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CHAPTER 4:

DEVELOPMENT APPROVAL

Section 4.101. General.

- (1) The forms of development approval governed by this Chapter concern uses permitted as of right, and uses permitted under prescribed conditions allowed in a zoning district under Chapters 9, 10, and 11.
- (2) Uses permitted by right and uses permitted under prescribed conditions, and uses and structures accessory thereto, shall require a building permit and a certificate of occupancy.
- (3) Changes in the use of property shall require a certificate of occupancy.
- (4) The procedures and standards of this Chapter shall not apply to signs; rather, signs shall be subject to the permit requirements, procedures, and standards established in Chapter 13 of these regulations.
- (5) Appeals from administrative decisions rendered under this Chapter shall be governed by Chapter 5.
- (6) Variances from these regulations to allow a person to receive approval under this Chapter shall be governed by Chapter 5.
- (7) Amendments to the text of these regulations and to the Zoning Maps, including the reclassification of property to a conditional zoning district, shall be governed by Chapter 6.

Section 4.102. Building permit required.

- (1) It is illegal for any person to begin the construction, reconstruction or demolition of a structure or any part of a structure, or to begin to excavate a structure, or to make any structural repairs, alterations, or additions to any structure, or to commence construction of any paved area which will result in an area of more than twenty thousand square feet of impervious cover, without obtaining a building permit from the Director of Code Enforcement or his or her authorized designee.

(Petition No. 2006-116 §4.102(1), 01/16/07)

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- (2) The Director of Land Use and Environmental Services Agency (LUESA), or his or her authorized designee, will not issue a building permit unless the plans, specifications, and intended use of the structure conform to the requirements of these regulations. The application for a building permit must be accompanied by information sufficient to allow the Director of LUESA to act on the request and be filed in the office of Director of Land Use and Environmental Services Agency (LUESA), accompanied by a fee established by the City Council.
(Petition No. 2006-116 §4.102(2), 01/16/07)

Section 4.103. Certificate of occupancy required.

- (1) It is illegal for any person to occupy or use any land, building, or structure or change the use of any land, building, or structure, except for land used for agricultural purposes, without first obtaining a certificate of occupancy.
(Petition No. 2006-116 §4.103(1), 01/16/07)
- (2) A certificate of occupancy shall not be issued unless it has been determined that the site, parcel, building or structure is in compliance with all applicable provisions of these regulations, or an instrument, acceptable to the City, to guarantee conformance with these regulations.
(Petition No. 2006-116 §4.103(2), 01/16/07)

Section 4.104. Zoning review.

Professional Staff identified in Part 5 of Chapter 3 shall conduct reviews and make approvals of zoning compliance under all applicable provisions of these regulations. Professional Staff is authorized to withhold approval for the issuance of, suspend, or revoke a building permit or a certificate of occupancy if it is determined that a project, structure, site or lot is not in compliance with applicable provisions of this ordinance.

(Petition No. 2005-78 §4.104, 06/20/05), (Petition No. 2006-116 §4.104, 01/16/07)

Section 4.105. Public notification process for institutional uses locating adjacent to, or abutting single family residential zoning districts (R-3, R-4, R-5, R-6, and R-8). *(Petition No. 2008-061, §4.105, 04/21/08)*

- (1) Purpose

Institutional uses, because of their nature or scale, may have some impacts on adjacent and abutting property owners. While these uses may be permitted under prescribed conditions, property owners shall receive a courtesy notification when a change of use permit or a commercial building permit has been issued for a structure previously used as a residence so that they may be aware of upcoming land use changes.

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- (2) Notification process
 - (a) The Zoning Administrator, individually, or by and through his or her authorized designees in Engineering and Property Management, shall mail a notice to adjacent and abutting property owners, as shown on the current City tax abstracts, including those across a street. Such notice shall provide the applicants name and information on the type of institutional use for which the permit was issued. The courtesy notice shall be mailed within 10 working days from the time that the Engineering and Property Management staff issues a change of use permit or a building permit. (Note: this is a courtesy notification of a permit being issued; not an opportunity for public input).

Section 4.106. Public notification process for certain land uses.

- (1) Purpose

There are certain land uses which, because of their nature or scale, may have particular impacts on both the immediate area and the community as a whole. While these uses may be permitted under prescribed conditions, the neighboring property owners as well as the general public should have the opportunity to learn about these uses, present relative information that may affect the extent or design of the project, to rebut information supplied by the permit applicant, to ask questions, and to present any pertinent evidence regarding the petition and the requirements of this ordinance. Part of this process will be accomplished through the means of a public forum.

- (2) Notification process

In order to facilitate the exchange of information and dialogue, the following process is established for certain land uses so specified:

(Petition No. 2006-116 §4.106(2)(a, b, c, d), 01/16/07)

- (a) The Zoning Administrator, individually, or by and through his or her authorized designees in Engineering and Property Management, Neighborhood Development, and Charlotte-Mecklenburg Planning Department, will cause the subject site to be posted with a notice stating that the proposed use has been requested, where additional information may be obtained, and establishing a date, time and place for a public forum. The Zoning Administrator, or his or her authorized designees will also mail a notice to affected property owners, as shown on the current City tax abstracts, within 100 feet of the proposed site including those across a street as well as those neighborhood leaders, as listed by the Planning department, within one mile of the proposed site. Such notice will be posted and mailed within 10 working days from the time that the Engineering and Property Management or Neighborhood Development staff determines that the

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application is complete. The public forum should be held within 30-calendar days of the posting of the sign(s) and the mailing of the notices.

(Petition No. 2012-020, § 4.106, (2)(a) 05/14/2012)

- (b) Applicants shall be responsible for supplying the Zoning Administrator, or his or her authorized designees with postage paid envelopes addressed to adjacent property owners and neighborhood leaders as noted above. Any error in an owner's or neighborhood leaders' list or any other procedural error or omission shall not invalidate the issuance of an otherwise properly issued permit.
- (c) The designated agency shall not render a decision on the proposed use until a minimum of 21 calendar days has elapsed following the date of the forum. The 21-day period may be used by all parties to submit written statements of rebuttal to the designated agency. The designated agency will consider only those rebuttal statements that relate to the compliance of the proposed use with the provisions of this ordinance.
- (d) Within five (5) business days after making a decision on the proposed use, the Zoning Administrator, or his or her authorized designees, will mail a notice of the decision to the affected property owners and any other persons who commented on the proposed issuance of the permit whose addresses are known.

Section 4.107. Delegated authority for development approval based upon existing conditions.

- (1) Delegated authority for quantifiable ordinance standards.

The Zoning Administrator has the authority to grant an administrative approval of deviations from measurable and quantifiable standards of this ordinance, except for density requirements and signs, if the deviations are in accordance with the conditions listed below. The approval for sign flexibility is per Chapter 13. For other deviation types, the deviation cannot be more than 5% of the ordinance requirements. The administrative approval must be in accordance with any one of the following four conditions:

- (a) The physical contours of the street, the land, or some other topographical or geographical feature is the basis for a surveying or other inadvertent error.
- (b) The physical layout of the land and the structures upon the land are such that the ordinance requirement cannot be met.
- (c) Because of the nature of the abutting property or intervening topographical or geographical features, the application of the

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ordinance requirement would not serve a useful purpose.

- (d) The applicant has agreed to measures that would ameliorate the deviation from complete compliance with the ordinance requirement.

(2) Yard, Buffers, and Encroachments.

(Petition No. 2005-78 §4.107(2), 06/20/05)

(Petition No. 2010-078 §4.107(2), 02/21/11)

The Zoning Administrator shall also have the administrative authority to approve deviations from yard and buffer requirements. To approve a deviation, the Zoning Administrator must determine that there has been a surveying error, a misunderstanding about a property line, an action of Land Use and Environmental Services Agency (LUESA), Neighborhood and Business Services, Engineering and Property Management, and/or the Planning Department, or other similar basis that demonstrates an inadvertent error. Any approval for a reduction shall not exceed two feet, except an approval for heating, ventilation, or air conditioning units, which shall not exceed three feet. The Zoning Administrator shall have the authority to apply subsection (1) or (2) but not both sections. The Zoning Administrator shall have the authority to attach any condition for a fence, screening, or a similar requirement, if deemed necessary.

(3) Handicapped ramps.

The Zoning Administrator shall have the authority to approve a handicapped ramp or other encroachment into a yard, if the encroachment is required by law and there is no other reasonable location.

(4) Procedure.

- (a) Before granting any administrative approval, the Zoning Administrator shall take reasonable steps to inform the owners of the property abutting on that side of the location of the requested approval or on all sides, if all sides would be affected. The Zoning Administrator shall inform the relevant abutting owner(s) that the owner is entitled to object. The abutting owner shall have three working days to make comments to the Zoning Administrator. The Zoning Administrator shall take into consideration any comments received.
- (b) If the Zoning Administrator determines that there is not a basis for administrative approval, then the applicant must seek a variance.
- (c) If any person who is deemed to have the status of an aggrieved person objects to the administrative approval with a stated reason before the

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Zoning Administrator's written decision, then the Zoning Administrator shall deny the request for an administrative approval and the applicant must file for a variance.

(5) Restoration/Replacement of Historic Features.

An administrative approval may be granted by the Zoning Administrator to allow for the restoration/replacement of historic features on an existing structure if the feature would encroach into a required yard, required setback or required buffer. Such structure must be deemed an Historic Landmark by the Charlotte-Mecklenburg Landmarks Commission or the structure must be located within an Historic District Overlay. Restoration/replacement of missing features shall be substantiated by documentary, physical or pictorial evidence. The Zoning Administrator may grant an administrative approval for such encroachment per the procedure provision found in Section 4.107(4).

(Petition No. 2015-094 §4.107(5), 04/18/2016)