

1.2.2 – Definitions

Administrative Decision- Decisions made in the implementation, administration or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in this ordinance.

Building – Any structure having a roof supported by walls or columns constructed, used or intended for supporting or sheltering any use or occupancy.

Conditional Zoning- A Legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

Development- The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, “development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation activity, when part of other operations or activates/, is not development. Reference to particular operations is not intended to limit the generality of this item.

Dwelling- Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home, mobile home, or recreational vehicle if used solely for a seasonal vacation purpose.

Dwelling Unit – A single unit, or a portion of a multi-family dwelling, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Public Facilities- Any improvement created and/or maintained by a public entity, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

Quasi-Judicial Decision- A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations.

Sleeping Unit- A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Special Use Permit- A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgement and discretion be exercised as well as compliance with specific standards. This definition includes permits previously referred to as “conditional use permits” or “special exceptions.”

CHAPTER 2: ZONING

2.1 – Jurisdiction

The zoning regulations set forth in this Ordinance shall apply within the Town of Goldston, as well as any extraterritorial jurisdiction that is established by the Town of Goldston in accordance with North Carolina General Statutes Section 160D.

2.4.5 - Conditions

Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions mutually approved by the local government and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-5-1, or the impacts reasonably expected to be generated by the development or use of the site.

Such conditions to approval of the rezoning may include dedication to the Town, County, or State, as appropriate, of any rights-of-way or easements for roads, water, or other public utilities necessary to serve the proposed development. Property may be placed in a conditional zoning district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to the district may be proposed by the petitioner or the county, but only those conditions approved by the county and consented to by the petitioner in writing may be incorporated into the zoning regulations or permit requirements.

2.4.7 - Procedure

A. Community Meeting

- (1) The applicant is required to hold a community meeting prior to the application deadline for a conditional zoning district rezoning. The applicant shall provide mailed notice of the meeting. Notice of the meeting shall be provided to owners of abutting property. Properties are abutting even if separated by a street, railroad, public or private right of way, or other transportation corridor.

2.5.3 Incorporation by Reference

Development Regulations adopted pursuant to G.S. 160D-105(b) may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by state and federal agencies. For these maps, a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps.

2.8.10 - Table 1: Zoning Table of Permitted Uses

Key: P = Permitted By Right; SUP = Special Use Permit Only

2.16 - Board of Adjustment

2.16.2 - Meetings

D. Conflicts of Interest

Members of appointed boards shall not vote on advisory or legislative decisions regarding a development regulation adopted pursuant to G.S. 160D-109(b) where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

2.16.4 Quasi-Judicial Procedure

A. Process Required. - Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, and certificates of appropriateness, variances, or any other quasi-judicial decision.

B. Notice of Hearing. - Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

C. Administrative Materials. - The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

D. Presentation of Evidence. - The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

E. Appearance of Official New Issues. - The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

F. Oaths. - The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

G. Subpoenas. - The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to

the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

H. Appeals in Nature of Certiorari. - When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).

I. Voting. - The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

J. Decisions. - The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

K. Judicial Review. - Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (2019-111, s. 2.4.)

2.16.5 – Appeal Procedure

C. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. **In the absence of evidence to the contrary, notice pursuant to 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of notice for mailing with the United States Postal Service.**

2.17.4 – Procedure for Submission and Consideration of Applications for Text Amendment or General Use Zoning Map Amendment

B. Citizen-Initiated Amendments

All applications for text or map amendments initiated by a property owner or citizen shall be required to submit an application containing the following information and follow the procedure outlined in Section 2.4.7. Applications for these amendments shall not require a Community Meeting. **No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the county. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:**

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

2.17.9 – Town Board Receives Recommendation of Planning Board

Prior to adopting or rejecting any zoning amendment, the Town Board shall adopt a statement describing whether its action is consistent with an adopted land use plan, is reasonable, and in the public interest. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the board that at the time of action on the amendment the board was aware of and considered the planning board’s recommendations and any relevant portions of an the comprehensive plan. Should the Town Board adopt a zoning amendment after finding that such an action is not consistent with an adopted comprehensive plan, the Board of Commissioners must also issue a declaration that the adopted comprehensive plan in question is also amended. The statement must include an explanation of “the change in conditions the governing board took into account in amending the zoning ordinance to meet the development needs of the community.” A plan amendment and a zoning amendment may be considered concurrently. When adopting or rejecting any petition for a zoning text or map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by the board. The statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of any areas proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development and the development under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

2.17.12 – Vested Rights

Requests to establish vested rights according to G.S. 160D-108 shall provide the information required for a conditional zoning or conditional use permit request and shall follow the amendment procedure specified in Section 2.4.7 of this Ordinance.

A. Permit Choice

If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

B. Vested Rights

Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

- (1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.
- (2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.
- (3) A site-specific vesting plan pursuant to G.S. 160D-108.1.
- (4) A multi-phased development pursuant to subsection (f) of this section.
- (5) A vested right established by the terms of a development agreement pursuant to 160D-403.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

C. Duration of Vesting.

Upon issuance of a development permit, the statutory vesting granted by subsection (B) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive. Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

D. Multiple Permits for Development Project

Subject to subsection (C) of this section, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

E. Multi-Phased Development

A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development

F. Continuing Review

Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with applicable land development regulations in effect at the time of the original application.

G. Process to Claim Vested Right

A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

H. Miscellaneous Provisions

The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law

CHAPTER 3: SUBDIVISION REGULATIONS

3.2 – Security for Completion and Maintenance of Improvements

3.2.1 – Improvement and Adequate Security

B. Adequate Security

(2) Such adequate security shall comply with all statutory requirements and shall be satisfactory to the Town Attorney as to form and manner of execution as set forth in these regulations, and the Planning Department as to sufficiency (i.e., inflation or rising construction costs shall be taken into account of security amount). A copy of the power of attorney for any countersigning agent shall be attached. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued unless the developer determines that the scope of work necessitates a longer duration.

(4) When the requirements of 3.2.2 B(1) are met, the performance guarantee shall be returned or released, as appropriate, in a timely manner upon acknowledgement by the town that the improvements for which the performance guarantee is being required are complete. The town shall return Letters of Credit or escrowed funds upon completion of required improvements to the specifications of the town, or upon acceptance of the required improvements, if subject to town acceptance. When required improvements that are secured by a bond are completed to the specification of the town, upon request by the developer, the town shall timely provide written acknowledgement that the required improvements have been completed.

G. Legal Responsibilities

No Person shall have or may claim any rights under or to any performance guarantee provided pursuant to ordinance or in proceeds of any such performance guarantee other than the following:

1. The County to whom such performance guarantee is provided.
2. The developer at whose request or for whose benefit such performance guarantee is given.
3. The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

