views, improving stormwater drainage, minimizing flooding, and maintaining and enhancing the visual beauty and character of the Town.

[97] As is discussed in Section 2.2.3 of the Code Assessment, the current LMO consolidates compliance review for nearly all aspects of site development into the Development Plan Review procedure—including review of plans and other information for compliance with the LMO's tree protection and wetlands protection standards in Chapter 6 of the current LMO. However, unlike with all other aspects of development, the LMO requires applicants for Development Plan Review to submit separate applications and receive Tree Protection Approval and Wetlands Alteration Approval. As is discussed in the Code Assessment, to address this problem and streamline and simplify development review, this draft of the LMO clarifies that compliance with the tree protection standards is to be conducted during Development Plan Review, and any development that has received approval of a Development Plan is exempted from having to receive a Tree Removal Permit.

The Tree Removal Permit will be carried forward to ensure development that is exempted from Development Plan Review (e.g., single family homes, public projects, agricultural activities, home occupations, accessory structures, and nonmaterial temporary uses) complies with the tree protection standards of the LMO. However, because that remaining type of development is small-scale and minor in nature, it is the intent that the review process be treated more like the current "approval letter for proposed removal of trees" (Sec. 16-3-403)—even though this development will still be required to comply with the tree protection standards. What this means is that development not subject to Development Plan Review (except exempted development) will be required to receive a Tree Removal Permit. The process will be more streamlined, like the current "approval letter for proposed removal of trees."

2. Applicability[98]

Except as exempted in Sec. 16-6-104.B.2, E, no person shall cut, destroy, cause to be destroyed, move or remove, transplant, prune, or limb any tree in the Town without first receiving approval of a Tree Removal Permit in accordance with the procedures and standards of this subsection—provided that no Tree Removal Permit shall be required where the proposed tree removal or alteration is reviewed and authorized in accordance with an approved Subdivision Plan (see Sec. 16-2-103.F), Development Plan (Minor or Major) (see Sec. 16-2-103.G), Small Residential Development (see Sec. 16-2-103.H) or Public Project (see Sec. 16-2-103.Q).

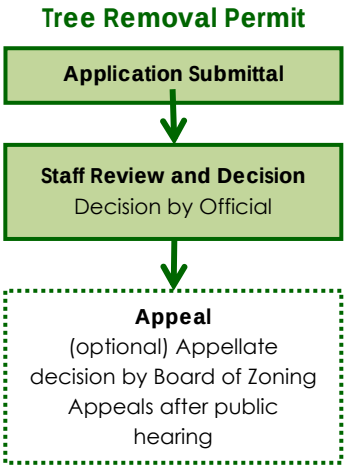
3. Tree Removal Permit Review Procedure[99]

a. Pre-Application Conference

Not applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C). Following the receipt of an application, the Official shall conduct an inspection of the development site. During this inspection, the Official shall assess the accuracy of the tree survey or related materials, check the condition of trees to be preserved, and inspect the site for any unusual features or specimen trees. Following the inspection, the Official shall advise the applicant of any recommended changes that should be made to the application to ensure compliance with the standards of this subsection.[100]



c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's decision on an application for a Tree Removal Permit shall be based on the standards in Sec. 16-2-103.K.4, Tree Removal Permit Review Standards, and shall be one of the following:

i. Approval of the Tree Removal Permit;

ii. Approval of the Tree Removal Permit subject to conditions of approval; or

iii. Denial of the application.

d. Public Hearing Scheduling and Notice

Not applicable.

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[98] This carries forward Sec. 16-3-402 of the current LMO (with exemptions listed in Sec. 16-6-104.B.2). As discussed above, it exempts any tree removal authorized by approval of a Subdivision Plan, Development Plan, Small Residential Development, or Public Project, since tree protection standards will be reviewed as part of those reviews.
[99] As discussed earlier, the Tree Removal Permit process will be treated more like the current "approval letter for proposed removal of trees." Consequently, the application content requirements, which will be placed in an administrative manual, will be modified accordingly.
[100] This carries forward Sec. 16-3-406 of the current LMO.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The decision of the Official on an application for a Tree Removal Permit may be appealed by an aggrieved person to the Board of Zoning Appeals in accordance with Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

4. Tree Removal Permit Review Standards

A Tree Removal Permit shall be approved on a finding the applicant demonstrates the proposed tree removal complies with the standards in Sec. 16-6-104, Tree Protection.

5. Effect of Approval[101]

Approval of a Tree Removal Permit authorizes only the particular tree removal or other activity approved, and not any other tree removal. In the event that a Tree Removal Permit is a prerequisite to another permit or approval that is required prior to commencement of development, then no development may take place until all required approvals are obtained. Approval of a Tree Removal Permit does not necessarily guarantee approval of any subsequent development application.

6. Expiration[102]

A Tree Removal Permit is valid for a period of one year, unless the Official approves an extension for good cause in accordance with Sec. 16-2-102.K.2.b, Extension of Expiration Time Period.

7. Amendment[103]

A Tree Removal Permit may be amended only in accordance with the procedures and standards for its original approval.

[101] This new paragraph sets forth the effect of approval of a Tree Protection Permit. It states that approval of the Tree Removal Permit does not assure approval of subsequently required permits or approvals under the LMO.
[102] This carries forward the one-year period in Sec. 16-3-409 of the current LMO for tree protection approvals not associated with an approved Development Plan.
[103] This is a new paragraph that provides that changes to an approved Tree Removal Permit require an application for a new Tree Removal Permit.

L. Wetlands Alteration Permit[104]

1. Purpose[105]

The purpose of this subsection is to ensure that any activity within a wetland, or any activity that alters a wetland, complies with the procedures and standards of this Ordinance.

2. Applicability

a. Generally

Unless exempted in accordance with paragraph 3 below, no person shall undertake any development constituting a wetlands alteration (see definition of "wetlands alteration" in Sec. 16-10-106, General Definitions) within a wetland without first receiving a Wetlands Alteration Permit in accordance with the procedures and standards of this subsection.

b. Nationwide Permits[106]

The issuance of Nationwide Permits Nos. 7, 14, 18, 19, 26, and 40 by the U.S. Army Corps of Engineers does not exempt an activity from full compliance with this subsection.

3. Exemptions[107]

The following is exempt from the standards and requirements of this subsection:

a. Wetland alteration in accordance with an approved Subdivision Plan (see Sec. 16-2-103.F), Development Plan (Minor or Major) (see Sec. 16-2-103.G), Small Residential Development (see Sec. 16-2-103.H)or Public Project (see Sec. 16-2-103.Q);

b. Development on a parcel of land that does not contain a wetland;

c. The construction of any public street or minor utility.

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[104] As is discussed above and in Section 2.2.3 of the Code Assessment, the current LMO consolidates compliance review for nearly all aspects of site development into the Development Plan Review procedure—including review of plans and other information for compliance with the LMO's tree protection and wetlands protection standards in Chapter 6 of the current LMO. However, unlike with all other aspects of development, the LMO requires applicants for Development Plan Review to submit separate applications and receive Tree Protection Approval and Wetlands Alteration Approval. As is discussed in the Code Assessment, to address this problem and streamline and simplify development review, this draft of the LMO clarifies that compliance with the wetlands alteration requirements is to be conducted during Development Plan Review, and any development that has received approval of a Development Plan is exempted from having to receive a Wetlands Alteration Permit. The Wetlands Alteration Permit is designed to ensure development that is exempted from Development Plan Review (e.g., single family homes, public projects, agricultural activities, home occupations, accessory structures, and nonmaterial temporary uses) complies with the wetland alteration standards of the LMO. However, because that remaining type of development is small-scale and minor in nature, it is the intent that the review process will be treated more like the current "approval letter" (Sec. 16-3-501.B). What this means is that development not subject to Development Plan Review (except exempted development) will be required to receive a Wetlands Alteration Permit. The process and application process will be more streamlined, like the current approval letter.

[105] This is a new paragraph setting forth the purpose of the Wetlands Alteration Permit. The statement built on Sec. 16-3-501.B (Prohibition on Alteration or Activity without Approval) of the current LMO.

[106] This carries forward language from Sec. 16-3-501.D of the current LMO.

[107] This carries forward language from Sec. 16-3-501 of the current LMO. As discussed above, it also clarifies the exemption for any alteration of wetlands that receives approval of a Subdivision Plan, Development Plan, Small Residential Development, or Public Project, since tree protection standards will be reviewed as part of those reviews.

d. The maintenance of any structure.

e. The use of land, with or without accessory structures, for purposes of agriculture, raising of crops or animals, forestry, mariculture, and the like.

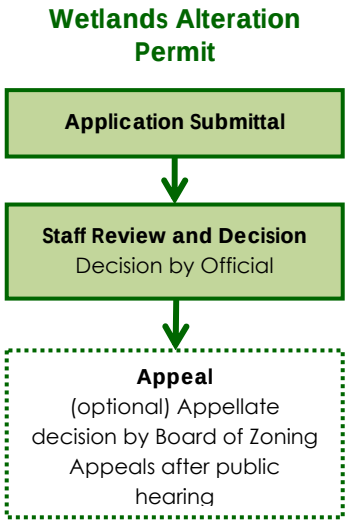
f. All structures (including factory-built housing) built or placed on an individual single family residential lot with no other dwellings on it.

g. Home occupations (see definition in Sec. 16-10-106, General Definitions).

h. Maintenance of golf course fairways through wetlands and required wetland buffers that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting), where the maintenance activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that re-deposit soil material; and

i. Maintenance and repair operations necessary for maintaining previously established flow rates and storage volumes of existing manmade stormwater conveyance systems. (The maintenance and repair exemption is not an exemption from stormwater management regulations.)

4. Wetlands Alteration Permit Procedure



a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's decision shall be based on the standards in Sec. 16-2-103.L.5, Wetlands Alteration Permit Review Standards, and shall be one of the following:

i. Approval of the Wetlands Alteration Permit;

ii. Approval of the Wetlands Alteration Permit subject to conditions of approval; or

iii. Denial of the application.

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The decision of the Official on a Wetlands Alteration Permit may be appealed by an aggrieved person to the Board of Zoning Appeals in accordance with Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

5. Wetlands Alteration Permit Review Standards[108]

A Wetlands Alteration Permit shall be approved on a finding that the applicant demonstrates the proposed wetland alteration complies with the standards in Sec. 16-6-102, Wetland Protection.

6. Effect of Approval[109]

Approval of a Wetlands Alteration Permit authorizes only the wetland alteration approved by the permit, and not any other activity. In the event that a Wetlands Alteration Permit is a prerequisite to another permit or approval that is required prior to commencement of development, then no development may take place until all required approvals are obtained. Approval of a Wetlands Alteration Permit does not necessarily guarantee approval of any subsequent development application.

7. Expiration[110]

A Wetlands Alteration Permit is valid for a period of one year, unless the Official approves an extension for good cause in accordance with Sec. 16-2-102.K.2.b, Extension of Expiration Time Period.

M. Sign Permit[111]

See Sec. 16-5-113.H, Sign Permits.

N. Development Project Name Review[112]

1. Purpose[113]

The purpose of this subsection is to create a uniform development project naming system in the interest of the public health, safety, and welfare of Town residents and visitors by improving emergency response times and ease of locating destinations.

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[108] This carries forth Section 16-6-203 – General Performance Standards Applicable to all Wetlands, from the current LMO.
[109] This new paragraph sets forth the effect of approval of a Wetlands Alteration Permit. It states that approval of the Wetlands Alteration Permit does not assure approval of subsequently required permits or development approvals under this Ordinance.
[110] This carries forth the expiration period from Section 16-3-507 of the current LMO.
[111] Town staff requests that all sign regulations be located together in the same part of the LMO. Accordingly, sign permit procedures will be combined with the sign standards in Title 16 Chapter 5.
[112] This carries forward Chapter 3, Article XI of the current LMO. However, because the Official reviews and decides Development Project Names and the Planning Commission reviews and decides Street and Vehicular Access Easement Name Approval, Chapter 3, Article XI, is separated into Development Project Name Approval and Street and Vehicular Access Easement Name Approval. The procedures and standards for Development Project Name Approval are found in this section. The procedures and standards for Street and Vehicular Access Easement Name Approval are found in the next section. Generally, in separating these provisions, we have carried forward the procedures and review standards from the current LMO.
[113] This section carries forth the language from Section 16-3-1101 of the current LMO.

2. Applicability

Development Project Name Approval is required before the approval of a Subdivision Plan, Development Plan, or Small Residential Development for the site where the development is to be located.

3. Development Project Name Approval Procedure

a. Pre-Application Conference

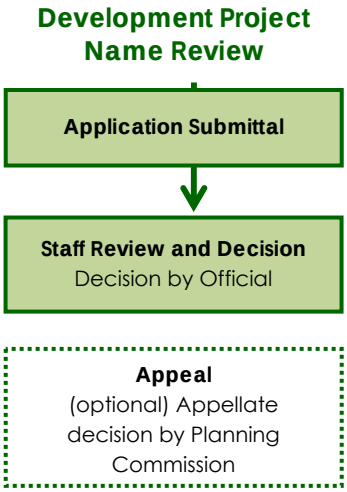
Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's decision shall be to approve, modify, or disapprove the proposed new or modified name based on the standards in Sec. 16-2-103.N.4, Development Project Name Approval Review Standards. Before making a decision, the Official shall consult with the emergency dispatch offices.



d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

g. Not applicable.

h. Appeal

Applicable. The decision of the Official on a Development Project Name Approval may be appealed by the applicant to the Planning Commission in accordance with Sec. 16-2-103.V, Appeal of Official's Decision to Planning Commission.

4. Development Project Name Approval Review Standards[114]

A proposed new or modified development project name shall be approved on a finding that the name complies with the following standards:

a. No new development project name, or proposed modified name of a development, except phases of the same development project, shall

[114] This paragraph carries forth the relevant review criteria (for development naming) from Sec. 16-3-1105 (Criteria for New or Modified Street and Vehicular Access Easement Names) of the current LMO.

duplicate, be phonetically similar to, or in any way be likely to be confused with an existing development project name, despite the use of prefixes or suffixes.

b. Names shall be simple, logical, easy to read and pronounce, and clear and brief. Use of frivolous or complicated words or unconventional spellings in names shall not be approved.

c. It is desirable to use names that have some association with Hilton Head Island and specifically with the immediate location of the road or place, such as reference to local history or physiographic features.

d. The proposed name of the development project shall in all respects emphasize the project's distinctive name rather than the name of the company or corporation that owns the development. This will reduce confusion on the location of separate developments owned by the same company or corporation.

5. Notice of Action[115]

On approving a new or modified development project name, the Official shall provide notice of the approved name to emergency dispatch offices, the post office, and Beaufort County Register of Deeds, as well as the applicant.

6. Expiration

Approval of a new or modified development project name shall not expire, but the name is subject to further modification in accordance with procedures set forth in this subsection.

7. Amendment[116]

A development project name may be amended only in accordance with the procedures and standards for its original approval.

O. Street/Vehicular Access Easement Name Review[117]

1. Purpose[118]

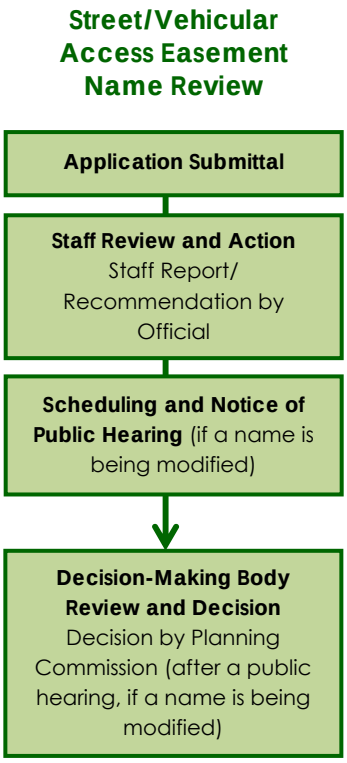
The purpose of this subsection is to create a uniform street and vehicular access easement naming system in the interest of the public health, safety, and welfare of Town residents and visitors by improving emergency response times and ease of locating destinations.

[115] This carries forward the notice requirements in Sec. 16-3-1103.A of the current LMO. The applicant would be responsible for notifying tenants, lenders, and other parties with contractual or other ties with the development.
[116] This is a new paragraph stating that a development project name may only be amended or modified by going through the same process for its original approval.
[117] This subsection carries forward Chapter 3, Article XI of the current LMO. However, as is discussed in the previous section, because the Official reviews and decides Development Project Names and the Planning Commission reviews and decides Street and Vehicular Access Easement Names, Chapter 3, Article XI is separated into two subsections: Development Project Name Approval and Street and Vehicular Access Easement Name Approval. The procedures and standards for Development Project Name Review are found in the previous subsection. The procedures and standards for Street and Vehicular Access Easement Name Review are found in this subsection. This subsection generally carries forward the procedures and standards for Street and Vehicular Access Easement Name Approval in Chapter 3, Article XI.
[118] This paragraph carries forward language from Sec. 16-3-1201 (Applicability and Purpose) of the current LMO.

2. Applicability

All new or modified official street names and vehicular access easements in the Town shall be approved in accordance with this subsection, concurrently with or prior to approval of a Subdivision Plan, Development Plan, Small Residential Development, or Public Project for the site where the street(s) or vehicular access easements will be located.[119]

3. Street/Vehicular Access Easement Name Procedure[120]



a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C). The application shall be submitted concurrently with an application for Subdivision Review, Development Plan Review, Small Residential Development Review, or Public Project Review.[121]

c. Staff Review and Action

Applicable (see Sec. 16-2-102.D).

d. Public Hearing Scheduling and Notice

Applicable only to applications to modify a street or vehicular access easement name (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

Not Applicable.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Planning Commission (after a public hearing if the street or vehicular access easement name is being modified) (see Sec. 16-2-102.G). The Commission's decision shall be to approve, modify, or disapprove the proposed new or modified name based on the standards in Sec. 16-2-103.O.4, Street/Vehicular Access Easement Review Standards.

[119] This new paragraph adds a provision stating the street or vehicular access easement name shall be approved prior to approval of a Subdivision Plan, Development Plan, or Small Residential Plan or the site.
[120] This subsection sets forth the procedures for Street and Vehicular Access Easement Name Review in Sec. 16-3-1103 and 1104 of the current LMO.
[121] This carries forward Sec. 16-3-1102 E. of the current LMO.

g. Appeal

Not applicable.

4. Street/Vehicular Access Easement Review Standards[122]

A proposed new or modified street or vehicular access easement name shall be approved on a finding that the name complies with the following standards:

a. No new street or vehicular access easement, or proposed modification of the name of an existing street or vehicular access easement, shall duplicate, be phonetically similar to, or in any way be likely to be confused with an existing street or vehicular access easement, despite the use of prefixes or suffixes.

b. Names shall be simple, logical, easy to read and pronounce, and clear and brief. Use of frivolous or complicated words or unconventional spellings in names shall not be approved.

c. It is desirable to use names that have some association with Hilton Head Island and specifically with the immediate location of the road or place, such as reference to local history or physiographic features.

d. Use of a common theme is recommended for names of streets that are associated with one another, such as those within a residential development.

e. Streets or vehicular access easements that continue through an intersection should generally bear the same name, except where the road crosses a major arterial or where existing address points on a street require that the roadway be given a different name.

f. A street or vehicular access easement making an approximate right-angle turn where there is no possibility of extending the street or vehicular access easement in either direction shall be considered to be continuous and continue the same name. Where there is a choice of direction or a possibility of extending either section in the future, such configuration shall be considered an intersection and the street/ easement segments extending from the intersection shall bear different names.

g. New or modified street names should generally use Drive, Lane, Place, Road, Street, or Way as suffixes. The following street designations should only be used if the street design meets one of the following descriptions. This list is not intended to limit the use of other appropriate suffixes.

- **i.** Alley—A street providing access to the rear of lots or buildings, usually as a secondary means of access to a property.
- **ii.** Avenue—A street that is continuous.
- **iii.** Boulevard—A street with a landscaped median dividing the roadway.
- **iv.** Circle—A street with a complete loop on the end or a side street that intersects another street at two adjacent intersections.
- **v.** Court—A street terminating in a cul-de-sac, not longer than 1,000 feet in length.

[122] This carries forth the relevant criteria from Sec. 16-3-1105 the current LMO (the criteria for modified or new street or vehicular access names).

vi. Extension—A section of street forming an additional length.

vii. Parkway—A street designated as a collector or arterial road, with a landscaped median reflecting the parkway character implied in the name.

viii. The suffixes Manor, Trace, and Common shall typically be used to name vehicular access easements.

ix. Where natural barriers, intervening land uses, or developments break an existing road into two separate roads that are not likely to be reconnected in the future, the roads shall be named in a manner that considers the potential economic impact of the number of address points and type of addresses impacted.

5. Notice of Action

a. If the Planning Commission approves the name, the Official shall certify the name in writing and forward the certification to the emergency dispatch office, post office, and Beaufort County Register of Deeds, as well as the applicant.

b. The Official shall provide notice of an approved modification of a street or vehicular access easement name by certified mail to all owners of record of properties on the affected street or vehicular access easement.

6. Expiration

Approval of a new or modified street or vehicular access easement name shall not expire, but the name is subject to further modification in accordance with procedures set forth in this subsection.

7. Amendment[123]

A street/vehicle access name approval may be amended only in accordance with the procedures and standards for its original approval.

P. Certificate of Compliance[124]

1. Purpose

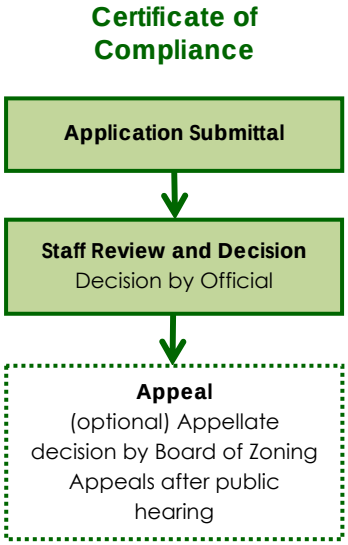
The purpose of a Certificate of Compliance is to ensure development complies with the standards and requirements of this Ordinance before it is occupied.

2. Applicability[125]

All development, or an approved phase thereof, that has received approval of a Subdivision Plan, Development Plan, or Small Residential Development—or any other development that has received a permit or development approval under this Ordinance— shall obtain approval of a Certificate of Compliance prior to a receipt of a Certificate of Occupancy and occupancy of a building or structure.

[123] This is a new paragraph stating that a street/vehicle access name approval may only be amended or modified by going through the same process for its original approval.
[124] This subsection builds on Chapter 3, Article VII (Certificate of Compliance) of the current LMO. Current procedures are not changed and the standards of review are not changed (there are some refinements to clarify language). .
[125] This carries forward language from Section 16-3-702 of the current LMO.

3. Certificate of Compliance Procedure



a. Pre-Application Conference

Not applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official, subject to the following procedures:

i. Following review of the application, the Official shall schedule and conduct a final inspection for the purpose of verifying compliance with all applicable provisions of this Ordinance, including but not limited to the requirements of the approved Subdivision Plan, Development Plan, Small Residential Development, or other applicable permits and development approvals.

ii. After the final site inspection, the Official shall either approve or deny an application for a Certificate of Compliance, based on compliance with Sec. 16-2-103.P.4, Certificate of Compliance Review Standards.

iii. The Official may issue a Temporary Certificate of Compliance for a period up to a maximum of six months where the only uncompleted development consists of landscaping/tree planting that is deferred until more appropriate weather conditions for planting is expected (e.g., deferring plantings from hot summer months to cooler autumn months).[126]

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

[126] This carries forward Sec. 16-3-705 of the current LMO, which authorizes the Official to issue a Temporary Certificate of Compliance, modifying the provision to limit it to deferral of plantings, in accordance with the Town's current practice.

g. Appeal[127]

Applicable. The decision of the Official on a Certificate of Compliance may be appealed by an aggrieved person to the Board of Zoning Appeals in accordance with Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals`.

4. Certificate of Compliance Review Standards

a. A Certificate of Compliance shall be approved upon a finding that the applicant demonstrates the proposed development complies with all applicable standards in this Ordinance, the Municipal Code, and all conditions of permits or development approvals approved under this Ordinance.

b. If the application is for an approved phase of development in accordance with an approved Subdivision Plan, Development Plan, or Small Residential Development, a Certificate of Compliance shall be approved only on a finding that the phase will be able to function alone with all required infrastructure, including but not limited to access drives, parking, drainage facilities, utilities, and required landscaping/tree planting.

5. Issuance of Certificate of Occupancy [128]

The Town's Building Official shall not issue a Certificate of Occupancy for any building until the Official has first issued a Certificate of Compliance for the development, or approved phase thereof, that contains the building.

Q. Public Project Review[129]

1. Purpose

The purpose of this subsection is to provide a uniform means for reviewing development of any proposed public project involving a new street, structure, utility, square, park, or other public way, grounds or open space, or public buildings to determine if the location, character, and extent of the project are in accordance or conflict with the Comprehensive Plan.

[127] The current LMO does not include any provision for appeals of Certificate of Compliance decisions. Town staff questioned why appeals of Certificate of Compliance decisions shouldn't go to the Planning Commission, as is the case with appeals of Development Plan Review decisions. State statutes limit appeals to the Planning Commission to decisions affecting the physical development of land. Since Certificates of Compliance largely certify compliance with use standards and other zoning standards as a prerequisite to occupancy of a building rather than to the actual development of the building, it seems more legally appropriate to have appeals of Certificates of Compliance go to the Board of Zoning Appeals as with all other zoning decisions.
[128] This carries forward Sec. 16-3-706 of the current LMO.
[129] This subsection carries forward Chapter 3, Article XII (Public Project Review) of the current LMO, modifying procedures to eliminate the current requirement for a public hearing. It implements South Carolina Code of Laws 6-29-540, which does not require a public hearing. The Town may still choose to notify affected persons of the Planning Commission's meeting and allow them to speak at the meeting. But since this procedure applies to a wide range of public development, the Town would be free to apply administrative policies to provide appropriate notice of large public projects or other public projects likely to affect adjacent property owners and residents.

2. Applicability[130]

a. Except as exempted in subparagraph b below, any proposal to develop a public project within the Town involving a new street, structure, utility, square, park, or other public way, grounds, or open space, or public buildings for any use, , whether publicly or privately owned, shall be reviewed in accordance with this subsection prior to its development.

b. These review procedures shall not apply to telephone, sewer, and gas utilities, or electric suppliers, utilities, and providers, whether publicly or privately owned, whose plans have been approved by the Town Council or a state or federal regulatory agency, or to electric suppliers, utilities, and providers who are acting in accordance with a legislatively delegated right pursuant to South Carolina Code of Laws, Chapter 27 or 31 of Title 58 or Chapter 49 of Title 33—provided these utilities submit construction information to the Planning Commission.

3. Public Project Review Procedure

a. Pre-Application Conference

Strongly encouraged (see Sec. 16-2-102.B).

b. Application Submittal

Applicable (see Sec. 16-2-102.C). Application may be initiated only by the entity proposing to develop or construct the public project.

c. Staff Review and Action

Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D). The Official's recommendation shall be based on the standards in Sec. 16-2-103.Q.4, Public Project Review Standards.

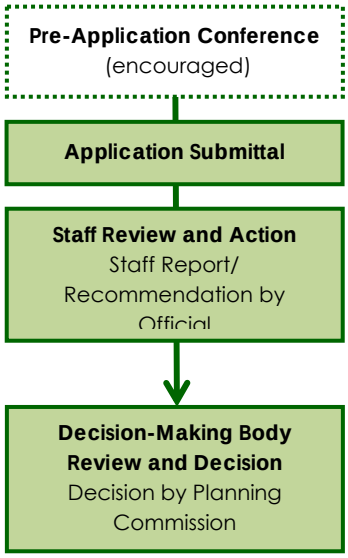
d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

Public Project Review



f. Decision-Making Body Review and Decision

g. Applicable to a decision by the Planning Commission (see Sec. 16-2-102.G). The Planning Commission's decision shall be whether or not the proposed development is compatible with the Comprehensive Plan. It shall be based on the standards in Sec. 16-2-103.Q.4, Public Project Review Standards, and include written findings.

[130] The wording of this applicability provision, including exceptions, comes from S.C. Code Ann. § 6-29-540.

h. Appeal

Not applicable.

4. Public Project Review Standards

In determining whether or not a proposed public project is compatible with the Comprehensive Plan, the Planning Commission shall consider whether the location, character, and extent of the proposed development is consistent with, or conflicts with, the plan's goals and implementation strategies.

5. Effect of Decision

a. If the Planning Commission finds the public project is compatible with the Comprehensive Plan, the Official shall issue a notice of the finding to the public entity proposing the project.

b. If the Planning Commission finds the public project conflicts with the Comprehensive Plan, it shall forward its written findings and an explanation of its reasoning to the public entity proposing the project.

c. If the entity proposing the public project elects to proceed with its project that is in conflict with the Comprehensive Plan, then the governing or policy-making body of the entity shall publicly state its intention to proceed and its reasons for proceeding and send a copy of its intention and reasons to the Town Council and Planning Commission. It shall also publish a public notice of the Planning Commission findings and its intention and reasons for proceeding in a newspaper of general circulation in the Town at least 30 days in advance of award of a contract or the beginning of construction of the proposed public project.

R. Written Interpretation[131]

1. Purpose

The purpose of this subsection is to provide a uniform mechanism for rendering formal written interpretations of this Ordinance when there is uncertainty or a dispute about the meaning of an Ordinance provision or when a use is not identified in the Principal Use Table in Sec. 16-4-102.A, Principal Use Table.[132]

2. Applicability

The Official shall be responsible for making interpretations of all provisions of this Ordinance—including, but not limited to, interpretations of:

a. The text of this Ordinance;

b. Zoning district boundaries;

c. Whether an unspecified use is comparable to a listed use or not, and should be allowed in a zoning district or prohibited in that district; and

d. Compliance with a condition of approval.

[131] This subsection builds on Chapter 3, Article II (Written Interpretations) of the current LMO.
[132] What should be referenced will be decided on completion of Title 16 Chapter 3: Zoning Districts.

3. Written Interpretation Procedure

a. Pre-Application Conference

Not Applicable.

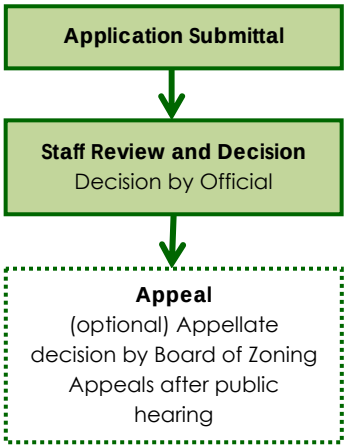
b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's written interpretation shall be based on the standards in Sec. 16-2-103.R.4, Written Interpretation Standards.

Written Interpretation



d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The interpretation of the Official may be appealed by the person requesting the interpretation to the Board of Zoning Appeals in accordance with Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

4. Written Interpretation Standards[133]

a. Zoning Map Boundaries

Interpretation of zoning district boundaries on the Official Zoning Map shall be in accordance with the standards in Sec. 16-10-102, Interpretation of Zoning District Map Boundaries.

b. Unspecified Uses

Interpretation of whether an unspecified use is similar to a use or is prohibited in a zoning district shall be based on Sec. 16-4-102.A.5, Interpretation of Unlisted Uses, and whether the interpretation is in accordance with the Comprehensive Plan.

[133] This new paragraph provides guidance to the Official in making written interpretations. Guidance on interpreting zoning district boundaries will be located in Title 16 Chapter 3: Zoning Districts; guidance on use interpretations will be found in Title 16 Chapter 9: Definitions, Interpretations, and Measurement; and guidance on text provisions will be found in this paragraph and Title 16 Chapter 9: Definitions, Interpretations, and Measurement.

c. Text Provisions

Interpretation of text provisions and their application shall be based on the standards in Sec. 16-10-101, General Rules for Interpretation, and the following considerations:

i. The clear and plain meaning of the provision's wording, as defined by the meaning and significance given specific terms used in the provision—as established in Sec. 16-10-106, General Definitions, and by the common and accepted usage of the term;

ii. The intended purpose of the provision, as indicated by purpose statements, its context and consistency with surrounding and related provisions, and any legislative history related to its adoption;

iii. The general purposes served by this Ordinance; and

iv. The Comprehensive Plan.

5. Official Record of Interpretations[134]

The Official shall maintain a record of written interpretations that shall be available in the Town Hall for public inspection, on reasonable request, during normal business hours.

6. Effect of Interpretation[135]

A written interpretation shall be binding on subsequent decisions by the Official in applying the same provision of this Ordinance in the same circumstance.

[134] This section carries forward Sec. 16-3-204 of the current LMO that requires an official record of written interpretations be kept in the Official's office. Official's office was changed to Town Hall, where the Official's office is located.
[135] This is a new paragraph clarifying the effect of Interpretations

S. Administrative Adjustment[136]

1. Purpose

An Administrative Adjustment is intended to allow minor variations, or adjustments, to certain dimensional or numerical standards of this Ordinance based on specific criteria, with the intent of allowing minor modifications where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by the standards of this Ordinance and the Comprehensive Plan, and is compatible with surrounding development. An Administrative Adjustment is also intended to provide limited flexibility, in specific areas, to allow alternative design that is better than that afforded by strict application of certain dimensional or numerical standards. The purpose of this subsection is to establish procedures and standards for review of applications for Administrative Adjustments.

2. Applicability

Administrative Adjustments may be requested, reviewed, and approved in accordance with this subsection concurrently with the review and approval of an application for a Development Plan Review (see Sec. 16-2-103.G) or Small Residential Development Review (see Sec. 16-2-103.H). An Administrative Adjustment may be approved only for the standards identified in Table 16-2-103.S.2, Allowable Administrative Adjustments, up to the limits set forth in the table for the zoning district within which the adjustment is requested.

[136] As described in the Code Assessment and the Response to LMO Rewrite Committee Comments on the Code Assessment, the administrative adjustment is a review procedure intended to allow the Official to approve prescribed adjustments or modifications to certain numerical standards (e.g., for parking, adjacent use setbacks and buffers, street setbacks and buffers, height) where doing so would avoid practical difficulties in allowing development that otherwise conforms to the purposes served by the deviated standard and provides some benefit to the community. This section would authorize administrative adjustments to:

- Minimum adjacent street setbacks and buffers:
  - Up to 30 percent reduction in the SMU District except on Highway 278 if (1) demonstrated no reasonable options exist to lay-out an allowed use in a way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer.
  - Up to 20 percent reduction in the IL and RD Districts if (1) demonstrated no reasonable options exist to lay-out an allowed use in a way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer.
  - Up to 15 percent reduction in all other districts.
- Minimum adjacent use setbacks and buffers:
  - Up to a 10% reduction in all districts.
- Minimum parking space requirements:
  - Up to a 15 percent reduction in SPC, CC, and MS Districts; and
  - Up to 10 percent reduction in all other districts.
- Maximum building height:
  - Up to 10 percent increase where the applicable height limit is 45 feet or less.

TABLE 16-2-103.S.2: ALLOWABLE ADMINISTRATIVE ADJUSTMENTS		
ADJUSTED STANDARD	**DISTRICTS**	**ALLOWABLE ADJUSTMENT AND SPECIAL CRITERIA**
Minimum adjacent street setback requirements (see Sec. 16-5-103.D) and adjacent street buffer requirements (see Sec. 16-5-103.G)	SMU District	Up to30% reduction in setback distance, buffer width, or planting rate for buffer screening, except along Highway 278, if it is demonstrated that: (1) there are no reasonable options to design and locate allowed development in way that complies with LMO standards, and (2) the opacity level of a modified adjacent street buffer is comparable to that of the required adjacent street buffer[137]
	RD and IL Districts	Up to 20% reduction in setback distance, buffer width, or planting rate for buffer screening if it is demonstrated that: (1) there are no reasonable options to design and locate allowed development in way that complies with LMO standards, and (2) the opacity level of a modified adjacent street buffer is comparable to that of the required adjacent street buffer
	All other districts	Up to 15% reduction in setback distance, buffer width, and planting rate for buffer screening
Minimum adjacent use setback requirements (see Sec. 16-5-103.E) and adjacent use buffer requirements (see Sec. 16-5-103.H)	All districts	Up to 10% reduction in setback distance, buffer width, and planting rate for buffer screening
Minimum number of parking spaces (see Sec. 16-5-106.D.1)	CR, SPC, CC, and MS Districts	Up to 15% reduction, if at least one bicycle parking space is added for every 2 vehicle parking spaces subtracted
	All other districts	Up to 10% reduction, if at least one bicycle parking space is added for every 2 vehicle parking spaces subtracted
Maximum building height where the applicable maximum building height is 45 feet or less	PR, RSF-3, RSF-5, RSF-6, RM-4, RM-8, RM-12, SPC, CC, MS, SMU, MMU, MV, LC, MED, and IL Districts; and part of the CR District	Up to 10% increase

3. Administrative Adjustment Procedure

a. Pre-Application Conference

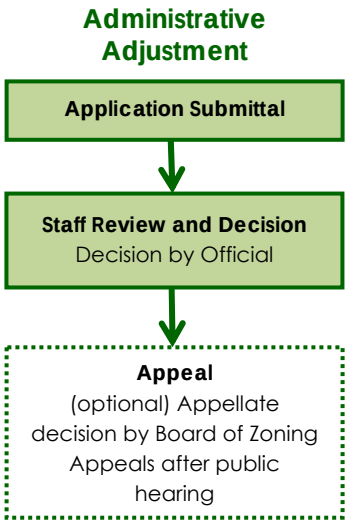
Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's decision shall be based on the adjustment limits and special criteria in Table 16-2-103.S.2, Allowable Administrative Adjustments, and the review standards in Sec. 16-2-103.S.4, Administrative Adjustment Review Standards, and shall be one of the following:



[137] An opacity level comparable to that of the required buffer may be achieved by a providing denser planting (where the modification is a reduction in buffer width), or providing a berm, fence, and/or wall (where the modification is a reduction in planting rate or a reduction in buffer width).

i. Approval of the Administrative Adjustment;

ii. Approval of the Administrative Adjustment subject to conditions of approval; or

iii. Denial of the Administrative Adjustment.

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The decision of the Official on an Administrative Adjustment may be appealed by an aggrieved person to the Board of Zoning Appeals, in accordance with the standards set forth in Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

4. Administrative Adjustment Review Standards

An Administrative Adjustment shall be approved only for the standards identified in Table 16-2-103.S.2, Allowable Administrative Adjustments, up to the limits set forth in the table for the zoning district within which the adjustment is requested, and subject to any applicable special criteria in Table 16-2-103.S.2, and the following standards:

a. The administrative adjustment is consistent with the character of development on surrounding land.

b. The result of development proposed by the administrative adjustment is consistent with the purpose and intent of the standard(s) adjusted.

c. The administrative adjustment either:

i. Is required to compensate for some unusual aspect of the site or the proposed development; or

ii. Results in improved site conditions for a development with nonconforming site features (such as, but not limited to, a reduction in the minimum parking standard that allows a nonconforming buffer to be widened, or a reduction in the minimum setback standard that allows extension of a wall or fence to provide screening of an existing outdoor storage area).

d. The administrative adjustment will not pose a danger to the public health or safety;

e. Any adverse impacts directly attributable to the administrative adjustment are mitigated (e.g., where a reduction in the minimum parking standard for a use with a drive-through facility is likely increase use of the drive-through facility, additional stacking distance may be provided); and

f. The site is not subject to a series of multiple, incremental, administrative adjustments that result in a reduction in development standards by the maximum allowed.

5. Effect of Approval

Approval of an Administrative Adjustment authorizes only the particular adjustment of standards authorized by the approval. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance and any other applicable laws, and does not indicate that the development for which the Administrative Adjustment is granted should receive approval of other permits and development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance or any other applicable laws are met. An approved Administrative Adjustment, including any condition of approval, shall run with the land, unless it expires, and shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.

6. Expiration

Approval of an Administrative Adjustment shall expire at the time of expiration of the approved Development Plan or Small Residential Development with which it is associated.

7. Amendment

An Administrative Adjustment may be amended only in accordance with the procedures and standards for its original approval.

T. Variance[138]

1. Purpose[139]

The purpose of a Variance is to allow certain deviations from the standards of this Ordinance when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner's control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest. Variances are to be approved only in rare instances, and under exceptional circumstances. No change in permitted or prohibited uses may be authorized by a Variance.

2. Applicability[140]

The Variance procedure may be used to seek and obtain hardship relief from the following standards:

[138] This subsection builds on Chapter 3, Article XIX (Variances) of the current LMO. At the request of town staff, it modifies the current provisions to expand the range of standards from which a Variance may be sought,
[139] This new paragraph adds language expressly stating the general purpose of variances.
[140] This modifies provisions in Sec. 16-3-1901 of the current LMO to broaden the standards from which a Variance may be sought. It specifically excludes Variances from standards designating permitted or prohibited uses and maximum density standards, in accord with South Carolina court opinions, which deem such variances tantamount to rezonings. The Town may wish to not allow a Variance from certain development and environmental standards.

a. The district standards in Chapter 16-3: Zoning Districts, except standards designating permitted or prohibited uses, and setting maximum density;

b. The use-specific conditions in Chapter 16-4: Use Standards;

c. The development and design standards in Chapter 16-5: Development and Design Standards except the subdivision standards; and

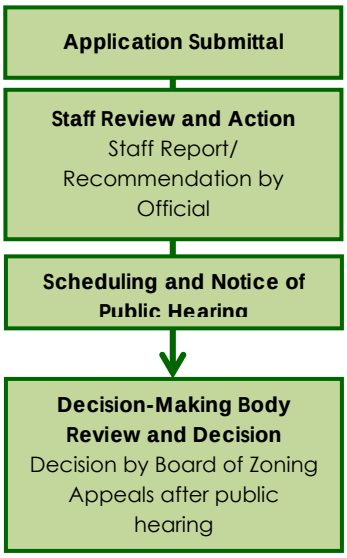
d. The natural resource standards in Chapter 16-6: Natural Resource Protection.

3. Variance Procedure

a. Pre-Application Conference

Not Applicable.

Variance



b. Application Submittal

Applicable (see Sec. 16-2-102.C).

c. Staff Review and Action

Applicable to a staff report and recommendation by the Official (see Sec. 16-2-102.D). The Official's recommendation shall be based on the standards in Sec. 16-2-103.T.4, Variance Review Standards.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E).

e. Advisory Body Review and Recommendation

f. Not applicable.

g. Decision-Making Body Review and Decision

Applicable to a decision by the Board of Zoning Appeals after a public hearing (see Sec. 16-2-102.G). The Board's decision shall be based on the standards in Sec. 16-2-103.T.4, Variance Review Standards, and shall be one of the following:

i. Approval of the Variance;

ii. Approval of the Variance subject to conditions of approval; or

iii. Denial of the application.

h. Appeal

Not applicable.

4. Variance Review Standards[141]

a. Required Findings

i. A Variance may be granted by the appropriate decision-making body if it concludes that the strict enforcement of any appropriate dimensional, development, design, or performance standard set forth in this Ordinance would result in unnecessary hardship to the applicant and that by granting the variance, the spirit of this Ordinance will be observed, public welfare and safety will not be diminished, and substantial justice will be done. A Variance may be granted in an individual case of unnecessary hardship if the decision-making body determines and expresses in writing all of the following findings:

01. There are extraordinary and exceptional conditions pertaining to the particular piece of property;

02. These conditions do not generally apply to other properties in the vicinity;

03. Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

04. The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance.

ii. In its consideration of an application for a Variance, the decision-making body shall be guided by this Ordinance, the relevant provisions of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and the decisions of the appellate courts of South Carolina interpreting such provisions.

b. Limitations

The decision-making body may not grant a Variance, the effect of which would do any of the following:

i. Permit a use of land or a structure that is not allowed in the applicable zoning district;

ii. Allow the physical extension of a nonconforming use;

iii. Increase the density of a use above that permitted by the applicable zoning district; or

iv. Vary the sign regulations.

c. Factor Not to be Considered

The fact that the property may be utilized more profitably, should a Variance be granted, may not be considered as grounds for a Variance.

[141] This section carries forward the review criteria from Section 16-3-1906 of the current LMO.

d. Hardship Due to Eminent Domain

Where the alleged hardship results from the taking of part of the property of the applicant by eminent domain, thus reducing the land area available for parking, buffers and other purposes, the applicant shall have the burden of proving that, after good faith efforts by the applicant or the applicant's predecessor, the condemning authority failed or refused to provide the applicant compensation adequate to cover the value of both the land actually taken and the economic impacts of the reduction in the size of the remaining property. Only if the applicant meets such burden of proof will a hardship under these conditions be considered adequate to justify the granting of a Variance.

5. Effect of Approval[142]

Approval of a Variance authorizes only the particular regulatory relief approved. It does not exempt the applicant from the responsibility to obtain all other approvals required by this Ordinance and any other applicable laws, and does not indicate that the development for which the Variance is granted should receive other permits or development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance or any other applicable laws are met. Unless it expires in accordance with Sec. 16-2-103.T.6, Expiration, a Variance, including any conditions of approval, shall run with the land, shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.

6. Expiration[143]

Granting of a Variance establishes a vested right in accordance with Sec. 16-2-102.K.1, Vested Rights for Approvals of Site Specific Development Plans.

7. Amendment[144]

A Variance may be amended only in accordance with the procedures and standards for its original approval.

U. Appeal of Official's Decision to Board of Zoning Appeals[145]

1. Purpose

The purpose of this subsection is to establish the means by which a person aggrieved by a decision or interpretation made by the Official under this Ordinance may appeal the decision or interpretation to determine if the decision was properly made in accordance with the requirements of this Ordinance.

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[142] This new paragraph sets forth the effect of approval of a Variance. It states that approval of a Variance only authorizes the particular regulatory relief granted, and does not ensure that the applicant will receive subsequently required development approvals or permits under the LMO.

[143] This carries forward Sec. 16-3-1907 of the current LMO. The Town might want to consider adding specific expiration provisions that set forth the expiration of a Variance if a Building Permit for the development is not approved in two years. The language would read as follows:

> Approval of a Variance shall automatically expire if a Building Permit is not obtained for the development for which the Variance is granted within two years after the date of the approval. The Official may grant one extension for a period of one year, for good cause.

[144] This new paragraph sets forth the Amendment procedures for a Variance.

[145] This subsection builds on Chapter 3, Article XX (Appeals of Administrative Decisions) of the current LMO, and provides the procedures and standards for appeals of Official's decisions to the Board of Zoning Appeals.

2. Who May File Appeal[146]

Any person aggrieved by a decision or interpretation of the Official under this Ordinance may appeal the decision or interpretation to the Board of Zoning Appeals by filing a Notice of Appeal with the Official. For the purposes of this subsection, an aggrieved person is:

a. Any owner of property within 350 feet of the property subject to the decision or interpretation, and may include a person owning property beyond 350 feet of the property subject to the decision or interpretation if it is determined by the Board of Zoning Appeals that such property owner may be affected by the decision.

b. The person who has requested and received a Written Interpretation in accordance with Sec. 16-2-103.R, Written Interpretation.

3. Types of Appeal[147]

Appeals of the following decisions or interpretations made by the Official shall be heard and decided by the Board of Zoning Appeals in accordance with the procedures and standards in this subsection.

a. Minor Deviations to a PUD/Master Plan (see Sec. 16-2-103.D.8, Minor Deviations from Approved Master Plan);

b. Tree Removal Permits (see Sec. 16-2-103.K, Tree Removal Permit);

c. Wetlands Alteration Permits (see Sec. 16-2-103.L, Wetlands Alteration Permit);

d. Certificates of Compliance (see Sec. 16-2-103.P, Certificate of Compliance);

e. Written Interpretations (see Sec. 16-2-103.R, Written Interpretation);

f. Administrative Adjustments (see Sec. 16-2-103.S, Administrative Adjustment); and

g. Any action to enforce the provisions of this Ordinance (see Chapter 16-8: Enforcement).

4. Appeal Procedure

a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C). The application shall specify the grounds for the appeal and shall be submitted to the Official (personally received or mailed and postmarked) within 14 calendar days after provision of notice of the decision being appealed (see Sec. 16-2-102.I.1, Notice of Decision).[148]

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[146] This carries forward the provisions of Sec. 16-3-2001 of the current LMO that state aggrieved persons may file an appeal under this section, and define who constitutes an aggrieved person. A new provision is added identifying a person who has requested and received a Written Interpretation as an aggrieved person who may file an appeal on the interpretation.

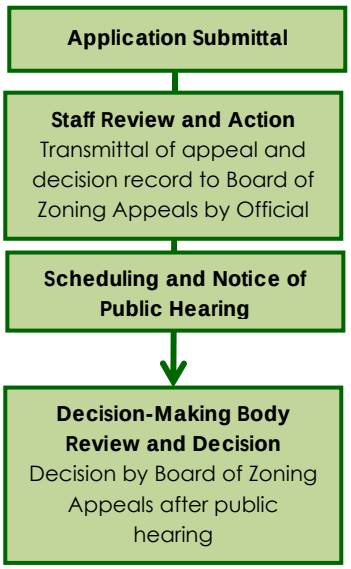
[147] This new paragraph summarizes the appeals that are decided by the Board of Zoning Appeals under this section.

[148] This carries forward the 14-day time limit in Sec. 16-3-200 of the current LMO.

c. Staff Review and Action

Applicable (see Sec. 16-2-102.D), except that on receiving the application, the Official shall transmit to the Board of Zoning Appeals the application and the record of materials considered in making the decision being appealed (including but not limited to, the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision). These materials, plus the Comprehensive Plan and this Ordinance, constitute the record of the appeal.

Appeal of Official's Decision to Board of Zoning Appeals



d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E). The Official shall also provide notice of the public hearing to the applicant for the decision being appealed (if different from the appellant), as well as the appellant.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Board of Zoning Appeals following a public hearing (see Sec. 16-2-102.G).

i. The Board of Zoning Appeals shall base its decision solely on the record of the appeal, as supplemented by arguments presented at the hearing, and the standards in Sec. 16-2-103.U.5, Board of Zoning Appeals Appeal Review Standards .

ii. The decision of the Board of Zoning Appeals shall be one of the following:

01. Affirmation of the decision or interpretation, in whole or in part;

02. Modification of the decision or interpretation, in whole or in part (in modifying the decision, the Board of Zoning Appeals shall have all the powers of the Official, and may issue a permit or development approval or direct that a permit or development approval be issued); or

03. Reversal of the decision or interpretation, in whole or in part (in reversing the decision the Board of Zoning Appeals shall have all the powers of the Official, and may issue a permit or development approval or direct that a permit or development approval be issued, provided that with respect to the Board of Zoning Appeals a majority vote of the Board shall be required to reverse the decision).

iii. The final decision shall be in writing with all findings of fact and conclusions of law separately stated.

g. Appeal

Not applicable.

5. Board of Zoning Appeals Appeal Review Standards [149]

a. The Board of Zoning Appeals may modify or reverse a decision or interpretation only on making the following determination, which shall be based on evidence in the record:

i. The Official made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met; or

ii. The Official made the decision based on a standard not contained in this Ordinance or other appropriate Town ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or

iii. The Official made an error in applying a standard or measuring a standard.

b. Unless the Board of Zoning Appeals makes the determinations in subparagraph a above, it shall affirm the Official's decision or interpretation.

6. Notice of Decision

The Official shall provide notice of the Board of Zoning Appeals decision to the appellant by certified mail.

7. Effect of Pending Appeal[150]

A pending appeal stays all Town actions in furtherance of the decision being appealed unless the Official certifies to the Board of Zoning Appeals that because of facts stated in the certificate, a stay would cause imminent peril to life or land. In that case, proceedings shall not be stayed other than by an order issued by the Board of Zoning Appeals for good cause, or by a court of law.

V. Appeal of Official's Decision to Planning Commission[151]

1. Purpose

The purpose of this subsection is to establish the means by which persons aggrieved by a decision made by the Official related to applications for Subdivision Review,

[149] Chapter 3, Article XX (Appeals of Administrative Decisions) of the current LMO does not include review standards. This subsection adds review standards to provide the Board of Zoning Appeals more specific guidance in making a decision on an appeal.

[150] This new provision spells out that all Town actions related to the decision/interpretation being appealed will be stayed until a decision is made by the Board of Zoning Appeals, unless the Official demonstrates the stay would cause imminent peril to life or property. This type of provision is authorized by the S.C. Code Ann. § 6-29-800 (C).

[151] This new subsection establishes the rules governing appeals made to the Planning Commission on Official decisions on Subdivision Plans, Development Plans, Small Residential Developments, and Development Project Names. State law requires that the Planning Commission serve as the appellate board for these types of appeals. Because there are differences between the requirements for these types of appellate decisions versus appellate decisions that are to be reviewed by the Board of Zoning Appeals, this separate procedure is established in the LMO rewrite.

Development Plan Review, Small Residential Development, or Development Project Name Review may appeal the decision to determine if the decision was properly made in accordance with the requirements of this Ordinance.

2. Who May File Appeal[152]

Any person who has applied for and received a decision of the Official on the following applications may appeal that decision in accordance with this subsection:

a. Subdivision Review;

b. Development Plan Review;

c. Small Residential Development Review; and

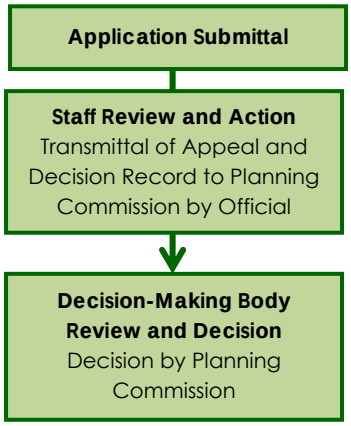
d. Development Project Name Review.

3. Appeal Procedure

a. Pre-Application Conference

Not applicable

Appeal of Official's Decision to Planning Commission



b. Application Submittal

Applicable (see Sec. 16-2-102.C). The application shall specify the grounds for the appeal and shall be submitted to the Official (personally received or mailed and postmarked) within 14 calendar days after provision of notice of the decision being appealed (see Sec. 16-2-102.I.1, Notice of Decision).

c. Staff Review and Action

Applicable (see Sec. 16-2-102.D), except that on receiving an application, the Official shall transmit to the Planning Commission the application and the record of materials considered in making the decision being appealed (including but not limited to, the application and support materials, other plans, documents, reports, and studies considered in making the decision, and any record of the meetings held to consider and make the decision). These materials, plus the Comprehensive Plan and this Ordinance, shall constitute the record of the appeal.

d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

[152] This section identifies who may file an appeal under this section.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Planning Commission (see Sec. 16-2-102.G).

i. The Planning Commission shall base its decision solely on the record of the appeal, as supplemented by arguments presented at the hearing, and the standards in Sec. 16-2-103.V.4, Planning Commission Appeal Review Standards. The decision of the Planning Commission shall be one of the following:

01. Affirmation of the decision, in whole or in part;

02. Modification of the decision, in whole or in part; or

03. Reversal of the decision, in whole or in part.

ii. The final decision shall be in writing.

iii. The Planning Commission shall act on the appeal within 60 days of receipt of the application.

g. Appeal

Not applicable.

4. Planning Commission Appeal Review Standards[153]

a. The Planning Commission may modify or reverse a decision only on making the following determinations, which shall be based on evidence in the record:

i. The Official made an error in determining whether a standard was met. The record must indicate that an error occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met; or

ii. The Official made the decision based on a standard not contained in this Ordinance or other appropriate Town ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or

iii. The Official made an error in applying a standard or measuring a standard.

b. Unless the Planning Commission makes one of the determinations in subparagraph a above, it shall affirm the Official's decision.

W. Appeal of Official's Decision to Design Review Board[154]

1. Purpose

The purpose of this subsection is to establish the means by which persons aggrieved by a decision made by the Official related to matters under the purview of the Design Review Board may appeal the decision to determine if the decision was properly made in accordance with the requirements of this Ordinance.

[153] This establishes review standards for the appeal to ensure there are clear rules to govern the Planning Commission's decision-making in the appeal, and to ensure that the decision-making is based on the record in front of the Official when the decision was made.

[154] This new subsection establishes procedures and standards for appeals from Official decisions to the Design Review Board on Minor Corridor Review and Minor Sign Permits.

2. Who May File Appeal[155]

a. Any person aggrieved by a decision of the Official related to an application for Minor Corridor Review or a Minor Sign Permit may appeal the decision to the Design Review Board by filing a Notice of Appeal with the Official.

b. An aggrieved person is any owner of property within 350 feet of the property for which a decision on a Minor Corridor Review or a Minor Sign Permit has been made, and may include a person owning property beyond 350 feet of the property subject to the decision if it is determined by the Design Review Board that such property owner may be affected by the a decision.

3. Types of Appeal[156]

The following decisions made by the Official may be appealed to the Design Review Board in accordance with the procedures and standards in this subsection.

a. Minor Corridor Review (see Sec. 16-2-103.I); or

b. Minor Sign Permit (see Sec. 16-2-103.M).

4. Appeal Procedure

a. Pre-Application Conference

Not applicable.

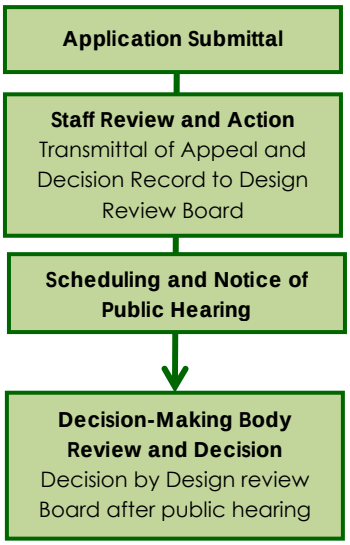
b. Application Submittal

Applicable (see Sec. 16-2-102.C). The application shall specify the grounds for the appeal and shall be submitted to the Official (personally received or mailed and postmarked) within 14 calendar days after provision of notice of the decision being appealed (see Sec. 16-2-102.I.1, Notice of Decision).

c. Staff Review and Action

Applicable (see Sec. 16-2-102.D), except that on receiving the application, the Official shall transmit to the Design Review Board the application and the record of materials considered in making the decision being appealed (including but not limited to, the application and support materials, other plans, documents, reports, and studies considered in making the decision, and any record of the meetings held to consider and make the decision). These materials, plus the Comprehensive Plan, this Ordinance, and the Design Guide, shall constitute the record of the appeal.

Appeal of Official's Decision to Design Review Board



[155] This incorporates the same definition of aggrieved person as Sec. 16-3-2001 of the current LMO (which involves appeals taken to the Board of Zoning Appeals on decisions and interpretations). This is done because the state law authorizing an appeal of a staff decision to the Design Review Board states an appeal may be taken by aggrieved person.

[156] This identifies the type of permits and development approvals that may be appealed to the Design Review Board.

d. Public Hearing Scheduling and Notice

Applicable (see Sec. 16-2-102.E). The Official shall also provide notice of the public hearing to the applicant (if the applicant is not the appellant) for the decision, as well as the appellant.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Applicable to a decision by the Design Review Board following a public hearing (see Sec. 16-2-102.G).

i. The Design Review Board shall base its decision solely on the record of the appeal, as supplemented by arguments presented at the hearing, and the standards in Sec. 16-2-103.W.5, Design Review Board Appeal Review Standards. The decision of the Design Review Board shall be one of the following:

01. Affirmation of the decision, in whole or in part;

02. Modification of the decision, in whole or in part; or

03. Reversal of the decision or interpretation, in whole or in part.

ii. The final decision shall be in writing.

iii. The Design Review Board shall make a decision on the appeal within a reasonable time.

g. Appeal

Not applicable

5. Design Review Board Appeal Review Standards[157]

a. The Design Review Board may modify or reverse a decision or interpretation only on making the following determinations, which shall be based on evidence in the record:

i. The Official made an error in determining whether a standard was met. The record must indicate that an error in judgment occurred or facts, plans, or regulations were misread in determining whether the particular standard was or was not met;

ii. The Official made the decision based on a standard not contained in this Ordinance or other Town ordinances, regulations, or state law, or that a standard more strict or broad than the standard established in this Ordinance was applied; or

iii. The Official made an error in applying a standard or measuring a standard.

b. Unless the Design Review Board makes one of the determinations in subparagraph a above, it shall affirm the Official's decision.

[157] This includes review standards to provide the Design Review Board more guidance in making a decision on appeal.

6. Effect of Pending Appeal[158]

A pending appeal stays all Town actions in furtherance of the decision being appealed unless the Official certifies to the Design Review Board that because of facts stated in the certificate, a stay would cause imminent peril to life or land. In that case, proceedings shall not be stayed other than by an order issued by the Design Review Board for good cause, or by a court of law.

[158] This spells out that all Town actions related to the decision being appealed will be stayed until a decision is made by the Design Review Board, unless the Official demonstrates the stay would cause imminent peril to life or property.

Chapter 16-8: Enforcement

COMMENTARY:

Chapter 16-8, Enforcement, carries forward Chapter 8, Enforcement, of the current LMO, with modest refinements that are noted. It includes twelve sections:

Section 16-8-101, Purpose, sets forth the purpose of the Chapter (Section 8.1, Purpose);

Section 16-8-102, Compliance Required, establishes that compliance with all provisions of the Ordinance is required;

Section 16-8-103, Violations, spells out what actions result in violation of the LMO;

Section 16-8-104, Responsible Persons, establishes that any person who violates this LMO shall be subject to the remedies and penalties set forth in this chapter;

Section 16-8-105, Enforcement Responsibility, Complaints, details who is responsible for enforcement (the Official), handling complaints, investigating and determining violations, notifying violators, and initiating remedies and penalties;

Section 16-8-106, Town Enforcement Actions, spells out the enforcement actions the Town may take as a remedy for a LMO violation;

Section 16-8-107, Private Civil Relief, states that, along with an enforcement action, a land owner who would be specially damaged by a violation of the Ordinance may take private civic relief;

Section 16-8-108, Tree Protection Violation, discusses the remedies for the removal or destruction, or failure to replace trees protected by this Ordinance;

Section 16-8-109, Impoundment of Signs, states that in addition to other remedies, the Official shall have the authority to remove and impound certain signs or sign structures;

Section 16-8-110, Violations Continue, clarifies violations of the previous LMO shall continue to be a violation, unless the development complies with the requirements of the revised LMO;

Section 16-8-111, Penalties, spells out the penalties (criminal and civil) that can be used against violators;

Section 16-8-112, Remedies Cumulative, clarifies that remedies, whether criminal or civil, are cumulative.

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Chapter 16-8: Enforcement

Sec. 16-8-101. Purpose[477]

This chapter establishes procedures to ensure compliance with the provisions of this Ordinance and obtain corrections for violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this chapter are intended to encourage the voluntary correction of violations, where possible.

Sec. 16-8-102. Compliance Required

A. Compliance Required[478]

Compliance with all the procedures and standards of this Ordinance, and all terms and conditions of permits and development approvals is required by all persons owning, developing, managing, using, or occupying land, structures, or signs in the Town.

B. Violations Generally[479]

1. Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or development approval granted in accordance with this Ordinance, shall constitute a violation of this Ordinance punishable as provided in this chapter.

2. Permits or development approvals issued on the basis of applications approved by the Town Council, Planning Commission, Board of Zoning Appeals, Design Review Board, or Official authorize only the use, arrangement, location, design, density/intensity, and development set forth in such permits or development approvals, and no other development.

3. Violations of this Ordinance shall run with the land where the violation occurred, and shall not be voided by sale or transfer.

Sec. 16-8-103. Violations[480]

It shall be a violation of this Ordinance to do any of the following:

A. Develop or attempt to develop land or a structure in any way not consistent with the requirements of the LMO.

B. Erect or attempt to erect a building or other structure in any way not consistent with the requirements of the LMO.

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[477] Chapter 8: Enforcement, carries forward Chapter 8: Violations and Enforcement, of the current LMO, with both organizational and minor refinements, as noted in the footnotes to the chapter. This first section on purpose sets out the general purpose of the enforcement chapter.

[478] This is a new section. It provides that all persons who own, develop, manage, or occupy land, structures, or signs are required by law to comply with the standards and procedures of the updated LMO and the terms and conditions of permits or development approvals. Those who violate this requirement are subject to the enforcement provisions and penalties established in this chapter.

[479] This section builds on Sec. 16-8-101 of the current LMO, and adds additional detail about what actions generally constitute a violation of the LMO.

[480] This section builds on Section 16-8-102 of the current LMO.

C. Develop land or a structure without first obtaining the appropriate permits or development approvals.

D. Occupy or use land or a structure without first obtaining the appropriate permits or development approvals.

E. Develop land or a structure without complying with the terms or conditions of the permits or development approvals required to engage in development.

F. Occupy or use land or a structure in violation of the terms or conditions of the permits or development approvals.

G. Subdivide land without first obtaining the appropriate permits or development approvals required to engage in subdivision.

H. Subdivide land without complying with the terms or conditions of the permits or development approvals required to engage in development.

I. Transfer title to any newly created lots or parts of a development unless the development plan or subdivision has received all development approvals or permits required under this Ordinance and an approved plan or plat, if required, has been filed in the appropriate County office.

J. Submit for recording with a County office any subdivision plat or other development plan that has not been approved in accordance with the requirements of this ordinance.

K. Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining the appropriate permits or development approvals, and complying with their terms and conditions.

L. Remove existing trees or other landscaping from a site or parcel of land without first obtaining the appropriate permits and development approvals, and complying with their terms and conditions.

M. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or development approvals.

N. Fail to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the permits have lapsed.

O. Create, expand, replace, or change any nonconformity except in compliance with this Ordinance.

P. Reduce or diminish the requirements for development, design, or dimensional standards below the minimum required by this Ordinance.

Q. Increase the intensity or density of development, except in accordance with the standards of this Ordinance.

R. Obscure or obstruct a notice required to be posted or otherwise given in accordance with this Ordinance.

S. Violate any lawful order issued by any person or board in accordance with this Ordinance.

T. Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Ordinance.

U. Continue any violation as defined above, with each day of continued violation to be considered a separate violation for purposes of computing cumulative civil or criminal penalties.

Sec. 16-8-104. Responsible Persons[481]

Any person who violates this Ordinance shall be subject to the remedies and penalties set forth in this chapter.

Sec. 16-8-105. Enforcement Responsibility, Complaints[482]

A. Responsibility

The responsibility for enforcement of this Ordinance is delegated to the Official.

B. Complaints

1. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a signed written complaint with the Official. The complaint shall state fully the causes of the alleged violation and the basis thereof.

2. The Official shall properly record such complaint, immediately investigate the complaint to determine the validity of the charge, and take whatever action is necessary to ensure compliance with this Ordinance.

C. Notice of Violation

1. On determining that any provisions of this Ordinance are being or have been violated, the Official shall deliver to the person responsible for the violation(s), a written notice of violation that sets forth the nature of the violation(s) and orders the action necessary to correct it. Such notification shall serve as a warning notice of a violation.

2. If no one is present to accept the notice of violation, or acceptance of the notification is refused, the Official shall post the notice on a primary entrance to a principal building on the site of the violation. If the land is unimproved, the notice should be posted visibly on the subject property. [483]

3. A written notice containing the same information as the notice delivered or posted on the land shall be mailed by certified mail to the record owner of the land subject to the violation, or the record owner's authorized agent, and to any other person responsible for the violation. [484]

D. Authority

Upon presentation of proper credentials, the Official may enter upon land or inspect any structure to ensure compliance with the provisions of this Ordinance. These inspections shall be carried out during normal business hours unless the Official determines there is an emergency necessitating inspections at another time.

[481] This new section clearly establishes any person who violates the LMO is subject to its penalties and remedies. "Person" is broadly defined in Chapter 10 to mean … "any individual, corporation, government agency, business trust, partnership, two or more persons having a joint interest, or any other legal entity."
[482] This section carries forward Sec. 16-8-103 and 104of the current LMO, with minor refinements to clarify language.
[483] This is a new subsection.
[484] This is a new subsection.

Sec. 16-8-106. Town Enforcement Actions[485]

On behalf of the Town, the Official may take any one or more of the following actions as a remedy for any violation of this Ordinance:

A. Withhold any pending or subsequent development approvals or permits required by this Ordinance;

B. Issue stop work orders against any work undertaken by an entity not having a proper development approval or permit required by this Ordinance;

C. Issue stop work orders against any actions in violation of this Ordinance;

D. Revoke a permit development approval if: [486]

1. There is a failure to comply with the approved permit, development approval, plans, specifications, or terms or conditions required under the permit or development approval;

2. The permit or development approval was procured by false representation; or

3. The permit or development approval was issued in error;

E. Bring an action for an injunction (or, in appropriate cases, for mandamus) to prevent the violation and/or to prevent the occupancy or use of any site or structure involved in the violation;

F. Bring an action for injunction or mandamus to abate a violation;

G. Prosecute the violation as a misdemeanor; or

H. Take any other action at law or in equity to prevent or remedy any violation, or otherwise enforce the provisions of this Ordinance.

Sec. 16-8-107. Private Civil Relief[487]

An adjacent or neighboring land owner who would be specially damaged by any violation of this Ordinance may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure or land. This is in addition to the right of the Town to bring an enforcement action.

Sec. 16-8-108. Town Maintenance of Common Open Space[488]

A. If a property owners' or homeowners' association (or successor organization) responsible for maintaining common open space required by Sec. 16-5-104, Open Space Standards, fails to maintain the common open space in accordance with the LMO, and fails to correct maintenance deficiencies within 30 days after a notice of violation issued in accordance with Sec. 16-8-105.C, Notice of Violation, the Town Council shall hold hearing, with notice of the hearing to the association (or successor organization) and owners of properties that have a right of enjoyment of the common open space.

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[485] This section carries forward Sec. 16-8-106 of the current LMO.
[486] This is a new subsection.
[487] This section carries forward Sec. 16-8-106 of the current LMO.
[488] This carries forward, in simplified form, provisions in Sec.16-5-302.B and C of the current LMO that establish specific procedures for enforcing open space maintenance responsibilities of a property owners' or homeowners' association.

B. After the hearing, the Town Council may modify the terms of the notice of violation, and extend the time period for correction of maintenance deficiencies. If the deficiencies are not corrected within 30 days after the hearing, or any extension thereof, the Town may enter upon the common open space and maintain it for a period of one year in order to preserve the taxable values of properties in the subject development and prevent the common open space from becoming a public nuisance.

C. When beginning any such maintenance, the Town shall record notice of the lien authorized by subsection G below with the Beaufort County Register of Deeds upon properties subject to such lien.

D. Before expiration of such a one-year period of Town maintenance, the Town Council shall, on its own initiative or at the request of the property owners' or homeowners' association (or successor organization), hold a public hearing, with notice to the association (or successor organization) and owners of properties that have a right of enjoyment of the common open space.

E. After the hearing, the Town Council shall determine whether the property owners' or homeowners' association (or a successor organization) is ready and able to maintain the common open space in a reasonable condition. The Town Council may, in its discretion, decide that the Town will continue to maintain the common open space for another one-year period. The Town Council's determination shall constitute a final administrative decision subject to judicial review.

F. This hearing and determination process shall be repeated each year thereafter as long as the Town continues to maintain the common open space.

G. The Town's cost of maintaining common open space, including any associated administrative costs, may be assessed ratably against the properties within the development that have a right of enjoyment of the common open space. The assessments shall be subordinate in lien to the lien of any mortgages on the assessed properties regardless of when the mortgages were created or when the assessments accrued. If an assessment is not paid, it shall become a tax lien on the assessed property.

H. A property owners' or homeowners' association (or successor organization) responsible for maintaining common open space required by Sec. 16-5-104, Open Space Standards shall not be dissolved or dispose of any of the common open space without first offering the open space to the Town or an appropriate public agency.

Sec. 16-8-109. Tree Protection Violation[489]

A. Each unauthorized removal or destruction of a tree, or failure to replace a tree, shall constitute a separate offense. Nothing herein shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violations.

Sec. 16-8-110. Impoundment of Signs[490]

A. In addition to other remedies identified in this chapter, the Official shall have the authority to remove and impound:

1. Any prohibited sign listed in Sec. 16-5-113.I,Prohibited Signs, without notice to the owner; and

[489] This section carries forward Sec. 16-8-106 of the current LMO, with minor refinements to clarify language.
[490] This section carries forward Sec. 16-8-107 of the current Ordinance, with minor refinements to clarify language.

2. Any sign that is installed or used in any way that is not consistent with the requirements of this Ordinance, provided that notice has been given as set forth in Sec. 16-8-105.C, Notice of Violation, and no action to correct the violation has been taken by the owner within the specified timeframe.

B. The owner of an impounded sign or sign structure may recover the impounded sign or sign structure upon the payment of $50.00 for each sign plus the costs of removal. If the sign or sign structure is not claimed within ten days after the date of impoundment, the Official shall have authority to dispose of the sign or sign structure without compensation to the owner.

Sec. 16-8-111. Violations Continue[491]

Any violation of the previous Ordinance 16, Chapter 7 shall continue to be a violation, unless the development complies with the requirements of this Ordinance. Resolving the violation shall require conformance to the regulations in effect at the time the violation is terminated, not regulations that may have been in effect at the time the violation was initiated. Any violation that was not discovered by the Town under the previous Ordinance 16, Chapter 7, shall be resolved under the provisions of this Ordinance. The lack of prior enforcement shall not constitute any degree of recognition, approval, waiver, or enforcement.

Sec. 16-8-112. Penalties[492]

A. Fine and Imprisonment

Any person violating any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall forfeit and pay such penalties as the court may decide as prescribed by South Carolina law, not to exceed $500.00 plus applicable court fees or 30 days imprisonment or both for each violation. Each day's continued violation shall constitute a separate offense.

B. Further Penalties

If a landowner or developer is found guilty by a court of competent jurisdiction of undertaking any development activity prior to approval and issuance of a development approval or permit in accordance with this Ordinance, the Official shall not consider the landowner's or developer's application for development approval or permit nor issue a development approval or permit for that project for a period not to exceed 90 days from the date of determination of violation.

Sec. 16-8-113. Remedies Cumulative[493]

The remedies provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

[491] This section carries forward Sec. 16-8-108 of the current LMO.
[492] This section carries forward Sec. 16-8-109 of the current LMO, with minor refinements to clarify language.
[493] This new section expresses that the Town's enforcement remedies are cumulative, and may be exercised in any order.

Chapter 16-9: Disaster Recovery

COMMENTARY:

Chapter 16-9: Disaster Recovery, carries forward the procedures for allowing landowners to repair and rebuild structures that have been damaged or destroyed due to a disaster (defined by this Ordinance and declared by the Mayor) back to their prior existing condition. There are no substantive changes to this chapter from the current LMO. The chapter includes the following sections:

Sec. 16-9-101, Emergency Permitting, contains important general provisions that are relevant to emergency permitting as a whole. This section carries forth all of the provisions from the current LMO.

Sec. 16-9-102. Temporary Units for Single-Family Damaged or Destroyed Single-Family Dwelling Units, describes the provisions for allowing a temporary residential unit on a property where the original structure/building was damaged or destroyed, while the site is being repaired or rebuilt to its prior existing condition.

Sec. 16-9-103, Temporary Nonresidential Units for Damaged or Destroyed Nonresidential, Development, describes the provisions for allowing a temporary nonresidential unit on a property where the original property was damaged or destroyed, while the development is being repaired or rebuilt.

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Chapter 16-9: Disaster Recovery

Sec. 16-9-101. Emergency Permitting

A. Purpose

1. There are a significant number of structures within the Town that are nonconformities. In the event of a natural disaster, it is impractical to require all of these nonconforming structures to rebuild in a way that conforms with all the procedures and standards of this Ordinance. Furthermore, the Town's economy depends on the ability of all landowners to be able to repair, reconstruct, or rebuild existing structures and become operational as quickly as possible following a natural disaster.
2. The purpose of this chapter is to allow a landowner to obtain development approval to repair, reconstruct, or rebuild any structure that is damaged or destroyed as a direct result of a natural disaster to the state or condition that existed prior to the disaster without the necessity of a full review as is normally required under this Ordinance, and that may otherwise be required under Chapter 16-2: Administration.
3. Any application to repair, reconstruct or rebuild a structure that does not comply with the following procedures shall only be reviewed and acted on in accordance with all applicable provisions of this Ordinance.

B. Applicability

1. This chapter shall apply in all cases where any structure, as defined in Sec. 16-10-106, General Definitions, is damaged or destroyed as a direct result of any event that has been declared a State of Emergency due to a disaster, as defined in Sec. 16-10-106, General Definitions, by the Mayor in accordance with Ordinance 7, Chapter 7 (State of Emergency) of the Municipal Code.
2. In such cases, this chapter takes precedence over Chapter 16-7: Nonconformities. Damage to or destruction of any structure by any other means shall be repaired, reconstructed, or rebuilt only in accordance with all relevant procedures and standards of this Ordinance.

C. Horizontal Property Regime

1. The provisions in this chapter shall not be construed or enforced to deprive a landowner of a dwelling unit within a horizontal property regime from rebuilding in the event the members of the regime vote for and fully fund, through insurance or otherwise, the total restoration of the development of which the dwelling unit is a part.
2. The Town shall require a surety in accordance with the requirements of this Ordinance to insure full performance of the restoration project when regime insurance is not sufficient to fully cover the costs of reconstruction.

D. Placards and Safety Assessment

1. Following a disaster, the Town will perform a safety assessment to determine the safety of structures that sustained damage or were destroyed as a result of the

disaster. When the safety assessment is complete, each structure will receive a placard informing the owner about the safety of the structure. The following placards will be issued following a safety assessment:

a. Green Placard means Inspected—Lawful Occupancy Permitted.

b. Yellow Placard means Restricted Use.

c. Red Placard means Unsafe—Do Not Enter or Occupy.

E. Planning Review Not Required

1. Planning Review Not Required

a. Any structure that sustains damage as a direct result of a disaster and receives a green placard after a safety assessment may be repaired to the state or condition that existed prior to the disaster without the necessity of obtaining a development approval or permit. The repair work shall be completed within 18 months of the date the Mayor declares the Town is ready to begin receiving applications for permits after the declared disaster.

b. If a structure receives a green placard after a safety assessment and the repair is delayed through litigation or other cause beyond the control of the owner, the time of such delay due to litigation or other cause beyond the control of the owner shall not be considered when computing the 18-month period for the repair work.

c. Owners who want to repair or rebuild damaged structures who cannot or do not comply with the time period requirements for repair work set forth in subparagraphs a and b above, shall comply with all relevant procedures and standards of this Ordinance in repairing or rebuilding a structure.

2. Other Requirements

In repairing a structure in accordance with this section, the requirements of Title 15 (Building and Building Codes) of the Municipal Code shall be met.

F. Planning Emergency Permitting

In order to be reviewed under the remaining sections of this chapter a structure that sustains damage or is destroyed as a direct result of a disaster shall:

1. Receive a yellow or red placard and require an emergency construction building permit after a safety assessment.

2. Be repaired, reconstructed, or rebuilt to the state or condition that existed prior to the disaster.

G. Planning Emergency Permitting Application

The planning emergency permitting application shall be submitted within six months of the date the Mayor declares the Town is ready to begin receiving applications for permits. At its discretion, the Town Council may extend the application submittal period by resolution.

H. Planning Emergency Permitting Affidavit

1. A planning emergency permitting affidavit shall be submitted as part of the planning emergency permitting application. The affidavit shall be signed by the owner of record and notarized.

2. It shall state that all structures are being built back to the height and density that legally existed prior to the disaster.

3. If any local, state, or federal regulations require changes to the structure with regard to height or square footage, the affidavit will allow the owner to build back with changes to comply with the local, state, or federal regulations.

I. Single Family or Duplex Dwelling

1. Planning Emergency Permit

Any single family or duplex dwelling unit that sustains damage or is destroyed as a direct result of a disaster may be repaired or reconstructed in accordance with this chapter on approval of a planning emergency permitting application in accordance with Sec. 16-9-101.G. The application shall include such information and documentation as may be reasonably required by the Official, including all the following items:

a. If the structure sustains damage amounting to less than 50% of the fair market value:

i. A planning emergency permitting affidavit as described in Sec. 16-9-101.H.

ii. Elevation drawings previously approved by the Town or the County showing the height of all four elevations of all structures on the site prior to the disaster or pre-disaster photos showing all four sides of each structure on the property.

iii. Pre-disaster photos of the entire property layout including front, rear, and side yards.

b. If the structure sustains damage amounting to 50% or more of the fair market value:

i. A planning emergency permitting affidavit in accordance with Sec. 16-9-101.H; and

ii. Two copies of an as-built survey.

2. Other Requirements

a. In repairing a structure in accordance with this section, the requirements of Title 15 (Building and Building Codes) of the Municipal Code shall be met.

b. For applicants who cannot meet the requirements of paragraph 1 above, and for all applicants who do not meet the time period set forth by Sec. 16-9-101.G, Planning Emergency Permitting Application, any repair, reconstruction, or rebuilding that occurs must comply with all requirements of this Ordinance.

J. Non-Single Family or Duplex Structures

1. Planning Emergency Permit

a. Any structure, other than a single family or duplex dwelling unit that sustains damage or is destroyed as a direct result of a disaster may be repaired or reconstructed in accordance with this chapter on approval of a planning emergency permitting application in accordance with Sec. 16-9-101.G. The application shall include such information and documentation as may be reasonably required by the Official, including all the following items:

i. A planning emergency permitting affidavit as described in Sec. 16-9-101.H.

ii. An approved Development Plan and two copies of all approved plans, or two copies of an as-built survey.

b. If the property is located within the Corridor Overlay District, two copies of building elevation drawings previously approved by the Town or the County showing all four elevations of all structures on the site prior to the disaster or pre-disaster photos showing all four sides of each structure on the property and the entire property layout including street, adjacent use, wetland and OCRM Beachfront Baseline buffer areas.

2. Other Requirements

a. In repairing a structure in accordance with this section, the requirements of Title 15 (Building and Building Codes) of the Municipal Code shall be met.

b. For applicants who cannot meet the requirements of paragraph 1 above and for all applicants who do not meet the time period set forth by Sec. 16-9-101.G, Planning Emergency Permitting Application, any repair, reconstruction, or rebuilding that occurs shall comply with all relevant procedures and standards of this Ordinance.

K. Manufactured Homes

Manufactured homes that are damaged or destroyed may be repaired, replaced, or changed to stick built construction in accordance with the following requirements:

1. If the structure receives a green placard after a safety assessment in accordance with Sec. 16-9-101.D, Placards and Safety Assessment, the structure may be repaired in accordance with Sec. 16-9-101.E, Planning Review Not Required.

2. If the structure receives a yellow or red placard after safety assessment, the structure may be repaired, replaced, or changed to stick built construction.

3. In repairing a structure in accordance with this section, the requirements of Title 15 (Building and Building Codes) of the Municipal Code shall be met.

4. The structure may be replaced using the current replacement application and procedures followed by the Town of Hilton Head Island and Beaufort County, South Carolina.

5. The structure may be removed and a stick built home may be constructed in accordance with the current requirements of this Ordinance. (This would be

considered a change to the existing condition; therefore, the benefits of Sec. 16-9-101.I, Single Family or Duplex Dwelling, would not apply.)

L. Landscape and Tree Standards

Properties that sustain damage or are destroyed as a direct result of a disaster shall be required to comply with the requirements of Chapter 16-6: Natural Resource Protection, for tree coverage, and comply with an approved landscape plan. The timeframe for meeting this requirement shall be extended to three years, with one third of the required planting to be done in each of the three years. The three-year time period shall begin when the property is issued a Certificate of Compliance by the Town.

M. Applications Under Review at the Time of a Disaster

1. Applications Acted on by the Official

All applications for development, subdivision, or other development approvals or permits that are reviewed and acted on by the Official and are submitted during or are in progress at the time of a State of Emergency due to a disaster declaration by the Mayor shall be suspended for such time as the Official deems necessary, provided that such suspension shall not exceed 18 months. The time frames established for reviews as set forth elsewhere in this Ordinance shall be suspended during this period. All such applications shall be reviewed and acted on based on the provisions of this Ordinance in effect at the time the application was deemed complete.

2. Applications Acted on by a Board, Commission or Council

All applications for development approvals or permits that are reviewed and acted on by the Design Review Board, the Board of Zoning Appeals, the Planning Commission, or the Town Council and are submitted during or are in progress at the time of a State of Emergency due to a disaster declaration by the Mayor shall be suspended until such time that the Design Review Board, Board of Zoning Appeals, Planning Commission, or Town Council can reasonably schedule any required public hearing(s) and meetings to review and act on such applications, provided that such suspension shall not exceed 18 months. All such applications shall be reviewed and acted on based on the provisions of this Ordinance in effect at the time the application was deemed complete.

Sec. 16-9-102. Temporary Units for Damaged or Destroyed Single-Family Dwelling Units

A. Purpose

The purpose of this section is to allow owners of single-family dwelling units to place a temporary dwelling on the property where the damaged or destroyed dwelling unit is located, while the existing single-family dwelling is being repaired or rebuilt.

B. Applicability

1. This section shall apply in all cases where any single-family dwelling unit is damaged or destroyed as a direct result of any event that has been declared a State of Emergency due to a disaster, as defined in Sec. 16-10-106, General Definitions, by the Mayor in accordance with Ordinance 7, chapter 7 (State of Emergency) of the Municipal Code. In such cases where the provisions of this section conflict with other LMO provisions, the provisions of this section control.
2. These provisions shall be in effect for six months from the date the Mayor declares the Town is ready to begin receiving applications for permits. At its discretion, Town Council may extend this time period by resolution.

C. Provisions

1. The owner of the single-family dwelling unit shall place the temporary dwelling within the legal limits of the property where the damaged or destroyed single-family dwelling unit is located.
2. Each single family property is limited to one temporary dwelling.
3. The temporary dwelling shall be travel ready.
4. Basic sanitation facilities shall be in place prior to placement of the temporary dwelling on the property.
5. The location of the temporary dwelling shall comply with health and safety regulations as stated by the Building Official and the Fire Marshal.

Sec. 16-9-103. Temporary Nonresidential Units for Damaged or Destroyed Nonresidential Development

A. Purpose

The purpose of this section is to allow permitted nonresidential development to place a temporary nonresidential unit on the property where the damaged or destroyed nonresidential development is located, while the existing nonresidential development is being repaired or rebuilt.

B. Applicability

1. This section shall apply in all cases where any nonresidential development is damaged or destroyed as a direct result of any event that has been declared a State of Emergency due to a disaster, as defined in Sec. 16-10-106, General Definitions, by the Mayor in accordance with Ordinance 7, chapter 7 (State of Emergency) of the Municipal Code. In such cases where the provisions of this section conflict with other LMO provisions, the provisions of this section control.
2. These provisions shall be in effect for six months from the date the Mayor declares the Town is ready to begin receiving applications for permits. At its discretion, Town Council may extend this time period by resolution.

C. Provisions

1. Nonresidential development shall place temporary unit(s) on the property where the damaged or destroyed nonresidential development is located.
2. Temporary nonresidential units shall be travel ready.
3. Basic sanitation facilities shall be in place prior to placement of the temporary nonresidential units.
4. The location of the temporary nonresidential units shall comply with health and safety regulations as stated by the Building Official and the Fire Marshal.

Appendix A: Advisory and Decision Making Bodies and Persons

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Appendix A: Advisory and Decision Making Bodies and Persons

Official

The Official is the LMO Official who is designated by the Town Manager as the person who administers and enforces this Ordinance. The Official shall have the following powers and duties under this Ordinance:

A. Powers and Duties[748]

1. Review and make decisions on:
   - **a.** Subdivisions (Minor and Major) (Sec. 16-2-103.F);
   - **b.** Development Plan Reviews (Minor and Major) (Sec. 16-2-103.G);
   - **c.** Small Residential Development Review (Sec. 16-2-103.H)
   - **d.** Minor Corridor Reviews (Sec. 16-2-103.I);
   - **e.** Tree Removal Permits (Sec. 16-2-103.J);
   - **f.** Wetlands Alteration Permits (Sec. 16-2-103.L);
   - **g.** Minor Sign Permits (Sec. 16-5-113.H);
   - **h.** Development Project Name Approvals (Sec. 16-2-103.N);
   - **i.** Certificates of Compliance (Sec. 16-2-103.P);
   - **j.** Administrative Adjustments (Sec. 16-2-103.S);
   - **k.** Minor Deviations to PUD/Master Plans (Sec. 16-2-103.D.8).
2. Review and prepare a staff report with a recommendation on:
   - **a.** Text Amendments (Sec. 16-2-103.B);
   - **b.** Zoning Map Amendments (Rezoning) (Sec. 16-2-103.C);
   - **c.** Planned Unit Development (PUD) Districts/Master Plans (Sec. 16-2-103.D);
   - **d.** Special Exceptions (Sec. 16-2-103.E);
   - **e.** Major Corridor Reviews (Sec. 16-2-103.I);
   - **f.** Major Sign Permits (Sec. 16-5-113.H);
   - **g.** Street/Vehicular Access Easement Name Reviews (Sec. 16-2-103.O);
   - **h.** Public Project Review (Sec. 16-2-103.Q);
   - **i.** Variances (Sec. 16-2-103.T).

[748] This section carries forward language from Chapter 2, Article 1, of the current LMO, with some changes to reflect new changes on the review made in Chapter 2: Administration. It removes the term "conditional uses.")

3. Make Written Interpretations of this Ordinance (Sec. 16-2-103.R).
4. Prepare and maintain an Administrative Manual (Sec. 16-2-102.C.2).
5. Establish application requirements and a review schedule for the review of applications (Sec. 16-2-102.C.4).
6. Enforce the provisions of this Ordinance (Sec. 16-8-105)
7. Maintain the Official Zoning Map (Sec. 16-1-107).
8. Provide expertise and technical assistance to the Town Council, Planning Commission, Board of Zoning Appeals, and Design Review Board, upon request.

Planning Commission

The Planning Commission is established under this Ordinance in accordance with state law. The Planning Commission has the following powers and duties under this Ordinance:

B. Powers and Duties[749]

1. Prepare and periodically revise plans and programs for the development and redevelopment of areas in the Town, as provided for in this Ordinance.
2. Prepare and recommend for adoption to the Town Council as a means for implementing the plans and programs:
   a. Zoning ordinances to include a zoning map(s) and appropriate revisions thereof;
   b. An official map and appropriate revisions of it showing the exact location of existing or proposed public street, highway and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its jurisdiction, or a specified portion of it;
   c. A landscaping ordinance setting forth required planting, tree preservation and other aesthetic considerations for land and structures;
   d. A capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the governmental bodies responsible for implementation prior to preparation of their capital budgets; and
   e. Policies or procedures to facilitate implementation of planning documents.
3. Review and make decisions on application for:
   a. Street/Vehicular Access Easement Name Reviews (Sec. 16-2-103.O);
   b. Public Project Review (Sec. 16-2-103.Q).
4. Review and make recommendations to the Town Council on:
   a. Text Amendments (Sec. 16-2-103.B);
   b. Zoning Map Amendments (Rezonings) (Sec. 16-2-103.C); and

[749] This section builds on Chapter 2, Article 1 from the current LMO; modifications are made to conform it with the changes to Chapter 2: Administration.

c. Planned Unit Development (PUD) Districts/Master Plans (Sec. 16-2-103.D).

5. Review and decide appeals (see Sec. 16-2-103.V) on:

   a. Subdivisions (Minor and Major);

   b. Development Plan Reviews (Minor and Major);

   c. Development Project Name Reviews;

   d. Small Residential Development Reviews; and

   e. Written Interpretations of the Official on subdivision/land development regulations.

6. Carry out any other powers and duties delegated to it by the Town Council, consistent with the S.C. Code of Laws.

C. Membership, Terms and Compensation

1. Number, Appointment

The Planning Commission shall consist of nine members, appointed by the Town Council, and shall include, to the extent practicable, at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold elected public office or position in the Town or County.

2. Terms

All members shall be appointed for three-year terms. All terms shall end on June 30 of the applicable year.

3. Current Members

Members of the Planning Commission on the effective date of this Ordinance shall continue to serve until their respective terms expire.

4. Term Limits

No member may serve for more than two successive terms, except for extraordinary circumstances where the Town Council believes it to be in the best interest of the community to have a continuation for a specified period of time for a particular member of the Commission. This limitation shall not prevent any person from being appointed to the Commission after an absence of one year. Service for a partial term of less than One and one-half years shall not constitute a term of service for purposes of this paragraph.

5. Vacancies

Vacancies shall be filled by the Town Council for the balance of an unexpired term.

6. Removal

The Town Council may remove a member for cause, after written notice and a public hearing. Cause may include, but not be limited to, nonattendance at meetings.

7. Compensation

The Town Council shall determine the compensation of members, if any.

D. Staff

The Planning Commission shall use the Town Hall staff. That staff shall be subject to the employment policies of the Town and act under the direction of the Town Manager.

E. Officers, Meetings, Quorum

1. Officers

The Planning Commission shall elect one of its members Chair and another Vice-Chair, each of whom shall serve one-year terms, beginning on July 1 and ending the following June 30. The Commission shall appoint a secretary, who may be an officer or employee of the Town and need not be a member of the Commission.

2. Meetings

The Planning Commission shall meet at the call of the Chair and at such regular times as the Commission may determine.

3. Quorum

A majority of the Planning Commission shall constitute a quorum for the conduct of business.

4. Notice of Meetings

Public notice of all meetings of the Planning Commission shall be provided by publication in a newspaper of general circulation in the Town, in accordance with South Carolina Freedom of Information Act requirements.

5. Rules of Proceeding

The Planning Commission shall adopt rules for the conduct of business.

6. Minutes

The Planning Commission and its committee shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.

F. Territorial Jurisdiction

1. The Planning Commission shall have jurisdiction over all lands within the Town.

2. The Town Council may expand the jurisdiction of the Planning Commission by ordinance and/or intergovernmental agreement, in accordance with the provisions of Section 6-29-330, S.C. Code of Laws.

Board of Zoning Appeals

The Board of Zoning Appeals is established under this Ordinance in accordance with state law. The Board of Zoning Appeals has the following powers and duties under this Ordinance.

G. Powers and Duties

1. To review and decide:

a. Special Exceptions Permits; and

b. Variances (zoning.

2. To review and decide appeals (see Sec. 16-2-103.U) on:

a. Minor Deviations from a PUD/Master Plan;

b. Tree Removal Permits;

c. Wetlands Alteration Permits;

d. Certificates of Compliance;

e. Written Interpretations of the Official on zoning regulations.

f. Administrative Adjustments; and

g. Any action to enforce the provisions of this Ordinance.

3. Carry out any other powers and duties delegated to it by the Town Council, consistent with the S.C. Code of Laws.

H. Membership, Terms and Compensation

1. Number, Appointment

The Board of Zoning Appeals shall consist of seven members, appointed by the Town Council, and shall include, to the extent practicable, at least one attorney, and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold any other public office or position in the Town or County.

2. Terms

All members shall be appointed for three-year terms. All terms shall end on June 30 of the applicable year.

3. Current Members

Members of the Board of Zoning Appeals on the effective date of this Ordinance shall continue to serve until their respective terms expire.

4. Term Limits

No member may serve for more than two successive terms, except for extraordinary circumstances where the Town Council believes it to be in the best interest of the community to have a continuation for a specific period of time for a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than one and one-half years shall not constitute a term of service for purposes of this paragraph.

5. Vacancies

Vacancies shall be filled by the Town Council for the balance of the unexpired term.

6. Removal

The Town Council may remove a member for cause, after written notice. Cause may include, but not be limited to, nonattendance at meetings.

7. Compensation

The Town Council shall determine the compensation of members, if any.

I. Staff

The Board of Zoning Appeals shall use the Town Hall staff. That staff shall be subject to the employment policies of the Town and act under the direction of the Town Manager.

J. Officers, Meetings, Quorum

1. Officers

The Board of Zoning Appeals shall elect one of its members Chair and another Vice-Chair, each of whom shall serve one-year terms, beginning on July 1 and ending the following June 30. The Board shall appoint a secretary, who may be an officer or employee of the Town and need not be a member of the Board.

2. Meetings

The Board of Zoning Appeals shall meet at the call of the Chair and at such regular times as the Board may determine.

3. Quorum

A majority of the members of the Board of Zoning Appeals shall constitute a quorum for the conduct of business.

4. Notice of Meetings

Public notice of all meetings of the Board of Zoning Appeals shall be provided by publication in a newspaper of general circulation in the Town, in accordance with South Carolina Freedom of Information Act requirements. In cases where the Board is considering applications for Variances or Special Exceptions, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property.

5. Witnesses

The Chair, or in the absence of the Chair, the Vice-Chair, may administer oaths and compel the attendance of witnesses by subpoena.

6. Rules of Proceeding

The Board of Zoning Appeals shall adopt rules for the conduct of business.

7. Contempt Penalty

In case of contempt by a party, witness, or other person before the Board of Zoning Appeals, the Board may certify the fact to the Circuit Court of the county in which the contempt occurs and the judge of the court, in open court or in chambers, after hearing, may impose a penalty as authorized by law.

8. Minutes

The Board of Zoning Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact. The Board shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the Board and must be a public record.

K. Territorial Jurisdiction

1. The Board of Zoning Appeals shall have jurisdiction over all lands within the Town.
2. The Town Council may expand the jurisdiction of the Board of Zoning Appeals by ordinance and/or intergovernmental agreement, in accordance with the provisions of Section 6-29-330, S.C. Code of Laws.

L. Appeal

1. A person who may have a substantial interest in any decision of the Board of Zoning Appeals, or an officer or agent of the appropriate governing authority may appeal from a decision of the Board to the Circuit Court of Beaufort County. The appeal must be filed within 30 days after the decision of the Board is mailed.
2. A property owner whose land is the subject of a decision of the Board of Zoning Appeals may appeal either as provided in subsection A or by filing a notice with the circuit court accompanied by a request for pre-litigation in mediation. The notice of appeal and request for pre-litigation in mediation must be filed within 30 days after the decision of the board is mailed."

Design Review Board

The Design Review Board is established as a board of architectural and landscape design review for projects in the Corridor Overlay District and for signs throughout the Town in accordance with state law. The Design Review Board has the following powers and duties under this Ordinance.

M. Powers and Duties

1. To periodically review and recommend for adoption such amendments to this Ordinance as it may deem appropriate. Any such proposed amendments shall be considered for adoption in accordance with the provisions of Section <>, Text Amendments;
2. To review and decide applications for:
   a. Major Sign Permits (Sec. 16-5-113.H); and
   b. Major Corridor Development Reviews) (Sec. 16-2-103.I).
3. To review and decide appeals on Official decisions on Minor Sign Permits and Minor Corridor Permits (Sec. 16-2-103.W).
4. Carry out any other powers and duties delegated to it by the Town Council, consistent with the S.C. Code of Laws.

N. Membership, Terms and Compensation

1. Number, Appointment

The Design Review Board shall consist of seven members, appointed by the Town Council, and shall include, to the extent practicable, at least one attorney and at least two but not more than three design professionals (such as a registered architect, a landscape architect or a graphic artist). None of the members shall hold elected public office in the Town or County.

2. Terms

All members shall be appointed for three-year terms. All terms shall end on June 30 of the applicable year.

3. Term Limits

No member may serve for more than two successive terms, except for extraordinary circumstances where the Town Council believes it to be in the best interest of the community to have a continuation for a specified period of time for a particular member of the Design Review Board. No design professional shall serve sequential terms. These limitations shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than one and one-half years shall not constitute a term of service for purposes of this paragraph.

4. Vacancies

Vacancies shall be filled by the Town Council for the balance of an unexpired term.

5. Removal

The Town Council may remove a member for cause, after written notice and a public hearing. Cause may include, but not be limited to, nonattendance at meetings.

6. Compensation

The Town Council shall determine the compensation of members, if any.

O. Staff

The Design Review Board shall use the Town Hall staff. That staff shall be subject to the employment policies of the Town and act under the direction of the Town Manager.

P. Officers, Meetings, Quorum

1. Officers

The Design Review Board shall elect one of its members Chair and another Vice-Chair, each of whom shall serve one-year terms, beginning on July 1 and ending the following June 30. The Design Review Board shall appoint a secretary, who may be an officer or employee of the Town and need not be a member of the Board.

2. Meetings

The Design Review Board shall meet at the call of the Chair and at such regular times as the Design Review Board may determine.

3. Quorum

A majority of the members of the Design Review Board shall constitute a quorum for the conduct of business.

4. Notice of Meetings

Public notice of all meetings of the Design Review Board shall be provided by publication in a newspaper of general circulation in the Town, in accordance with South Carolina Freedom of Information Act requirements.

5. Rules of Proceeding

The Design Review Board shall adopt rules for the conduct of business.

6. Minutes

The Design Review Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.

Q. Territorial Jurisdiction

The Design Review Board shall have jurisdiction throughout the Town, subject to other provisions of this Ordinance regarding the districts or other areas to which the provisions administered by the Board are applicable.

R. Appeal

1. A person who may have a substantial interest in any decision of the Design Review Board, or an officer or agent of the appropriate governing authority may appeal

from a decision of the Board to the Circuit Court of Beaufort County. The appeal must be filed within 30 days after the decision of the Board is mailed.

2. A property owner whose land is the subject of a decision of the Design Review Board may appeal either as provided in subsection A or by filing a notice with the circuit court accompanied by a request for pre-litigation in mediation. The notice of appeal and request for pre-litigation in mediation must be filed within 30 days after the decision of the Board is mailed.